



## Freeman Chair in China Studies

### 費和中國研究講座

#### **Symposium Synopsis: Irreconcilable Differences?: The Rule of Law vs. Democratization in China** **September 18, 2006**

On September 18, 2006 the Freeman Chair in China Studies sponsored a symposium entitled: “Irreconcilable Differences?: The Rule of Law vs. Democratization in China,” which examined the findings of a just-published book edited by **Dr. Suisheng (Sam) Zhao** of Denver University, entitled, *Debating Political Reform in China: Rule of Law vs. Democratization*. The book, sparked by the views of Chinese intellectual Pan Wei who believes China can introduce legality while eschewing democratization, offers 14 essays by Chinese and Western specialists including Larry Diamond, Edward Friedman, and Pan Wei.

**Dr. Bates Gill**, the Freeman Chair in China Studies, provided the opening remarks. The first panel, addressing the one-party state and rule of law in China, was led by **Dr. Suisheng (Sam) Zhao**, who reviewed the concept of a consultative rule of law regime, the subject of the book’s first essay, authored by Pan Wei. Dr. Zhao noted that Pan Wei believes establishing the rule of law is China’s most likely form of political reform but said he disagrees with the assertion that democracy is not appropriate for China, noting that he believes democratization is the best eventual outcome.

**Dr. Jerome Cohen**, Professor of Law, New York University School of Law, began his presentation with the assertion that there are no prospects for the democratization of China in the near future. Dr. Cohen then presented two possible scenarios that would lead to the establishment of a true rule of law regime in China: First, the emergence of a “rights conscious” leader who wanted to establish the rule of law; and second, a weak/threatened leader who would promote the rule of law in order to remain in power. Dr. Cohen noted that little progress is being made towards establishing a rule of law regime, particularly in light of the recent imprisonment of several prominent Chinese lawyers, but that death penalty reform was one of the few exceptions.

The second panel focused on the rule of law and prospects for democratization in China and featured **Dr. Stanley Rosen**, Professor and Director, East Asian Studies Center, University of Southern California, and **Dr. Tianjian Shi**, Associate Professor, Department of Political Science, Duke University.

**Dr. Rosen** addressed the work of Pan Wei, and also noted both the necessity and dearth of visionary reformers needed for the rise of democracy in China. Dr. Rosen also commented that the current situation of a market economy without market rule of law is unsustainable and that any reforms introduced by the government will be suspended if they threaten political stability.

**Dr. Tianjin Shi** continued the discussion with an empirical focus. In a power-point presentation, Dr. Shi shared the findings of a study measuring both the desired level of democracy and the perceived level of democracy of various countries in Asia, and found that both the desired and perceived levels in China were high. In short, people in China want democracy, but perceive it as being at an already high level. He offered several explanations for this phenomenon, including political fear, political indoctrination, and a different understanding of what democracy means.

**Carl Minzner**, Council on Foreign Relations Visiting International Affairs Fellow, Freeman Chair in China Studies, CSIS, made the keynote remarks at lunch. He began by outlining two significant problems impeding the establishment of the rule of law in China: One, the excessive concentration of power in the hands of local elites, and the absence of checks and balances; and two, the fact that although Chinese leaders have taken steps to resolve the problem, they have not addressed the core issue of the matter. Minzner notes that if the goal is to expand political rights, the government must check the power of local leaders, and even if the goal is to establish the basic rule of law, the government must ensure that the laws in all areas are national laws, and just not the machinations of a local leader. Minzner also noted that local leaders often limit the information that reaches the top leadership and restrict courts and lawyers in their jurisdictions, thus undermining the state's interest in developing the rule of law in China.

Efforts under way to end the arbitrary exercise of power by local officials Minzner cited include the creation of an administrative law regime, which allows citizens to sue local governments, as well as the introduction of such reforms as village-level elections and elections to local people's congresses. However, he noted that the central government often limits these reforms when desired and the declining number of administrative cases being taken indicates that citizens are not using this legal channel to air their grievances. Minzner concluded by commenting on the growing and pervasive discontent with the legal system in China, and on the significant impact the excessive concentration of power and abuse of checks and balances has on the effort to establish the rule of law in China.