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RESEARCH ARTICLE

Reflections on Chinese governance

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ABSTRACT

A modern political system consists of three sets of institutions: a modern, impersonal state, rule of law, and mechanisms for democratic accountability. China developed the modern state more than two millennia ago, but has yet to achieve a real rule of law limiting state power, and has no democratic accountability. Current Chinese government under the leadership of the Chinese Communist Party replicates many features of dynastic rule, including top-down organization and upward, rather than downward, accountability. The system is unbalanced, with insufficient constraints on executive power, risking emergence of the ‘bad Emperor’ problem. The current anti-corruption campaign is unsustainable in the absence of a true rule of law. Transition to a more fully modern political system should sequence rule of law before democratic accountability, placing real constitutional limits on state power and only gradually opening up the system to greater political pluralism.

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Introduction

I am very happy to have the opportunity to revisit my ideas about Chinese government and governance, and to offer some speculations about its future. I have written on this subject in my two most recent books, *The Origins of Political Order: From Prehuman Times to the French Revolution*, and *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy* (Fukuyama 2011, 2014). These books have been widely read in China and have attracted a good deal of comment; they have also produced considerable misunderstanding so I think it is important to clarify some of my judgments about the nature and the future of Chinese government.

I will therefore summarize the conceptual framework I have tried to establish, describe how contemporary China fits into it, and then go on to discuss some possible futures for the Chinese political system.

The three institutional pillars of modern government

There are three baskets of basic institutions that make up a modern political system: the state, the rule of law, and mechanisms of democratic accountability.

The state was properly defined by Max Weber as a legitimate monopoly of force over a defined territory. States in their essence are hierarchical institutions that generate and concentrate power, and use that power to protect the community from external enemies, ensure domestic peace, enforce laws, provide necessary public goods from education to public health to infrastructure.

There is an important distinction to be made between what Weber labeled patrimonial states and modern ones. A patrimonial state is one in which the rulers consider the state a species of private property which they can use for their own purposes. An individual's relationship to the ruler is governed by personal relationships, i.e. whether he/she is a relative, friend, or client of those in power. A modern state, by contrast, is impersonal and seeks to treat citizens uniformly based simply on their status as citizen. Only in a modern state can there be a distinction between public and private; corruption occurs when rulers appropriate public resources for their own private benefit.

There was a time when kings and emperors believed they literally owned the territories they governed and could barter or sell them like private property. Today, no political elites argue that they literally own their countries; what we have instead is what has been labeled 'neo-patrimonialism,' in which rulers maintain the outward façade of impersonal, modern government, but in reality act as predators, using political power to extract resources for their own benefit and that of their families. Neo-patrimonial government is widespread in the developing world, and indeed is one of the most important causes of poverty there.

The second institutional pillar of modern government is the rule of law. There are many competing definitions of the rule of law, but the one that is the most salient from a political point of view has to do with the universality of the application of law. If law simply consists of the commands of the sovereign that are binding on subjects but not on the sovereign himself, then we have what is often called 'rule by law'; rule of law exists only when the sovereign himself—meaning, in effect, the most powerful political figures in the system—is subject to the same laws as ordinary citizens. If a king, emperor, president, or party general secretary can make up or change laws as they go along, then no real rule of law exists.

Understood in this sense, the rule of law pulls in the opposite direction from the state: that is, the state generates and uses power, while the rule of law is a constraint on power. In some respects, the state and rule of law overlap: state capacity is needed in order to enforce laws, in the form of courts, legal systems, and police. But a true rule of law would limit the state's discretionary power over its subjects, according to transparent rules that are generally regarded as just and legitimate.

Because the law exists as a constraint on state power, it needs to be manifested institutionally as a separate set of legal institutions with autonomy from the state. If the executive has the power to not just change laws at will, but to appoint, fire, or instruct judges, then obviously the ability of law to constrain state power will be undermined.

The third institutional pillar is democratic accountability. State power needs to reflect the wishes of the broad community it serves, rather than the narrow interests of the elites running the state. In modern liberal democracies, accountability is understood in procedural terms, that is, as periodic, free and fair multiparty elections that give citizens an opportunity to turn governments out of power if they feel they are not performing properly.

The purpose of procedures like elections is to achieve substantive accountability, that is, governments that are responsive to popular wishes. Procedural accountability does not always produce substantive accountability: democratically elected governments can be corrupt, unresponsive, or otherwise incapable of acting according to citizen demands. Conversely, countries that do not hold elections can be more or less responsive to citizen demands. Nonetheless, there are good reasons for believing that in the long run, substantive accountability cannot be achieved without procedural accountability. In the absence latter, one has to rely on the good intentions of the rulers and their willingness to look to public interests rather than their own.

Like rule of law, democratic accountability constitutes a constraint on the state. In my view, a legitimate and well-functioning political system needs to have all three pillars in place, operating in proper balance. A political system with a strong state but no institutions of constraint will be a dictatorship; if a state is modern rather than patrimonial but lacks law or accountability, it will simply be a more effective dictatorship. Conversely, systems with democratic elections and law but ineffective or weak states will not be able to provide citizens with the kinds of public goods they demand. At one extreme, we have seen the complete breakdown of states in many parts of the world—most recently, in the Arab Middle East, where state authority has collapsed completely in Iraq, Syria, Libya, and Yemen.

It is very difficult to achieve a proper balance between these three institutions, and the balance can shift over time. In particular, modern states are difficult to establish and sustain; more difficult, it would seem, than to create electoral institutions of democratic accountability. The modern state's requirement of impersonality runs against a basic human proclivity to favor friends and family. When powerful elites capture state power and use it to favor their own private interests, modern state can decay and revert to a form a neo-patrimonialism.

The evolution of Chinese institutions

How does China fit into this conceptual framework? In *Political Order and Political Decay*, I argued that China was the first world civilization to establish not just a state, but a modern state, and that this was done initially at the time of the Qin unification in 221 BC. This meant that China beat Europe in this aspect of political development by some 1800 years, since modern states did not begin to emerge in the latter region until the late 16th century.

The state of Qin that presided over the unification of China and established the Qin dynasty had many of the hallmarks of a modern state, that were developed under the guidance of individuals like Shang Yang and his Legalist followers. The Qin state was centralized, bureaucratic, with a capacity for tax extraction that surpassed those of its rivals. Qin established the well-field system, a type of land reform that weakened the

power of local elites and increased the state's ability to monitor citizens. It established a system of uniform weights and measures, and began a process of unifying the written Chinese language. It also began the practice of promoting officials not on the basis of personal ties to the ruler, but on the basis of merit and experience.

Qin developed these institutional innovations for the same reasons that European states like France, Prussia, and Sweden did in the 16th–17th centuries: the relentless military competition that characterized the Spring and Autumn and Warring States periods of Chinese history forced states to adopt efficient modern state institutions if they were to survive. When Qin unified China, it sought to spread these institutions to the empire as a whole.

The Qin Dynasty that followed exemplified the problems of unbalanced development: the Chinese state had a very powerful, prematurely modern state, but no institutions of constraint in the form of law or accountability mechanisms. As a result, it was an unbridled dictatorship, and was in fact a more effective tyranny precisely because it was so modern. Premodern Chinese states could not aspire to reorder the countryside along the lines of Qin's well-field system. The first Qin Emperor, Qin Shi Huangdi, reportedly ordered that 400 Confucian scholars be buried alive. The dynasty lasted only 16 years because the harshness of its rule bred opposition, beginning with those soldiers and officials who were supposed to carry out its wishes. The subsequent Han Dynasty that replaced it implemented many of the modernist measures undertaken by the Qin, but tempered this harsh rule by the re-introduction of Confucian principles.

It was the Han Dynasty that institutionalized the modernist form of government that has characterized China for the next two millennia. This system was built around a centralized, bureaucratic state, without formal legal constraints on state power. There were of course laws in the form of the Qin, Han, and later codes, but these constituted rule by law rather than rule of law—that is, they were for the most part lists of very harsh punishments of subjects for a variety of infractions promulgated by the Emperor, but which were not binding on the emperor himself.

In other societies, rule of law emerged out of religion. This was true in ancient Israel, in the Christian West, under Hinduism in the Indian subcontinent, and in the Muslim world. Each of these societies developed a hierarchy of priests or judges who were the interpreters of a divine law. Law did not emanate from the state, but from a series of sacred texts that were guarded (for the most part) by an autonomous body of specialists: the judges in Judaism, the Catholic priesthood in Europe, the ulama in the Muslim world, and the Brahmin class in India.

China is the only major world civilization not to have developed such a class of independent legal specialists, largely because China never developed a transcendental religion. Although China had a concept of 'heaven' and a 'mandate of heaven,' this source of authority was never represented by a separate institution like the Church, the ulama, or the Brahmins. There was no Chinese Pope who claimed to speak on behalf of heaven. Chinese state religion in the early dynasties consisted of ancestor worship, which by definition cannot be a universal doctrine since one has duties only to one's own ancestors. Buddhism took on characteristics of a state religion during the Tang dynasty, but was suppressed in the Song and later periods. Religion for the most part has been a vehicle for social protest and therefore controlled very carefully by the state, rather than being an independent source of moral authority.

The traditional Chinese attitude toward law therefore struck a different balance than in other societies. Law was understood as an expression of state power, rather than as a constraint on it. The real checks on the state lay in domains other than law, primarily in ritual, morality, and bureaucracy.

Morality as a check was manifest in the debate between the Confucians and Legalists in ancient China. The Legalists argued for clear and transparent laws as the only way of controlling unruly individuals. The Confucians by contrast maintained that no set of formal laws could be applicable in all circumstances, and that rules need to be tempered by good judgment that could put general rules in a specific context. This judgment needed to be exercised by someone with education and wisdom; the educational system promoted by Confucianism was essentially a moral education that would allow officials to exercise proper judgment. Hence the Confucian linking of education, morality and bureaucracy that are the hallmarks of Chinese civilization.

This debate is not unique to China. In American administrative law, there is a long-standing discussion of the proper balance between rules and discretion in administrative decision-making. There is broad recognition that formal rules cannot cover all circumstances, and that context-specific judgment often needs to be exercised. While American democracy is frequently criticized for being excessively rule-bound and legalistic, American officials are in fact granted substantial autonomy in specific domains where fast and efficient decision-making is seen as critical (like monetary policy and military strategy). The balance, however, is on the whole different from the one traditionally chosen in China. Americans prefer formal rules to limit power, while China has always come out on the side of greater administrative discretion.

While China never developed an independent court system like the ones that emerged in the US and other Western countries, state discretion could be limited by other factors. The Emperor had unlimited authority in theory, but in practice had to rule through a large bureaucracy. This bureaucracy itself operated under a complex series of rules and rituals, and was frequently in a position to stymie or reject the Emperor's wishes. Like all large, hierarchical systems, Chinese government suffered from big problems of information: the center often did not know what was going on in the periphery, particularly in an historical period when communications were slow and limited. This required the delegation of authority to local officials, whose superior knowledge of local conditions gave them power over the center.

Dynastic China suffered from what economists today would label principal-agent problems, where the bureaucratic agents formally tasked with carrying out the principal's wishes had their own agendas that did not correspond to that of the palace. Because the emperor found the agents unreliable, he was forced to turn to other sources for information and control, like the corps of palace eunuchs who were more trusted than the bureaucrats. At times however, the corps of eunuchs began to act autonomously themselves, requiring further layers of monitoring and surveillance, like the Eunuch Rectification Office established during the Ming Dynasty.

Chinese bureaucracy therefore acted, to a certain degree, as an institutional check on state power in dynastic China. There was however also a moral element that constrained power, that was based on Confucian doctrine. Emperors were given elaborate educations in the Confucian classics and ritual that emphasized their roles as guardians of what might be described as a broader public interest. Their role was not simply to

maximize the wealth and happiness of their own households, but to manage the empire wisely and justly according to Confucian principles as well.

Contemporary Chinese government and the Chinese tradition

It is clear that the Chinese Communist Party is increasingly calling on China's historical traditions, and indeed the legacy of Confucianism, as a way of legitimating its own rule. We therefore need to consider how contemporary Chinese government relates to that tradition, and where it deviates.

There are indeed many similarities between contemporary and dynastic China. Both were characterized by a large, centralized, bureaucratic state that at least aspired to be modern, that is, hierarchical, uniform and impersonal. Of the three pillars of modern government, the state in China had always been precociously developed, and this continues to be the case in the present.

During the Cultural Revolution, Mao Zedong tried, and largely succeeded, in dismantling not just the Chinese state, but much of the Communist Party as well. He substituted the authority of 'Red Guards' and 'masses' mobilized under his personal authority outside of the Party's hierarchy, and used them to disrupt the normal functioning of the Party-State.

Since 1978, that Party-State hierarchical structure has been reconstructed and institutionalized in a broader and more modern form than what had existed prior to the Cultural Revolution. The Party has retreated from direct involvement in many areas of government, and regular state institutions have reclaimed authority, although the Party continues to command state and it is completely intertwined with the state. The Party itself has reestablished and institutionalized its own centralized authority over the past 30 years, and has shown itself capable of exercising its traditional form of top-down discipline through the Party-State apparatus. However, what China does not have are the other two pillars of modern government that constrain state authority, a rule of law or democratic accountability.

In many respects, attempting to rule a very large country like China in this top-down fashion has created many of the same governance dilemmas as those experienced in dynastic times. First of all, there is a huge problem of information. Highly centralized authority faces the problem that governance requires intimate knowledge of local conditions; if information has to travel up and down a large hierarchy before it can be acted on, decisions will be slow, distorted, and unresponsive to those conditions.

China has sought to deal with this problem in traditional ways. While the formal authority of the Party remains vested in the Standing Committee of the Politburo, a great deal of authority for actual implementation of its wishes is delegated. This is most evident in the economy, where a market economy with its decentralized price-setting has been established (though the state retains a far higher degree of discretion to intervene in markets than in most capitalist countries).

But delegation is also evident in state authority, where provinces, municipalities, and counties have authority to implement policies in accord with local conditions. This sets up regional power centers and makes possible conflicts between national policy and local wishes. As in dynastic China, officials at the center often do not

know what is going on in the provinces, and find their own policies stymied by local authorities.

The CCP also faces the same problem of controlling a large organization with nearly 90 million members in a top-down fashion. The Party stands over the government to monitor its behavior, but then faces the question of who monitors the Party. The Party's Organization Department is tasked with disciplining the Party in its role as human resources manager, but then it itself needs to be monitored. There is a tendency to pile hierarchical monitoring organizations on top of one another, and to shift authority outside of the existing power structure because leaders can't trust their agents to carry out their wishes. The current anti-corruption campaign is an example of this process, where the hierarchy of the Party in effect has to attack itself in order to impose self-discipline, and cannot use regular channels to do so.

What China lacks today are institutions of constraint, either in the form of rule of law, or procedures to provide democratic accountability. This does not mean that either law or accountability is completely missing in China today, but they are not nearly well enough institutionalized to be real constraints on the misuse of power.

China has what can be described either as 'rule by law' or 'rule-based decision-making.' Indeed, the spread of rules since 1978 has been one of the most important components of Chinese political development, and something that separates China from other authoritarian countries.

For governing day-to-day life, China incorporated a version of the German-Japanese-Guomindang civil code during the 1980s. Unlike Western law, contemporary Chinese law does not recognize citizens as individual rights-bearers; to the extent they have rights, they are granted them by the state. There are no full guarantees of property rights under Chinese law. De facto property rights are recognized and respected as a matter of policy since this is necessary for the functioning of the market economy. But in the end, Chinese officials have much greater powers to arbitrarily take property from citizens than in a true rule of law country.

Perhaps the most important aspect of rule-based decision-making in China concerns succession and personnel turnover since Deng Xiaoping. The entire Chinese senior leadership has observed term limits, with what are now three transitions of power to new individuals on a ten-year cycle. In addition, the Party has mandated retirement ages which helps in the circulation of cadres. While the actual mechanisms for the selection of senior party leaders remains non-transparent, the process is far more institutionalized than in the vast majority of non-democratic political systems. At lower levels, there are much clearer rules for hiring and promotion, such that Chinese bureaucracy has, as in dynastic times, many Weberian characteristics.

Having term limits and a succession mechanism is of great advantage to China. Regular leadership turnover is critical in facilitating necessary policy reform. In most authoritarian regimes (and many democratic ones), leaders hold on to power too long. In personalistic dictatorships, there are no clear rules for succession, so the death of a leader (who has in any event likely overstayed his welcome) produces a potentially existential crisis for the regime. Many authoritarian countries like North Korea, Kazakhstan, Azerbaijan and the like are reverting to dynastic succession as a solution to the succession problem.

On the other hand, China's leadership rules fall short of being true constitutional constraints on power. They are the result of a consensus on the part of the Party's top leadership after the Cultural Revolution that they did not want to be victimized by a single, arbitrary leader. In liberal democracies operating under constitutional constraints, a president still needs to get legislative approval for extending or changing term limits, and in some cases (like Alvaro Uribe in Colombia) they are unable to get their way because they are blocked by a Constitutional Court. The current Chinese consensus on succession could be upset by a future leader with sufficient charismatic authority to capture the Party.

China does not have true rule of law because there is no independent judicial system that can constrain the Communist Party itself. For example, the current anti-corruption campaign is not being carried out by an independent legal institution; rather, it is a matter of the Party's Disciplinary Committee composed of senior leaders imposing discipline on its lower ranks, in the manner of a traditional party purge. If party-state officials are found violation of laws, they will be turned over to the courts at a later stage. Those exercising the discipline are not necessarily subject to that same discipline. The Latin phrase 'quis custodiet custodes?' ('who guards the guardians?') applies to the CCP. While the Party has given the lower courts slightly more autonomy to act against local officials, it has made very clear that it will not permit true judicial independence.

China of course does not have institutions of democratic accountability like periodic multiparty elections. There are village elections, but the structure of leadership selection remains top down.

Some Chinese scholars and regime spokesmen have argued that China should be considered democratic because the Party reflects the true interests of the Chinese people. They gauge popular feelings in a variety of ways: through listening to citizen comments, through private polling, through monitoring the internet, and in response to public protests. Although they are not institutionally compelled to respond to citizen complaints, interests, or wishes, they nonetheless take them into account. Indeed, some argue that since they can take a longer-term view of that interest than politicians in democratic countries, the Chinese system is in fact more genuinely accountable.

Nonetheless, it is clear that China remains very far from being anything like a real democracy. We do not know the extent to which government actions actually represent choices that would have been made by citizens since they are not allowed to express their views freely. The many cases of corrupt dealings by officials that have been revealed in the anti-corruption campaign make it clear that they often act in self-interested ways in violation of citizen rights. They have not had to worry about being held accountable by their citizen victims; the only people to whom they are accountable is the senior leadership of the Party. It would seem that that the regime enjoys general legitimacy and in outcome terms has delivered good results over the past three decades. But democracy is more than generalized legitimacy. True democracy is based on a view that citizens are actual agents and not simply recipients of government largesse. Part of that agency is based on their ability to have some share of rule and political power, if only by casting a ballot every few years, or being able to voice criticisms of government behavior. While outcomes are important, so is the actual process of participating in self-government.

As in dynastic China, the government retains huge discretion to do as its top leadership wishes, without either horizontal or vertical mechanisms with the power to check its activities and exercise of power. Chinese civil society is not permitted to mobilize to express its views. To the extent that China is or has been well-governed, it is a consequence of the fact that the top leadership has maintained a consensus about the broad direction of policy since 1978. The common experience of surviving the Cultural Revolution has convinced senior leaders of the dangers of allowing a single one of their number to have unbridled personal authority as Mao Zedong did.

This is not a sustainable system. It is completely dependent on the good intentions of those at the top of the hierarchy. While such a system can perform well in the hands of a good leader, it is highly vulnerable to the arbitrary authority of a bad one. This problem has been referred to in Chinese historiography as the problem of the 'Bad Emperor.' Since 1978, Chinese leaders have by common consensus been largely good emperors, but there is no guarantee that this will continue to be true going into the future. While a good Emperor can undertake reforms more rapidly than reformers in democratic countries, there are no checks on the authority of a bad Emperor and no way or removing him or her.

Moreover, it is not clear that such a top-down system can deal with the information requirements of governing a large and rapidly changing society. Political systems need to respond and adapt to rapid changes on the ground; there is a strong functional reason for having mechanisms of democratic accountability simply to shorten the accountability route between rulers and citizens and provide the former with better information.

The Party moreover faces a serious problem regarding legitimacy. There are as noted above many continuities between contemporary Chinese government and the older Chinese imperial tradition. However, in dynastic China there was a clear meshing of the ideology on which the system was based, and its actual institutions. Confucian doctrine supported the training and recruitment of the Mandarinate, and provided the basis for the education of future emperors.

While many contemporary Chinese leaders have sought to draw legitimacy from the historical tradition, they cannot do so cleanly because the Party still officially adheres to a Western ideology, that is, Marxism-Leninism as interpreted by Mao Zedong. The Party of course has not felt bound by that doctrine's strictures for many years, interpreting it 'with Chinese characteristics.' Nonetheless, abandoning it officially will have large costs and its retention makes it impossible for the Party to attempt a full-throated resurrection of Confucianism or traditional Chinese values, which would risk undermining the regime's regime identity and legitimacy. The result of this ideological confusion is that the Party's real source of legitimacy has rested instead not on coherent ideas, but on a combination of performance and Chinese nationalism. However, Marxism-Leninism and Mao Zedong thought are still codified in the Constitution as the guiding ideology of the Party and the State, and the Party-State continues to uphold to it as a source of legitimacy.

Performance legitimacy has served the Party well over the past three decades, but it unfortunately depends on maintaining a high level of economic growth which is not necessarily within the Party's control. While citizens may be quite content to live under

the Party's tutelage while growth rates are high, it is not clear how they will react if the country faces mass unemployment or prolonged stagnation.

Legitimacy through nationalism has a separate set of dangers. The geopolitical situation in East Asia has already been destabilized to some extent by the kinds of territorial claims China has made since 2008. In general, rising powers present large challenges to the international situation; a China that seeks legitimacy at home by following a highly assertive policy abroad risks upsetting international stability.

Apart from the question of political stability, there is the deeper issue of whether the Chinese economy can continue to grow without greater political and individual freedom. China is in the process of transitioning to a 'new normal' of lower growth, in which further gains in per capita GDP will depend not on extensive mobilization of resources (primarily agricultural workers), but on gains in productivity. But the latter depends on innovation and connection with the outside world: unless individuals are willing and able to challenge established ways of thinking and doing things, fundamental change will not be possible. Unfortunately, the Party has been moving in the opposite direction under Xi Jinping, towards a substantial curbing of individual freedom, hostility towards foreign influences, and a reimposition of Party doctrine.

A path forward

Whatever China's successes in economic growth and power over the past three decades, the current political system bears much vulnerability that will become more evident as the economic engine slows down. The question, then, is what is the best way forward in terms of political development?

In my view, the most sensible path is the one taken by a number of European countries in earlier periods, that is, the development of a real rule of law in the near term, and the gradual introduction of greater democratic political participation down the road. The current leadership under Xi Jinping in fact claims this to be a long-term goal for China, and to be part of the 'socialist core value' promulgated at the 18th Party Congress.

There are several reasons for this kind of sequencing. It would seem that there is a broad hope on the part of many in the Chinese elite for a more liberal and rule-bound political system. That is, people, both intellectuals and businesspeople, would like more freedom to talk, criticize, innovate, take risks, and the like, under clear cut rules that established boundaries for personal freedom. This space has been carved out to some extent already in economic transactions, but needs to be extended to non-economic life as well.

Down the road, China needs to make a transition from rule by law to rule of law. That is, clear rules need to apply not just to ordinary citizens and to lower levels of the government, but to the Party itself. There should be true constitutional constraints on the Party-State's exercise of power. The discretionary authority wielded by Party officials needs to be circumscribed by clear and transparent laws, not just internal Party discipline. And above all, the area of judicial autonomy needs to be expanded.

The need for this is evident in the area of countering corruption. The Party rightly sees that corruption is highly damaging to its reputation and legitimacy, and is currently engaged in a massive anti-corruption campaign that has targeted any number of

'tigers' as well as countless 'flies.' This effort, however, does not come under the heading of Rule of Law. The rules that officials are being accused of violating are not clear; behavior that was officially permitted in earlier years has now become a punishable offense. There is no procedural regularity to either the accusations or the convictions. The impact on the economy is potentially very damaging: executives no longer know what kinds of decisions will get them into trouble, and as a result have become very risk-averse. The campaign is very similar to many earlier efforts by the Party to discipline its own members. The problem is that no party anywhere has been able to keep up this kind of internal purge over the long run. The climate of fear it induces paralyzes action by both government and the private sector; in the past, the Party eventually relents and relaxes its grip. The underlying problem of corruption is not solved because it is a systemic and institutional corruption caused by unchecked power of Party-State leaders, and there is no clear rule of law to guide behavior, only the Party's shifting political requirements.

China needs a more sustainable institutional mechanism to control corruption. And this mechanism is a genuine rule of law administered by an independent judiciary. Without institutional separation between the executive and judicial branches, control of corruption remains a discretionary political decision that can be turned on and off at will, and targeted selectively against particular individuals and factions.

To make the current Chinese system conform to something that would look more like a genuine rule of law would be to give real meaning to the Chinese constitution, and to embed existing rules on mandatory retirement, collective leadership, and term limits in it. The current constitution does not govern the Party; rather, the Party makes and changes the constitution at will. This is made possible legally by the Four Principles it begins with, which in effect grants sovereignty not to the Chinese people but to the Party.

I argued above that practices like term limits and mandatory retirement were critical in distinguishing the Chinese system for the better from other authoritarian systems. However, these are for the most part internal Party understandings reflecting the experiences of the elite that lived through the Cultural Revolution. As noted above, they could be changed by a new leader with substantial charismatic authority, who could overturn current understandings about collective leadership. Having these rules embedded in the Constitution in the end is not a guarantee that they will endure; nonetheless, such provisions would make it harder for a single individual to upset the system.

The rule of law is not a binary, on-off condition. Rather, it has distinct components and degrees of applicability. Legal constraints can never be fully binding and are constantly under threat of erosion. But it seems to me that China would benefit greatly from a gradual expansion of its current rule-based decision-making to encompass more and more areas of not just economic but political life.

The question of institutions of democratic accountability is more complicated. Any near term transition to genuine multi-party democracy of the sort made by Taiwan and South Korea during the 1980s seems very unlikely to succeed in China. It is not simply the fact that the Communist Party has no interest in giving up power, like the KMT in Taiwan ultimately did. The problem lies in the fact that the CCP is not, as in other countries, simply a political body that gives political instruction to a neutral

administrative hierarchy; rather, the Party *is* in effect the government at virtually all levels from the Standing Committee of the Politburo down to the smallest danwei at a local level. It is hard to see how the Party could extract itself from government in the aftermath of an election if it were to lose. The experience of countries with long-dominant single party rule like Mexico, Japan, or Taiwan itself indicates that genuine political competition is very hard to establish. There are of course no organized opposition groups or parties in China; even if they were permitted to organize, they would have not governing experience. If they actually succeed in coming to power they have no idea how to implement their programs and usually end up losing power in subsequent elections.

Those countries in which a transition from one-party to multi-party rule has worked have often devolved power on a municipal or provincial level prior to opening up national offices for political competition. This was true in Mexico, Turkey and Taiwan: opposition candidates gained governing experience as provincial governors or city mayors before seeking national office. Even so, the playing field is seldom if ever level; dominant parties have many ways of continuing their hold on power.

In China, the only path I can see to genuine political competition is within the CCP itself. If the Party factionalizes, or permits genuine competition for offices at lower levels of government, alternative voices could eventually emerge. The party could delegate not just discretion over implementation, but over more fundamental matters of policy, to provinces, counties, and cities. However, given the Party's determination to hold onto power, all of this becomes highly speculative and is not in the cards for the foreseeable future.

Conclusions

China has reached an important moment in its history. It has concluded a prolonged period of unprecedented economic growth based primarily on the extensive mobilization of labor and manufacturing for export, and is shifting to one based more heavily on services, domestic demand, and increasing productivity. Economics and politics are heavily intertwined: it will not be possible to make the shift to the 'new normal' unless the political system evolves as well. There needs to be more freedom of thought and action throughout the system, and more ability to adapt to rapidly shifting conditions. It is not possible for even the wisest Party leadership to be able to direct this process from the top.

Thus, for example, the country faces a major tradeoff between economic growth and environmental safety. The right balance between these competing values cannot be prescribed from above by the Party; ultimately, it is the Chinese people who have to decide how much they are willing to pay for clean air and safe food. A democratic political system is simply a mechanism for reconciling different social interests and passions in a peaceful manner, or at a minimum to prevent domination of the whole system by a particular narrow interest or industrial departmental interest of the government. The balance China has achieved between state, rule of law, and democratic accountability has been heavily tilted towards the state and away from institutions of constraint, both historically and in its recent history. That unbalanced system may have served it well as it was catching up to the other developed powers, but will

not be sufficient as a form of governance in the most complex world that is unfolding at present.

Disclosure statement

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