

From Leninist Discipline to Socialist Legalism

*Peng Zhen on Law and Political Authority
in the PRC*

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*Yansu Zhifa: Strictly Enforce the Law**

Introduction

Peng Zhen has had an extraordinary effect on the "culture" of the PRC legal system. Peng has often been portrayed as a political "thug," and there is little doubt that he has exercised ruthlessness in pursuing his own political interests. Yet, Peng's ideas about political authority have particular significance for the role of law and institutions in China. Indeed, the very nature of the legal system as an instrument of policy is attributed in part to the influence of Peng Zhen. While he has been associated most commonly with institutionalizing the role of politics and policy in law — hence the common term *zhengfa* — Peng's views on the role of law have evolved significantly over time. Peng's views have un-

* From a placard in Peng Zhen's calligraphy hanging in the lobby of the Supreme People's Court and in other courts throughout China.

dergone a transition from the imperative of using law to articulate and enforce the policies of the Communist Party of China (henceforth CPC or the Party) to a greater concern with the enforcement of law in a way that recognizes the changing social conditions of contemporary China. The transition in Peng Zhen's thinking from an emphasis on Leninist discipline to one that stresses socialist legalism does much to explain the conceptual foundations for law in China today. This paper will explore this transition by reference to several important periods in Peng Zhen's career.

Personal Context

Peng Zhen's ideas about law and authority proceed from the context of his personal life. These may be viewed in terms of the familiar outlines of his career, and also by reference to four themes that describe his *persona* — (1) Peng the individual; (2) Peng the politician; (3) Peng the party organizer and (4) Peng the law-maker.

*Biographical Sketch*¹

Peng Zhen was born into a poor peasant family in 1902 in Quwu county, Shanxi.² His education was limited to primary and middle school. Peng joined the CPC in 1923 and during the late 1920s and early 1930s was active in labor organization work, first in Taiyuan and then in Tianjin. He was arrested three times during this period and was released for the last time in 1935.³ It was during this period that Peng began what was to become a long-standing relationship with Liu Shaoqi when Liu took over the Party's North China Bureau in Tianjin. Peng played an important role as a Party liaison worker during the student-led December 9th Movement of 1935. With the onset of the Sino-Japanese War, Peng briefly went to Yan'an and then to Shanxi, where he became Party secretary and later chairman of the Government Council of the Jin Cha Ji (Shanxi, Chahar, Hebei) Border Region. Peng returned to Yan'an

in 1941 to become vice-president of the Central Party School, and he played a major role in carrying out the 1942 Party rectification campaign. Indeed, Peng's role in Yan'an was sufficiently important that in 1990 he was appointed honorary chair of the China Society for Research in the Yan'an Spirit.⁴ Peng also took it upon himself to oversee the publication of materials on the rectification at the Party school.⁵

Peng was made acting director of the Party Organization Department in 1944, and was elevated to the Politburo at the Seventh National CPC Congress in 1945. After the Japanese surrender, he was appointed secretary of the Northeast Bureau in Manchuria, and political commissar for the army commanded by Lin Biao. Peng was removed from these posts in 1946 in the wake of policy conflicts with Lin and Mao Zedong over matters of political and military strategy. From 1947 to 1949, Peng's energies were directed toward land reform issues in Jin Cha Ji and other liberated areas of the North China Plain, and he played an increasingly important role in preparations for the capture and ultimately the administration of Beijing.⁶

After the Communist victory, Peng was made secretary of the Beijing Party Committee and held concurrent posts in the Chinese People's Political Consultative Conference and in the Central People's Government Council. His power base in Beijing continued until his purge in 1966. Peng also held important positions in the central government. In October 1949 he was named vice-chair and Party secretary of the government's Political-Legal Affairs Commission, an appointment which laid the foundation for his long career in this area, while also signaling the CPC leadership's views on the extent to which law and politics should be subject to CPC policy and organization. In 1953, he was appointed a member of the election-law drafting committee under Deng Xiaoping, and in 1954 he served as head of the Central Political-Legal Cadre School. Peng was appointed secretary and vice chair of the First National People's Congress (NPC) Standing Committee in 1954.

In the early 1960s, Peng was given responsibility for the Party's cultural policy. In the politically combative atmosphere

following the Great Leap Forward, indirect criticism of Mao became prominent in the literary fora under Peng's control. His sponsorship of Deng Tuo and Wu Han was to play an important role in Peng's downfall. As head of the "Group of Five" in charge of cultural reform, Peng was charged by Mao to direct the criticism of Wu Han and his play, "Hai Rui Dismissed from Office," Peng attempted to confine criticism of Wu to academic rather than political issues. This led to the final break with Mao, and Peng's dismissal from his posts was finalized at a series of Politburo meetings during May 4-16, 1966. On December 4, 1966, he was "arrested" by Red Guards and on the 12th was paraded through the streets of Beijing to a violent struggle session. Aside from heralding a new phase of open conflict in the Cultural Revolution, the persecution of Peng Zhen was particularly ironic because it represented the imposition of extra-legal punishment on the Politburo member most closely associated with the Chinese legal system. While some reports claim that Peng was exiled to remote Shaanxi province for the duration of the Cultural Revolution,⁷ others assert that Peng was confined in the infamous Qincheng Prison in Changping county outside Beijing.⁸

After the decision of the landmark Third Plenum of the Eleventh Central Committee to rehabilitate Cultural Revolution victims, Peng Zhen returned to Beijing in December 1978,⁹ and reappeared publicly on January 27, 1979 at a tea party celebrating the Spring Festival.¹⁰ On February 23, Peng was appointed chairman of the NPC Committee for Legislative Affairs,¹¹ and in July he was once again elected a vice-chairman of the Standing Committee. In September he regained his former position on the Politburo.¹² On June 10, 1981, Peng resigned his post on the Committee for Legislative Affairs to take up responsibilities as vice-chairman of the Committee for Revising the Constitution.¹³ In December 1982, Peng became first secretary of the Party's Central Political Legal Committee, although he was passed over for appointment to the CPC Politburo Standing Committee. Instead, he was appointed chairman of the Sixth NPC Standing Committee in June 1983. In this position he played an active role in the drafting of a

wide range of legislations, including the General Principles of Civil Law. Peng resigned from his central government positions, and from the Party Central Committee and Politburo in October 1987.¹⁴

Peng the Individual

Peng Zhen's life and career have revealed a complex array of individual characteristics, including toughness, intelligence, and comradeship. First and foremost, Peng Zhen was a tough individual. Peng's heritage as the child of a poor peasant family no doubt steeled him for the rigors of revolution and Chinese elite politics. Quwu county is located in the southern Shanxi prefecture of Linfen, an area so desolate that efforts to build up towns along the Datong railway between Taiyuan and Xian during the late 1950s went unfulfilled.¹⁵ While in a Taiyuan jail for his labor organizing activities in the late 1920s and early 1930s, Peng organized hunger strikes and other forms of resistance. Each of these came at significant personal cost — to the point where He Long indicated how impressed he was with the toughness of the young Peng.¹⁶ Peng's work in the underground Party cells in the "White Areas" of North China required a capacity for self-denial, while Peng's work in isolated Jin Cha Ji and in the bloody battles of the Manchurian campaign would have toughened further Peng's capacity to withstand hardship.

Yet Peng was also mentally tough — his work in Jin Cha Ji and during the Yan'an rectification campaign, as well as in the campaigns of the early 1950s against counter-revolutionaries, as well as against corrupt officialdom (*san fan*) and the urban bourgeoisie (*wu fan*) made him a dark figure in the early years of the PRC.¹⁷ Peng was a key player in the Anti-Rightist campaign, although his precise role remains in dispute.¹⁸ During the Cultural Revolution, he was paraded through the streets and suffered considerably during struggle meetings and at the hands of case group interrogators, but still refused to make a thorough self-criticism — essentially toughing it out in the face of mob demands and the

Maoist inquisition.¹⁹ Although his attributes of personal toughness were shared by other Chinese Communist leaders with similar experiences, Peng certainly held them in ample doses.

A second personal attribute is Peng's intelligence. Although largely uneducated — Peng's education through middle school was a most unusual opportunity provided by the Party's largesse, Peng's intelligence was spoken of many times by Liu Shaoqi and even Mao.²⁰ Upon visiting Yan'an, writer Gunther Stein commented on being unsure whether the peasant or the intellectual element was foremost in Peng's thinking.²¹ Peng's posting to Party School in 1941 after his return from Jin Cha Ji; his increased responsibility for education policy under the Secretariat in the early 1960s; and his close dealings with intellectuals, first in Jin Cha Ji, and more obviously during the 1960s prior to the Cultural Revolution all suggest the extent to which Peng's intelligence was recognized by his colleagues.

Indications of Peng's intelligence have been confirmed by members of Peng's NPC staff interviewed in Beijing. Peng is said to have grasped easily the complexities not only of Marxism but also of modern economic theory, philosophy, and world affairs. On many occasions he is said to have sat through a lengthy and detailed policy presentation and then to be able to ask incisive and difficult questions that revealed his mastery of latent complexities and contradictions. His powers of memory were also prodigious: Peng is said to have been able while in his eighties to commit a four-hour speech to memory and speak from only a few pages of notes.

Peng's traits of toughness and intelligence were complemented by his personal affability — an important element in building political connections. While in Jin Cha Ji and Yan'an, he organized local opera performances, and there were numerous descriptions of him schmoozing with associates, thoroughly enjoying the performances — indeed Peng was criticized during the Cultural Revolution for being too fond of classical operas.²² He was a noted fishing partner of He Long.²³ In contrast to Liu Shaoqi's rather ascetic demeanor, Peng was not averse to living

the good life, and was accused of throwing elaborate parties at his compounds in Beijing.²⁴ Peng's affability extended to his professional life, where he was described as demanding but collegial. His subordinates referred to him as *Peng Laoshi* — the teacher who is solicitous toward his protégés. One former colleague insisted that Peng was genuinely interested in his associates' views, constantly asking them to say what they really thought, not simply the thought he wanted to hear.

Peng the Politician

From his early days as an underground labor organizer, Peng Zhen revealed a variety of political traits that complemented his personal attributes. These included a ruthless commitment to achieving goals set for him; the active cultivation of political allies; and a refined sense of pragmatism in pursuit of his personal career.

A major aspect of Peng's political *persona* was his ruthless pursuit of political goals set for him by his superiors. As Liu Shaoqi's deputy in the North China Bureau, Peng was charged with investigating problems of leftism in the December 9th Movement. Peng's activities were instrumental in providing information for Liu's report of April 1936 critiquing problems of closed doorism (*guanmen zhuyi*) and adventurism (*maoxian zhuyi*).²⁵ During the critical stages of consolidating the Party's control over the movement in early 1936, Peng represented Liu and the North China Bureau in articulating CPC policies at the first meeting of the North China National Salvation Association (*Huabei Jiu Guo Hui*), and maintained constant contact with the student movement.²⁶ But Peng was critical of the inability of the movement to eliminate leftist errors, and his reporting ultimately formed the basis for reorganizing the Beiping CPC Committee.²⁷ Peng's work was later incorporated into Liu Shaoqi's "The lessons to be drawn from the Beiping question" — a summary critique of leftist errors that was later published as "On the Beiping question" in the North China Bureau's journal, *Fireline* (*Huoxian*).²⁸

Peng's participation in the Yan'an rectification campaign revealed a similar commitment to carrying out political directives from above in the context of intra-Party struggle. And while Peng's appointment as deputy director of the Central Party School was in all likelihood an effort by Liu Shaoqi to use his protégé to rein in whatever excesses might have emerged from Mao in his capacity as director, Peng nonetheless seemed committed to carrying out the purge — his cooperative relationship with Mao indicated in part by a well-publicized photograph of Mao shaking Peng's hand at the Yan'an airport in the company of Zhu De, Chen Yi, Nie Rongzhen, and Li Fuchun.²⁹ Peng's 1942 speech summarizing the twenty-two articles that were to be the focus of study during the rectification movement characterized the opportunism associated with Wang Ming and the "returned students" as class conflict — thus opening the door for virtually unrestrained attacks on dissidents within the Party: "[W]e represent the proletariat class, but all erroneous opportunistic points of view represent another alien class."³⁰ Elsewhere in the speech, Peng suggested that Mao's views could not be easily dismissed as merely one component of a dialectic process of contending views, claiming instead that Hegelian materialism permitted a degree of absolutism in areas of doctrine and ideology.³¹ Peng's view that Yan'an was rife with spies and class enemies contributed to the vehemence of this attack.³² With the drawing down of the campaign in 1944, Peng adopted a more conciliatory stance, as evidenced by his 1944 speech summarizing the rectification effort. Here, Peng emphasized the importance of "saving the patient" and maintaining the enthusiasm of Party cadres.³³

Peng's zealotry in carrying out political attacks on enemies inside and outside the Party continued after liberation. His direction of the 1950-51 campaign against counter-revolutionaries included public condemnation and execution meetings in which Peng was portrayed as an enthusiastic participant.³⁴ Thus, in his reporting on the campaign, Peng decried the problems of overleniency (characterized as a problem of "rightism"), which were seen as alienating the masses anxious to redress past wrongs.³⁵

Similarly, during the *san fan* purges Peng refused to be dissuaded by notions that the problem of corruption in post-1949 China was limited in comparison with the problems under the nationalists — even as he conceded the point, Peng argued for even more vigilant work in ferreting out cadre corruption and waste.³⁶

Following his rehabilitation in 1979, it appeared Peng had lost none of his skills for political attack. In one of his first speeches after returning to the central political elite circle, Peng took a leading position supporting Deng Xiaoping's effort to re-register Party members in an effort to eliminate leftist influences in the leadership. Citing the spirit of the Fifth Plenum of the Eleventh Central Committee, and Deng's dicta on practice as the sole criterion of truth and the need to liberate thought, Peng argued for vigorous rectification at leadership departments in the political-legal sector as a necessary step in clarifying major issues of Party line.³⁷ Clearly, Peng was lending his services to support Deng's attacks on Cultural Revolution hold-overs in the government. Peng's activist bent was directed as well toward problems of social order and economic crime during the early 1980s, as he approved the use of administrative sanctions (particularly reform and re-education through labor) in lieu of the criminal sanctions provided under the PRC Criminal Law and the Criminal Procedure Law which offered more formal, albeit flawed, protections for the criminally accused.³⁸

However, Peng Zhen's political skills extended beyond being merely a subservient functionary. He also actively cultivated political allies in an effort to bolster his political position and independence. From his earliest days in Tianjin, Jin Cha Ji and Yan'an, Peng developed a network of political mentors on whom he would come to rely throughout his career. The most familiar of these was Liu Shaoqi, for whom Peng worked in the North China Bureau in Tianjin. Liu saw Peng's value during the December 9th Movement, and used Peng's work as a basis for his own reporting to the Party Centre. At Jin Cha Ji, Peng cultivated relations with a network of Party leaders such as Bo Yibo and An Ziwen who were to stand him in good stead later on — at least for a time.³⁹

Peng Zhen's military connections were somewhat less strong. While his work in Jin Cha Ji permitted contacts with Nie Rongzhen, Cheng Zihua, and other military officials,⁴⁰ and he was on the distribution list for important military directives,⁴¹ Peng was unable to build the network of military contacts enjoyed by Deng Xiaoping. Part of the explanation lies in the fact that Peng was considered a Party disciplinarian and civilian administrator, rather than a political commissar working directly with military units.⁴² As well, Peng's sole foray into military strategy and tactics was fairly disastrous — his proposal that the civil war in Manchuria emphasize urban centers was rebuked publicly by Mao and even Liu Shaoqi, and led to Peng's dismissal from the Northeast Bureau.⁴³

As he rose in the hierarchy, Peng began cultivating subordinates as well. He used his position as mayor of Beijing and head of the Beijing Party Committee to promote careers of former associates from Jin Cha Ji, such as Deng Tuo and Wu Han. After his rehabilitation, Peng continued to promote careers of former subordinates from the Beijing Party Committee, such as Wang Hanbin and Zheng Tianxiang. Peng's position as chair of the NPC Standing Committee also provided an opportunity to cultivate former associates, such as Wang Hanbin, Wang Renzhong and Chen Pixian.

As a politician, Peng Zhen was also a pragmatic bureaucratic infighter. This became particularly evident during the late 1950s and early 1960s when, despite being passed over for the post of Party general secretary at the Eighth CPC Congress in 1956, Peng began to take on individual political significance as a leader of growing stature. Peng's success in using Beijing municipality as a political power base motivated Mao to comment that under Peng's leadership the city was controlled so tightly that not even a needle or a drop of water could penetrate.⁴⁴ Peng's infighting skills combined with his control of Beijing were evident in his sponsorship of the Chang Guan Lou meetings in 1961.⁴⁵ Apparently with the knowledge of Liu Shaoqi, and perhaps Deng Xiaoping as well, Peng directed Deng Tuo to supervise an

investigation of mistakes in central economic policy that had caused the economic disaster of the Great Leap. In November 1961, several meetings were held at the Chang Guan Lou (Broad View Tower) in the Beijing Zoo during which central policy documents were analyzed. A lengthy report was generated and delivered to Peng,⁴⁶ who apparently intended to use the report and its accompanying materials at an enlarged meeting of the Central Committee in an attempt to repudiate Mao's economic policies.⁴⁷ Based on these reports, Peng noted Mao's errors directly at the "7,000 Cadres Conference" in January 1962, and criticized the tendency to avoid individual responsibility.⁴⁸ Ultimately, Mao's self-criticism at the conference rendered the attack superfluous and the Chang Guan Lou report was never formally presented, although it probably helped to prompt Mao's withdrawal from economic policy-making.

Peng again relied on organizational skills during the Socialist Education Campaign to oppose Mao's call for work team attacks on local cadres.⁴⁹ Mao's "First Ten Points" on the campaign had emphasized the importance of poor and lower-middle peasant organizations as the main force for mobilizing popular participation.⁵⁰ Peng, in his "Later Ten Points," put local officials in charge, with higher-level Party work teams serving mainly as supporting staff.⁵¹ While Peng allowed work teams to replace "bad" officials in some instances, he generally admonished against interference in local administration.⁵² Peng's view of the work teams was even more restrained than that expressed in Liu Shaoqi's "Revised Later Ten Points," which urged that work teams take charge of local Party reform.⁵³ Peng's willingness to protect local officials from work team interference was not only an issue of policy ideals, however. Personal interest also played a role, as evidenced in his decision to replace Zhang Banshi as head of the work team sent to Peking University when Zhang continued to press criticism against Peng's associate, Lu Ping, head of the school's Party Committee.⁵⁴

Peng's handling of Mao's criticisms of Wu Han also revealed his skills as a political infighter.⁵⁵ First he used the control of

Beijing's cultural apparatus to prevent publication of Yao Wen Yuan's critique of *Hai Rui* and then to mitigate the effects of Yao's attack by terming the entire matter one of academic discussion. Then he held a private meeting with Mao in Hangzhou to discuss Wu Han and to delay a final political resolution, while seeking to explain privately to Mao the general terms of the February Outline. Finally, he tried to portray Mao as having approved the February Outline in order to secure Politburo approval. These actions all speak of an effort to control access to information and the interpretation of policy in order to protect his political position and to nullify his opponents. The fact that Peng was ultimately unsuccessful suggests that his skills did not yet match those of the chairman, who in hindsight can be seen to be manipulating Peng into a position where he could be fairly easily removed.⁵⁶ In this context, Peng was in company with many of Mao's opponents.

During the post-Mao period, Peng actively used his position as chair of the NPC Standing Committee and the banner of socialist legality as platforms to promote his own political position.⁵⁷ Peng quickly began to transform the NPC Standing Committee into a politically meaningful body. Estranged from Deng Xiaoping's inner circle, Peng brought many senior officials, such as Chen Pixian and Wang Renzhong, over to the NPC Standing Committee, from where he began to play an increasingly significant role in the policy process — a role made possible by the Party's view (largely derived from Peng himself) that law should be an instrument of policy enforcement. Peng was to take pride in noting the discomfort among some members of the elite caused by the NPC Standing Committee transcending its former function as a "rubber stamp."⁵⁸ By attempting to strengthen the NPC Standing Committee's role as the principal organizational framework for legislation, Peng made the NPC Standing Committee a force to contend with. This was not necessarily because Peng was interested in pursuing law and good governance, but rather because it provided him an institutional platform (the only one left to him) from which to pursue his political career. It was this element of Peng's *persona* that was probably at the root of his comment to

reporters upon presenting the 1982 PRC Constitution that he was not sure which was more important, the Party or the law.

Peng the Party Organizer

Throughout his career, Peng has been involved with the building and operation of organizational mechanisms aimed at ensuring compliance by lower levels with central Party policies. While his attention to organizational structures and procedure has tended to emphasize form over substance and a reluctance to depart from formal decisions, his record as a Party organizer is perhaps the most enduring.

Peng's experience during the December 9th Movement and his conclusions about the need for organizational discipline no doubt played a role in his thinking about Party work in the Jin Cha Ji border region. Peng's main role in Jin Cha Ji was to serve as a conduit for disseminating and ensuring enforcement of Party policies in the border region in such areas as economic administration, security work, education, war mobilization, and other tasks. One of Peng's first assignments was to direct the First Representative Congress of Jin Cha Ji held in August 1938 and to convey the policies of the Party Centre.⁵⁹ In 1940, he presented a "Twenty Point Program" aimed at strengthening Party control in three areas: (i) elimination of enemies through the use of tribunals dominated by Party loyalists; (ii) Party building through use of "filtered democracy" in election laws, and other regulations to ensure Party dominance; and (iii) institution building through the use of formal regulations on government institutions that permitted Party domination.⁶⁰ Ultimately, Jin Cha Ji was held up as a model for other border regions to follow in the area of building Party power — a tribute to Peng Zhen's organizational work.⁶¹

Peng's work in Yan'an afforded further opportunities to apply his organizational skills. Peng drafted the "plan" for the Central Party School, whose aim was to break down old organizational loyalties and to ensure that newly recruited cadres, many of whom had recently defected from the nationalists, were brought

within the ambit of Party discipline and organization.⁶² The plan called for the assignment and arrangement of students in Party school to be based on educational level, rank and "theoretical ability and the ability to work independently" with little attention paid to factors such as age, time of joining the Party and organizational background. This meant that cadres from the same organization would not necessarily be trained together, thus permitting the education program to transcend personal and institutional relations in the molding of cadre-students into disciplined compliers with Party policy. It also meant that the School — or more accurately the Party Secretariat and Organization Department who approved and coordinated recruitment — determined which cadres would be selected for advancement, thus avoiding promotions from institutions based on personal ties. Peng's work at the Central Party School revealed his capacity for using organizational arrangements to promote Party authority, and suggested as well that he was fully aware of the potentially disruptive consequences of parochial organizational and personal loyalties.

After liberation, Peng's work on the Government Administrative Council's Political-Legal Commission provided additional opportunities to carry out his ideas about Party organization work. Peng's work in political-legal matters included serving on the drafting committee for the Election Law, where his experience with the use of "filtered democracy" to ensure Party control in Jin Cha Ji played a crucial role. While he was not a member of the Drafting Committee for the 1954 Constitution, Peng had ample opportunity for input to the document before it was enacted.⁶³ In the area of judicial institutions, Peng frequently discussed the need to coordinate relations and division of labor between and among the Public Security Bureaux, the People's Procuracies and the People's Courts.⁶⁴ He emphasized coordination and mutual supervision among these institutions and the use of procedural arrangements to ensure that no single organ would become too powerful and to ensure that all organs complied with central Party directives and policies.

Following his rehabilitation, Peng reiterated the importance of Party control over the legal system. This was evident in his persistent recitation of the "Four Basic Principles" — the most basic of which is the leadership of the Chinese Communist Party.⁶⁵ Thus, in his speech to the first session of the Chinese Legal Studies Society, Peng stressed that "the work of the Legal Studies Society is to uphold the Four Basic Principles."⁶⁶ Among the tasks he enumerated at the July 1982 National Conference on Political-Legal Work was that of strengthening the leadership of basic-level Party organizations in the campaign against economic crimes.⁶⁷ Peng's support for Party supervision in judicial decision-making was indicated by the absence in the final draft of the 1982 Constitution of any prohibition on Party interference in the handling of cases.⁶⁸ Peng also stressed that the Party Secretariat should have approval authority for congressional enactment of the constitution, criminal law, and all other legislation.⁶⁹

Despite his support for general Party supervision, however, Peng cautioned that Party officials should not get involved in individual cases, so as to avoid arbitrary intervention. He told an audience at the Central Party School that, "leadership by the Party Committee does not mean it must examine and approve concrete cases.... If the Party Committee has a hand in every case, it will surely become too busy with trifles to bother about important matters."⁷⁰ While seeming to contradict the concept of Party leadership, Peng's comment in fact indicates merely that such leadership should take on a new form of indirect supervision. For Peng also stated that instead of involving itself in concrete cases, the Party Committee "must lead, supervise, and support the independent public security organs and the functioning of procuratorial and law enforcement organs.... It must support the correct things they have done. It must criticize and rectify the mistakes they have made."⁷¹ These indirect controls were in Peng's view equally or more effective than direct intervention.

Thus, while he continued to support the Party's leadership over legal matters, Peng Zhen preferred a more subtle and indirect approach. Behind-the-scenes informal Party approval of legisla-

tion and the interpretation of statutes would ensure that the matters over which courts were presiding would be subject to rules approved by the Party. As well, the Party's control over the appointment and supervision of personnel would ensure that legal institutions were staffed by loyal and compliant officials. Rather than supporting direct Party intervention in judicial decision-making — an unwieldy task at best and one fraught with problems of legitimation and consistency in implementation, Peng sought to ensure Party domination over the socialist legal system through controlling the rule-making and personnel organization systems with which he was most familiar.

Peng the Law-maker

Peng's experience with organizational matters in Jin Cha Ji and Yan'an served him well in his responsibilities as the Party official in charge of legal system after 1949. During the state-building period of the 1950s Peng guided the establishment of China's legal system from an instrumentalist perspective — using law to ensure implementation of Party policies. For example, in his discussion both of the 1951 regulations on counter-revolutionaries and the 1952 regulations on corruption, Peng emphasized that these measures were aimed at ensuring Party control over the masses and preserving central control over local levels.⁷² Peng's discussion of the 1954 Constitution emphasized the need to use the Constitution and the laws to meet the needs of the Chinese people under the leadership of the Party.⁷³ Throughout his speeches on law during the early and mid-1950s, Peng repeatedly returned to this instrumentalist theme: Law must serve specific policy objectives, as these are set out by the Party.⁷⁴

Peng resumed this role as law-maker after his rehabilitation in early 1979, through his positions on the Legislative Affairs Committee, the Bills Committee and, later, the Committee for Revising the Constitution. In his explanation of the policy basis for various substantive laws, Peng emphasized that such legislation was designed to serve the regime's policies of economic modernization.⁷⁵

Thus, the 1979 Criminal Law Code was aimed at maintaining social stability in order to facilitate the Party's policies of socialist modernization.⁷⁶ These policies were also dominant in the drafting of the Economic Contract Law, as indicated by Peng's speech to the third session of the Fifth NPC Standing Committee in September 1980.⁷⁷ Under Peng's guidance, the drafting of the 1982 Constitution also gave vent to Party policies supporting economic modernization, expanded support for intellectuals, and family planning.⁷⁸

Peng's instrumentalist approach to lawmaking in general contributed to his views on the scope of specific acts of legislation. During his tenure as chair of the NPC Standing Committee, he cautioned against comprehensive legislation, preferring simplicity instead in the legislative expression of Party policy: "We must avoid subjective, one-sided attempts to formulate a multiplicity of all-embracing laws and must not allow our laws to become too complicated and elaborate for our cadres and people to learn and apply."⁷⁹ While some have suggested that Peng's caution about comprehensive legislation masked a broader effort to forestall reform efforts associated with Deng Xiaoping and Zhao Ziyang,⁸⁰ it seems more likely that Peng's orientation toward enacting law as an expression of Party policy required a combination of narrowness of scope and generality of language.⁸¹ Thus, despite the potential problems of divergent interpretations and application,⁸² Peng's view that law should serve as a tool of policy enforcement mandated the use of narrowly focused but broadly worded enactments in favor of precisely worded statutes of general application. This approach would then permit the Party to maintain maximum control over interpretation, while allowing it maximum flexibility in using law to exercise control over society. In sum, Peng Zhen stood as a law-maker for several clearly identifiable principles. First, law should be an instrument of policy — initially the Party's but later the policy preferences of Peng himself. Second, laws and regulations should be carefully drafted so as to avoid problems of over-breadth and vagueness. And finally, formal laws should be

treated carefully — imbued with sufficient flexibility to permit policy changes but not so malleable as to be devoid of authority.

Peng Zhen's *persona* reveals a complex mix of characters. As an individual, Peng exhibited traits of toughness, intelligence, and affability. As a politician, he took on the role of the aggressive functionary who could be counted on to apply his considerable abilities to achieving assigned policy goals, while still attending to his own political advancement. Peng's career has been strongly influenced as well by his role as a Party organizer. While this derived from his early experiences in the Communist underground, Peng later used his organizational positions and ideology to pursue his own personal and political interests. Peng's emphasis on Party organization and the use of formal procedures for the exercise of institutional authority allowed him to confine policy debate within institutional channels where he had significant influence. This had a bearing later on in Peng's role as a law-maker, where he continued to emphasize legislative institutions and procedure to bolster his authority vis-à-vis elite Party institutions from which he had been excluded. Peng Zhen is a complicated person. His personal characteristics, as an individual, politician, Party organizer, and law-maker often complement each other, but also seem sometimes to operate in contradiction. These provide an important context for his evolving views on law and authority.

Peng Zhen's Evolving Views about Political Authority

Peng Zhen's evolving views about political authority can be described as involving a transition from an emphasis on Leninist discipline to one on socialist law. In the early years of his career, he subscribed to and employed the Leninist model of organizational discipline during the course of articulating, disseminating, and enforcing Party policy. Following the establishment of the

People's Republic, however, this emphasis underwent gradual change in response to Peng's own evolving views about the socio-economic conditions in China and his own political fortunes. Peng came to emphasize not merely the imposition of organizational discipline on the objects of rule, but also on the subjects of political authority. Finally, after his rehabilitation Peng began, again for ideological as well as personal reasons, to support the establishment of a system of proto-legal institutions.

Discipline and Revolution

During the pre-liberation period, Peng was an archetypal Leninist revolutionary — committed to the use of organization to ensure disciplined adherence to Party policy. Discipline was paramount, taking precedence over most other considerations. The policy making process was to be a flexible mixture of directives from the Party elite tempered by vague notions of democratic centralism. Once policy was decided, it was the province of organizations to ensure dissemination and rigid enforcement. Legal and political institutions were not vehicles for popular participation but, rather, were to be mechanisms for policy enforcement by the Leninist vanguard Party. These views were particularly evident in Jin Cha Ji and at Yan'an.

External Discipline and Party-building: The Jin Cha Ji Program

During the Jin Cha Ji period, Peng directed the use of formal regulations to achieve a variety of specific policies aimed at building discipline inside and outside the Party. Punishment of traitors, control of corruption, mediation of disputes, elections, the organization of various administrative and judicial bodies, and the management of economic activity all fell within the ambit of the regulatory expression of Party policies.⁸³ These specialized laws were formulated according to the "Current Administrative Program Concerning the Jin Cha Ji Border Region," drafted by Peng Zhen and issued in 1940 by the North China Bureau.⁸⁴

Peng's program served first of all as a broad statement of Party policy regarding such issues as the establishment of organizations for resisting Japan, economic and tax policies, property rights, education, and measures for the punishment of "traitors." Policies on the economy, land, labor, finance, and banking were to be carried out under the direction of local Party committees.⁸⁵ More importantly, the program also detailed the organizational steps to be taken in the realization of these policies. Article 5 set forth the manner by which Party dominance of popular and administrative organizations was to be achieved. All popular and government bodies were to reserve one-third of their membership for the Chinese Communist Party, leaving two-thirds to be made up of "other parties resisting Japan together with independent persons." For such tasks as disaster relief, cooperation among nationalities, mutual aid among the peasants, and the improvement of health and hygiene, Article 11 established a variety of specialized bodies in which the Party was to enjoy a minimum of one-third guaranteed membership. Aside from these organizational means of ensuring the Party's dominance over popular and governmental organizations, Article 17 called for the active repression of enemies, traitors, anti-Communists, and diehards — thus providing a basis for the elimination of potential opponents to Party rule.

In contrast to the organizational framework established for the enforcement of Party dominance, there existed no such framework for the protection of personal and property rights promised for "all those who resist Japan" (Article 7). Subsequently, in 1943 and 1944, regulations were enacted pertaining the party-state's powers of inspection, search, arrest, and detention.⁸⁶ These regulations, however, were designed primarily to restrict the independent authority of individual officials rather than impose limits on the power of the party-state over the citizenry generally. For, while the arrest of citizens was subject to approval by higher-level organs, such approval could be obtained after the arrest had been carried out.⁸⁷

Peng's primary concern with building political power was revealed in his "Report on Party work and specific policies in Jin Cha Ji Border Region," delivered to the CPC Politburo in October 1941.⁸⁸ Describing the issue of political power as the "fundamental issue of all revolutions," Peng emphasized the need to establish a system of village representative congresses.⁸⁹ These popular organizations would in turn serve as the pool from which officials in administrative organs would be drawn.⁹⁰ Peng explained that the reason for this system of indirect representation was the need to prevent "the stealthy deprivation of the people's real democratic rights under extreme democracy." Distinguishing between the concepts of political power (*zheng quan*) and the power of rule (*zhi quan*), Peng argued that the political power of the people did not include the powers of direct election and the recall of officials.⁹¹ In essence, Peng was seeking to ensure the Party's control over the processes of selection of local officials — by undermining the traditional village heads, elevating the role of Party-controlled popular organizations, and then using these bodies as a basis for strengthening Party control over elected government positions. Peng also sought to loosen the prerequisites for candidacy to administrative office, so as to facilitate the appointment of inexperienced but politically favorable individuals.⁹²

Thus, in Jin Cha Ji, Peng was primarily concerned with Party-building. The war against Japan provided opportunities to destroy the structure of political institutions that had existed previously and to consolidate Party power. The needs of revolution mandated that the Party attend to its external relations and build its influence in the context of changing political institutions.

Discipline inside the Party: From Jin Cha Ji to Yan'an

Yet, Peng Zhen was also concerned with discipline inside the Party. Newly recruited cadres, often with little education on Party ideology, needed to be properly trained and indoctrinated. Peng's views on intra-Party discipline recognized this point by stressing the importance of strong leadership and supervision over cadres and the practical re-education of Party members. Peng empha-

sized the need for discipline in the implementation of Party policies, noting that the Party often was accused of "being able to talk but unable to act."⁹³ Observing that the parochial concerns of the local peasants and workers were largely incompatible with the comprehensive and long-term perspectives required of Party cadres, Peng emphasized both the need for theoretical study of basic issues of the Chinese revolution and the requirement that "Party cadres steel themselves in actual activity."⁹⁴ Peng's statements foreshadowed his approach to cadre education, one that would be applied on a wider scale during the Yan'an rectification campaign to follow.

Peng Zhen's appointment as deputy director and head of Education at the Central Party School in 1941 gave him charge of the training and ongoing indoctrination of Party members. While Mao Zedong was titular director of the School, Peng's positions allowed him functional control since Mao was burdened with other obligations. Although Peng Zhen was later accused of supporting the Wang Ming line associated with Zhang Wentian (Luo Fu), who had been director of the Marxism-Leninism Institute since its establishment in 1938,⁹⁵ it seems more likely that Peng was brought to Yan'an to counteract the influence of Zhang and the other "returned students" who were then challenging Mao for ideological influence.

Among Peng's first task was to draft the "Plan for the Party School," which was issued jointly with Mao Zedong and Ren Bishi.⁹⁶ Given the general brevity of the document (five pages in all), it is remarkably concise and detailed. The Plan revealed Peng's emphasis on the use of Party organs to control the selection and training of cadres. The Plan provided that students were to be recruited from cadre ranks nominated by local Party organs. Although recruitment of incoming students was based on origins in central, county, and district departments, classification and assignment to classes was to be based on educational (cultural) levels. Student entrance to the school was to be directed by the Party Secretariat and recorded with the Organization Department. The Plan also contained provisional arrangements for stu-

dents from the central departments pending the completion of a military-political institute. Detailed provisions for the staffing of the school were also made, in some cases specifying who would be in charge of teaching particular topics, in some cases specifying merely that such matters as procedures for appointment of school director would be made by the central leadership. Peng even attended to such minutiae as the number of sheets of paper and ink sticks per student as well as matters of subsidies and living arrangements. The provisions of the school Plan were amplified through additional measures, such as the "Regulations on qualifications of newly admitted students to the CPC Central Party School," which provided significant additional detail.⁹⁷

By virtue of his position at the Party School, Peng Zhen was heavily involved in the Yan'an rectification campaign. As more information has become available, the excesses of the campaign's efforts at political thought control have come to dominate most recollections of the period.⁹⁸ And while there can be little doubt that the darker side of the campaign served the political interests of Mao, Kang Sheng, and others including Peng Zhen, the work of rectification also provided insights to Peng's views on the role of Leninist discipline.

Peng produced several written documents in connection with the rectification. First among these was his 1942 document, "The Spirit and Practice of the Twenty-Two Documents Issued by the Leadership Council," in which Peng summarized the documents that were required reading for cadres and students in the campaign.⁹⁹ Throughout the speech, Peng appeared to support Mao's approach to the rectification, while subtly suggesting greater leniency in implementing campaign goals. Thus, Peng emphasized the more palatable of Mao's instructions, namely to reform errors through killing the disease and saving the patient, and to focus on changing attitudes rather than attacking individual persons. And, while Peng reiterated Mao's policy of opposing subjectivism — which in essence entailed a license to attack virtually anyone in the Party regardless of their previous political status and contributions — he also stressed the need to take into account the different

concrete circumstances of the campaign and its victims.¹⁰⁰ In this sense, Peng seemed to act as a tempering force against the efforts of Mao, and particularly Kang Sheng, to eliminate all real and suspected challengers.¹⁰¹

At the close of the campaign, Peng summarized the work of rectification at the Party School in his speech of July 18-19, 1944 to the entire school assembly, entitled "Questions about methods of thinking."¹⁰² In this speech, Peng elaborated on his ideas about discipline within the Party. He acknowledged that intra-Party conflict was virtually unavoidable in light of the many different kinds of new members being admitted (indeed, it was Peng's responsibility to re-educate many of these newly admitted cadres). He reiterated the Maoist dogma of attacking the disease while saving the patient, and noted that this might mean harming an individual's "face" while cautioning against harming their positivism.¹⁰³

Peng's views on discipline came through clearly in his remarks about egalitarianism.¹⁰⁴ While belatedly acknowledging the validity of criticisms of a very few special people with high living standards, Peng concentrated his attack on those who gave vent to unacceptable sentiments of individualism or had misplaced expectations that socialism meant the banal equality of egalitarianism.¹⁰⁵ While Peng appeared to support Mao's prescriptions for rectification, he still argued for attention to specific conditions and the need for nuanced assessment of Party members. Drawing examples by distinguishing between the instincts of bees and the purposeful thinking of humankind or noting that a watermelon could not be fully described merely by reference to its green color, Peng argued that the true essence of a person's political stance required a deeper examination.¹⁰⁶ If not a direct challenge to Mao's attacks on subjectivism, Peng's approach was at the very least a call for restraint in the arbitrary labeling of Party cadres.

In his handling of the Party's external and internal relations during the pre-Liberation period, Peng exhibited classic Leninist traits emphasizing discipline as the basis for political authority.

The revolutionary role of the vanguard Party required external discipline through the oppression of class enemies and the manipulation of public institutions to facilitate the building of the Party's political power. Peng called explicitly for the use of institutions, policies, and laws to strengthen the Party's political power and to restrain its enemies.¹⁰⁷ Ancillary matters such as economic development and the war with Japan were considered important primarily to the extent that they could be channeled to the service of the Party's political ascendancy.

Internally, discipline was also necessary in order to ensure consistent enforcement of Party policies. Peng's views on internal discipline entailed a commitment to subordinating individual interests to the needs of the Party. In part because he was aware of the diversity of views and backgrounds of the new Party members, Peng was committed to ridding them of their pre-conceptions and ideas. The emphasis was on the purity and depth of commitment by Party members, which were not to be taken for granted, but had to be constantly tested and refined.

Discipline and Governance

Peng's emphasis on discipline continued after liberation, but took on new elements with the transition from revolution to governance. Following the establishment of the People's Republic, Peng faced the challenge of adapting the discipline of revolution to the context of governing. Although Peng was subordinate to Dong Biwu on the Political-Legal Committee, Dong's relative inactivity made Peng the most influential member.¹⁰⁸ In this capacity, Peng became an important force in the new regime's consolidation of power. While his experience in Jin Cha Ji and Yan'an was to prove useful, there were new challenges to be met as well.¹⁰⁹

Characteristically for Peng, law served first as a statement of policy and then as an organizational framework for the enforcement of policy. Thus, in the campaign against counter-revolutionaries Peng spoke first about policy foundations, and only later about the policy's legal form. In February 1951, Peng delivered to

the Government Administrative Council a "Report on Questions Concerning the Suppression of Counter-revolutionary Activity and Regulations for the Punishment of Counter-revolutionaries,"¹¹⁰ in which he underscored the role of the regulations in providing standards for judicial personnel in the current "constitution" — the Common Program of 1947 — to prevent leftist (overly harsh) and rightist (overly lenient) errors in the suppression of counter-revolutionaries.¹¹¹ Later, in May 1951, Peng presented a "Report on Political-Legal Work and the Present Tasks,"¹¹² in which he addressed the problems brought on by a lack of legal personnel. He cautioned against mass participation unfettered by legal procedure and stressed the need to establish political/legal committees "responsible for directing and linking up the work of organs concerning civil affairs, public security, judicial affairs, bureaux of investigations, law courts, and supervision as well as for the disposal of mutual relations between organization and work." These committees would serve to control further mass participation in the campaign against counter-revolutionaries.

With the policy foundation clarified, formal regulations would then formalize the regime's policy of repression of "those who collude with imperialism," "inciters," "tempters," "officials receiving bribes," "traitors," and "those using arms to cause disruption of the masses."¹¹³ The regulations provided a "legal weapon" against opponents of the regime by stipulating the varying sanctions to be employed against such elements. The regulations also provided an organizational framework that, while allowing anyone to denounce counter-revolutionaries to the people's government, ensured that the power of individuals and groups to apply sanctions was subject to the control of the Party/state.¹¹⁴

This interplay between policy and law was also present during the subsequent (*san fan*) campaign against corruption, although there was a significant distinction in the treatment of the objects of the campaign. Whereas attacks on counter-revolutionaries were aimed at class enemies, Peng described the struggle

against corruption and theft as one between two work-styles.¹¹⁵ Accordingly, law was to serve not merely as a tool of repression, but as a mechanism to promote central control over local cadres, impose Party-directed rules on non-Party officials, and control the mass movement. Peng wanted to routinize the results of the campaign by emphasizing institutional processes and dampening mass participation. Such routinization involved the establishment of a framework of judicial and commercial management organizations to detect and punish corruption.¹¹⁶ Although the regulations gave such bodies great flexibility and discretion in carrying out their tasks,¹¹⁷ central control over the movement was also exercised through the system of Party committees rather than through restrictive procedural regulations.¹¹⁸

Peng's work in the newly established People's Republic was not limited to political campaigns. His responsibilities in Beijing municipality mandated attention to a wide array of administrative tasks. Peng's emphasis on the role of organization was particularly pronounced in this area of work. His speech to the First Beijing Representative Congress in 1954 served as a summary of the city's development during the first five years after liberation. While conceding that the elimination of the poisons of the old society required a long-term struggle, Peng emphasized the need for a more systematic approach to handling these problems. Similarly, in addressing the need for ideological reform to complement socialist transformation, Peng stressed the need for organization and discipline. He went on to admonish all government workers and people to develop the practice of following law and legal methods. This concern was applied also to economic, educational, and cultural questions.¹¹⁹ Thus, the role of organization extended beyond the needs of revolution. Governance in particular required organization and law to ensure policy enforcement. The transition from revolution to governance permitted and, indeed, required the institutionalization of discipline through law.

Perhaps the most telling indicator of Peng's conclusions about the changing conditions and requirements of Chinese state and society was the dictum, "all are equal before the law" (*falu mian-*

qian ren ren pingdeng).¹²⁰ This phrase was incorporated into the 1954 Constitution, and in his speech to the First NPC Peng elaborated on the theme. He explained that equality before the law did not mean substantive or procedural equality for all, but rather that, once the content of particular rules were set, implementation should be disciplined and in keeping with organizational procedures.¹²¹ In this sense, equality before the law did not mean that the law in its most general sense should treat everyone equally, but rather that there should be uniformity in the enforcement of statutes and regulations. This was a call for increased institutional formality, rather than a liberal approach to equality. The law still could and should be used to achieve the Party's policy goals, including repression of class enemies. Thus, hostile elements such as landlords, rich peasants, and Kuomintang elements were not entitled to be treated equally with "citizens." On the other hand, Peng suggested that these class enemies were gradually being eliminated, and with the resulting decline in class struggle the remainder of society should enjoy the even-handed application of law. Thus, while the content of particular statutes and regulations might permit disparate treatment of different types of people, once enacted these measures should be enforced equally according to their terms. The extent to which the doctrine of equality before the law reflected Peng's views on changing conditions of Chinese society was evident during the Cultural Revolution, when Peng was accused of using the notion of equality before the law to halt class struggle.¹²²

After victory in the civil war, the CPC faced the challenge of managing a transition from revolution to governance. Peng Zhen was a central figure in this task, which entailed a transition from discretionary edicts to formally articulated rules in the exercise of political authority. During the state-building period of the early 1950s, Peng Zhen continued to emphasize the role of law as an instrument of Party policy aimed at consolidating political power through internal and external discipline. The disciplining power of law was aimed primarily at hostile forces outside the Party, as

indicated by the campaigns against counter-revolutionaries and the urban bourgeoisie. Internal discipline was also stressed in the *san fan* campaign against official corruption, although it required a distinct form whereby law replaced class struggle as the instrument of discipline. The needs of governance required increased institutionalization, and this had implications for those wielding political authority — for, if the targets of revolution were largely eliminated and the needs of governance required increased routinization in institutions and rules, what then was to be made of the power and authority of Leninist political leaders? Peng might not have grappled with this issue as early as he did but for the imperious style of chairman Mao and the policy disasters that resulted.

Discipline for the Subjects of Rule

The gradual regularizing of political authority in the People's Republic and the emergence of more formal institutions of rule made for a range of policy conflicts among the top leadership. Mao's preference was for continuing revolution — particularly the accelerated development of the economy through collectivization, while others in the leadership questioned the continued commitment to campaign-style voluntarism.

The Hundred Flowers campaign and the Anti-Rightist campaign that followed have been seen as important precursors to the Cultural Revolution.¹²³ Although debate continues as to who supported and who opposed the invitation for popular criticism of the Party,¹²⁴ the Hundred Flowers campaign made obvious to all the depth of popular doubts about the regime, while the Anti-Rightist campaign seemed to confirm the venality of the Party's dictatorship and worked to cow those few who had remained untouched by politics. While strong evidence suggests that Peng Zhen was an active proponent of attacks on rightists,¹²⁵ there is also ample evidence to suggest that he tried to minimize the campaign, by arguing against "expansion" (*kuodahua*).¹²⁶ Even Peng's use of the quota system for targeting rightists is amenable

to interpretation as an effort to limit the scope of the campaign. The conflicts in the evidence suggest that Peng's own role was conflicted — on the one hand the elements of Peng's *persona* that gave primacy to political advancement through ruthless pursuit of policy goals were certainly in evidence, while it is also clear that Peng's political characteristics would have motivated him to minimize attacks on intellectuals and legal cadres coming from the institutions that Peng drew on for political strength. An additional factor involved conclusions shared with Liu Shaoqi and other Party traditionalists about the conclusion of the revolution and the fundamental elimination of class struggle, which would have militated in favor of tempering attacks on alleged rightists.

The disaster of the Great Leap and the purge of Peng Dehuai for stating what many in the leadership believed but were too self-interested to state openly raised critical questions about the source of political authority and the need for limits on political power. Whereas during the revolutionary and state-building period, discipline was the focus of Peng Zhen's ideas and activity, this was a discipline of the object. Whether outside the Party altogether or merely working at lower levels in the hierarchy, the objects of rule were to be subjected to discipline and control through the use of organizations of political authority enforcing increasingly formal expressions of Party policy. By the late 1950s, the focus was turning to the subjects of authority, and Peng began to articulate ideas (no doubt inspired by Peng's mentor Liu Shaoqi and shared by others in the leadership) about the need for procedural constraints on the exercise of political power.

Peng's views on the subjects of political authority took form early on in critiques against special privileges. During the 1950s, he spoke out on a number of occasions against special privileges.¹²⁷ The critique of special privileges was aimed explicitly at those who claimed that as a result of past "meritorious service" (*gong lao*) or "difficult service" (*ku lao*) to enjoy some sort of immunity from control by the Party/state. Peng argued that the illegal acts even by Party members with strong revolutionary

credentials should be handled not merely through internal policy measures, but through formal legal sanctions.

Peng's emerging interest in procedural restraints on authority was reflected in the slogan "all are equal before the truth" (*zhenli mianqian ren ren pingdeng*), which came under particularly severe criticism during the Cultural Revolution.¹²⁸ The slogan reflected Peng's views on decision-making and organizational discipline, and underscored the ultimate equality of individual leaders based on objective conditions.¹²⁹ With the failure of the Great Leap Forward and the subsequent debates over economic policy, Peng and others stressed the importance of respecting objective truth even more than before, suggesting that "truth" required a recognition both of the failure of the Leap policies, and by implication of the error of purging Peng Dehuai for challenging Mao at the Lushan Plenum. Questions as to whether Mao's voluntarist economic policies had any rational foundation surfaced in a number of ways and found expression in the Beijing Party Committee's journal, *Frontline* (*Qianxian*), under Deng Tuo's leadership. Issues were raised, for example, as to whether truth had a class character, or whether one could distinguish between objective laws and various class-based theories about those objective laws.¹³⁰ By questioning Mao's view that everything had a class nature, Peng's group participated in a larger effort to shape a theoretical alternative to Mao's thought.¹³¹ They also implicitly rebuked Mao for his refusal to heed the advice of his colleagues on economic policy since, in the view of Peng and others, objective truth was arrived at through the involved process of mutual consultation and rational discussion. Despite being the obvious point of attack, Mao was hard pressed to oppose Peng's statement since this would have meant a direct challenge to existing Party orthodoxy — which of course Mao was not prepared to launch until several years later when the dictum was expressly attacked during the Cultural Revolution.

The period leading up to the Cultural Revolution saw significant transformation in Peng Zhen's views on discipline and polit-

ical authority. By the late 1950s, Peng's views on discipline, imposed previously on class enemies and Party subordinates, now extended to the Party elite. In response largely to policy disputes and the calamities resulting from the chairman's experiments, Peng gradually began to support greater procedural regularity within the government decision-making arena. Thus, the insistence on rigid discipline for the objects of rule was gradually being complemented by the requirement for discipline amongst the subjects of rule. While the Cultural Revolution saw the temporary failure of this approach, as Peng found himself fighting for his political life and grasping at whatever variety of organizational and personal resources he could find, the principle of imposing some measure of procedural restraints on the exercise of political authority remained and was to surface again after Peng was brought back to power in 1979.

From Leninist Discipline to Socialist Legalism

With his rehabilitation in early 1979, Peng Zhen once again entered center stage of Chinese elite politics. Once again he was given charge over the political-legal (*zhengfa*) regime. In the immediate post-Mao period, Peng's role in law building followed a path similar to that which Peng had followed during the early 1950s. And while many of the themes of Chinese law in the early post-Mao period echoed sentiments from the 1950s, a new element of procedural formality was introduced.

Peng's commitment to the use of law to enforce policy decisions was familiar to those who had watched his performance during the pre-Cultural Revolution period. Thus, during his speech on seven of the first draft laws enacted in the post-Mao period (including the Criminal Law and the Criminal Procedure Law), Peng's focus was again on the use of law as an expression of Party policy.¹³² Similarly, Peng's 1983 speech on the implementation of the new Constitution argued that the Constitution's main

purpose was to preserve and develop the socialist system.¹³³ Thus, new laws were enacted to achieve the policy goals of political stability and economic development. The essential character of law remained instrumentalist — law and regulation were instruments to entrench current policies through formal laws and institutions.

But, Peng's approach to law in the post-Mao period contained another element. In 1983, Peng was appointed chair of the NPC Standing Committee after having been denied a seat on the Politburo Standing Committee of the CPC. This effectively ended Peng's career in the Party elite. Peng had previously held CPC and NPC appointments jointly, but had generally acted in pursuit of expanded Party power. Now, in his eighties and facing Deng Xiaoping's call for the retirement of senior cadres, Peng no doubt realized that his career at the pinnacle of the Party was essentially over. But, Peng's personal and political traits remained evident, however, and Peng began to build a power base in the NPC.

This effort was facilitated by the strain in Peng's thinking about the evolution of Chinese society. The premises of Leninist discipline were that the vanguard Party must lead China's masses to revolutionary victory and ultimately to socialism. The struggle against hostile classes required discipline both within and without the Party. While Party directives might be conceived through a rather flexible policy process, enforcement was to be subject to a strict regime of organizational mechanisms and dictates. With the attainment of victory in the revolution and through socialist transformation, these needs changed. The decline of class struggle in particular entailed the possibility of increased equality in the governance of society. This was seen to permit and perhaps mandate greater formality in the process and content of law, and less room for arbitrary intervention by the Party. Thus, formality ensured a transition from Leninist discipline to socialist law.

These aspects of Peng's philosophy on the relationship between policy, law and changing historical conditions in China were of long standing. Even as early as his tenure at Jin Cha Ji, Peng had suggested that China's revolutionary conditions were

changing and giving way to new socio-economic circumstances where class enemies were not nearly as important as the need to institutionalize Party rule.¹³⁴ During the 1950s, Peng had articulated similar views, echoing Liu Shaoqi's conclusions that classes and class struggle were no longer of primary importance.¹³⁵ These views were also evident in Peng's discussion of the treatment of landlords during the Socialist Education Campaign. In contrast to Mao Zedong's approach which emphasized the need for ongoing class struggle and proletarian dictatorship over hostile elements, Peng argued that, since the Party had already seized and consolidated political power, the impact of the pre-existing bad classes was diminished and, therefore, behavior rather than class origin ought to be the primary criterion in determining political qualities of individuals.¹³⁶ Thus, Peng's "Later Ten Points" noted explicitly that the sons and daughters of landlords and rich peasants could break from their class backgrounds and criticized the practice of applying parents' class labels to their children.¹³⁷

By the 1980s, Peng's views that China's socio-economic conditions permitted a departure from class struggle and mandated greater attention to procedural regularity coincided with his political ambitions. As chair of the NPC Standing Committee, Peng was in a position to expand its legislative functions, and to justify such expansion by reference to China's changing conditions. Thus, in his March 13, 1984 speech to local people's congresses, Peng emphasized the transition from revolution to state-building and the concomitant need to consolidate the achievements of socialism and build the economy.¹³⁸ This entailed increased recognition of the independent authority of local legislative organs. Later, speaking on relations between the NPC Standing Committee and local people's congresses Peng stressed the importance of non-interference — indicating that while there existed a legal duty of supervision, changing social and economic conditions in China mandated granting greater discretion to local legislative organs.¹³⁹ This was in significant contrast to the views in Peng's 1954 speech on Party organization which had stressed the obedience of lower

level organs even if higher levels still must take into account local circumstances.¹⁴⁰

At the same time, Peng suggested that these changing conditions required changes in the Party's leadership. Peng's speech following the Tiananmen crisis focused on the need for the Party to rectify its leadership — implying that the authoritarian discretion of the Party Centre was no longer suited to current conditions.¹⁴¹ While he had provided somewhat tepid support for the declaration of martial law in late May,¹⁴² once the post-mortem was under way, Peng returned to familiar themes. Law and formalism were to replace individual officials and arbitrary discretion in governance. The Constitution should serve as the basis for law, which suggested in part the primacy of Party authority through the implementation of the Four Basic Principles, but also emphasized the importance of legal procedure and behavioral rather than class-based rights. In emphasizing the role of the people's democratic dictatorship, Peng stressed the transition from dictatorship of the proletariat to democratic dictatorship, a transition which further diminished the role of class struggle. Finally, Peng noted the importance of democratic centralism, a return to the themes of inner-Party democracy that characterized his critiques of Mao's domineering leadership two decades earlier. Peng's speech seemed to suggest that the answer to the dilemmas of Leninist discipline lay in the application of socialist law to a society where class struggle and inequality were seen as gradually but steadily diminishing.

Peng's response to the Tiananmen disaster represented something of a culmination of the transition from Leninist discipline to socialist law. With the revolution completed, the needs of governance and economic development required increased attention to institutional and procedural limits on Party power. Even on what many thought was his deathbed, Peng returned to this point — lecturing Jiang Zemin, Li Peng and other Politburo leaders on the need to continue institutional reforms in the relationship between Party and state leadership.¹⁴³

The post-Mao period saw Peng Zhen's views on political authority complete the transition from Leninist discipline to socialist law. Building on conclusions about changing social and economic conditions in China, and driven by new political realities that compelled a new emphasis on the NPC and its legislative functions, Peng increased his emphasis on developing law and legal institutions. As well, Peng's views on rectifying the Party's leadership emerged anew, even to the extent of a critique of Deng Xiaoping's dominance of Party policy-making that was reminiscent of Peng's challenges to Mao's leadership during the early 1960s. By the end of the 1980s, Peng had articulated a view of socialist law that supported the role of legislation and emphasized procedural regularity as replacement for the emphasis on Leninist discipline that characterized the revolutionary and state-building period.

Conclusion

Peng Zhen's career in the CPC has spanned more than six decades. From his earliest days as an underground Party organizer to his final decade where he advocated replacing arbitrary Party fiat with formal legislation, Peng has had a singular impact on the culture of law and political authority in China. In the context of a *persona* comprised of individual, organizational, political, and jurisprudential components, Peng's views on law and political authority have evolved from an instrumentalist approach calling for the use of law in pursuit of the goals of Leninist discipline to one emphasizing greater procedural and institutional regularity. Driven in part by changes in Peng's own political fortunes, but also by his conclusions about changing conditions in China, Peng's views on law and political authority have permitted a greater role for law and legal institutions in China than would have been possible without him. Although policy instrumentalism is still present in the culture of China's socialist legal system,

the formalization of policy norms in legislation may represent the beginning of autonomy for legal norms. Thus, while the future of law in China remains uncertain, Peng Zhen's ideas about the role of law in the exercise of political authority will have a significant impact on the future role of legal institutions in China.

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Notes

1. Portions of the following section derive from Pitman B. Potter, "Peng Zhen: evolving views on Party organization and law," in Carol Lee Hamrin and Timothy Cheek, eds, *China's Establishment Intellectuals* (Armonk, NY: M.E. Sharpe, 1986), pp. 21-50. An authoritative bibliographical outline provides additional information. See CPC Shanxi Party Committee Historical Research Office, ed., *Peng Zhen shengping dashi nianbiao* (Chronology of the Major Events in the Life of Peng Zhen) (Beijing: Central Party History Press, 1992).
2. Most authorities agree that Peng came from a poor peasant family. During the Cultural Revolution, however, Red

- Guard criticisms of Peng claimed that his was a rich peasant background. See for example, "Counterrevolutionary revisionist P'eng Chen's towering crimes of opposition of the Party, socialism and the thought of Mao Tse-tung," in *Selections from China Mainland Magazines*, No. 649, Jan. 6, 1969, p. 30. For the majority view, see Donald Klein and Anne Clark, *Biographical Dictionary of Chinese Communism 1921-1965* (Cambridge, MA: Harvard University Press, 1970), p. 713. Also see "Peng Zhen: from disgrace to rehabilitation," in *Issues and Studies*, Vol. XV, No. 9 (Sept., 1979), p. 93.
3. Peng's official biography notes specifically that Peng was released at the completion of his sentence. See CPC Shanxi Party Committee Historical Research Office, ed., *Peng Zhen shengping dashi nianbiao* (Chronology of the Major Events in the Life of Peng Zhen) (Beijing: Central Party History Press, 1992), p. 7. This contradicts previous assertions that Peng was one of the so-called "61 Cadres" who gained release from prison by renouncing their Party loyalties — allegedly at the direction of Liu Shaoqi. See "Selected edition on Liu Shao-ch'i's counter-revolutionary revisionist crimes," in *Selections from China Mainland Magazines*, No. 653, May 5, 1969, p. 8; "Dossiers of P'eng Chen," in *Selections from China Mainland Magazines*, Supplement No. 27, July 8, 1968, pp. 33-39 at p. 36. Also see Li Yong, *Wenhua da geming zhong de ming ren zhi yu* (Imprisonment of Famous Personages during the Cultural Revolution) (Beijing: Nationalities Institute Press, 1993), p. 49.
 4. See "Zhongguo Yan'an jingshen yanjiu hui zai Beijing chengli" (The China Society for Research in the Yan'an Spirit is established in Beijing), in *Dangshi tongxun* (Party History Newsletter), Vol. 12, No. 36, June 25, 1990.
 5. See *Yan'an zhongyang dangxiao de zhengfeng xuexi* (Studying the Rectification of the Yan'an Central Party School) (Beijing: Central Party School Press, 1987).

6. See e.g., Peng Zhen, "Zuohao tongyi zhanxian gongzuo" (Do a good job in united front work) (Jan. 6, 1949), in *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), pp. 170-92.
7. See "Document No. 49, Peng Zhen, from *Beijing Spring*," in James D. Seymour, *The Fifth Modernization: China's Human Rights Movement, 1978-1979* (Stanfordville, NY: Human Rights Publishing Group, 1980), p. 194.
8. Michael Schoenhals, "The Chinese case examination system," public lecture, University of British Columbia, Centre for Asian Studies, March 3, 1995.
9. See James D. Seymour, *The Fifth Modernization: China's Human Rights Movement, 1978-1979* (Stanfordville, NY: Human Rights Publishing Group, 1980), pp. 193-94.
10. See *Selections from World Broadcasts (Far East)*, Feb. 1, 1979, p. BII/23.
11. See *Selections from World Broadcasts (Far East)*, Feb. 27, 1979, p. BII/2.
12. See Wolfgang Bartke, *Who's Who in the People's Republic of China* (Armonk, NY: M.E. Sharpe, 1981), pp. 287-89.
13. See *Xinhua yuebao* (New China Monthly), No. 6, 1981, p. 80. Although Peng was nominally subordinate to Ye Jianying on the committee, Ye's state of semi-retirement gave Peng *de facto* leadership.
14. See CPC Shanxi Party Committee Historical Research Office, ed., *Peng Zhen shengping dashi nianbiao* (Chronology of the Major Events in the Life of Peng Zhen) (Beijing: Central Party History Press, 1992), p. 52.
15. See Theodore Shabad, *China's Changing Map: National and Regional Development, 1949-71* (New York: Praeger, 1972), pp. 234-35.
16. See Shao Ding, "Ji He Long" (Remembering He Long), in *Hong qi piao piao* (The Red Flag Waving), No. 6, Feb. 1, 1958, pp. 91-183 at p. 115.
17. See generally, Lazlo Ladany, *Law and Legality in China: The Testament of a China-watcher* (London: Hurst & Co., 1992).

18. See Frederick C. Teiwes, "The establishment and consolidation of the new regime, 1949-1957," in Roderick MacFarquhar, ed., *The Politics of China, 1949-1989* (Cambridge: Cambridge University Press, 1993), pp. 5-86 at pp. 79-80.
19. See e.g., "Look, these dogs in the water are not dead yet!" in *Survey of China Mainland Press*, No. 4032, Oct. 2, 1967, pp. 6-8 at p. 7.
20. In attacking Deng Xiaoping's work on the Secretariat, Mao noted that the work of the Secretariat was actually being done by Peng Zhen. See "Selected edition on Liu Shao-ch'i's counter-revolutionary revisionist crimes," in *Selections from China Mainland Magazines*, No. 651, Apr. 22, 1969, p. 1. Liu Shaoqi was attacked for supporting Peng's activities. *Id.*, p. 38. Also see "Dossiers of P'eng Chen," in *Selections from China Mainland Magazines*, Supplement No. 27, July 8, 1968, pp. 33-39 at p. 35. Peng's intelligence was also noted by Nikita Khrushchev. See Strobe Talbot, ed., *Khrushchev Remembers: The Last Testament* (Boston: Little Brown & Co., 1974), p. 281.
21. See Donald Klein and Anne Clark, *Biographical Dictionary of Chinese Communism 1921-1965* (Cambridge, MA: Harvard University Press, 1970), p. 714.
22. See e.g., "Counterrevolutionary revisionist P'eng Chen's towering crimes of opposition of the Party, socialism and the thought of Mao Tse-tung," in *Selections from China Mainland Magazines*, No. 640, Jan. 6, 1969, pp. 1-32 at p. 24. The attacks were no doubt also motivated in part by his resistance to the efforts of Jiang Qing to replace traditional Beijing Opera with a modern revolutionary variant.
23. See "Down with Ho Lung," in *Current Background*, No. 859, Aug. 8, 1968, pp. 15-26 at p. 23.
24. See e.g., "P'eng Chen's towering crimes," *supra*, pp. 33 *et seq.*
25. See CPC Central Party School, ed., *Yi er jiu yundong shiyao* (Outline History of the December Ninth Movement) (Beijing: Central Party School Press, 1986), p. 115. Liu's report

- appears as "Suqing guanmen zhuyi yu maoxian zhuyi" (Eliminate closed doorism and adventurism), in CPC Beijing Party Committee Party History Materials Compilation Committee, ed., *Yi er jiu yundong* (The December Ninth Movement) (Beijing: CPC Party History Materials Press, 1987), pp. 66-74; and China Modern Revolutionary History Materials Series, *Yi er jiu yundong ziliao* (Materials on the December Ninth Movement), Vol. 2 (Beijing: People's Press, 1982), pp. 1-12. For further discussion, see Feng Yi, ed., *Liu Shaoqi geming shijian he sixiang yanjiu* (Research on the Revolutionary Experience and Thought of Liu Shaoqi) (Beijing: History Education Society Press, 1988), pp. 87-90. For a chronology of the December Ninth Movement, see CPC Beijing Party Committee Party History Materials Compilation Committee, ed., *Yi er jiu yundong* (The December Ninth Movement) (Beijing: CPC Party History Materials Press, 1987), pp. 448-89. English language sources on the December Ninth Movement include John Israel, *Student Nationalism in China 1927-1937* (Stanford: Stanford University Press, 1966); John Israel and Donald W. Klein, *Rebels and Bureaucrats: China's December 9ers* (Berkeley, Los Angeles, and London: University of California Press, 1976); and Hubert Freyn, *Prelude to War: The Chinese Student Rebellion of 1935-1936* (Shanghai: The China Journal Publishing Co. Ltd., 1939).
26. See reminiscence of Zhang Youyu (a noted constitutional scholar, who served under Liu Shaoqi in the North China Bureau and later as Peng Zhen's deputy in the Beijing CPC Committee during the early 1960s) in Chen Shaochou, ed., *Liu Shaoqi zai baiqu* (Liu Shaoqi in the White Areas) (Beijing: CPC Party History Publishers, 1992), p. 140. Also see Guo Simin, Tianyu, *Women yan zhong de Liu Shaoqi* (Liu Shaoqi in Our Eyes) (Shijiazhuang: Hebei People's Press, 1992), p. 207.
 27. See Li Xuefeng, "Yi jiu san liu nian yi yue dao yi jiu san qi nian yi yue Zhonggong Beiping dang zuzhi ji qi huodong qingkuang" (January 1, 1936-January 1, 1937, the situation of

the CPC Beiping Party organization and its activities), in CPC Beijing Party Committee Party History Materials Compilation Committee, ed., *Yi er jiu yundong* (The December Ninth Movement) (Beijing: CPC Party History Materials Press, 1987), pp. 342-48, at p. 346. Although the city was renamed Beijing after 1949, at the time of the December 9th Movement the city was termed Beiping and is so labeled in subsequent CPC History materials.

28. See Chen Shaochou, ed., *Liu Shaoqi zai baiqu* (Liu Shaoqi in the White Areas) (Beijing: CPC Party History Publishers, 1992), p. 179.
29. See Yan'an zhongyang dangxiao de zhengfeng xuexi (Studying the Rectification of the Yan'an Central Party School) (Beijing: Central Party School Press, 1987), p. i.
30. See Peng Zhen, "Ling hui ershier wenjian de jingshen yu shijian" (The spirit and practice of the Twenty-Two Documents issued by the Leadership Council), in Chinese Academy of Social Sciences Information Research Bureau and Chinese Media History Information Office, eds, *Yan'an wencui* (Collection of Documents of Yan'an) (Beijing: Beijing Publishers, 1984), Vol. 1, pp. 29-34, especially p. 32.
31. *Id.*, p. 31.
32. See Roger Faligot and Remi Kauffer, *The Chinese Secret Service* (tr. Christine Donougher) (London: Headline Press, 1987), p. 165.
33. See Peng Zhen, "Sixiang fangfa wenti" (Questions about methods of thinking), in Yan'an zhongyang dangxiao de zhengfeng xuexi (Studying the Rectification of the Yan'an Central Party School) (Beijing: Central Party School Press, 1987), p. 7.
34. See e.g., Lazlo Ladany, *Law and Legality in China: The Testament of a China-watcher* (London: Hurst & Co., 1992), pp. 62-63.
35. See Peng Zhen, "Zhaokai qu renmin daibiao huiyi de chubu jingyan" (Preliminary experiences of the representative congresses in the open areas) (Aug. 7, 1950), in Peng Zhen

wenxuan (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), p. 202.

36. See Wang Chaobin, *San fan shi lu* (A Record of the Three Anti-campaign) (Beijing: Police Academy Press, 1992), p. 55.
37. See Peng Zhen, "Dangqian zhengfa gongzuo de jige wenti" (Several issues in contemporary political-legal work) (Mar. 15, 1980), in *Lun xin Zhongguo de zhengfa gongzuo* (On Political-Legal Work in the New China) (Beijing: Party Documents, 1992), p. 219.
38. See Peng Zhen, "Zai gongan gongzuo gaige huiyi yubei huiyi shang de jianghua" (Speech to meeting in preparation for meeting on reform in public security work) (Apr. 19, 1983), in Peng Zhen, *Lun xin Zhongguo de zhengfa gongzuo* (On Political-Legal Work in the New China) (Beijing: Party Documents, 1992), p. 341; and "Zai sheng, zizhiqiu, zhixiashi zhengfa lingdao ganbu lunxun banxueyuan de jianghua" (Speech to training academy for political-legal leading cadres at the provincial, autonomous region, and centrally administered municipality level) (Jan. 5, 1985), *Id.*, p. 367 and Peng Zhen, *Lun xin shiqi de shehuizhuyi minzhu yu fazhi jianshe* (On Building Socialist Democracy and the Legal System in the New Period) (Beijing: Party Documents, 1989), p. 238.
39. Bo Yibo remained one of Peng's staunchest supporters both before the Cultural Revolution and during the post-Mao policy debates. See discussion of the so-called "Shansi counter-revolutionary stronghold" led by Peng Zhen, Bo Yibo, and An Ziwen, in "Exposing the towering crimes of counter-revolutionary revisionist Li Ch'i against the Party, socialism, and Mao Tse-tung's thought," in *Selections from China Mainland Magazines*, Supplement No. 23, Apr. 16, 1968, p. 1. An Ziwen's role in securing renewal of Peng's place on the Party Politburo is discussed in Frederick C. Teiwes, "The establishment and consolidation of the new regime, 1949-1957," in Roderick MacFarquhar, ed., *The Politics of China, 1949-1989* (Cambridge: Cambridge University Press, 1993), pp. 5-86, especially p. 48, and in Bo Yibo, *Ruogan*

zhongda juece yu shijian de huigu (Review of Various Major Decisions and Affairs) (Beijing: Central Party School, 1991), p. 313. For further discussion of An Ziwen's links with Peng Zhen, see "Down with big renegade An Tzu-wen! Demolish the independent kingdom of the former Organization Department of the Central Committee," in *Selections from the China Mainland Press*, No. 3970, pp. 5-7. Peng's faith in the capacity of his political contacts was evident in his statement just prior to his fall in 1966 soliciting assistance from friends in the looming political crisis. See Byung-joon Ahn, *Chinese Politics and the Cultural Revolution: Dynamics of Policy Processes* (Seattle: University of Washington Press, 1976), p. 207.

40. Nie Rongzhen continually supported Peng even after Peng was dismissed from his posts in June 1966, affirming Mao's conclusions that during the 1950s and early 1960s Peng was actually doing the work of the Party Secretariat even though Deng Xiaoping was nominally general secretary. See "Selected edition on Liu Shao-ch'i's counter-revolutionary revisionist crimes," in *Selections from China Mainland Magazines*, No. 651, Apr. 22, 1969, p. 1.
41. See e.g., "Zhongyang junwei guanyu muqian xingshi he renwu de zhishi" (Directive from the Central Military Commission concerning the present situation and tasks), in Central Archives, ed., *Zhonggong zhongyang wenjian xuanji* (Compilation of Documents of the Chinese Communist Party Centre), Vol. XII:1939-1940, (Beijing: Party History Press, 1987), p. 283.
42. Nie Rongzhen recalled that Peng was in charge of the anti-Japanese war effort in Jin Cha Ji. See Nie Rongzhen, *Nie Rongzhen huiyilu* (Memoirs of Nie Rongzhen) (Hong Kong: Ming Pao, 1991/Beijing: PLA Publishers, 1984), p. 338. However, at the time this was primarily an underground effort centered on Party organizing, and by 1940-41 when the "hundred regiment offensive" and the "three alls campaign" entailed more direct military engagement, Peng was increasingly involved with central Party matters in Yan'an.

See Nie Rongzhen, *Nie Rongzhen huiyilu*, *supra*, p. 438; Kathleen Hartford, *Step By Step: Reform, Resistance, and Revolution in Chin-Ch'a-Chi Border Region 1937-1945* (Ph.D. dissertation, Stanford University, 1980), pp. 90-105; CPC Shanxi Party Committee Historical Research Office, ed., *Peng Zhen shengping dashi nianbiao* (Chronology of the Major Events in the Life of Peng Zhen) (Beijing: Central Party History Press, 1992), pp. 11-12.

43. See Shan Siyi, *Zai jiefang zhanzheng zhong fengfu fazhan* (Rich Development during the War of Liberation) (Beijing: PLA Press, 1991), pp. 22-23; Li Ying, ed., *Wenhua da geming zhong de ming ren zhiyu* (Cases of Famous Personalities in the Cultural Revolution) (Beijing: Nationalities Institute Press, 1993), pp. 77 *et seq.*; Zheng Xiaofeng, Shu Ling, *Tao Zhu zhuan* (Biography of Tao Zhu) (Beijing: Youth Publishing, 1992), p. 188. In hindsight, Peng's thinking may have been correct — the failure to build underground cells in the Manchurian cities led to appalling losses once decisions were made to take urban centers like Changchun. See generally, Zhang Zhenglong, *Xue bai xue hong* (White Snow Red Blood) (Hong Kong: Great Earth Publishing, 1991).
44. See Roderick MacFarquhar, *The Origins of the Cultural Revolution, I: Contradictions among the People* (London: Columbia University Press, 1974), p. 204, citing *Zhengfa hongqi* (Political-Legal Red Flag) (Oct. 17, 1967), p. 5.
45. Red Guard criticisms of the Chang Guan Lou Incident include "Events surrounding the Chang Guan Lou counter-revolutionary incident," *Dongfang hong* (The East is Red), Apr. 20, 1967, in *Selections from the China Mainland Press*, No. 3187, June 15, 1967, pp. 23-37; "Thoroughly disclosing the inside story of Chang Guan Lou counterrevolutionary incident," *Diyi zhanxian* (The First Battle Line), May 18, 1967, in *Selections from the China Mainland Press*, No. 4001 (Aug. 15, 1967); and "Big exposure of a conspiracy to usurp the Party and state leadership," *Guangming ribao* (Guangming Daily), Aug. 9, 1967, in *Selections from the China Mainland Press*, No.

- 4014 (Sept. 15, 1967). Also see Kenneth Lieberthal, *A Research Guide to Central Party and Government Meetings in China: 1949-1975* (White Plains, NY: International Arts and Sciences Press, 1976), pp. 176-77.
46. Kenneth Lieberthal credits Xiao Jia with writing the report. See Kenneth Lieberthal, *A Research Guide to Central Party and Government Meetings in China: 1949-1975* (White Plains, NY: International Arts and Sciences Press, 1976), p. 177. The report was allegedly delivered to Peng's deputy on the Beijing Party Committee, Zheng Tianxiang. See *Guangming ribao*, Aug. 9, 1967, p. 3.
 47. See Kenneth Lieberthal, *A Research Guide to Central Party and Government Meetings in China: 1949-1975* (White Plains, NY: International Arts and Sciences Press, 1976), p. 177. Also see Timothy Cheek, "Deng Tuo: a Chinese Leninist approach to journalism," in Carol Lee Hamrin and Timothy Cheek, eds, *China's Establishment Intellectuals* (Armonk, NY: M.E. Sharpe, 1986), pp. 92-123, especially p. 105.
 48. See Bo Yibo, *Ruogan zhongda juece yu shijian de huigu* (Review of Various Major Decisions and Affairs) (Beijing: Central Party School, 1991), p. 1026.
 49. See generally, Richard Baum and Frederick C. Teiwes, *Ssu-ch'ing: The Socialist Education Movement of 1962-1966* (Berkeley: University of California Press, 1968).
 50. The "First Ten Points" are included as Appendix B in Richard Baum and Frederick C. Teiwes, *Ssu-ch'ing: The Socialist Education Movement of 1962-1966* (Berkeley: University of California Press, 1968).
 51. The "Later Ten Points" are included as Appendix C in Richard Baum and Frederick C. Teiwes, *Ssu-ch'ing: The Socialist Education Movement of 1962-1966* (Berkeley: University of California Press, 1968), p. 76. Peng Zhen is widely credited as the author of the "Later Ten Points." See Richard Solomon, *Mao's Revolution and the Chinese Political Culture* (Berkeley: University of California Press, 1971), p. 435; Byung-joon Ahn, *Chinese Politics and the Cultural Revolution: Dynamics of*

- Policy Processes* (Seattle: University of Washington Press, 1976), p. 62.
52. See Art. 7, "First Ten Points," and Art. 2, para. 4, "Later Ten Points," in Richard Baum and Frederick C. Teiwes, *Ssu-ch'ing: The Socialist Education Movement of 1962-1966* (Berkeley: University of California Press, 1968), p. 76.
 53. Richard Baum and Frederick C. Teiwes, *Ssu-ch'ing: The Socialist Education Movement of 1962-1966* (Berkeley: University of California Press, 1968), pp. 29 *et seq.*
 54. See Byung-joon Ahn, *Chinese Politics and the Cultural Revolution: Dynamics of Policy Processes* (Seattle: University of Washington Press, 1976), p. 115.
 55. See generally, Hung Yung Lee, *The Politics of the Chinese Cultural Revolution: A Case Study* (Berkeley: University of California Press, 1978); Byung-joon Ahn, *Chinese Politics and the Cultural Revolution: Dynamics of Policy Processes* (Seattle: University of Washington Press, 1976); and Lowell Dittmer, *Liu Shao-ch'i and the Chinese Cultural Revolution: The Politics of Mass Criticism* (Berkeley: University of California Press, 1974).
 56. On this point, see Lowell Dittmer, *Liu Shao-ch'i and the Chinese Cultural Revolution: The Politics of Mass Criticism* (Berkeley: University of California Press, 1974).
 57. For discussion of Peng's role in transforming the NPC Standing Committee, see Murray Scott Tanner, "Organizations and politics in China's post-Mao law-making system," in Pitman B. Potter, ed., *Domestic Law Reforms in Post-Mao China* (Armonk, NY and London: M.E. Sharpe, 1994), pp. 56-93, especially pp. 72-76.
 58. Peng noted that some considered the NPC to be a rubber stamp, but that it was no longer a rubber stamp and if some comrades were unhappy about this, so be it. See Peng Zhen, "Jiaqiang minzhu yu fazhi jianshe, Jiaqiang renda changweihui gongzuo" (Strengthen construction of the democracy and the legal system, strengthen the work of the NPC Standing Committee), (June 27, 1986), in Peng Zhen

Lun xin shiqi de shehuizhuyi minzhu yu fazhi jianshe (On Building Socialist Democracy and the Legal System in the New Period) (Beijing: Party Documents, 1989), pp. 324-31, as cited in Murray Scott Tanner, "Bureaucratic and subcommittee development in the National People's Congress" (manuscript presented to the 1993 Annual Meeting of the Association of Asian Studies), p. 15.

59. See Nie Rongzhen, *Nie Rongzhen huiyilu* (Memoirs of Nie Rongzhen) (Hong Kong: *Ming Pao*, 1991/Beijing: PLA Publishers, 1984), p. 338.
60. See Peng Zhen, "Zhonggong zhongyang beifang fenju guanyu Jin Cha Ji bianqu muqian shizheng gangling" (Outline of the Northern Bureau of the CCP Central Committee on the present conditions and policies in Jin Cha Ji) (1940), in Peng Zhen, *Guanyu Jin Cha Ji bianqu dang de gongzuo he juti zhengce baogao* (Report on Party Work and Specific Policies in the Jin Cha Ji Border Region) (Beijing: Party School, 1981), p. 204. For a discussion of the drafting process, see Nie Rongzhen, *Nie Rongzhen huiyilu* (Memoirs of Nie Rongzhen) (Hong Kong: *Ming Pao*, 1991/Beijing: PLA Publishers 1984), pp. 414-18.
61. See Nie Rongzhen, *Nie Rongzhen huiyilu* (Memoirs of Nie Rongzhen) (Hong Kong: *Ming Pao*, 1991/Beijing: PLA Publishers, 1984), p. 387. Also see Kathleen Hartford, *Step By Step: Reform, Resistance, and Revolution in Chin-Ch'a-Chi Border Region 1937-1945* (Ph.D. dissertation, Stanford University, 1980), p. 61. Also see Kathleen Hartford, "Repression and Communist success: the case of Jin Cha Ji, 1938-1943," in Kathleen Hartford and Stephen M. Goldstein, eds, *Single Sparks: China's Rural Revolutions* (Armonk, NY and London: M.E. Sharpe, 1989), pp. 92-127, especially p. 94.
62. See "Zhongyang dangxiao jihua" (Plan for the Central Party School), in *Yan'an zhongyang dangxiao de zhengfeng xuexi* (Studying the Rectification of the Yan'an Central Party School) (Beijing: Central Party School Press, 1987), Vol. 1, p. 326. This work drew directly on Peng's previous experience

as director of the North China Bureau's Party School. See CPC Shanxi Party Committee Historical Research Office, ed., *Peng Zhen shengping dashi nianbiao* (Chronology of the Major Events in the Life of Peng Zhen) (Beijing: Central Party History Press, 1992), p. 10.

63. One week prior to the First NPC session that would approve the 1954 Constitution, a vice chair of the Constitution Drafting Committee asked Peng Zhen and Luo Ruiqing for leave to retreat to Beidaihe, and said everything was to be in Peng's hands. See *Dong Biwu nianpu* (Chronology of the Life of Dong Biwu) (Beijing: Central Documents Press, 1991), p. 440. From the time the Constitution Drafting Committee was formed in January 1953 through to the Constitution's enactment, Dong was in constant contact with Peng Zhen. Also, Peng's associate, An Ziwen, was also a vice chair of the Drafting Committee, thus providing Peng additional contacts with the process. See *Dong Biwu nianpu*, *supra*, pp. 417-42.
64. See Peng Zhen, "Zai di liu ci quanguo gongan huiyi shang de jianghua" (Speech at the sixth national public security conference) (June 9, 1954), in Peng Zhen, *Lun xin Zhongguo de zhengfa gongzuo* (On Political-Legal Work in the New China) (Beijing: Party Documents, 1992), pp. 96-103.
65. The principles are: (1) Uphold the Socialist Road; (2) Uphold Proletarian Dictatorship; (3) Uphold the Leadership of the Party; and (4) Uphold Marxism, Leninism, Mao Zedong Thought. See Deng Liqun, "Meiyou gongchandang lingdao jiu meiyou shehuizhuyi xiandaihua jianshe" (Without the leadership of the Communist Party there can be no socialist modernization construction), in *Sixiang jiben yuanze tongshu jiangzuo* (Popular Lectures on the Four Basic Principles) (Beijing: Broadcast Publishers, 1981), pp. 9-15.
66. See Peng Zhen, "Fazhan shehuizhuyi minzhu, jianquan shehuizhuyi fazhi" (Develop socialist democracy, perfect the socialist legal system), in *Faxue zazhi* (Legal Studies Journal), No. 5, 1982, pp. 5-6.

67. See "Quanguo zhengfa gongzuo huiyi zai Beijing juxing" (National political-legal work meeting convenes in Beijing), *Zhongguo fazhi bao* (China Legal System Gazette) (July 30, 1982).
68. See Art. 126, Constitution of the PRC (1982).
69. See Peng's discussion of the role of the Party Secretariat in "Shiyi renmin zhijie canjia guojia guanli de yizhong zhongyao xingshi" (An important form by which a billion people directly participate in management of the country), in *Xinhua yuebao* (New China Monthly) No. 5, 1982, p. 33.
70. See Peng Zhen, "Guanyu shehuizhuyi fazhi de jige wenti" (On several questions concerning the socialist legal system), in *Hongqi* (Red Flag) No. 11, 1979, p. 7.
71. *Id.*, p. 7.
72. See Peng Zhen, "Guanyu zhenya fangeming he zhengzhi fangeming tiaoli wenti de baogao" (Report on issues in the regulations on suppressing and controlling counter-revolutionaries) (Feb. 20, 1951), in *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), pp. 206-11; and Peng Zhen, *Lun xin Zhongguo de zhengfa gongzuo* (On Political-Legal Work in the New China) (Beijing: Party Documents, 1992), pp. 13-18, in which Peng noted that the regulations on counter-revolutionaries were necessary in order to provide a "legal weapon" for use in suppressing counter-revolutionaries, to provide "standards for the measurement of penalties in adjudicating counter-revolutionary crimes," and in order "to overcome leftist and rightist tendencies" in the campaign. Also see Peng Zhen, "Guanyu zhengzhi tanwu tiaoli caoan de shuoming" (Explanation of the draft regulations for the control of corruption) (Apr. 18, 1952), *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), pp. 229-36; and Peng Zhen, *Lun xin Zhongguo de zhengfa gongzuo* (On Political-Legal Work in the New China) (Beijing: Party Documents, 1992), pp. 62-69, in which Peng noted that the *san fan/wu fan* campaign had been conducted under the leadership of the Party,

- and that the regulations were part of this effort to "punish corrupt elements," "consolidate the victories of the *san fan* and *wu fan* campaigns," and in order to "wage continued struggle against corruption and theft."
73. See Peng Zhen, "Quanguo renda changweihui jiguan yao wei lifa gongzuo fuwu" (Institutions of the National People's Congress should serve the work of legislation) (Oct. 29, 1954), in *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), pp. 260-65, in which Peng emphasizes "the leadership of Mao Zedong and the repeated discussions within the Party" as the basis upon which the drafting of the constitution proceeded, and that law "represents the will of the ruling class" and should "suit the needs of the Chinese people."
74. See e.g., Peng Zhen, "Zai quanguo jiancha yewu huiyi shang de baogao" (Report to the National Procurators Conference) (Nov. 21, 1954), in *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), pp. 266-71; and Peng Zhen, *Lun xin Zhongguo de zhengfa gongzuo* (On Political-Legal Work in the New China) (Beijing: Party Documents, 1992), pp. 109-14.
75. See "Peng Zhen tongzhi xiang canjia quanguo gong, jian, fa youguan huiyi de tongzhi zuo zhongyao jianghua" (Comrade Peng Zhen gives an important speech to comrades participating in the national meetings on public security, procuracy, and the judiciary), in *Xinhua yuebao* (New China Monthly) No. 7, 1979, p. 281.
76. See Peng Zhen, "Guanyu xing fa caoan he xingshi susong fa caoan de shuoming" (Explanation of the draft criminal law and the draft criminal procedure law) (June 7, 1979), in Peng Zhen, *Lun xin Zhongguo de zhengfa gongzuo* (On Political-Legal Work in the New China) (Beijing: Party Documents, 1992), pp. 146-55, 156-70; "Guanyu qige falu caoan de shuoming" (Explanation of seven draft laws) (June 26, 1979), in *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), pp. 368-82; and Peng Zhen, *Lun*

- xin shiqi de shehuizhuyi minzhu yu fazhi jianshe* (On Building Socialist Democracy and the Legal System in the New Period) (Beijing: Party Documents, 1989), pp. 1-16.
77. See *Zhongguo fazhi bao* (Chinese Legal System Gazette), Sept. 5, 1980. Also see Peng Zhen, "Report on the work of the Standing Committee of the National People's Congress of the PRC," in *Main Documents of the Third Session of the Fifth NPC* (Beijing: Foreign Languages Press, 1980), p. 98.
 78. See Preamble and Arts. 6, 7, and 25 Constitution of the PRC (1982).
 79. See Peng Zhen, "Zai di liu jie quanguo renmin daibiao dahui di yi ci huiyi shang de jianghua" (Speech to first session of 6th National People's Congress) (June 21, 1983) in *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), pp. 473-81; and Peng Zhen, *Lun xin shiqi de shehuizhuyi minzhu yu fazhi jianshe* (On Building Socialist Democracy and the Legal System in the New Period) (Beijing: Party Documents, 1989), pp. 186-95.
 80. See Sen Lin, *China's Decentralization and Provincial Economic Legislation* (Ph.D. dissertation, University of Calgary, 1994), pp. 102 *et seq.*
 81. For example, Peng claimed to have personally proposed the factory director responsibility system but suggested that the delay in implementing it through the Law on State-Owned Industrial Enterprises was due to difficulties in reaching consensus on specific legislative language. See "Peng Zhen answers journalists' questions," in *Beijing Review*, No. 17, Apr. 27, 1987.
 82. See National People's Congress 1981 procedures for interpreting ambiguous laws and regulations. See *Selections from World Broadcasts*, FE/67 48/BII/3/13, June 1981, p. 3.
 83. For texts of these and other regulations, see Han Yanlong and Chang Zhaoru, *Zhongguo xin minzhuzhuyi geming shiqi genju di fazhi wenxian xuanbian* (Collection of Legal Documents from the Base Areas during China's New Democratic Revolution), 3 vols (Beijing, 1981). See also Jin Cha Ji Bianqu

- Xingzheng Wei Yuanhui (Administrative Committee of Jin Cha Ji Border Region), ed., *Xianxing faling huiji* (Collection of Current Laws and Edicts), 2 vols, 1945. For general discussion of laws and regulations in Jin Cha Ji and other border regions, see Lan Quanpu, *Jiefangqu fagui gaiyao* (Outline of Laws and Regulations in the Liberated Areas) (Beijing: Masses Publishers, 1982). Also see Kathleen Hartford, *Step By Step: Reform, Resistance, and Revolution in Chin-Ch'a-Chi Border Region 1937-1945* (Ph.D. dissertation, Stanford University, 1980).
84. The original text appears in Administrative Committee of Jin Cha Ji Border Region, ed., *Xianxing faling huiji* (Collection of Current Laws and Edicts), Vol. 1, pp. 1-5. The "Program" was reprinted in Peng Zhen, *Guanyu Jin Cha Ji bianqu dang de gongzuo he juti zhengce baogao* (Report on Party Work and Specific Policies in the Jin Cha Ji Border Region) (Beijing: Party School, 1981), pp. 210-14. While the original version of this report is unavailable, the veracity of the reprint is suggested by the accuracy of the reprint of the "Current Administrative Program for the Jin Cha Ji Border Region," contained in the same volume.
 85. For discussion of the role of Party committees in carrying out land policy, see Peng Zhen, *Guanyu Jin Cha Ji bianqu dang de gongzuo he juti zhengce baogao* (Report on Party Work and Specific Policies in the Jin Cha Ji Border Region) (Beijing: Party School, 1981), pp. 87-101.
 86. For a discussion of these procedural regulations, see Lan Quanpu, *Jiefangqu fagui gaiyao* (Outline of Laws and Regulations in the Liberated Areas) (Beijing: Masses Publishers, 1982), pp. 127-37. Also Han Yanlong and Chang Zhaoru, *Zhongguo xin minzhuzhuyi geming shiqi genju di fazhi wenxian xuanbian* (Collection of Legal Documents from the Base Areas during China's New Democratic Revolution), Vol. 3, pp. 91-97, 392-93.
 87. See Sect. 2, Arts. 3-8, "Decision of the Jin Cha Ji Border Region concerning arrest, search, investigation, and han-

- dling of crimes and serious criminals," in Han and Chang, *Zhongguo xin minzhuzhuyi geming shiqi genju di fazhi wenxian xuanbian* (Collection of Legal Documents from the Base Areas during China's New Democratic Revolution), Vol. 3, pp. 92-93.
88. See Peng Zhen, *Guanyu Jin Cha Ji bianqu dang de gongzuo he juti zhengce baogao* (Report on Party Work and Specific Policies in the Jin Cha Ji Border Region) (Beijing: Party School, 1981). A hand-written version edited in January 1942 is available as Peng Zhen, *Zhonggong Jin Cha Ji bianqu zhi ge zhong zhengce* (Various Policies of the CPC in Jin Cha Ji Border Region) (1942) (Hoover Institution folio). The hand written transcription omits sections in the 1981 text and abbreviates others. It also contains inconsistencies as to subtitling and sequence of discussion. Nonetheless, a careful comparison of the two documents reveals no substantive contradictions in the counterpart passages. Also the 1981 text issued by the Party School is quite consistent with the content of Peng's reporting to various North China Sub-Bureau meetings in 1940 and 1941. It is quite possible, therefore, that the hand written transcription was taken from Peng's actual remarks while the 1981 text is based on Peng's formal written report. This would be consistent with the practice of Chinese political reporting generally.
 89. See Peng Zhen, *Guanyu Jin Cha Ji bianqu dang de gongzuo he juti zhengce baogao* (Report on Party Work and Specific Policies in the Jin Cha Ji Border Region) (Beijing: Party School, 1981), pp. 20, 24-25. For text of the "Regulations for country, district, and village organizations in the Jin Cha Ji Border Region," see Han Yanlong and Chang Zhaoru, *Zhongguo xin minzhuzhuyi geming shiqi genju di fazhi wenxian xuanbian* (Collection of Legal Documents from the Base Areas during China's New Democratic Revolution) (Beijing, 1981), Vol. 2, pp. 272-81.
 90. Peng Zhen, *Guanyu Jin Cha Ji bianqu dang de gongzuo he juti zhengce baogao* (Report on Party Work and Specific Policies

- in the Jin Cha Ji Border Region) (Beijing: Party School, 1981), pp. 27-31. Also see Han and Chang, *Zhongguo xin minzhuzhuyi geming shiqi genju di fazhi wenxian xuanbian* (Collection of Legal Documents from the Base Areas during China's New Democratic Revolution), Vol. 2, pp. 272-81.
91. Peng Zhen, *Guanyu Jin Cha Ji bianqu dang de gongzuo he juti zhengce baogao* (Report on Party Work and Specific Policies in the Jin Cha Ji Border Region) (Beijing: Party School, 1981), pp. 27-28.
 92. *Id.*, p. 29.
 93. *Id.*, p. 166.
 94. *Id.*, pp. 180, 194-95. Peng's assessment of the political backwardness of the local populace was cause for stinging criticism during the Cultural Revolution, when Peng's views were contrasted with Mao's expressed faith in the progressive and revolutionary qualities of the proletariat. See Defend the East May 16 Fighting Force of Nankai University [Mighty Torrent] Fighting Group, "Da dao laopai da bantu Peng Zhen" (Strike down old line big traitor Peng Zhen) Vol. 1, in Defend the East May 16 Fighting Force of Nankai University, ed., *Wei Dong "Hong Hai Yan"* (Defend the East "Red Sea Swallow") June 12, 1967, pp. 3-16, especially pp. 10-11.
 95. See generally, Wu Jiemin, ed., *Yan'an Ma Lie xueyuan huiyilu* (Memoirs of the Yan'an Marxism-Leninism Institute) (Beijing: Academy of Social Sciences Press, 1991). Also see Dai Qing, Wang Shiwei and "Wild Lilies" (Apter and Cheek, eds) (Armonk, NY and London: M.E. Sharpe, 1994), p. xviii.
 96. See "Zhongyang dangxiao jihua" (Plan for the Central Party School), in *Yan'an zhongyang dangxiao de zhengfeng xuexi* (Studying the Rectification of the Yan'an Central Party School) (Beijing: Central Party School Press, 1987), Vol. 1, p. 326.
 97. See "Zhongguo gongchandang zhongyang dangxiao zhaoshou xinsheng zige guiding" (Regulations on qualifications of newly admitted students to the CPC Central Party

School), in *Yan'an zhongyang dangxiao de zhengfeng xuexi* (Studying the Rectification of the Yan'an Central Party School) (Beijing: Central Party School Press, 1987), Vol. 1, p. 326.

98. See e.g., David Apter and Tony Saich, *Revolutionary Discourse in Mao's Republic* (Cambridge, MA: Harvard University Press, 1994); John Byron and Robert Pack, *The Claws of the Dragon: Kang Sheng — The Evil Genius Behind Mao — and His Legacy of Terror* (New York: Simon and Schuster, 1992), pp. 183 *et. seq.*; and Dai Qing, *Wang Shiwei and "Wild Lilies"* (Apter and Cheek, eds) (Armonk, NY and London: M.E. Sharpe, 1994). These views contrast with less critical accounts from an earlier age when information was more difficult to come by. See e.g., Mark Seldon, *The Yenan Way in Revolutionary China* (Cambridge, MA: Harvard University Press, 1971). Also see Boyd Compton, *Mao's China: Party Reform Documents, 1942-44* (Seattle: University of Washington Press, 1966), pp. xxxiv-ix.
99. See Peng Zhen, "Ling hui ershier wenjian de jingshen yu shijian" (The spirit and practice of the Twenty-Two Documents issued by the Leadership Council), in Chinese Academy of Social Sciences Information Research Bureau and Chinese Media History Information Office, eds, *Yan'an Wencui* (Collection of Documents of Yan'an) (Beijing: Beijing Publishers, 1984), Vol. 1, p. 29. In this summary, Peng addresses the concepts and implementation of 22 documents, namely (1) Mao's Feb. 1, 1942 speech to the Party School "On reforming Party workstyle;" (2) Mao's Feb. 8, 1942 speech to the Yan'an Cadres Conference "Oppose stereotyped writing (*bagu*);" (3) Kang Sheng's two reports "Report made twice to cadres meetings concerning opposing subjectivism and factionalism" and "Bitterly attack stereotyped writing (*bagu*);" (4) Party Central decision on strengthening Party character;" (5) Party Central decision on investigation and research; (6) Party Central decision on the Party school; (7) Party Central decision on education of technical cadres; (8) Mao speech to

border area participation group; (9) Mao speech on "Transforming our thought;" (10) Mao speech on "Opposing liberalism;" (11) Mao speech on investigation of villages; (12) The six articles summarizing Party history; (13) Stalin's twelve articles on bourgeoisization of the Party; (14) Liu Shaoqi's "The interest of individual Party members is to unconditionally serve the interests of the Party," "Listing of various errors in ideology and thought within the Party," "Attitudes toward handling errors of ideology and thought within the Party," and "Attitudes on handling conflict within the Party," that comprise Sections 2, 3, 4, and 5 of Chapter Two of Liu's "Transformation of Party Members;" (15) Chen Yun's "How to make a Party member;" (16) Thought of the Ninth Meeting of the Red Fourth Army on incorrect phenomena within the Party; (17) Handbook on guiding propaganda; (18) Decision of the Central Committee Propaganda Department on discussion of Party Central decisions at Yan'an and Mao's report on rectification; (19) Stalin on leadership and testing; (20) Lenin and Stalin on Party discipline and Party democracy; (21) Stalin on egalitarianism; (22) G.M. Dimitrov (*Jimitekefu*) on cadre policy and cadre education policy.

100. See Peng Zhen, "Ling hui ershier wenjian de jingshen yu shijian" (The spirit and practice of the Twenty-Two Documents issued by the Leadership Council), in Chinese Academy of Social Sciences Information Research Bureau and Chinese Media History Information Office, eds, *Yan'an Wencui* (Collection of Documents of Yan'an) (Beijing: Beijing Publishers, 1984) Vol. 1, p. 32, in which he notes, "Since we have only one standpoint, while it may definitely be insufficient, nevertheless it still follows different revolutionary stages and differences in specific issues and economic and political conditions, so that in the course of resolving problems these differences are expressed," and "The specific application of these concepts (i.e. objectivism and materialism)

- should take into account the differences in issues and specific conditions, even though the changes will be endless."
101. For a discussion of Kang Sheng's role in the salvation movement during the Yan'an rectification, see John Byron and Robert Pack, *The Claws of the Dragon: Kang Sheng — The Evil Genius Behind Mao — and His Legacy of Terror* (New York: Simon and Schuster, 1992).
 102. See Peng Zhen, "Sixiang fangfa wenti" (Questions about methods of thinking), in *Yan'an zhongyang dangxiao de zhengfeng xuexi* (Studying the Rectification of the Yan'an Central Party School) (Beijing: Central Party School Press, 1987), p. 7.
 103. *Id.*, p. 8.
 104. Peng's attack on egalitarianism was intended in part to respond to criticisms like those from Wang Shiwei that the Party elite's privileges were betraying the revolution. See Dai Qing, *Wang Shiwei and "Wild Lilies"* (Apter and Cheek, eds) (Armonk, NY and London: M.E. Sharpe, 1994).
 105. See Peng Zhen, "Sixiang fangfa wenti" (Questions about methods of thinking), in *Yan'an zhongyang dangxiao de zhengfeng xuexi* (Studying the Rectification of the Yan'an Central Party School) (Beijing: Central Party School Press, 1987), p. 10.
 106. *Id.*, p. 17.
 107. Liu Shaoqi once commented that Peng could be extremely sectarian in his outlook — an indication that Peng's vigilance in controlling non-Party elements was considered somewhat extreme. See *Selections from China Mainland Magazines*, No. 651, Apr. 22, 1969, p. 39.
 108. See Donald Klein and Anne Clark, *Biographical Dictionary of Chinese Communism 1921-1965* (Cambridge, MA: Harvard University Press, 1970), p. 715.
 109. That Peng may also have been influenced by Kuomintang law is indicated by Red Guard charges that Peng and Liu Shaoqi "openly advocated that law has the nature of continuity" and that "the old laws of the Kuomintang may be

- continued." See James Seymour, *China: The Politics of Revolutionary Reintegration* (New York: Thomas Crowell, 1976), p. 92.
110. See Peng Zhen, "Guanyu zhenya fangeming huodong he zhengzhi fangeming tiaoli wenti de baogao" (Report on questions concerning the suppression of counter-revolutionary activity and regulations for the punishment of counter-revolutionaries), in *Zhongyang zhengshi gongbao* (Central Political Affairs Bulletin), No. 25, 1951, pp. 4-6.
 111. Art. 7 of the Common Program of the Chinese People's Political Consultative Conference addresses directly the respective roles of harshness and leniency in handling counter-revolutionaries. See Chen Hefu, *Zhongguo xianfa leibian* (Compilation of Chinese Constitutions) (Beijing: Social Sciences Press, 1980).
 112. See Peng Zhen, "Report on political-legal work and the present tasks," in *Current Background*, No. 91 (July 10, 1951), pp. 1-9.
 113. See Arts. 3, 4 and 5 of "PRC regulations for the punishment of counter-revolutionaries" in "Zhongyang renmin zhengfu guanyu gongbu shixing Zhonghua renmin gongheguo zhengzhi fangeming tiaoli de mingling" (Orders of the Central People's Government Concerning Promulgation and Implementation of the PRC Law for Punishment of Counter-revolutionaries) (Beijing, 1951), p. 2.
 114. See Art. 20 of "PRC regulations for the punishment of counter-revolutionaries," in "Zhongyang renmin zhengfu guanyu gongbu shixing Zhonghua renmin gongheguo zhengzhi fangeming tiaoli de mingling" (Orders of the Central People's Government Concerning Promulgation and Implementation of the PRC Law for Punishment of Counter-revolutionaries) (Beijing, 1951), p. 2.
 115. See Peng Zhen, "Guanyu Zhonghua renmin gongheguo zhengzhi tanwu tiaoli caoan de shuoming" (Explanation of draft regulations for punishment of corruption in the PRC), in *Renmin shouce* (People's Handbook), 1952, pp. 52-55. Also

- see "Zhonghua renmin gongheguo zhengzhi tanwu tiaoli" (PRC draft regulations for punishment of corruption), in *Renmin shouce* (People's Handbook), 1952, pp. 50-51.
116. See "Zhonghua renmin gongheguo zhengzhi tanwu tiaoli" (PRC draft regulations for punishment of corruption), Art. 10, in *Renmin shouce* (People's Handbook), 1952, p. 51.
 117. While the regulations established a hierarchy of sanctions for crimes of varying degrees of seriousness measured by value of loss, there is little in the way of standards for computation or for determining other types of seriousness. See "Zhonghua renmin gongheguo zhengzhi tanwu tiaoli" (PRC draft regulations for punishment of corruption), in *Renmin shouce* (People's Handbook), 1952, pp. 51-52.
 118. See Peng Zhen, "Guanyu Zhonghua renmin gongheguo zhengzhi tanwu tiaoli caoan de shuoming" (Explanation of draft regulations for punishment of corruption in the PRC), in *Renmin shouce* (People's Handbook), 1952, p. 52.
 119. See Peng Zhen, "Beijing shi wu nian lai zhengfu gongzuo qingkuang he jinhou gongzuo renwu" (Government work in Beijing during the first fifteen years and work tasks for the future), in *Xinhua yuebao* (New China Monthly), No. 9, 1954, pp. 28-30.
 120. See Peng Zhen, "Gongmin zai falu mianqian ren ren pingdeng" (All citizens are equal before the law) (Sept. 17, 1954), in *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), pp. 255-59; and Peng Zhen, *Lun xin Zhongguo de zhengfa gongzuo* (On Political-Legal Work in the New China) (Beijing: Party Documents, 1992), pp. 104-09. Also see Art. 85 of the 1954 Constitution, in Chen Hefu, *Zhongguo xianfa leibian* (Compilation of Chinese Constitutions) (Beijing: Social Sciences Press, 1980), p. 232; *Zhengfa hongqi* (Politics and Law Red Flag), Oct. 17, 1967, p. 8; *Cuijiu zhanbao* (Militant Journal for Smashing the Old), May 25, 1967, p. 3.
 121. See e.g., Peng Zhen, "Gongmin zai falu mianqian ren ren pingdeng" (All citizens are equal before the law), in *Peng*

- Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), pp. 255-59.
122. See *Cuijiu zhanbao* (Militant Journal for Smashing the Old), May 25, 1967, p. 3, and "Counterrevolutionary revisionist P'eng Chen's towering crimes," p. 2. The theme of equality before the law was to re-emerge during the post-Mao period. See Chen Changhang, "'Falü pingdeng' de lixiang, xianshi, lishi" (The ideals, reality, and history of 'Everyone is equal before the law'), in Chinese Academy of Social Sciences Law Institute, ed., *Lun falu mianqian ren ren pingdeng* (On Everyone is Equal before the Law) (Beijing: Law Publishers, 1981), pp. 141-49.
 123. See generally, Roderick MacFarquhar, *Origins of the Cultural Revolution*, Vol. 1 (London: Oxford University Press, 1974).
 124. For a review of contrasting scholarly views, see Frederick C. Teiwes, "The establishment and consolidation of the new regime, 1949-1957," in Roderick MacFarquhar, ed., *The Politics of China, 1949-1989* (Cambridge: Cambridge University Press, 1993), pp. 5-86, especially pp. 79-80.
 125. See e.g., Roderick MacFarquhar, *Origins of the Cultural Revolution*, Vol. 1 (London: Oxford University Press, 1974).
 126. See e.g., Peng Zhen, "Zhan zai geming he jianshe de zui qianxian" (Stand in the forefront of building the revolution) (Nov. 25, 1958), in *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), p. 313; where Peng recites Maoist doctrine on avoiding the doctrine of the mean and middle of the roadism, but also concludes that unreasonable fault finding ("*chui mao qiu ci*") must be stopped. Also see Peng Zhen, "Zai quanguo gongan, jiancha, sifa huiyi shang de jianghua" (Speech to the national conference on public security, procuracy, and the judiciary) (Aug. 16, 1958), in Peng Zhen, *Lun xin Zhongguo de zhengfa gongzuo* (On Political-Legal Work in the New China) (Beijing: Party Documents, 1992), p. 124, where Peng expressed doubts about unreasoned expansion of the movement.

127. See Peng Zhen, "Gongmin zai falu mianqian ren ren pingdeng" (All citizens are equal before the law) (Sept. 17, 1954), in Peng Zhen, *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), p. 255; and Peng Zhen, *Lun xin Zhongguo de zhengfa gongzuo* (On Political-Legal Work in the New China) (Beijing: Party Documents, 1992), p. 104. This theme continued after his rehabilitation as well. In his discussion of "Seven Draft Laws," Peng noted that the pursuit of special privileges would undermine the legal system. See Peng Zhen, "Guanyu qige falu caoan de shuoming" (Explanation of seven draft laws) (June 26, 1979), in *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), pp. 368-82; Peng Zhen, *Lun xin Zhongguo de zhengfa gongzuo* (On Political-Legal Work in the New China) (Beijing: Party Documents, 1992), pp. 156-70; and Peng Zhen, *Lun xin shiqi de shehuizhuyi minzhu yu fazhi jianshe* (On Building Socialist Democracy and the Legal System in the New Period) (Beijing: Party Documents, 1989), pp. 1-16. Moreover, continued reference to the ongoing presence of "leftist remnants" reveals concern that such remnants in particular yet will seek to manipulate the judicial system for their own political benefit. See Peng Zhen, "Guanyu qige falu caoan de shuoming" (Explanation of seven draft laws) (June 26, 1979), in *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), pp. 368-82.
128. See "Zai tan zhenli you meiyou jiejixing" (A further discussion on whether truth has a class nature), in *Qianxian* (Frontline) No. 17, 1965. Also see "Counterrevolutionary revisionist P'eng Chen's towering crimes of opposition of the Party, socialism and the thought of Mao Tse-tung," in *Selections from China Mainland Magazines*, No. 649, Jan. 6, 1969, p. 2.
129. See "Guanyu xueshu taolun de jige wenti" (On various issues of study and discussion) (Sept. 23, 1964), in *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's

- Press, 1991), p. 354. For critiques of Peng's view see "Counterrevolutionary revisionist P'eng Chen's towering crimes," p. 2. Also see Y. C. Chang, *Factional and Coalition Politics in China: The Cultural Revolution and Its Aftermath* (New York: Praeger, 1976), p. 14; P'eng Shu-tse, *The Chinese Communist Party in Power* (New York: Monad Press, 1980), p. 279.
130. See "Zai tan zhenli you meiyou jiejixing" (A further discussion on whether truth has a class nature), in *Qianxian* (Frontline), No. 17, 1965, pp. 47-49. For discussion of *Qianxian* and its significance, see Timothy Cheek, "Deng Tuo: culture, Leninism, and alternative Marxism in the Chinese Communist Party," in *The China Quarterly* (Sept. 1981), p. 484.
131. For a discussion of Mao's contention that all understanding has a class character, see Stuart Schram, *The Political Thought of Mao Tse-tung* (New York: Praeger, 1969), pp. 180-85, 190-94.
132. See Peng Zhen, "Guanyu qige falu caoan de shuoming" (Explanation of the seven draft laws) (June 26, 1979), in *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), p. 368.
133. See Peng Zhen, "Jinyibu shishi xianfa, yange anzhaio xianfa banshi" (Progressively implement the Constitution, do thing strictly according to the Constitution) (Dec. 3, 1983), in *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), p. 482; also in Peng Zhen, *Lun xin Zhongguo de zhengfa gongzuo* (On Political-Legal Work in the New China) (Beijing: Party Documents, 1992), p. 352; and Peng Zhen, *Lun xin shiqi de shehuizhuyi minzhu yu fazhi jianshe* (On Building Socialist Democracy and the Legal System in the New Period) (Beijing: Party Documents, 1989), p. 201.
134. See Peng Zhen, *Guanyu Jin Cha Ji bianqu dang de gongzuo he juti zhengce baogao* (Report on Party Work and Specific Policies in the Jin Cha Ji Border Region) (Beijing: Party School, 1981), pp. 51-54.

135. See e.g., Peng Zhen, "Gongmin zai falu mianqian ren ren pingdeng" (All citizens are equal before the law) (Sept. 17, 1954), in *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), pp. 255-59; and Peng Zhen, *Lun xin Zhongguo de zhengfa gongzuo* (On Political-Legal Work in the New China) (Beijing: Party Documents, 1992), pp. 104-09.
136. In his January 31, 1965 speech to the second session of the Fourth National Committee of the All-China Youth Federation and the simultaneously held Eighteenth National Students Representative Conference, Peng pointed out that the "Party, in dealing with young people with different family origins and experience, attached importance to their behavior." See *Selections from the China Mainland Press*, No. 3395 (Feb. 11, 1965). Also see Stanley Rosen, *Red Guard Factionalism and the Cultural Revolution in Guangzhou (Canton)* (Boulder, Colo.: Westview Press, 1982), p. 85. For Mao's view, see Arts. 3 and 5, "First Ten Points." For Peng's view, see Arts. 3 and 9, "Later Ten Points." The "First Ten Points" are included as Appendix B, the "Later Ten Points" as Appendix C in Richard Baum and Frederick C. Teiwes, *Ssu-ch'ing: The Socialist Education Movement of 1962-1966* (Berkeley: University of California Press, 1968). Also see Note 54 and accompanying text.
137. See "Later Ten Points," Art. 10, in Richard Baum and Frederick C. Teiwes, *Ssu-ch'ing: The Socialist Education Movement of 1962-1966* (Berkeley: University of California Press, 1968), pp. 93-94.
138. See Peng Zhen, "Bu jin yao kao dang de zhengce, er yao yi fa ban shi" (Don't just rely on Party policy, do things according to law) (Mar. 13, 1984), in *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), p. 491; also in Peng Zhen, *Lun xin Zhongguo de zhengfa gongzuo* (On Political-Legal Work in the New China) (Beijing: Party Documents, 1992), p. 361; and Peng Zhen, *Lun xin shiqi de shehuizhuyi minzhu yu fazhi jianshe* (On Building Socialist

- Democracy and the Legal System in the New Period) (Beijing: Party Documents, 1989), p. 218.
139. See Peng Zhen, "Quanguo renda changweihui he difang ren da changweihui de guanxi" (On relations between the NPC Standing Committee and local people's congresses standing committees) (May 28, 1984), in Peng Zhen, *Lun xin shiqi de shehuizhuyi minzhu yu fazhi jianshe* (On Building Socialist Democracy and the Legal System in the New Period) (Beijing: Party Documents, 1989), p. 231.
140. See Peng Zhen, "Dang de zuzhi gongzuo de jige wenti" (On various questions of Party organization work) (Apr. 1, 1954), in *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), p. 248.
141. See Peng Zhen, "Zai zhongyang zhengzhiju kuoda huiyi shang de fayan" (Speech at the expanded meeting of the central politburo) (June 21, 1989), in *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), p. 659; also in Peng Zhen, *Lun xin shiqi de shehuizhuyi minzhu yu fazhi jianshe* (On Building Socialist Democracy and the Legal System in the New Period) (Beijing: Party Documents, 1989), p. 436.
142. See Peng Zhen, "Yong xianfa he falu tongyi sixiang" (Use the constitution and laws to unify thought) (May 26, 1989), in *Peng Zhen wenxuan* (Collected Works of Peng Zhen) (Beijing: People's Press, 1991), p. 655; also in Peng Zhen, *Lun xin shiqi de shehuizhuyi minzhu yu fazhi jianshe* (On Building Socialist Democracy and the Legal System in the New Period) (Beijing: Party Documents, 1989), p. 432.
143. See "Peng Zhen calls for political reform," *Ching Pao* (HK) Mar. 5, 1993, in *FBIS Daily Report-China*, Mar. 8, 1993, p. 26.