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The 1978 Constitution of the People’s Republic of China

By CHIN KIM†
TIMOTHY G. KEARLEY††

On March 5, 1978, the People’s Republic of China (PRC) adopted the third constitution of its relatively short history.¹ This article will describe China’s new basic law primarily by means of comparison with its two predecessors adopted in 1954 and 1975; particular emphasis is placed on the 1975 Constitution.² This treatment will be more in the nature of a textual exegesis than a series of speculations regarding the “deeper meaning” of the provisions for Chinese society, although the description must occur within the context of acknowledged facts of recent Communist Chinese politics.³

At this relatively advanced stage in the history of state socialism it may not be necessary to defend the giving of careful consideration to the fundamental law of a socialist nation. However, some may yet be dubious of such an undertaking since these constitutions are clearly not conceived of, even by their drafters, in exactly the same terms as those of Western style democracies.⁴

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1. The English text of the new PRC Constitution may be found in Hsia & Haun, People’s Republic of China, III Constitutions of the Countries of the World (A. Blaustein & G. Flanz ed. 1978); and in 21 Peking Rev. 5 (March 17, 1978) from which an English text is reproduced as an appendix [hereinafter cited as 1978 Constitution].


4. Apparently even those who study socialist constitutions are not always convinced of the worth of their endeavors. For a brief discussion of an instance of this phenomenon, see Dittmer, Book Review, 26 Prob. in Communism 57 (Jan.–Feb., 1977).
Socialist constitutions have been called "basically action programmes to be translated into political practice," and it is true that they are typically used to recapitulate the progress of socialism in the country to date and to chart its future path. A Soviet commentator expressed this notion by stating, "For every socialist country, the adoption of a Constitution—the basic law of the state—is a major event because in this way the basic rights of the working people and their political and social gains on the path of the construction of a new society are consolidated." The Soviet newspaper article in which this statement appeared rigorously criticized the 1975 PRC Constitution for its ideological heresies (not the least of which was hostility towards the U.S.S.R.) in describing the Chinese state and its programs. The same critique, however, indicated concern for what it perceived as shortcomings in the 1975 Constitution’s provisions for the state structure and provisions for ensuring the rights of citizens. That these functions of a fundamental law are also significant considerations for the drafters of socialist constitutions is further evidenced by a saying of Mao himself that "An organization must have rules and a state also must have rules; the Constitution is a set of general rules and is a fundamental charter." Indeed, the PRC's most recent constitution devotes considerable attention to establishing the state's organization and regulating the conduct of state organs and citizens in relation to one another.

Perhaps the most concise explanation of the facets of one socialist constitution was offered by the author of an analysis of the last Chinese constitution, who wrote of it: "The new Chinese Constitution performs some functions which are common to constitutions everywhere. It legalizes the existing social order and makes explicit its ideological principles; it establishes a framework of government and administration; it regulates social and institutional behavior; it enumerates Chinese goals and aspirations."
Thus, while socialist constitutions in general, and the Chinese in particular, may not be the long-lasting, state-binding documents we conceive Western constitutions to be, they do serve many functions. They are seen as major documents by the promulgating nations themselves, and can provide valuable insights into the nature of socialist state systems.\footnote{11}

The 1978 Constitution of the People's Republic of China dramatically revises the preceding 1975 Constitution in many respects\footnote{12} and in fact bears a strong resemblance to the PRC's first fundamental law of 1954,\footnote{13} a more traditional document. The new Constitution significantly alters the functions and powers of state organs.\footnote{14} Particularly, it reinvigorates the legal organs,\footnote{15} and offers citizens new rights, especially emphasizing the freedoms of thought and expression.\footnote{16} Also changed in the new basic law is the definition of China's current historical stage and, most importantly, the description of "the general task . . . for the whole nation in this new period."\footnote{17} It is this new "general task"—the concern with making the PRC a modern nation by the end of this century—that best accounts for the nature of the other changes referred to above.

While the revision of the state structure and the human rights reforms of the 1978 Constitution may serve several independent functions, they can best be rationalized as part of the PRC's overall direction towards technological advancement and general economic development. The reinstitution of the Procuracy\footnote{18} as a guard against administrative illegalities, for instance, will protect against breakdowns in central control such as those experienced during the Cultural Revolution, while the renewal of intellectual freedom should

\begin{itemize}
\item \footnote{11}{Another pithy comment, in the nature of a rhetorical question, on the significance of socialist constitutions was offered by Dittmer, supra note 4, at 58: "If the sole purpose of the constitution is to bamboozle the bourgeoisie, why does the Communist Party also seek to shape its own destiny through constitutional engineering?"}
\item \footnote{12}{For example, the 1978 Constitution comprises sixty articles compared to the thirty contained in the 1975 version. See 1975 Constitution, supra note 2, at 28-35.}
\item \footnote{13}{Although the 1954 document had one-hundred and six articles and contained several provisions, such as an entire section on the Chairman of the People's Republic, which were not re-instated in the 1978 Constitution, the latter's detail and tone render it more similar to the former than to the truncated 1975 revision. These similarities are also noted in Ching, The Chinese Constitution's Latest Amendments, Wall St. J., Mar. 28, 1978, at 24, col. 4.}
\item \footnote{14}{See Part III infra, "The Structure of the State."}
\item \footnote{15}{See Part IV infra, "The People's Courts and the People's Procurates."}
\item \footnote{16}{See Part IV infra, "The Rights and Duties of Citizens."}
\item \footnote{17}{1978 Constitution, supra note 1, preamble para. 4. See text at notes 21-23 infra.}
\item \footnote{18}{See, e.g., 1978 Constitution, supra note 1, art. 43; see also the discussion in Chien-Ying, Report on the Revision of the Constitution, 21 Peking Rev. 15, 19-20 (March 17, 1978) on the need for both "great democracy" and democratic centralism.}
\end{itemize}
stimulate creative, problem-solving thought. These factors are pre-requisites to rapid modernization, which requires both efficiency and independent action. Other major constitutional changes can likewise be seen as serving the same causes of technological advancement and general economic development.

The harmonization of discipline with creativity, and of centralized direction with individual initiative, can in a real sense be said to be the underlying theme of the PRC’s 1978 Constitution. The specific provisions of the new Constitution, through which the Chinese leadership is attempting to achieve unity and efficient action while fostering original problem-solving thought among its citizens, are described below.

I. PREAMBLE

The new Constitution’s preamble is, to a large extent, an expanded version of its 1975 predecessor’s, many phrases having been wholly borrowed. The additions it contains, however, presage the revised direction and policies of state elaborated upon in other of its provisions.

This preamble, as those of the past, recites the struggle and triumph of the Chinese people, led by the Chinese Communist Party (CCP), and then discusses the nation’s economic and political development to date. It departs chiefly from the prior constitutions in its emphasis of the late Chairman’s role.

The most significant addition to the 1978 preamble is the fourth paragraph, which formally brings to a close the First Great Proletarian Cultural Revolution and announces the arrival of “a new period of development in China’s socialist revolution and socialist construction.” It is here wherein the general task for the nation during the new period is set out:

To persevere in continuing the revolution under the dictatorship of the proletariat, carry forward the three great revolutionary movements of class struggle, the struggle for production and scientific experiment, and make China a great and powerful socialist

19. Compare paras. 1-4 of the 1954, 1975 and 1978 preambles. See notes 1 and 2 supra. In the most recent version of the preamble, Chairman Mao is mentioned by name five times and Marxism-Leninism-Mao Tse-tung Thought once. Only one reference had been made to the latter in 1975, and none in 1954.

20. 1978 Constitution, supra note 1, preamble para. 3.

21. For an extended discussion of the general task and the “four modernizations,” see Chien-Ying, supra note 18, at 15-18; the “four modernizations” are specifically discussed at 17-18.
country with modern agriculture, industry, national defence [sic] and science and technology by the end of the century." (Emphasis added.)

Although the first elements of the new general task are carry-overs from the 1975 preamble, the last clause is a critical new element. It announced the "four modernizations," agriculture, industry, defense, and science and technology, which are to be the focal points of Chinese economic development into the twenty-first century, and which portend the basic thrust of the revised constitution as a whole.

This decision to forge ahead with rapid economic modernization represents the culmination of a debate which has raged almost throughout the PRC's entire history and which has been the cause of many a CCP member's downfall. The Party's radical element has always emphasized revolutionary politics over economic progress while the "moderates," such as Chou En-lai, argued for the necessity of creating a stable, modern economy. The victory of the current leadership over the "gang of four" appears to have settled this question in favor of the "moderate" position for the foreseeable future.

Another noteworthy aspect of the new preamble is its re-introduction of the united front concept (although in its 1978 rebirth it is labelled a "revolutionary united front" as opposed to a "democratic united front," as it was known under the 1954 Constitution). "[L]ed by the working class and based on the worker-peasant alliance . . .," the front is said to unite "the large numbers of intellectuals and other working people, patriotic democratic parties, patriotic personages, our compatriots in Taiwan, Hongkong,

22. Comments of the new leadership on this struggle can be found in id. at 18, 23-25, wherein the "Gang of Four" are repeatedly accused of having deliberately sabotaged production. The Gang of Four consists of Chiang-Ching (the widow of Mao Tse-tung) and three other Politburo Members: Wang Hung-wen, Chang Chun-chiao and Yao Wen-yuan. All were senior leftists arrested in October, 1976 and later purged for plotting a coup. N.Y. Times, Oct. 12, 1976, at 1, col. 1; id., Nov. 28, 1976, at 1, col. 3; id., Dec. 7, 1976, at 10, col. 1; id., Jan. 1, 1977, at 2, col. 1. See generally Lieberthal, The Politics of Modernization in the PRC, 27 PROB. OF COMMUNISM 1 (May-June, 1978). For a general overview of the political machinations in recent PRC history, see Domes, Gang of Four—and Hua Kuo-feng: Analysis of Political Events in 1975-76, 71 CHINA Q. 478 (1977); Harding, China After Mao, 26 PROB. OF COMMUNISM 1 (Mar.-Apr., 1977); Lieberthal, The Internal Political Scene, 24 PROB. OF COMMUNISM 1 (May-June, 1975); Wang, Leadership Re-alignments, 26 PROB. OF COMMUNISM 1 (July-Aug., 1977).


24. 1978 Constitution, supra note 1, preamble para. 6; 1954 Constitution, supra note 2, preamble para. 4.
Macao, and our countrymen residing abroad.”

This sixth paragraph of the preamble reflects the current Constitution’s general concern for broadening China’s polity and increasing the diversity of available input. This same concern is evident in the preamble’s discussion regarding enhancement of “the great unity of all the nationalities,” correctly distinguishing contradictions among the people of the People’s Republic from those between the people and the enemy, and establishing “both unity of will and personal ease of mind and liveliness.”

Also new to the 1978 preamble is a paragraph calling for the liberation of Taiwan, although neither a method nor a timetable is included. Otherwise the preamble’s statements on foreign and international affairs remain much the same as those of 1975. The “Five Principles” of mutual respect for sovereignty, mutual nonaggression, noninterference in each other’s internal affairs, equality and mutual benefit, and peaceful coexistence are still cited as the basis of China’s foreign relations, and China’s commitment to proletarian internationalism is duly renewed.

The other new international tenet announced in the preamble is the need for the PRC to unite with all countries subjected to aggression, subversion, interference, control and bullying by the social-imperialist and imperialist superpowers. While the prior preamble also rallied against social-imperialism (the PRC’s description of Soviet foreign policy) and called for unity with oppressed nations, it did not so explicitly suggest the need for an alliance against the U.S.S.R. (referred to under the label of social-imperialism).

On the whole, it is accurate to say that the preamble of the 1978 Constitution of the PRC differs chiefly from that of its predecessor in its laudatory treatment of Mao Tse-tung, and in its identification

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25. Id. As further evidence of the new search by the PRC for a broader base, note the revitalization of the Chinese People’s Political Consultative Conference (CPPCC), a national support organ composed of CCP representatives and representatives from other parties, people’s organizations and various national groups. See Constitution of the Chinese People’s Political Consultative Conference, 21 Peking Rev. 31 (Mar. 24, 1978).


27. Id.

28. Id. para. 7.

29. Id. para. 8.

30. 1978 Constitution, supra note 1, preamble para. 5. The PRC’s Minister of National Defense recently made explicit the Chinese view that the U.S.S.R. is a “far graver source of world war than the U.S.,” Hsiang-chien, Heighten Our Vigilance and Get Prepared to Fight a War, 21 Peking Rev. 5 (Aug. 11, 1978).
of a dramatic new direction for the nation. The 1978 preamble, in essence, marks the end of one era and the beginning of another.

II. GENERAL PRINCIPLES

Chapter one, as one would expect, firmly establishes the dominant principles of the 1978 Constitution and clearly reveals its departures from the preceding basic law. Although here there is an extensive borrowing of phrases from the 1975 Constitution, the key elements of change contained in the 1978 Constitution—some harkening back to the PRC’s first Constitution—make an unmistakable appearance.

The first three articles, which define the PRC as a “socialist state of the dictatorship of the proletariat,”

are essentially unchanged from the 1975 Constitution. These provisions designate the Communist Party of China as the core of leadership for the people, set up “Marxism-Leninism-Mao Tse-tung Thought” as the state’s guiding ideology, and explain that the people’s all-embracing power is exercised through the National People’s Congress.

Article 4, however, constitutes a shift away from the radical line of the 1975 document back towards the more moderate approach of 1954 in its call for unity, understanding and equality among China’s nationalities. The 1978 Constitution requests “unity and fraternal love among the nationalities” which should “help and learn from each other.” The drafters also saw fit to explicitly state that “[d]iscrimination against, or oppression of, any nationality, and acts which undermine the unity of the nationalities are prohibited.”

In addition, the new Constitution reinstates a provision from the 1954 Constitution which allows all nationalities the freedom, not only to maintain their languages, but also to “preserve or reform their own customs and ways.”

31. 1968 Constitution, supra note 1, art. 1. For a discussion of the significance of the phrase “dictatorship of the proletariat” in describing the state, see Hsia and Haun, supra note 1, at 32. The failure of the PRC to outgrow the dictatorship of the proletariat and move to a nation “of the entire people” in 1975 also upset the Soviets. See Hazard, supra note 6, at 991.

32. 1975 Constitution, supra note 2, arts. 1-3.

33. 1978 Constitution, supra note 1, art. 2, para. 1.

34. See id. art. 2, para. 8. See also Kim, supra note 2, at 7-14.

35. 1978 Constitution, supra note 1, art. 3, para. 1.

36. Compare id. art. 4, para. 2, with 1954 Constitution, supra note 2, art. 3, para. 2.

37. 1978 Constitution, supra note 1, art. 4, para. 2.

38. Id.

39. Id. para. 3. Compare with 1954 Constitution, supra note 2, art. 3, para. 2.
This liberalization of Chinese minority policy represents a distinct reversal of the less conciliatory line which prevailed in the 1975 Constitution, and which had been official policy for several years prior to 1975. The attempt to homogenize the diverse ethnic minorities living in China appears to have become a major source of discontent, which was thought to be needlessly dangerous in view of the great need for security along the extensive, minority-populated border with the U.S.S.R.\(^\text{40}\) Liberalization of minority policies also accords with the overall loosening of controls in educational, cultural and political spheres.

Articles 5 through 10 of the 1978 Constitution, dealing with the essential economic principles and structures of the nation, basically recapitulate the provisions contained in the 1975 Constitution, though a few interesting additions and subtle changes of emphasis are apparent.

The means of production are still said to be owned either by "the whole people" or by collectives of working people, while individual nonagricultural laborers (e.g., craftsmen, artists) are also still allowed to work for themselves.\(^\text{41}\) Also unchanged under the new Constitution is the leading role of the state sector of the economy.\(^\text{42}\) Article 7's provisions concerning the rural people's commune sector of the economy makes no drastic departure from the previous scheme either, but two noteworthy alterations do appear. The first, which relates to structural changes in the bureaucracy, is the stripping of governmental administrative functions from the communes, leaving them solely as economic units.\(^\text{43}\) The second change, a rare instance of actual "radicalization" in the new Constitution, is the provision making possible the substitution of the production brigade for the production team as the basic unit of accounting within the economic system.\(^\text{44}\)

Since a production brigade is larger than a team, making production brigades the basic accounting unit through which individu-
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als are remunerated lessens the correlation between individual effort and reward. This move toward further egalitarianism had long been sought by radical elements but was not included in the 1975 Constitution. In light of the new Constitution's general shift towards moderation (and its explicit defense of material incentives) this provision seems somewhat anomalous, but it should be noted that the change is not mandatory and may be more of a rhetorical concession than a real one.\footnote{45} Article 7's retention of the previous Constitution's tolerance of limited private farming should also be noted. Commune members may still farm small plots for themselves, "engage in limited household sideline production," and, where feasible, keep small numbers of livestock for their own needs under the 1978 Constitution.\footnote{46}

Articles 8 through 11 of the PRC's new Constitution are also clearly derived from the 1975 Constitution, but once again they have been expanded to effect a change of emphasis.\footnote{47} For instance, the inviolability of socialist public property is maintained along with continued state assurances of national economic growth, but several phrases are added to underline the need to protect the economy from disruption. The 1978 Constitution art. 8, para. 2 forbids "[a]ny person from using any means whatsoever to disrupt the economic order of the society, undermine the economic plans of the state, encroach upon or squander state and collective property, or injure the public interest . . . ," compared with the 1975 Constitution Article 8's simple prohibition of " . . . any person from undermining the socialist economy and the public interest in any way whatsoever." This added emphasis on protection from disruption surely results from the economic chaos caused by the Cultural Revolution and is intended as fair warning that such will no longer be tolerated as a means of political expression.

Likewise, after renewing the prior Constitutions' guarantees of citizens' rights to lawful income, savings, housing and other means of livelihood,\footnote{48} and restating the "socialist" principles, "[h]e who

\footnote{45. "A production brigade may become the basic accounting unit when its conditions are ripe." 1978 Constitution, supra note 1, art. 7, para. 1. This controversy is discussed, in conjunction with its 1975 resolution, in Hsia & Haun, supra note 1, at 32.}

\footnote{46. Compare 1978 Constitution, supra note 1, art. 7, para. 2 with 1975 Constitution, supra note 2, art. 7, para. 3.}

\footnote{47. These articles correspond to 1975 Constitution, supra note 2, arts. 8-9. See also Kim, supra note 2, at 14.}

\footnote{48. 1978 Constitution, supra note 1, art. 9, para. 1 and 1975 Constitution, supra note 2, art. 10. The first quoted "socialist" principle is, of course, actually taken from the Bible and is found in 2 Thessalonians 3:10.}
does not work, neither shall he eat" and "from each according to his
ability, to each according to his work," the 1978 Constitution goes
on to explicitly recognize the use of material rewards to achieve
greater productivity. This defense of material incentives, declared
to be bourgeois and reactionary by radical elements, is, to be sure,
couched in revolutionary rhetoric (proletarian politics are put in
command of the policy and moral encouragement is said to be
stressed). But, its very inclusion in the Constitution represents a
reinforcement of older provisions which were less complete on the
subject.

Article 11 is also basically an amalgamation of provisions found
in the 1975 Constitution regarding the state's policies of economic
development, but the reorganization tends to stress economic dyna-
mism (a radical political phrase is omitted and high speed is added
as a modifying phrase) over politics; and, while the "initiative of
both the central and local authorities" in economic development is
called for, as it was previously, the new provision clearly places
control "under the unified leadership of the central authorities."

In Articles 12 through 14 more obvious departures from the 1975
constitutional path are made with regard to science, education, and
culture. In general, the need for subservience to ideology in these
areas is deemphasized and, correspondingly, broad state encourage-
ment for their development is announced.

Article 12, for example, breaks new ground in providing, "The
state devotes major efforts to developing science, expands scientific
research, promotes technical innovation and technical revolution
and adopts advanced techniques wherever possible in all depart-
ments of the national economy." There is no requirement here, as
there was in the 1975 Constitution, that scientific research "serve
proletarian politics" or "be combined with productive
labor." "Learning from others," the Chinese expression for accepting for-
eign technical expertise, is even explicitly called for in combination
with indigenous creative efforts.

Article 13, which requires the state to "devote(s) major efforts

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49. 1978 Constitution, supra note 1, art. 10, para. 1.
50. Id. para. 2.
51. Id.
52. These principles, as expressed in the 1975 Constitution, are discussed in Hsia &
Haun, supra note 1, at 32.
53. 1978 Constitution, supra note 1, art. 11, para. 2. Compare with 1975 Constitution,
supra note 2, art. 10.
54. Articles 12-14 are expansions of 1975 Constitution, supra note 2, arts. 11 and 12.
55. 1975 Constitution, supra note 2, art. 12.
to developing education . . .” had no parallel in prior Constitutions. Education was previously lumped together with other spheres of culture. Although education, unlike science, “must serve proletarian politics and be combined with productive labor,” its mere isolation as the theme for a separate constitutional article bears significance—especially so when viewed in connection with other provisions calling for an overall strengthening of the nation’s culture.

The 1978 Constitution’s changed attitude in the cultural sphere is well exemplified by Article 14. After an initial paragraph regarding the leading role of Marxism-Leninism-Mao Tse-tung Thought in ideology and culture, and the necessity of requiring culture to “serve the workers, peasants and soldiers and serve socialism” (taken from the 1975 Constitution), the new document further states that “the policy of ‘letting a hundred flowers blossom and a hundred schools of thought contend’” will be applied by the state to promote the development of the arts and sciences.

The general principles concerning China’s state bureaucracy in the 1978 Constitution’s Articles 15 through 17 are similar in many respects to those of the preceding Constitution; however, new emphases are evident in the former.

Article 15, for instance, restates the previous mandate for the maintenance of close ties between state organs and the masses, and renews the requirement that their composition “conform to the principle of the three-in-one combination of the old, the middle-aged and the young.” Article 16 likewise recapitulates prior provisions regarding the need for the state personnel to “earnestly study Marxism-Leninism-Mao Tse-tung Thought, wholeheartedly serve the people . . . take an active part in collective labour . . . ,” etc., but it adds important features as well. The personnel of state organs are instructed to “be models in observing the Constitution and the law,” accurately fulfill their professional functions and generally avoid misusing their authority. Thus, the need for dependable, professional administrative work within the PRC’s state bureaucracy seems to have been considered important by the new Chinese lead-

56. Id.
57. 1978 Constitution, supra note 1, art. 13.
58. 1975 Constitution, supra note 2, art. 12.
59. 1978 Constitution, supra note 1, art. 15, para. 2. For a brief discussion concerning the significance of the choice of this three-in-one formula over another, see Lieberthal, The Internal Political Scene, supra note 22, at 8.
60. 1975 Constitution, supra note 2, art. 11, para. 1.
ers—to the extent that that need elicited substantially expanded constitutional coverage in the latest revision.

The state bureaucracy is also the subject of an essentially new provision, the 1978 Constitution's Article 17, which stresses the right of the people to "participate in the management of state affairs . . ." and to "supervise the organs of state and their personnel."

The state's treatment of its enemies is the subject of Article 18. The provisions of the 1975 Constitution were largely transferred to it intact. Another class of enemy, "newborn bourgeois elements," is added to the old list of traitors and counter-revolutionaries. The old provision for depriving certain groups of their political rights is modified by the stipulation that it only applies to those "who have not yet been reformed."

Chapter One's final principle, concerning the armed forces, is unchanged in the 1978 Constitution to the extent that the Chairman of the CCP is still given command of the armed forces, and the fundamental task of the armed forces is described much as it was in the former Constitution. New provisions have been added. Article 19 commits the state to devoting "major efforts to the revolutionization and modernization of the Chinese People's Liberation Army" (the PLA). Furthermore, a system is said to be adopted in which the "armed forces are a combination of the field armies, the regional forces and the militia." The previous Constitutions' stipulation that the PLA be "at all times a fighting force, and simultaneously a working force and a production force" was dropped.

Modernization of the PLA had been a major source of conflict for the moderate and radical party factions during the Cultural Revolution, the radicals militating for a continued reliance on sheer numbers and revolutionary spirit, while the moderates desired technological improvements. The Article 19 clause concerning modernization of the PLA and its implications for the armed forces is given below:

61. Id. art. 14.
62. See also the discussion in Chien-Ying, supra note 18, at 19 and 22.
63. For an explanation of reformation, see id. at 22-23.
64. 1978 Constitution, supra note 1, art. 19, para. 1.
65. Id. art. 19, para. 3 provides: "The fundamental task of the armed forces of the People's Republic of China is: To safeguard the socialist revolution and socialist construction, to defend the sovereignty, territorial integrity and security of the state, and to guard against subversion and aggression by social-imperialism, imperialism and their lackeys." Note once again the raising of social-imperialism to the position of first-named enemy; see note 30 supra, and compare 1978 Constitution, supra note 1, art. 19, para. 3 with 1975 Constitution, supra note 2, art. 15, para. 4.
66. 1975 Constitution, supra note 2, art. 15, para. 3.
67. For a brief discussion of the modernization issue, see Spurr, PLA Modernization Has to Be Painfully Slow, 96 FAR EASTERN ECON. Rev. 46 (Oct. 7, 1977). A more general discussion
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I. THE STRUCTURE OF STATE

The treatment given China's state structure in the PRC's 1978 Constitution departs dramatically from the truncated, sometimes vague description granted the same topic in its predecessor. In fact, the new treatment of state structure closely resembles its counterpart in the PRC's Constitution of 1954.8

Compared with the arrangement of state authority in the 1975 basic law, the current and original Constitutions lodge substantially more authority in the National People's Congress (NPC) and its Standing Committee (vis-a-vis the State Council's ministries and commissions), place greater emphasis on state legal organs and adherence to principles of legality, and generally offer greater detail regarding the functions and powers of all organs.

A. The National People's Congress

The greater status accorded the NPC and its Standing Committee in Section 1 of the new Constitution, relative to that given them in the 1975 Constitution, is clearly revealed by the increased number of relevant articles; ten in 1978 as compared to three in 1975.9 Eighteen articles were dedicated to these bodies in the PRC's first Constitution, but, discounting redundancies and rather insignificant provisions, their number and substance is essentially the same as those in the current Constitution.70

In both the 1978 and 1975 Constitutions, the NPC is defined as "the highest organ of state power," and its electorate has the same composition in each of these Constitutions.71 The latest version, however, stipulates, in Article 12, that elections are to be held by

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8. Compare 1978 Constitution, supra note 1, arts. 20-43 with 1975 Constitution, supra note 2, arts. 16-25 and 1954 Constitution arts. 21-84. See also Kim, supra note 2, at 15-17. 68. 1978 Constitution, supra note 1, arts. 20-29; 1975 Constitution, supra note 2, arts. 16-18. 70. 1954 Constitution, supra note 2, arts. 21-38. 71. 1978 Constitution, supra note 1, art. 20 and art. 21, para. 1, respectively; and 1975 Constitution, supra note 2, art. 16, paras. 1 and 2 respectively. The deputies are elected by the people's congresses of the provinces, autonomous regions, municipalities directly under the central government and the PLA according to both constitutions.
secret ballot after democratic consultation and assigns the responsi-
bility for conducting them to the Standing Committee. The preced-
ing document omitted such a provision in this section, having pro-
vided broadly in the chapter on general principles that deputies on
all levels would be elected through democratic consultation alone. Less importantly, the same article of the present Constitution in-
creases the term of office for NPC deputies from the previous term
of 4 years to one of 5 years.

It is, of course, the powers and functions of the NPC and its
Standing Committee that are of primary concern in an analysis of
these organs’ position in the state structure. A look at the relevant
articles in the current and previous constitutions quickly reveals
their enhanced status in 1978.

Article 22 of the 1978 Constitution contains ten functions and
powers delegated to the NPC while its counterpart in the 1975 Con-
stitution contains only six. The six NPC functions listed in the
1975 Constitution are: 1) to amend the Constitution, 2) make laws,
3) and appoint and 4) remove the Premier of the State Council and
the members of the State Council on the proposal of the Central
Committee of the CCP, 5) approve the state budget and the final
state accounts, and 6) exercise such other functions and powers as
the NPC deems necessary. Added in 1978 to these previous six are
the powers: 1) to supervise the enforcement of the Constitution and
the law, 2) to elect the President of the Supreme People’s Court
and the Chief Procurator of the Supreme People’s Procuracy, 3) to ex-
amine and approve the national economic plan, 4) to confirm cer-
tain administrative divisions, and 5) to decide on questions of war
and peace.

Supervising the enforcement of the Constitution and law will
be rather difficult for the NPC in light of the few days it convenes.
The function, however, is significant to the extent that it tends to
renew the NPC’s prestige, and symbolizes a new concern for legality
and the development of counterpressures within the state structure.

The second new NPC power, the power to elect the President
of the Supreme People’s Court and the Chief Procurator of the
Supreme People’s Procuracy, represents an enhancement of the
NPC’s powers vis-a-vis its Standing Committee, a return to the

72. 1975 Constitution, supra note 2, art. 3, para. 3. See also text at notes 101-105 infra.
73. Id. art. 17.
74. 1978 Constitution, supra note 1, art. 22, secs. (3), (6), (7), (8), and (9) respectively.
75. In the 1975 Constitution neither the NPC nor its Standing Committee were granted
the power to elect the President of the Supreme People’s Court within the articles listing their
1978 Chinese Constitution

The 1978 Constitution

The power of confirming administrative divisions and the greater power to decide questions of war and peace, further reversions to the first Constitution, increase the NPC’s overall prominence and render it a more constitutionally substantial organ in relation to the State Council and other organs.

The NPC’s Standing Committee is strengthened by the new Constitution even more than is its parent body. Article 25 of the 1978 document, and Article 26 pertaining to the newly created constitutional position of Chairman of the Standing Committee, grant roughly twelve functions and duties to the Standing Committee which are not found in the analogous article of the previous basic law.

The Standing Committee is to assume nine functions and powers not expressly delegated to it by the 1975 Constitution. Most important of these added powers are: 1) conducting the elections of NPC deputies, 2) interpreting the Constitution (not just laws as in the previous Constitution), 3) changing and annulling inappropriate decisions adopted by the organs of state power directly beneath it, 4) deciding on the appointment and removal of State Council members upon the Premier’s recommendation when the NPC is not in session, 5) appointing and removing Vice-Presidents of the Supreme People’s Court and Deputy Chief Procurators of the Supreme People’s Procurate, and 6) deciding on a proclamation of war in case of an attack when the NPC is not in session.

functions, and the Procuracy was abolished. Article 25 on the legal organs, however, noted that the presidents of all people’s courts were to be appointed by the people’s congress’ permanent organs at the corresponding level. 1975 Constitution, supra note 2.

76. 1954 Constitution, supra note 2, art. 27, secs. (7) and (8).

77. The Procuracy is examined in the text at notes 112-27 infra.

78. 1954 Constitution, supra note 2, art. 27, secs. (11) and (13).

79. Under the 1975 Constitution the Standing Committee’s powers and functions were: “[t]o convene the sessions of the National People’s Congress, interpret laws, enact decrees, dispatch and recall plenipotentiary representatives abroad, receive foreign diplomatic envoys, ratify and denounce treaties concluded with foreign states, and exercise such other functions and powers as are vested in it by the National People’s Congress.” 1975 Constitution, supra note 2, art. 18, para. 1.

80. 1978 Constitution, supra note 1, art. 25, secs. (1), (3), (6), (7) and (12). Also added to Article 25 are section (4) regarding Standing Council supervision of the State
All these functions are throwbacks to the 1954 Constitution with its powerful legislature and accompanying permanent body.81 The section pertaining to elections is significant in that it specifically assigns the responsibility for conducting them. As was noted above, the previous Constitution only indicated that all deputies would be chosen by democratic consultation, no regular constitutional method being mentioned.82 The Standing Committee’s power to interpret the Constitution significantly expands its previous function of interpreting laws, especially considering the all around stress placed on adherence to legality in this document.

The Standing Committee’s supervisory powers are strengthened by the authority conferred by the new Constitution to change or annul the decisions of state organs directly beneath it, (this area was rather unclear in the prior basic law)83 and by the restored appointment powers over key administrative and legal personnel. These functions help restore this organ to its position as the hub of governmental activity.

Finally, the restoration to the Standing Committee of a function relating to war and peace tends to bolster its status in the whole field of foreign relations, even though not all the military-related powers granted to the Standing Committee under the 1954 Constitution have been renewed.84

All of these new functions combine with prior powers to make the Standing Committee a more potent tool for controlling the entire state apparatus and clearly establish its dominance among competing governmental organs. The authority to interpret the Consti-

81. 1954 Constitution, supra note 2, art. 31, secs. (1), (6), (7), (8), (10) and (16) respectively. Article 31, section (6) is not identical to Article 25, section (3) of the 1978 Constitution, but in practice will yield approximately the same results.

82. See note 71 supra.

83. 1975 Constitution, supra note 2, art. 22, para. 3 made local revolutionary committees responsible to the “organ of state at the next higher level” (as well as the corresponding people’s congress), but whether that included the Standing Committee in addition to the State Council was unclear. See Hsia & Haun, supra note 1, at 77-78 for a discussion of this problem.

84. The 1954 Constitution, supra note 2, art. 31, sections (17) and (18), gave the Standing Committee the power to decide on mobilization and martial law, respectively.
The 1978 Chinese Constitution

...tution, to change or annul decisions of the highest level local authorities, and to appoint and recall various officials allows the Standing Committee to steer the course of state in a very direct manner.

Adding to the Standing Council's eminence is the constitutional establishment of its Chairman and the delegation to him of some symbolic functions ordinarily exercised by a chief of state (some of which indeed accrued to the Chairman of the PRC under the 1954 Constitution). The Chairman of the Standing Committee, for example, receives foreign diplomatic envoys, promulgates laws and decrees, ratifies treaties, and is responsible for the PRC's foreign representatives.

The final important features of the 1978 Constitution, which evidence the increased power of the NPC and its Standing Committee, are those of Articles 27 and 28 which give, respectively, both bodies the power to establish special committees, and the NPC deputies the right to inquire, and receive answers from, all the other organs of state. Both of these powers can be extremely efficacious devices for monitoring and controlling the activities of other governmental units. The Party leadership may well have felt that the existence of such tools in the previous Constitution might have prevented the disintegration of governmental coordination and discipline which characterized the years of the Cultural Revolution.

B. The State Council

While sharing in the overall governmental invigoration wrought by the PRC's 1978 Constitution, the State Council did not receive any substantial increase in authority over other organs of state. For the most part, the new Constitution has the effect of reinforcing the State Council's executive/administrative mission insofar as it was not adequately carried out under the 1975 constitutional provisions.

Article 30 defines the State Council and describes its relative position within the state structure in largely the same terms as its counterpart in the previous Constitution. The new document does,

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85. 1978 Constitution, supra note 1, art. 26, para. 1.
86. 1954 Constitution, supra note 2, arts. 40-41.
87. 1978 Constitution, supra note 1, art. 26, para. 1. Paragraph 2 of the same article provides for Vice-Chairmen to assist the Standing Committee Chairman and exercise part of his functions and powers.
88. Similar powers were delegated by the 1954 Constitution, supra note 2, arts. 35 and 36.
89. The 1975 Constitution called the State Council "the Central People's Government" and made it responsible to the NPC and its Standing Committee. 1975 Constitution, supra note 2, art. 19.
however, harken back to the original PRC Constitution of 1954 by more explicitly pointing out that the State Council is the executive organ of state power, in addition to being the highest organ of state administration.90 The Council’s composition is also described in a fashion very similar to that of the 1975 Constitution.91 Yet, the functions of the Premier and Vice-Premiers are separately stated as they were in 1954.92

The State Council’s specific role within the PRC’s state structure is sketched out in the nine subsections of Article 32, three of which concern functions not delegated to the Council by the 1975 Constitution.93 While maintaining its previous responsibilities for administering government programs, drawing up the budget and economic plans, leading local administrative bodies and the like, the State Council is also granted the power to: 1) submit proposals on laws or other matters to the NPC or its Standing Committee, 2) “protect the interests of the state, maintain public order and safeguard the rights of citizens,” and 3) confirm lower level administrative divisions.94

In addition to these new duties, the 1978 Constitution expressly grants the Council the right to appoint and remove administrative personnel. Further, it stresses the Council’s obligation to see that its administrative directives are correctly carried out. At best, these functions had only been alluded to in the previous Constitution.95

The total effect of these new powers and emphases represents a constitutional mandate for the State Council to improve its implementation and supervision of state policies and generally to guard

90. 1954 Constitution, supra note 2, art. 47.
91. Compare 1978 Constitution, supra note 1, art. 31, para. 1, with 1975 Constitution, supra note 2, art. 19, para. 2; see also 1954 Constitution, supra note 2, art. 48.
92. Compare 1978 Constitution, supra note 1, art. 31, para. 2 with 1954 Constitution, supra note 2, art. 50.
93. The State Council’s powers and functions under the 1975 Constitution were “to formulate administrative measures and issue decisions and orders in accordance with the Constitution, laws and decrees; exercise unified leadership over the work of ministries and commissions and local organs of state at various levels throughout the country; draft and implement the national economic plan and the state budget; direct state administrative affairs; and exercise such other functions and powers as are vested in it by the National People’s Congress and its Standing Committee. 1975 Constitution, supra note 2, art. 20.
94. 1978 Constitution, supra note 1, art. 32, secs. (2), (6) and (7) respectively.
95. 1978 Constitution, supra note 1, art. 32, secs. (8) and (1) respectively. The former section allows the State Council “to appoint and remove administrative personnel according to the provisions of the law,” while the latter requires it to “formulate administrative measures . . . and verify their execution.” The 1975 provision delegating to the Council the power “[t]o manage the administrative affairs of state” (see note 94 supra) probably included these functions, but their explicit statement in 1978 certainly underscores them.
against the all too common disruption of state functions and state order seen within the PRC in recent years.

C. The Local People’s Congress and the Local Revolutionary Committees at Various Levels

In comparison with the 1975 Constitution, the 1978 Constitution greatly expands the coverage given the Local People’s Congress and the Local Revolutionary Committees at various levels. The revision specifically describes the various divisions of state administration and more fully details their functions and interrelationships.

The preceding Constitution’s failure to lay out the organizational structure of the PRC’s administrative divisions is rectified by the new Constitution’s Article 33, which closely resembles the state’s administrative structure as set out in 1954. A significant deviation from past practice is the separation of two administrative divisions from their previously dual status as levels of administration and levels of political power. Thus, it is no longer the case that each layer of state administration is paralleled by a political layer.

As in 1975, the local units of political power in the 1978 Constitution are people’s congresses and their revolutionary committees, and variously named “organs of self government” which, for the most part, are their equivalents in national autonomous areas. The new Constitution, unlike its predecessor, refers to these bodies as leading organs of collective economy as well as organizations of political power at the grass roots level. They were previously established in every administrative division of the state, but under the revision, two of these divisions, those of prefectures and districts set up under counties, will have no local organ of political power. In these areas, “administrative offices will be set up as agencies” of the revolutionary committees immediately above them in the hierarchy. These changes are aimed at “trimming the administrative structure and raising efficiency.”

Deputies to the local people’s congresses at all levels are to be elected according to the new Constitution “by secret ballot after

96. 1954 Constitution, supra note 2, art. 53.
97. See note 100 infra and accompanying text.
98. 1978 Constitution, supra note 1, art. 34 and 1975 Constitution, supra note 2, art. 24. The local organs of self-government, however, are granted powers beyond those of the local people’s congresses. See text at notes 118-125 infra.
99. 1978 Constitution, supra note 1, art. 34, para. 2.
100. 1978 Constitution, supra note 1, art. 34, para. 3; Chien-Ying, supra note 18, at 21-22.
democratic consultation." Deputies of the three most heavily populated administrative units are elected by the congresses of the units directly beneath them, the deputies of which are directly elected. The previous Constitution failed to mention the method of deputy election (the current ones are identical to those of 1954) whatsoever. It did list the terms of office for deputies at the various levels, and these remain unchanged in the 1978 revision. The new Constitution also stipulates, unlike its predecessor, that local people’s congresses are to be convened at least once a year by their revolutionary committees and that the electorate of each has full power to “supervise, remove and replace their deputies at any time . . . .”

The PRC’s 1975 Constitution delegated the same five functions to both the local people’s congresses, referred to as the local organs of state power, and their revolutionary committees, called variously local people’s congresses’ permanent bodies or the local people’s governments. The revised Constitution separates the bodies more clearly. It gives each body its own functions while redesignating the revolutionary committees as the local people’s congresses’ executive organs but maintaining them as the local organ of state administrative units as well.

Article 36 of the 1978 Constitution models the local people’s congresses to resemble somewhat more closely the NPC than was previously the case, expanding their powers of initiative. Instead of mostly looking after the local implementation of laws or state plans

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101. 1978 Constitution, supra note 1, art. 35, para. 2.
102. Id.
103. 1975 Constitution, supra note 2, art. 36.
104. Article 21, paragraph 2 of the 1975 Constitution sets the terms of deputies at five years for those in the provinces and municipalities directly under the central government, three years for prefectures, cities and counties, and two years for rural people’s communes and towns. Prefectures, of course, no longer exist as levels of political power, but municipal districts are added in their stead under the 1978 Constitution. See 1978 Constitution, supra note 1, art. 35, para. 3.
105. 1978 Constitution, supra note 1, paras. 4 and 5 respectively.
106. 1975 Constitution, supra note 2, art. 21, para. 1.
107. Article 23 of the 1975 Constitution, supra note 2, provides: “The local people’s congresses at various levels and the local revolutionary committees elected by them ensure the execution of laws and decrees in their respective areas; lead the socialist revolution and socialist construction in their respective areas; examine and approve local economic plans, budgets and final accounts; maintain revolutionary order; and safeguard the rights of citizens.”
108. 1975 Constitution, supra note 2, art. 22.
109. 1978 Constitution, supra note 1, art. 37, para. 1.
110. Id.
and fulfilling public order functions as it did in the past, the local congresses now also have the power to: 1) address inquiries to all the other governmental units at their level, 2) adopt and issue decisions, and 3) at the county level and above, elect and recall the presidents of the people's courts and the chief procurators at the corresponding level. When combined with added traditional duties, such as making plans for local economic and cultural development and for public utilities, ensuring the enforcement of the Constitution, and safeguarding the equal rights of minorities, these functions can truly be said to create a substantially revitalized, multifaceted organ of local state power.

As noted above, the local revolutionary committees have been redefined in the current Constitution so as to be the lower level analog of the State Council, rather than a sort of lesser Standing Committee. While they were known as the permanent organs of the local congresses in 1975 (just as the Standing Committee is the NPC's permanent organ) in addition to bearing the appellation "local people's government," the former phrase was dropped in 1978. The revolutionary committees are now being described only in the same terms as the State Council. This reduced breadth of scope is probably the result of negative experience with "run-away committees" in the Cultural Revolution.

Under the 1978 Constitution the revolutionary committees are limited to carrying out the decisions of other bodies, directing administrative work, "issuing decisions and orders within the limits of their authority as prescribed by law," and, at the county level and above, appointing or removing state personnel. They are responsible to both the corresponding people's congresses and to the next higher organs of state administration, and are under the general leadership of the State Council.

111. 1978 Constitution, supra note 1, art. 36, para. 1. The local people's congresses "ensure the observance and enforcement of the Constitution, laws and decrees; ensure the implementation of the state plan; make plans for local economic development and for public utilities; examine and approve local economic plans, budgets and final accounts; protect public property; maintain public order; safeguard the rights of citizens and the equal rights of minority nationalities; and promote the development of socialist revolution and socialist construction." Compare with art. 23 of the 1975 Constitution, quoted in note 107, supra.

112. 1978 Constitution, supra note 1, art. 36, paras. 2-4.

113. Id. para. 1.

114. See notes 108-10 supra and accompanying text.

115. 1978 Constitution, supra note 1, art. 30, para. 1.

116. Id. art. 37, para. 3.

117. Id. para. 4.
D. The Organs of Self-Government of National Autonomous Regions

"The Organs of Self-Government of National Autonomous Areas" section of the PRC's 1978 Constitution provides for substantially the same system of minority self rule called for in the previous basic law, but a careful reading reveals significant differences in policy between the two.

While these organs of self-government exist at the same levels and function in a similar manner under both Constitutions, the revision, unlike its predecessor, mandates proportional representation for minorities where more than one national group lives in the same area. It also allows self-government units to make regulations pertaining to the exercise of autonomy, for submission to the Standing Committee. Furthermore, according to the new Constitution, the governmental organs of autonomous areas are granted the right to use their own local languages in performing their functions, and the higher organs of state are directed to become more aware of the special characteristics and needs of the minorities, and to make a "major effort" to train minority cadres.

This broadened coverage of minority government in the 1978 Constitution, and its generally solicitous tone, reflects a continuance of the shift away from the forced assimilation program of the 1960's and early 70's. Although the 1975 Constitution evidenced a marked move away from the tolerance of minority differences found in the original Constitution, the former actually represented a moderation of the restrictive policies developed not long after the 1954 Constitution was promulgated.

The liberalization of Chinese minority policy may be seen as one aspect of the apparent new found concern of the PRC leadership for human rights. However, this policy shift can probably be better

118. 1975 Constitution, supra note 2, art. 24.
119. 1978 Constitution, supra note 1, art. 38, paras. 1 and 2 provide: "The organs of self-government of autonomous regions, autonomous prefectures and autonomous counties are people's congresses and revolutionary committees."

"The election of the people's congresses and revolutionary committees of national autonomous areas, their terms of office, their functions and powers and also the establishment of their agencies should conform to the basic principles governing the organization of local organs of state as specified in Section III, Chapter Two, of the Constitution."

Compare with 1975 Constitution, supra note 2, art. 24, paras. 2 and 3.
120. 1978 Constitution, supra note 1, art. 38, para. 3.
121. Id. art. 39, para. 2.
122. Id. para. 3.
123. Id. art. 40.
124. Dreyer, supra note 40; 1954 Constitution, supra note 2, arts. 3, and 67-72.
explained, as previously noted, in terms of security requirements. Discontented minorities provide particularly likely allies for enemies of the state. Considering the sizeable minority populations along the Sino-Soviet border (some of whom fled across to the U.S.S.R. following the Great Leap Forward and have since been disseminating anti-Chinese propaganda), it is not surprising to find the PRC’s leaders in a conciliatory mood on minority issues.125

IV. THE PEOPLE’S COURTS AND THE PEOPLE’S PROCURATES

The PRC’s 1978 Constitution works one of its most extensive changes in its section on “The People’s Courts and the People’s Procurates.” Three articles consisting of nine paragraphs deal with the state’s legal organs as compared with the single, three paragraph article devoted to them in the 1975 version.126 As has been noted previously, and will be observed again in connection with the individual rights of citizens, one of the strongest themes of China’s new Constitution is the need for adherence to legality in all spheres of activity.127

Although the preceding Constitution established a Supreme People’s Court and people’s courts at the local levels (along with special people’s courts) as does the 1978 document,128 it did not, contrary to the present Constitution, make mention of their formation being prescribed by law,129 or of people’s assessors sitting with judges as representatives of the masses.130 Perhaps more importantly, the 1975 Constitution, unlike the present one, neither guaranteed public trials under most circumstances,131 nor assured the accused of the right to a defense.132 In promulgating these provisions, the 1978 Constitution recapitulates most of the prominent aspects of the nation’s original Constitution. However, not all of the prior commonly accepted concepts of justice are restored.133

125. Id. and text at notes 36-40 supra.
127. In addition to the discussion in the text following notes 74 and 82 supra, and at notes 145 and 149, infra, see Chien-Ying, supra note 18, at 22-23; see also The Socialist Legal System Must Not Be Played Around With, 24 PEKING REV. 28 (June 16, 1978).
128. Compare 1975 Constitution, supra note 2, art. 25, with 1978 Constitution, supra note 1, art. 41, para. 1.
129. 1978 Constitution, supra note 1, art. 41, para. 1.
130. Id. para. 2.
131. Id. para. 3.
132. Id.
133. Compare with 1954 Constitution, supra note 2, arts. 73-84. The earlier article 78’s
The current Constitution also gives new life to the Supreme People's Court, the highest judicial organ, by allowing it its own article after having given it a low profile within the 1975 Constitution's single legal article. While the hierarchy of people's courts set out in new Article 4 is the same as that which existed under the last system, noteworthy alterations are made regarding their supervision. It is made clear that the Supreme People's Court "supervises the administration of justice by local people's courts at various levels" and that the local people's courts at the higher levels in turn supervise those beneath them in the structure. This was not done under the last Constitution. And, although the Supreme People's Court is said to be responsible to the NPC and its Standing Committee as in the past, the local courts are only responsible to the corresponding people's congress which elects them. They are not responsible to the local revolutionary committees which no longer have any constitutional authority over them.

Of primary significance in the 1978 Constitution's legal provisions is the reinstatement of the procuracy as a state organ. The drafters of the PRC's 1975 basic law boldly departed from their nation's first Constitution in entirely omitting from the legal system a body whose function it would be not only to prosecute individuals violating the law, but to assure that state organs followed the law as well. The 1975 Constitution merely said that "the functions and powers of procuratorial organs are exercised by the organs of public security at various levels." The police, thus, were left to police themselves.

Article 43 of the new Constitution recreates the Supreme People's Procurate, which is to "ensure observance of the Constitution and the law by all the departments under the State Council, the local organs of state at various levels, the personnel of organs of state and the citizens."

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134. Compare 1978 Constitution, supra note 1, art. 42 with 1975 Constitution, supra note 2, art. 25, para. 1. The new article's analog under the 1954 Constitution was Article 79.
135. 1975 Constitution, supra note 2, art. 25, para. 1.
136. 1978 Constitution, supra note 1, art. 42, para. 2.
137. 1975 Constitution, supra note 2, art. 25, para. 1.
138. 1978 Constitution, supra note 1, art. 42, para. 3.
139. 1975 Constitution, supra note 2, art. 25, para. 1.
140. 1954 Constitution, supra note 2, arts. 81-84, particularly art. 81.
141. 1975 Constitution, supra note 2, art. 25, para. 2.
142. 1978 Constitution, supra note 1, art. 43, para. 1. Compare with 1954 Constitution, supra note 2, art. 81, para. 1; see also G.B. SMrrm, PRoCURACY AND THE SUPERVISION
reinstated at the various levels of government. These new procuratorial organs are structured in the same hierarchical arrangement as the people's courts and are responsible to the same bodies as the latter.

China's new leaders, by their own admission, consider the reestablishment of the legal order to be a critical task for the immediate future. The breakdown of legality during the Cultural Revolution apparently caused great distress among the populace, with persons having been convicted of political transgressions by kangaroo courts and insecurity having been rife in general.

The gang of four has been attacked quite strongly on this point and their misuse of official power to further their political ambitions is cited as the major rationale for employing a system of checks and balances in government in general, and for reinstating the procuracy in particular. As part of this drive towards a more formalized legal system, PRC officials have indicated their intention to enact a series of "[s]ocialist laws, such as criminal law, civil law, and procedural laws..." a dramatic step for a society long characterized by the flexible nature of its system of justice. Adherence to legality, the Chinese leadership hopes, will both restore a sense of security to individual citizens and guard against factional use of state power in the future.

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143. 1978 Constitution, supra note 1, art. 43, para. 1. Compare with 1954 Constitution, supra note 2, art. 81, para. 2.
144. N.Y. Times, Jan. 15, 1979, at 1.
146. Chien-Ying, supra note 18, at 19, 22 and 27, particularly at 22.
148. The extent to which legal regularity is deemed important by the current leadership is evidenced by the insertion in the report on the Constitution of an entire section entitled, "On the Enforcement of the Constitution." Although this section indicates that respect for the law "does not mean being bound hand and foot," it calls upon the masses to study the Constitution and enhance their legal awareness. Chien-Ying, supra note 18, at 26-27.

For an excellent discussion of the PRC's recent legal history and a prediction of the current trend towards legality, within the framework of the traditional Chinese struggle between "Li" (moral code) and "Fa" (positive law), see Leng, The Role of Law in the People's Republic of China As a Reflection of Mao Tse-tung's Influence, 68 J. CRIM. L. & CRIMINOLOGY 356 (1977). See also Fu-Shun Lin, CHINESE LAW PAST AND PRESENT (1966); G. Kaminski & Weggel, DAS RECHT UND DIE MASSEN: RECHT UND RECHTSPFLEGE IN DER VR CHINA (1977); Cohen, Will China Have a Formal Legal System? 64 A.B.A.J. 1510 (1978); Ginsburg, American Bar Association Delegation Visits People's Republic of China, 64 A.B.A.J. 1516
V. THE RIGHTS AND DUTIES OF CITIZENS

The concern for legality exhibited in the PRC's 1978 Constitution carries over into the new chapter on citizens' rights and duties as well. This section has been expanded from four articles of 11 paragraphs in 1975 to the current 16 articles comprised of 22 paragraphs. While the actual number of rights (and duties) are not substantially increased, their substance is enhanced by an elaboration of the state's obligation to implement them.

The guarantees of the right to vote and stand for election, of freedom of speech, press, assembly, association, procession, demonstration and the freedom to strike remain unchanged from 1975 to 1978, as does the unique right to "speak out freely, air . . . views fully, hold great debates and write big character posters." Citizens' rights to believe in religion or to propagate atheism and to enjoy personal freedom and the inviolability of their homes are likewise carried over from the previous Constitution to the current one. The latter two rights have been expanded by the stipulation in the new constitution that only a court or the procuracy may sanction an arrest and that it can only be carried out by a public security organ.

Articles 48 through 51 of the 1978 Constitution pertain to rights which were also secured under the previous Constitution. The present articles, however, obligate the state to take certain measures for their realization. The right to work article, for example, requires that the state provide employment, increase pay, improve working conditions and labor protections and expand collective welfare. Similarly, the right to rest is amplified by the state's duty to pre-
scribe working hours and vacations and its duty to gradually expand leisure facilities.\textsuperscript{158} Old age and disability assistance are likewise the subjects of enhanced state action under the new Constitution,\textsuperscript{159} as exemplified by the gradual expansion of social insurance, social assistance, public health services and cooperative medical services. The state’s special concern for the young is particularly emphasized, as compared with its coverage in the 1975 Constitution. The 1978 Constitution includes an assurance of expansions in the educational and cultural systems.\textsuperscript{160}

A wholly new guarantee appearing in the current Constitution is the “freedom to engage in scientific research, literary and artistic creation and other cultural activities.”\textsuperscript{161} Additionally, the state is said to assist citizens in their various creative endeavors.\textsuperscript{162} Quite a departure from previous constitutional provisions which subordinated science, and creative activities in general, to ideology, this article is obviously another reflection of China’s need to hasten technological and economic progress.\textsuperscript{163}

The prior Constitution’s guarantee of equal rights for women\textsuperscript{164} is expanded in new Article 53 specifically to include “equal pay for equal work.” The new article also indicates that “men and women shall marry of their own free will.” Family planning is urged by the state,\textsuperscript{165} although the state still “protects marriage, the family, the mother and child.”\textsuperscript{166}

Of the remaining rights and duties found in China’s 1978 Constitution, those pertaining to the protection of overseas Chinese,\textsuperscript{167} the duty to defend the motherland,\textsuperscript{168} and the granting of asylum to persecuted foreigners\textsuperscript{169} are adopted largely unchanged from the previous one.\textsuperscript{170} Two of the remaining provisions, though, are expanded

\begin{itemize}
  \item \textsuperscript{158} \textit{Id.} art. 49.
  \item \textsuperscript{159} \textit{Id.} art. 50.
  \item \textsuperscript{160} \textit{Id.} art. 51. \textit{Compare with} 1975 Constitution, supra note 2, art. 27, para. 2's minimum coverage: “Citizens have the right to education. To ensure that citizens enjoy this right, the state gradually increases the number of schools of various types and of other cultural and educational institutions and popularizes education.”
  \item \textsuperscript{161} 1978 Constitution, supra note 1, art. 52.
  \item \textsuperscript{162} \textit{Id.}
  \item \textsuperscript{163} \textit{See} Chien-Ying, supra note 18, at 25-26.
  \item \textsuperscript{164} 1975 Constitution, supra note 2, art. 27, para. 3.
  \item \textsuperscript{165} 1978 Constitution, supra note 1, art. 53, para. 3.
  \item \textsuperscript{166} \textit{Id.} para. 2.
  \item \textsuperscript{167} \textit{Id.} art. 54.
  \item \textsuperscript{168} \textit{Id.} art. 58.
  \item \textsuperscript{169} \textit{Id.} art. 59.
  \item \textsuperscript{170} 1975 Constitution, supra note 2, art. 27, para. 6, art. 26, para. 2, and art. 29, respectively.
\end{itemize}
in the present Constitution: 1) added to the right to lodge complaints against state personnel there is a right of appeal to higher levels if unsatisfied,\textsuperscript{171} and 2) in addition to requiring citizen support of the CCP and the socialist system, it is now also necessary for citizens to safeguard China's unification and the unity of all its nationalities.\textsuperscript{172} Finally, another new duty is added to the 1978 Constitution by Article 57 wherein it is stated that, "Citizens must take care of and protect public property, observe labor discipline, observe public order, respect social ethics and safeguard state secrets."

VI. CONCLUSION

The 1978 Constitution of the People's Republic of China appears to mark the end of a rather turbulent era in that nation's history and should demarcate the beginning of a new, more orderly one if the new Constitution's intentions are realized. With its objective being the transformation of the PRC into a modern industrial state,\textsuperscript{173} the 1978 Constitution provides for a more efficient, better

\begin{footnotesize}
\begin{enumerate}
\item[\textsuperscript{171}]{\textit{Compare} 1978 Constitution, \textit{supra} note 1, art. 55 \textit{with} 1975 Constitution, \textit{supra} note 2, art. 27, para. 3.}
\item[\textsuperscript{172}]{\textit{Compare} 1978 Constitution, \textit{supra} note 1, art. 56 \textit{with} 1975 Constitution, \textit{supra} note 2, art. 26, para. 1.}
\item[\textsuperscript{173}]{A clear sign of this trend is the recent conclusion of the Sino-Japanese treaty of peace and friendship. The treaty creates the prospect of a unique combination of Chinese labor, Japanese technology and Japanese capital that could, in the long run, change the balance of industrial and commercial power in the world. The authors wish to express their gratitude to Judge Tsuyoshi Abe of the Japanese Supreme Court Library, who kindly supplied the English text of the 1978 Treaty of Peace and Friendship Between Japan and the People's Republic of China, which is set out below:}

\textbf{Unofficial Translation}

\textbf{Treaty of Peace and Friendship}

\textbf{Between Japan and the People's Republic of China}

\textbf{Japan and the People's Republic of China,}

Recalling with satisfaction that since the Government of Japan and the Government of the People's Republic of China issued a Joint Communique in Peking on September 29, 1972, the friendly relations between the two Governments and the peoples of the two countries have developed greatly on a new basis,

Confirming that the above-mentioned Joint Communique constitutes the basis of the relations of peace and friendship between the two countries and that the principles enunciated in the Joint Communique should be strictly observed,

Confirming that the principles of the Charter of the United Nations should be fully respected,

Hoping to contribute to peace and stability in Asia and in the world,

For the purpose of solidifying and developing the relations of peace and friendship between the two countries,

Have resolved to conclude a Treaty of Peace and Friendship and for that purpose have appointed as their Plenipotentiaries:}
\end{enumerate}
\end{footnotesize}
coordinated state structure and a revitalized legal system. One of the stated aims of the revitalized legal system is to assure greater individual liberty. If Chinese society truly comes to reflect its new Constitution, a dramatic change will indeed have been accomplished.

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Japan: 

Minister for Foreign Affairs  
Sunao Sonoda

People's Republic of China: Minister of Foreign Affairs  
Huang Hua

Who, having communicated to each other their full powers, found to be in good and due form, have agreed as follows:

**Article I**

1. The Contracting Parties shall develop relations of perpetual peace and friendship between the two countries on the basis of the principles of mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit and peaceful co-existence.

2. The Contracting Parties confirm that, in conformity with the foregoing principles and the principles of the Charter of the United Nations, they shall in their mutual relations settle all disputes by peaceful means and shall refrain from the use or threat of force.

**Article II**

The Contracting Parties declare that neither of them should seek hegemony in the Asia-Pacific region or in any other region and that each is opposed to efforts by any other country or group of countries to establish such hegemony.

**Article III**

The Contracting Parties shall, in the good-neighbourly and friendly spirit and in conformity with the principles of equality and mutual benefit and non-interference in each other’s internal affairs, endeavour to further develop economic and cultural relations between the two countries and to promote exchanges between the peoples of the two countries.

**Article IV**

The present Treaty shall not affect the position of either Contracting Party regarding its relations with third countries.

**Article V**

1. The present Treaty shall be ratified and shall enter into force on the date of the exchange of instruments of ratification which shall take place at Tokyo. The present Treaty shall remain in force for ten years and thereafter shall continue to be in force until terminated in accordance with the provisions of paragraph 2.

2. Either Contracting Party may, by giving one year's written notice to the other Contracting Party, terminate the present Treaty at the end of the initial ten-year period or at any time thereafter.