

CHINA BALANCE SHEET

RULE OF LAW

The direction that China and U.S.-China relations take will define the world's future. For the United States, a rising China increasingly affects American prosperity and security, calling for some clear-eyed thinking and tough economic, political, and security choices. As the twenty-first century unfurls, the stakes have never been higher for getting U.S. policy toward China right. By untangling the complex, sometimes contradictory, strands of this vast and dynamic country, *China: The Balance Sheet* lays the foundation for informed and effective U.S. policy toward China, the world's emerging superpower.

BACKGROUND

- No one claims that China is today a rule of law country. **The harsh criminal justice system is still plagued by torture, aggressive defense lawyers are likely to end up as defendants themselves, and successful businesses can get expropriated by local governments.** Citizens bypass the weak, politically submissive judiciary in favor of an archaic, extra-judicial petitioning process.
- Nevertheless, most would acknowledge that China is moving toward a legal system that increasingly provides mechanisms to restrain the arbitrary exercise of state and private power, and offers the promise, if not the guarantee, that **Chinese citizens can assert their rights through reliance on law.**
- Since 1979, the National People's Congress (NPC) has enacted and updated more than 200 laws, generally consistent with accepted principles of international law.
- China has also concluded a large number of international agreements, including 21 international conventions on human rights and World Trade Organization accession agreements.
- **China's 3,000 basic courts and 200,000 judges are answerable to the NPC and thus cannot yet consistently protect the rights and interests of citizens** through an independent authority to enforce government and private compliance with the law.
- While courts hear eight million cases per year, government agencies, including the courts themselves, are flooded with nearly twice as many petitions to resolve a range of grievances – 30 percent of which are about the legal system and the handling of specific cases.

CURRENT SITUATION

- **The NPC, criticized for being a “rubber stamp,” is being made more professional, transparent, and responsive.** Many People's Deputies now reach out to their putative constituents for feedback, as some seek to more effectively carry out their constitutional duties.

For further information, see *The Rule of Law in China: Incremental Progress* by Jamie Horsley and published in *The China Balance Sheet in 2007 and Beyond*, available online and Chapter 3: “China's Domestic Transformation: Democratization or Disorder?”

China: The Balance Sheet: What the World Needs to Know Now about the Emerging Superpower

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- **The landmark 1989 Administrative Litigation Law, fortified by the 1994 State Compensation Law, grants citizens the unprecedented right to sue the government** over “concrete” government actions that violate their rights and interests and is a significant step in implementing the constitutional concept that the Chinese government is itself constrained by law and accountable to its citizens.
- The 1996 Administrative Penalties Law and 2004 Administrative Licensing Law impose procedural constraints on government action itself. The APL is the first law to provide regulated persons the right to defend their case and the right to a public hearing, thus introducing the concept of procedural due process.
- **Only 40 percent of judges hold a university degree**, though new rules require judges to have a degree and pass a national unified bar exam. Judges are appointed and remunerated by local-level PC’s, exacerbating local protectionism and political influence.
- Starting with less than 2,000 lawyers in 1979, however, China now has around 120,000 certified lawyers, more than 500 law schools, and 12,000 law firms.
- **More than 3,000 government-sponsored legal aid clinics claim to have aided some 1.6 million clients.** In 2005, for the first time, the Ministry of Justice allocated \$6.2 million for legal aid in impoverished areas, while local governments earmarked another \$32 million.
- **In March 2007, the NPC passed a landmark law increasing the protection of private property rights.**

10th National People’s Congress and its Standing Committee in 2006

In 2006, the 10th National People’s Congress Standing Committee deliberated on 23 laws and draft resolutions, and passed 14. Here are the highlights of passed laws from 2006:

- the Supervision Law: standardizes and legalizes the supervisory role of the NPC Standing Committee over the government
- Farmer Specialized Cooperatives Law: establishes the legal status of farmers’ specialized cooperatives and standardizes procedures and rules
- Law on Supervising and Managing the Banking Industry, amended: increases the power of banking supervisory institutions to supervise and conduct investigations of the banking industry
- Compulsory Education Law, amended: promotes compulsory education by legally establishing the compulsory education fund mechanism and prohibiting school fees
- Criminal Law, amended: provides additional penalties to crimes in production safety, financial crimes, and corporate crimes.
- The People’s Court Organization Law, amended: limits death penalty cases to the Supreme People’s Court

IMPLICATIONS

- **Establishing the rule of law in authoritarian China is a complex and often unprecedented process**, and represents a paradox similar to the creation of a “socialist market economy.” Despite the Party’s refusal to relinquish ultimate power over the legal system, the Party recognizes the value of greater rule of law to the Chinese economy and society as well as its own legitimacy and “governing capacity” and so far has appeared motivated to foster a new culture of government transparency, restraint and accountability, expressed through and buttressed by law.
- China’s evolving administrative laws and new regulatory practices like **procedural safeguards, open government information and public participation in decision-making represent substantial change in traditional and Maoist Chinese political culture as well as represent positive developments that may contribute to helping improve and strengthen the legal system** over the long-term.
- However, despite the initial success of the ALL, the number of administrative lawsuits under the ALL has leveled off, most likely due not to a decline in grievances but rather to lowered expectations and the inability of plaintiffs in politically sensitive cases to get the courts to accept the filing of the cases. **The political obstacles to suing the state, including politically deferential courts, clearly remain.**
- **Significant obstacles still exist to the creation of the “rule of law” in China.** A more credible and transparent Chinese judiciary as well as a more transparent government would help increase the legitimacy and effectiveness of the Chinese legal system.