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Party-Legislation of Legislating-Party in the Chinese Socialist Rule of Law: The Role of the CCP in the Party-State Legislation Revisited

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Abstract

The wide and deep participation into legislation is a crucial means for the CCP to govern the Chinese Party-state. This Article examines how the CCP as a legislating Party acts in the state legislation as well as in its own internal legislation and what influences the Party's legislating behaviors bring to the socialist rule of law. By a positivist and typological survey, the Article divides the intra-party regulations into three kinds, namely the pure intra-party regulations, the state-parallel intra-party regulations as well as the supra-state intra-party regulations. On this basis, the Article further analyzes how different types of the intra-party regulations influence the state legislation and, ultimately, the socialist rule of law. Finally, this Article points out that the overexpansion of the intra-party regulations leads to the partisanization of the state legislation and the legalization of the Party legislation which renders the existing separation of the Party and the state feebler and the socialist rule of law could afford more pressures in a foreseeable future.

Keywords: Party legislation; legislating Party; state legislation; socialist rule of law; separation of Party and state

A. Introduction

Legislation is one of the most important action forms of the Chinese Communist Party (“CCP”) for ruling China. Under the political reality of the Party-state, the CCP simultaneously acts as a bureaucratic political organization and as a leading party monopolizing all the supreme powers of the state. Correspondingly, the legislation of the CCP is also dichotomous. It includes not only the state legislation under the CCP's control, but also the internal legislation of the CCP. The co-existence of two normative systems is the counterpart of the dualistic Party-state political reality. The relationship between the two normative systems created by state-legislation and Party-legislation has varied in the different periods of CCP rule.

In a long term after the Reform and Opening policy in 1978, the CCP generally insisted on the separation of Party and state defined by Deng Xiaoping at the end of 1970s. The separation of Party and state means, in contrast to the high mixture of Party and state organizations and their functions in the Cultural Revolution era, the “retreat” of the Party from the most areas of the day-to-day state governance. The vacuum which was left by the retreat of the Party and its regulatory function and force was filled by state laws. As a result, it is a clearly observable phenomenon that the legal and political evolution in the Reform era was characterized by a large scale of state-legislation, or on a more abstract level, the rationalization and formalization of the state governance system, especially its legal system. However, it is also

undeniable that the Party-legislation and the intra-party normative system existed parallel with the acceleration of the state-legislation even in the Reform era. The gain of autonomy as well as independence of the state legal system depends highly on the space granted by the CCP to the state. The will of the CCP to maintain the separation between the Party and the state guaranteed the nuanced balance between the intra-party normative system and the state normative system to a greater extent.

In the past decade, consistent with the tendency to strengthen its overall leadership, the CCP took a series of measures to enhance its internal legislation by enacting considerable intra-party regulations. Strengthening intra-party legislation also brought changes to the relationship of the intra-party normative system with the state normative system. Contrary to the “retreat” from the state, the CCP more and more intervenes into the state day-to-day operations under the policy of Party’s overall leadership. In this regard, the past decade witnessed the boom of Party-legislation.

Some sensitive Western observers of Chinese law very early caught this phenomenon of the Chinese legal evolution in recent years. They endeavored to grasp and analyze the “comeback” of the Party and the salience of the intra-party legislation in various paradigms, principally for example, “legal formalism/anti-formalism,”¹ “rationalist/irrationalist,”² “liberal-democracy/dictatorship-authoritarianism,”³ “administrative power/political power,”⁴ “rule-based processes/(law-transcending/ illiberal) political leadership,”⁵ “the legal/the political,”⁶ “professionalism/politicization,”⁷ and so on. One even referred to the dichotomy of “normative state/prerogative state” theory which had been developed to describe Nazi Germany.⁸ In sum, their worries concentrated on the possible negative impacts of strengthening intra-party legislation on the achievements of the legal reform in the Reform era and the “disorientation” of the Chinese legal development for the new era.⁹ Concretely, they worry that under the tendency of Party-state-fusion, the intra-party legislation which involves not only pure Party matters, but also intervenes into state matters, undercuts the separation of Party and state, and as a result, the basis of the socialist rule of law and all the institutional achievements consisting of it.

¹Samuli Seppänen, *Formalism and Anti-Formalism in the Chinese Communist Party’s Governance Project*, 10 GLOB. CONSTITUTIONALISM 290, 291 (2021).

²Samuli Seppänen, *Interrogating Illiberalism through Chinese Communist Party Regulations*, 59 CORNELL INT’L L.J. 267, 281, 290 (2019).

³Taisu Zhang & Tom Ginsburg, *China’s Turn Toward Law*, 59 VA. J. INT’L L. 307, 310–11 (2015).

⁴Ling Li, “Rule of Law” in a Party-State: A Conceptual Interpretive Framework of the Constitutional Reality of China, 2 ASIAN J.L. & SOC’Y 93, 95–96 (2015).

⁵Seppänen, *supra* note 1, at 290, 293. See also Seppänen, *supra* note 2, at 270–71, 301. See also Samuli Seppänen, *Disorientation for the New Era—Intraparty Regulations and China’s Changing Party-State Relations*, in LAW AND THE PARTY IN CHINA: IDEOLOGY AND ORGANIZATION 214 (Rogier Creemers & Susuan Trevaskes eds., 2020).

⁶Seppänen, *supra* note 2, at 217, 229–230. See also Rogier Creemers & Susan Trevaskes, *Ideology and Organization in Chinese Law: Towards a New Paradigm for Legality*, in LAW AND THE PARTY IN CHINA, *supra* note 5, at 1, 22.

⁷JAMIE P. HORSLEY, PARTY LEADERSHIP AND RULE OF LAW IN THE XI JINPING ERA: WHAT DOES AN ASCENDANT CHINESE COMMUNIST PARTY MEAN FOR CHINA’S LEGAL DEVELOPMENT? 7 (2019).

⁸Seppänen, *supra* note 1, at 296–97; ERNST FRAENKEL & JENS MEIERHENRICH, THE DUAL STATE: A CONTRIBUTION TO THE THEORY OF DICTATORSHIP xv (2017) (explaining that the “two-states” theory was developed by the German jurist Ernst Fraenkel). Fraenkel “believed to have found a key to understanding the National Socialist system of rule—“*der nationalsozialistischen Herrschaftsordnung*”—in the duality or concurrent existence—“*Nebeneinander*”—of a “normative state”—“*Normenstaat*”—that generally respects its own laws, and a “prerogative state”—“*Mafnahmenstaat*”—that violates the very same laws.” *Id.*

⁹See Seppänen, *Disorientation*, *supra* note 5, at 216–17 (explaining how Professor Seppänen entitled his recently published essay focusing on the CCP’s intra-party regulations as “Disorientation for the New Era”). In *Disorientation*, he expressed concerns about the “Party’s relationship with rule-based governance” and argued this “disorientation” originated from the CCP’s “attempt to exercise illiberal political leadership through a ‘modern,’ supposedly rationalist, bureaucracy.” *Id.*

Generally, to understand the boom of the intra-party normative system and its influences on the state law, one has to examine the very origin of the existing “socialist rule of law state.” The author argues that the socialist rule of law state, regardless of its intentional terminological imitation of its Western counterpart “rule of law,” did not bring any approach to or uptake of the substantive values of the Western rule of law, for example, “liberal democracy” and “separation of powers,” which are in direct contravention with the Party-state political reality. On the contrary, the greatest contribution of the socialist rule of law state is that it, constitutionally and legally, entrenched the autonomy and independence of the state governance system, especially its legal system and managed to consolidate the separation of the Party—normative system—and the state—normative system—from the state side. This means that all the day-to-day ruling—or more accurately “regulatory”—behaviors of the Party entails the justification and legalization from the state and its normative system, even if the Party itself dominates the state lawmaking. This kind of Party behavior form essentially distinguishes itself from the previous ways that the Party acted merely on the basis of its own internal polices, or even the orders of some individual Party-leaders like in the Cultural Revolution. The socialist rule of law state signifies the belief of the Party in and its commitment to the institutional rationality, it created and guaranteed the indispensable space for all institutional establishments and growths within the state, including but not limited to massive rationalized legislative projects, enhanced judicial professionalism and functional independence and legalized administration.

Some of the above-enumerated paradigms are indeed conducive to explain the dynamics of the Party-state relationship. For instance, the dichotomy of “legal formalism/anti-formalism” is suitable for analyzing the possible effects of the intra-party rules on the authority and stability of the formal state laws, because the normativity and binding force of the informal intra-party rules, often depicted as the antithesis of formal state laws, can compete with and infringe on the normativity of the formal state laws. Other paradigms, however, can only obtain a limited explanatory force, especially the dichotomy of “liberal-democracy/dictatorship-authoritarianism.” When the Western liberal democracy was not intended to be adopted into the core connotation of the socialist rule of law state at all, how can one require it to interpret the current Party-state relationship convincingly?

A more appropriate way to examine how the strengthened intra-party legislation can exert possible influences on the state normative system is to adopt an indigenous perspective, namely under the socialist rule of law state and the framework of the separation of the Party and state. To do this, this Article conducts a more sophisticated study on the intra-party legislation. It categorizes the CCP’s intra-party legislation and its intra-party norms into three kinds: The pure intra-party regulations, the state-parallel intra-party regulations and the supra-state intra-party regulations. On this basis, it further discusses the relationship of the different intra-party regulations with the state laws as well as, ultimately, the relationship of the Party with the state.

Structurally, Part B expounds upon the status and function of the CCP in the state legislation as well as in its own Party-legislation and points out that the CCP acts as a legislating party and the legislation is one of its most important action forms. In Part C, the author conducts a positivistic and typological investigation on the intra-party enactments. Under the paradigm of socialist rule of law state and the separation of Party and state, Part D studies the influences of each kind of intra-party rules on the state formal laws and responds to the existing explanatory frameworks posed by some Western Chinese law observers. Part E concludes this Article.

B. Legislation as Action Form of the CCP for Ruling the Party-State

In the PRC, it is the People’s Congresses on the national and local levels that function as the legislative organs. Different from Western competitive representative democracy where the

legislature is designed to articulate and integrate the plural interests of the constituencies, the People's Congresses have generally been deprecated as "rubber stamps" under the control of the CCP. The state legislature is deemed to be a tool for the Party to rule the state and is totally subject to the will of the Party. To a greater extent, under the Party-state political design—where there is no Party outside the state and no state outside the Party—it is safe and appropriate to argue that the state legislature possesses a strong instrumentalist nature due to its subordinate status to the Party. The dominant status of the Party which enables the Party to be a legislating Party in the Party-state can be demonstrated in two legislation areas, namely in the state legislation and in the legislation of the Party's own.

I. The Party in the State Legislation

Under the mechanism of the Party-state, the state legislation is one of the most important areas over which the Party exerts its leadership. The supreme status of the Party guarantees its absolute control over the state legislatures through political, ideological and organizational means. However, it is also worth noting that, contrary to the total substitute of the Party organs for the state organs like in the Cultural Revolution, the leadership of the Party over the state legislatures premises the institutional independence of the state legislatures. Thus, the faces of the Party in the state legislation are twofold: On the one hand, the Party never abandons its control over the state legislatures and ensures that the state legislatures comply with its will anytime when needed; on the other hand, it highly depends on the institutional rationality of the state legislatures to convert its wills into rationalized and systemized legal clauses which are required for governing and regulating a modern society. The transformation and polishing within the state legislatures also endows the Party's will with the indispensable legality through the routine legislative procedures.

Moreover, it bears noting that the Party's will cannot be understood as a pure political will merely inundated of ideological instructions and disciplines. In fact, as the unique leading Party which is committed to achieving the modernization and rejuvenation of the Chinese nation, the CCP must face and handle the complexity of the day-to-day state governance in the enormous concrete social fields. A pure political understanding ignores the live life reality of the state and society. In this sense, notwithstanding its strict political control over the state legislatures, the Party has to endow the state legislatures with indispensable institutional vitality and space, so that the state legislatures can function as the part of the normal state organs for implementing and realizing the day-to-day state governance. This duality is key to understand the status of the Party in the state legislation. It obviously refutes the one-sided and oversimplified emphasis on the so-called arbitrary—illiberal and undemocratic—political leadership of the Party over the state legislatures as some of the afore-mentioned explanatory categories argued.

II. The Organizational Control of the Party Over the State Legislatures

Among all the control means, the organizational control undoubtedly is the most effective one for the Party to lead the legislatures on the national and local levels. To a greater extent, other "soft" control means like political and ideological means can only effectively be achieved by the "hard" organizational control, because the organizational control determines the material reward, punishment and promotion, career prospect and, most importantly, the political future of a party member. Through the control of personnel appointments, the Party ensures that the top leaders as well as the majority of the members of the legislatures are occupied by the Party members who, from their side, must abide by the orders, instructions, disciplines, policies and the whole ideology of the Party. Thus, when the Party exerts its organizational control over the Party members

“inserted” in the state legislatures, it can also enforce its will in the state legislatures without any obstacles.

On the whole, the absolute majority of the state organs are occupied by the Party members. General data officially released in 2016 shows that “more than 80 percent of China’s civil servants are Party members, and more than 95 percent of the leading officials at or above the county level are Party members.”¹⁰ Regarding the state legislatures on the national and local level, there are rare systematic official data about the percentage of their Party members.¹¹ However, some academic researches and media reports as well as some fragmental official data can provide a hint of this percentage. According to the statistics of Professor Qin Qianhong, “the proportion of CCP members in the National People’s Congress (“NPC”) is always an [. . .] majority, with 54.49% in the first, 57.75% in the second, 54.83% in the third, 76.8% in the fourth, 72.78% in the fifth, 62.5% in the sixth, 66.9% in the seventh, 68.4% in the eighth and 71.5% in the ninth.”¹² For the thirteenth NPC, there is still no full view of the Party membership of the NPC deputies. According to the data of the newspaper “*Wenhui Bao*,” in the Shanghai Delegation of the thirteenth NPC, one of the 35 delegations of the NPC, the proportion of its Party members is 66.7%.¹³ On the local level, there are some scattered available samples. A case of the Haiyan County of the Zhejiang Province shows that the proportion of the Party members in its People’s Congress reaches 73.2%.¹⁴ In the case of the Fuzhou City of the Fujian Province, the proportion of the Party members in its People’s Congress is 60.9%.¹⁵ An official Decision of the Foshan City of the Guangdong Province requires that the proportion of the Party members in its People’s Congress shall not surpass 65%.¹⁶

The proportion of the Party members in the Council of Chairmen (*weiyuanzhang huiyi*, 委员长会议) of the Standing Committee of the NPC (“SCNPC”) can provide a more conducive perspective. The proportion of the Party members in the Council of Chairmen from the seventh to thirteenth NPC is respectively 55% in the seventh, 60% in the eighth, 60% in the ninth, 68.8% in the tenth, 64.3% in the eleventh, 64.3% in the twelfth, and 60% in the thirteenth.¹⁷ Besides in the leadership of the SCNPC, the general proportion of the Party members in the total members of the NPC Special Committees is also dominant.

From the above-given statistics, it is clear that the proportion of the Party members in the organs of the national and local legislatures varies between 55% and 80%. It never happens that this proportion falls below 50%, and in the most cases, it remains about

¹⁰See Xi Jinping, *Speech at the Sixth Plenary Session of the Eighteenth Central Commission for Discipline Inspection*, CENT. COMM’N FOR DISCIPLINE INSPECTION & SUPERVISION (Jan. 12, 2016), http://www.ccdi.gov.cn/toutiao/201610/t20161020_125098.html.

¹¹*The Proportion of Leading Cadres has Decreased! A Chart Showing the Composition of the 13th National People’s Congress*, BAIDU (Mar. 4, 2018), <https://baijiahao.baidu.com/s?id=1594014138909686911&wfr=spider&for=pc> (finding that the customary way is to publish only the information about ethnicity, gender, and occupation of the deputies. The proportion of ethnic minorities, women, peasants, and workers is often emphasized to demonstrate the representative diversity of the NPC deputies).

¹²Qin Qianhong, *zhongguo gongchandang dui lifa de yingxiang* [The Influences of the CCP on the Legislation], <https://www.aisixiang.com/data/46946.html> (last visited on May 24, 2022).

¹³See Wen Wei Po, *60 National People’s Congress Deputies in Shanghai Arrived in Beijing. What are the New Changes This Year?*, BAIDU (Mar. 3, 2022), <https://baijiahao.baidu.com/s?id=1726256010518297607&wfr=spider&for=pc>.

¹⁴See Shao Qi & Fan Linxia, *How are the 235 County Representatives of the 16th National People’s Congress Composed?*, THE PAPER (Feb. 14, 2022), https://m.thepaper.cn/baijiahao_16695244.

¹⁵See Li Bailei, *The Composition of the New Municipal People’s Congress Representatives is More Extensive and Representative*, BAIDU (Jan. 5, 2022), <https://baijiahao.baidu.com/s?id=1721076389509485575&wfr=spider&for=pc>.

¹⁶Ni Lingfang, *guanyu renda daibiao jiegou de diaoyan yu jianyi* [Investigations and Suggestions on the Deputies’ Structure of the People’s Congress], 5 RENDA YANJIU, 16 (2014), <https://www.pkulaw.com/qikan/4f2580f6c5bb23d93fcbf7803497c182bdfb.html>, (finding that an investigative paper of an author from the People’s Congress of Zhejiang Province also verified this proportion).

¹⁷See NATIONAL PEOPLE’S CONGRESS OF THE PEOPLE’S REPUBLIC OF CHINA, <http://www.npc.gov.cn/>.

Table 1. The Partisan structure of the NPC special committees¹⁸

	CCP Members		Members of Democratic Parties and Groups		Non-Partisan Members	
	Amount	Percentage	Amount	Percentage	Amount	Percentage
Sixth NPC	104	80.62	15	11.63	10	7.75
Seventh NPC	120	75.00	36	22.50	4	2.50
Eighth NPC	138	78.86	31	17.71	6	3.43
Ninth NPC	171	79.17	27	12.50	18	8.33
Eleventh NPC	224	82.66	32	11.81	15	5.54

65%.¹⁹ This proportion ensures that the will of the Party can be realized in the internal processes of the state legislatures and enhanced in the state laws.

Concretely, the organizational control of the Party is principally guaranteed in the form of the leading Party members group—*dangzu*, 党组, LPMG—and other party organizations established in the state legislatures. According to Regulation on Work of Leading Party Members Group of the Chinese Communist Party,²⁰ hereafter the LPMG Regulation, the LPMG is a leading body set up by the Party in the leadership of the central and local state organs, people's organizations, economic and cultural institutions, as well as other non-Party organizations. As the power organs of the state, the legislatures on the national and local levels are naturally the crucial units where the LPMG must be established.²¹ Besides the LPMG, there are also other forms of Party organizations existing in the state legislatures and these Party organizations are strictly hierarchically and bureaucratically arranged.²² Table 2 lists the Party organizations in the NPC and SCNPC.

The LPMGs in the state legislatures discuss and decide on the following major issues of the units: (1) The enforcement of the significant measures made and deployed by the Party Central Committee and the Party organizations at higher levels. (2) The significant issues in the drafts of laws, administrative rules, regulations of ministries and local governments and other normative documents. (3) The development strategy, major deployments and issues of the professional work, and so on.²³

The general quantitative majority of the Party members as well as the LPMGs established in the leadership of the state legislatures ensure the absolute and seamless control of the Party over the state legislative organs. Under the precondition of organizational control, the Party's control over

¹⁸Liu Leming, *quanguo renda zhuanmen weiyuanhui jigou jiqi wenti yanjiu* [Study on the Structure and Problems of the NPC Special Committees], in 12 RENDA YANJIU 14 (Liu Leming trans., 2012) (explaining that an academic statistic published in the official journal of the NPC shows partial percentages of the CCP members in the NPC Special Committees) (See Table 1).

¹⁹*Id.* See also Feng Lixia, *zhizhengdang yu renda lifa de guanxi – cong “lingdao dang” xiang “zhizheng dang” zhuanbian de lifaxue chanshi* [Orientating the Relationship Between the Ruling Party and the People's Congresses' Legislation—A Legislative Theory's Interpretation of the Transformation from “Leading Party” to “Ruling Party”], in 5 FAXUE JIA 108 (2005).

²⁰Xinhua News Agency, *zhongguo gongchandang dangzu gongzuo dangzu gongzuo tiaoli* (中国共产党党组工作条例) [The CPC Central Committee Issued the “Regulations on the Work of Party Groups of the Communist Party of China”], CHINA GOV'T NETWORK (Apr. 15, 2019), http://www.gov.cn/zhengce/2019-04/15/content_5383062.htm.

²¹Leading Party Members Group Regulation (promulgated by the Cent. Comm. of the Communist Party of China, Apr. 15, 2019) Int'l Dep't Cent. Comm. of CPC, at art. 7 ¶ 1.

²²On the national level, the LPMG is the most important Party organization established in the leadership of the NPC and the SCNPC. In practice, the forms of Party organizations are flexible and diverse. Besides the LPMG, there also exist other Party organizations established according to actual needs, like Party Committee (*dangwei*, 党委), temporary Party Committee (*linshi dangwei*, 临时党委), Affiliated Leading Party Members Groups (*fen dangzu*, 分党组), Organ Leading Party Members Group (*jiguan dangzu*, 机关党组), Party branch (*dangzhibu*, 党支部), temporary Party Branch (*linshi dangzhibu*, 临时党支部). On the local level, the Party organizations in the legislatures basically have the homogenous structure as the national ones.

²³*Supra* note 22, at art. 17 ¶¶ 1–3.

Table 2. Overview of the Party organizations in the NPC and SCNPC²⁴

	LPMG	Other Party Organizations
NPC	Temporary LPMG of the NPC	<ol style="list-style-type: none"> 1. Temporary Party Committee of the Presidium of the NPC 2. Temporary Party Branch of the delegations to the NPC 3. Affiliated LPMG of the Special Committees of the NPC
SCNPC	LPMG of the SCNPC	<ol style="list-style-type: none"> 1. Organ Party Members Groups of the SCNPC 2. Affiliated LPMG of the Special Committees of the NPC 3. Other temporary Party Members Groups

state legislatures is realized in various concrete ways. In the NPC, for instance, the Party can directly intervene into the legislative processes mainly through the power to introduce legislative bills and propose “legislative suggestions”—*lifa jianyi*, 立法建议—and the mechanism of “requesting for instructions and reporting on major issues”—hereinafter the Mechanism RIRMI, *zhongda shixiang qingshi baogao zhidu*, 重大事项请示报告制度—.

Formally, the Legislation Law of the PRC²⁵ only stipulates limited kinds of subjects that can introduce legislative bills into the NPC.²⁶ Nominally, the Party organizations on the national level are not eligible subjects that can propose legislative bills. However, due to the universal existence of Party control in these formal subjects of legislative bills, the legislative bills are usually initiated, drafted and reviewed in advance by their internal mechanism of Party control before being submitted to the NPC.²⁷ Thus, the control over legislative bills actually endows the Party with a recessive power to introduce legislative bills into the formal state legislatures. Further, the Party can also exercise its wills in the NPC by proposing the so-called “legislative suggestions.” The legislative suggestion means that the Party directly “tells” the NPC what to do in the form of “suggestions.” It is not a legally defined way. However, it is a more overt and convenient way for the Party to intervene into the legislative processes. Notwithstanding the form of “suggestions,” the NPC must fulfill such Party’s political orders in the form of formal legal processes. An official report states:

Since the founding of new China, all the amendments to the Constitution were drafted by the CCP Central Committee. It then delivered the drafts in the form of legislative suggestions to the NPC. This is an important way for the Party to lead the legislation. [...] The Anti-secession Law and other major legislative projects were also based on the legislative suggestions of the CCP Central Committee and drafted by it.²⁸

²⁴See Guo Hui, *shuangchong lifazhe—quanguo rendad-dang zuzhi zai lifa zhong de juese* (雙重立法者—全國人大黨組織在立法中的角色) [*Dual Legislator—The Role of Party Organizations in the Lawmaking of the National People’s Congress*], 180 ERSHIYI SHIJI 120 (Guo Hui trans., 2020).

²⁵Lifa Fa (立法法) [Law on Legislation] (promulgated by the Standing Comm. Nat’l People’s Cong., Mar. 15, 2000, effective July 1, 2000; rev’d 2023) 2000 STANDING COMM. NAT’L PEOPLE’S CONG. GAZ. 112 (China).

²⁶*Id.* at arts. 14–15.

²⁷Feng Yujun & Zhou Jianwei, *jiaqiang dang du lifa gongzuo de lingdao* (加強黨對立法工作的領導) [*Strengthening the Party’s Leadership Over Legislative Work*], in 1 HONGQI WENGAO (2022), http://www.qstheory.cn/dukan/hqwg/2022-01/11/c_1128251152.htm (“In the step of law formation, . . . the subjects of legislative bills must propose bills to the legislatures according to the Party’s positions.”).

²⁸*Theoretical Development and Practical Innovation of the Party’s Leadership Over Legislative Work*, NATIONAL PEOPLE’S CONGRESS OF THE PEOPLE’S REPUBLIC OF CHINA, http://www.npc.gov.cn/npc/c12434/dzlfzgzcl70nlfic/202108/t20210823_313203.html (last visited June 8, 2022). See also Feng & Zhou, *supra* note 27 (“Since the 18th National Congress of the CCP, the attitude of the Central Committee of the CCP in proposing legislative suggestions has become increasingly proactive and clear. It has made important legislation instructions in key and frontier areas such as national security, network security, ecological environment, scientific and technological innovation, and the construction of a foreign-related legal system.”).

The mechanism RIRMI means that Party organizations at lower levels ask for instructions from and reporting to the organizations at higher levels on major issues; Party members and leading cadres ask for instructions from and reporting to the Party organizations on major issues.²⁹ Party organizations must ask for instructions from Party organizations at higher level on a wide range of issues,³⁰ including major legislative matters.³¹ In many cases, this intra-Party mechanism has actually become an indispensable formal step embedded into the NPC legislative processes. Since the eighteenth National Congress of the CCP in 2012, the SCNPC has reported to the Party Central Committee and requested for its instructions on all major legislative matters in the name of the LPMG of the SCNPC. By doing this, a normalized and institutionalized mechanism has been established.³² Through this mechanism, the Party can: (1) Define the guidelines and strategies of the legislation; (2) examine and approve the legislation plans of the SCNPC;³³ (3) study and discuss important drafts and make decisions on major issues involved in the drafts.³⁴

III. The Professional Dependence of the Party on the State Legislatures

The CCP repeatedly emphasizes its power to oversee and intervene into the legislative processes within the NPC and SCNPC. However, in fact, the Party's actual intervention into the concrete legislative processes is limited and highly selective.³⁵ The making of the PRC Civil Code can provide a good example for explaining this. The Civil Code compilation was a significant legislation project for both the Party and the state in the past few years. The role of the Party Central Committee in the legislative processes of the SCNPC for making the Civil Code was clearly published.

The making of the Civil Code is “a significant political and legislative task defined by the Fourth Plenary Session of the 18th CCP Central Committee.”³⁶ It was incorporated into the “Decision of the CCP Central Committee on Some Major Issues Concerning Comprehensively Advancing the Governing the Country According to Law,” adopted in October 2014. After that:

[I]n June 2016, August 2018 and December 2019, the General Secretary Xi Jinping presided over the Meetings of the Standing Committee of the Political Bureau of the CCP Central Committee three times. In these Meetings, he listened to and agreed in principle to the requests for instructions and reports made by the LPMG of the SCNPC on the codification of

²⁹zhongguo gongchandang zhongda shixiang qingshi baogao tiaoli (中国共产党重大事项请示报告条例) [Regulation on Requesting for Instructions and Reporting on Major Issues of the Chinese Communist Party] [hereinafter Regulation RIRMI] (promulgated by the Cent. Comm. of the Communist Party of China, Jan. 31, 2019) 2019 CENT. COMM. OF THE COMMUNIST PARTY OF CHINA GAZ. art. 3 ¶ 1 (China).

³⁰*Id.* at arts. 12–15.

³¹*Id.* at art. 13 ¶ 2.

³²*Theoretical Development*, *supra* note 28.

³³*Id.* (“Since the Standing Committee of the Seventh National People’s Congress in 1988, each standing committee of the National People’s Congress has worked out legislative plans. They were printed and issued for implementation after being approved by the Party Central Committee.”).

³⁴*Id.*

³⁵Zhao Yidan, *dang lingdao lifa de zuzhi yanbian* (党领导立法的组织演变) [The Organizational Evolution of the Party’s Leadership over Law - Making], in 6 HUANQIU FALU PINGLUN [GLOBAL L. REV.], 104 (2021) (“In the past 22 years from 1991 to the 18th National Congress of the CCP held in November 2012, 3 requests for instructions on issues related to the revision of the Constitution and 32 requests for instructions on issues related to the law drafts were submitted to the Party Central Committee in the name of the LPMG of the SCNPC, with an average of 1.6 requests per year. Since the 18th National Congress of the CCP, the number of the requests for instructions has increased, with an average of about 8 per year.”).

³⁶*zinshidai de renmin fadian - zhonghua renmin gongheguo minfadian danshengji* (新时代的民法典 - 中华人民共和国民法典诞生记) [The People’s Code of the New Era - The Birth of the PRC Civil Code], THE NATIONAL PEOPLE’S CONGRESS OF THE PEOPLE’S REPUBLIC OF CHINA, http://www.xinhuanet.com/politics/2020-05/28/c_1126046820.htm (last visited June 8, 2022).

the Civil Code, gave important instructions on and provided important and basic guidelines for the codification of the Civil Code.³⁷

In the official release, it is repeatedly emphasized that “the strong leadership of the CCP Central Committee is the decisive factor for successfully fulfilling the codification of the Civil Code.”³⁸ The major issues and matters during the making of the Civil Code decided by the CCP Central Committee includes “the overall consideration and work steps of the codification of the Civil Code as well as the style and structure of the Civil Code.”³⁹

However, except the above-mentioned information, more details about the role of the Party Central Committee in the legislative process are absent. For example, how did it decide on the structure of the Civil Code? What kind of instructions about the major issues and matters did it give? Thus, the emphasis on the role of the Party Central Committee in the making of the PRC Civil Code is more a political reiteration of the overall leadership of the Party in the legislation area. It demonstrates the total control of the Party Central Committee over the major state legislation project. It never means that the Party Central Committee concretely participated in the formulation of the articles of the Civil Code or other professional works. This can be also extra proved in the same official release. It says:

According to the work deployment of the Party Central Committee, the drafting of the Civil Code is led by the Legislative Affairs Commission of the SCNPC, with the Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Justice, the Chinese Academy of Social Sciences and the Chinese Law Society as participating units. In order to do a good job in the codification of the Civil Code, the Legislative Affairs Commission of the SCNPC and the five participating units set up a coordination group and a taskforce.⁴⁰

The Legislative Affairs Commission as well as the five participating units are the specialized legal departments on the central level. Based on their professional forces consisting of legal experts and other elites, they are the actual maker of the PRC Civil Code. What further to note is that the academic forces from the top law schools in China also significantly contributed to the making of the PRC Civil Code.⁴¹

The Party Central Committee indeed played a crucial role in the making of the Civil Code. This can be explained from two dimensions. Politically, it initiated the project of making Civil Code as a political task what endows the making of the Civil Code with indispensable political priority in the unique Party-state politics. By doing this, the Party ensured the smooth implement of such a significant task in the jungle of the intricate Party and state bureaucracies. Organizationally, it integrated and centralized all the necessary legal professional forces from the bureaucracy and the scholarship for making the Civil Code and guaranteed the efficiency of the working process of the codification of the Civil Code. In this sense, the Party is not the actual maker of the Civil Code. Rather, it is the organizer of the project of Civil Code making. The role of political initiator and project organizer of the Party in the state legislation is also embodied in other important legislation areas. In the 2020 Work Report of the SCNPC, it asserted that “the most striking characteristic of the SCNPC’s works is that it closely follows the major decisions and deployments

³⁷See Zhao, *supra* note 35.

³⁸*Id.*

³⁹*Id.*

⁴⁰*Id.*

⁴¹RENMIN UNIVERSITY OF CHINA, <https://news.ruc.edu.cn/archives/279603> (last visited Aug. 28, 2022) (finding that according to the available information, many legal professors and experts from different law schools participated in the making of the Civil Code).

of the Party Central Committee.”⁴² In the past few years, the national security was one of the work focuses of the Party. Correspondingly:

[I]n accordance with the decisions and arrangements of the CCP Central Committee, the NPC and its Standing Committee have formulated and revised a number of important laws related to national security, such as the Anti-espionage Law (2014), the National Security Law (2015), the Network Security Law (2016), the Nuclear Security Law (2017), and the Anti-terrorism Law (2018).⁴³

In the vertical dimension, the Party Central Committee maintains a strong control over NPC and its Standing Committee. However, this control does not originate from the actual and direct intervention into the concrete legislation issues. Rather, it derives from the general leading status of the Party in the state legislative organs through the Party’s internal organizational channel. At most, the Party Central Committee sets the general goal and the overview idea of one enactment, or endows one enactment with some degree of political significance and priority. But the formulation of legal clauses are afforded by the professionalized state organs and in many cases supported by academic forces from universities or institutes.

Horizontally, the Party’s leadership over the state legislature is realized by the LPMGs as well as the quantitative dominance of the Party’s members. In general, the members of the LPMG and other common Party members in the SCNPC have two identities: On the one hand, they are political elites as Party members; on the other hand, they are also professional elites as specialized legal forces or experts in other professional areas. In their double identities, the identity of professional elites is undoubtedly more salient in the day-to-day legislative affairs. It is obvious that the politics alone is not enough, namely, mere pure political considerations cannot cope with the huge amount of matters and issues for regulating a country like China.⁴⁴ As demonstrated above, some scholars tend to criticize the Party’s intervention into the activities of the state legislatures and argue that this intervention distorts the own legislation of the state and renders the latter to be “anti-formalist,” “irrationalist,” and “politicalized.”⁴⁵ However, under the political reality of the Party-state, there is no state legislature out of the Party. Thus, such kind of critics is apt to be ambiguous and pointless. Further, it is worth noting that there is no completely abstract “Party” entity transcending all individual members. Rather, the Party consists of the living Party members and is shaped by the latter. In this sense, the Party consisting of the acting members cannot be purely political entity breaking away from all the involvements into the real world. Likely, notwithstanding their Party member identity, the members of the SCNPC must act more as real legislators and professional bureaucrats in the legislative affairs. The professional identity of the SCNPC members is also the fundament on which the Party must rely in order to enact laws needed for regulating a highly specialized modern society.

In the past decades, the professional level of the SCNPC was steadily improved. Structurally, the Standing Committee of the twelfth NPC, which ran from 2013-2018, consisted of 175 members. From the perspective of the education degree, 30.9% of them obtain a bachelor degree,

⁴²The SCNPC Work Report 2020, THE NATIONAL PEOPLE’S CONGRESS OF THE PEOPLE’S REPUBLIC OF CHINA, https://english.www.gov.cn/premier/news/202005/30/content_WS5ed197f3c6d0b3f0e94990da.html (last visited Sept. 1, 2022).

⁴³Feng Yujun, *dang lingdao lifa de lishi yu jingyan* (党领导立法的历史与经验) [*The History and Experiences of the Party’s Leadership over Legislation*], THE NATIONAL PEOPLE’S CONGRESS OF THE PEOPLE’S REPUBLIC OF CHINA (Mar. 16, 2022), http://www.npc.gov.cn/npc/c2597/zgrmdbhzdlljyh/zgrmdbhzdlljyh002/202203/t20220316_317115.html.

⁴⁴Horsley, *supra* note 7, at 5 (“The party, while demanding ‘absolute’ leadership of political-legal work, continues to delegate to state legal institutions the responsibility to address and resolve complex matters on a day-to-day basis in a professional, efficient, fair, and autonomous manner to help maintain social stability and promote economic development.”)

⁴⁵Seppänen, *supra* note 1 (finding that typically, these criticisms are embodied in the above-mentioned paradigms, *inter alia*, “legal formalism/anti-formalism,” “rationalist/irrationalist,” and “professionalism/politicization”). See also Seppänen, *supra* note 2; Horsley, *supra* note 7.

36.5% of them have a master degree and 28.6% of them have doctor degree.⁴⁶ Their professional background covers science and engineering (26.9%), social sciences (50.9%), medical science (3.4%), humanities (13.7%), military science (3.4%) and so on.⁴⁷ The systematic higher education and professional training of the SCNPC members indicates the gradual rationalization and professionalization of the SCNPC aiming to act as a legislative body in a modern state. The professionalization of the SCNPC is more obvious when compared with the education degree of the members of the Standing Committee of the sixth NPC, which ran from 1983–1988, in which only 57% of them had a bachelor or higher degree.⁴⁸ The statistics about the members of the Chairmen Council of the thirteenth SCNPC show also the similar image. All the sixteen members of the Council of the Chairmen have the education degree of undergraduate or above. 81% of them have postgraduate or doctor degree.⁴⁹ Further, as the state legislative body, the SCNPC is widely supported by ten Special Committees of the NPC, four working bodies of its own, a large amount of the common technocrats within the SCNPC and NPC as well as the extensive academic forces from the high schools and institutions. In sum, the SCNPC acts as a normal state legislative body like any other state legislatures. This contributed to the boom of legal norms and the whole progress of the socialist rule of law in the past decades.

IV. The Party in the Party-Legislation

According to the Internal Statistical Bulletin of the CCP, “as of December 31, 2021, the total number of CCP members is 96.712 million and the CCP has 4.936 million primary organizations.”⁵⁰ These statistics show the scale of the CCP and the necessity of the Party’s internal regulation and self-maintenance. As a tremendous political organization, the CCP has to develop its internal regulations to regulate the acts of its members, build the Party’s united wills and render itself capable of action.⁵¹

The CCP is also aware of the significance of the intra-party legislation in regulating the Party itself and the state affairs. As one of the efforts to strengthen the socialist rule of law state, the intra-party “rule of law” has been enhanced to an unprecedented important level since the eighteenth CCP National Congress. Parallel to the state formal legal system, the intra-party rules system has been considered to be an indispensable part of the Chinese socialist rule of law. In October 2014, the Fourth Plenary Session of the eighteenth CCP Central Committee established the formation of a sound intra-party legal system as an important part of the construction of the socialist rule of law system with Chinese characteristics, and made a clear plan to strengthen the construction of intra-party legal system. In December 2016, the first national working conference on intra-party laws and regulations in the history of the Party was held to thoroughly implement the decision and deployment of the Party Central Committee and the important instructions of the General Secretary Xi Jinping on the construction of intra-party laws and regulations. In October 2019, the Fourth Plenary Session of the nineteenth CCP Central Committee stressed the need to accelerate the formation of a sound intra-party legal system. In November 2020, the Central Conference on the Comprehensive Rule of Law stressed the need to build a socialist rule of

⁴⁶Zhu Haiying, *quanguo eenda zucheng ren yuan jiegou fenxi – bijiao de guandian* (全国人大常委会组成人员结构分析—比较的观点) [An Analysis on the Structure of the SCNPC Members – From a Comparative Perspective], in 8 RENDA YANJIU, 12 (2014).

⁴⁷Zhu, *Supra* note [48].

⁴⁸Wang Yijie, *quanguo renda changweihui zucheng ren yuan de goucheng fenxi* (全国人大常委会组成人员的构成分析) [An Analysis on the Structure of the SCNPC Members] (Dec. 15, 2017) (Master Thesis, Jianxi University of Finance and Economics).

⁴⁹See http://www.npc.gov.cn/npc/c34614/ssj_wyz.shtml, last retrieved on September 3, 2022, (illustrating concrete information in the below represented Table 3).

⁵⁰Xinhua News Agency, *Statistical Bulletin of the Communist Party of China*, COMMUNIST PARTY MEMBER NETWORK (ed. Xu Yao, June 29, 2022, 3:14 PM), <https://www.12371.cn/2022/06/29/ART11656486783270447.shtml>.

⁵¹See Seppänen, *supra* note 2, at 307.

Table 3. Overview of the Educational and Professional Background of the Members of the Chairmen's Council of the 13th SCNPC

Members of the Chairmen's Council of the SCNPC		Year of Birth	Highest Education Degree	Professional Background
Chairman	Li Zhanshu	1950	Undergraduate	Political Education, Business Administration
Vice-Chairmen	Wang Chen	1950	Postgraduate	Journalism
	Cao Jianming	1955	Postgraduate	Legal Science
	Zhang Chunxian	1953	Postgraduate	Management
	Shen Yueyue	1957	Postgraduate	Mathematics
	Ji Bingxuan	1951	Undergraduate	Literature
	Erkin Iminbaqi	1953	Undergraduate	Light industry
	Wan E'xiang	1956	Postgraduate	Legal science
	Chen Zhu	1953	Doctor	Medicine
	Wang Dongming	1956	Postgraduate	Philosophy
	Bai Ma Chi Lin	1951	Postgraduate	(unclear)
	Ding Zhongli	1957	Doctor	Paleontology, stratigraphy
	Hao Mingjin	1956	Doctor	Legal Science
	Cai Dafeng	1960	Doctor	Engineering
Wu Weihua	1956	Doctor	Science	
Secretary-general	Yang Zhenwu	1955	Postgraduate	Chinese language and literature, journalism

law system with Chinese characteristics and form a complete system of intra-party laws and regulations. All the measures taken after the eighteenth CCP National Congress achieves a key transformation of the narrative on the Chinese socialist rule of law. When the “socialist rule of law” solely refers to the formation of a formal state legal system and the guarantee of its implementation in the period before 2014, it extends to include the governance of the Party into itself and weakens the narrative monopoly of state laws in the socialist rule of law.⁵²

Although the constitutional concept “socialist rule of law” emphasizes the “uniformity and dignity of the socialist legal system,”⁵³ what is absent in this concept is the role which the intra-party regulations play in the socialist rule of law state. Logically, it is reasonable that in a formal state legal system, the intra-party regulations enacted not by the state legislatures and their formal legislation procedures naturally are not part of the state laws. Thus, only the state laws can exert the binding force over the general state citizens and the intra-party regulations can exert its binding force over the Party members. However, given the Party's monopoly of the state powers in the Chinese Party-state and the strict organizational control of the Party over the state organs, the

⁵²See Fǎzhì zhōngguó jiànshè guìhuà (法治中国建设规划 (2020-2025 年)) [Plan for Building Rule of Law in China (2020-2025)] (promulgated by the Cent. Comm. of the Communist Party of China, Jan. 10, 2021) (“To build a rule of law in China, we must adhere to the organic unity of governing the country according to law and governing the party according to regulations.”).

⁵³XIANFA art. 5 ¶ 2 (1982) (China).

Party can directly or indirectly intervene into the state day-to-day affairs and, as a consequence, the penetration of the binding force of the Party's internal regulations into the formal legal system is also inevitable.

In its nature, the establishment of a state formal legal system was firstly a political expediency to restore the domestic order after the Cultural Revolution. Then, it becomes an instrument for the Party to accomplish its modernization project. Thus, the instrumentalisation of the legal system and the instrumentalist understanding of law are always the critiques accompanying the Party's building of a "socialist rule of law state."⁵⁴ The Party determines the degree of the autonomy granted to the state formal legal system. When the Party changes its will, the space of the state formal legal system also changes. This is exactly the case which happened in the past decade. The Party put great emphases on the intra-party regulations and created a more systematic intra-party normative system. Parallel with the state legal system, the intra-party regulation system provides extra origins of the normative forces and, in some cases, extrudes the space of the former. This also properly explains the origins of many Western observers' worries about the erosion and degeneration of the existing "socialist rule of law" system.

The Party strongly accelerated the rationalization of the intra-party regulations by perfecting its internal legislative mechanism. The most notable measure is the enactment of the "Regulation on the Formulation of Intra-Party Regulations of the Chinese Communist Party."⁵⁵ This regulation is called the "Intra-Party Legislation Law ("IPLL")" co-existing with the State Legislation Law ("SLL"). In the IPLL, the intra-party regulations are defined as:

[R]ules developed by the central organizations of the Party, the Central Commission for Discipline Inspection, the functional departments of the CCP Central Committee, and the CCP committees of provinces, autonomous regions, and municipalities directly under the Central Government, which manifest the Party's unified will and regulate Party leadership and Party building, whose implementation is ensured by Party discipline.⁵⁶

Like the SLL, the IPLL stipulates the matters which the intra-party regulations regulate,⁵⁷ the forms⁵⁸ and hierarchical forces⁵⁹ of the various intra-party regulations, the authorities, and the procedures of making the intra-party regulations⁶⁰, and so on.

Together with the IPLL, the CCP also enacted other regulations concerning its internal legislation, such as the Provisions of the Chinese Communist Party on Filing and Review of the

⁵⁴See Xiaodan Zhang & Wenjia Yan, *Class Nature in Contemporary Chinese Socialist Law – Its Derivation, Evolution, and Status Quo*, 28 *Zeitschrift für Chinesisches Recht [GERMAN J. CHINESE L.]* 267, 273–74 (2021). See also XIANFA, *supra* note 53, at art. 5 ¶ 2; Xiaodan Zhang & Wenjia Yan, *Forty-Years of the Modernization of Chinese Socialist Legality: Strategy, Lacuna, and Outlook*, 23 *GERMAN L.J.* 691, 706–07 (2022).

⁵⁵Zhōngguó gòngchǎndǎng dǎng nèi fǎguī zhìdìng tiáoli (中国共产党党内法规制定条例) [Regulations on the Formation of Intra-Party Laws and Regulations of the Communist Party of China] (promulgated by the CPC Cent. Comm., May 26, 2012, effective May 26, 2012; rev'd by the Pol. Bureau of the CPC Cent. Comm., Aug. 30, 2019).

⁵⁶*Id.* at art. 3 ¶ 1.

⁵⁷*Id.* at art. 4 ¶ 1 (describing how intra-Party regulations provide mainly for the following matters: (1) The establishment, composition, and powers and duties of various types of Party organizations at all levels. (2) The systems and mechanisms, standards and requirements, and manners and methods for Party leadership and Party building. (3) The supervision, evaluation, rewards and punishments, and guarantees respecting the work and activities of Party organizations and the conduct of Party members. (4) The selection, promotion, education, management, and supervision of Party leaders). See also *Id.* at art. 4 ¶ 2 (explaining how anything in connection with the creation of the powers and duties of Party organizations, the rights and obligations of Party members, Party disciplinary actions, or organizational disciplinary actions may be provided only by intra-Party regulations).

⁵⁸*Id.* at art. 5 (finding that the forms of the intra-party regulations include Party Constitution (*dangzhang*, 党章), standards (*zhunze*, 准则), regulations (*tiaoli*, 条例), provisions (*guiding*, 规定), measures (*banfa*, 办法), rules (*guize*, 规则), and detailed rules (*xize*, 细则)).

⁵⁹*Id.* at art. 31 (stipulating the hierarchical order of the intra-party regulations).

⁶⁰*Id.* at arts. 12–14, 20–30.

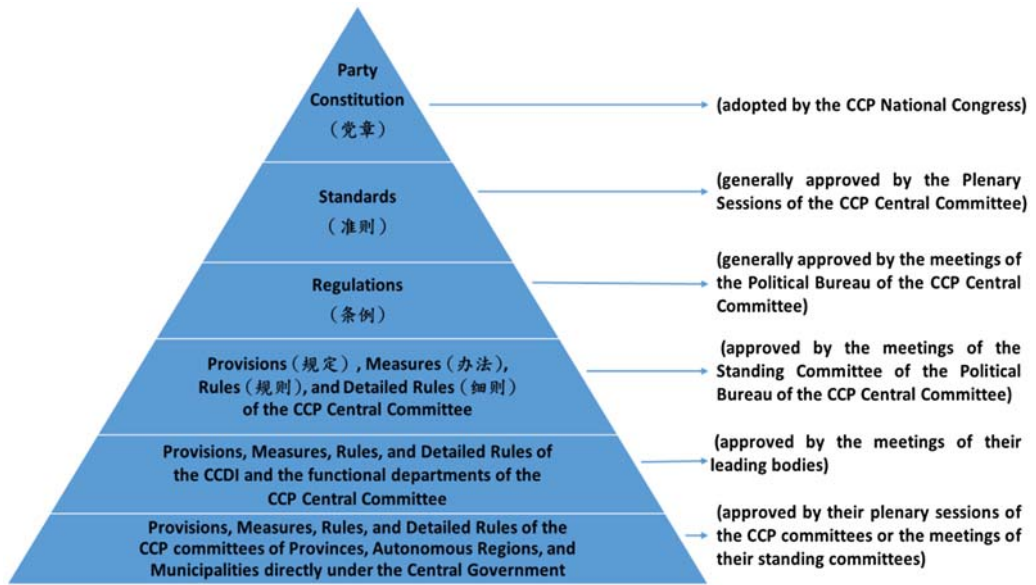


Chart 1. The Hierarchical Order of the CCP Intra-party Regulations

Intra-Party Regulations and Regulatory Documents⁶¹ and the Provisions of the Chinese Communist Party on the Responsibility System for Implementation of Intra-Party Regulations—for Trial Implementation.⁶² Further, the Party’s legislation work is guided by its internal legislation plan, such as the Outline of the Plan for Formulation the Central Intra-party Regulations, 2023–2027.⁶³

All the efforts the CCP made has created a quasi-legal system within the Party. According to an official report, as of July 1, 2021, 3,615 intra-Party regulations are currently in effect. Of these, 211 were formulated by the CCP Central Committee, 163 by the Central Commission for Discipline Inspection and the functional departments of the CCP Central Committee, and 3,241 were formulated by Party committees of provinces, autonomous regions and municipalities directly under the Central Government. Among the intra-party regulations currently in force, there is one Party Constitution, three Standards, forty-three regulations, 850 provisions, 2,034 measures, seventy-five rules and 609 detailed rules.⁶⁴

⁶¹Zhōngguó gòngchǎndǎng dǎng nèi fǎguī hé guīfàn xìng wénjiàn bèi'àn shěnchá (中国共产党党内法规和规范性文件备案审查规定) [Provisions on the Recording of Internal Regulations and Normative Documents of the Communist Party of China] (promulgated by the CPC. Cent. Comm., June 4, 2012, effective June 4, 2012; rev'd by the Pol. Bureau of the CPC Cent. Comm., Aug. 30, 2019), Communist Party Member Network, Sept. 15, 2019, (China).

⁶²Zhōngguó Gòngchǎndǎng Dǎng Nèi Fǎguī Zhíxíng Zérèn Zhì Guīdìng (Shíxíng) (中国共产党党内法规执行责任制规定(试行)) [Provisions on the Responsibility System for the Implementation of Internal Party Regulations of the Communist Party of China (Trial Implementation)] (promulgated by the Pol. Bureau, Aug. 30, 2019, effective Sept. 3, 2019), Communist Party Member Network (China).

⁶³Zhōngyāng Dǎng Nèi Fǎguī Zhìdìng Gōngzuò Guīhuà Gāngyào (2023–2027年) [Outline of the Central Party Regulations Formulation Plan] (promulgated by the Cent. Comm. of the Communist Party of China, Apr. 18, 2023), Xinhua News Agency, Apr. 18, 2023.

⁶⁴See the report of the Regulation Bureau of the General Office of the CCP Central Committee, http://www.gov.cn/xinwen/2021-08/06/content_5629962.htm, last retrieved on April 3, 2023.

C. Party-Legislation of the CCP—A Positivist and Typological Study

The IPLL defines the scope of the intra-party regulations as the intra-party matters.⁶⁵ Nevertheless, due to the leading and monopoly status of the CCP in the Party-state, its internal normative rules inevitably intervene into the state affairs. Thus, in many cases, the intra-party regulations are not purely internal. Based on whether the Party-legislation involves the state matters, the intra-party regulations can be categorized as three types, namely the pure intra-party regulation (PIPR), the state-parallel intra-party regulation (SPIPR) and the supra-state intra-party regulation (SSIPR) which can independently impose restraints on the legal rights of the Party members even without the basis of the corresponding state laws.

I. The Pure Intra-Party Regulations

Strictly speaking, under the high homogeneity of the Party and state, there are actually no “pure intra-party matters” in the Chinese Party-state, because any change of the matters within the Party has its direct or spillover effects on the state. For instance, the “selection, promotion, education, management, and supervision of Party leaders” are defined as one of the typical intra-party matters in the IPLL.⁶⁶ However, given the Party’s seamless organizational control over the state organs, such kind of intra-party norms are unavoidably also state-involving especially by appointing Party leaders to assume the corresponding state organ positions. Thus, what is here defined as “pure intra-party regulations” mainly refers to those intra-party regulations which aim to achieve the Party’s self-maintenance and self-regulation and contain no direct and clear rules concerning the concrete state affairs.

The PIPR exerts its direct forces merely within the Party and regulate the conducts of the Party organs and Party members. In the past several years, the CCP enacted a large amount of PIPR on the Party’s central level. These PIPR principally aim to strengthen the so-called “governing the Party according to regulations (*yigui zhidang*, 依规治党)” and normalize the Party’s internal construction in the vital areas, including the Party’s internal political life—the intra-Party political discipline,⁶⁷ integrity, self-discipline and anti-corruption,⁶⁸ accountability,⁶⁹ intra-party supervision,⁷⁰ inspection work,⁷¹ intra-party election,⁷² organization work,⁷³ work

⁶⁵*Supra* note 57, at art. 4.

⁶⁶*Supra* note 57, at art. 4 ¶ 1.

⁶⁷Guānyú xīn xíngshì xià dǎng nèi zhèngzhì shēnghuó de ruògān zhǎngcè (关于新形势下党内政治生活的若干准则) [Some Standards on the Political Life in the Party under the New Circumstances] (promulgated by the Cent. Comm. of the Communist Party of China, Oct. 27, 2016), *Danjian People*.

⁶⁸Zhōngguó gòngchǎndǎng liánjié zìlǚ zhǔnzé (中国共产党廉洁自律准则) [Standards of Integrity and Self-discipline of the CCP] (promulgated by the Cent. Comm. of the Communist Party of China, Oct. 21, 2015) *Communist Party Member Network* (China).

⁶⁹Zhōngguó gòngchǎndǎng wèn zé tiáoli (中国共产党问责条例) [Accountability Regulations of the CCP] (promulgated by the Cent. Comm. of the Communist Party of China, Sept. 4, 2019) *Xinhua News Agency* (China).

⁷⁰Zhōngguó gòngchǎndǎng dǎng nèi jiāndū tiáoli (中国共产党党内监督条例) [Regulations on Intra-Party Supervision of the Communist Party of China] (promulgated by the Cent. Comm. of the Communist Party of China, Oct. 27, 2016) *Xinhua News Agency* (China).

⁷¹Zhōngguó gòngchǎndǎng xúnshì gōngzuò tiáoli (中国共产党巡视工作条例) [Regulations on Intra-party Supervision of the Chinese Communist Party] (promulgated by the Cent. Comm. of the Communist Party of China, 2015; rev’d July 1, 2017) *Xinhua News Agency* (China).

⁷²Zhōngguó gòngchǎndǎng dìfāng zǔzhī xuǎnjǔ gōngzuò tiáoli (中国共产党地方组织选举工作条例) [Regulations on the Election Work of Local Organizations of the CCP] (promulgated by the Cent. Comm. of the Communist Party of China, 1993; rev’d Dec., 2020) *Xinhua News Agency*, Jan. 6, 2021, (China). See also *Zhōngguó gòngchǎndǎng jícéng zǔzhī xuǎnjǔ gōngzuò tiáoli* (中国共产党基层组织选举工作条例) [Regulations on the Election Work of Primary Organizations of the CCP] (promulgated by the Cent. Comm. of the Communist Party of China, June 2020) *Xinhua News Agency*, July 20, 2020 (China).

⁷³Zhōngguó gòngchǎndǎng zǔzhī gōngzuò tiáoli (中国共产党组织工作条例) [Regulations on the Organization Work of the CCP] (promulgated by the Cent. Comm. of the Communist Party of China, Apr. 2021) *Xinhua News Agency*, June 2, 2021 (China).

regulations of Party organs,⁷⁴ rights of Party members,⁷⁵ education and management of Party Members,⁷⁶ decision-making process,⁷⁷ disclosure of Party affairs,⁷⁸ the internal legislation,⁷⁹ and so on.

II. The State-Parallel Intra-Party Regulations

The SPIPR means that in certain areas of the state affairs, the Party directly participates into their regulation in the form of intra-Party regulations parallel with the state laws. The SPIPR cover various areas of state affairs. However, whether the Party promulgates a SPIPR in a certain area highly depends on the Party's will and work focus. Generally, as shown in the following table, the intervention of the Party into certain areas of the state matters in the form of SPIPR is irregular and selective.

Usually, the SPIPR are enacted in those areas in which there already exist corresponding state laws. The making of the SPIPR demonstrates that the Party puts greater emphasis on this area so as to strengthen its regulation together with the state laws. One example in the area of work safety shows that the Party usually intervenes into the area of great significance and in which there currently exist major and urgent problems.⁸⁰ The regulation areas of the SPIPR become effectively the overlapping areas of the intra-party regulations and the state laws. Table 4 enumerates some typical samples of the newly enacted SPIPR and their corresponding state laws.

Unlike the PIPR which exerts its force on the state organs only indirectly through the Party organizations imbedded in them, the SPIPR usually contains the direct and clear rules which regulate the relevant concrete state affairs as showed by the following samples (Table 5):

⁷⁴Zhōngguó gòngchǎndǎng jìlǜ jiǎnchá wěiyuánhui gōngzuò tiáolì (中国共产党纪律检查委员会工作条例) [Work Regulations of the Discipline Inspection Commission of the CCP] (promulgated by the Pol. Bureau of the Communist Party of China, Dec. 6, 2021, effective Dec. 24, 2021) Xinhua News Agency, Jan. 4, 2022, (China). See also Zhōngguó gòngchǎndǎng zhōngyāng wěiyuánhui gōngzuò tiáolì (中国共产党中央委员会工作条例) [Work Regulations of the Central Committee of the CCP] (promulgated by the Pol. Bureau of the Communist Party of China, Sept. 28, 2020, effective Sept. 20, 2020) People's Daily Online, Oct. 13, 2020, (China); Zhōngguó gòngchǎndǎng dǎngxiào xíngzhèng xuéyuàn gōngzuò tiáolì (中国共产党党校(行政学院)工作条例) [Work Regulations of the Party School of the CCP (School of Administration)] (promulgated by the Pol. Bureau of the Communist Party of China, Sept. 24, 2019, effective Oct. 25, 2019) Xinhua News Agency, Nov. 4, 2019, (China); Zhōngguó gòngchǎndǎng dǎngzǔ gōngzuò tiáolì (中国共产党党组工作条例) [Regulations on the Work of Party Groups of the CCP] (promulgated by the Mar., 2019, effective Apr., 2019) People's Daily Online July 14, 2020, (China).

⁷⁵Zhōngguó gòngchǎndǎng dǎngyuán quánlì bǎozhàng tiáolì (中国共产党党员权利保障条例) [Regulations on the Protection of the Rights of Members of the CCP] (promulgated by the Cent. Comm. of the Communist Party of China, Dec. 2020) People's Daily Online, Jan. 5, 2021, (China).

⁷⁶Zhōngguó gòngchǎndǎng dǎngyuán jiàoyù guǎnlǐ gōngzuò tiáolì (中国共产党党员教育管理工作的条例) [Work Regulations on the Education and Management of Party Members of the CCP] (promulgated by the Cent. Comm. of the Communist Party of China, xxx, effective May 6, 2019) Xinhua News Agency, May 21, 2019, (China).

⁷⁷See Regulation RIRMI *supra* note 29.

⁷⁸Zhōngguó gòngchǎndǎng dǎngwù gōngkāi tiáolì shìxíng (中国共产党党务公开条例(试行)) [Regulations on Disclosure of Party Affairs of the CCP (Trial Implementation)] (promulgated by the Cent. Comm. of the Communist Party of China, Nov. x, 2017, effective Dec. 20, 2017) Xinhua News Agency, Dec. 25, 2017, (China).

⁷⁹See parenthetical text *supra* note 57.

⁸⁰Compacting Leadership Responsibility to Ensure Work Safety – the Relevant Person in Charge of the Ministry of Emergency Management Answered Reporters' Questions on the 'Provisions on the Work Safety Responsibility System for Local Party and Government Leaders', PEOPLE'S DAILY (Apr. 19, 2018), <https://news.12371.cn/2018/04/19/ART11524093877238886.shtml> (finding that in 2018, one SPIPR in the field of work safety was enacted by the Party. In the explanation for making this SPIPR, one Party leader argued:

At present, the situation of work safety is relatively stable, but it is still severe, and serious work safety accidents occur from time to time, and work safety remains a weak link in the economic and social development. The local party and government leading cadres are the "key minority" of the work safety. Whether they have a strong awareness of the red line of work safety, whether their responsibilities are clear, whether the relevant rules are strictly implemented and whether their accountabilities are executed, directly affect the stability of a region's work safety situation.

Table 4. Samples of the SPIPR and Their Corresponding State Laws

Regulation Areas	SPIPR	Corresponding State Laws (including but not limited to)
Political Consultation	Work Regulations of the CCP on the Political Consultation (2022)	The PRC Constitution
Higher Education	Work Regulations of the CCP on the Primary Party Organizations in Colleges and Universities (2021)	Higher Education Law of the PRC
Political and Legal Work	Regulations of the CCP on the Political and Legal Work (2019)	<ul style="list-style-type: none"> • The PRC Constitution • Criminal Law of the PRC • Public Security Administration Punishments Law of the PRC
State-owned Enterprise	Work Regulations of the CCP on the Primary Party Organizations in the State-owned Enterprises (Trial Implementation) (2019)	<ul style="list-style-type: none"> • Law of the PRC on the State-Owned Assets of Enterprises • Corporate Law of the PRC
Agriculture and Rural Affairs	Work Regulations of the CCP on the Rural Affairs (2019)	<ul style="list-style-type: none"> • Agriculture Law of the PRC • Land Administration Law of the PRC • Organic Law of the Villagers' Committees of the PRC • Law of the PRC on the Contracting of Rural Land
Civil Servants	<ul style="list-style-type: none"> • Regulations on the Punishment of the Civil Servants (2007) • Provisions on the Petitioning of Civil Servants (2022) • Provisions on the Assessment of Civil Servants (2020) 	<ul style="list-style-type: none"> • Civil Servants Law of the PRC • Oversight Law of the PRC
Auditing	Provisions on Auditing the Economic Responsibility of the Principal Leading Cadres of the Party and Government and the Principal Leading Personnel of State-owned Enterprises and Public Institutions (2019)	Audit Law of the PRC
Food Safety	Provisions on the Food Safety Responsibility System for Local Party and Government Leaders (2019)	<ul style="list-style-type: none"> • Criminal Law of the PRC • Food Safety Law of the PRC • Regulation on the Implementation of the Food Safety Law of the PRC
Work Safety	Provisions on the Work Safety Responsibility System for Local Party and Government Leaders (2018)	<ul style="list-style-type: none"> • Criminal Law of the PRC • Work Safety Law of the PRC • Civil Servants Law of the PRC

Further, in the recent development, there is also the case in which the state law is replaced by an intra-party regulation. For example, the system of Complaint Letters and Visits (*xinfang*, 信访) was a state legal system for handling the petitioning of the citizens established by the State Council's Regulations of Complaint Letters and Visits.⁸¹ Due to the significance and sensibility of

⁸¹Xinfang tiaoli (信访条例) [Regulation on Letters and Calls] (promulgated by the State Council, Jan. 5, 2005, effective May 1, 2005) Xinhua News Agency, Nov. 24, 2009, (China) (explaining that in its nature, the Regulation of Complaint Letters and Visits is "executive regulation (行政法规, xingzheng fagui)" which is promulgated by the state council and directly under the law of the National People's Congress and its Standing Committee).

Table 5. Samples of the SPIPR and Their Direct State-Affairs-Relevant Rules

SPIPR	The direct state-affairs-relevant rules (including but not limited to)
Work Regulations of the CCP on the Primary Party Organizations in Colleges and Universities	Article 10 item 3: The university Party committee deliberates and determines the basic management system of the university, discusses and decides major issues in the Reform, development and stability of the university, as well as in teaching, scientific research and administrative management.
Work Regulations of the CCP on the Primary Party Organizations in the State-owned Enterprises (Trial Implementation)	Article 11 item 3: The Party committee (the leading Party group) of state-owned enterprises studies and discusses the major business management issues of the enterprises, and supports the (general) shareholders meeting, the board of directors, the board of supervisors and the managers in exercising their functions and powers in accordance with law.
Provisions on the Food Safety Responsibility System for Local Party and Government Leaders	Article 10 item 3: The person in charge of food safety at all levels of the local governments shall organize and carry out special investigations and surveys on food safety work, study and formulate special plans for food safety and annual key work plans, and coordinate and promote food safety work in the region.

the *xinfang* in maintaining the social order and stability, the Party decided to improve the status of the *xinfang* system and strengthen its functions. In 2022, the *Xinfang* Regulation of the State Council was abolished and replaced by the intra-party regulation “Work Regulation on Complaint Letters and Visits (WRCLV).” Different from other kinds of SPIPR which are solely made by the Party’s organs, the WRCLV was deliberated and approved by the meeting of the Political Bureau of the CCP Central Committee and jointly issued by the Central Committee and the State Council.⁸² It demonstrates a new form of joint legislation of the Party and the state and embodies a greater degree of fusion of the Party legislation and the state legislation.

Besides the joint intra-party legislation of the Party and the state organs, there are also considerable so-called “normative documents (ND, *guifanxing wenjian*, 规范性文件)” jointly issued by the Party and the state organs. In its nature, the ND is not a kind of intra-party regulations defined in the IPLL.⁸³ Rather, it is a kind of policies (*zhengce*, 政策). However, the ND are highly similar to the SPIPR: On the one hand, they possess general binding forces like the intra-party regulations; on the other hand, they also participate into the regulation of certain areas of state affairs which are regarded as important by the Party. Based on the significance of the matters which are to be regulated, the ND are jointly issued either by the Party Central Committee (PCC) and the State Council or by the General Office of the Party Central Committee (GOPCC) and the General Office of the State Council (GOSC). The forms of the ND are usually “opinions (*yijian*, 意见),” “outlines (*gangyao*, 纲要),” “programs (*fang’an*, 方案),” and “plans (*guihua*, 规划).” Table 6 shows some samples of the typical ND which are recently issued.

⁸²The similar SPIPR, for example, “Measures for Implementing the Responsibility System for Rural Revitalization (乡村振兴制实施办法)” which was deliberated and approved by the CCP Central Committee and jointly issued by the CCP Central Committee and the State Council; “Regulations on Honorary Recognition of Military Meritorious Achievements (军队功勋荣誉表彰条例)” which was jointly issued by the CCP Central Committee, the State Council and the Military Commission of the CCP Central Committee (CCP).

⁸³*Supra* note 57, at art. 5 (explaining that as demonstrated above, in the IPLL, the forms of the intra-party regulations are exclusively defined as Party Constitution, Standards, Regulations, Provisions, Measures, rules and detailed rules).

Table 6. Samples of the Normative Documents

Types	Titles	ND-makers
Opinions	Opinions of the CCP Central Committee and the State Council on Promoting the Development and Growth of the Private Economy (July, 2023)	PCC and State Council
	Opinions on Building a High-quality and Balanced Basic Public Education Service System (June, 2023)	GOPCC and GOSC
	Opinions on Further Improving the Medical and Health Service System (March, 2023)	GOPCC and GOSC
Outlines	Outline of the National Water Network Construction Plan (May, 2023)	PCC and State Council
	Outline of Strategic Planning for Expanding Domestic Demand (2022-2035) (December, 2022)	PCC and State Council
Programs	Program on Reforming Party and State Institutions (March, 2023)	PCC and State Council
	Program of Implementing Rural Construction Action (May, 2022)	GOPCC and GOSC
Plans	Overall Layout Plan for Digital China Construction (February, 2023)	PCC and State Council
	The 14 th Five-Year Plan for Cultural Development (August, 2022)	GOPCC and GOSC

III. The Supra-State Intra-Party Regulations

The third type of the intra-party regulation is the supra-state intra-party regulation. What the SSIPR means is that as a normative source, the SSIPR can independently impose major constraints on the constitutional and legal rights of the Party members, as state citizens, outside or above the state laws, *inter alia*, the deprivation of the personal freedom. The SSIPR creates a supra-state basis for the Party's behaviors. The most typical SSIPR was the "Work Regulations on Case Inspection of the Discipline Inspection Organs of the CCP (WRCI)."⁸⁴ By it, the CCP established one highly controversial system "*shuanggui* (双规)." Literally, *Shuanggui* means "at a designated time and place." It is an investigation measure used by the Party's discipline inspection organs to investigate the Party members suspected to violate the Party's disciplines. The suspect is required to explain the issues involved in the case at a designated time and place and, at the same time, deprived of personal freedom and other legal rights, such as the procedure rights of the suspects in the ordinary state criminal procedure.⁸⁵

In its nature, *Shuanggui* is a kind of criminal procedure. According to the Constitution and the Legislation Law of the PRC, in the area of criminal matters, only the National People's Congress has the power to promulgate a law and the criminal matters shall only be governed by law.⁸⁶ However, unlike the ordinary criminal measures which are established by the formal state criminal laws,⁸⁷ *Shuanggui* is established by an intra-party regulation. It is not a part of the formal state judicial procedure. Rather it is an intra-party measure which is exerted on the suspected Party

⁸⁴Zhōngguó gòngchǎndǎng jìlǜ jiǎnchá jīguān ànjiàn jiǎnchá gōngzuò tiáolì (中国共产党纪律检查机关案件检查工作条例) [Regulations on the Case Inspection Work of the Discipline Inspection Organs of the Communist Party of China] (promulgated by the Cent. Comm. for Discipline Inspection of the Communist Party of China, Mar. 25, 1994, effective May 1, 1994) (China).

⁸⁵Zhōnghuá rénmín gònghéguó xíngshì sùsòng fǎ (中华人民共和国刑事诉讼法) [Criminal Procedure Law of China art. 32 ¶ 1] (promulgated by the Standing Comm. Nat'l People's Cong., July 1, 1979, effective Jan. 1, 1980) (China) (emphasizing the right to entrust lawyers).

⁸⁶See XIANFA *supra* note 53, at art. 62. See also Lifa Fa *supra* note 25, at art. 11 (empowering the NPC to enact and amend criminal laws. Article 11, item 4 of the PRC Legislation Law further stipulates that criminal offences and their punishments shall only be governed by law).

⁸⁷See Lifa Fa *supra* note 25, at art. 8. (explaining that in the PRC, the criminal laws mainly contain the Criminal Law of the People's Republic of China (中华人民共和国刑法) and the Criminal Procedure Law of the People's Republic of China (中华

members ahead of the state criminal procedure.⁸⁸ It infringes on the personal freedom of the Party members as state citizens and surpasses the state laws.⁸⁹ Thus, in a long term, *Shuanggui* raises significant concerns in the areas of human rights and rule of law and causes great doubts on its legitimacy and considerable fierce critics.⁹⁰

Actually, the CCP has also been aware of the great challenges posed by the WRCI to the state legal system and the socialist rule of law. In March 2018, the National People's Congress amended the PRC Constitution⁹¹ and promulgated a new state supervision law.⁹² In this law, the previous intra-party measure *Shuanggui* ended its nearly 30-years history and is transformed to *liuzhi* (留置), a measure, just like other criminal coercive measures, formally defined by a NPC law.⁹³ As one of the most important investigation measures under the state supervision power, *Liuzhi* achieves the legalization of the previous intra-party *Shuanggui* and eliminates the extreme tension between the SSIPR and the state laws.

IV. The Legislating Behaviors of the CCP and Their Influences on the Socialist Rule of Law State

Legislation is one of the most important action forms of the CCP in the Chinese Party-state. The behaviors of the CCP in the legislation provide the conducive areas for evaluating the evolution of the Chinese socialist rule of law. The influences of the legislating behaviors of the CCP on the socialist rule of law state can be observed from two dimensions, namely the Party's role in the state legislation and the Party's own intra-party legislation.

From the state side, the original connotation of the socialist rule of law has never been the absorption of the values of the Western rule of law. Rather, in the context of the Party-state, it merely means the separation between the Party and state which is based on the will of the former. The space granted by the Party to the state since 1978 essentially contributes to the independent evolution of the state legal system and guarantees the establishment and growth of various state institutions. In terms of the state legislation, under the reality of the Party-state and the

人民共和国刑事诉讼法). Both are promulgated by the highest power organ and legislature of the state—the National People's Congress (全国人民代表大会).

⁸⁸Flora Sapio, *Shuanggui and External Detention in China*, 22 CHINA INFO. 7, 15 (2008) (finding that the results of the *Shuanggui* are bifurcate: It leads either to the formal state criminal procedure or to the punishment procedure of the intra-party disciplines). Once a confession is obtained, *shuanggui* is lifted. *Id.* However, this does not always result in the detainee's release from custody. *Id.* If commission officials believe that the evidence they have collected proves the commission of a crime, *shuanggui* is converted into arrest. In this case an arrest warrant is issued by the procuratorate. *Id.* The detainee is then simply transferred from one detention facility to another, and his case is handed over to judicial organs. *Id.* If the commission officials believe the detainee has violated only Party discipline, but not the criminal law, he is released and punished with Party discipline sanctions. *Id.*

⁸⁹See Wang Zhenmin, *dangnei fagui zhidu tixi jianshe de jiben lilun wenti* (党内法规制度体系建设的基本理论问题) [*The Basic Theoretical Problems in the Construction of the Intra-Party Regulations System*], 2 ZHONGGUO GAOXIAO SHEHUI KEXUE 142 (2013).

⁹⁰See Sapio *supra* note 88, at 7–8, 10, 20, 24–25 (providing, for example, that *Shuanggui* is criticized as “secretive nature,” “extra-legal,” “extraneous to any adequate legal framework,” “solitary confinement,” “illegal detention,” and “zones of exceptions”). See also FLORA SAPIO, SOVEREIGN POWER AND THE LAW IN CHINA 5, 108 (2010); Wei Zhixun, “*lianggui*” bian “*liuzhi*” zhangxian fanfu fazhihua (“两规”变“留置”彰显反腐法治化) [*The Replacement of Lianggui by Liuzhi Demonstrates the Legalization of Anti-corruption*], DAZHONG DAILY (Nov. 22, 2017), http://www.sdjj.gov.cn/gzdt/llyt/201711/t20171122_11187817.htm.

⁹¹*Supra* note 55, at §7 (2018) (China) (finding that this amendment creates a new independent state power, namely the supervision power (jianchaquan, 监察权), and the corresponding state supervision commissions).

⁹²Zhonghua rénmín gònghéguó jiānchá fǎ (中华人民共和国监察法) [*Supervision Law of the People's Republic of China*] (promulgated by the Standing Comm. People's Cong., Mar. 20, 2018, effective Mar. 20, 2018) Xinhua News Agency, Mar. 26, 2018 (China).

⁹³*Id.* at arts. 22, 43–44, 60, 65 (explaining that functionally, *Liuzhi* distinguishes itself barely from *Shuanggui*). Both function as a measure for investigating the possible misconducts of the civil servants that exercise public power. *Id.* However, the State Supervision law defines relatively strict conditions for using *Liuzhi* and makes *Liuzhi* a complete legal coercive measure. *Id.*

homogeneity of the Party and state legislatures, there is actually no real separation between the Party and the state. From the very beginning of constructing a socialist rule of law state, the Party has never asserted to abandon its control over the state legislatures. Thus, the strict organizational control of the Party over the state legislatures has never changed.⁹⁴

However, in order to carry forward the modernization of the state, the state legislation has become a crucial instrument for the CCP to regulate the various fields of the society and economy. In this regard, the CCP highly depends on the professionalized and routinized legislating works in the day-to-day state matters⁹⁵ and firmly maintains the indispensable independence and functions of the state legislatures. Non-separation in the separation and separation in the non-separation are the simultaneously existing reality in the Chinese Party-state. In this sense, strengthening the Party's overall leadership in the recent years has not fundamentally changed the existing relationship between the Party and the state legislatures and the original meaning of the socialist rule of law.

From the Party side, the reinforcement of the intra-party legislation is an inevitable logical consequence against the great background of strengthening the Party's overall leadership. Strengthening the intra-party legislation also brings influences on the state legislation, and, ultimately, the socialist rule of law. As enumerated above, some observers tried to analyze the results brought by the Party's overall leadership from various frameworks.⁹⁶ However, some views which argue that the reinforcement of the intra-party legislation leads to "the political" or "law-transcending/illiberal political leadership" need further examination based on the positivist and typological analysis. As demonstrated above, the intra-party regulations of the CCP are not totally onefold, and a further positivist examination can differentiate three types of the intra-party regulations. The three types of the intra-party regulations exert different influences on the state legislation and the socialist rule of law.

Essentially, the PIPR is self-referential. The CCP as a party needs rules to achieve its self-regulation and self-maintenance. The reinforcement of the enactments of the PIPR in recent years help the CCP to improve the Party's ability to form a united will and to act. The enactments of the PIPR contribute to the anti-corruption campaigns within the Party. However, in the most cases, the rules of the PIPR do not directly involve the state affairs and do not occupy the space of the state legislation. Thus, the PIPR basically has no direct influences on the state affairs and the state legal system, either.

Unlike the PIPR, the SPIPR deeply, widely and directly participates in those state matters where there usually exist state laws. Objectively, the SPIPR achieves the co-governance of the state matters together with the state laws. Nevertheless, in the overlapping areas of the SPIPR and state laws, the enactment of SPIPR does not mean that the SPIPR replaces, surpasses or contravenes the corresponding state laws.⁹⁷ Rather, the state laws still maintain its independence and keep its own indispensable space under the socialist rule of law. The state laws, instead of the SPIPR and the SPIPR-similar ND, function as the direct rules for regulating all the areas of the state and society. This can be more clearly elucidated from the judicial perspective: In the law enforcement of the courts, the SPIPR and ND have rarely been the direct enforceable rules like the ordinary state legal rules.⁹⁸ What here

⁹⁴See HORSLEY, *supra* note 7, at 5.

⁹⁵*Id.* at 1.

⁹⁶See *supra* Part A.

⁹⁷Usually, the contents of the SPIPR emphasize the behavior rules of the Party leaders and members which are responsible for the concrete state affairs. In the area of food safety, for example, the relevant SPIPR (see *supra* Table 4) stresses that the local Party and government leaders should strengthen their works on food safety by strictly implementing the laws regarding food safety. Thus, the state laws in the area of food safety, instead of the SPIPR, are still the fundamentally binding rules for the Party leaders and their behaviors relevant to the food safety works.

⁹⁸In the Chinese judicial system, the rules on which the courts can base their judgements are clearly defined. Provisions of the Supreme People's Court on Citing Laws, Regulations and Other Normative Legal Documents in the Judgment Documents (最高人民法院关于裁判文书引用法律、法规等规范性法律文件的规定, promulgated by the Supreme People's Court in 2009) exhaustively enumerate such legal rules. These rules include laws (法律) and legal interpretations (法律解释),

also to note is that, the samples of the SPIPR and the ND⁹⁹ reveal that in the governance of the Chinese Party-state, there is actually no pure areas of the so-called “the political” which is supposed to be the proper realm of the Party’s behaviors.¹⁰⁰ Rather, the Party’s behaviors do not limit themselves to “the political” and intervene deeply into the day-to-day operations of the state wherever it deems important. The Party and the state co-govern the Party-state.

The real challenge posed by the intra-party regulations to the socialist rule of law was the SSIPR. The SSIPR created an extra-legal normative source above the state. As the *Shuanggui* system established by a SSIPR shows, this extra-legal measure displays major constraints on the citizens’ legal rights. Basically, the SSIPR denied the separation between the Party and the state and replaced the latter by the former. It was a huge tear of the state legal system and the socialist rule of law.

D. Conclusion

The wide and deep participation and intervention into the legislation is a notable action form for the CCP to govern the Chinese Party-state. Notwithstanding its dominant role in the state legislation, the CCP generally guarantees the functional independence of the state legislation and maintains the core connotation of the socialist rule of law which presupposes the separation between the Party and the state. The boom of the intra-party legislation is a remarkable phenomenon in recent years. However, unlike the common points of view which argue that the intra-party regulations can indiscriminately challenge the existing socialist rule of law, the positivist and typological survey shows that different kinds of the intra-party regulations exert different influences on the state legislation and, ultimately, the socialist rule of law.

However, on the whole, against the great background of the CCP’s reinforcement of its internal legislation, there is an obvious tendency in recent years, namely the partisanization of the state legislation and the legalization of the Party legislation. On the one hand, as the *Xinfang* system shows, the matters which were previously regulated by the state law can be transformed to the matters governed by the intra-party regulation. On the other hand, as the *Shuanggui* system shows, the matters which were previously regulated by the intra-party regulation can be transformed to the state law. The partisanization of the state legislation and the legalization of the Party legislation render the division and boundary between the Party legislation and the state legislation more ambiguous and indicate the trend of the function-fusion and the function-interconvert of the intra-party normative system and the state normative system. Consequently, the existing separation of the Party and the state could be feebler and the socialist rule of law could afford more pressures in a foreseeable future.

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administrative regulations (行政法规), local regulations (地方性法规), autonomous regulations (自治条例) or special regulations (单行条例) and judicial interpretations (司法解释). These rules are also the formal legal sources of the Chinese legal system defined in the PRC Legislation Law. It is clear that the intra-party regulations, notwithstanding their increasing significance in the state governance, are not a formal legal source in the Chinese state legal system.

⁹⁹See *supra* Tables 4–6.

¹⁰⁰See Björn Ahl, *Post-2013 Reforms of the Chinese Courts and Criminal Procedure: An Introduction*, in CHINESE COURTS AND CRIMINAL PROCEDURE: POST-2013 REFORMS 1 (Björn Ahl ed., 2021).

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