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THE OPINION PAGES | OP-ED CONTRIBUTOR

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By PAUL GEWIRTZ OCT. 19, 2014

NEW HAVEN — Two weeks ago, with the democracy protests in Hong Kong in full swing, China's official People's Daily newspaper labeled them "illegal" and called for protecting "the rule of law" in Hong Kong. Such statements left observers with little doubt about a central meaning "the rule of law" has in the People's Republic: the Communist Party's use of law to control and regulate society.

Yet there's plenty of evidence that China sees the rule of law in far more nuanced and complex ways. Today the Communist Party's 18th Central Committee starts its Fourth Plenum, and the main topic will be the rule of law in China — the first time in party history that a meeting with the authority of a plenary session will focus on the rule of law. And there are reasons for a measure of optimism that the plenum will demonstrate more complex views about the roles law can play and also take meaningful steps to advance new legal reforms.

Of course, legal reform has major limits in China's one-party authoritarian system. There won't be true judicial independence. All bets are off whenever the party sees a threat to its continued power; steps toward the rule of law don't mean steps toward multiparty political democracy, which China's current leaders totally resist. When the plenum issues its report, it will surely underscore that one central role of law is to maintain social order.

But, contrary to what pessimistic observers have predicted, the plenum is not likely to treat law as merely a tool for the party to control Chinese society, a throwback to the "Legalist School" of philosophy from 2,200 years ago which President Xi Jinping seems fond of quoting. Chinese society and its legal system have already changed too fundamentally for that, and the current regime led by Mr. Xi has already signed onto many reforms and even adjustments in ideology that represent positive steps toward a modern system of rule of law. These changes aren't just window-dressing; they reflect the leadership's recognition that it needs to improve governance, address widespread public grievances, and respond to public opinion.

Consider some legal reforms that have been made in just the last few years. Use of the death penalty has been cut roughly in half, with improved procedures for deciding on its use. A new Criminal Procedure Law has been adopted, providing significantly more protections to suspects and defendants. The odious system of "re-education through labor" has been abolished (though, to be sure, what will replace it is still not clear).

A sea change has taken place in government transparency, with important requirements of open government information changing the relationship between the state and citizens. Zhou Qiang, the strong new president of the Supreme People's Court, recently issued a five-year judicial reform plan promising to enhance court independence from interfering local governments, increase judicial openness and transparency, improve fairness to individual litigants, and further professionalize judging.

Some critics point to recent official statements demonizing "constitutionalism" and ask how can China be serious about legal reform if it denigrates or sidelines its own Constitution. In fact, "constitutionalism" has become a code word for a specific idea: importing Western political democracy, which China's leaders will not accept. But as for the Constitution itself, Mr. Xi recently called it China's "fundamental law" and said that to "govern the nation by law means to govern in accordance with the Constitution." China currently has no effective mechanism for enforcing its Constitution — a major deficiency — but at least that crucial topic is now being openly discussed.

China's leaders see improving the legal system not simply as a way to control society but as a way to rein in wayward bureaucrats, insist that local officials carry out national policies, establish rules of the road for a more robust economy, provide peaceful ways for citizens to resolve disputes and seek redress for grievances, reduce the corruption that's seen as the greatest threat to the Party's continued hold on power — in short, to constrain government itself, not just to control society and contain social unrest. Mr. Xi may have been playing to the crowds when he recently spoke of "locking power in a cage," but it was a recognition that the party needs to constrain some of its power in order to keep it.

Moreover, China's maturing legal community, as well as ordinary Chinese citizens, follow these developments carefully, so expectations have been raised. Failure to deliver and actually enforce reforms would create a destabilizing pushback on China's leaders. The most convincing reason for outsiders to be cautiously optimistic about these developments is that many legal figures

within China, like the revered legal scholar and reformer Jiang Ping, have written about the plenum with cautious optimism.

This is not to say that China is about to abandon its preoccupation with “social stability,” which too often means silencing or imprisoning peaceful dissenters and activists who blow the whistle on some of the country’s many woes, including environmental degradation, abuses of power and needless policies against Tibetans and Uighurs.. But in the eyes of China’s leaders, social stability is what enabled China to lift hundreds of millions of people out of poverty in a mere few decades, generate huge economic growth, and peacefully re-establish China as a major power among nations. The prospects for legal reform will be greatly enhanced if China’s leaders come to see how the rule of law itself contributes to social stability.

Above all, we should recognize that every reform made or promised in China, even in a regime that contains factions opposed to reform, provides an opening for a large group of scholars, activists, reform-minded officials, as well as ordinary citizens to push to implement the changes and to find new openings for reform. The constraints are real, but so are the dynamics for producing ongoing reforms.

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