1. Stability and the law
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INTRODUCTION

Social stability is a top national concern of Chinese authorities. Law is essential to achieving and maintaining stability, in the understanding of these authorities and in practice. This volume therefore explores the place of law in judicial and government activism around managing social instability in China today. In official circles, social stability is understood as the political and social security that accompanies orderly, conflict-free social relations. Instability is manifest in what the Communist Party-state deems unharmonious relations within communities and between individuals and the state, brought about by crime, dispute and protest. Disparity in income distribution, the underdeveloped welfare system and weak governance oversight mechanisms in local areas are the root causes of festering social unrest that has swept the nation for at least the last 15 years. Well over 100,000 collective protests annually make stability a major political preoccupation. How local courts and governments marshal the forces of law to deter and punish crime, resolve disputes and manage protest has become a central socio-political concern for China’s governing authorities. Social stability has become a defining socio-political goal because the Party-state sees social disorder as a threat to future prospects for economic growth, hence to its own future. The studies in this volume observe interactions between law and the stability imperative and how politics figures in these interactions.

These studies reach broadly across matters of law in China, including litigation and mediation practices, substantive law, procedural law reform, anti-corruption initiatives, detention centre operations, parapolicing law and administrative law. Running through these studies are two

1 China’s gini co-efficient was 0.474 in 2012.
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related threads. One concerns how the political imperative of social stability has reframed approaches to law and justice in the decade of the 2000s to fit the contours of the stability imperative. The second concerns the challenges posed to the legitimacy of the law when the stability agenda of politics overtakes routine law and justice concerns. What links these two strands is the shift in China’s justice and security policy to prioritize positive ‘social outcomes’ (i.e., successfully preventing disorder) over ‘positive legal outcomes’ (through due legal process) in handling disputes, protest and crime.

Emphasizing substantive over procedural justice has served to reshape legal practices early in the 21st century at a cost to law’s legitimacy. Political responses to the stability imperative have challenged the legitimacy of the law in the eyes of many because these responses hamper judges and government decision-makers trying to follow established legal procedure. This undermines their capacity to make judicial and governmental decisions free from the political pressure to act as the Party-state deems necessary to maintain stability.

The stability imperative has compelled the Party-state to reframe legal and justice practices in a way that in many respects runs counter to the Party’s own principle of ‘governing the country according to the law’ (yifa zhiguo). Therefore while the empirical focus varies among chapters, the studies in this volume share a common theme: the challenge of maintaining law’s legitimacy when at grassroots the stability imperative from Beijing often translates as, in the words of Deng Xiaoping, to ‘preserve stability above all other concerns’ (wending yadao yiqie). This ‘whatever it takes’ imperative often invites excessive when translated into local practice. In these chapters, the authors show the difficulties for those involved when stability trumps all other concerns. For those who administer justice it is balancing the imperatives of crime control and due process; for those who adjudicate civil and criminal cases it is reconciling the achievement of so-called positive legal outcomes and positive social outcomes; and for those in government and courts who deal with labour, land and environmental disputes it is ‘harmonizing’ the competing rights and interests of participants, especially when one of them is a local government agency.

CONTAINING INSTABILITY AT THE LOCAL LEVEL

The Party-state has conceived of stability as a precondition for successful economic development since Deng’s era of open reform began in 1979. Threats such as crime to the stability of communities have since been an
ongoing concern (Dutton 1992). Given its prerequisite status, social stability has been put forward to legitimize most of China’s criminal justice policies over the past 30 years (Biddulph 2007, Trevaskes 2010, Sapio 2010, Nesossi 2012). However, over the last 15 years or more, official concern for stability has widened considerably to incorporate social actions that now reach well beyond conventional crime to include legal disputes, individual petitioning and collective protests. Social stability began to be transformed into a key political preoccupation after the Tiananmen incident in 1989 but it took until the 21st century for this concern to be fully institutionalized in the justice and security arenas.

Today stability is the primary socio-political concern of the Party-state, which claims that unregulated social action such as protest or legal dispute over socially sensitive matters such as land, labour and environmental issues threatens not only the success of China’s economic agenda but also the nation’s political life and the Party’s future. This preoccupation with stability has reshaped how the Party-state approaches justice and government decision-making practices and security arrangements. Since many protestors and petitioners perceive they cannot obtain justice in their local courts, over the last 15 years or so, millions of petitioners have travelled to provincial capitals or to Beijing to lodge protests, hoping to have court or government decisions overturned. Particularly in the early to mid-2000s, complainants preferred to take their chances petitioning in Beijing or in the provincial capital since they found it difficult to have their administrative suits heard in local courts or to have their grievances heard by the local government (Zhang 2009, Li, Liu and O’Brien 2012).

In response to the petitioning phenomenon and to the escalation in collective protests throughout the first decade of the 2000s, central and provincial authorities have produced a strategy of ‘localizing grievances while insulating the Centre’ (Mattis 2012). Part of this strategy involves policing protests financed through a ‘Stability Maintenance’ budget that now runs to over 700 billion yuan (approximately US$120 billion) annually. Another part of the strategy has been for courts to refuse to accept civil cases for litigation and to deal with disputes through mediation practices (Woo 2013). Practices such as mediation can give authorities firmer control over case outcomes, ensuring that relations between competing parties are ‘harmonized’. The Party-state has therefore taken steps to make local courts and governments increasingly ‘activist’ (Zhu 2010) in their decision-making in response to the escalating number of people who use petitioning outside court and government agencies to seek justice.
Courts and other governmental and justice agencies are these days reluctant to allow cases of forced eviction, land-taking and other civil and administrative disputes to go to trial, preferring to solve the issue through mediation. Mediation is attractive to local authorities because when complainants (including those likely to petition to authorities in provincial capitals or Beijing) agree to the terms of a mediation agreement, it is difficult for them to complain legitimately through appeal or petitioning against a decision that they participated in. But Beijing’s pressuring of local courts to ‘close the case and solve the problem’ (anjie shiliao) (Liebman 2012, Zhang 2012) before it reaches higher levels of justice administration or before petitioners head off to Beijing to protest, has created a logistical problem for local authorities. It means court time is now clogged with administrative cases that are sometimes difficult to mediate in favour of the complainant. Indeed, according to some Chinese commentators, with the ‘petition-ization’ (sifa xinfanghua) of court work, court time is increasingly taken up with judicial mediation outside courtrooms; up to 80 per cent of administrative cases are now required to undergo mediation rather than litigation (Zhou 2010, Wang 2013).

Other agencies such as local governments have become increasingly activist through mechanisms such as enforcement campaigns against labour unrest that hark back to the era of Maoism (Biddulph, Cooney and Zhu 2012). Other expressions of stability-related activism are present in the ‘Stability Maintenance’ policing operations, operations entailing mass CCTV surveillance (Bakken 2012), operations requiring the increasing involvement of China’s parapolicing forces (Tanner 2007, 2012) and criminalizing the actions of petitioners and protestors (Cai 2008, Sapio 2013). The overriding concern is to contain potential or realized unrest and dissent at the local level so that a dispute or other social problem does not escalate to become unmanageable.

In short, the strategy of containing contention within local areas has been achieved by bringing back Mao-style pre-emptive mechanisms to deal with social problems through means such as mediation. These mechanisms often prevent citizens from exercising their legal rights through court appeal to higher provincial authorities or through petitioning to central authorities in Beijing. As a consequence, the strategy has politicized what was once routine dispute-related judicial and governmental decision-making, which in turn has politicized the ways in which citizens seek to solve social problems through collective action (Fu 2013). In these circumstances, citizens’ rights in relation to legal disputes now run thickly with contention and politics. Obsession with instability has reframed the human rights and justice debate within China in the 21st century. For the Party-state law is the central ingredient to these
responses, but for increasing numbers of aggrieved citizens it is also the essential ingredient to their actions as citizens increasingly challenge the state-centric view of their rights. These conditions position law in a complex, inextricable and difficult relationship with the national goal of stability.

CITIZEN ACTIVISM, STATE ACTIVISM AND RIGHTS

From the outset of China’s open door reforms in the late 1970s with Deng Xiaoping at the national helm, the Party-state linked development of rights directly to its blueprint for economic modernization. Economic and social rights were made the nation’s top human rights priority, to be developed in lockstep with increasing national wealth. Official discourse linked commitment to improving rights to subsistence as the nation’s primary human rights goal, while to enable the market to function the state gradually withdrew from what had been its Mao-era responsibilities as ‘provider’. Subsistence was indeed still a critical problem for many Chinese in the 1980s and early 1990s. The Chinese government’s most impressive feat over the last two decades has been to lift out of poverty hundreds of millions of people from rural areas across the nation, an accomplishment of truly historic proportions.

But the social and economic fallout of this feat has challenged many people’s social and economic rights. Uneven distribution of wealth, unequal access to justice, and corruption – entrenched throughout a political system characterized by weak oversight mechanisms – have inspired widespread discontent. Many increasingly feel that their health, property and wages are no longer adequately protected by the legal system or government. They are aggrieved when local authorities consistently fail to punish widespread corruption. They are also aggrieved when government and courts protect the economic interests of big and small business over the rights and interests of the Chinese people. They want state action through law and policy to deliver justice by protecting their rights as citizens rather than their roles in what has become a political as well as economic marketplace. Citizens, like the state, have been increasingly activist and strategic about how they approach this activism (Chen 2012, Fu 2013).

The fallout of decades of social and economic inequality and inadequate access to reliable avenues of justice has therefore transformed the rights debate in China’s liberal press (Southern Daily and Southern Weekend) and in social media, which has shifted significantly to the issue of how protests, petitions, appeals and security threats are managed and
punished. Crucially this fallout also creates challenges to the legitimacy of the law when the stability agenda overtakes routine law and justice concerns. At the core of the stability obsession is the issue of loss of public trust in the law (Minzner 2013, Chen 2013). Mass protests continue to occur because people have little faith in the commitment and ability of local governments to address their problem or of local courts to deliver fair and independent decision-making, especially when courts refuse to accept socially sensitive cases for litigation. While billions of yuan each year are poured into Stability Maintenance as a budget item (Xie 2013), an additional and arguably more costly aspect to maintaining stability is apparent. It is the loss of regime legitimacy in the public’s eyes brought about by changing legal and justice practices to accommodate the stability imperative. Authorities have been unwilling or unable to effectively address two key sources of public anger that fuels social unrest. One is the corruption and apathy towards corruption apparently entrenched at all levels of government, and the other is blocked access to formal justice, that is, the incapacity of many people to use and afford the legal system as an avenue through which they can have their grievances addressed.

The stability imperative follows a political logic legitimized through grand political narratives such as Hu Jintao’s ‘Harmonious Society’. In the same manner, the rights prescribed by the Party-state for citizens to appeal and protest a legal or governmental decision follow a political ideology, fashioned by political values and by a social system that is a product of nearly 70 years of Party rule. Citizens’ actions can challenge government and court decisions but these challenges are circumscribed by what the Party-state sees as regime threatening. And while China’s transition has indeed opened a wider space for popular expression over the past 30 years, the scope and nature of this space are intrinsically linked to how far the Party-state is willing to tolerate disunity. This may not be surprising when we consider that in most modern states, the official position on human rights is tailored by how the state validates notions of rights and justice to accommodate the impact of its governance and social control policies. In China, validation is through the concept of ‘mutuality of rights and duties’.

‘Mutuality of rights and duties’, a guiding human rights principle in China, accommodates stability-related policy in implying that rights are inseparable from the duties prescribed by the Constitution and other laws. Stressing the utmost importance of ‘social stability’ serves to lock on rights to duties and in the process it interlocks the mutual responsibilities of citizen and state. Since the Party-state sees social instability as a threat to economic development and national prosperity, citizens who are not
fulfilling their duty to maintain social stability forfeit their rights. Official jurisprudence sees that individual as well as collective protests undermine the rights of the larger collective (‘the people’) since protests of any size hamper economic development and hence the capacity of all citizens to realize their economic and social rights.

Regardless of how official jurisprudence legitimates state responses to instability, socio-economic disputes relating to land, environmental and labour issues find expression in the over 100,000 collective protests across the nation annually (Mattis 2012). Obsession with instability pushes and pulls citizens’ calls for justice through the tight nexus between politics and law. But the problem of how the state prescribes rights and justice is complicated by the reality of weak oversight mechanisms at the local level, which has encouraged widespread corruption, corporate malfeasance and consequently, public mistrust of the law. The people’s lack of access to reliable avenues for redressing injustice has exacerbated problems from the speed and depth of social change through economic development, especially the increasing wealth gap separating poor from rich. But rather than identifying root causes to initiate remedial action, the Party-state has cast consequences – the sharp rise in social unrest and protests – as the key problem. It has planted ‘social stability’ as the key principle to legitimize both changes in justice and security practices and how it exercises authority to govern the nation through this era of increasing social discord.

The chapters in this volume share a number of themes that primarily concern how citizens respond to injustice and how, in turn, justice and security organs have reorganized their practices in response. The volume has three parts. The first, ‘Managing Disputes’, sets the stage with detail for analysis through introducing both the legal disputes and the government and judicial activist mechanisms that seek to contain these disputes and their social fallout. The second, ‘Creating and Sustaining Legal Frameworks’, explores the myriad legal mechanisms open to authorities for responding to what they perceive as instability since the authorities have changed laws and legal practices in response to the stability imperative. The third, ‘Framing the Discourses of Stability’, reflects on the political logic of the stability imperative, discussing the discursive frameworks that support it, particularly ‘Harmonious Society’, ‘Stability Maintenance’ and ‘Social Management’, which are used to embed the stability imperative within the Chinese legal system.
PART 1: MANAGING DISPUTES

Law is the main mechanism for action used by both the Party-state and Chinese citizens in the stability arena. As we noted above, while the imperative of social stability is politically conceived by the Party-state, which responds to instability through a range of legal and governmental mechanisms, the law also provides citizens with avenues for redress. When citizens believe that individuals, the state or private enterprises have done them or their society an injustice, law can become an empowering instrument for them. Citizens have increasingly pursued legal action such as protesting and appealing court decisions to defend their rights and interests. Many have successfully used legal avenues, including administrative and civil law suits, to fight decisions made against their interests by land developers, construction companies, factory or plant owners and local governments. But when citizens push, the Party-state pushes back by readjusting governmental and judicial decision-making practices. As this volume reveals, such use of the law by citizens can have limited success given the close bonds of financial, administrative and political interdependence that link courts to local governments and shape adjudication and mediation practices.

Part 1 concerns how citizens push – and how courts and governments push back – in labour, land and environmental disputes. Collective and individual legal disputes began to draw the Party-state’s legal institutions onto the centre stage of politics in the first decade of the 21st century. Equipped with reconfigured political rhetoric and ideology to justify its evolving approach to law and order, the Hu Jintao–Wen Jiabao leadership came to be known for its ‘rigid’ (Yu 2010) approach to the maintenance of stability, particularly from 2007 to 2012. Front and centre in this surge of public dissatisfaction with abuse of power, economic inequalities and lack of access to formal avenues of justice are the labour, land and environmental disputes. Disputes and protests in these years incarnated people’s frustration at being unable to secure their social and economic rights in a society that for the most part has bifurcated sharply into the urban haves and the rural have-nots. Increasingly citizens expressed anger at inequalities, not just of wealth and opportunity but also of access to justice. Part 1 of this volume explores the politics–law–stability nexus in relation to these three types of disputes.

We begin with labour disputes, which Sarah Biddulph’s chapter argues the Party-state sees as a serious threat to social and political stability. This study explores the relationship between stability and rights in the regulation of labour protests through examining how Party-state agencies
have interpreted and responded to this unrest. Biddulph argues that the upsurge in labour-related protests can be seen as a problem of both rights and stability. Legal reforms and administrative measures have tried to enhance labour stability through addressing failings in the current regulatory regime, but this is not a high priority; the authorities see that other disturbances pose greater political risk. Some labour disturbances start out as a form of rightful resistance but develop more explicitly political overtones. Authorities can quickly characterize violent labour protest as a social order ‘emergency’ requiring more direct and coercive intervention. Biddulph argues that despite some reforms, the Party-state has been unable and unwilling to address the problems of low wages and work insecurity that arise from both the current economic development model and concomitant inadequacies in the labour regulatory regime.

Forced land-taking by local governments for the purposes of development is one of the most prominent sources of social conflict in contemporary China. Xin He’s chapter on ‘hard-nail household’ disputes explores the process of legal mediation in land-taking cases as a relatively new form of judicial activism aimed to prevent unrest and preserve stability. Policymakers encourage mediation to resolve these disputes because it discourages or even prevents the aggrieved party from appealing or petitioning against the court’s decision; the aggrieved party voluntarily accepts the outcomes so is unlikely to appeal, petition or complain. This mode of dispute resolution may seem workable in the short term, but mediation does not guarantee stability. As Xin He points out, when courts fail to support the aggrieved party in mediation, protestors often assume the courts are ‘wearing the same underwear’ as the local government and developers, which can escalate tensions. Conversely, courts are pressured not to rule in favour of the aggrieved party in land-taking disputes since acquiescing in pressure from the aggrieved party encourages more hard-nail households and others to demand justice through the courts. Case outcomes are thus often skewed to avoid further tensions, regardless of legal merit. Xin He argues that stability concerns overtaking legal procedures such as formal litigation undermines court authority. He questions the sustainability of mediation as a dominant approach to the stability agenda, arguing that it may resolve some disputes, but in the long run weakens the institutional capacity of the courts and results in increased petitioning and resistance.

Further to Xin He’s chapter exemplifying stability-related judicial activism in generally urban development disputes, Zhang Wanhong and Ding Peng’s chapter illustrates how judicial and governmental activism has also become prominent in rural environmental disputes over use of water. Central to this rural water activism is China’s rapidly deteriorating...
ecological terrain, which feeds into poor sanitation, accelerated relocation of pollution to rural areas, soil contamination, and shortages and contamination of water (Ma 2008). Zhang and Ding focus on efforts to mediate collective disputes over serious infringement of regulations on water, which endangers the lives and livelihoods of rural residents. Here dispute resolution is to ensure that rural social stability is maintained, sometimes at any cost. Through case studies of two areas in rural Hubei province, this chapter documents rural residents’ attempts to resolve water pollution problems that gravely affect those living in the vicinity of river-polluting manufacturing plants, who drink the water from the river and use it for their crops. We see that when villagers cannot access the law or courts fail to protect their interests over manufacturers’ and developers’ interests, villagers may feel forced to organize and participate in ‘mass incidents’. As argued in the previous two dispute-related chapters, Zhang and Ding argue that the only lasting foundation of stability in Chinese society is the legitimacy of the law that is manifest in effective judicial remedy and the protection and realization of rights.

PART 2: CREATING AND SUSTAINING LEGAL FRAMEWORKS

The chapters in this part unmask the stability imperative now embedded widely across the practices of administrative, legal and security organs. The scope of the studies here is therefore broad, each homing in on a variety of law and justice sites that illustrate the centrality of the imperative to manage discord, disorder and dispute in the intersection between law and the Party-state’s political agenda of stability.

Benjamin van Rooij’s chapter sets the scene for Part 2 by reflecting on how regulation itself can produce instability through underdevelopment of the enforcement capacities of China’s regulatory regime, which seeks to oversee the activities of state-owned and private enterprises. He argues that weak regulation and social instability are now closely entwined in China, resulting in fragmented and ‘irregular’ uses of regulation that can damage public trust in the law. Fear of social unrest also plays multiple and sometimes contradictory roles in the development and functioning of regulation. Protests can inspire the state to respond by launching campaigns that crack down on irregularities. The stop–start and short-lived nature of government commitments triggered public pressure to enforce regulatory law but sends mixed signals to the community about the ‘stability’ of the law itself. It also underscores the need for local and central authorities to take regulatory law much more seriously as a
legitimate state instrument for protecting citizens and ultimately preserving stability in China.

Michael Palmer’s study in Part 2 expands on Xin He’s in Part 1, which acknowledges the renewed dominance of mediation over litigation in settling disputes. Palmer examines how state–society relations are mediated in administrative suits in China today, tracing the rise of mediation as dominant in practice – if not in the official rhetoric – in administrative suits. One of the most serious difficulties facing the legal reform drive immediately post Mao was the need for legal control over the administrative powers of the state. Politico-legal authorities experimented with a system of administrative litigation (xingzheng susong) in the 1980s, which was introduced as a national law in 1990. Originally this was a means by which citizens might more effectively challenge the actions of administrative agencies. However, as Palmer explains, it has nowadays been transformed by judicial practice that favours mediation over litigation. Transforming the meaning of administrative litigation – and the relationship between this transformation and official policies favouring socio-political stability and ‘Harmonious Society’ – is a story both significant and ongoing. Accordingly, this chapter explores two central questions: the nature and significance of the role of mediation in administrative litigation in the PRC, and the most salient current developments in this unfolding tale.

Trevaskes considers a very different and somewhat unexpected site for judicial mediation: the death penalty. Her chapter examines reshaping of death penalty policy and practice to address issues of stability and harmony preservation through propagation by China’s Supreme People’s Court (SPC) and Supreme People’s Procuratorate (SPP) of two types of model cases: ‘standard cases’ (dianxing anli) and ‘guiding cases’ (zhidao anli). By examining the medium and the message of model cases on lenient death sentencing post 2007, Trevaskes investigates how the socio-political role of punishment in relation to maintaining stability is articulated top down from the SPP and SPC to prosecutors and judges in local jurisdictions. Guiding cases are a key means for the SPC and SPP to convey to judges and prosecutors in local jurisdictions what these two top legal institutions construe as correct practice for death sentencing that responds effectively to the political imperatives of Stability Maintenance and Harmonious Society-building. The guiding cases thus exemplify how in homicide cases where death sentencing is applied, judges and prosecutors are to prioritize positive ‘social outcomes’ driven by the constant political imperative of social stability, over the long-term positive ‘legal outcomes’ concerned with legal propriety of the nation’s civil law system.
Reconciling positive legal and social outcomes was also a keen concern for the drafters of China’s latest Criminal Procedure Law (2013) as Guo Zhiyuan explains. Crime control and due process are key imperatives for criminal justice systems worldwide. In China, these two imperatives have informed recent debates on criminal procedure reform and have been an integral part of the legislative drafting process of this newly amended law. China enacted its first Criminal Procedure Law (CPL) in 1979, and substantially revised the law in 1996. Guo examines the most recent reform to the CPL brought into effect in March 2013, arguing that stability is one of the most important goals, through balancing crime control and due process. The crime control imperative requires that the criminal procedure law punishes offenders to protect the public from social harm caused by crime, while the legal imperative of due process requires the criminal procedure law to protect the accused from wrongful proceedings and other abuses of power. Guo argues that due process and crime control are compatible in theory, but in practice they can easily be set in contradiction when stability becomes the overriding politico-legal standard. Criminal law in China is predominantly to protect the collective majority from the minority, a predisposition that suits the stability maintenance agenda and justifies the dominance of crime control as the driving principle of the CPL.

Disciplinary and legal frameworks dealing with corruption and abuse of power are explored by Fu Hualing. One of Xi Jinping’s first political statements after ascendancy to the Party throne in November 2012 was to announce yet another anti-corruption drive. Corruption and abuse of power link directly to stability and social order because they are the key sources of community dissatisfaction with China’s governance model. Since acceding to the United Nations Convention against Corruption (UNCAC) in 2003, China has implemented a series of anti-corruption initiatives to prevent and reduce corruption and to punish corrupt officials. Fu Hualing’s study introduces those initiatives and offers an assessment of their success and limits in containing the spread of corruption and regaining public trust. Fu’s study strikes a largely positive note, arguing that for the time being, implementing the UNCAC-based international best practices in China has contributed to the nation’s political stability and authoritarian resilience. In the long term, however, the one-Party state may be unable to resolve the deeply entrenched corruption that reaches into every sector of government and is sustained by the existing legal frameworks.

Murray Scot Tanner’s chapter explores the law–stability nexus in relation to the People’s Armed Police (PAP) in the 21st century. The PAP is intrinsic to the politics of law and stability in China. This paramilitary
force has been called upon to supplement the police force in breaking up large-scale mass protests and is therefore seen by the authorities as instrumental in the Party-state’s moves to create and sustain social stability in a practical way by preventing or curbing social unrest through armed force. In this context the creation and implementation of law to legally codify the deployment of the armed police forces – where, when, how, why and most importantly by whom – runs thick with politics. Control over the armed police matters very much. In this context, the 2009 PAP Law was designed to legalize organizational control over China’s paramilitary police forces, which had been governed primarily by military and police regulations. But the law’s text, debated extensively within the National People’s Congress Standing Committee, ultimately raised as many questions about control of paramilitary forces as it answered. Tanner’s chapter on changes to the PAP Law examines control over the PAP before the law was changed, debates over the 2009 Law and its final text, and subsequent practices under the revised law for mobilizing these forces, which play an increasingly important practical role in China’s internal security and maintenance of stability.

PART 3: FRAMING THE DISCOURSES OF STABILITY

The final part of this volume interrogates political rhetoric surrounding the stability imperative and how the prevailing political discourses in 21st-century China relate to stability. Elisa Nesossi’s chapter on social management discourse examines the framing of ‘Social Management Innovation’ that has emerged over recent years in the Chinese criminal justice system and its effects on pre-trial detention. Nesossi assesses how the Party-state sustains a neoliberal rhetoric on rights and justice without weakening emphasis on its own leading and paternalistic role in society. She examines how typically Western concepts like transparency and accountability have been co-opted within the Chinese legal-political discourse on ‘social management’ and ‘criminal justice socialization’ to support the line of stability and legitimacy maintenance, which helps sustain Party-state leadership. Illustrating through the place of reform in the system of pre-trial detention, this chapter examines in particular the role of the procuratorate, mass organizations and the general public within detention centres.

Flora Sapio’s study of social management theory contemplates this new ‘Social Management Innovation’ discourse as a recent post-Harmonious Society political programme that rationalizes stability as an imperative of the ‘general will’ of the masses. Sapio examines the
rationales behind this discourse as a new ideological phenomenon in China. Social Management Innovation began life as an add-on to Stability Maintenance but has been given a life of its own since 2010. Sapio’s discussion identifies the theoretical role of the ‘general will’ in Chinese and Western political philosophy to connect Social Management Innovation rationales to Stability Maintenance. Social Management entails selectively adapting neoliberal government techniques to maximize the prospects of social stability and economic growth. This development has been explained as the ‘retreat of the state’ and the decline of ideology, but as Sapio explains, politics remains supreme in this new programme, just as it has in the Harmonious Society and Stability Maintenance years. She argues that the endogenous intellectual forces that encouraged such a shift in governance in China did not envisage a shift in the relationship between power and the lives of individual human beings. Rather, translated into political praxis, such ideas have induced a continuing emphasis on stability: the undisturbed operation of the laws that regulate politics, the economy, society and the individual.

The final chapter by Trevaskes, Nesossi, Sapio and Biddulph reflects on the political context of the themes explored in the volume, through reappraising the journey to stability obsession in recent years. It considers the discursive frameworks within which China’s leadership has reframed justice and security practices to deepen understanding of how and why the stability imperative became the Party-state’s number one preoccupation in the decade of the 2000s. It sketches the path of stability’s rise to prominence through political programmes and rhetoric linking stability to the national imperatives of economic development and institutional reform.

Stability Maintenance and Harmonious Society are agendas that aim to address the connection between three key ingredients of China’s modernization drive: stability, economic development and reform. In the early 2000s, the new Hu Jintao leadership recognized that, long term, they would need to take institutional reform, particularly legal reform, seriously as the ultimate mechanism required to ‘govern the country according to the law’, to curb corruption, to improve China’s weak governmental and legal oversight mechanisms and to sustain the prospects for a moderately prosperous society. But while they recognized that a strong legal system capable of enforcing the law across the nation would be the ultimate guarantee for long-term social stability, it is apparent that they did not believe that, at this juncture in time, the law would be sufficiently robust to create a stable social environment for growth.
This final chapter traces the journey towards stability preoccupation in the late 20th and early 21st centuries, reflecting on how stability came to tie in with the two other key elements of China’s modernization goals: institutional reform and economic development. How the Party-state perceived their interrelationship explains why the stability imperative became the central political concern of the first decade of the 21st century in China, while institutional reform ended up as the weakest link in this tripartite chain.

This discussion concludes the volume by reflecting on the erosion of public trust in the law in China, questioning the cost of the stability imperative in relation to the loss of law’s credibility in recent times. The Party-state’s quest for stability in China has been exercised partly through the law, but not always for the nation’s legal system. Therein lies the politics of law and stability in 21st-century China.

CONCLUSION

The Politics of Law and Stability in China examines the nexus between law, politics and stability at this crucial period in the nation’s rise to the status of economic superpower. It explores the impact of Party-state rationales for social stability on legal reform, judicial decision-making and justice system policy relating to institutions such as courts, the PAP and detention centres and the handling of civil disputes and social unrest. This volume presents politico-legal approaches the Party-state has used to manage (and in some cases, to punish) the behaviour of Chinese citizens in response to what it sees as destabilizing or potentially destabilizing social action. The studies in each chapter digest how in the first decade of the 21st century the stability imperative has driven the reframing of approaches to law and justice practices, impinging upon the legitimacy of the law when it has overtaken routine law and justice concerns. Many of the Party-state’s changes in legal and justice practices in response to the stability imperative challenge law’s legitimacy because their results contradict the idea of ‘governing the country according to law’, which the Party-state wants to promote and practise at this stage of China’s socio-economic development. Excesses also register below the national level, as local governments and court workers can be penalized for not containing dissent locally.

The Party-state attributes the rise in legal disputes, protests and other public disturbances, particularly since the beginning of new century, to the social and economic fallout of rapid economic growth. If it recognizes these public expressions of resistance, dissent or conflict also as
products of the nation’s one-Party political system and the corruption entrenched within it, it does not publicly acknowledge them. Rather than dealing head on with the causes of the problems, it has cloaked disputes in rhetorical garb as destabilizing and potentially dangerous to society. By implication, of course, disputes also threaten the Party’s prospects for long-term rule. The price that the nation now pays for the Party-state’s unwillingness and/or incapacity to deal head on with structural and political weaknesses is an increasingly unharmonious Chinese society, which lacks trust in the Party’s commitment to ‘governing the country in accordance with the law’. It creates a very potent politics of law and stability in 21st-century China.

REFERENCES


Stability and the law


