The 'Rule of Law' Policy in Guangdong:
Continuity or Departure? - Meaning, Significance, and Processes

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Introduction

For two reasons the elevation of the law in government policy and political rhetoric in China in recent years inspires great interest and significance. First is related to the perennial debate on the desirability and possibility of 'a government of laws' versus 'a government of men' in Chinese history. To what extent does the recent emphasis on the law indicate a movement towards the former from the latter? Given the importance of the issues of institutionalization and power distribution in the analysis of Chinese politics, what significance does this development of the law bring to our understanding?[1] What is, in other words, the *meaning* of the recent policy on the 'rule of law'? Does it mean something new and what is that newness? The second cause of interest is the mere appearance of the topic itself. Why, and how, is the recent surge of deliberations on the rule of law possible to occur at all, if, as we often believe, individual leaders have heavily dominated Chinese politics? In other words, what underlying *processes* are at work to motivate the leaders to advocate the supremacy of the law, rather than the supremacy of their own authority?

There has been a substantial body of literature on the status of the law in Chinese history and philosophy.[2] Much of the discussion has revolved around the role of and

[1] Institutionalization, or the lack of it, has been said to cause many problems in Chinese politics. See for instance Suisheng Zhao, 'The feeble political capacity of a strong one-party regime – an institutional approach toward the formulation and implementation of economic policy in post-Mao mainland China', 2 parts, *Issues and Studies*, Vol. 26, Nos. 1-2, pp. 47-40, 35-74; Tang Tsou, 'The Tiananmen tragedy: the state-society relationship, choices, and mechanisms in historical perspective', in Brantly Womack, ed., *Contemporary Chinese Politics in Political Perspective*, (Cambridge: Cambridge University Press, 1991), pp. 265-327; Kenneth Lieberthal & David Lampton, eds., *Bureaucracy, Politics and Decision-Making in Post-Mao China* (Berkeley: University of California Press, 1992), Michael Oksenberg, 'The American study of modern China: Toward the twenty-first century', in David Shambaugh, ed., *American Studies of Contemporary China* (Armonk, New York: M. E. Sharpe, 1993), pp. 315-43; Joseph Fewsmith, *Dilemmas of Reform in China: Political Conflict and Economic Debate* (Armonk, New York: M. E. Sharpe, 1994); and Hao Jia and Zhimin Lin, eds., *Changing Central-Local Relations in China: Reform and State Capacity* (Boulder: Westview Press, 1994).

[2] For a sample of works see Wm. Theodore de Bary and Tu Weiming, eds., *Confucianism and Human Rights* (New York: Columbia University Press, 1998); Chad Hansen, 'Punishment and dignity in China', in Ponald J. Munro ed., *Individualism and Holism: Studies in Confucian and Taoist Values* (Ann Arbor: The Center for Asian Studies, University of Michigan, 1985), pp. 359-83; Bill Brugger and Stephen Reglar, *Politics,*

meanings attributed to the law in political thinking and practice. Specifically comparisons have been drawn between the Western and Chinese thinking of the 'rule of law', in the context of discussion about human rights and cross-cultural political development.[3] One recently arrived consensus on this question holds that the differences between Chinese and Western thinking on the law have often been overdrawn. More importantly, it recognizes that both traditions, as part of their broader philosophical contexts, have always been in a state of flux and change, so that historically each has contained strands of thought found in the more dominant versions of the other.[4] This developmental perspective of constitutionalism enables analysts to identify and appreciate better similarities between political cultures, but also begs the question of how a certain course of development is ever to take place. In other words, the questions of how the 'convergence' is achieved between the cultures, and of how a certain state of existence gives way to another existence within a specific tradition over time, would themselves require an answer.

This paper seeks to probe for an answer to these questions on meanings and processes of change through an examination of the 'rule of law' policy in Guangdong province. For a number of reasons the case of Guangdong is likely to offer insights. First, the central-provincial interface has historically been a major locus of political conflict within China's under-institutionalized political system. Any changes in the approach to governance, from 'a government of men' towards 'a government of laws', will necessarily be reflected in the relationship between the Centre and the provinces. Indeed, it has been

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Economy and Society in Contemporary China (London: Macmillan, 1994), Ch. 5; Edward J. Epstein, 'Law and legitimation in post-Mao China', in Pitman B. Porter, ed., *Domestic Law Reforms in Post-Mao China* (Armonk, New York: M. E. Sharpe, 1994), pp. 19-55; Carlos Wing-hung Lo, *China's Legal Awakening: Legal Theory and Criminal Justice in Deng's Era* (Hong Kong: Hong Kong University Press, 1995); Andrew J. Nathan, 'Sources of Chinese rights thinking', in R. Randle Edwards, Louis Henkin and Andrew J. Nathan, *Human Rights in Contemporary China* (New York: Columbia University Press, 1985), pp.125-64; De Bary, 'Chinese despotism and the Confucian ideal: A seventeenth-century view', in John K. Fairbank ed., *Chinese Thought and Institutions* (Chicago and London: University of Chicago Press, 1957), pp.163-203; and Yongping Liu, *Origins of Chinese Law: Penal and Administrative Law in its Early Development* (Hong Kong: Oxford University Press, 1998).

[3] For a recent treatment see De Bary and Tu Weiming, eds., *Confucianism and Human Rights.*

[4] *Ibid.*, pp. 24-5.

argued that any substantive change in institutionalization may likely start from the central-provincial nexus.[5] In this connection Guangdong is probably best chosen to peep into any changes in governance in this sensitive area, as Guangdong's greater fiscal autonomy since the 1980s has given the province added leverage in its relations with the Centre. Secondly, the case of Guangdong is illuminating precisely for the reason that the new emphasis on the rule of law would appear so unthinkable in Guangdong, given its previous fame for 'flexibility'. The imaginative flexibility of Guangdong's officials during the 1980s had led pilgrims from other provinces to arrive at the 'red lights theory', codified as the blue book of a quick route to prosperity in unpredictable policy environments. Given these achievements it is interesting that Guangdong should have responded so enthusiastically to the Centre's call for the rule of law as the new guiding principle of governance, and that considerable amount of energy and administrative resources have been expended towards its implementation.[6] What processes have been at work to result in such a turnaround in policies? The contention is that the more 'extreme' circumstances in Guangdong would offer a better opportunity to grasp the underlying processes and dynamics of change which may be more opaque in less 'extreme' situations.

Rule of Law or Rule by Law?

Understanding the meaning of the new emphasis on the law in Chinese government undoubtedly requires an understanding of the Chinese expression '*fazhi*'. Often translated as the 'rule of law' questions have often been asked whether the Chinese leaders meant instead the 'rule *by* law', the instrumental use of laws by rulers to facilitate social control and to impose punishment as understood in the Legalist tradition.[7] In fact, it has been

[5] This is postulated in Linda Chelan Li, *Centre and Provinces: China, 1978-1993. Power as Non-zero-sum* (Oxford: Clarendon Press, 1998).

[6] The impression that the Guangdong leadership was very keen on the rule of law 'project' was confirmed by a law professor in Beijing's China Academy of Social Sciences (CASS), who had been amongst the CASS legal experts invited to give 'law lectures' to provincial leaders. Interviews conducted in Beijing, September 1996.

[7] See for instance Richard Baum, 'Modernization and legal reform in post-Mao China: The rebirth of socialist

pointed out that the Confucians and Legalists have more in common regarding the role of laws in governance than usually assumed. The Legalist position would not need to reject the communitarian values of the Confucians, that a well-ordered society would ideally arise from social persuasion and demonstration of virtuous behaviour by the sages, and that laws are kept at the minimum as a supplement. The Legalist advocacy of the law is simply derivative of an assessment of the empirical situation and the felt added urgency to bring order to the society.[8] Whilst Confucians undeniably put more emphasis on the existence of a higher moral order above the positive laws of the state, and with which such laws need to conform in order to be effective, the Confucian moral order is socially originated stressing the duties of individuals towards the common good. Individualism as a value in itself is non-existent and institutional constraints on rulers remain fragile. The criss-cross influence of Confucianism and Legalism means that historically the law has, in a normative sense, seldom enjoyed a more than marginal and instrumental existence in Chinese political life, any restraint on individual leaders being disproportionately reliant upon their own innate inclinations for sageness reinforced through moral education.[9]

In this connection it is worth noting that various expressions have been used in discussions within contemporary China regarding the law. These include 'strengthening the law', 'tightening up the legal system', 'abiding by the law in administration', 'rule by law', and the 'rule of law'. Different shades of meaning have been attached to each of these terms, and Chinese officials and scholars have employed the expressions rather loosely and sometimes interchangeably.[10] According to an informed source, the central government had

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legality', *Studies in Comparative Communism*, Vol. 19, No. 2 (Summer), pp. 69-103; Brugger and Reglar, *Politics, Economy and Society*, p. 177.

[8] Hansen, 'Punishment and dignity', p. 374.

[9] *Ibid*., p. 367; Nathan, 'Sources of Chinese rights thinking', pp. 127, 137-40.

[10] The term 'rule of law' appeared more often in academic papers, and was often used in contrast with the 'rule of men'. For an example of the interchangeable use of various expressions, see Li Buxun, 'Shixin Yifa Zhiguo, Jianshe Shehui Zhuyi Fazhi Guojia' (Practice the 'Ruling according to the Law' Policy, Build a socialist country with the rule of law), *Chinese Legal Science* 2 (April 1996), pp.14-27. For debates about the meanings of various terms, and whether one or the other term should be adopted, see, for example, Wu Shihuan, 'Lun Yifa Jishang Yu Yifa ZhiGuo di Zhengtixing' (The Integral Relations Between Doing Business According to

originally preferred the expression, 'strengthening the law/legal system', to that of 'the rule of law'. It was felt that the latter might give a controversial connotation of instrumentality, and ignite a second guess of the government's intention, whilst the former conveyed a straightforward meaning of strengthening the law and institutions.[11] It is also true that a review of the policy of the 'rule of law', as discussed in a subsequent section in this paper, often shows that the emphasis is very much on the enforcement of laws to effect government and Party policies. These all cause concern over the exact meaning of the recent policy on the 'rule of law' in China.

It would be over-simplistic, however, to resign the law to an *entirely* instrumental position at the disposal of political leaders. First, the traditional Confucian position has always required laws to support the higher moral order: kings and their laws hold legitimate power so long as they are considered moral. The development of socialist legality since 1949 sees continuity in the tradition by only replacing the socially embedded Confucian moral order with the policy and direction of the Communist Party, which is the embodiment of the 'natural law' of social progress. The weakness in the Confucian tradition does not thus lie in the absence of a higher moral order constraining the abuse of power, but in the lack of an adequate institutional mechanism to operationalize the higher moral order and bring it to constrain the power of rulers. Secondly, regarding the loose definitions and usage of the various expressions about the law, it is worth reminding that such is not peculiar to China and could also be found in the historical development of law in legal jurisdictions usually associated with the practice of the rule of law. It has been pointed out, for instance, that the English phrase 'rule of law' has no exact translation in French or German and that the usual translations, as in Chinese, carry quite different implications and

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Law and Ruling According to Law), *Guangdong Legal Science*, 2 (April 1993), pp.4-8; Guo Daohui, 'Zhiguo Fanglue de Genben Zhuanbian' (A Fundamental Change of the Approach to Governance), in Liu Hailin, Li Buyun and Li Lin, eds., *Yi Fa Zhi Guo Jianshe Shehui Zhuyi Fazhi Guojia* (The Rule of Law: Building a Socialist, Rule-based Country), Beijing: Zhongguo Fazhi chubanshe, 1996, pp. 109-20.

[11] Author's interview with the Bureau of Legislative Affairs, Beijing, September 1996.

connotations from the original English expression.[12] There is hence a need for caution against reading too much into the differences over expressions and thus overlooking the similarities across legal jurisdictions in a substratum of legal values and practice.

The crux to understanding similarities *as well as* differences across legal jurisdictions is the understanding that laws and legal conceptions change over time and across space as a result of changes in the socio-economic-political contexts. The development of theories on legal evolution reflects changes in our understanding on this dynamic aspect of the law, which has bred a stream of scholarship on comparative law.[13] The challenge is to gather enough understanding on the *processes* of change in the law in various time-space contexts, in relation to processes of change in other aspects of society. In the lack of such an understanding, there is a danger of conflating historical specificity which incidentally become associated with more basic legal values with the values and practices themselves.

The 'Rule of Law' Policy in Guangdong

The landmark announcement signifying the policy change in Guangdong was found in the report made by Xie Fei, provincial Party Secretary from 1990 to 1998, during the seventh Guangdong Party Congress in May 1993. In the report, Xie Fei outlined the strategies for Guangdong to achieve modernization in twenty years' time. The strengthening of the law, and the deepening of political reform through the 'rule of law', was championed as one of the seven major strategies.[14] Then near the end of 1993 Shenzhen was designated as the

[12] Norman S. Marsh, 'The rule of law as a supra-national concept', in A. G. Guest, ed., *Oxford Essays in Jurisprudence* (Oxford: Clarendon Press, 1961), pp. 229-30.

[13] For a historical account of the development of theories of legal evolution see Peter Stein, *Legal Evolution: The Story of An Idea* (Cambridge: Cambridge University Press, 1980. For a discussion of the Chinese case, see Robert Benewick, 'Towards a developmental theory of constitutionalism: the Chinese case', *Government and Opposition*, Vol. 33, No. 3 (Autumn), 1998, pp. 442-61.

[14] The other six strategies are: (1) establishing the socialist market framework in various policy aspects; (2) diversifying export markets and expanding the open door policy; (3) restructuring industries to improve

'trial city' to pioneer the new policy. A powerful leadership group was formed in March 1994 to oversee implementation, with Shenzhen's Party Secretary, Li Youwei, acting as the chair, and the Director of Shenzhen People's Congress Standing Committee and the Mayor as the vice-chairs. Members of the leadership group included leaders from the courts, the prosecutoratory, and major government departments. A new office under Shenzhen People's Congress Standing Committee served the leadership group, complete with budgetary provision and full-time staff.[15] Similar leadership groups were formed in the provincial level and other cities in 1996.[16]

The agenda for action could be summarized in three major dimensions: legislation, enforcement and education, which were targeted at three problem areas respectively: 'having no proper laws to follow', 'lax enforcement of laws', and 'not voluntarily abiding by the laws'. The three problems were closely related, but on balance enforcement was generally regarded as the most difficult issue.[17] A few initiatives have been taken to combat the enforcement problem. One was the 'law enforcement responsibility' mechanism instituted in provincial departments in the latter half of 1994. A handbook was published, which listed the departments having primary and secondary enforcement responsibility for each and every national and provincial legislation.[18] The purpose was to clarify responsibility and minimize avoidance of duties among government departments, as well as to facilitate monitoring of the executive by the People's Congress.

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economic efficiency; (4) planning intraprovincial regional development to ensure balanced development; (5) developing education and training to improve the quality of workforce; and (6) cultivating a healthy social and cultural environment. See Xie Fei, 'Wei Guangdong 20 Nian Jiben Shixian Xiandaihua Re Fendou' (Struggling to Achieve Modernization Within Twenty Years in Guangdong), in Xie Fei, *Guangdong Gaige Kaifeng Tansuo* (Probing in Reform and Opening Up in Guangdong), (Beijing: Central Party School Press, 1995), pp.11-20.

[15] See *Ren Min Zhi Sheng* 6 (June 1995), pp. 30-31. Interview with a senior Guangdong official formerly working in the justice stream, Guangzhou, June 1996.

[16] *Guangdong Nianjian* 1997, p. 126.

[17] Interviews with legal scholars in Guangzhou, June 1996.

[18] See *Nanfang Ribao,* August, 27, 1994, p.1. The 'Law Enforcement Responsibility System Handbook' was edited jointly by Guangdong Provincial People's Congress Standing Committee, Guangdong Provincial Law

Another initiative taken to combat lax enforcement was a 'performance appraisal' system for elected officials. Unlike evaluation mechanisms that were already in place within the Party personnel administration system, this appraisal system was installed at the legislature-executive nexus as part of the wider attempt of the legislature to exercise its constitutional duty of oversight over the executive.[19] Elected government officials were required to submit written performance reports to their corresponding people's congress. Face-to-face sessions were conducted in selected cases during which Congress deputies questioned government officials regarding aspects of performance they found wanting. In the city of Jiangmen, the appraisal reports would enter the personnel files of the officials, thus having an impact on the future career prospects of the officials.[20] In some cases, where serious performance problems were detected or crimes committed, officials had been fired or demoted. According to an account, more than 800 appraisals had been conducted since the system started in 1992 within Guangdong by people's congresses of various levels.[21]

Legislation forms another major focus of the new policy. The existence of legal vacuum in important areas or existing laws being unsuitable would only encourage indifference to the law and justify the rule by fiat. With the designation of the socialist market economy as the goal of reform in the Fourteenth Party Congress in October 1992, most existing laws, which were promulgated at a time of planned economy, have become

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Bureau, and the Guangdong Provincial Legal Education Office, and published in May 1994. The handbook covers 448 national and provincial legislations enacted between 1979 to March 1994.

[19] For a discussion of this appraisal system and its implementation in various cities in Guangdong, see Guangdong People's Congress System Research Association, ed., *Xin Lu* (The New Road), (Guangzhou: Guangdong Higher Education Press, 1996).

[20] *ibid*., pp.10, 27.

[21] Interview with a senior Guangdong official formerly working in the justice stream, Guangzhou, June 1996. Five elected officials were removed from their positions after the appraisal, including one county public security bureau chief. Several hundred non-elected officials were removed from their positions as an indirect effect of the legislative scrutiny on their elected superiors. According to a law professor of the CASS, there was no similar appraisal system in place in the National People's Congress as of 1996, where cadre management was still viewed as the exclusive privilege of the Chinese Communist Party. Author's interviews in Beijing, September 1996.

unsuitable to contemporary needs and needed to be replaced.[22] To this end legislation has been speeded up. The provincial legislature used to enact an average of 3-4 local laws and regulations per year before 1993. The number rose dramatically to more than 30 in 1993 and 1994 respectively, dropping slightly only in 1995 in the interest of consolidation.[23]

Whilst noting the dramatic change since 1993, especially in terms of legislation, we need to bear in mind also its continuity with previous developments. The strengthening of the law was not a novel call in either the national or provincial contexts. As early as in 1978, Deng Xiaoping had called for the strengthening of the law. In fact the four slogans which subsequently became the symbol of the 'rule of law' policy in the 1990s had appeared in Deng's speech in 1978. The slogans read, '*youfa keyi, youfa biyi, zhifa biyan, weifa bijiu*' (there are laws to follow; laws will be followed; laws will be strictly enforced; lawbreakers will be caught).[24] The continuity was especially notable among central officials and scholars, who maintained that the increased emphasis on the law in the 1990s was part of the natural progression of the major shift in national policy in the Third Plenum towards economic development in late 1978.[25] The central Ministry of Justice had in 1985 announced the first five-year plan of popular legal education. In Guangdong, the provincial Justice Bureau had stated in 1987 that the aim of popular legal education was to ensure that government actions were conducted only in accordance with law.[26] In 1988 the central Ministry of Justice called for experiments of the 'rule of law' at the municipal/county level. A number of cities, counties and townships across the country and within Guangdong had experimented with this policy. According to an informed official, the Guangdong Justice

[22] Economic legislations enacted during the 1980s were still very much overshadowed by the pre-existing planned economy, as seen from the requirements of the development of the market economy in the mid-1990s. Author's interviews with a CASS law professor, September 1996.
[23] Interview with an informed Guangdong legal official, Guangzhou, June 1996. For the adjustment of pace since 1995, see *Fazhi* (The Legal System), 1 (1996), p.5.
[24] See Deng's speech of December 13, 1978, given to the closing ceremony of the Central Working Conference convened in preparation for the Third Plenum of the Eleventh Party Congress which followed immediately, printed in *Selected Works of Deng Xiaoping, 1975-1982* (Beijing: People's Press, 1983), p.136.
[25] Author's interviews, Beijing, September 1996.
[26] Interview with a senior Guangdong official formerly working in the justice stream, Guangzhou, June 1996.

Bureau in late 1988 had initially planned to submit a proposal to the Guangdong People's Congress to implement the 'rule of law' policy at the *provincial* level. If implemented Guangdong would have made another step ahead of the rest of the nation. This was regarded premature, however, after consultations within the government. Instead 'experiments' were subsequently conducted in selected cities and counties to gather more experience.[27] In 1989, therefore, the Guangzhou People's Congress passed a 'rule of law' five-year plan, outlining a programme of measures to strengthen the law and promote law observance in Guangzhou.[28] The strategy was, according to an informed source, one of 'starting from the bottom to the top, spreading from isolated spots to the entire surface'.[29]

From Flexibility to the 'Rule of Law' Policy

There is a certain irony in seeking an interpretation of the meaning and significance of the policy on the 'rule of law' in Guangdong. On the one hand, there is an inclination to interpret the added emphasis on the law as reflecting somehow a shift in policy and in the approach to governance. In any event, the previous emphasis on flexibility during the 1980s within the province is so different from the concern for regularity required under a regime of the rule of law that it would be difficult not to infer the existence of *some* change. On the other hand, the recognized continuity of the policy with past events raises doubt as to the extent that the current policy adds any *new* meaning to the historical debate between 'a government of laws' versus 'a government of men', out of which the political system has yet remained authoritarian and personalized. In other words, as political life in

[27] *ibid.*

[28] See Peng Baoluo, 'Guanyu Yifa Zhisheng (shi) de Lilun Yu Shijian de Xike' (Theory and Practice of the 'Rule of Law' at a provincial/municipal level: Some Thoughts), in Guangdong Legal Society, ed., *Shehui Zhuyi Shichang Jingji Yu Yifa Zhisheng Lunwenji* (Essays on the Socialist Market Economy and the 'Rule of Law' in Guangdong), (Guangzhou: Facheng chubanshe, 1996), p.8.

[29] Interview with a senior Guangdong official working in the justice stream, Guangzhou, June 1996. A law professor at Beijing pointed out that this 'bottom-up' phenomenon was in fact orchestrated from the top. Each level of government was practically pushing the next lower level to implement the 'rule of law' policy, in the name of experimentation and gathering experience, thus delaying if not avoiding the impact of the policy on itself. Author's interview, Beijing, January 1998.

contemporary China still exhibits heavily the characteristics of 'a government of men', what new meaning may we attribute to the recent deliberations on the law? A subsequent question is: if the developments in the 1990s did suggest new departures in the approach to governance in China, through what processes had such departures been made possible?

In this respect one may be tempted to see the advocacy of the rule of law in Guangdong since 1993 as merely the implementation of national policy. The landmark announcement by Guangdong Party Secretary Xie Fei in May 1993 followed a series of national decisions and remarks by central leaders. During his southern tour in spring 1992, Deng Xiaoping remarked that the law was a more reliable means to achieve a clean government.[30] In a speech during the Fourteenth Party Congress in October 1992, Party General Secretary Jiang Zemin named the strengthening of the law and the 'improvement' of the National People's Congress system as one of the ten major measures in promoting future social and economic development.[31] An explicit message came from Qiao Shi after he was newly elected the Chairman of the Eighth National People's Congress Standing Committee in March 1993. Qiao talked in great length about the importance of strengthening the work of National People's Congress, especially in the areas of legislation and oversight. Legislation needed to be speeded up, it was said, in order to provide a legal framework to guide the progress of reform and the move towards a socialist market economy. Monitoring the discharge of executive and judicial duties, meanwhile, was integral to attaining the objective of 'ruling in accordance with law'.[32] Qiao also gave explicit instruction to Guangdong during his meeting with Guangdong deputies during the National People's Congress session in March 1993 that Guangdong should speed up legislative work. During his visit to Guangdong in April 1993, he remarked that Guangdong should become the 'experimental field for legislative work (in the new

[30] See Shenzhen Party Committee, ed., *Deng Xiaoping Yu Shenzhen* (Deng Xiaoping and Shenzhen: Spring, 1992) (Shenzhen: Haitian chubanshe, 1992), p.10.
[31] The report is printed in *Qiushi*, 21 (1992), p. 13-14.
[32] See *Nanfang Ribao* March 29, 1993, p.1, and *Yangcheng Wanbao* July 3, 1993, p.1.

circumstance of a socialist market economy)'.[33] The linkage between central and provincial policies was thus apparent. Indeed, Guangdong officials themselves readily referred to the impact of central policy on the adoption of the 'rule of law' policy in Guangdong, and especially on the 'great leap' in the enactment of local legislations since 1993.[34]

It is however simplistic to explain the adoption of the 'rule of law' policy in Guangdong in 1993 as merely the loyal implementation of national policy. Evidence of failures in compliance in various policy areas abounded, and previous studies have indicated that provincial performance should be understood in a wider context of central and provincial agendas and choices by both sides.[35] The essential question is: what made Guangdong so receptive to *this* central policy? What were the circumstances in Guangdong that induced Guangdong's leaders to regard a change in governance approach in favour of the law would be of their benefits?

Rationale of the 'Flexibility' Approach

In order to explain change it is imperative to understand first the circumstances in which flexibility had been cherished as the recipe of success. In a political system where authority and obligations were not clearly delineated, success depended a great deal on flexibility. One had to be flexible in the interpretation of laws and policies, written or unwritten, in order to maximize the room for manoeuvres in an insecure environment. When the power

[33]Guangdong People's Congress, ed., *The Course of Guangdong People's Congress, 1954-1994* (Guangzhou: Guangdong People's Congress, 1994), p.82.
[34]*ibid*. The influence of central policy, and especially the impact of Qiao Shi's comment of the 'experimental field' in April 1993, was also acknowledged by authors' interviews conducted in Guangzhou, June 1996. According to a respondent working in the legal stream, Qiao Shi's remarks served to remove the worry among Guangdong's leaders that local legislations should only supplement existing national laws and regulations. Instead, Guangdong was now sanctioned not only to experiment in reform *policies*, but also in *laws* before national legislation was in place.
[35] See Li, *Centre and Provinces*; and Linda Chelan Li, 'Central-Provincial Relations: Beyond Compliance Analysis', in Joseph Cheng, ed., *China Review 1998* (Hong Kong: The Chinese University Press, 1998), pp. 157-85.

of the central government had been traditionally strong, for instance, provincial governments had an interest to blur the clarity of central policy so as to increase the latitude for provincial discretion. This interest in flexibility and ambiguity was reinforced by the onset of reform in the 1980s, when increasing uncertainties in the policy environment called for a bigger room for provincial discretion. The requirements of the circumstances were such that if ambiguity were insufficient, provincial governments would actively create more.[36]

Flexibility and 'playing ambiguity' thus became an important success factor for provincial manoeuvres during the unpredictable environment of reform in the 1980s. The famous 'red lights theory', based on Guangdong's experience, was a summary of the strategies a provincial government could deploy to manipulate the ambiguity of national laws and policies. However, the benefits of ambiguity were not exclusive to the provinces. Ambiguity and flexibility became a major strategy and approach to governance because it conferred benefits on various actors within the system. In a central-provincial context, there were not only the provinces but also the Centre which had seen benefits in the sustenance of ambiguity. The Centre welcomed a certain degree of ambiguity in its policies and rules in order to make new initiatives and minimize the political risk of failures. The Centre would, therefore, tolerate provincial deviation when either the resultant impact tallied with its objective, or when it had yet to decide on an alternative. Normally the ambiguity would be ended when the positive impact of the move proved undeniable, at which time local experiments became national policy. Alternatively, it was ended when the negative impact of the deviation became too much to tolerate. Ambiguity and flexibility became the dominant approach to governance in the Chinese political system under reform,

[36] This is not to suggest that provinces are able to 'create' ambiguity on their own despite very clear instructions from the central government. Provincial success in blurring central policy will substantially depend on their ability to obtain central government co-operation, which allows them a larger space of autonomy. This does not however imply to attribute provincial discretion entirely to decisions or non-decisions made at the Centre. The process is one of interactive influences rather than zero-sum trade-off between the Centre and the provinces. See Li, *Centre and Provinces*, for a full exposition of this position.

therefore, because ambiguity allowed the actors to maximize gains whilst avoiding responsibilities.

This reliance on flexibility was also, to an extent, necessitated by the circumstances of reform---when changes were so rapid that existing laws simply could not provide any authoritative guidance to the conduct of public life. A Guangdong audit official had commented that as auditors they had been working in a vacuum of *relevant* rules and regulations. Most existing rules were plainly outdated and inadequate, as circumstances had changed so much and so rapidly at a time of reform. Audit officials were thus forced to be flexible in the 'interpretation' of laws and policies, and in their daily work could seek guidance only in the vague principles of promoting productivity and reform.[37] Given the importance of rules in this area of work in more normal circumstances, this suggested that laws and regulations had become largely irrelevant in the conduct of public affairs.

This *could* be a transient phenomenon only, however. It was theoretically possible for flexibility to fade away when new laws appropriate to the requirements of reform came into place. The question was thus whether Guangdong's leaders would find it worthwhile to enact such new laws and abide by them, instead of relying on flexibility indefinitely. In other words, if flexibility and ambiguity had served Guangdong well, why should Guangdong's leaders bother to seek change?

Rationale for 'the Rule of Law' Policy

To explain the change towards the 'rule of law' in provincial policy requires us to inquire into the logic as well as the wider social context in which Guangdong's leaders contemplated their range of options. Whilst each of the actors saw benefits in tolerating and even creating ambiguities they each also had to bear the consequence of the manoeuvres of

[37] Interview with a Guangdong audit official, Guangzhou, December 1993.

one another. When conflicts accentuated and the negative consequence of manoeuvres accumulated to a level which all actors found intolerable, changes would occur.[38] The next question is to identify the circumstances whereby this change in perception of gain occurred. What were the processes and interactions that led the provincial leaders to feel that the cost of the previous flexibility approach had outweighed its benefits, so that a change was needed? The rest of this paper illustrates the processes at work in three different contexts.

Central-Provincial Relationship

It may be argued that the backdrop of the recent emphasis on the law was laid by the intense conflicts between the Centre and the provinces during the 1980s.[39] Rapid decentralization of power and resources from the Centre to the provinces in the 1980s, together with the unpredictable environment in the course of reform, had made the ability to 'play with ambiguity' instrumental to success. The level of conflicts rose, however, with the amount of ambiguity and flexibility in the system. Whilst both the Centre and the provinces could originally benefit from a state of ambiguity, in the course of time both parties suffered from the consequence of manoeuvres of their opposite number. The cumulative effect was that both parties gradually came to see themselves as the loser in the ambiguity game. In this circumstance greater clarity and a higher level of institutionalization were felt gradually by both sides to be of their own benefits, in order that one's obligations and the responsibilities of the other would be better specified.

An example was the central-provincial fiscal relationship. In the 1980s the central-provincial fiscal system was one of the contractual system, whereby provinces entered into 'contracts' with the Centre specifying either the absolute amount of fiscal remittances or a

[38] For a theoretical analysis on the process of change and the concept of power, see Li, *Centre and Provinces*, Ch. 8, and Linda Chelan Li, 'Towards a Non-Zero-Sum Interactive Framework of Spatial Politics: The Case of Centre-Province in Contemporary China', *Political Studies,* Vol.45, No.1 (March 1997), pp.49-65.
[39] Li, *Centre and Provinces,* Ch. 8.

formula of revenue sharing within a specified time period (usually lasting for several years). The original intention was to provide a secure and predictable fiscal environment for both the Centre and provinces, as the Centre would know well in advance the amount of remittances it would be getting from the provinces whilst the provinces would also know how much they were required to remit. At a time when ambiguity and flexibility was the rule of politics, however, both the Centre and provinces quickly found benefits in *not* observing strictly the contract. Instead multiple tactics were employed by both sides to maximize gains and contain responsibilities. On top of the contractual remittances, for instance, the Centre would demand additional 'contributions' from provinces. These might take the forms of new taxes, fiscal 'loans' which were never repaid, state bonds, the centralization of profitable local state enterprises, or the reallocation of expenditure responsibilities in favour of the Centre. On the other hand, provinces also engaged in a wide variety of means in order to minimize their exposure to central encroachment. The major methods were diverting resources from the budget to the extrabudgetary sector, generous tax exemption policies, encouraging the development of the non-state sector, and hiding resources by means of sifting and false reporting. As the model of the 'flexibility' approach among provinces, the Guangdong government was well known for its sophisticated strategy of playing around the fiscal 'contract'.[40]

The end result of the flexibility approach was that both the Centre and the Guangdong Government regarded themselves, eventually, as the loser in the fiscal relationship. On the one hand, the Centre felt that the Guangdong Government should have contributed more to the central coffers, since the province had become much more prosperous whilst the central government was increasingly short of money in the course of reform. On the other hand, the Guangdong Government regarded itself to be shouldering more than its fair share of the costs of reform. Guangdong was often required to pay the

[40] For a detailed account of the various means employed by the Guangdong Government to maximize its interests, see *ibid*., ch. 5.

bills of central policy initiatives,[41] it was said, and bear additional fiscal burden as central expenditure items were transferred to the provincial level. Moreover, the province did not regard itself to be contributing too little to the central coffers since, after all, the total remittances had always exceeded the original contracted level.[42] The consequence was that both the central leaders and Guangdong officials felt the need for clearer delineation of fiscal authority. Naturally, reflecting the differential consequences of the manoeuvres in the 1980s, the Centre and the provinces (and different provinces) had different priorities. The central officials were more concerned about getting a larger share of fiscal resources while Guangdong's leaders were more interested in defining, and thus containing, the province's expenditure obligations. The institution of the new fiscal system, the tax-sharing system, in 1994 was an embodiment of the new interest in institutionalization. Whilst the fiscal system implemented in 1994 still exhibited substantial hangovers of the previous contractual system, it was also true that the fiscal relationship between the Centre and the provinces had been regularized and become more predictable.[43] In other words, institutionalization had begun to set in.

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[41] Interview with a Guangdong fiscal official, Guangzhou, June 1996. One example of 'central policy, provincial bills' the respondent gave was the 'combat the crimes' policy. Central pressure required provinces to tighten up law enforcement. The cost of tightening up enforcement was, however, shouldered entirely by provinces. Many local governments were facing a much higher bill to pay for prison expenditures, for instance.

[42] This is reflected in the following table:

Guangdong's Fiscal Remittances: 'Contract' and 'Extra-Contract'

(Billion Yuan)

Year	Total Remittances	Contract	Extra-Contract	(% of Total)
1980-1987	12.197	7.334	4.863	39.87
1987	2.319	0.778	1.541	66.45
1988-1991	19.308	7.044	12.264	63.52
1991	6.985	1.995	4.990	71.44

Sources: Table extracted from Li, *Centre and Provinces*, and calculated from Dangdai Zhongguo Congshu Bianji Bu (ed.), *Dangdai Zhongguo de Guangdong* (Guangdong in Contemporary China) Vol. 1, (Beijing: Dangdai Zhongguo chubanshe, 1991), pp. 686-87; and Guangdong Provincial Party Committee (ed.), *A Record of Insights of Opening and Reform in Guangdong*, p. 59.

[43] This was confirmed by the fiscal official interviewed in June 1996, Guangzhou. According to the respondent, despite various difficulties with the new fiscal system, in particular with reference to the time lag between the transferal of central fiscal grants and the requirement of local expenditure, one notable result of the new system was that the Centre had ceased asking for additional contributions from Guangdong. Unlike

Instituting a system of the rule of law presupposes a respect for institutionalization and putting value in regularity and predictability. In this sense, the move towards institutionalization in the central-provincial relationship may be interpreted as constituting and starting the process of change in the approach to governance in favour of the rule of law.

Logic of Economic Development and Reform

As economic reform and development progressed, there gradually appeared a mainstream opinion within China that the development of a socialist market economy would require corollary development in the 'soft' arenas of law and administration. The ruling dictum is: 'market economy is a legal economy', meaning that a healthy market economy is necessarily regulated by law.[44] It was considered that a healthy market was possible only if there was a level ground of competition, which required a high degree of regularity, predictability and transparency. The traditional reliance on policies and individuals could ill suit the needs of a market economy, which has flourished in places which generally practice the rule of law. This perceived logical relationship between the requirements of market economy and the rule of law, to a large extent, underlined the advocacy on the rule of law

previously when substantial 'extra-contractual' remittances were required on top of remittances under the formal contractual system, by and large the fiscal relationship between Guangdong and the Centre since 1994 had been conducted within the confines of the new system. One major lingering problem was that there had been no major improvement in the delineation in expenditure responsibilities between the Centre and provinces, despite repeated complaints from the province. For the major content of the tax-sharing system of 1994 and its major principles, see State Council Notice No.85, 1993, printed in *Caizheng* 2 (1994), pp.18-20. See also Li, 'Central-Provincial Relations: Beyond Compliance Analysis'.

[44] For an official statement on the connection between the rule of law and market economy, see for instance Xie Fei, 'Jiajiang Fazhi Jianshe, Jianchi Yifa Zhisheng' (Strengthening the Legal System, Carrying Through the Rule of Law in Guangdong), in Xie Fei, *Guangdong Gaige Kaifeng Tansuo* (Probing in Reform and Opening Up in Guangdong), (Beijing: Central Party School Press, 1995), p.370. For an elaboration of the connection, see Peng Puihuang and Yin Xianying, 'Shilun Fazhan Shichang Jingji Bixu Jiaqiang Fazhi Jianshe' (Developing the Market Economy Necessarily Requires the Strengthening of the Legal System: A Preliminary Analysis) in Guangdong Legal Society, ed., *Essays on the Socialist Market Economy and the 'Rule of Law' in Guangdong*, pp. 141-6.

by the central leadership since late 1992, when the construction of a socialist market economy was made the target of future reform and development.

As the designated pioneer of economic reform since 1979 Guangdong therefore became, logically, also the pioneer of the rule of law in the nation. The directives from Qiao Shi to Guangdong on the speeding up of the legislative programme had thus to be read in this context. Moreover, from the perspective of the Guangdong leaders, it was in every interest of Guangdong to make inroads in the strengthening of the rule of law. First, if there was a real connection between economic development and the rule of law, making progress in the rule of law ahead of other provinces would ensure the continuous development of Guangdong's economy, thus maintaining its status as a growth pole in the country. Second, even if the connection between economic development and the rule of law was obscure and uncertain, the fact that the rule of law has been perceived by central leaders as a symbol of successful market development would warrant its advocacy. Guangdong would then be able to sustain its status as the pacesetter of reform and reinforce its image of success. This image would then enable Guangdong to enjoy a greater leverage in its bargaining for resources and policies with the Centre.[45]

In the early 1990s Guangdong's leaders were preoccupied with the sustenance of Guangdong's lead over the rest of the country.[46] Unlike in the early 1980s when the Centre's preference for Guangdong to undertake reform and have growth ahead of the rest

[45] The awareness among Guangdong officials and scholars of the importance of maintaining the *image* of the reform pacesetter is clearly shown in articles such as Wu Shihuan, Lu Ying et al, 'Shuli Guangdong "Quanguo Huochetou" de Fazhi Xingxiang' (Establish Guangdong's Image as the National Spearhead of the Rule of Law), in Guangdong Legal Society, ed., *Essays on the Socialist Market Economy and the 'Rule of Law' in Guangdong*, pp. 69-75.

[46] The Guangdong Government organized a series of seminars and conferences with officials and scholars to devise new strategies for continuous growth and development since 1993. A succinct description of Guangdong's concern in the new phase of competition and development is given in Zhu Senlin's speech to a conference of this kind in September 1994. See Zhu Senlin, 'Zengchuang Xin Youshi, Jiasu Xiandaihua' (Increase the New Edges, Speed Up the Modernization), in Guangdong Yearbook Editorial Board, ed., *Jianli Guangdong Fazhan Xin Youshi Yanjiu Chengguo Huibian*, (Guangdong: Guangdong Yearbook Press, 1995), pp. 35-43.

of the country was obvious, in the 1990s Guangdong was facing keen competition from other provinces and central leaders were no longer as attentive to the needs of Guangdong as before. Shanghai was, for instance, quickly becoming a major competitor after Pudong was granted preferential policy in 1990. Having an established history of international trade, a solid industrial infrastructure and a highly educated workforce, and with the more industrialized Yangzi Basin and Central China as its hinterland, Shanghai's reinvigoration posed a formidable threat to Guangdong's privileged status in economic development and reform.[47] As the economy of inland provinces generally lagged behind that of the more prosperous coastal region, the Centre also became more concerned with regional disparities in development and less prepared to support policies that would benefit Guangdong exclusively. The pressure for Guangdong to devise new strategies whereby to sustain growth was thus immense. It was in this wider context of spatial politics that the promotion of the rule of the law entered the agenda of the provincial government.

Lin Ruo, Chairman of the Guangdong People's Congress Standing Committee from 1990 to 1996, made an explicit statement on the linkage of the 'rule of law' policy and the need to identify new growth strategies in Guangdong. In the words of Lin,

> We need now to place the question of the rule of law on the agenda. Why do we often encounter chaos and disorders when we loosen control? The reason is simply that we do not have a proper system of law. Without laws (and their proper enforcement), what is originally intended as the enlivening of thoughts and further opening up often leads to unscrupulous behaviour and chaos...[48]

[47] This perceived threat from Shanghai was evident in a paper on the comparative edges of Shanghai and Guangdong, written by an official in the Research Office, Guangdong Government. See Huang Qingyong, 'Cong Shanghai de Jueqi Kan Guangdong de Zai Fazhen' (The Lesson of the Reinvigoration of Shanghai on the Further Development of Guangdong), in *ibid*., pp.443-51.

[48] Lin Ruo, 'Yizhua Gaige, Erzhua Fazhi' (One Method is Reform, the Other is the Strengthening of the Law), reprinted in ibid., p.85. This article was first released in *Guangdong Economy*, 6 (1993).

The strengthening of the law was elevated to a level of importance commensurate with the deepening of reform, both being part and parcel of Guangdong's strategies to achieve continuous prosperity and a lead in the country. Apparently Guangdong's leaders have come to the view, as were central leaders, that reform without laws had too often resulted in disorders, which eventually had a negative impact on the progress of reform and economic development in the province.[49]

Political Survival of Regime

Up to a point it may be true to say that the absence of the rule of law works against the interests of the governed more than against those who govern. After all the entire notion of the rule of law has historically grown out of the concern for limiting the arbitrary power of the government. There is also always a close, though not necessarily indispensable, connection between the notion of the rule of law and the liberal political tradition.[50] Nevertheless the point will be reached when more arbitrary action on the part of the government and its officials would also cost the government dear. When popular grievances accumulate to a level sufficient to threaten social stability, the legitimacy of the political regime will be brought under question.

[49] There is a need to recognize the possibility of provincial leaders concurring and disagreeing with central policy out of their independently formed beliefs and rational thinking, and not to treat choices of behaviour by provincial leaders entirely in terms of compliance or non-compliance with central policies. Provincial choices are likely to be a combination of the two. See Li, 'Central-provincial relations: Beyond compliance analysis'.

[50] See Allan C. Hutchinson and Patrick Monahan, eds., *The Rule of Law: Ideal or Ideology* (Toronto: Carswell, 1987), especially pp. 97-123, and 1-16. There has been a long debate as to whether the concept and the institution of the 'rule of law' should be defined in a more substantive or more procedural, and thus narrower, sense. The former position sees many liberal notions connected with democracy and popular sovereignty as part and parcel of the institution of the 'rule of law', whilst the latter will confine rule of law largely to predictability of law and thus sees the existence of rule of law theoretically compatible with the absence of democracy. See for instance Marsh, 'The rule of law as a supra-national concept', for the former position and Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford: Clarendon Press, 1979), Ch. 11, for the latter position.

In these circumstances it will be in the interest of the government to strengthen the rule of law in order to relieve grievances and ensure its own political survival. The target of law administration will not be only those in the society who have broken the law, but also and especially those within the government who are enforcing the law. The emphasis is, to put simply, on the *lawful implementation of laws*. In this way the promotion of the rule of law has a focus very different from an anti-crime exercise. In the latter the focus is placed on combating crimes and law-breaking behaviour. Little reference is made, however, with regard to the means and process whereby the end product, the reduction of crime rate, is achieved. On the other hand, in the case of the rule of law the emphasis is put on the process itself. Whilst the objective is to promote lawfulness the scope of lawfulness is broadened to include not only substantive outcomes but also procedural arrangements. It is not only important to enforce laws, therefore, but also to enforce laws in accordance with laws.

The distinction is a fine one, but is necessary if the original purpose of law enforcement is to be attained. The reason is simple. Without the emphasis on lawful enforcement there will be no guarantee that the laws will be duly enforced. Prospective lawbreakers may easily bribe law enforcers to get away from the law, so that in the end the law enforcement system is paralyzed. Crimes, disorders, and instability will only escalate.

It will be in the long-termed interest of the regime, therefore, to promote the rule of law in order to make law enforcement effective and ensure an acceptable level of social stability.[51] The higher the level of social discontent there exists within the society, the greater the incentive there is for the government to restrain its own arbitrary power and promote the rule of law. The cost of inaction in these circumstances is high---the very political survival of the regime is at stake. As a law professor in Beijing described the incentives behind the recent emphasis on the strengthening of the law by the central leaders:

[51] Here 'rule of law' is understood more in the narrower, procedural, sense.

> The central leaders did not act out of detached, rational analysis, in the sense that all-rounded analyses were made to ensure that decisions would benefit the nation in a balanced and sustainable manner. Very often decisions were the outcomes of pragmatic considerations, a result of compromises with vested interests. The decision to strengthen the law and improve institutionalization was thus less a reflection of the leadership attributing positive value to institutionalization *per se*, but more the outcome of a choice for a lesser 'evil'. The increasing social instability since the 1980s had compelled the leaders to agree, with reluctance, that their power be limited.[52]

Situations in Guangdong in the 1990s suggested that social tensions were acute. One indication was rampant corruption. In 1995, corruption cases involving more than 1 million yuan increased by nine-fold to 208 cases from the level in 1991. The proportion of such 'big' cases out of the total also rose from 50% in 1991 to 89% in 1995.[53] Rampant corruption suggested the level of disorder and grievances within the existing system. Whilst some specific corruption moves might be intended to relieve pressure within the system, the so-called 'lubricating' effect, eventually the very practice of corruption served to breed further grievances and, in turn, more corruption.

The income gap between the rich and the poor within the provincial population also bred dissatisfaction and potentially led to various crimes such as corruption, burglary, and robbery. Statistics as shown in Table 1 indicated that Guangdong had a larger income gap between the richest 10% of the urban population and the poorest 5% of the population than the national average. In 1997, the poorest 5% of Guangdong's urban residents earned an average of 3241 yuan per capita, which is 1.5 times of the national average of 2186 yuan.

[52] Author's interviews, Beijing, September 1996.
[53] This is information given by the Chief Procurator of the Guangdong Senior Level Procuratorate, as reported in *Ming Pao* February 5, 1996, p. C1.

The richest 10% in Guangdong earned 18184 yuan per capita, 1.76 times of the national average of 10297 yuan. The richest 10% in Guangdong earned 5.6 times the income of the poorest 5%, against the 4.7% times of the national average. The gap is also widening in the recent years with the rich getting ever richer and the poor getting poorer.[54]

The structure of available information on rural income is less helpful in revealing the extent of income disparity. Nationally, as shown in Table 1, rural households earning less than 600 yuan accounted for 3.8% of the households in 1997. In Guangdong, the percentage was a negligible 0.1%. In fact, rural households in Guangdong earning less than 1000 yuan per year accounted for only 0.9% of the total, and those earning between 1000-2000 yuan per year accounted for 15.7%. The majority of rural households in Guangdong, 83.3%, earned an annual income of over 2000 yuan, which is the top income level category in the compilation of rural income statistics. Nationally, a smaller proportion of rural households, at 45.4%, fell into this top income category. Here one notes that the rural income statistics does not show the income of the richest 10% of household. Given the large percentage (83.3% for Guangdong and 45.4% nationally) of households in the 2000 yuan and above category, it is obvious that the richest 10% of rural households actually earned an annual income much higher than what is suggested by the 2000 yuan bottom figure. Since the proportion of rural households earning the 'top' income category in Guangdong was almost double that of nationally, it is reasonable to infer that, in line with the urban situation, the top 10% income rural households in Guangdong should earn an income level much higher than the top 10% nationally.

Table 1

[54] The poorest 5% of urban population in Guangdong earned almost 10% less in 1997 than in 1996 (an average of 3241 yuan against 3570 yuan), whilst the poorest 5% nationally earned 2.5% less (2186 yuan against 2243 yuan). The richest 10% in Guangdong earned 8% more in 1997 than in 1996, whilst nationally the increase is 11%. In relative terms, the gap between the richest 10% and lowest 5% has enlarged from 4.7 times (Guangdong) and 4.1 times (national) in 1996 to 5.6 times and 4.7 times respectively in 1997. *Guangdong Statistical Yearbook*, 1997, p. 229; *China Statistical Yearbook*, 1997, pp. 296-7.

Income Gap (1997)

Income	Guangdong	National
Urban (per capita)		
Highest 10%	18184 yuan	10297yuan
Lowest 5%	3241 yuan	2186 yuan
Highest/lowest Gap	5.6 times	4.7 times
Rural (per household)		
Earning under 600 yuan	0.1 %	3.8%
Earning over 2000 yuan	83.3%	45.4%

Sources: *China Statistical Yearbook*, 1998, pp. 329, 344; *Guangdong Statistical Yearbook*, 1998, pp. 245, 256

Despite the limitation in the rural income statistics, the above data overall suggests that the level of absolute poverty in Guangdong is lower than the national average. On the other hand, the larger gap between the richest and the poorest indicates a higher degree of relative deprivation in Guangdong.

The concept of relative deprivation suggests that the feeling of satisfaction or dissatisfaction with one's situation 'depends more on subjective standards, such as the level of outcomes obtained by salient comparison persons, rather than on objective prosperity.'[55] The eradication of absolute poverty in Guangdong, according to this argument, will not necessarily relieve the feelings of social discontent, especially if the improvement of one's material conditions is dwarfed by more significant improvement in the cases of one's referent groups. Some studies on relative deprivation and behaviour also suggest that

[55] James M. Oslon, C. Peter Herman, Mark P. Zanna, eds., *Relative Deprivation and Social Comparison: The Ontario Symposium*, Vol. 4 (London: Lawrence Erlbaum Associates, 1986), p. 2. This observation was first made by the classical study on American soldiers by S. A. Stouffer, E. A. Suchman, L. C. DeVinney, S. A.

ideology is a relevant intervening variable affecting one's evaluation of social condition and the potential for action.[56] When one's ideology leads one to accept the existence of some kind of inequality, one is more inclined to limit one's scope of social comparison, and thus containing the extent of dissatisfaction. However, when the mainstream ideology leads one to believe in the illegitimacy of inequality, one will be much less tolerant.

It is arguable that conditions in Guangdong provided a fertile ground for feelings of dissatisfaction and subsequent action. Relative deprivation between the richest and the poorest of the provincial population was of a more acute level than the national average. Coupled with conspicuous consumption by some of the richer, this feeling of deprivation was likely to breed anger and jealousy amongst those who lagged behind. Emotions could also be intensified by the socialist ideology of equalitarianism. Despite the emphasis placed on efficiency by leaders of various levels since reform, the tension between widening inequality and the ruling ideology had never gone away.[57] As the income gap widened the dissonance between what had been preached and what occurred in practice became increasingly acute. At the same time there was the history of activism in the socialist revolution encouraging action to combat injustice. The increased occurrence of crimes in Guangdong, such as robbery, burglary and corruption, might thus be interpreted as the reaction to such perceived injustice by the low-income earning people and officials.[58]

Star, and R. M. William Jr., *The American Soldier: Adjustment During Army Life*, Vol. 1, (Princeton: Princeton University Press, 1949).

[56] See for instance Joanne Martin, 'The Tolerance of Justice', in James M. Oslon, C. Peter Herman, Mark P. Zanna, eds., *Relative Deprivation and Social Comparison: The Ontario Symposium*, pp. 217-42.

[57] An illustration is in Deng Xiaoping's remarks during his Southern Tour in spring 1992. The major thrust of his messages was to encourage new initiatives to seek higher economic growth, especially from the more developed areas in the south and along the coast. Notwithstanding the primary concern for growth rather than equality, Deng apparently felt obliged to also include a reference to the longer term aim of achieving equalitarianism in wealth in the nation. See Shenzhen Party Committee, ed., *Deng Xiaoping and Shenzhen: Spring, 1992*, p. 5.

[58] The increasing occurrence of corruption cases among officials who previously were well known for their dedicacy to work and revolutionary spirit reflected the magnitude of the pressure. See for instance a report in *Apple Daily* (Hong Kong) June 30, 1996, p. A13.

The Chinese leaders had gradually come to feel the threat of an increase in crimes and especially rampant corruption to regime survival. During the fourth meeting of the National People's Congress Standing Committee held in October 1993, for instance, delegates warned that increasing corruption was posing a real threat to the very survival of the Party and the Nation.[59] It was a life-and-death issue and urgent action was required. In order to tackle fundamentally the problem, there was a felt need for a good legal system and its due enforcement. In highlighting the extent of the problem, a judicial official in Guangdong once pointed out that only about 10% of existing laws and regulations in China were being properly enforced.[60] Major changes to the existing monitoring mechanism and legal system were imperative in order that the arbitrary use of state power might be checked. The resultant advocacy of the rule of law amongst the central leadership, and in Guangdong in particular, was thus a response of the state to sustain political survival against threats from the society.[61]

Continuity *and* Departure

Discussion in this paper so far suggests that the recent 'rule of law' policy in Guangdong is both a continuity and a departure from the previous emphasis on flexibility. On the one hand, the advocacy of the rule of law in the 1990s grew out of the context of flexibility, thus being a continuance of the latter. On the other hand, a regime of the rule of law was plainly different from a regime of flexibility and ambiguity, so that a departure was evident. In other words, there has been continuity in process and departure in substantive content.

[59] See *Yancheng Wanbao*, October 31, 1993, p. 1.

[60] See Mo Jiaqi, 'Guanyu Jianli Wanshan Fan Fubai Fazhi Jizhi de Gouxiang' (Some Thoughts on Establishing and Improving the Anti-Corruption Legal Mechanism), in Guangdong Legal Society, ed., *Essays on the Socialist Market Economy and the 'Rule of Law' in Guangdong*, p. 114.

[61] For an 'official' statement of the background of the adoption of the rule of law policy in Guangdong, coming from within the provincial leadership, see Zeng Hong, 'Yifa Zhisheng Shi Lishi Fazhan de Yaojiu he Biran' (Practising the 'Rule of Law' in Guangdong is the Logical Requirement of Historical Development), in Guangdong Legal Society, ed., *Essays on the Socialist Market Economy and the 'Rule of Law' in Guangdong*, pp. 3-7. Zeng was a member of the Guangdong People's Congress Standing Committee and the former director of the Guangdong Justice Bureau.

More importantly, this paper argues that processes and meaning are interactive. In order to understand what constitutes the departure in substantive content, that is, meaning and significance, we need to start with the 'continuous' processes of policy development.

Central to the processes of policy change are the changes in the contexts in which the Guangdong leaders operated. In the broader context of opening and reform, the new emphasis on law is in part a result of external influence, and early in the 1980s the government of Shenzhen had attempted to take reference from Hong Kong in its legislative exercises. The process of influence was, however, more complex than a direct 'copy and paste' of external examples. The picture shown in this paper is that there has been a complex interaction between various domestic concerns of political control across different spatial scales, and the logic and demands of economic development in an open and international context. Mediated through these interactions was the learning process within political actors regarding what strategy of governance would suit best their interests. The practice of the rule of law in market economies elsewhere does not, therefore, exert a direct impact on the practice in mainland China. The reform process and China's increasing participation in the international economy in the last two decades have generated *domestic* processes which subsequently led the leaders to see the utility of the rule of law in resolving their problems. The province of Guangdong has been at the cutting edge of China in this process, being situated at the front door of China's open door policy.

A caution is required regarding substantive differences. The apparent contradiction between the flexibility approach and the rule of law notwithstanding, it should not be taken to suggest the existence of an exclusive dichotomy, in which the former is the antithesis of, and being replaced by, the latter. In the opinion of a senior Guangdong official it was misleading to contradict the need for flexibility with the need for the rule of law, as if

flexibility would necessarily lead to illegality.[62] The rationale for the rule of law policy was felt to be based on the inadequacy of the existing legal system, *not* targeted against the flexibility approach. In his own words,

> It is actually 'unscientific' to describe Guangdong's flexibility approach as the 'red lights theory'. Such a description lends a negative connotation as if we will still cross the road despite the 'red' traffic light is on. What actually occurs is that Guangdong does not merely stop in the middle of the road when the red light is on. We stop at this road, *but keep finding alternative roads where the red light is not on.* Flexibility does not, therefore, necessarily incur unlawfulness. There is no contradiction between flexibility and the rule of law.

The underlying message is: the low level of institutionalization and the poor state of the legal situation as existing in Guangdong and in China has left ample room for improvement. Whilst a *sole* emphasis on flexibility as a growth strategy and governance approach might have reinforced unlawfulness, strengthening the law would not exclude flexibility. There had been, in fact, a need for flexibility in the course of improving the legal system. In the enactment of local legislation, for instance, flexibility had to be exercised in the interpretation of 'legitimate' areas for local legislation, given the unified nature of China's legislative hierarchy.[63] In other words, the provincial leadership saw the need for flexibility despite its recognition of the value of regularity and institutions, especially in the current stage of *developing* towards the state of the rule of law. Here the echo with the developmental view of constitutionalism is loud and clear, and any discussion of the

[62] Author's interview, Guangzhou, June 1996. The official worked in the reform planning stream of the Guangdong Government.

[63] The status of local legislation in the national legislative system has been a major topic of contention within China. For examples of such discussion see Zhou Wangsheng, 'Lun Zhongguo Difang Lifa de Diwei' (The Status of Local Legislation in China), *Zhengzhi Yu Falu*, 5 (October 1994), pp. 8-11, and Shen Guancheng, 'Dui Difang Lifaquan de Zai Renshi' (A Reappraisal of Local Legislation), *Chinese Legal* Science 1 (February 1996), pp. 17-22. There are two approaches in arguing for the legitimacy of local legislation in a unified legal

distinction between ‘rule of law’ and ‘rule by law’ needs to be embedded in the dynamic development of legal institutions over time and space.

hierarchy: the ‘legislation by experience’ argument and the ‘advanced legislation’. For changes in attitudes regarding these two approaches in Guangdong, see *Fazhi* 1(1996), pp. 4-6.