

The Communist Party and the Law: An Outline of Formal and Less Formal Linkages between the Ruling Party and Other Legal Institutions in the People's Republic of China

Manuél E. Delmestro¹

“When the state feels threatened, the rule of law can be suspended. Anywhere.”²

“Politics is the art of looking for trouble, finding it everywhere, diagnosing it incorrectly and applying the wrong remedies.” –Groucho Marx³

I. INTRODUCTION⁴

The Communist Party of China (CPC or the Party) is the absolute power center in Chinese politics. Deng Xiaoping made the Four Cardinal Principles paramount in Chinese politics: upholding the socialist path; the people's democratic dictatorship; the leadership of the CPC; and the Marxism-Leninism-Mao Zedong Thought.⁵ Thus the Party stands aloof, assumes general oversight and coordinates all sides of the executive agencies, the National People's Congress (NPC), the Chinese People's Political Consultative Conference (CPPCC), and other mass organizations. If the latter is the flesh, and the armed forces the bones, of the Chinese political body, the Party is undoubtedly its brain, main nerves and tendons. The Party leads and controls all other political (and not only political) organizations and institutions in the People's Republic of China (PRC), allowing observers to use the once perhaps more fashionable term, “Party-State,” to capture China's political reality.

The Party has relinquished ideology as the sole or main source of legitimacy,⁶ and for almost three decades has been enjoying support through the “performance oriented” means⁷ of what appears to be a “benevolent one party rule.” The Chinese political system could thus also be seen as one of “good governance with Chinese characteristics.” The regime delivers steady economic performance and is consistent in terms of “consumer-satisfaction”; the people, in return, refrain from getting too angry about its peculiarities.⁸

This article does not directly address the rule of law in China or the eternal debate on its development and developmental patterns, but rather it addresses some peculiar aspects of it. The first part shall provide a brief account of how the Chinese Constitution and main statutory norms of public law formally “treat” the CPC. The second part outlines how the Party practically exerts its influence and authority over the Chinese political system, i.e., the actual functioning of the Party-State machine in the PRC.

1. D. Comp. L. (Palermo), Assistant Professor, Taiwan National University, Taipei.

2. Nick Davies, *The Bloody Battle of Genoa*, Jul. 17, 2008, available at <http://www.guardian.co.uk/world/2008/jul/17/italy.g8> (last visited Feb. 28, 2010).

3. The purpose of the quotes is to show that perhaps the Communist Party of China (CPC) is not that peculiar, and not that keen on politics after all.

4. The author's ideas, opinions, and conclusions are based on sheer data, i.e. documents, regulations, databases, etc., retrieved from official Chinese websites, including Xinhua, and Renmin Ribao. Ideas indirectly borrowed from other sources will be noted as such and properly cited.

5. This occurred after the watershed of the third Plenum of the Eighth CPC Congress in 1978.

6. Much has been written about this topic. See generally Thomas Heberer & Gunter Schubert, *Political Reform and Regime Legitimacy in Contemporary China*, 99 *ASIAN SURVEY* 99-128 (Apr. 2006).

7. For example, the Party allows certain high cadres to face the force of the law (e.g., Chen Liangyu's demise in 2006 and conviction in 2008 for corruption and abuse of office), or the Party itself injects “pills of democratic functioning” into the political machine. At the Seventeenth Party Congress, held in October 2007, the Party leadership allowed 15% of the nominees to not be elected. See John L. Thornton, *Long Time Coming: The Prospects for Democracy in China*, *FOREIGN AFFAIRS*, Jan. 1, 2008, at *5.

8. See generally ASSESSING THE QUALITY OF DEMOCRACY x-xi (Larry Diamond & Leonardo Morlino eds., John Hopkins Univ. Press 2005) (providing a systematic conceptual scheme for identifying the essential properties of democracy). Surveys and research on governance show that popular support for government is not always present in a political system with strong democratic institutions, or vice versa. China might score poorly in some of the variables that help to define democracy (e.g., a law abiding government, controlling corruption, competition, electoral participation, political interest, political efficacy, vertical accountability, horizontal accountability, freedom, equality, and responsiveness), but score better in others.

II. THE PARTY AND THE LAWS⁹

This section will attempt to address two questions that I asked myself when writing this article. First, to what extent is the CPC present in the Constitution and ordinary statutory laws in China? Second, what, according to these norms, is the legal nature of the CPC?

A. *The Legal Status of the CPC Vis à Vis the Constitution and Main Statutory Laws*

1. *The Role of the CPC and the Socialist System in Constitutional Documents*

In 1949, the Common Program of the Chinese People's Political Consultative Conference (CPPCC) mentioned the CPC in its Preamble (中國人民政治協商會議共同綱領 *Zhongguo renmin zhengzhi xieshang huiyi gongtong gangling*). Additionally, the Organic Law of the CPPCC discussed the revolutionary impetus and the dictatorship of the proletariat, among other things (中國人民政治協商會議組織法 *Zhongguo renmin zhengzhi xieshang huiyi zuzhifa*). The Organic Law of the Central People's Government of the PRC also discussed the CPC (中華人民共和國中央人民政府組織法 *Zhonghua renmin gongheguo zhongyang zhengfu zuzhifa*).

In 1954, the PRC's first proper Constitution (中華人民共和國憲法 *Zhonghua renmin gongheguo xianfa*) mentioned the CPC twice in the Preamble and granted a high profile to the National President in Articles 40, 42, and 43, resembling the 1936 Soviet Constitution.¹⁰

In 1975, the Cultural Revolution Constitution, which was a short, thirty article, "more sincere" document, epitomized the then quasi-collapse of the political-legal system, extensively mentioning the expression "under the leadership of the Communist Party of China" (在中國共產黨領導下 *zai Zhongguo gongchandang lingdao xia*) in the Preamble, General Principles, and in Articles 2, 15, 16, 17 and 26. Article 2 mentions the CPC when discussing leadership (中國共產黨是全中國人民的領導核心。工人階級經過自己的先鋒隊中國共產黨實現對

9. The first part of this paper could be improved by employing a vast spectrum of norms to analyze the formal (legal) relations between the ruling party and the institutional framework in other socialist countries and similar systems. For example, the Communist Party of the Soviet Union (CPSU) and USSR; communist parties in other former and current Socialist countries in and outside Europe, such as Yugoslavia, Cuba, Vietnam, and North Korea; Kuomintang (KMT) and the Republic of China (ROC) (both *pre* and *post* 1949); and One Party Rule systems in other former and current authoritarian or semi-authoritarian countries. See generally PAOLO BISCARETTI DI RUFFIA & GABRIELE CRESPI REGHIZZI, *LA COSTITUZIONE SOVIETICA DEL 1977 [THE 1977 CONSTITUTION OF THE USSR] (1979)*; Gabriele Crespi Reghizzi, *La Disciplina Giuridica della Lega dei Comunisti in Jugoslavia [The Legal Framework of the League of Communists in Yugoslavia]*, in *L'ENIGMA JUGOSLAVO: LE RAGIONI DELLA CRISI [THE YUGOSLAVIA ENIGMA: THE REASONS OF THE CRISIS]* (Stefano Bianchini ed., 1989).

10. See XIANFA art. 40 (1954) (P.R.C.). Article 40 states: "The Chairman of the People's Republic of China, in pursuance of decisions of the National People's Congress or its Standing Committee, promulgates laws and decrees; appoints and removes the Premier, Vice-Premiers, Ministers, Chairmen of Commissions or the Secretary-General of the State Council; appoints and removes the Vice-Chairmen and members of the Council of National Defense; confers state orders and titles of honor; proclaims amnesties and grants pardons; proclaims martial law; proclaims a state of war; and orders mobilization."

(中華人民共和國主席根據全國人民代表大會的決定和全國人民代表大會常務委員會的決定，公佈法律和法令，任免國務院總理、副總理、各部部长、各委员会主任、秘书长，任免國防委員會副主席、委員，授予國家的勳章和榮譽稱號，發布大赦令和特赦令，發布戒嚴令，宣布戰爭狀態，發布動員令。 *Zhonghua renmin gongheguo zhuxi genju quanguo renmin daibiao dahui de jue ding he quanguo renmin daibiao dahui changwu weiyuanhui de jue ding, gongbu falv he faling, renmian guofang weiyuan zongli, fuzongli, ge bu buzhang, ge weiyuanhui zhuren, mishuzhang, renmian guofang weiyuanhui fuzhuxi, weiyuan, shouyu guojia de xunzhang he rongyu chenghao, fabu dashe ling he teshe ling, fabu jiyao ling, xuanbu zhanzheng zhuangtai, fabu dongyuan ling*). *Id.*; see also XIANFA art. 42 (1954) (P.R.C.). Article 42 states: "The Chairman of the People's Republic of China commands the armed forces of the state, and is Chairman of the Council of National Defense."

(中華人民共和國主席統率 (COMMANDS) 全國武裝力量，擔任國防委員會主席。 *Zhonghua renmin gongheguo zhuxi tongshuai quanguo wuzhuang lilian, danren guofang weiyuanhui zhuxi*). *Id.*; see also XIANFA art. 43 (1954) (P.R.C.). Article 43 states: "The Chairman of the People's Republic of China, whenever necessary, convenes a Supreme State Conference and acts as its chairman. The Vice-Chairman of the People's Republic of China, the Chairman of the Standing Committee of the National People's Congress, the Premier of the State Council and other persons concerned take part in the Supreme State Conference. . . The Chairman of the People's Republic of China submits the views of the Supreme State Conference on important affairs of state to the National People's Congress, its Standing Committee, the State Council, or other bodies concerned for their consideration and decision."

(中華人民共和國主席在必要的時候召開最高國務會議，並擔任最高國務會議主席。最高國務會議由中華人民共和國副主席、全國人民代表大會常務委員會委員長、國務院總理和其他有關人員參加。最高國務會議對於國家重大事務的意見，由中華人民共和國主席提交全國人民代表大會、全國人民代表大會常務委員會、國務院或者其他有關部門討論並作出決定。 *Zhonghua renmin gongheguo zhuxi zai biyao deshihou zhaokai zuigao guowu huiyi, bing dangren zuigao guowu huiyi zhuxi. Zuigao guowu huiyi you Zhonghua renmin gongheguo fuzhuxi, quanguo renmin daibiao dahui changwu weiyuanhui weiyuanzhang, guowuyuan zongli he qita youguan renyuan canjia. Zuigao guowu huiyi duiyu guojia zhongda shiwu de yijian, you Zhonghua renmin gongheguo zhuxi tijiao quanguo renmin daibiao dahui, quanguo renmin daibiao dahui changwu weiyuanhui, guowuyuan huoqie qita youguan bumen taolun bing zuochu jue ding*). *Id.* The Supreme State Conference (最高國務會議 *Zuigao guowu huiyi*) was substituted in practice by the Politburo Standing Committee, established in 1956 by the Eighth Congress of the CPC.

國家的領導。馬克思主義、列寧主義、毛澤東思想是我國指導思想的理論基礎。Zhongguo gongchandang shi quan Zhongguo renmin de lingdao hexin. Gongren jieji jingguo ziji de xianfengdui Zhongguo gongchandang shixian dui guojia de lingdao. Makesizhuyi, lieningzhuyi, Mao Zedong sixiang shi woguo zhidao sixiang de lilun jichu). Article 15 mentions the CPC when discussing the Armed Forces (中國共產黨領導的工農子弟兵

，是各族人民的武裝力量。中國共產黨中央委員會主席統率全國武裝力量。Zhongguo gongchandang lingdao de gongnong zidi bing, shi gezu renmin de wuzhuang liliang. Zhongguo gongchandang zhongyang weiyuanhui zhuxi tongshuai quanguo wuzhuang liliang). Article 16 mentions the CPC when discussing the NPC (全國人民代表大會是在中國共產黨領導下的最高國家權力機關。全國人民代表大會會議每年舉行一次。在必要的時候，可以提前或者延期。Quanguo renmin daibiao dahui shi zai Zhongguo gongchandang lingdao xia de zuigao guojia quanli jiguan. Quanguo renmin daibiao dahui huiyi meinian juxing yi ci. Zai biyao deshihou, keyi tiqian huozhe yanqi). Article 17 mentions the CPC when discussing the State Council (SC) (全國人民代表大會的職權是：修改憲法，制定法律，根據中國共產黨中央委員會的提議任免國務院總理和國務院的組成人員，批准國民經濟計劃、國家的預算和決算，以及全國人民代表大會認為應當由它行使的其他職權。Quanguo renmin daibiao dahui de zhiquan shi: xiugai xianfa, zhiding falv, genju Zhongguo gongchandang zhongyang weiyuanhui de tiyi renmian guowuyuan zongli he guowuyuan de zucheng renyuan, pizhun guomin jingji jihua, guojia de yusuan he jiesuan, yiji quanguo renmin daibiao dahui renwei yingdang you ta xingshi de qita zhiquan). And finally, Article 26 mentions the CPC when discussing people's duties (公民的基本權利和義務是，擁護中國共產黨的領導，擁護社會主義制度，服從中華人民共和國憲法和法律。Gongmin de jiben quanli he yiwu shi, yonghu Zhongguo gongchandang de lingdao, yonghu shehuizhuyi zhidu, fucong Zhonghua renmin gongheguo xianfa he falv).

In 1978, a Transitional Constitution was enacted. This short-lived document (amended in 1979 and 1980) maintained previous provisions about the Party's leading role, with some adjustments in phrasing and style. Article 19 discusses the

the military (中華人民共和國武裝力量由中國共產黨中央委員會主席統。

中國人民解放軍是中國共產黨領導的工農子弟兵，是無產階級專政的柱。Zhonghua renmin gongheguo wuzhuang liliang you Zhongguo gongchandang zhongyang weiyuanhui zhuxi tongshuai. Zhongguo renmin jiefangjun shi Zhongguo gongchandang de gongnong zidi bing, shi wuchan jieji zhuanzheng de zhushi). Article 21 discusses the State Council in two different sections: (根據中國共產黨中央委員會的提議，決定國務院總理的人選; genju Zhong

guo gongchandang zhongyang weiyuanhui de tiyi, jueding guowuyuan zongli de renxuan) and (根據國務院總理的提議，決定國務院其他組成人員的人

選; genju guowuyuan zongli de tiyi, jueding guowuyuan qita zucheng renyuan de renxuan). This Constitution made a weak, but real, attempt at a formal strengthening of the role of the Premier of the State Council vis-à-vis the obtrusive leadership of the CPC Central Committee.

In the 1982 Constitution and following amendments (in 1988, 1993, 1999, and 2004), the CPC is mentioned five times, but only in the Preamble, while the rest of the text offers only sporadic references to the “Socialism (社會主義 shehuizhuyi) [Socialist System (社會主義體制 shehuizhuyi tizhi)] with Chinese characteristics.”¹¹ Efforts to strengthen the role of the law and to restrain, at least formally, the Party's omnipotence, are reflected in the eighth paragraph of the Preamble and, more clearly after the 1999 amendments, in Article 5. The Preamble, paragraph eight, discusses the Constitution and law (本憲法以法律的形式確認了中國各族人民奮鬥的成果，規定了國家的根本制度和根本任務，是國家的根本法，具有最高的法律效力。全國各族人民、一切國家機關和武裝力量、各政黨和各社會團體、各企業事業組織，都必須以憲法為根本的活動準則，並且負有維護憲法尊嚴、保證憲法實施的職責。Ben xianfa yi falv de xingshi queren le Zhongguo gezu renmin fendou de chengguo, guiding le guojia de genben zhidu he genben renwu, shi guojia de genbenfa, juyou zuigao de falv xiaoli. Quanguo gezu renmin, yiqie guojia jiguan he wuzhuang liliang, ge zhengdang he ge shehui tuanti, ge qiye shiye zuzhi, dou bixu yi xianfa wei genben de huodong zhunze, bingqie fuyou weihu xianfa zunyan, baozheng xianfa shishi de zhize). Article 5 also discusses the Constitution and law

11. The fact that the CPC is mentioned only in the Preamble suggests how important and preceptive (and not only declaratory) the Preamble can be, as this one happens to be, the only part of the document that reflects the Material Constitution of the country.

(中華人民共和國實行依法治國，建設社會主義法治國家。國家維護社會主義法制的統一和尊嚴。一切法律、行政法規和地方性法規都不得同憲法相抵觸。一切國家機關和武裝力量、各政黨和各社會團體、各企業事業組織都必須遵守憲法和法律。一切違反憲法和法律的行為，必須予以追究。任何組織或者個人都不得有超越憲法和法律的特權。 *Zhonghua renmin gongheguo shixing yifa zhiguo, jianshe shehuizhuyi fazhi guojia. Guojia weihu shehuizhuyi fazhi de tongyi he zunyan. Yiqie falv, xingzheng fagui he difangxing fagui dou bu dei tong xianfa dichu. Yiqie guojia jiguan he wuzhuang lilian, ge zhengdang he shehui tuanti, ge qiye shiye zuzhi dou bixu zunshou xianfa he falv. Yiqie weifan xianfa he falv de xingwei bixu yuyi zhuijiu. Renhe zuzhi huozhe geren dou bu dei you chaoyue xianfa he falv de tequan.*)

Both the Hong Kong Special Administrative Region (SAR) and the Macao Special Administrative Region (SAR) Basic Laws (基本法 *Jibenfa*), approved in 1990 and 1993 and enacted in 1997 and 1999 respectively, are peculiar examples of “sub-constitutions.” Their main role, apart from establishing a basic legal framework for these two new entities, is “suspending” the Socialist System provisions that are in force in the rest of mainland China. Provisions “suspending” part of the Chinese Constitution can mainly be found in the second paragraph of the Preamble¹² (為了維護國家的統一和領土完整，保持香港的繁榮和穩定，並考慮到香港的歷史和現實情況，國家決定，在對香港恢復行使主權時，根據中華人民共和國憲法第三十一條的規定，設立香港特別行政區，並按照“一個國家，兩種制度”的方針，不在香港實行社會主義的制度和政策。國家對香港的基本方針政策，已由中國政府在中英聯合聲明中予以闡明。 *Weile weihu guojia de tongyi he lingtu wanzheng, baochi Xianggang de fanrong he wending, bing kaolv dao Xianggang de lishi he xianshi qingkuang, guojia jue ding, zai dui Xianggang huifu xingshi zhuquan shi, genju Zhonghua renmin gongheguo xianfa di sanshiyi tiao de guiding, sheli Xianggang tebie xingzheng qu, bing anzha “yige guojia, liang zhong zhidu” de fangzhen, bu zai Xianggang shixing shehui zhuyi de zhidu he zhengce. Guojia dui Xianggang de jiben fangzhen zhengce, yi you Zhongguo zhengfu zai ZhongYing lianhe shengming zhong yuyi chanming*), and in Articles 2, 5, and 8. There is no need in the text to further explain that the CPC does not enjoy the right to *direct* (領導 *lingdao*) or *lead* (指導 *zhidao*)¹³ state organs and affairs in Hong Kong and Macao. This is because the CPC’s role is implied in the Socialist System and the dropping of the latter apparently entails the removal of the former.

2. The Role of the CPC and the Socialist System in Other Specific Basic Statutes

In the organic laws of central organs, the CPC is not mentioned, but Democratic Centralism (民主集中制 *minzhu jizhong zhi*), a peculiarity of the Socialist System, or an obligation to protect and uphold Socialism and its institutions, is mentioned instead.¹⁴ An exception is the Law on Regional Ethnic Areas Autonomy,¹⁵ where the CPC is mentioned in the Preamble, and Democratic Centralism and the Socialist System are mentioned in Articles 3 and 6.

Articles 1, 3, 4, and 5 of the General Principles chapter of the Legislation Law (approved and enacted in 2000) provide a bold confirmation of the core features of the legal system of the PRC and state as follows:

Article 1. This Law is enacted in accordance with the Constitution in order to standardize lawmaking activities, to perfect state legislative institution, to establish and perfect the socialist legal system with Chinese characteristics, to safeguard and develop socialist democracy, to promote the governance of the country through legal mechanism, and to build a socialist country under the rule of law. (為了規範立法活動，健全國家立法制度，建立和完善有中國

特色社會主義法律體系，保障和發展社會主義民主，推進依法治國，建設社會主義法治國家，根據

12. An extract of the Hong Kong SAR Basic Law is provided here, as the Macao SAR’s provision is almost identical.

13. Here I have used an instrumental translation to mark the difference between the two Chinese terms.

14. See generally 人民法院組織法 *Renmin fayuan zuzhifa* [People’s Courts Organic Law] (promulgated by the Standing Comm. Nat’l People’s Cong., July 5, 1979, effective Jan. 1, 1980) art. 3, 11 (P.R.C.) amended in 1983, 1986, and 2006 (Article 3 discusses Socialism, and Article 11 discusses Democratic Centralism); 人民檢察院組織法 *Renmin jianchayuan zuzhifa* [People’s Procuracy Organic Law] (promulgated by the Standing Comm. Nat’l People’s Cong. 1979) art. 3, 11 (P.R.C.) amended in 1983, and 1986 (Article 3 discusses Democratic Centralism, and Article 4 discusses the Socialist System).

15. See 中華人民共和國民族區域自治法 *Zhonghua renmin gongheguo minzu quyue zizhifa* [Law on Regional Ethnic Areas Autonomy] art. 3, 6 (1984 and amended in 2001).

憲法，制定本法。*Weile guifan lifa huodong, jianquan guojia lifa zhidu, lianli he wanshan you Zhongguo tese shehuizhuyi falv tixi, baozhang he fazhan shehuizhuyi minzhu, tuijian yifa zhiguo, jianshe shehui zhuyi fazhi guojia, genju xianfa, zhiding benfa*).

Article 2. The enactment, amendment and repeal of any national law, administrative regulation, local decree, autonomous decree and special decree shall be governed by this Law. The enactment, amendment and repeal of administrative rules promulgated by agencies under the State Council and local rules promulgated by local governments shall be carried out in accordance with the relevant provisions of this Law. (法律、行政法規、地方性法規、自治

條例和單行條例的製定、修改和廢止，適用本法。國務院部門規章和地方政府規章的製定、修改和廢止，依照本法的有關規定執行。*Falv, xingzheng fagui, difangxing fagui, zizhi tiaoli he danxing tiaoli de zhiding, xiugai he feizhi, shiyong benfa. Guowuyuan bumen guizhang he difang zhengfu guizhang de zhiding, xiugai he feizhi, yizhao benfa de youguan guiding zhixing*).

Article 3. Lawmaking shall adhere to the basic principles of the Constitution, and shall be centered around economic development, and shall uphold the socialist road, uphold the democratic dictatorship by the people, uphold the leadership by the Chinese Communist Party, and uphold Marxism-Leninism and Mao Zedong Thought and Deng Xiaoping Theory, and uphold the reform and opening [to the outside world]. (立法應當遵循憲法的基本原則，以經

濟建設為中心，堅持 (uphold) 社會主義道路、堅持人民民主專政、堅持中國共產黨的領導、堅持馬克思列寧主義毛澤東思想鄧小平理論，堅持改革開放。*Lifa yingdang zunxun xianfa de jiben yuanze, yi jingji jianshe wei zhongxin, jianchi shehuizhuyi daolu, jianchi renmin minzhu zhuanzheng, jianchi Zhongguo gongchan dang de lingdao, jianchi makesilieningzhuyi Mao Zedong sixiang Deng Xiaoping lilun, jianchi gaige kaifang*).

Article 4. Lawmaking shall comply with legally prescribed scope of authority and procedure, and shall serve the national interests and safeguard the uniformity and dignity of the socialist legal system. (立法應當依照法定的

權限和程序，從國家整體利益出發，維護社會主義法制的統一和尊嚴。*Lifa yingdang yizhao fading de quanxian he chengxu, cong guojia zhengti liyi chufa, weihu shehuizhuyi fazhi de tongyi he zunyan*).

Article 5. Lawmaking shall reflect the will of the people, promote socialist democracy, and ensure that people are able to participate in the lawmaking process through various channels. (立法應當體現人民的意志，發揚社會主義民主，保障人民通過多種途徑參與立法活動。*Lifa yingdang tixian renmin de yizhi, fayang shehuizhuyi minzhu, baozhang renmin tongguo duozhong tujing canyu lifa huodong*).

(For the sake of completeness, the sixth and last article of the General Principles chapter is also provided).

Article 6. Lawmaking shall be based on actual circumstances, and shall, in a scientific and reasonable manner, prescribe the rights and obligations of citizens, legal persons and other organizations, and the powers and duties of state organs. (立法應當從實際出發，科學合理地規定公民、法人和其他組

織的權利與義務、國家機關的權力與責任。*Lifa yingdang cong shiji chufa, kexue helide guiding gongmin, faren he qita zuzhi de quanli yu yiwu, guojia jiguan de quanli yu zeren*).¹⁶

Another sensible reminder of the central role of the Party can easily be found in the 2005 Civil Servants Law, where Article 4 reaffirms the tight control of the Party over the personnel machinery of the State, which is one of the pillars, along with the grasp over the military, that guarantees the CPC's steady centrality in the PRC. Article 4 states:

The Civil Servants system shall take Marxism-Leninism, Mao Zedong Thought and Deng Xiaoping Theory and the important thought of "Three Represents" as its guide; carry out the basic route of the preliminary stage of socialism and the cadre routes and guidelines of the Chinese Communist Party, and uphold the principle that the CPC assumes the administration of cadres. (公務員制度堅持以馬克思列寧主義、毛澤東思想、鄧小平理論和"三個代表"重要思想為指導，貫徹社會主義初級階段的基本路線，貫徹中國共產黨的干部路線和方針，堅持黨管幹部原則。*Gongwuyuan zhidu jianchi yi makesiliening zhuyi, Mao Zedong sixiang, Deng Xiaoping lilun he "sange daibiao"*

16. See 立法法 *Lifa fa* [Law on Legislation] (promulgated by the Standing Comm. Nat'l People's Congress, Mar. 15, 2000, effective July 1, 2000) 2000 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ 112 (P.R.C.).

zhongyao sixiang wei zhidao, guanche shehui zhuyi chuji jieduan de jiben luxian, guanche Zhongguo gongchandang de ganbu luxian he fangzhen, jianchi dang guan ganbu yuanze).¹⁷

As hinted to above, the other main pillar of the CPC's rule is its grasp over the military establishment. Despite using the word "State" (國家 *Guojia*) more than forty times in relation to the military, the 1997 National Defense Law mentions the usual Socialist System in the General Principles, and in Article 19, it clearly states that "the Armed Forces of the PRC are led by the Communist Party of China," and that "Party organizations within the Armed Forces perform their activities in accordance with the Party Constitution".¹⁸

Two other examples of the presence of direct links to the Party Constitution and organizations can be found in the 1998 Village Committees Organic Law, Article 3, and in the 1993 Company Law, Article 19.¹⁹ It is interesting that in these two pieces of legislation we are reminded of the obvious notion that Party organizations have to act and function according to Party regulations. The assertion of Party rule here seems to be an attempt to protect Party fabric in entities (democratically elected village committees and income-pursuing enterprises) that might tend to forget the ultimate source of authority in the country.²⁰

B. The Legal Nature of the Party and of the Parties in Civil Law

Despite their resemblance to legal persons (法人 *faren*) similar to social organizations (社會組織 *shehui zuzhi*), the political parties in China are not mentioned in either Article 50 of the 1986 General Principles of Civil Law (民法通則 *Minfa tongze*), or in the Regulations on the Registration of Social Organizations Management (社會團體登記管理條例 *Shehui tuanti dengji guanli tiaoli*) issued in 1998 by the State Council.²¹ This legal vacuum seems to imply that the political parties in China are only the CPC itself and the small eight "Democratic Parties" that the Party tolerates, and that any evolution of the political scenario can originate and be successful, if it has the explicit approval of the ruling Party. This reality was partially confirmed in a Notice issued by the Ministry of Civil Affairs that suddenly appeared in February of 2007 on an official Chinese media outlet.²² That Notice explained how organizations within the CPPCC and those approved, ratified, or cleared (批准 *pizhun*) by the State Council are not required to register, according to the 1998 regulations. One can infer that the battalion of "flower-pot" parties²³ and the CPC itself, in their capacity as key members of the CPPCC, live a sort of "separate life" that isolates them from other actors in society. Moreover, this group has not yet been, and perhaps

17. See 公務員法 *Gongwuyuan fa* [Civil Servants Law] (promulgated by the Standing Comm. Nat'l People's Cong., April 27, 2005) art. 4 (P.R.C.).

18. See *Guofang fa* [National Defense Law] (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 3, 1997, effective Mar. 3, 1997) art. 19 (P.R.C.). Article 9 states: (中華人民共和國的武裝力量受中國共產黨領導。武裝力量中的中國共產黨組織依照中國共產黨章程進行活動。Zhonghua renmin gongheguo de wuzhuang liliang shou Zhongguo gongchandang lingdao. Wuzhuang liliang zhong de Zhongguo gongchan dang zuzhi yizhao Zhongguo gongchandang zhangcheng jinxing huodong).

19. See 村民委員會組織法 *Cunmin weiyuanhui zuzhifa* [Village Committee's Organic Law] (promulgated by the Standing Comm. Nat'l People's Cong., Nov. 28, 1987, effective Nov. 28, 1987) art. 3 (P.R.C.). Article 3 states: 中國共產黨在農村的基層組織，按照中國共產黨章程進行工作，發揮領導核心作用；依照憲法和法律，支持和保障村民開展自治活動、直接行使民主權利。Zhongguo gongchandang zai nongcun de jiceng zuzhi, anzhao Zhongguo gongchandang zhangcheng jinxing gongzuo, fahui lingdao hexin zuoyong; yizhao xianfa he falv, zhichi he baozhang cunmin kaizhan zizhi huodong, zhijie xingshi minzhu quanli). *Id.*; see also 公司法 *Gongsifa* [Company Law] (promulgated by the Standing Nat'l People's Cong., Dec. 29, 1993) art. 19 (P.R.C.). Article 19 states: 在公司中，根據中國共產黨章程的規定，設立中國共產黨的組織，開展黨的活動。公司應當為黨組織的活動提供必要條件。Zai gongsi zhong, genju Zhongguo gongchandang zhangcheng de guiding, sheli Zhongguo gongchandang de zuzhi, kaizhan dang de huodong. Gongsifa yingdang wei dang zuzhi de huodong tigong biyao tiaojian).

20. A field that I will not investigate here (for lack of space and knowledge), but that deserves further research, is that of case law. A question to think about is whether instructions and goals contained in CPC policy papers (issued by the Party itself or jointly by the Party and State organs, like the State Council and its General Office) or Party internal norms themselves, can be regarded as "guiding principles" (指導方針 *Zhidao fangzhen*) by the courts?

21. See Regulations for Registration and Management of Social Organizations, available at http://news.xinhuanet.com/ziliao/2005-0/17/content_3625526.htm (last visited Feb. 27, 2010).

22. See Notice of the Ministry of Civil Affairs on Issues regarding Registration Exemption for some Associations (民政部關於對部分團體免予社團登記有關問題的通知 *Minzhengbu guanyu dui bufen tuanti mianyu shetuan dengji youguan wenti de tongzhi*), available at http://news.xinhuanet.com/ziliao/2006-2/17/content_4191954.htm (last visited Feb. 27, 2010).

23. As they are mercilessly defined by Chinese people themselves.

cannot be, enlarged or integrated by means of bottom-up legal actions. These notions lead to the hypothesis that the Party is a sort of mighty being that lives and operates almost exclusively within the high realm of constitutional law and in the very earthly realm of the prosaic day-to-day practices of the Material Constitution and actual management of power.²⁴

III. THE ACTUAL FUNCTIONING OF THE PARTY-STATE SYSTEM²⁵

Although the PRC's Party-State can hardly be considered a modern constitutional system, according to Dippel's "[e]ssential features of modern constitutionalism,"²⁶ it nevertheless shows rare talent in devising and maintaining arrangements that enhance its ability to run the country with pretty good results and relatively few grumbles from the population.²⁷

A. Party, Policy-Making, Oversight and State Organs

As clearly stated by the Constitution Preamble, and even more clearly observed in day-to-day practice, the Party is the leading force in the Chinese political arena. The leadership exerted by the Party is *ideological, political* and *organizational*. It covers all of the branches of government (in the American usage of this word) and it is carried out through various channels: policy-making; law-making; policy-implementation; law-implementation; policy-enforcement; and law-enforcement.²⁸ The power structure of the PRC consists of three vertical systems: the Party apparatus (系統 *xitong*); the State/Government; and the military establishment.²⁹ The apex of these pillars is the Political Bureau, or Politburo, of the Central Committee of the CPC, and its Standing Committee (PBSC) (中國共產黨中央政治局常務委員會 *Zhongguo gongchandang zhongyang zhengzhiju changwu weiyuanhui*). The pillars operate on approximately five levels: centre (中央級 *zhongyang ji*); province (省級 *sheng ji*); area (地區級 *diqu ji*); county (縣級 *xian ji*); and township (鄉級 *xiang ji*).

This structure is further organized into six major functional sectors (口 *kou*), and each sector is supervised by one or two members of the PBSC, the de facto top power organ in the PRC. The sectors are: military and foreign affairs; political and legal affairs (responsible for legislative, judicial and law enforcement affairs); administrative affairs (responsible for industrial and agricultural production, finance and commerce, health, education, science, sports, etc.); propaganda (responsible for education, media and cultural affairs); United Front (responsible for other political parties, religion, minorities, Taiwan, Hong Kong and Macao affairs, mass organizations or unions, youth and women's organizations,

24. Other aspects of the CPC relating to its capacity in the Private Law sphere are still quite opaque and undoubtedly worthy of further research. For example, an interesting question is whether the Party possesses its own assets, property, and real estate, or if it lives as a parasite of the State?

25. A detailed report on the complex com-penetrations between Party and State organs in China would require many more pages than allowed here, so only a simple sketch will be provided. For an extensive analysis of this topic, see generally JEAN-PIERRE CABESTAN, *LE SYSTÈME POLITIQUE DE LA CHINE POPULAIRE [THE POLITICAL SYSTEM OF [THE] PEOPLE'S [REPUBLIC OF] CHINA]* (Paris, 1994); ZHU GUANGLEI 朱光磊, *中國政府與政治 Zhongguo zhengfu yu zhengzhi [GOVERNMENT AND POLITICS OF CHINA]* (Taipei, 2004); ZHANG QIANFAN, 張千帆 *憲法學導論：原理與應用 Xianfa xue daolun: yuanli yu yingyong [A GUIDE TO THE STUDY OF THE CONSTITUTION: PRINCIPLES AND USES]* (Beijing, 2004).

26. See Horst Dippel, *Modern Constitutionalism: An Introduction to a History in Need of Writing*, 73 *TUJDSHRIFT VOOR RECHTSGESCHIEDENIS [THE LEGAL HISTORY REVIEW]* 153, 155-56 (2005) (listing the essential features of modern constitutionalism as: 1) the sovereignty of the people; 2) constitution founded on universal principles; 3) a declaration of rights; 4) limited government; 5) representative government; 6) responsible and accountable government; 7) the separation of executive, legislative and judicial powers; 8) judicial independence; 9) a written constitution as the paramount law; and 10) the people's right and ability to amend the constitution).

27. See generally China's Political Party System, Information Office of the State Council (Nov. 15, 2007), available at <http://www.china.org.cn/english/features/book/231979.htm> (last visited Feb. 28, 2010) (providing a somewhat romantic, but sincere, introduction to China's political party system and its "inevitability" for China's development); Asian Barometer, <http://www.asianbarometer.org/> (last visited Feb. 28, 2010) (providing data about "satisfaction indexes" of Chinese people).

28. Law-making, law-implementation, and law-enforcement have been left mainly to State/governmental agencies, and the more the matter or field is perceived as technical, the more the Party is disengaged. See He Jiadong 何家棟, *黨政分開再探 Dang zheng fenkai zai tan*, available at <http://www.chinaelections.com/NewsInfo.asp?NewsID=59096> (last visited Feb. 29, 2010) (providing a brief historical outline of Party's disengagement from executive affairs). Mr. He cleverly suggests that whoever sees the disengagement of the Party as a sign of its will to give up leadership fails to appreciate how the Party is able to supervise, oversee, and coordinate more efficiently, without having to meddle with day-to-day petty management; an opinion I completely agree with.

29. See Lu Ning, *The Central Leadership, Supraministry Coordinating Bodies, State Council, and Party Departments*, in *THE MAKING OF CHINESE FOREIGN AND SECURITY POLICY IN THE ERA OF REFORM* 30, 30-69 (David Lampton ed., 2001). In this article, I have modified some of Lu's settings and updated some data.

and other associations), and Party affairs (responsible for Party day-to-day affairs and Party discipline).

TABLE 1. THE NINE STANDING COMMITTEE MEMBERS' AREAS OF RESPONSIBILITY.

	M&F	P&L	Ad.	UF	PROP.	PA
PBSC Member	Hu, Xi	Wu	Wen	Jia	Li Cc	Hu, Xi
	Wen	Zhou	Li Kq	-	-	He

Members of the PBSC conduct direct sectoral supervision through an institutionalized body such as a committee (委員會 *weiyuanhui*) (e.g., the Central Military Commission (CMC), the Central Commission for Discipline Inspection (CCDI), or the Political & Legal Affairs Committee) or a non-standing organ such as a Central Leading Small Group (CLSG) (中央領導小組 *zhongyang lingdao xiaozu*) (e.g., the Financial & Economic Affairs CLSG, the Foreign Affairs CLSG, or the CLSG for Constitutional Amendment).³⁰ Each of these bodies is made up of ordinary Politburo, Central Committee, and CCDI members, who almost invariably are also high officials in the State organs and agencies.³¹ For example, vice-premiers, state councilors, ministers, top members of the NPC, Presidents of the Supreme People's Court (SPC) and Supreme People's Procuratorate (SPP), the top brass of the People's Liberation Army (PLA), and provincial and mass organization leaders are all concurrently members of the Central Committee (some even of the Politburo), thus framing a pervasive institutionalized system of "dual-hatted" officials, or cadres (幹部 *ganbu*), also called, after former USSR & CPSU, *nomenklatura*.

This system of sectoral division for purposes of management (歸口管理制度 *guikou guanli zhidu*), which perpetuates the "Party manages, State executes" principle (黨管國辦 *Dang guan Guo ban*), is an internal mechanism that does not appear on formal organizational charts of the Party,³² government,³³ or military,³⁴ which instead feature the more general frameworks envisaged by Party and State Constitutions.

But how does the Party ensure that policies and decisions are followed by 76 million Party members and over 1.3 billion PRC citizens?³⁵ General policies and strategies are developed in a plethora of Party meetings, gatherings, and study sessions, endorsed as Party theses (黨的主張 *Dang de zhuzhang*) by the Central Committee and occasionally by the Party Congress.³⁶ These policies and strategies are then sent to the legislative and executive agencies through the respective organ's Party group (黨組 *dangzu*)³⁷ for approval.³⁸ These policies and strategies are eventually turned into new constitutions, constitutional

30. See Figure 2 and Table 2, *supra*, for details on permanent bodies.

31. For example, Hu Jintao is the General Secretary of the CPC, President of the PRC, and Chairman of the CMC; Wu Bangguo is ranked second in the PBSC and is Chairman of the NPC; Wen Jiabao is ranked third in the PBSC and is Premier of the State Council; Jia Qinglin is ranked fourth in the PBSC and is Chairman of the CPPCC (China's only consultative and almost powerless liberal "upper house," composed of a majority of non-CPC members, democratic parties, mass organizations, and intellectuals); Xi Jinping is ranked sixth in the PBSC and is Vice-President of the PRC in charge of the Secretariat and Taiwan affairs; He Guoqiang is ranked eighth in the PBSC, is the CCDI Secretary, and top anti-corruption official; and Zhou Yongkang is ranked ninth in the PBSC and is in charge of security and justice issues. The most remarkable current exception is Li Changchun, "The Propaganda Czar," who holds no position in State or Party standing organs.

32. See Figure 2.

33. See Figure 3.

34. The system's structure can be reconstructed through extensive comparison of Chinese sources and data. See GIGA's China Aktuell, China Data Supplement, June 2008, available at http://www.giga-hamburg.de/dl/download.php?d=/content/ias/archiv/cds/cds_0806.pdf (last visited Feb. 29, 2010) (listing the leading cadres and organs in China, with some mistakes and misprinting).

35. See 新中國成立60年來中國共產黨黨員增加16倍 總數近7600萬名 *Xin Zhongguo chengli 60 nian lai Zhongguo gongchandang dangyuan zengjia 16 bei zongshu jin 7600 wan ming* [In 60 years after the Establishment of the New China the Number of CPC Party Member has increased 16 times: the amount is close to 76 million], available at http://news.xinhuanet.com/politics/2009-06/30/content_11626985.htm (last visited Feb. 29, 2010).

36. See 中共中央政治局會議(十七屆) *Zhonggong zhongyang zhengzhiju huiyi* [Meetings of the Politburo of the CPC (XVII Central Committee)], available at http://news.xinhuanet.com/ziliao/2007-10/24/content_6931869.htm (last visited Feb. 29, 2010) (providing an overview of the most recent meeting of the Politburo plenum).

37. See Figure 1, *infra* (exemplifying the relationship between Party committees and Party groups in State organs at the same level).

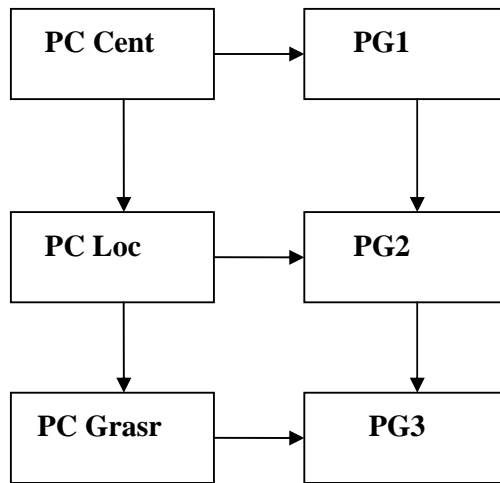
38. Approval is not always given without mild unrest and adjustments by the People's Congresses. In recent years, the NPC and provincial PC seem to have become less subservient to higher dictates, as exemplified by their uneasiness towards the Three Gorges Dam, low approval rates of SPP and SPC reports, and poor support for some elected officials, among other things. See generally CAI DINGJIAN, 蔡定劍, 中國人民代表大會制度 *Zhongguo renmin daibiao dahui zhidu* [THE INSTITUTION OF THE PEOPLE'S CONFERENCE IN CHINA] (Beijing, 2003)

amendments, legislation, and regulations (i.e., the Will of the State (國家的意志 *Guojia de yizhi*)) at various levels of the government.³⁹ The same means are employed for mass organizations.

The various agencies comply with the legislation and regulations for several reasons. First, CPC members comprise a comfortable majority in all elected bodies⁴⁰ and among cadres (the “Party leads/manages cadres” principle 黨管幹部 *Dang guan ganbu*).⁴¹ Second, a complex network of interconnected Party organizations supervise government agencies and directly or indirectly report to the highest echelons. Such organizations include Party committees at all levels, discipline inspection committees, and Party groups and organic committees. Finally, the extensive propaganda work and two major organizational principles, Democratic Centralism (民主集中制 *minzhu jizhong zhi*) and “double-dependence” (or dual leadership) (雙重領導 *shuangchong lingdao*), play a key role in securing the cohesion of the entire system.⁴²

Judiciary and law enforcement agencies fall directly within the responsibility of the Political & Legal Affairs Committee and the Comprehensive Management of Social Security Committee (CMSSC), both headed by Zhou Yongkang and composed of the Presidents of the Supreme People’s Court & Procuratorate, the Ministers of Public Security, Justice and State Security, and officials from the anti-Falungong “office 610,” among others.⁴³

FIGURE 1. PARTY COMMITTEES & PARTY GROUPS © Delmestro 2007



The only sector where the Party’s actual rule is not even half-hidden is the crucial military sector. Within the military, the will of the Party reigns supreme, not only by virtue of the identical Party and State Central Military Commission (CMC) (中央軍事委員會 *Zhongyang junshi weiyuanhui*)⁴⁴ and usual

(detailing work of NPC); Murray Scot Tanner, *The National People’s Congress*, in *THE PARADOX OF CHINA’S POST MAO REFORMS* (Merle Goldman & Roderick MacFarquhar eds., 1999).

39. See G. Crespi Reghizzi & Manuél Delmestro, *La Costituzione della RPC si Aggiorna* [The Constitution of the PRC is Updated], in *DIRITTO PUBBLICO COMPARATO ED EUROPEO*, [COMPARATIVE AND EUROPEAN PUBLIC LAW] 575-99 (2004) (providing a more detailed account on the process that led to recent Constitutional amendments); see also PU XINGZU 浦興祖 ed., *中華人民共和國政治制度*, (*Zhonghua renmin gongheguo zhengzhi zhidu*) [THE POLITICAL SYSTEM OF THE PEOPLE’S REPUBLIC OF CHINA] 83-90 (Shanghai, 1999) (on perfecting of the NPC system).

40. Because the Party controls electoral procedures at every level, with the possible exception of Townships, this is not an extremely difficult task. See generally Hsu Szu-Chien, 徐斯儉, *中國大陸城市基層民主與城市治理的民主化意涵* *Zhongguo dalu chengshi jiceng minzhu yu chengshi zhili de minzhuhua yihan* [Democratic Implications of Mainland China’s Urban Grassroots Democracy and City Governance], in CHU HSIN-MIN, *中國大陸城市基層民主研究*, *Zhongguo dalu chengshi jiceng minzhu yanjiu* [STUDIES OF URBAN GRASSROOTS DEMOCRACY IN MAINLAND CHINA] (Taipei, 2004).

41. The “Office of Personnel” for the entire Party-State is the CPC Central Organizational Department. See generally Table 2, *infra*.

42. The Democratic Centralism organizational principle enables internal debate within the Party, provided strict obedience to the will of higher levels is maintained. The “double-dependence” organizational principle (of which Figure 1 is an attempted exemplification) guarantees the internal cohesion of the Chinese organizational fabric.

43. See http://www.chinapeace.org.cn/2006-07/26/content_1377.htm (last visited Feb. 29, 2010) (describing the Political & Legal Affairs Committee); see also The Official Website of the Supreme People’s Court, available at <http://www.court.gov.cn/mien/1/200803190002.htm> (last visited Feb. 21, 2010) (confirming that the “Chief Justice” of the PRC, Wang Shengjun, has to report to this committee, as its Secretary General and deputy-director of the CMSSC).

44. The most prominent example of the “One Organ–Two Signboards” (套機構兩塊牌子 *yi tao jiguan liang kuai paizi*) arrangements in

Party committee and political office systems, but also by the institution of the Party at every level and in every unit of the People's Liberation Army (PLA) (中國人民解放軍 *Zhongguo renmin jiefangjun*), People's Armed Police (PAP) (中國人民武裝警察部隊 *Zhongguo renmin wuzhuang jingcha budui*), and of Political Commissars (政治委員 *zhengzhi weiyuan* or 政委 *zhengwei*).⁴⁵ Political Commissars report to the General Political Department (GPD) (總政治部 *Zong zhengzhi bu*) of the PLA, buttress civilian ultimate leadership by curbing military independence tendencies and reducing the risk of coups d'état, for example, and ensure that loyalty to the Party and adherence to its will is absolute.⁴⁶

B. Internal Party Regulations

The Party employs a vast and complex set of regulations⁴⁷ to run its gigantic machinery, and actually anticipated the State's lawmaking in 1990 when it enacted the Interim Regulations on Procedures for Establishing Internal Party Regulations (IRPEIPR) (中國共產黨黨內法規制定程序暫行條例 *Zhongguo gongchandang dangnei fagui zhiding chengxu zanxing tiaoli*), a concise version of "Legislation Law."⁴⁸ This document sets a strict hierarchy of sources of (Party) Law, with the Party Constitution at its apex, and a series of enacting procedures to be followed. The IRPEIPR confirms the People's Liberation Army's special position, even in Party "legal" matters (Article 31), but does not shed much light on the (legally speaking) enigmatic Joint Documents by the Central Committee and the State Council (中共中央國務院聯合發佈文件 *Zhonggong zhongyang guowuyuan lianhe fabu wenjian*).⁴⁹ Nonetheless, the creation of the IPREIPR can be considered a milestone in the open process of institutionalizing the Party itself and the building of an internal Party "Rule of Law" system somehow ahead of the greater one of the People's Republic of China.

Given the undeniable centrality of the Party in the PRC in comparison to the relatively little room allotted to it in State laws, statutes, and regulations, and given the pervasiveness of the Party's internal regulations system,⁵⁰ it can be guessed that the latter represents an autonomous and parallel normative system, certainly not justiciable by the State courts of Law; a parallel system that certainly interacts with the State normative system (perhaps as its "backup" system?) in interesting ways.

IV. CONCLUSION

Thanks to its legal enshrinement in the Constitution and basic, systemic laws and statutes, and to the numerous cross-references to the Socialist System and to the Party political documents (mainly the Party Constitution) and resolutions, the CPC is able to exert its ideological, political and organizational leadership over the entire political, social, and, to a lesser extent (albeit willingly), economic spheres within the PRC.

The non-extensive, but still existing, reference to the Party Constitution in important pieces of legislation suggests that the role of so-called "soft law" in the PRC deserves much consideration. Doubts can arise on how "soft" Party provisions and regulations, provided their great influence and strength, can possibly be an *extreme persuasiveness* bordering on a proper binding force. Party internal regulations appear to be a corpus of provisions that legal doctrines are not entirely able to conceptualize with suitable categories. It might be necessary to devise a new ad hoc category to specifically delimitate Party norms in a peculiar system like the Chinese one.

When considering this, I would suggest the neologisms *nomopoiesis* (noun) & *nomopoietic*

Chinese political structure. See Table 2 for more details.

45. The People's Armed Police reports to both the CMC and the State Council through the Minister of Public Security, in his/her capacity of its "First Political Commissar."

46. See generally David Shambaugh, *The Soldier and the State in China: The Political Work System in the People's Liberation Army*, 127 CHINA Q. 527, 527-68 (1991) (describing history of politicization of Chinese military).

47. The Party's enforcement agency is the CCDI, and the Party also has a legal interpretation organ, which is usually the Organization Department, or the CPC General Office.

48. IRPEIPR, Art. 2, sec. 3, states that one of its primary goals is to strengthen the Party's Building and secure the "institutionalization (制度化 *zhiduhua*) of the Party's work and activities."

49. The Joint Documents by the Central Committee and State Council seem to legally bind both the State and the Party, but their proper legal categorization remains unclear.

50. The Party has regulations on Discipline, Party member's rights, powers and functions of Party groups and other Party organs, etc.

(adjective).⁵¹ The use of these words would allow us to define soft law and hard law also in terms of different degrees of *vis nomopoietica* (*nomopoietic* potency).⁵² The CPC could thus be regarded as the single “corporate” political entity with the soundest *nomopoietic* (rule-creating) abilities and functions within the PRC; abilities and functions only partially formalized in State hard laws and regulations.

What still needs to be understood is whether and, if yes, how, a diminished formal “presence” of the Party in the normative documents of the State entails a parallel lowering of the level of the actual influence it commands over the political system as a whole. Observation suggests that even if this happens, it happens much more slowly than the updating process of the formal normative framework.

One famous dictum by Albert Venn Dicey says: “[t]he rule of law is in effect when the State becomes just another actor.” This statement is probably correct and agreeable, unless the film director (and/or the producer) is the Party.

51. I have been thinking about a single term that could describe the degree or ability of a certain entity to create norms (and that could substitute for the expression “norm-creative”), and I believe that this compound of the Greek roots *nomo-* (meaning law or rule) and *poiesis-* (meaning creation or production) could accomplish the task. It refers to the production/creation of norms and to the ability of producing/creating norms. An example of an already existing word of this kind is *biopoiesis*, which refers to the origin of life from inorganic matter.

52. Jurists would notice and point out the existence of the terms *binding* and *binding force* (in English) and *vincolante* and *vincolatività* (in Italian, and similar terms in other neo-Latin languages). The difference between these terms and *nomopoietic force* is that the former terms describe the formal, or “official,” “strength” of a provision (say, a regulation of the State Council), while the latter term captures the actual vigor of it, and its ability to be obeyed. An administrative regulation will be in force until formally substituted, repealed by a higher source of law, or struck down by law courts, but its *vis nomopoietica* would vanish long before, precisely when the gap between the content of said regulation and that of the new or higher one (law, political document signaling a new deal, or different approach) becomes apparent to agencies and people. The provision is thus struck down by the courts or simply not obeyed as soon as the disappearance of the *vis nomopoietica* is detected by those expected and trained to do so.

Figure 2. ORGANIZATIONAL CHART OF THE CPC © Delmestro 2008

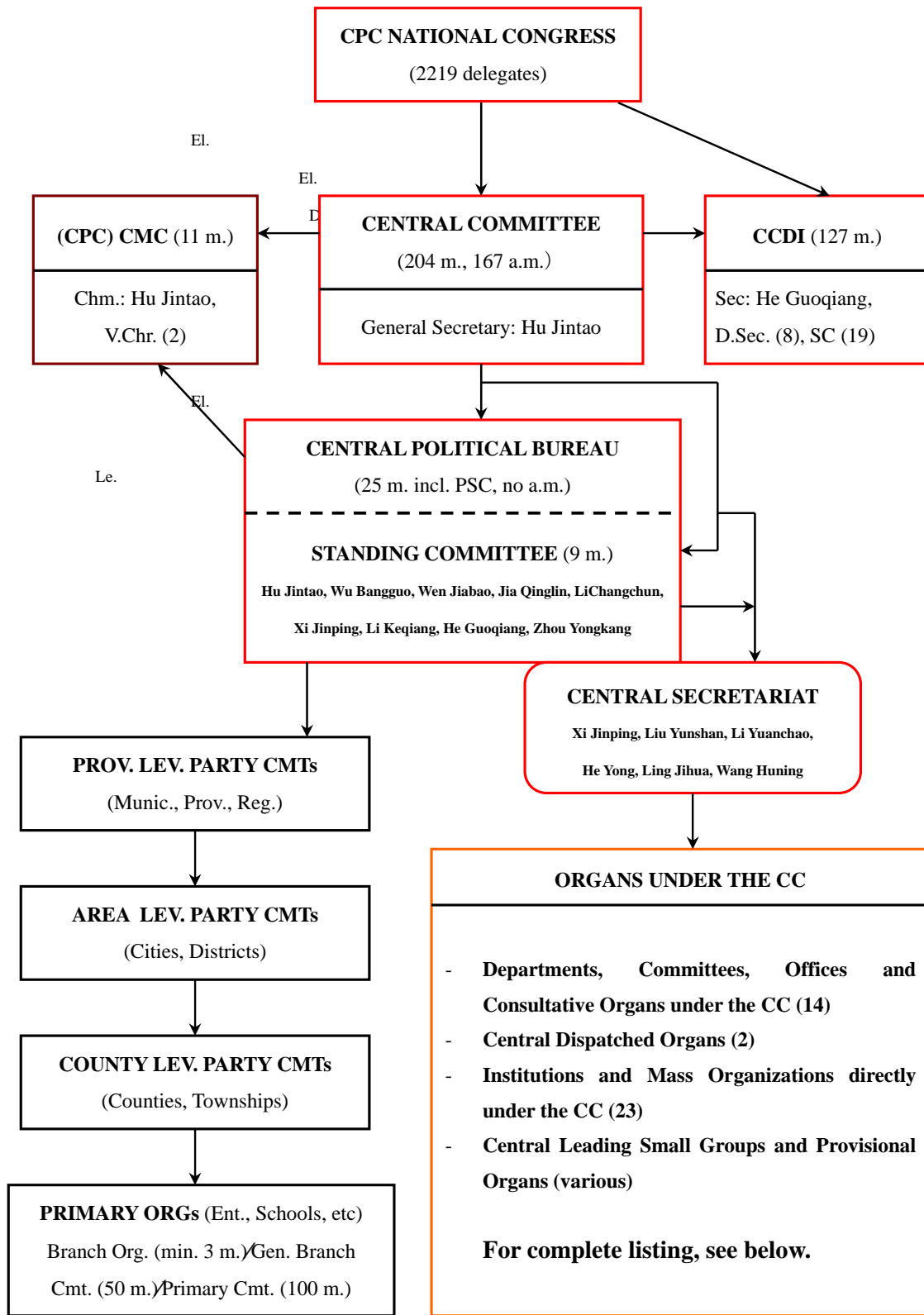


Table 2. ORGANS DIRECTLY UNDER THE CENTRAL COMMITTEE © Delmestro2008	
* “One Organ – Two Signboards” organs.	
** Organs within the formal organizational framework of the State Council.	
*** Organ under the leadership of the Central Committee	
Central Commission for Discipline Inspection***	Sec. He Guoqiang
Departments, Committees, Offices and Consultative Organs under the CC	
General Office	Dir.: Ling Jihua
Organization Department	Dir.: Li Yuanchao
Publicity (Propaganda) Department	Dir.: Liu Yunshan
United Front Department	Dir.: Du Qinglin
International Liaison Department	Dir.: Wang Jiarui
Political & Legal Affairs Committee	Sec.: Zhou Yongkang
Policy Research Office	Dir.: Wang Huning
Taiwan Work Office (SC Taiwan Affairs Office)*	Dir.: Wang Yi
International Publicity Office (SC Information Office)*	Dir.: Wang Chen
Foreign Affairs Office	Dir.: Dai Bingguo
Organization Reform Committee Office	Dir.: Wang Dongming
Comprehensive Management of Social Security Cmt.	Dir.: Zhou Yongkang
Secrecy Committee Office (National Secrecy Bureau)*	Dir.: Xia Yong
Guard Bureau	Dir.: You Xigui
Central Dispatched Organs	
Work Committee for the Organs Directly Under the CC	Sec.: Wang Gang
Work Committee for the State Organs	Sec.: Ma Kai
Institutions and Mass Organizations directly under the CC	
Central Party School	Pres.: Xi Jinping
People’s Daily	Dir.: Zhang Yannong
Party Literature Research Office	Dir.: Leng Rong
Party History Research Office	Dir.: Li Jingtian
Seeking Truth Magazine	Dir.: Li Baoshan
All-China Federation of Trade Unions (ACFTU)	Chm.: Wang Zhaoguo
Communist Youth League of China	Sec.: Lu Hao
Translation Bureau	Dir.: Wei Jianhua
All-China Women Federation	Chw.: Gu Xiulian
China Federation of Literary and Art Circles	Chm.: Sun Jiazheng
China Writers’ Association	Chw.: Tie Ning
China Science & Technology Association	Chm.: Han Qide
China Returned Overseas Chinese Federation	Chm.: Lin Zhaoqv
State Admin. of Radio, Film and Television (SARFT)**	Dir.: Wang Taihua
Xinhua News Agency**	Dir.: Li Congjun
Guangming Daily	Ed.Ch.: Gou Tianlin
Economic Daily	Dir.: Xu Rujun
Central Archives (National Archives Bureau)*	Dir.: Yang Dongquan
National Foreign Languages Bureau	Dir.: Cai Mingzhao
China Law Society	Chm.: Han Zhubin
China Journalists’ Association	Chm.: Tian Congming
All-China Asc. for Friendship with Taiwan Compatriots	Chm.: Yang Guiqing
China Press Group	Dir.: Yang Muzhi
Central Leading Small Groups and Provisional Organs (various)	
CLSG for ... (Non-Standing Organs)	Head: ...

Abbreviations:

a.m. Alternate Member
Admin. Administration
App. Appoints
Asc. Association
Aut. Autonomous
Br. Branch
CC. Central Committee
CCDI. Central Commission for Discipline Inspection
Chm. Chairman
Chw. Chairwoman
CMC. Central Military Commission
Cmt. Committee
CPPCC. Chinese People's Political Consultative Conference
D. Deputy
Dir. Director
Dist. District
Dr. Directs (*lingdao*, stronger than *zhidao*)
Ed.Ch. Editor-in-Chief
El. Elects
Ent. Enterprise
Est. Establishes
HPC. High People's Court
HPP. High People's Procuratorate
Incl. included
IPP. Intermediate People's Procuratorate
Le. Leads (*zhidao*, weaker than *lingdao*)
Lev. Level
m. Member
Med. Mediation
Mil. Military
Org. Organization
PC. People's Court
PG. People's Government
Pr. Proposes
Pref. Prefecture
Pres. President
P.'s People's
Rm. Removes
SC. State Council, Standing Committee
Sec. Secretary
SPC. Supreme People's Court
SPP. Supreme People's Procuratorate
Sup. Supervise
Twns. Township
V. Vice