THE STABILITY IMPERATIVE
Human Rights and Law in China

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The Asia Pacific Legal Culture and Globalization series explores intersecting themes that revolve around the impact of globalization in countries on the Asia Pacific Rim and examines the significance of legal culture as a mediator of that impact. The emphasis is on a broad understanding of legal culture that extends beyond traditional legal institutions and actors to normative frameworks and the legal consciousness of ordinary people. Books in the series reflect international scholarship from a wide variety of disciplines, including law, political science, economics, sociology, and history.

Contents

1

Rights in a Time of Anxiety about Stability

In his 1980 speech *The Present Situation and the Task before Us,* Deng Xiaoping acknowledged the years of suffering of the Chinese people as a result of political campaigns and political instability. He determined that policies would be implemented to make the country rich and strong, to "develop the productive forces and gradually improve the people's material and cultural life" (Deng 1980, 236–37). The precondition for achieving this objective was political stability and unity. From the outset of the program of economic reform and opening up, China's one-party state (the Party-state)[1] has promised to improve people's material and cultural life as part of national development. The precondition for such improvement has always been stability.

Since Deng's speech, the Party-state has moved away from its Marxist rejection of human rights and embraced the rhetoric of protection of individual human rights. China has signed and ratified many of the major international human rights instruments and embedded a commitment to the protection of human rights in its Constitution (Article 33). Arguably, together with rule of law, the protection of human rights has become an important basis for governance. In June 2012, the Chinese government released its most recent human rights policy document, the second National Human Rights Action Plan (the "Human Rights Action Plan") for the period 2012–15. It contains a clear affirmation of the Chinese government's obligation to respect and safeguard human rights and sets out a wide-ranging

plan to gradually improve both social and economic, and civil and political rights. The document addresses a number of audiences: it is directed outward to the international community, which is increasingly engaging with China on human rights issues, and inward to China's citizens, who are increasingly demanding that their rights be respected. It is as much hortative and symbolic as it is an official statement of achievements and plans for giving effect to human rights in China. It is also an attempt by the Party-state to define and control the scope and meaning of human rights in China.

As the 2012–15 Human Rights Action Plan makes clear, the Party-state's primary human rights focus remains national development and, as part of that, the right to subsistence, to material assistance when in need, and the continued improvement of people's livelihoods. The Human Rights Action Plan goes on to articulate a desire to safeguard citizens' "economic, political, social, and cultural rights and to promote social equity and harmony, so as to ensure that every member of society lives a happier and more dignified life" (State Council Information Office 2012, Introduction). Such a focus is not new. Elizabeth J. Perry (2008, 39–40) points out that there has been a very long history of the Chinese state's giving priority to protection of the people's livelihood and the perception that failure to do so brings the threat of social instability. As a policy and governance objective, giving effect to fundamental rights relating to livelihood becomes inextricably linked to social and political stability.

By 2014, China has become both rich and strong, but the promises to improve people's livelihoods and to enable every member of society to lead a happier and more dignified life have been imperfectly realized. In fact, growing inequality between different groups in society has led to growing social instability. One commentator, Zhou Ruijin, identified the following main issues as contributing to what he calls "public indignation":

- The gap between the rich and the poor has widened in the absence of a fair and rational system to distribute China's economic prosperity;
- Social welfare lags behind economic development, failing to establish a social security system capable of benefiting all in society;
- The public's sense of happiness is decreasing as a result of failures in tackling problems of basic livelihood, like education, healthcare, housing, employment, etc.;
- Environmental pollution is worsening as high investment and high-pollution industries continue to emerge. Food, water, and air are polluted.

> The sharp conflict between economic development and environmental protection is on the verge of explosion and has triggered many mass protests; and

- Corruption takes root not just in economic activities, but also in officialdom, the administration of justice, the media, and education. Corruption is directly correlated with institutional defects. (Zhou 2013)

Public anger over failure to address basic concerns about livelihood is increasingly being expressed in public through complaints, protests, strikes, appeals and petitions to Party and state agencies, and, in extreme cases, large-scale or violent protests, suicide, and murder. Of concern is that although a large number of grievances are being addressed through formal dispute resolution channels, an increasing number are being pursued outside these channels. Not all forms of public protest and disruptive conduct are rights-related but the vast majority are. A 2012 report on mass incidents (*quntixing shijian* 群体性事件) published by the *Legal Daily* suggests that mass incidents fall into three broad categories: rights protection, which is primarily in response to harm to people's livelihood (*weiquan* 维权); anger venting (*xiefen* 泄愤); and disturbances or riots (*saoluan* 骚乱). The report's author, Professor Yu Jianrong, concludes that over 80 percent of mass incidents are related to rights protection (Yu 2009b). Handled badly, they have the potential to turn into serious public order incidents.

Clearly, the disjunction between the rhetoric of human rights and the reality of day-to-day administration and people's lived experience raises questions not just of evaluation but also of explanation. What are the ideological and institutional filters through which these human rights promises are shaped and given effect? How do other policy priorities, such as preservation of social order, impact on the interpretation and implementation of these rights promises? How are human rights promises to be reconciled with the realities and priorities of governance in China's Party-state? The growing number of mass protests and the state's response to them highlight a tension that plays an important role in shaping and limiting the scope of human rights: that is, the state's obsession with social order and stability, and, by extension, political stability. The particular *ways* in which the Party-state pursues its objective of social stability are a core concern in any examination of legal and institutional engagement with rights.

The legal system is a core institutional determinant of rights. At the official level, the establishment of China's version of the rule of law is seen as

key to articulating and giving effect to human rights. This linkage was reiterated in the Human Rights Action Plan with the statement that the "socialist legal system with Chinese characteristics has been established to provide legal support for all fields of social life and all aspects of human rights protection" (State Council Information Office 2012, section 1). As the legal system is so closely associated with the realization of human rights promises, it is appropriate for us to look carefully and critically at the ways in which the legal system embodies or defines human rights and to evaluate the mechanisms that the law makes available to give practical effect to those rights or to pursue human rights–based claims. Despite the clear link between law and human rights in the Human Rights Action Plan, it is not apparent that the Chinese legal system provides effective mechanisms to protect human rights. In fact, as is the case with legal systems everywhere, the legal system has many functions and reflects a range of priorities that may be in tension with each other. Economic growth and increasing state power are at their core. Two others are the protection of human rights and the maintenance of social stability. Ultimately all priorities of the legal system focus on the primary objective: the preservation of the political power of the Chinese Communist Party (CCP). So how does this obsession with "stability above all else" impact upon rights protection? This is the central question explored in this book.

This book examines the ways in which rights are given effect and implemented in China's domestic environment. It explores the multifaceted relationship between these rights and social stability. Its focus is thus primarily on domestic law, policy, and practice rather than on an examination of the meaning of human rights in international law, or China's institutional engagement with international human rights organizations. The book looks in particular at three specific examples of the relationship between rights and stability in areas that impact directly on people's basic livelihood: labour (Chapter 2), forced housing eviction and relocation (Chapter 3), and medical care (Chapter 4). It examines the ways in which disruptive behaviour and individuals considered to pose a risk to social order are managed, controlled, and punished (Chapter 5). Finally, it examines the relationship between rights and stability in the context of the protection of personal liberty, which is a fundamental component of personal dignity. It does so through a discussion of the abolition of re-education through labour (Chapter 6).

Scholarly examinations of different aspects of China's legal system have considered a number of ways in which stability preservation impacts on

legal protections of rights. Randall Peerenboom argues that enjoyment of rights is properly subordinated to the need to preserve stability. He says that "stability is a pre-requisite for the enjoyment of all rights. The need to ensure economic development and stability justifies limitations on the exercise of civil and political rights" (Peerenboom 2005a, 80). Another approach is that social and political stability are the basis upon which human rights may be enjoyed. Social stability, in this view, is the greatest guarantee of human rights (Ren 2005, 27, 30). Extensive empirical studies on the role of courts in adjudication by He Xin, Benjamin Liebman, Carl Minzner, and others point to the ways in which stability goals and the fear of protest overshadow the administration of justice according to law (He Xin 2007; Liebman 2011, 2013; Minzner 2011; Su and He 2010). The case studies in this book reveal a range of formulations: rights protection used rhetorically and in practice as a means of promoting stability, a view of rights protection as existing in conflict with stability protection, and the imperatives of stability protection acting as an incentive to abrogate rights and to use repressive force. A detailed examination of the ways in which stability imperatives impact on the definition and realization of rights in the case studies helps to show how these tensions underpin the evolving legal structures and priorities of governance. It provides a perspective on the policies and imperatives instrumental in shaping China's particular version of the rule of law. The core issues explored in this book focus on the ways in which rights are defined and given effect by law, on their interaction with the Party-state's understandings of the causes of social instability, and on institutional structures for preservation of stability. Further explanation of these core concepts provides some background to the detailed discussions that follow.

Stability

Whilst the concern to ensure social stability is neither new in China nor unique to China, since 1989 preservation of social stability has become a key priority of governance. In the Party-state's mind's eye, the calculation is not to weigh the balance between order and freedom but between order and chaos. Deng Xiaoping famously proclaimed on 26 February 1989: "Of China's problems, the need for stability overrides all else. Without a stable environment, nothing can be achieved, and all that has been achieved will be lost" (*People's Daily Online* 2001). According to dictum, not only the successes of economic reform are imperilled by social instability but so are political stability and continuation of CCP rule. Since 1989, the maintenance of

social stability has been a core priority of the CCP. After installation of the new generation of leaders under under General Secretary Xi Jinping in 2012 there has been no lessening of the focus by senior leadership on the preservation of stability. Xi affirmed that not only the Party but also all Chinese people want stability and fear chaos (Yuen 2014a, 2). Yuen argues that the legitimacy of the state depends on its capacity to maintain social order. In this view, maintenance of stability is not merely a basis for economic growth and a marker of legitimacy; rather, the Party-state's capacity to maintain social order is the *basis* of its legitimacy – "a mark of popular consent to the Party-state" (Yuen 2014a, 2, 5–6).

The question of what social condition is seen as being stable is fundamental both to interpretations of the nature of the threat posed by socially disruptive conduct, including mass incidents, and to the nature of the Party-state's response to these threats. Professor Yu Jianrong, one of the best-known scholars of petitioning and mass incidents in China, sets out two ideal types: rigid stability and resilient stability. Rigid stability tends to view society as inherently unstable and therefore in need of active state intervention to maintain order. It is centred on maintenance of the CCP's monopoly over political power and requires absolute social order. This view of stability tends to construe any disruption of social order as undermining political stability and requiring intervention. Such a view of stability underpins comprehensive social order policies and the coordinated institutional arrangements that have been put in place at all administrative levels to realize the objectives of social order and social harmony. Most recently they have taken the institutional form of Stability Preservation Offices established at each administrative level. At the local level, protests can readily be interpreted as an assault on local power and so a form of instability. Through this lens, conduct such as petitioning or other mass protests are readily seen as destabilizing rather than as a vehicle for making legitimate claims (Yu 2009c).

Resilient stability, on the other hand, requires that more sustainable long-term stability be based on observance of the law and the Constitution. Stability is constituted through stability of the political system and institutions of state based on the rule of law. This model sees stability as being based on norms of justice and equity, or at least mitigating injustices such as an insecure and unfair employment market, unequal opportunities and access to education and health care, and expropriation of land, especially rural land, without proper procedures and compensation. The 2005 United Nations Development Programme *China Human Development Report* defines justice as follows:

> Justice is a value and a norm for making judgment calls on social practices and human relations. As a concept, it involves "fairness" and "goodness" and is highly normative. Social justice is a moral pillar indispensable for any society, a basis for members of a society to reach consensus and cooperate, and a basis for resolving conflicts. (United Nations Development Programme 2005, 5)

Such a model of stability would not be so quick to construe all socially disruptive conduct as constituting a fundamental threat to stability. The problem, according to Professor Yu, is how to move from a model of rigid stability to one of resilient stability. Improving the authority of the legal system and constraining the exercise of Party and state power through law is central to such a transition. The new CCP leadership under Xi Jinping has determined to pursue "socialist rule of law with Chinese characteristics." It is a very particular vision of the rule of law. The leak of Document No. 9 issued by the General Office of the CCP Central Committee in April 2013 indicates ongoing Party resistance to what it identifies to be "western" views of the rule of law and constitutional governance. Among other things, Document No. 9 attacks western constitutional democracy, judicial independence, and those who attack Party leadership by asserting that the CCP be subject to the Constitution and governance according to law (Lubman 2013). The 4th Plenum of the 18th CCP Central Committee held in October 2014 focused on strengthening socialist rule of law and building governance capacity. The vision of the rule of law articulated by the Central Committee firmly retains Party leadership over all aspects of governance including the administration of justice. Its stated objectives include "resolutely upholding the authoritiy of the Constitution and law, protecting the lawful rights and interests of the people, protecting social equality and justice and protecting national security and stability." It remains to be seen whether this vision of the rule of law will provide the basis of legal justice, equality, and fairness necessary to underpin a move from a model of rigid stability to one of resilient stability.

It is also significant that the conceptual framework provided by Mao Zedong's theory of contradictions is still commonly used in discussing stability and analyzing conflicts and disruptive conduct. Mao divided contradictions into antagonistic contradictions (those between enemies and the people) and non-antagonistic contradictions (those amongst the people). Antagonistic contradictions are to be resolved by coercion and repression. Non-antagonistic contradictions, on the other hand, are to

be resolved by "the democratic method, the method of discussion, of criticism, of persuasion and education" (Mao 1972). Within this repertoire – for example, in the handling of labour protests characterized as non-antagonistic contradictions – we see the use of mediation, persuasion, and even *ex gratia* payments of back wages from special local government funds to persuade protesters to disperse. On the other hand, where protests that might have been sparked by accumulated grievances escalate into violence, such as the riot in Zhencheng, Guangdong, in 2011, they are dealt with as antagonistic contradictions and suppressed with great force.

The emphasis on stability preservation, coupled with institutional pressures on local agencies to ensure social stability, has, perversely, led to increasing abuse of punitive powers by local governments and officials (Ren, Wang, and Jia 2013). As discussed further in Chapter 5, the Party-state has constructed an extensive and pervasive institutional structure to implement stability preservation *(weiwen)* policies. Stability preservation has the capacity to be both intrusive and abusive, and to be implemented at the expense of rights protection. The question Yuen (2014a) raises is whether the Party-state's efforts to relegitimate itself through the policies and institutional mechanisms it has adopted to preserve stability have, perversely, undermined its legitimacy. He would conclude in the affirmative.

Mass Incidents

At a time of social dislocation and growing inequality as a result of economic transformation, it is not surprising that there has been an upsurge in mass incidents. These range from small-group petitions, sit-ins, strikes, rallies, and street processions to fighting and riots (Tanner 2004, 138). Group protests are not a new phenomenon, but it appears that the label of "mass incident" was first applied in 2004 in an opinion issued jointly by the General Office of the Central Committee and the General Office of the State Council, the *Opinion on the Work of Actively Preventing and Properly Handling Mass Incidents*. The term has three distinct yet overlapping meanings: legal, political, and social. The legal definition emphasizes the unlawfulness, the group nature, and the harm caused to social order by the conduct as described in the 2000 Ministry of Public Security *Regulations on Handling Public Order Incidents of a Mass Nature*. The political definition emphasizes its characterization as a non-antagonistic contradiction arising from harm to personal livelihoods and interests and the use of unlawful methods to make demands of the government or employer. The social meaning

emphasizes the objectives of gathering together to make demands and the desire to achieve those objectives by having an impact on social order (Yu and Liu 2014, 18–19).

Yu Jianrong defines a mass incident as having four characteristics: (1) there are more than five people participating (the *Letters and Visits Regulations,* for example, define group petitions involving more than five people as an "incident"); (2) the group must carry out its actions together (3) the group lacks legal authorization; and (4) the group's actions affect order, especially financial or social order. Mass incidents take many forms, including rallies, marches, assemblies, demonstrations, strikes, group petitioning, skip-a-level petitioning, and occupation of roads, railways, or other public places (*Legal Daily* 2012). Based on this definition, there were 8,709 mass incidents in 1993 and 90,000 in 2006 (Yu 2009b). The Ministry of Public Security stopped releasing statistics after 2006. One scholar has asserted that in 2010 the number of mass incidents had risen to 180,000 (Fewsmith 2012; Forsythe 2011). The definition has now expanded to include online activity.

Of the 80 percent of mass incidents related to assertions of rights, Yu argues that the vast majority relate to economic problems and can be resolved through monetary payments. Official interpretations of mass incidents concur, characterizing the majority as reflecting "contradictions amongst the people," or conflicts over material interests. That is, the main causes of mass incidents are issues such as delayed payment of wages, compensation for land expropriation or compulsory housing eviction and demolition, excessive tax burdens, or illegal financial exactions – conduct that has a direct impact on people's livelihoods (Ren 2005, 49, 259). A study of large-scale (involving over 500 people) mass incidents between 2003 and 2009 found that the bulk, 45 percent, were labour disputes relating to the restructuring of state-owned enterprises and disputes over wages and working conditions in private enterprises. The second most common category comprised disputes over land expropriation and forced housing relocation (Tong and Lei 2010, 491–93). Middle-class protests seeking to prevent construction of environmentally damaging industries in proximity to urban areas or developments that might affect the value of properties have also become prevalent. The significance of characterizing the bulk of mass incidents as non-antagonistic contradictions is that, in theory, they could be dispersed without resort to violent suppression.

The overwhelming majority of "rights-asserting" mass protests are framed in terms of rules rather than rights. They are mostly reactive (responding to

specific incidents and aggravations) rather than proactive, and involve both lawful and unlawful conduct (Yu 2009b). Although most are fragmented, there is evidence that some protesting groups are linking up (Tanner 2004, 142). As the analysis in Chapter 2 suggests, the reactive and fragmented nature of protests, at least in relation to labour disputes, may be changing. Extensive social research conducted by Martin Whyte supports the view that the increase in the number of mass incidents should not necessarily be interpreted as opposing the Party-state or the existing political regime. Whyte's research suggests that income inequality per se may not be enough to lead to popular resentment and social instability. His research points to acceptance of unequal distribution if it is based on individual hard work, education, or talent, but less willingness to accept income disparities based on factors such as personal connections and unequal access to opportunities (Whyte 2010, 47). Since the mid-1980s, the Party-state has engaged in wave after wave of legal education campaigns that have resulted in growing rights consciousness. However, many claims by citizens and groups are framed in terms of moral claims to subsistence rather than as an assertion of a new form of political citizenship, and so it is important not to over-interpret the significance of either mass incidents or rights discourse in these areas. Perry (2008, 44, 46–47) rightly points out that protests may be framed as demands to protect subsistence rights or to follow the rules, rather than as a challenge to the political order. Protests may also be one of the mechanisms by which higher levels of government obtain information and deal with local abuses, and so contribute to stability.

Mass incidents characterized as "anger venting" or "riots," such as the Weng'an incident on 30 October 2007 or riots stemming from ethnic tensions, are dealt with using force. The Weng'an incident began with the death by drowning of a young woman, Li Shufen, in Weng'an County, Guizhou Province. Her death was found to be a suicide, but many suspected she had been murdered by her boyfriend, who was the son of a senior local official. On his way to the police station to file a complaint, her uncle was set upon by unknown thugs and seriously injured. When news of this spread, many poured into the streets to protest and a riot ensued. The riot was controlled only after seven hours; many buildings and cars were burned and around 150 people were injured. Of note was that many people joined the protest despite not being directly affected by its original cause. There was evidence of wide-ranging accumulated grievances concerning injustice and bad treatment at the hands of local officials, particularly in the forced relocation of

many residents and migrant workers to make way for the development of mines (Tong and Lei 2010, 498; Yu 2009b). This riot caught the attention of central authorities, with the then minister of public security, Meng Jianzhu, leading the riot response by telephone (Tong and Lei 2010, 494). The incident shows how small triggers can transform into anger-venting mass incidents and, if handled badly, into riots (Ren 2005, 31; Yu 2009b). Studies of mass incidents that have escalated into violence indicate that poor handling by local officials or police or their failure to address grievances at the outset play a significant role in escalation of the incidents (Mo 2011; Tanner 2004, 148). That one incident could trigger a riot indicates the depth of accumulated grievances against local authorities, which is more difficult to address than protests that can be dealt with by payment of money, and is thus indicative of broader legal and institutional failures. This type of disturbance has become more frequent (Tong and Lei 2010, 494).

The police who are often called upon to deal with protests are not without sympathy for actions they see as based on a legitimate grievance (Chung, Lai, and Xia 2006; Li 1999b; Tanner 2004, 144–45). In many circumstances, the demands of the protesters are accommodated as a way of dissipating the protest, or no action is taken (Su and He 2010; Tong and Lei 2010, 501). However, when these conflicts become "confrontational" in form, policing responses are affected (Ren 2005, 259–63). Many protests are becoming larger, better organized, and more violent as the underlying grievances are not satisfactorily resolved (Tanner 2004, 140–41; Wang 2001). If they are handled appropriately, social stability may be enhanced. If handled inappropriately, however, what might have started as a conflict over material interests has the potential to intensify, to become increasingly confrontational, and to seriously undermine social stability (Ren 2005, 49).

Petitioning (Letters and Visits)

Mechanisms for receiving and dealing with citizen complaints predated the establishment of the People's Republic of China (PRC). In 1951, special offices were established to receive citizens' complaints and criticisms. These were re-established soon after the start of the Economic Reform and Open Door Policy in 1978. Article 41 of the Chinese Constitution authorizes citizens to criticize and make suggestions regarding any state organ or functionary and to bring complaints against state organs and functionaries for violation of the law or dereliction of duty. It requires state organs to deal with these complaints. One way this constitutional protection has been

given institutional form is through the establishment of "letters and visits offices" in Party, government, and judicial organs beginning in 1982, following the adoption of the *Temporary Regulations on the Letters and Visits Work of Party and Government Organs* (Zhang Duo 2012, 31). Complaint making through letters and visits was further institutionalized by the State Council *Letters and Visits Regulations,* first passed in 1995 and then in 2005. From 2013, it became possible to post complaints online.

Between 1979 and 1982, letters and visits dealt primarily with historical problems, where people sought to have adverse judgments imposed during the Cultural Revolution set aside (Luehrmann 2003, 855). In 1982, letters and visits were transformed into a venue for resolving individual and collective grievances (Zhao 2004b). Complaints may be brought to letters and visits offices established in all state and Party organs, including courts at all levels. Complaints need not be framed in terms of lawfulness of conduct. This is one strength of the system: a grievance can be raised without having to conform to legally framed causes of action. It is also a weakness, however, as the process for resolving the dispute is less formalized, with the risk that the problem will not be resolved at all. Officials are tasked with dealing with these complaints, sometimes by investigating the complaints themselves but more frequently by referring the complaint back to the local agency that is its subject. Luehrmann (2003) reported a trend towards increasing numbers of complaints starting from the mid-1990s and continuing into the early 2000s.

From around 2003, the hope that the then new leadership of Hu Jintao and Wen Jiabao might respond more favourably to petitions led to a massive increase in petitioners to Beijing (Li, Liu, and O'Brien 2012, 320). In particular, petitioning to Beijing is seen by many as a way of putting pressure on local authorities to address the complaint (Yu 2004). Besides an increase in the volume of petitions, there has been a gradual escalation in the disruptive or confrontational tactics used by petitioners. To many petitioners, repeat petitioning, skip-a-level petitioning (petitioning to government a level higher than the agency against which the complaint is made), and disruptive conduct as part of petitioning are seen as ways of making protests more effective (Xi Chen 2007, 255). Many feel that only if they make a big fuss will there be a resolution to their problem, whereas creating no fuss will lead to no resolution at all (Chen Jianghua 2010, 192). Disruptive and trouble-making strategies employed include large-scale street protests, storming of public buildings, and large-scale sit-ins in public places (Li, Liu, and O'Brien 2012, 321–23). Those petitioners who engage in strategic troublemaking

designed to pressure officials to address their grievances risk crossing the boundary between lawful and unlawful conduct (Xi Chen 2007). In extreme circumstances, petitioners have taken violent measures, such as blowing up buildings and committing suicide by self-immolation.

Since 2004, the central government applied pressure on local governments to ensure that they either deal with petitioning (or the problem that gave rise to the petitioning in the first place) locally or prevent petitioners from reaching Beijing. The target management responsibility system (discussed below) was also brought to bear as a way of pressuring local officials to prevent petitioners from travelling to Beijing. In 2006, a satisfactory performance appraisal was made conditional upon meeting petitioning targets. As a consequence, local officials were subject to official criticism, punished, had their bonuses docked, or their chances for future promotion prejudiced if they failed to prevent petitioners from reaching Beijing or if mass incidents resulted from their failure to deal with petitioning.

Local authorities responded in a number of ways. One was to adopt a range of punitive and repressive measures to meet those targets (Human Rights Watch 2005, 7; Human Rights Watch 2009c, 9; Li, Liu, and O'Brien 2012, 325–26; Minzner 2009–10, 57). An example discussed in Chapter 3 is the escalation in petitioning against forced demolition and eviction in Shanghai in the early 2000s. On several occasions beginning in 2003, police arrested petitioners as they departed by train for Beijing, and others were detained by the Beijing Municipal Public Security Bureau after they arrived in the capital (CECC 2005; Human Rights in China 2005; Human Rights Watch 2004; Wilhelm 2004, 283).

Another response of local authorities has been to do anything necessary to solve petitioners' grievances and make the problem go away. One academic argues that the amount of publicity given by mainstream media to the willingness of governments to do anything needed to solve petitioners' difficulties has fuelled a belief that petitioning is more effective than pursuing claims through judicial channels (Liu Wenjing 2013). This belief, coupled with the cadre performance appraisal system, which punishes officials based on the volume of collective and skip-a-level petitions from their jurisdiction, has, perversely, contributed to an escalation of socially disruptive behaviour (Minzner 2006, 156–57; Yu 2004). Despite regulations that severely circumscribe complaint making to higher-level departments, the incidence of both repeated petitioning and skip-a-level petitioning continues to remain high. For example, in Taizhou, Zhejiang province, the number of repeat petitions increased 76 percent between the first half of 2006 and the

first half of 2007 (Jiang 2007, 52).[2] Problems of coercive, illegal and abusive practices taken by local governments to discourage skip-a-level petitioning finally became so serious that in November 2013 the central government decided to remove the number of skip-a-level petitions as an item in the annual performance appraisal of local officials. (Wu, 29 November 2013).

Minzner argues that the petitioning system is only marginally interested in resolving individual grievances. He argues, with justification, that the system is a management technique and that it operates as a mass line instrument more generally interested in maintaining official connections with the masses, directing thought, monitoring the conduct of officials, maintaining social order, and enabling citizen input into policy making (Minzner 2006, 120–21).

The burgeoning petitioning practices discussed above and the official responses to them have been accompanied by waves of legal and institutional development. The first wave occurred around 1995 with passage of the *Letters and Visits Regulations* and establishment of the Bureau of Letters and Visits with offices nationwide. Following the flood of petitioning, in 2003 Hu Jintao instructed that a work mechanism be established to reduce the number of petitions; that petitioners be sent back and problems solved. In 2004, the Central Office for Joint Conferences for Handling Prominent Problems with Letters and Visit and Mass Incidents (中央处理信访突出问题及群体事性事件联席会议办公室) was established to understand and develop strategies to resolve or reduce petitioning and mass incidents and to supervise the way in which local agencies handled petitions and protests. It comprises representatives from over twenty-eight different state agencies, and it established five specific working groups to deal with the areas with the most serious problems: expropriation of farming land, urban demolition and relocation, restructuring of state-owned enterprises and entities, transforming army-owned enterprises into civilian enterprises, and law-related petitioning (Zhao 2004a; Peng 2012).

A major report on petitioning led by Yu Jianrong and released in 2004 received high-level attention, not least for its citation of the abysmally low rate at which petitioners' grievances were successfully resolved: 2 cases in 1,000 (Zhang Duo 2012). This report also fed into a debate about how to reform the system of letters and visits. One view was that the system needed to be legalized and regularized. Yu's view was that it should be allowed to disappear, as it had become transformed from a system for collecting and delivering information to the public into a dispute resolution mechanism of last resort that undermined the authoritativeness of judicial dispute

resolution (Zhang Duo 2012). The then head of the Central Political-Legal committee, Zhou Yongkang, expressed the view that the letters and visits system needed to be regularized and strengthened. He emphasized that a key to social stability lay in resolving issues raised through the system of letters and visits lawfully and efficiently (Feng 2011). New *Letters and Visits Regulations* were passed in 2005 which, amongst other things, gave legal form to the working mechanism established in 2004. Zhou Yongkang commented that these regulations were passed to legalize and standardize the system of letters and visits, ensuring that it would not fade away and that it would provide a positive intervention in promoting a harmonious society (Xinhuanet 2005a). As discussed further in Chapter 5, since the passage of these regulations, more restrictive conditions have been placed on petitioning conduct and punishments have been clarified for those who engage in "abnormal" petitioning.

Stability Protection and Social Management

Stability Protection

Preserving social stability has long underpinned social order and policing policies. The importance of social stability is underlined by the existence of a number of high level Committees established directly under the Central Committee, all of which are focused on issues of law and order and social stability. The Party exercises organizational leadership over the civilian coercive apparatus and law enforcement policy and practice through its Political-Legal Committee (*zheng fa wei* 政法委), which consists of representatives of the police, People's Armed Police, state security, People's Courts, People's Procuratorates, the Bureau of State Secrets, and justice agencies at each level (Biddulph 2007, 232–34).

In 1981, the policy of Comprehensive Management of Public Order (CMPO) was adopted as the umbrella for coordinated management of the Party-state's social order and crime-control activities. After 1989, the centrality of stability and its positive role in economic modernization was reasserted (Yuen 2014a, 10). In 1991, the Comprehensive Management of Public Order Committee was established to strengthen Party control over social order policy and its enforcement at the local level. The program was designed to provide a comprehensive umbrella involving Party, government, and public actors in preserving stability and punishing crime (Biddulph 2007, 103–5, 107–9). Its focus was not merely on punishment of offenders but also on prevention through education, oversight by local resident and

village committees, and the management of targeted populations and sensitive locations (Biddulph 2007, 103–9). As early as 1991, the Party-state's capacity to exercise comprehensive control over society had weakened (Dutton 1995, 314). Policing policy had become reactive rather than proactive (Wong 2002, 309). Over twenty years later, the processes of pluralization of individual, economic, and state interests have effected an even more dramatic transformation of society. It is now even more difficult for policies and programs that purport to exercise comprehensive oversight and control to be implemented in the ways their design might suggest.

The focus on social order and crime was expanded in the mid- to late 1990s by the CCP's Central Committee to encompass a broader, multi-agency stability protection mechanism to respond to the social unrest arising from the restructuring and bankruptcy of state-owned enterprises (Liao 2009). The Central Stability Preservation Work Leading Group (Zhongyang Weihu Wending Gongzuo Lingdao Xiaozu 中央维护稳定工作领导小组), which is located on a par with the CMPO Committee and the Political-legal Committee, was established in 1998. There is a strong overlap between the leadership and personnel of these three organs. Meng Jianzhu currently (in 2014) serves as the Secretary of of the Political-legal Committee, the CMPO Committee and chairs the Stability Preservation Work Leading Group.

The Stability Preservation Work Leading Group plays a central role in coordinating and directing stability maintenance work nationwide, in particular policies on social management, early warning, and management of mass incidents. The CMPO Committee is responsible for planning and carrying out stability maintenance work. Stability Preservation Offices are established at each administrative level. At the local level, the structure of stability preservation organs is not uniform, with some overlapping and merging, particularly of the CMPO Offices and Stability Maintenance Offices. They work closely with local Letters and Visits bureaus. Local stability maintenance organs are referred to throughout as "Stability Maintenance Offices." Their work is discussed further in Chapter 5.

"Protection of social stability" (*weihu wending* 维护稳定, abbreviated to *weiwen* 维稳) was designated as a policing priority from 2003 to address problems of social order caused by mass incidents. At that time, a report commissioned for the CCP's Central Committee evaluated the harm caused by social instability and mass incidents as damaging the image of the government and Party, threatening the authority of the law, and threatening political stability and community respect for order (Trevaskes 2013, 63–64). Mass incidents thus came to be seen as a much more of a threat to social and

political stability than a nuisance, and have become the focus of comprehensive social order and policing priorities under the rubric of "stability preservation" *(weiwen)*. Factors identified as driving the increase in mass incidents were the growing conflict between "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" (Trevaskes 2013). These factors map nearly exactly the main sources of social and distributive injustice identified by Zhou Ruijin (2013) above.

While the case studies in this book document the Party-state's responses to ameliorate the substantive injustice underlying social tensions, these social order contradictions have also driven the development of institutionalized responses to the fact of social instability. These responses lie at the heart of the multiple layers of tension between protection of rights and protection of stability explored in this book. Public spending on stability protection has skyrocketed. The budget for domestic stability protection in 2011 was ¥624.4 billion (US$95.18 billion), greater than the publicly declared military budget for 2011 (Lam 2011).

Social Management

From 2010, the CCP's Politburo expanded the program of stability protection into a broader approach to governance under the rubric of social management (*shehui guanli* 社会管理), with a view to dealing with the growing number of mass incidents and the concern over their impact on the legitimacy of the Party (Fewsmith 2012). In 2011, the name of the CMPO Committee was changed to "Committee for the Comprehensive Governance of Social Management," which reflected a merging of the social order functions of the old committee with the economic objectives of reducing inequality and devolution to NGOs and community volunteers of the provision of some public welfare services (Sapio 2014, 251–52).

From 2014, there appears to be a retreat from the expanded focus of the comprehensive program of social management and the particular institutional form it was given in 2010 and a return to the more narrowly focused policy of comprehensive management of social order. On 11 October 2014, Meng Jianzhu was reported as announcing that the Committee for the Comprehensive Governance of Social Management would resume its original name; the CMPO Committee. Meng stated that there would be strengthened coordination and cooperation between the various central Party committees responsible for oversight of various aspects of social stability and

law and order; the Central Committee's Political-legal Committee, the CMPO Committee, the Central Stability Preservation Work Leading Group Office and the Central Office for Joint Conferences for Handling Prominent Problems with Letters and Visits and Mass Incidents (Wang, 11 October 2014). At the time of this decision, there was some concern that the work of the CMPO Committee was being stretched beyond its area of institutional competence. Despite the name change of the CMPO Committee, broader programs of social management discussed below appear to remain intact.

In addition to the agencies discussed above, the Third Plenum of the 18th Central Committee in November 2013 determined to establish a National Security Commission, which is designed to coordinate both domestic- and foreign-related security. It appears to retain a strong focus on regulation of domestic security and social stability, though by the end of 2014 it had not yet issued any detail of specific tasks or the organizational structure by which those tasks are to be achieved. (Blanchard 15 April 2014). It is thus not clear whether the leadership structure for stability maintenance will be changed again as a result of creation of the National Security Commission.

The aims of social management are elaborated in the Twelfth Five-Year Program for National Economic and Social Development (Twelfth Five-Year Plan, chapter 37). Replicating the 2006 Central Committee *Decision on Several Major Questions on Building a Harmonious Socialist Society,*[3] it outlines a more "people-oriented" approach to governance. Social management includes strengthening the capabilities of the Party to lead, organize, manage, and serve society, and strengthening "dynamic management" to "resolve the masses' legitimate and rational appeals" (Fewsmith 2012). It also resolves to establish emergency management mechanisms to deal with sudden or unexpected incidents (*tufa shijian* 突发事件).

Approaches to social management are illustrative of broader governance patterns and priorities. They reflect a view that society has to be managed in order to be stable, with law providing the "framework and ground rules" (Pieke 2012, 155). It is in conception a state corporatist project designed to co-opt and subordinate the interests of individuals, the collective, and society to the Party's vision and agenda. In this respect, the program of social management articulates an approach to governance that goes beyond the pre-existing program for the comprehensive management of public order developed from the beginning of the reform era that was focused more narrowly on control and punishment. Rhetorically, since the Decision of the Fourth Plenum of the 16th Party Congress in 2004, social management mechanisms have been conceived as being "under the leadership of the

Party, with the government responsible, society cooperating, and the masses participating."

The concept of social management goes beyond a focus on crime and order through its emphasis on promoting social harmony to touch on dispute resolution, the provision of social services, and recruitment of volunteers into stability management work. Justice departments, the police, People's Procuratorates, and People's Courts all have a role to play in implementing social management policies, resolving disputes in order to promote harmonious social relations, reducing social contradictions, and realizing fairness (Nesossi 2014, 225–26). In subsequent chapters we will see these ideas reflected in regulatory design including the emphasis by courts and other agencies on mediation as a way of resolving disputes and promoting social harmony. Mediation is an important tool in resolving disputes and defusing tensions in each of the case study areas examined in this book. The use of mediation is not developed fully in all chapters but explored in detail in Chapter 4 on medical disputes.

Social management and stability protection policies provide that primary responsibility for implementation of these programs lies with local government. The cost of funding stability protection initiatives has not been fully met by the central government and so the financial burden on local governments, particularly in poor areas, is heavy (Xie 2013). Local governments shoulder the primary responsibility for resolving disputes and disruptions at the local level. Officially they are required to achieve stability through adherence to the rule of law (Hu and Yue 2013), but the interests of the local state do not always coincide with central programs or with some aspects of those programs. A key to understanding the incentives for local government to engage with these programs and to undertake responsibilities allocated to them lies in the target management responsibility system (*mubiao guanli zerenzhi* 目标管理责任制), which forms the basis for annual performance evaluation. The annual local cadre performance appraisal affects an individual's prospects for promotion and the payment of performance bonuses, and acts as a strong motivator to prioritize certain responsibilities over others (Minzner 2009–10; Whiting 2004). The maintenance of social stability has been designated as one of the most important performance targets, a "one-vote veto" (*yi piao foujue* 一票否决). As a result, a single social order incident can negate all other achievements for that year (Feng 2013).

An example of how the one-vote veto works in practice comes from Qujing in Yunnan Province. In that area, where there has been a serious

social order incident in the previous year, the leaders with responsibility may suffer a range of sanctions including not being able to receive an assessment of "good" (youxiu 优秀); being reported to and shamed before the municipal government; being required to submit a written self-criticism; or being dismissed, in cases where the leader has received a grade of "bad" (*cha* 差) for two consecutive years. Responsibility for serious social order incidents is not confined to the county government leadership: county-level officials are allocated 70 percent of the blame and municipal-level officials 80 percent.[4] It is therefore unsurprising that local officials respond to mass incidents in a range of ways. Either they are particularly vulnerable to pressure and so more willing to resolve a dispute regardless of the legalities (Yao Li 2013) or they may adopt forceful measures to suppress the protest and punish the participants (Feng 2013).

Recent policy emphases on Party- and state-led mechanisms for social management, coupled with an understanding of social order in terms of rigid stability, readily lead to the interpretation that socially disruptive conduct is damaging to society as a whole and to political stability. The discussion in the following chapters demonstrates how this conception of social and political stability creates over-sensitivity to socially disruptive conduct and a tendency to construe disruptive protests as "'abnormal" and even as an emergency requiring an emergency response.

Rights, Justice, and Law

Human Rights

After the Tiananmen Square massacre in 1989, the critical attention of the world focused on the protection of human rights in China (Kent 1993). In response, the Chinese government issued a White Paper in 1991 titled *Human Rights in China,* in which it articulated its vision of human rights. This vision of human rights claimed the right to subsistence as the foremost human right of the Chinese people: "It is a simple truth that, for any country or nation, the right to subsistence is the most important of all human rights, without which the other rights are out of the question." It goes on to elaborate: "The preservation of national independence and state sovereignty and the freedom from imperialist subjugation are, therefore, the very fundamental conditions for the survival and development of the Chinese people" (State Council Information Office 1991).

This White Paper articulates a state-centred approach to human rights based on the view that the interests of the nation are indistinguishable from

the interests of its citizens. It gives priority to the nation's right to development and links strengthening the nation and increasing its wealth through economic development to the enjoyment of individual social and economic rights. These rights are framed in terms of the capacity to participate in and enjoy the fruits of economic development. Citizens' rights are thus considered to be dependent upon and subordinate to the nation's right to development (Liu and Cooney 2010). Conceived in this way, social and economic rights are not exercised as claims against the Party-state but are derived through and provided by it. The nation creates and gives effect to the rights enjoyed by its citizens.

In the aftermath of the social upheaval in 1989, the Party-state went on to develop human rights policies that sought to balance economic reform and social stability. These included programs to improve housing, provide social insurance, and reform the provision of health care (Kent 1993, 199–201). As we shall see in the case studies, rights related to health, housing, and labour are framed as core elements of the basic right to subsistence promised by the Party-state, and enjoyment of these rights is understood to be closely related to the preservation of social stability. Since 1991, however, inequality in income and access to social goods has been growing, while urban development schemes have rendered both housing and land-use rights insecure. The issue of human rights and its relationship to social stability has again come into focus. The most recent Human Rights Action Plan continues to link the promotion of human rights to national development by stating that "human rights endeavours" are "combined" with "economic, political, cultural, social and ecological construction" (State Council Information Office 2012).

China has not given equal weight to the protection of civil and political rights, and continues to impose severe limitations on freedoms of speech, religion, and association. It has also been criticized over many years for its systems of arbitrary detention under a range of administrative powers. Many now argue that a view of human rights that focuses on the rights to development and subsistence to the exclusion of civil and political rights cannot be sustained. Enjoyment of all human rights, they argue, is necessary to ensure the dignity of the person (Minkler and Sweeney 2011). Within China there is growing acceptance even at official levels that all rights – social and economic, civil and political – are indivisible and interdependent. The 2012 Human Rights Action Plan asserts: "Taking all types of human rights as interdependent and inseparable, the Chinese government determines to promote the coordinated development of economic, social and

cultural rights as well as civil and political rights, and the balanced development of individual and collective human rights" (State Council Information Office 2012). It becomes clear in the discussion in this book's case studies that the capacity of individuals to enjoy social and economic rights is strongly influenced by enjoyment (or lack thereof) of their rights to personal security, assembly, association, and expression of their views in public and through the media.

Rights and Law

The Party-state adopts a positivist view of rights, namely, that rights are granted by the Party-state, as a consequence of legislation. Law is the primary vehicle through which rights are given their form and specific meaning. The Chinese Constitution sets out the rights enjoyed by citizens, as well as their corresponding duties. For these rights to be given specific form, legislation is required that defines both the nature and extent of the right and prescribes the means for its implementation and enforcement. These laws must in the ordinary course be read in the context of core policies (such as the Harmonious Society policy) that influence the ways in which legal prescriptions are interpreted and implemented. This view of human rights stands in sharp contrast to the international and natural law approach to rights that views rights as being inherent in individuals by virtue of their being human. In such a view, human rights are universal and inalienable (Kent 1993, 7).

As is common in socialist states, there is a largely positive view of rights in that state action is required for their realization. As a consequence, regulation of citizens' legal rights places the preponderance of power and responsibility on agencies of the state for implementation, supervision, and enforcement of the law. Active state participation is also mandated by the nature of social and economic rights themselves, such as provision of social security, access to housing and medical care, and the right to work, to be paid, and to enjoy reasonable working conditions, as they commonly involve claims on the state. The Human Rights Action Plan reiterates this state-led and positive approach to the definition and protection of rights and interests. The Twelfth Five-Year Plan also explicitly provides for improvement of the mechanisms to protect the people's lawful rights and interests through strengthening of the Party-state's leadership, "implementing a scientific and effective mechanism for coordinating interests, for making claims and resolving conflicts." This positive approach has traditionally been contrasted with the negative views of rights, which operates

to prevent the state from interfering in certain types of freedoms (Woo 1993, 181–82). However, the distinction should not be drawn too sharply between civil and political rights and social and economic rights, as both sets of rights have positive and negative aspects to them. One example discussed in relation to labour rights in Chapter 2 is the anti-discrimination provision of the *Employment Promotion Law,* which has enabled groups to use focused anti-discrimination litigation to seek improvement in the overall workplace conditions of disadvantaged groups.

The state-led nature of social and economic rights suggests to some commentators that the availability and strength of private enforcement mechanisms are less important or apposite than might be the case with enforcement of other rights, such as negative rights to prevent the state from interfering in civil or political rights. Some aspects of social and economic rights, such as whether the state has taken the necessary steps to achieve their progressive realization, involve policy and resourcing decisions that are not amenable to individual dispute resolution in a court (Peerenboom 2010–11, 311–16). The inquiry in this book is somewhat different as it examines the capacity of individuals and groups to make claims and enforce rights that have been given specific definition by law, and for which the law also specifies modes of enforcement. It thus considers the capacity of individuals to access the law and the mechanisms provided in the law rather than the broader question of whether social and economic rights may be advanced or protected by litigation. While individuals are empowered to pursue breaches of their rights through the courts and administrative review mechanisms, these channels of complaint are, in different ways, limited. A theme explored in this book is the extent to which, and ways in which, individuals are able to press claims through formal channels, as well as the nature and types of restrictions and limitations on civil society groups, unregistered lawyers, and even lawyers in assisting and representing claimants.

Rights and Justice

Some may wonder whether the legal and policy issues raised by increasing inequality and growing public anger are best framed as a question of rights rather than of justice more broadly. It has already been noted that many disputes and protests are not framed in terms of rights protection but as a demand for compliance with rules. This insight may be used to argue that public protests and demands cannot be interpreted as being indicative of the emergence of a new type of political citizenship that might eventually

challenge the existing political order (Perry 2008). It is an argument that protests are not politically destabilizing, and that in their appeal to state agencies to redress wrongs, protesters actually affirm the existing political order. Arguably, however, the issue of rights is not exhausted by a question of whether or not protests are framed as rights demands, or whether protests challenge the rule of the Chinese Communist Party. An interpretation of the political significance of claims made by citizens, either framed as demands based on rules or on rights, is a question for another time and is not the direct focus of this book. This book focuses on the narrower question of legal implications of rights questions – their definition, their implementation, and the many consequences that flow from failure to give effect to those rights.

The Party-state's commitment to improving the basic livelihood of the Chinese people and its own characterization of this task as a fundamental right raises squarely for consideration its approach to establishing and protecting social and economic rights, which may also be viewed as a core component of distributive justice. In this context, a discussion of rights, particularly rights fundamental to livelihood and human dignity, may be seen as a component of an interrogation of fairness and justice in China's system of governance. The Party-state has thrown its political capital and organizational capabilities behind the establishment of a system of law-based governance (*yifa zhi guo* 依法治国). Failure to implement the laws that define rights in the domestic environment undermines the capacity of citizens to enjoy or to demand respect for these rights. Systematic failures of law-based governance to fulfill promises made in law concerning rights undermine just governance and are therefore damaging to the authority of the law and ultimately to the Party.

An examination of the ways in which rights are enacted in law and given effect through law arguably provides one way of addressing the broader issue of distributive justice. This practical approach to an examination of the definition and realization of rights is grounded in a view of justice that focuses on the practical steps that might be taken towards improving social justice and on how better protection of rights might contribute to the realization of that ideal. As Sen (2009) puts it, it is necessary to consider what steps may be taken to remove injustice. In this book, I focus on the ways in which institutional arrangements of state power and state policies both define and give effect to rights. They set limits on the extent to which and the ways in which rights can be enjoyed. While a great deal can be learned about China's progress in protecting rights through rankings in international

indices, such as the United Nations' Human Development Index, these aggregate numbers and rankings also leave out a lot. The proportion of GDP spent on primary health care, for example, cannot capture the different experiences of primary health care provision of the richest and poorest in the country. As the disparity between levels of wealth and provision of services between the richest and poorest of China's citizens grows, so does the need to capture differently located voices. Patricia Williams (1991) reminds us that the experience of rights and their significance differ between differently located individuals. This book seeks to capture a range of different voices through an examination of laws and policies that define and give effect to rights. It also considers the ways in which claims for protection of those rights, or, more accurately, claims to uphold the law that defines those rights, are framed, and responses to those claims.

The Structure of This Book

The material in this book is organized as a series of case studies. The book does not seek to provide a comprehensive account of human rights as they are implemented in China, or to develop an overall theory about the relationship between rights and stability in China's system of governance. Its purpose is to explore the multiple, shifting ways in which stability imperatives impact on the legal definition and implementation of rights, and the outcomes of these interactions for the evolving project of governance according to law. Each of the case studies deals with a topic of fundamental importance to the realization of the Party-state's stated goals of improving people's livelihood and respecting human dignity. The case studies were chosen both because of their centrality to people's livelihoods and because failures to date in these areas have a direct and significantly negative impact on people's livelihoods, are the focus of significant dissatisfaction, and are the cause of a high proportion of socially disruptive behaviour in the form of petitioning and mass incidents.

The use of case studies enables us to examine in detail the legal regulations that give concrete form to rights, to evaluate enforcement modes, and to evaluate the areas of weakness and failure to enforce those rights. It also enables us to examine the varying state responses to protests arising from such failures.

This chapter has described the primary questions under examination and explained some of the central concepts. Chapter 2 examines the problem of labour unrest. A dilemma for the Party-state lies in the fact that the increase in the number of labour disputes, especially large, public protests, not only

signals systemic problems with China's industrial relations system and the ability of employees to assert and enforce their rights but also raises fears about the potential for this unrest to lead to broader social and political instability. Of concern is the potential of accumulated labour-related grievances to trigger large-scale riots. This chapter examines the multi-pronged approach adopted to deal with the problem of industrial unrest. One approach has been to adopt both short- and long-term measures designed to rectify the worst abuses, with "rights protection" a means of promoting social stability. These measures include extensive legislative reform and attempts to strengthen the will of unions more effectively to represent worker interests. However, these reforms have not, so far at least, changed the underlying regulatory structure of the labour market, which has individualized labour relations and downplayed collective empowerment. In parallel, there has been a focus on the management of stability, through a web of early warning and early intervention strategies to prevent escalation of disputes. Perceptions that the Party-state is confronting a social order crisis has undergirded the development of a range of Party-led coordinated administrative measures, including enforcement campaigns, that involve mobilization of Party, state, and other agencies. Finally, protests that have become large and violent are recharacterized as a riot – and thus an antagonistic contradiction – and suppressed with violence. Where leaders can be identified, they are punished severely.

Chapter 3 examines forced housing demolition and relocation. Urban renewal projects undertaken by local governments have led to the forcible removal of many urban residents and the demolition of their homes in ways that they consider grossly unjust. In these developments, the interests of local governments are aligned with developers against those of residents. This conduct has been a major source of popular dissatisfaction and caused widespread public protest. A number of factors underlie these problems, including the loose definition of legal rights; the effective merger of public and private interests in the way in which rights to land are allocated and demolition rights are granted and carried out; and the lack of effective legal redress for unconscionable or unlawful conduct. This chapter examines the recent reforms to regulations on forced housing evictions that were intended to rectify some of the worst abuses by developers and local governments, but that at the same time strengthen punitive powers in relation to people who refuse to cooperate. It examines people's grievances in their own voices through four petition letters that set out each individual grievance, their struggle for justice, and their appeal for redress of unlawful

expropriation and inadequate compensation. We see, though, that protesters and those willing to support them are often met with force by agents of the developer and local government. We also see the limits of reforms that address procedural issues having to do with housing demolition and eviction but fail to address the underlying cause of the problem. That problem is driven by local governments' reliance on land and property sales to finance their budgets, and the collusive relationships formed in and around real estate development. The contrary example of minor property housing, where the interests of peasants, local governments, and developers are aligned, illustrates the fundamentally financial origins of the problem of land and housing expropriation.

Chapter 4 examines medical disputes. Privatization of China's health care system laid the groundwork for the steadily growing public anger about availability and quality of medical care. Recent reforms to increase public financing of primary health care have done little to reduce the levels of direct and sometimes violent actions being taken by aggrieved patients and their families against doctors and health workers in hospitals. This chapter examines the factors that have tended to divert grievance resolution procedures away from formal medical arbitration and civil dispute resolution processes towards direct action and protest against health professionals and hospitals. It traces the range of state responses to these forms of social disturbance: tentative but ultimately minimal legislative reform of formal dispute resolution processes; introduction of specialist medical dispute mediation committees; efforts to reshape popular attitudes about the doctor-patient relationship through television programming; and expansion of the range of activities punishable on grounds of disrupting social order in both administrative and criminal law. Finally, a series of violent attacks and murders in hospitals near the end of 2013 triggered a nationwide campaign. This one-year campaign is designed to coordinate responses to medical dispute-related disruption and violence and to strengthen the severity of punishments to be imposed on those engaging in violent conduct against doctors, hospital staff, and hospitals. In a different context from labour and housing disputes, we see replicated a range of responses to public dissatisfaction: steps to rectify underlying problems; introduction of coordinated measures to address disruptive conduct and disputes; and strengthening of punitive responses against those who persist with disruptive or violent conduct.

Chapter 5 examines in greater detail the array of coercive measures, broadly defined, used to target protest and socially disruptive conduct.

These include programs to discover dissatisfaction that may develop into protest, and to manage, resolve, or defuse protests early, before they develop. A range of educational strategies are also used to influence public opinion. The backdrop of these strategies is the array of coercive and punitive powers exercised by justice agencies to punish conduct identified as troublemaking, disruptive of social order, or plain criminal offending. This chapter discusses the example of petitioning conduct to illustrate changing state tolerance of disruptive conduct. It illustrates the ways in which legal interpretations and rules define an increasingly narrow range of acceptable petitioning conduct, thereby increasing the reach of administrative and criminal punitive powers, both lawful and unlawful, to sanction conduct that falls outside the bounds of acceptable petitioning.

Chapter 6 examines the impact and significance of the abolition of one of China's most infamous administrative punishments, re-education through labour (RETL). It examines the impact of this abolition in terms of the totality of state powers to punish socially disruptive conduct. It also considers the significance of the abolition in terms of rights protection. An examination of the debates over reform or abolition of RETL prior to its final demise reveals a growing awareness of basic human rights norms and a growing willingness to embrace those norms. However, evaluations of the legal and institutional changes required in order to comply with those norms differed widely. In particular, there was considerable disagreement about how long a person could be detained under an administrative sanction, and about what forms of decision-making and oversight were required to avoid arbitrariness. Questions about how to balance protection of rights with protection of social stability commonly assume that the former would come at the expense of the latter. Only a few voices suggested that protection of rights through promotion of social fairness and justice might help improve social stability. The emerging consensus before its abolition that RETL was not an efficient way of protecting social stability means that the question of the relationship between rights and stability in the context of punitive powers remains open.

Finally, Chapter 7 brings these case studies together. Each of these chapters reveals a range of ways in which stability concerns impact on the enjoyment of rights. Rights protection may be used as a means of stability protection and is seen in the legal and policy steps taken to remediate problems. Stability protection is often used as a reason for increasingly punitive approaches to dealing with protests and petitions. Social-stability considerations impact on forms and outcomes of dispute resolution and

are implicated in the increasing use of mediation to resolve rights-related disputes. Stability concerns have prompted the use of comprehensive management tools to intervene in the regulatory sphere to restore stability. Finally, we are left with questions about the circumstances in which rights protection is seen as contributing to stability protection, and when stability protection becomes a value to be pursued even at the expense of rights protection. The interaction between stability concerns and lawmaking and enforcement as they affect rights illustrates the many ways in which demands for social and political stability have shaped the development of the rule of law and governance in China.