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“China’s Political Reform under the Hu-Wen Leadership”

Since China began revamping its economy in the late 1970s, the pressure for political reform has been building up as it has become more and more difficult for the communist leadership to sustain a growing disconnection between a market-oriented economy and a dynamic, robust society, on the one hand, and a brittle, anachronistic and authoritarian state on the other. As a result, political reform has not only been hotly debated and broadly discussed among Chinese intellectuals but also become an official policy objective, listed on the agenda of many CCP and governmental meetings and official publications. While many Western observers have expected China’s political reform leading to democratization of the polity, when Chinese government officials and some Chinese scholars talk about political reform, they are proposing to make the single party rule more institutional and provide it with a solid legal base.

This presentation will discuss three important aspects of political reform since Hu Jintao and Wen Jiabao came to power in 1992: the trend of institutionalization of the decision-making system, government accountability to an increasingly pluralized society, and the effort to establish a rule of law regime that emphasizes normative rules and procedures rather than ideological principles.

**Institutionalization of Decision-making System**

Institutionalization of China’s leadership system started in the 1980s. Significant reform measures have included regular Party and state body meetings according to constitutional schedules; constitutionally mandated two-term limit for the premier and president and retirement age for all party and government posts; and a personnel policy emphasizing youth and education. One of the most important consequences of institutionalization is the enhancement of formal institutional authority and the decline of informal personal authority of top leaders. For many years in PRC history, personal authority was more important than institutional authority in the top-level politics. This
was particularly true during the 1980s when retired senior leaders possessed great personal prestige and influence over newly promoted and younger top office-holders. Although Deng gave up most of his formal titles voluntarily at the peak of his power except the Chairman of the CMC that he retained for two more years after stepping down from the Politburo Standing Committee in 1987, he still exercised ultimate authority due to his personal stature, connections, and breadth of experience. Deng ruled China even when his only formal position was Honoray Chairman of the Chinese Bridge Players’ Society.

Institutional authority has advanced to take more important position than personal authority since the complete demise of the senior revolutionary veterans in the 1990s. After Deng’s death in 1997, there have not been any retired senior leaders who ever practiced footloose informal power as Deng did. Even though Jiang Zemin has sought to follow the lead of Deng since his stepping down from the party boss position at the 16th Party Congress, it has been hard for him to succeed in doing so, as Jiang does not have the kind of prestige and stature that Deng had and therefore is not able to exercise the level of informal authority that Deng was able to wield. Jiang’s authority depended at first upon the approbation of the elders and, later, on his institutional positions. That is why Jiang has tried to retain the CMC chairmanship.

Gradually coming out of Jiang’s shadow, Hu Jintao has moved further along the direction of institutionalization of political process and, in particular, has emphasized the importance of preserving the normative rules and procedures of collective leadership in decision-making process. At the highly publicized first Politburo meeting after the 16th party congress, Hu emphasized the rule of law and the role of constitution. Since then, the Politburo and its standing committee meetings have been routinely publicized in official media. In addition to regular Politburo meetings, Hu started a system of collective study sessions to help his colleagues make decisions based on more educated information. It also revealed that at the State Council's first executive meeting presided over by Premier Wen Jiabao on March 19, two days after assuming the position, a set of working codes for the cabinet were worked out and emphasized administration by law and enhancing supervision on government work.
In a move to institutionalize decision-making system in the State Council, Wen stopped making decisions at premier work meeting (zhongli bangong huiyi), which did not have any legal status but was held regularly by his predecessors. Instead, he has made decisions at the State Council Executive meetings (guowuyuan changwu huiyi) and State Council Plenary Meetings (guowuyuan qianti huiyi), which were regulated by the Constitution and State Council Organic Law. Both Premier Li Peng and Premier Zhu Rongji relied heavily upon the premier work meetings to make State Council decisions. It was reported that within the five year tenures of both premiers, each held about 150 such meetings. Both Li and Zhu like the premier work meeting because it was called upon by the premier, its participants were at the discretion of the premier, and gave the premier a lot of discretion power in the decision-making process. In contrast, both the State Council Executive Meeting and plenary meeting are clearly stipulated by the constitution and law. The participants of executive meeting must include premier, vice-premiers, state councilors, and state council secretary generals. It should be convened at least once a month. The participants of plenary meeting are all members of the state council. It should be held every two months or a quarter. It was reported that 37 executive meetings were held by between March 19, 2003 and January 29, 2004, about 3-4 meetings each month.

One news report quoted a Chinese scholar that the stop of the premier work meeting and the regularization of the executive meeting “reflected the institutionalization of the State Council decision-making system, avoided the rule of man in decision-making process. This is a major method toward ruling the country according to the constitution and laws.” It quoted another Chinese scholar that the reform was a step toward legalization, institutionalization, and regularization in the operation of the State Council.”

Another significant move toward institutionalization of leadership politics is the decision in July 2003 to abolish the annual series of informal central work conference at the summer resort of Beidaihe. The informal central work conference started in Mao’s years and was held in various locations. Many major policy decisions were made at these conferences although their existence and jurisdiction were never stipulated in the CCP or

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1 “Wen Jiabao quxiao zhongli bangong huiyi ruhua gaochen renzhi shecai” (Wen Jiabao abolish the premier work meeting to weaken the rule of man at the top), Chinesenewsnet.com, February 10, 2004.
PRC constitutions. The central work conference survived post-Mao transition. Vacationing and participating in these informal meetings, retired elders exercised undue influence. The decision to abolish the Beidaihe informal conference and to rely upon formal meetings of the Politburo and its Standing Committee is certainly a major advance toward institutionalization of decision making at the top.

Continuing institutionalization of decision-making system at the top and making it more transparent are certainly a positive development of political reform. The top CCP leaders would have tended to have less and less personal authority as the institutionalization of leadership politics continues. In this case, Hu Jintao, no matter how capable he is, would have less personal authority than Jiang in the years to come and, in this case, would be less likely to become a strongman after his retirement than Deng or even Jiang did. The lack of a strongman in the leadership would at least make members of the CCP leadership more willing to follow normative rules and procedures in decision-making. This formal structure of collective leadership would in turn further strengthen the process of institutionalization of the decision-making system.

**Political Reform and Government Accountability**

Another aspect of political reform in post-Mao China is to build a new base of authority in response to the legitimacy crisis that the CCP suffered after the inception of market-oriented economic reform and opening-up to the outside world in the late 1970s. In response, Deng’s political reform in the 1980s redefined the content and role of the official ideology as promoting economic modernization. The party began to imply that the responsibility of the state was to expand socialist democracy rather than exercise dictatorship although it never defined democracy in Western terms. Carrying political reform to accommodate a more pluralist society, as Minxin Pei indicated, the party has developed a strategy of opening up peripheral parts of the political system while allowing no challenge to its power.² Opportunity for voluntary participation in politics has been increased at both the grassroots and national levels. Multiple candidates and secret ballots have been introduced for elections to people’s congresses at the local and county levels.

and for village committees. Although it has not yet become an independent legislature that can routinely initiate legislation, veto state proposals, or impose accountability on government or party officials, the National People’s Congress (NPC) is no longer merely a rubber-stamp parliament and in recent years has gradually asserted itself. It holds an annual plenary session, and its standing committee meets on five or six occasions annually. The NPC has established functional committees that specialize in particular aspects of foreign and domestic policy and that have played a more active role in drafting legislation. Some members of these committees come from the small “democratic parties,” which are primarily associations of intellectuals, scientists, and former capitalists and have resumed the recruitment of new members. Although they are not considered opposition parties and are treated merely as advisory organizations that can offer suggestions to the CCP, some of them have exercised considerable influence on certain technical decisions in NPC sessions.

Since Hu Jintao came to power, the effort of rebuilding the regime legitimacy has continued. In particular, the new leadership has tried to promote a new image of “qinmin” (be nice to the people) government by working closely with the masses, especially the disadvantaged. On March 18, 2003, the day after assuming the presidency, vowing before the TV cameras, Hu Jintao proposed what have been known as “new three people’s principles” (xin shanmin zhuyi): to use the power for the people (quan weimin shuoyong), to link the sentiments to the people (qing weimin shuoji), and to pursue the interest of the people (li weimin shoumo). These efforts have been known as “Hu-Wen New Deal” (Hu-Wen xinzheng).

During the crisis triggered by SARS (severe acute respiratory syndrome) epidemic, the new Chinese leadership worked hard to build an image of the champion of ordinary Chinese people by calling for the government officials to be more professional and accountable, partially in response to the media exposure and domestic as well as international pressure with regard to the initial cover-up of the epidemic. After a whistleblower exposed lies about the outbreak, Chinese people began demanding basic rights to information and the World Health Organization and the foreign media clamored

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for accountability. In the hospitals, the virus crept into the ranks of the Communist Party. Unlike in times past, the drama was chronicled in real time on the Internet. Realizing the danger that SARS could pose to the country and the state, Hu made an unusual move to acknowledge that the government had lied about the disease at an unscheduled Politburo meeting on April 17. To show his commitment to an all-out war against an epidemic sweeping the country and the capital, three days later, he fired Beijing’s mayor and the country's health minister for covering up the actual number of SARS patients. Prime Minister Wen Jiabao, in a show of remorse and regret, apologized for mistakes while attending a regional SARS Summit in Bangkok in late April.

“The SARS crisis - and the Chinese government's deceitful early response to it - has underlined the urgent need for systemic political reform.”

In response, the Hu-Wen administration made efforts to find new ways of communicating with Chinese people and made a change in style of governance toward a more transparent and rule-binding administration. After admitting to the cover-up of the severity of SARS in Beijing, the central leadership insisted that the media must honor the people's “zhiquin quan” (right to know) and ministries, provinces, and cities, must establish a news dissemination system to boost government transparency. A cadre responsibility system (wenze zhi) was set up whereby leading officials were demanded greater accountability and required to report truthfully on the epidemic situation. If any official is found unable to prevent mishaps ranging from epidemic to labor unrest would face tough penalties or dismissal. A Chinese journalist reported that “Nearly 1,000 government officials, including former Minister of Health Zhang Wenkang, were sacked or otherwise penalized last year for either concealing lax efforts to prevent the SARS outbreaks or even concealing the epidemic.”

Although it is hard to say how much such changes have showed a conviction of acceptance to liberal democratic principles or entailed complete opening of the political system, the Hu-Wen administration has certainly been under pressures to make reform of the system to reflect the tumultuous pace of transformation in China, from technology

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that often outpaces efforts to control information, to globalization and foreign influences that vie with Communist Party doctrine.

**The Rule of Law Regime and Constitutional Reform**

The third important aspect of political reform is to build a legal system, or “fazhi,” a Chinese word which means both “rule of law” and “rule by law.” Reformist leaders have worked hard to pass laws and promoted the supremacy of constitution in maintaining an authoritarian stability. It was against this background that Pan Wei, a professor of political science in Peking University, suggested a consultative rule of law regime in China.  

The progress in legal reform has been very impressive in recent years. In particular, constitutional reform has become a hotly contested issue in China’s political reform agendas.

The PRC has been governed by four constitutions and four amendments have been made to the current constitution. While the first constitution in 1954 detailed the state structure of the new People’s Republic, its normal function became obsolete in 1966-67 when the Cultural Revolution resulted in the disruption of established institutional arrangement and produced new structures and processes that had little, if any, constitutional validity. The second constitution, known as “the Cultural Revolution Constitution” (wenge xianfa), was produced in 1975. After the inception of economic reform, the third constitution, known as the “Four Modernization Constitution” (sige xiandaihua xianfa), was adopted in 1978, marking the initial attempts to restore the pre-Cultural Revolution political system and the re-orientation of party policy toward economic development. The formal structures governing the Chinese political system barely gained legitimacy with the 1978 constitution, the fourth constitution, known as “Reform and Opening-up Constitution” (Gaige kaifang xianfa), was passed in 1982. In an effort to establish a rule of law regime, the 1982 constitution stipulated that “no organization or individual is privileged to be beyond the Constitution or law,” and dropped reference to the party as the “core of leadership.”

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6 Pan Wei, “Toward a Consultative Rule of Law Regime in China,” *Journal of Contemporary China*, vol. 12, no. 24, pp. 3-42.
Functioning to regularize frameworks for political life in China, the 1982 constitution has amended four times in 1988, 1993 and 1999, 2004, in correspondence with the policy adjustments at the 13th, 14th, 15th and 16th CCP National Congresses. The fact that it was amended, rather than replaced by new constitutions, suggests a consensus among China’s leaders on the fundamental goal of economic modernization. Indeed, largely reflecting already existing and approved economic and political practices, these amendments provided ideological justifications of the party's economic reform policies and helped the reformist leaders to create a more predictable system. They moved China toward international norms on legal issues. Among the most important items of the amendments, the 1988 amendment introduced provisions on private economy while the 1993 one replaced the concept of “socialist market economy” for the concept of “planned economy on the basis of socialist public ownership.” In the 1999 amendment, the role of the private sector was elevated from being “a complement to the socialist public economy” to “an important component of the socialist market economy.” The phrase “counter-revolutionary activities” was changed to “crime jeopardizing state security.” Significantly, “the constitutional amendments explicitly avow, for the first time in the constitutional history of the People’s Republic, to ‘govern the state according to law’ (Yifa Zhiguo) and ‘establish the socialist state of rule of law’.”

Among the 2004 amendment, one most politically motivated change is the incorporation of the concept of the “three represents” into the constitution, a reflection of Jiang Zemin’s desire to enshrine his political legacy. Second notable revision is that "Citizens' legal private property is not to be violated . . . the state protects citizens' private property rights and inheritance rights according to law." This change puts private assets of Chinese citizens on an equal footing with public property, both of which are "not to be violated." The word "private" has long been a center of attention and the focus of much debate among Chinese officials, scholars, and the public over its place. For many years after the founding of the PRC, the word "private" and such terms as private interests, private property, and private concerns, were targets of attack. Post-Mao reform has loosened the strict social and economic controls exercised by the state and produced a

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new private sector. However, for a rather long period they could only be called "minying" (citizen-operated) enterprises, not private enterprises. Obviously, the practice of encouraging the private sector of the economy but avoiding reference to its existence in the constitution cannot sit well with the rising private sector. Many private entrepreneurs have been afraid of their assets subject to state takeover without a legal guarantee in the Constitution. It was reported that before the third constitutional amendment in 1999, many legal scholars had appealed to add the article on the inviolability of private property, but the proposal was eventually abandoned due to strong opposition within the party. Since then it has become a key demand of China's newly emerged entrepreneurs. Such an amendment would certainly encourage more private investment and initiative, which the party needs to raise living standards of Chinese people and keep it in power.

The private property amendment in the constitution is significant not only for the protection of private entrepreneurs but also for the protection of the private assets of ordinary Chinese. According to a Xinhua news report, China's private assets had surpassed 11 trillion yuan (US$1.33 trillion) by the end of 2002, exceeding state assets by about 1 trillion yuan (US$121 billion). Most of these private assets are owned by ordinary citizens who need more protection in the constitution because their right to hold their own assets is more likely to be infringed upon by the state and the rich. One most discussed infringement of private property rights in recent years is the forcible relocation of urban and rural residents in the process of developing real estate projects or the construction of economic projects. Millions of urban and rural residents have been forced to leave their homes with inadequate compensation. To address this problem, the proposed constitutional amendment adds "the State should give compensation" to the original stipulation that "the State has the right to expropriate urban and rural land" although “exactly what kind of compensation should be given is not stated in the amendment because during the constitutional revision process there was conflicting debate over this issue."8

Third important constitutional revision is that "the State respects and protects human rights." This amendment is obviously a response to Western criticism of China’s

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human rights record. Although it is ambiguous and made no mention of political freedom, this amendment, together with the private property protection and the stipulation that the “State should give compensation” are major steps forward to “define limitations on those who rule at the highest level in a nation-state,” a primary goal of all modern national constitutions whatever form they may take." The constitution may not only bestow legitimate authority on the CCP leadership but also be used by citizens to limit the behavior of the state. In a commentary on the constitutional amendments, a scholar indicated, “For a government that not too long ago persecuted private property owners and denounced "human rights" as an alien western concept, these are monumental improvements.”

While the top-down approach toward constitutional reform has set limitations to the scope of the amendments, Liu Xiaobo, a Chinese political dissident known for his role in the 1989 Tiananmen pro-democracy demonstrations, acknowledges that “a constitution for the party authority (dangquan xianfa) has been transformed to a constitution of limiting the party authority (xianquan xianfa).” An evidence of the transformation, according to his observation, is that the emphasis of legal education has shifted from educating citizens to obey law to educating officials to follow law.

Indeed, protection of constitutional rights has become a hot topic in China's media, as ordinary Chinese have developed an understanding of the legal rights they are supposed to enjoy and try to make them real. This development has produced a series of incidents of protests against the government infringement of citizens’ rights and the spread of rights consciousness and activism. Among the major incidents, debate over excessive police powers raged after a young man was beaten to death in police custody, leading to a decision to revoke the detention and repatriation regulation giving police extensive powers to detain and repatriate people found without urban residency permits in cities in June 2003. The regulation, which was passed in 1982 and covered the

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provision of shelter for vagrants and beggars in urban areas and their repatriation, was criticized widely by human rights activists for violating its original purpose of providing assistance to the homeless. The decision came after the death in custody of 27-year-old Sun Zhigang on March 20. Sun was a university graduate from Wuhan and detained by police in Guangzhou after he failed to produce his temporary residence permits. He was sent to a detention centre and died three days later. Sun’s tragic death caused a public uproar over after its exposure by the media. Three young legal scholars made a petition to the NPC and challenged the legality of Detention and Repatriation. This petition was followed by a national outcry over the unexplained beating death of Sun. In response, Guangzhou courts sentenced a detention center nurse and one of her patients to death, and 16 others were given prison sentences, for Sun's death.\(^\text{12}\) The old detention and repatriation system was replaced with a comprehensive relief program. Although these actions were to help the Hu leadership establish an image of “cadres of the masses,”\(^\text{13}\) they are a positive response to the demands of protecting individual’s constitutional rights.

Chinese media in recent years told many stories of citizens’ actions to protect their constitutional rights and their positive results. Beijing’s popular magazine, Xinwen Zhoukan (News Week), published a special issue at the year end of 2003 with the title, “2003: New Civil Rights Actions.” A commentator of the magazine weaved together many of these stories and saw “an unusual linkage among these seemingly incidents.” The commentator believed that “along with new civil rights actions, the call for maintaining the supremacy of the constitutional system has forcefully arisen above the water.”\(^\text{14}\) The rise of constitutional right consciousness has brought about many new concepts among Chinese people. Guangzhou’s bimonthly magazine, Nanfeng Chuang (South Wind Window), listed ten “concepts of the year” in its last issue of 2003. Most of them are closely linked with the constitutional consciousness, such as “yimin weiban”

\(^\text{13}\) Editorial, “The new rules, which will take effect on August 1, have been welcomed,” People's Daily Online English, June 30, 2003.
\(^\text{14}\) Qiu Feng, “xin minquan xingdong nian” (New Civil Rights Action Year), Xinwen Zhoukan (News Week), december 23, 2003, pp. 52-53.
Conclusion: Limits of Political Reform

Political reform has made a thin end of the wedge in the rigid authoritarian system and the new generation of leadership has tried to establish an image of a new stripe, less hide-bound, more open-minded, and more rule-binding. However, these advances have been very modest. Paradoxically one of the main purposes of the reform has been to head off threats that might eventually increase pressure for democratization.

In a discussion of the recent development of institutionalization and the rule of law regime in China, Bruce Gilley characterized them as a “proceduralism,” which has resulted in an “end of politics” and a form of “crypto-politics.” According to Gilley, “Proceduralism is an attempt to deal with decisions through processes that are blind to outcomes. It is a key to the notion of ‘technocracy’ -- officialdom guided by markets and scientific expertise.” He sees the constitution as “the pediment of the procedural temple.” It is a constitutionalism stripped of the political life that makes constitutions powerful symbols of deliberative agreements in other countries.” While Gilley may be too negative toward institutionalization and constitutional reform, he made a useful distinction between institutionalizing political competition and “proceduralism.” It is particularly interesting to see the doctrine of proceduralism in the context of a grand policy consensus built by Deng and advanced by Jiang over the primacy of concentrating on economic modernization and political stability in order to maintain the CCP one-party rule. It has been a long-held party belief during the reform years that keeping economic growth moving and prosperity on the rise is crucial to the party's progress and efforts to maintain one-party rule over an increasingly savvy society. Its legitimacy can be maintained without abolishing the one-party rule, as long as the communist party’s rule can be improved to deliver economic growth.

Both doctrines of proceduralism and economic primacy have so far stood the state as well as the reformist leaders in good stead as the party’s legitimacy in China has become increasingly tied to the party’s ability to maintain a rule of law regime and raise incomes and deliver year after year of strong GDP growth. In this case, “When the party considers itself under assault, no law, treaty or right contains its fury. Despite nominal guarantees of freedom of association in China’s Constitution, the police treat religious and labor groups that operate without official approval as seditious.”17

The real test to political reform, therefore, is whether the party and state are willing to accept constitutional curbs on their ultimate power by, among other things, an independent constitutional review process, expansion of direct local elections, dilution of party control of the judiciary, and, in practice, permitting people to exercise such rights as freedom of assembly. It is hard to expect the current leadership to make such a breakthrough as the new leadership has wanted to do better than its predecessors and improve the system that they oversee -- not bring it down. They have worked to govern an increasingly complex polity rather than to strike out in finding a new political direction.