Chinese jurisprudence constitutes a discourse on what is justice, and the transition to the ‘socialist market’ has posed an essential question of social justice in law. How will the law, as a predicate facilitating new market relationships, respond to the ‘rights and interests’ of the most vulnerable sectors of society in a policy context which synthesizes justice with efficiency? The 1990s sequence of legislated human rights and its supporting jurisprudence formally established the ‘special grouping’ (teshu qunti), of the rights and interests of women, children, the handicapped and elderly. This chapter describes and analyses the contents of this particular grouping. The latter is placed within the jurist consideration of changes in society and the related weighting of justice and efficiency in the new marketplace.

The ‘special grouping’ has received a surprisingly high political priority in the context of the elimination of class-based strategies and policies and the transition from a planned to a ‘socialist’ market economy. This high priority was assigned despite a very strong political reaction against absolute egalitarianism as expressed in ‘all eating from a common pot’. Whether or not the new emphasis on ‘getting rich’ is turning out to be as ‘glorious’ as it has been touted, efficiency has rarely been placed in direct antithesis to distributive justice and equality rights. Efficiency has been placed within a ‘balance of values’ which also responds to the ‘Chinese socialist’ preference for social justice and stability. There is a new political focus on the protection of human rights categories as part of a strategy to ensure social stability as it is thought to be rooted in social justice. At the same time, there is a renewed interest in the use of law to facilitate institutionalized morality in a time of societal distress.
Legislation on rights and interests came about largely as a response to economic reform policy focusing on production increase through competition. An essential corollary of such a policy is the reduction of the social welfare costs of state enterprise through a more diversified sharing of responsibilities for welfare across the state and society. Any uninhibited emphasis on the ‘liberation of productive forces’ has been qualified in policy and law highlighting the protection of the rights and interests of the most vulnerable sectors of society.

In various reports to the Party, Jiang has professed fidelity to Deng’s ‘three favourable directions’, sange youli yu, calling for the contemporaneous liberation of productive forces with the elimination of polarization and the achievement of common prosperity.1 Jiang reportedly expressed to US Senator Max Baucus a keen interest in Franklin D. Roosevelt’s new deal strategy for alleviating the traumatic consequences of runaway capitalism.2 However, in the pathbreaking 14th Party Congress of October 1992, Jiang referred to the difficulties contingent upon everyone reaching common prosperity at the same time: ‘Socialism does not mean poverty. As it is impossible to become prosperous simultaneously, we must allow and encourage some areas and people to become well-off first, with a view to bringing along more and more areas and people and achieving the goal of common prosperity step by step.’3

‘Step by step’ might suggest some form of timed triage of human rights enjoyment, or a casual tolerance for the prioritized enjoyment of human rights. The February 1994 report on China’s implementation of the Nairobi strategies acknowledged that, even though China is part of the Asia-Pacific Region – a region where economic development was until recently on the upswing – there are still ‘problems’. The report explained: ‘The problems facing China are insufficient funds and materials that can be used directly for women’s participation in production and the phenomenon of occupational barriers in the course of economic transition.’4 The June 1994 ‘white paper’ on the status of women reiterated: ‘China is a developing country. Owing to the constraints of social development and the influence of old concepts, the condition of Chinese women is still not wholly satisfactory.’5 Within the normative context of such development, Chinese politics is likely to witness future battles over the state’s legal responsibility for the entrenching of rights and interests vis-à-vis the increase in social inequalities as a result of economic reform.

While the Chinese viewpoint has stressed that the opportunity for human rights enhancement is somewhat circumscribed by the oppor-