

# EXPORTING VIRTUE?

## China's International Human Rights Activism in the Age of Xi Jinping

Pitman B. Potter



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# Introduction

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The historic rise to prosperity of the People's Republic of China (PRC) since 1978 has seen increased engagement with international standards and institutions of governance. While much of this has involved varying and conflicted efforts to comply with international law, in recent years the PRC Party-state, enabled by new-found power and influence, has begun to challenge international legal standards. Human rights law and policy offer important examples of this effort. This book examines the ways in which China under the leadership of President Xi Jinping has attempted to change international human rights standards to accommodate its interests.

Like many in the China law field, I have examined institutional changes in PRC law and governance as a dynamic process of normative and organizational change influenced by local conditions as well as by international legal discourses. Globalized discourses of law have served as a benchmark of sorts for China's legal developments over the past forty years, as PRC officials and scholars have explained China's legal reforms by reference to international precedents. However, despite the temptation to interpret Chinese law in terms of the classic "Western impact–Chinese response" discourse, China law scholarship is better served by appreciating that Chinese law and policy actors bring their own socio-cultural, political, and legal perspectives to bear on a range of governance ideals – interpreting the global by reference to the local.<sup>1</sup> Accordingly, informed by the observed resiliency of local legal culture, I have attempted previously to explain China's engagement

with international legal discourses as involving a dynamic of “selective adaptation” by which globalized legal standards are mediated by local norms and institutions.<sup>2</sup> Turning from the question of local interpretation and application of international standards, this book offers a complementary analysis of Chinese efforts to revise international human rights standards to suit the human rights preferences of the ruling regime.<sup>3</sup>

### **International Assertiveness with Human Rights Implications**

While this book focuses on China’s human rights activism in the age of Xi Jinping, Beijing’s international assertiveness has been developing for some time. At the 18th National Congress of the Communist Party of China (CPC) in 2012, President Hu Jintao averred that China had become more active in international affairs, using the rubric “Progress Has Been Made in China’s Diplomacy”:

We have staunchly protected China’s interests and the legitimate rights and interests of Chinese nationals and legal persons overseas. We have increased exchanges and cooperation with other countries. We have promoted reform in global governance, enhanced world peace and development, secured more representation and a greater say for China in international affairs, and created favorable international conditions for China’s reform and development.<sup>4</sup>

Hu’s assertions about international activism take on particular significance when compared with his remarks at the 17th CPC National Congress (2007), which had a more domestically oriented agenda informed by themes of Hu’s “Scientific Outlook on Development.”<sup>5</sup>

International activism was highlighted once again in Xi Jinping’s October 2017 speech to the 19th CPC National Congress:

China champions the development of a community with a shared future for mankind, and has encouraged the evolution of the global governance system. With this we have seen a further rise in China’s international influence, ability to inspire, and power to shape; and China has made great new contributions to global peace and development.<sup>6</sup>

Such efforts to contribute to global peace and development are closely intertwined with the domestic policies and practices of the Party-state.<sup>7</sup> Thus, Xi’s address to the Central Conference on Foreign Affairs Work in June 2019

offered “guiding thought” on China’s foreign affairs work, calling for big-power diplomacy to further China’s goals of national rejuvenation, echoing themes of China’s development and national interests.<sup>8</sup> Official commentators applauded the linkage between Xi’s vision for PRC diplomacy and the “comprehensive deepening of reform,” suggesting that PRC foreign policy should reflect economic, political, cultural, social, and environmental policies at home that depend on and reinforce the authority of the Party-state.<sup>9</sup> Similarly, China’s promotion internationally of the so-called Beijing Consensus calling for authoritarian management of economic growth reflects China’s approach to directing its domestic economy, in contradistinction to the “Washington Consensus” based on markets, democracy, and the rule of law.<sup>10</sup>

While some have viewed China’s international activism as a potentially worrisome but manageable campaign of education and engagement,<sup>11</sup> others have seen a more fundamental challenge to liberal democracies.<sup>12</sup> China’s international activism has faced growing resistance despite the country’s importance to the world economy and global governance.<sup>13</sup> Concern about political influence activities led and/or supported by the CPC’s United Front Work Department (UFWD) has been particularly noteworthy.<sup>14</sup> Despite such pressures, China’s efforts to expand its international influence appear likely to continue, and invite careful consideration by the world community. This book adds to existing discourses on China’s rise to international prominence<sup>15</sup> by focusing on its efforts to promote its human rights policies and practices internationally.

China’s human rights standards have changed considerably since the early years of “reform and opening up.”<sup>16</sup> Following China’s re-entry into the world system after 1978 and continuing through the Deng Xiaoping years and the rulership of Deng’s immediate successors Jiang Zemin and Hu Jintao (CPC General Secretaries during 1989–2002 and 2002–12, respectively), China initially seemed willing to accept much of the corpus of international human rights standards while also pleading for time to fully implement them and suggesting that China’s local conditions mandated localized variation from international standards. More recently, however, the PRC has taken on a more assertive stance in seeking to displace international standards in favour of the regime’s preferred human rights orthodoxy – the basic norms mandated by the ruling regime as the basis for human rights standards and practice.

China’s human rights orthodoxy is distinct from particular legal doctrines whose authority derives from the legitimacy of their source (in Max

Weber's terms, the "law-giver"), but also from internal consistency of logic, jurisprudence, and practice.<sup>17</sup> Orthodoxy, by contrast, depicts a set of mandated values whose authority derives almost entirely from the legitimacy of the source of the mandate. Just as canonical orthodoxy derives authority and claims to obedience from the legitimacy of the religious organization from which it emerges, China's human rights orthodoxy gains authority from the legitimacy of the ruling regime. As a subset of orthodoxy, doctrine is subject to the standards of orthodoxy and may undergo variation consistent with such standards, while the terms of orthodoxy itself are less malleable. For example, the PRC Party-state continues to hold to an orthodoxy of socialism and public ownership, even while permitting debate over doctrinal issues such as property rights and associated variations in legal regulation.<sup>18</sup> Thus, doctrine involves the implementation of orthodoxy, while orthodoxy determines the permitted scope of doctrine.

As discussed in [Chapter 1](#), the PRC holds to a human rights orthodoxy of Regime-led Development expressed through precepts of Party Supremacy, Conditionality of Rights, and Stability for Development and implemented through law and policy on matters such as political expression, labour relations, and environmental protection. PRC human rights orthodoxy, precepts, and law/policy align broadly with the terminology of "line," "principles," and "policy" in CPC vernacular. Whereas the *line* of "socialism with Chinese characteristics" is expressed through the Four Cardinal *Principles* and implemented through *policy* directives on such matters as legal and economic reform,<sup>19</sup> the human rights orthodoxy of Regime-led Development is expressed through precepts on Party, conditionality, and stability, which in turn serve as foundations for instrumentalist legal rules and policy dictates. China's international human rights activism involves not only dissemination of legal and policy standards on human rights but also promotion of the orthodoxy from which those standards emerge.

As discussed in [Chapter 2](#), China seeks to revise current international standards to conform to its human rights orthodoxy. In the words of China's 2017 human rights white paper under the heading of *Actively Promoting the Development of Global Human Rights Under the Rule of Law*, "China actively participates in building a legal system of international human rights ... [a]ctively participating in the making of international rules related to the protection of human rights."<sup>20</sup> China has focused on reforming the international human rights system to ensure "more reasonable and inclusive global human rights governance."<sup>21</sup> China's increased participation in the development of international human rights standards extends beyond the question

of “rule taking” and “rule making,” which tends to focus on formally articulated standards.<sup>22</sup> By contrast, China seeks to internationalize not only its human rights standards but their underlying normative framework.<sup>23</sup> Thus, China endeavours to transform from “norm-taker” to “norm-shaper” on human rights standards and principles. To the extent that China’s human rights performance has heretofore involved tensions between tentative acceptance of international treaty standards and conflicted assimilation of their underlying norms, Xi Jinping’s China seeks to resolve this tension by altering the content of both.

### Importance of China’s Human Rights Activism

While it would be premature to suggest conclusions as to the success of China’s efforts to export its human rights orthodoxy, analysis of Beijing’s international human rights activism is useful for several reasons, each of which takes on yet greater significance in the context of the COVID-19 crisis. First, China’s human rights activism tells us much about PRC law, policy, and practice on a broad range of civil-political, socio-economic, and cultural issues. Aside from familiar political issues of freedoms of expression (discussed in [Chapter 3](#)), association, and religious belief, human rights issues in China include a wide range of socio-economic relations, such as access to housing, medical care, and living standards. This invites examination of the implications for China and the world of efforts to internationalize PRC human rights orthodoxy, which cannot be separated from the record of human rights conduct for which China is roundly criticized.<sup>24</sup>

Authoritarian governance by the PRC Party-state is widely perceived to involve significant diminution of human rights of individuals and communities.<sup>25</sup> Human rights abuses in Xi Jinping’s China have been well documented in areas such as censorship,<sup>26</sup> torture and abuse of prisoners,<sup>27</sup> extensive use of the death penalty,<sup>28</sup> abuse of criminal process for political purposes,<sup>29</sup> suppression of religious freedoms,<sup>30</sup> abuse of ethnic minorities,<sup>31</sup> denial of LGBTQ rights,<sup>32</sup> and the use of surveillance technology,<sup>33</sup> to name but a few. Human rights issues in labour conditions and environmental degradation, discussed in [Chapter 5](#), are also problematic, as are ongoing challenges of corruption and rising inequality.<sup>34</sup> Like the regime’s punishment of Nobel Laureate Liu Xiaobo in 2010 (prior to Xi’s appointments as CPC General Secretary and PRC President but while Xi was already on the Politburo Standing Committee and tapped to succeed Hu Jintao), the sham trial and harsh sentence imposed on moderate economics professor Ilham Tohti in 2014 confirmed that Xi Jinping’s Party-state exercises authority as

it wills, undiminished by international human rights standards.<sup>35</sup> The recent initiative to incarcerate some 1.5 million of Xinjiang's Uighur Muslims in "re-education camps" shows similar disregard.<sup>36</sup> China's human rights conduct is not merely a matter of domestic policies and conditions<sup>37</sup> but is reflected in China's activities abroad as well. Clandestine efforts to repatriate PRC nationals and even former PRC citizens who have taken citizenship in other countries have increased not only to retrieve persons accused of corruption but to punish critics and intimidate other Chinese living abroad.<sup>38</sup> Examining the dissemination of China's human rights orthodoxy reveals the consequences of its implementation in China and internationally.

Examining China's international human rights activism also illuminates the challenges posed by the absence of clear and enforceable standards on human rights protection. China disseminates its human rights preferences against a fragile and limited consensus on the nature and implications of human rights generally. Whether in the area of "positive rights" assured by the state on matters such as labour conditions and living standards, or the realm of "negative rights" against state intrusion in such areas as freedom of expression, international human rights standards intersect with underlying expectations about governance.<sup>39</sup> Thus, in liberal economies where law is generally appreciated as limiting the intrusion of the state, it is not surprising to find a broad normative consensus in favour of "negative rights," whereas in many developing economies, where the state is often portrayed as an essential agent for development, greater attention attaches to "positive rights." Of course, there is significant overlap between these categories, as the protection of positive socio-economic and cultural rights is often inseparable from protection of negative rights against state intrusion in political and civil affairs. Thus, protection of negative rights in such matters as freedoms of expression and association is essential to ensuring positive rights in labour relations and environmental protection, while protection of positive rights and the prosperity they may engender often enables public support for protecting negative rights. As well, changing conditions of political economy and socio-cultural conditions impel greater consideration of rights around sustainability, protection for disadvantaged groups, and new technologies, which defy easy classification as either positive or negative rights. In light of these complexities, the international human rights regime has embraced flexible norms and largely voluntary standards of performance. The record of the UN Human Rights Council (UNHRC) – referred to by critics as a "mutual praise society" – exemplifies the apparent inability of the international legal system to ensure robust and coordinated protection

of all international human rights, as do the limits faced by the UN's Human Rights Up Front initiative.<sup>40</sup> Such indeterminacy creates opportunities for China to engage in norm shaping to align international human rights standards with its political and policy priorities.

Finally, focusing on China's human rights activism has implications for comparative law and politics, as the PRC's human rights orthodoxy exemplifies the authoritarian governance model of the PRC Party-state. China's governance model of "patrimonial sovereignty" combines the patrimonialism of Confucianized socialism with the sovereign authority of the Leninist Party-state.<sup>41</sup> Xi Jinping's regime has called on a neo-Confucian discourse of authority and obedience to justify its rule.<sup>42</sup> This combines with the historical materialism discourse of Marxism-Leninism, by which the CPC is mandated by history to lead China's transition to modernity. Resonating with Confucian ideals of state authority and popular submission, the authority of the Party-state stems from the claimed correctness of its historical mandate, the terms of its interpretations of that mandate, and the effectiveness of policies and programs aimed at its fulfillment. Popular obedience in service of community well-being (as interpreted by the Party-state) is expected to follow.

Exemplifying the dynamics of patrimonial sovereignty, the PRC Party-state embodies an approach to governance based on the superiority – in Confucian terms, the "virtue" – of political leaders and hence their legitimacy to rule.<sup>43</sup> Whereas the virtue claims of the traditional Confucian elite were embodied not only in mastery of orthodox texts but also in traits of personal behaviour such as civility, moral behaviour, reciprocity, and human-heartedness, those of the Party-state centre almost entirely on mastery of its ideology and submission to its historical determinist project of revolution, while the niceties of personal civility continue to struggle with deeply entrenched Maoist critiques of bourgeois hypocrisy.<sup>44</sup> Reliance on mastery of orthodox texts works to insulate the regime from external accountability and critique. Even if individual Party members are subject to discipline for corruption or other malfeasance, this is enforced almost entirely through internal CPC-led supervision and discipline processes. In contrast to liberal systems, where accountability of government combines internal disciplinary mechanisms with arrangements for external accountability through democracy and the rule of law,<sup>45</sup> the CPC's Central Commission on Discipline Inspection (CCDI) system represents an internal non-legal channel of accountability whose processes are largely hidden from view.<sup>46</sup> China's 2019 human rights white paper extolled the discipline inspection systems of the Party-state

as the primary, if not exclusive, mechanism for ensuring accountability of public officials: “Discipline inspection commissions of the Party and supervision commissions of the government at all levels jointly carry out full supervision over all public functionaries who exercise public power.”<sup>47</sup>

Yet, the Marxist-Leninist dimensions of the PRC regime’s virtue claims limit full reliance on Confucian ideals, omitting the critical “reciprocity” dimension of Confucian virtue that tempers hierarchical authority:

15.24: Tsze-kung asked, saying, “Is there one word which may serve as a rule of practice for all one’s life?” The Master said, “Is not RECIPROCITY such a word? What you do not want done to yourself, do not do to others.”<sup>48</sup>

The historical mandate of revolutionary transformation through class struggle is non-reciprocal by design, as the Leninist vanguard party that is the CPC claims a monopoly on unfettered authority to direct and lead China’s development, thus ensuring omission of reciprocity from the virtue claims of the PRC Party-state. Grounded as they are in an ideology of historical materialism and supported by selected Confucian obedience norms, the virtue claims of the PRC Party-state make little room for reciprocity or accountability between the regime and the society it governs – the Party-state is responsible *for* but not responsible *to* the people it rules. The authoritarian governance model underpinning China’s human rights orthodoxy intersects with regime responsibility for human rights conditions in the PRC and the international policy standards on human rights by which they are assessed.

### Context and Content

The PRC regime portrays its international human rights activism as an exercise in sharing what its 2019 human rights white paper termed “Chinese wisdom” as a preferred alternative to existing international standards.<sup>49</sup> Perhaps this is to affirm the virtue claims of the Party-state and its human rights orthodoxy, but it serves as well to normalize the authoritarian conduct of the regime. In light of China’s record of demonstrable human rights abuses and its apparent intolerance to criticism or external accountability, China’s international human rights activism seems mainly to be an exercise in justifying authoritarianism, virtue claims notwithstanding.

China’s international human rights activism operates alongside, and indeed reinforces, the spread of authoritarianism in countries and regions of the world grown weary of the unfulfilled promises of globalization and trade liberalization.<sup>50</sup> China’s authoritarian governance model resonates

with authoritarian policies and practices in Brazil, Hungary, North Korea, the Philippines, Russia, Saudi Arabia, Turkey, and elsewhere that undermine human rights. Under such conditions, China's dissemination of its repressive human rights policies and practices internationally faces little pushback. Even the United States, once a champion of international human rights and a proponent of their measured implementation in China, seems in recent years to be challenging China's repressive human rights practices mainly for pursuit of trade concessions and domestic political advantage.<sup>51</sup> While the US State Department and other agencies regularly raise human rights concerns, the credibility and effects of such reporting remain uncertain in light of conflicting priorities expressed by the White House.<sup>52</sup>

This volume is in part a response to these developments. Relying on Chinese and English texts of PRC official documents and building on existing academic and policy literature, the book examines China's human rights orthodoxy and its dissemination internationally. Beginning with an examination of historical and cultural factors, [Chapter 1](#) examines the development and content of China's human rights orthodoxy as a foundation for critical engagement with the human rights standards that China is seeking to internationalize. [Chapter 2](#) depicts the processes and dynamics by which China seeks to displace existing international human rights standards in favour of its preferred alternatives. [Chapter 3](#) examines China's efforts to control political expression domestically and abroad as a case study on China's human rights orthodoxy and its international dissemination. [Chapter 4](#) looks at how China internationalizes its human rights orthodoxy through foreign economic relations, where Beijing's international influence is perhaps greatest. [Chapter 5](#) offers case studies on coordination of China's trade policy with human rights in labour relations and environmental protection, furthering international dissemination of China's human rights orthodoxy. The Conclusion summarizes observations about China's export of its human rights orthodoxy and suggests policy responses for engagement.

Building on existing discourses of scholarly and policy writing on China's human rights performance and international activism, this volume offers multifaceted analysis and illustrative case studies on the international dissemination of the PRC's human rights orthodoxy. Couched in terms of virtue but implemented as an expression of authoritarianism, China's international human rights activism mandates critical engagement by scholars, policy makers, and the international community. This volume is a partial step in that direction.

# 1

## Human Rights in China Past and Present From Confucian Governance to Regime-led Development

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China's international human rights activism invites consideration of the historical contexts for human rights orthodoxy in the People's Republic of China today. Tensions between the authoritarian rule of the PRC Party-state and dissenting perspectives from a range of socio-economic and political actors have historical antecedents going at least as far back as the putative reform movements of the late Qing Dynasty (1636–1911) and early Republic of China (ROC) (est. 1912). Discord over standards of governance unavoidably intersect with human rights questions, not merely because of normative interconnections but also because human rights issues extend to virtually all aspects of social, economic, and political life. Human rights are embedded not only in overtly political matters such as freedoms of expression, association, and religious belief but also in socio-economic issues such as housing, health, labour, and environmental rights. Thus, discourses on human rights in employment, living conditions, and development, for example, involve debates over government policies on these issues. Similarly, debates over civil and political affairs reveal tensions over norms of governance and dissent and the permitted scope for public policy discourse. Such normative issues complement questions of institutional capacity that underpin recognition and enforcement of human rights. Hence, even where there is broad consensus on human rights norms, their implementation depends on the strength and effectiveness of political and legal institutions. Our understanding of human rights in China is illuminated by

this interplay of normative standards and institutional capacity in historical and contemporary contexts.

### **Human Rights in Historical Context**

Although many of the conflicts between state and society in Imperial China involved what we would now recognize as human rights issues, the rubric of human rights was not formally part of the discourse of governance.<sup>1</sup> Prior to the 1911 Republican Revolution, governance in Imperial China drew on varying interpretations of Confucian philosophy.<sup>2</sup> Confucian norms of hierarchy and stability in socio-political and family relations were expressed in four of the “five great relationships” (ruler to subject; father to son; husband to wife; elder brother to younger brother).<sup>3</sup> The only non-hierarchical relationship was that of friend to friend, but even this was subject to the hierarchical dynamics of age and gender. These relational norms informed much of the institutional and operational aspects of governance, extending to the varying forms of legal order.<sup>4</sup> Thus, law in Imperial China imposed criminal punishments for violations of Confucian norms, reinforcing norms of obedience in institutional relations between state and society.<sup>5</sup> Notions about legal rights expressed in formal texts, embodied in individuals and enforceable against state and society, challenged Confucian relational norms and so were largely rejected.

Instead, social behaviour was subject to authoritarian governance based on the presumed virtue of political rulers. Confucius espoused leadership through the understanding and performance of norms of virtue rather than reliance on formal texts:

13.5: The Master said: “Though a man may be able to recite the three hundred odes, yet if, when intrusted with a governmental charge, he knows not how to act, or if, when sent to any quarter on a mission, he cannot give his replies unassisted, notwithstanding the extent of his learning, of what practical use is it?”

13.6: The Master said: “When a prince’s personal conduct is correct, his government is effective without the issuing of orders. If his personal conduct is not correct, he may issue orders, but they will not be followed.”<sup>6</sup>

This orientation toward genuineness, toward reliance on norms of virtue, toward substance over form was offered in clear juxtaposition to the formal codification of rules and behavioural standards under the competing Legalist school.<sup>7</sup> Thus, Confucian governance was not infused with rights-based

discourse but rather was a relational exercise in hierarchical authority requiring popular obedience to the purportedly virtuous rule of the Emperor and his officials.<sup>8</sup> Within government and among the intelligentsia, the veracity and persuasiveness of analyses of socio-economic conditions and responses to them depended significantly if not entirely on the Confucian status of their proponents.

The reform movements of the late nineteenth and early twentieth centuries, notably the Hundred Days of Reform in 1898<sup>9</sup> and the May Fourth Movement of 1919,<sup>10</sup> offer important historical perspectives on the human rights discourse of China today.<sup>11</sup> By challenging operational failings of the state on economic prosperity, social well-being, and foreign intrusion, these reform movements also involved normative challenges to the legitimacy of state power. In facing the challenge of foreign imperialism, the Confucian state and establishment intellectuals attempted to balance fealty to Confucian tradition with utilization of foreign technologies, through the dichotomy of *ti* and *yong* (*zhongxue wei ti*, 中学为体 – Chinese learning as the core; *waixue wei yong*, 外学为用 – foreign learning as functional utility).

In 1898, weakness in the face of foreign imperialism (particularly military defeat by Japan) led to calls for strengthening of technical and scientific education in government and military administration under the rubric of the “self-strengthening,” which in turn ran afoul of traditional perspectives on the superiority of Confucian knowledge and application of its relational norms to education and state administration. Ultimately, reforms were shelved in deference to Confucian conservatism. Roughly twenty years later, the May Fourth Movement challenged the newly established Republic of China government over its bowing to imperialist demands to convey to Japan former German concession territories in China as war reparations. Protests also challenged government science and education policies and administrative structures and staffing. As with the 1898 reforms, perceived deficiencies in institutional and operational aspects of governance led to challenges to its normative foundations. Although the May Fourth Movement launched an intellectual and ideological movement whose effects are still felt today, it did not bring about significant institutional change at the time. As an embodiment of Confucian responses to change, the *ti-yong* discourse limited the possibilities of reform efforts in 1919 as it had in 1898.<sup>12</sup> Utilitarian reliance on the *waixue* of foreign knowledge was insufficient to displace the foundational *zhongxue* of tradition. Constrained by the resiliency of Confucian norms, the *ti-yong* discourse confined foreign knowledge

within limits acceptable to tradition and so was unable to support meaningful changes in governance and policy.

The tension between foreign influence and local tradition embodied in the *ti-yong* debates continues to influence policy discourse in China today. Like the foreign knowledge in natural and applied sciences such as mathematics and engineering that captivated reformers in Qing and Republican China, foreign ideas on finance, trade, and law, along with advances in telecommunications and computing, have supported many aspects of China's recent emergence as a world power. China's economic growth has relied heavily on the globalization of finance and investment and global systems of trade liberalization. Institutional arrangements associated with the rule of law also appear as foreign technologies – the *waixue* (外学) of the *ti-yong* dichotomy – that are potentially useful in building effectiveness and legitimacy for PRC governance. During the mid-2000s, when Supreme People's Court (SPC) president Xiao Yang presided over significant justice system reforms, the interest in adopting a rule of law system for China was particularly high among PRC law and policy specialists. Indeed in 2002 several major university law schools sponsored seminars on the comprehensive and robust articulation of the rule of law system portrayed in Ronald Dworkin's *Law's Empire*.<sup>13</sup>

Yet conservative commentators continue to cling to the talisman of Confucianism to ensure that foreign knowledge does not challenge existing governance priorities.<sup>14</sup> Local normative and operational features – the *zhongxue* (中学) of the *ti-yong* dichotomy – remain powerful, as indicated in part through the caveats of “socialist” and “with Chinese characteristics” appended to ideas about democracy, the rule of law, the market economy, and human rights.<sup>15</sup> Recalling Confucianism's emphasis on authority and obedience and the problems this raises for human rights,<sup>16</sup> efforts by the PRC regime to associate its rule with Confucian tradition invite questions about the applicability of Confucianism's authoritarian governance norms in the face of increased reliance on “rule of law” vernacular. The “dual state” discourse helps explain the apparent contradiction of legal and judicial reforms operating alongside significant human rights deprivations.<sup>17</sup> For even as it claims to adhere to a “socialist rule of law” that appropriates the nomenclature of liberalism, the PRC Party-state suppresses challenges to the regime's authority.<sup>18</sup>

Interspersed with these seemingly disparate dimensions of the PRC legal order is China's engagement with international legal standards, some of which are relied on to build legitimacy and to some extent to bolster

the effectiveness of China's judicial system, while others that contradict regime orthodoxy are either ignored or adapted to the preferences of the PRC Party-state. Thus, in terms of the *ti-yong* dichotomy, the norms and institutions associated with the rule of law – public and generally applicable rules, independent courts, professional legal advocates, and so on – remain relegated to the realm of utility (*yong*), accepted as useful but only insofar as they do not challenge the “essence” (*ti*) of Party-state rule. This has particular implications for human rights.

### Human Rights Orthodoxy in Contemporary China

Informed by the foundational practices of patrimonial sovereignty, the PRC regime's approaches to human rights have seen a gradual transition from policy to law as the primary means of expression. Initially committed to revolutionary transformation, the Party-state gradually came to support a limited role for law in managing socio-economic and political relations. This included limited engagement with international legal and political discourses.

### From Revolutionary Transformation to Regime-led Development

After 1949, the newly founded People's Republic initially pursued policies involving human rights, even though, as with Imperial China, the term itself was not featured. Instead, policies on labour relations, land reform, and women's rights, and the laws and regulations enacted to reflect them, were couched in terms of class struggle and revolution. The 1949 “Common Program” set forth organizational principles for the newly formed PRC government, focusing on class struggle involving support for workers, peasants, and petty and national/patriotic bourgeoisie and suppression of counter-revolutionaries and reactionaries.<sup>19</sup> The Common Program's references to “socialist transformation of agriculture, handicrafts and capitalist industry and commerce” as general tasks of the state alluded to efforts to strengthen labour conditions for workers. The 1950 PRC Land Reform Law espoused policy goals of reforming land ownership through redistribution of land from landlords to poor peasants.<sup>20</sup> The 1950 PRC Marriage Law challenged traditional gender arrangements as part of a broader campaign of social transformation.<sup>21</sup> While these measures addressed what we would now term “human rights,” they were couched and presented as components of a broader effort at revolutionary transformation through class struggle.

These themes were expressed yet again in the first Constitution of the PRC enacted in 1954, which articulated themes of class struggle as guiding