

Rule of Law in China: Chinese Law and Business

The Political Economy of China's Transition

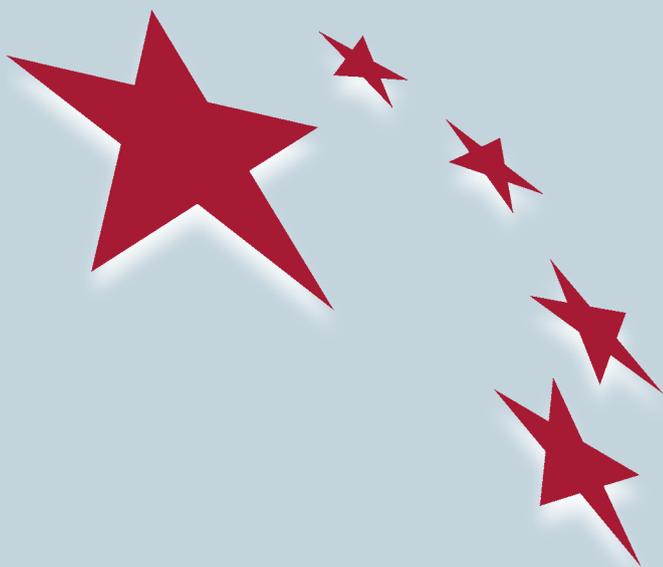
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Executive Summary

- This policy brief argues that Minxin Pei's *China's Trapped Transition: The Limits of Developmental Autocracy* contains a number of useful insights into the political economy of contemporary China, including recognition of the convergence of the economic and political elite in ways that tend to perpetuate the dominance of that elite; recognition that economic development can strengthen autocracy, by providing greater resources for the state both to repress societal challenges and distribute patronage; and recognition that this pattern of rule has created a number of governance deficits that have distorted China's socio-economic growth causing a serious erosion of social justice.
- The brief argues that more attention to the features of late-stage Leninism and the implications of the urban-rural gap in China would strengthen some of Minxin Pei's arguments.
- Nevertheless, I also argue that there are important aspects of China's polity that the trapped transition thesis cannot explain. In particular: political change and changing public policy priorities, such as the attention of the leadership of Hu Jintao and Wen Jiabao to the areas of governance deficit that Minxin Pei has identified; how the state collects, processes, and acts upon information, which is a more flexible system than the trapped transition thesis allows; and the process of experimental system-building in such matters as village elections, the development of NGOs, and the creation of various new systems of 'inner-party democracy' and 'consultative democracy'.
- The bottom line is that China's political system will resist democratization for a substantial period of time for many of the reasons that Minxin Pei suggests. This lack of a more direct public feedback mechanism will distort patterns of growth and governance. Nevertheless, China's political system is more capable of change, confronting established interests, and adapting to changing circumstances than the trapped transition thesis would maintain.

The Political Economy of China's Transition

Overview: Minxin Pei's thesis of trapped transition

The basic argument of Minxin Pei's recent book, *China's Trapped Transition: The Limits of Developmental Autocracy* (Harvard University Press, 2005) is that gradual economic reform, rather than paving the way for incremental political reform, as Pei previously believed, has allowed the state to use its political strength to protect its own power, by maintaining a patronage system that keeps economic and political elites loyal; while public goods are either not developed or are distorted, so they do not aid the vast majority of the public.

Far from market forces pushing the state to modernize its bureaucracy and develop modern regulatory functions, as Dali Yang has argued, Pei claims that 'the power of the state is used to defend the privileges of the ruling elite and to suppress societal challenges to those privileges, instead of advancing broad developmental goals' (pp. 8-9). Indeed, Pei argues that at least in the short term, economic development has given the state greater resources that it can use in a variety of ways: directing investment, distributing largess, and reinforcing its coercive apparatus. This has increased the ability of the state to cope with any societal challengers. It is this political defence of elite privileges against the sort of societal challenges that might be expected to lead to democratic transition that Pei defines as a 'trapped transition'; it is a transition trapped by a selfish political and economic elite.

In addition, Pei argues that increasing decentralization of the state has caused the state as principal to lose control over its local agents, thus

creating more opportunities for corruption and the consolidation of political power at the local level: centralized authoritarian states are less corrupt than decentralized ones.

Pei in the context of Chinese intellectualism

It is worth pointing out that his argument is part of a broader discourse among Chinese intellectuals to the effect that China has settled into a neo-authoritarian, or neo-conservative, vein that is unlikely to yield to democratic transition anytime soon. For instance, Guoguang Wu, whom Pei mentions, has written about the 'end of reform'. Sun Liping, the sociologist now at Qinghua University, wrote a very influential article about how reform had been taken advantage of repeatedly by 'the never left out class' (*bu loukong jieji*), which possessed political, economic, and cultural capital, and thus was in a position to benefit from every turn of the reform wheel. Kang Xiaoguang agrees from a different point of view that reform has only benefited the elite, which can control the polity for a long time to come; and that it should share at least a few crumbs with the *hoi polloi* to relieve social tensions.

China's political economy

Pei's thesis does seem to explain important aspects of China's political economy. Twenty-five years after inaugurating reform, China shows few signs of adopting political changes, liberalization or democratization, corresponding to its economic growth. This lack of political reform has, as Pei argues, distorted governance, creating deficits in a number of areas including health care, education, environmental degradation, and corruption.

Indeed, the system rewards the collection of taxes rather than the deliverance of services. The same political economy, which has driven economic development, has wreaked serious economic damage.¹ By nature, corruption is difficult to measure. But some reports suggest that it has got significantly worse in recent years. Corruption may not be spiralling out of control, but it has become endemic.

Indeed, one could drive Pei's argument further. He does not place much stress on the Leninist features of China's political system, although that system remains largely intact despite a quarter-century of reform.² It still controls the media, personnel selection, and the police. Indeed, economic changes have not so much eroded that system as caused it to adapt. The recent efforts to articulate a 'Beijing consensus', in opposition to the Washington consensus, to criticize neoliberal economic theory, and to begin to adopt more protectionist policies appear as a political system trying to protect itself.³ China may or may not be trapped in transition. But the hope that there would be a gradual evolution out of Leninism seems optimistic.

Trapped transition versus development

Nevertheless, there are serious questions that can be asked about the trapped transition thesis. For instance, that China has developed a predatory state seems difficult to reconcile with 10 per cent annual growth. Certainly, there is significant corruption in China, and various campaigns do not seem to do more than prevent it from substantially worsening. But true predatory states do not have the

high growth that China has had. Nor do predatory states make the sort of policy decisions China has made to address problems of political economy.

More importantly, change must be explained. For instance, there has been a significant shift in the public rhetoric, substantive policies, and the personnel under Hu Jintao and Wen Jiabao. How does one explain such shifts in policy? Over the last five years, and particularly since the adoption of the 11th Five-Year 'Program', Hu Jintao and Wen Jiabao have made significant efforts to shift the priorities of the central government, precisely to those areas Pei has identified as exemplifying governance deficits. Whatever the inequities of the Jiang Zemin period, some combination of public feedback, public policy maturation, and leadership change have apparently brought about an important shift in public policy. Perhaps the sums of money are only the crumbs from the table that Kang Xiaoguang was pleading for. However, it does seem that something more profound is happening.

China's government

There seem to be at least two factors behind the recent shift in policy priorities. First, since the 1994 tax reform, the central government has been raking in large increases in revenues. It now has the resources to address some of the issues it could not before – although of course, it should be noted that the centralization of revenues was an important cause of the impoverishment of village and township governments, which the new policies seek to address.

Secondly, a new leadership team has brought substantial new priorities. It is not unusual for new leaderships in any country to want to distinguish themselves from their predecessors. Certainly Hu and Wen have done that, redefining people-oriented development, the scientific development perspective, and now, harmonious society. Hu Jintao has promoted many people from the Communist Youth

1. Economy, E. (2004) *The River Runs Black: The Environmental Challenge to China's Future*. New York: Cornell University Press.

2. Oksenberg, M. (2001) 'China's Political System: Challenges of the Twenty-first Century', *The China Journal*, No. 45 (January 2001): 21–35.

3. Fewsmith, J. (2007) 'The Politics of Economic Liberalism: Are there Limits?' In W. W. Keller and T. G. Rawski, *China's Rise and the Balance of Influence in Asia*. Pittsburgh (PA): University of Pittsburgh Press.

League. The so-called Shanghai gang, once thought to be all-powerful, has been shaken by the arrest of Chen Liangyu and others. In short, new leaders, backed by a partially different group of followers, have formulated new and different approaches to governance under new slogans. Perhaps it is the case that China's reform is guided by gradualism, but this is not a government paralyzed by *immobilisme*.

Such changes appear to present a serious challenge to the trapped transition thesis, which envisions no way out other than through accumulated distortions, eventually bringing about collapse of the system. Yet it appears that Chinese government is capable of generating and acting on considerable amounts of information about the state of society. The Chinese government is obsessed with surveying Chinese society. The surveys carried in the annual publication of the *Blue Book*, published by the Chinese Academy of Social Sciences (CASS), reflect this concern. They are only the tip of the iceberg. Although a large number of these changes had their roots in the Jiang Zemin period, it does appear that it took a leadership change to infuse them with vigour.

China's elites

This raises the possibility, even the probability, that there is sufficient contention within elite circles to bring about significant policy change, at least through periodic changes of the leadership, if not within the span of one leadership group. But will such contention continue? One could imagine that the converging interests of the elite might lead it to weed out precisely the sort of imaginative and bold leaders that it needs to implement changes, much as the Soviet Union did between 1964 and 1985. Of course, even in the case of the Soviet Union, political stagnation ultimately led to radical political change. The divergence of interests in China, combined with an implicit recognition that those different interests must be somehow balanced (if not evenly), suggest that elite contention might itself be a source of policy change.

If change is possible within China's political system, does that mean that its transition might not be as trapped as Pei indicates? Will we see law playing a greater role in the future? Will political change follow, sooner or later, in the wake of elite contention and policy change? Indeed, will modernization lead to a gradual expansion of the elite, and therefore to an enlargement in the area of contention, and therefore increase the likelihood of political transition? If so, China's transition is not trapped, it is just slow.

Transition and gradualism

There may be a number of reasons to believe that any fundamental transition is likely to take a long time. One reason is the attitude of China's political elites, as Pei argues. Pei cites Guoguang Wu's study of the political reform work carried out under Zhao Ziyang to support his view that even in the heyday of political reform, no one seriously considered anything beyond administrative reform. This is an important point if one accepts, as Pei does, the idea that political breakthroughs are likely to come out of elite contention.

The data seems to support Pei's point. For instance, in a survey done of *ting* level cadres at the Central Party School in 2002, most cadres identified 'political structural reform' as the single most important factor constraining economic and social development in the coming years. But when asked about 'decisive factors in achieving success in political structural reform', most people responded 'managing well relations between the party and the state' (indicating that division of labour remained a significant problem), followed by changing further the functions of government organs. These up-and-coming cadres understood political structural reform to mean administrative reform.

Democratization

Incredibly, no one selected increasing the role of democratic parties, and very few selected increasing

the role of the people's congresses.⁴ In short, it appears that China's political elite thinks political or administrative reform is important, but that democratization is not. From the very limited data, it appears that China's political elite has no interest in democratization, as the term is understood in the West.

Secondly, it can be assumed that elite views would diverge into moderates and hardliners under pressures from below, as is the case in some theories of democratic transition. But there seem to be remarkably few pressures coming from below, at least of the sort likely to generate political transition. There has been an increase in 'collective incidents' and other forms of protest that have caught the eye of the elite and led to the elimination of the agricultural tax and other changes. Clearly, the Hu-Wen administration is trying to address the yawning gaps in inequality that threaten both social order and economic development. But such changes appear to be well within the scope of administrative reforms, and do not require broader explorations of political reform.

Chinese society

Indeed, there seems to be an extraordinary amount of optimism in Chinese society about the present state of affairs and the future. For instance, over 64 per cent of people report that their incomes have increased either somewhat or greatly over the past five years. Many expect their income to continue to increase over the next five years. Moreover, there has been a slow but steady increase in individual satisfaction with life circumstances over the past five years. Even rural residents, whose rate of satisfaction

declined in 2004 and 2005, expressed significantly greater satisfaction in 2006. Perhaps most surprisingly, citizens expressed high rates of trust in the central government, though lower levels of trust in lower levels of government.

In short, sources of unhappiness can be identified, especially among the less well off and around issues that affect people personally, e.g., health care, social security, and employment, the survey data that is publicly available do not reflect any great popular dissatisfaction with government. Given that expression of political views is discouraged, most people seem willing to focus on individual well-being. There is no reason such attitudes could not continue for a long time.

The urban-rural development divide

In addition, there is the urban-rural divide, which, in my view, may be the chief explanation for the prolonged delay in the development of democratic politics. In contrast with the experience of most countries, China's cities are privileged enclaves with higher wages, better schooling, and more opportunities for work. Urban residents have been doing well in raising their incomes. Survey results show that the vast majority of people are satisfied with their economic circumstances and expect their incomes to continue to increase over the next five years. Urban residents see their rural counterparts as a threat to their well-being. Migrants from rural areas compete for jobs, commit crimes (or are accused of doing so), and strain urban resources. Accordingly, they are granted second-class status, at best. Such attitudes reflect a basically self-satisfied urban citizenry, eager to protect its privileges by pulling up the ladder and preventing others from sharing in their prosperity. We do not see urban residents reaching out to the countryside in an effort to create a broad-based demand for democracy.

The rise of an urban middle class

Finally, one might examine the very slow rise of the middle class in China. It is clear that economic growth

4. Qing Lianbin, 'Zhongguo dangzheng lingdao ganbu dui 2002-2003 nian shehui xingshi de jiben kanfa' (Opinions on social situation in 2002-2003 by leading officials of the party and state), in Ru Xin, Lu Xueyi, and Li Peilin, (eds), (2003) *Shehui lanpishu: 2003 nian: Zhongguo shehui xingshi fenxi yu yuce* (Blue book of society - China's social situation: Analysis and forecast, 2003). Beijing: Shehui kexue wenxian chubanshe, pp. 124-139.

has created more wealth, particularly in the eastern seaboard cities, than ever before. But it is premature to call China, even the eastern seaboard, a middle class society. According to an influential study by the CASS, China's middle class constitutes about 15 per cent of China's society.⁵ But the study of social mobility in China makes clear that there is relatively little permeability between the middle class and the elite. The elite has been good at reproducing itself and allowing a certain minimum of upward social mobility. But the bigger story is of a middle class that remains economically and socially precarious. Is such a class likely to push against entrenched power for greater political rights? Perhaps some time, but not yet.⁶

Demands for democratic politics seem to be greater in the countryside, where village-level elections have been occurring on a regular basis since the late 1980s and early 1990s. These elections have created tensions between party and village committees. In at least some cases, the tensions have led to a widening of participation and the creation of new institutions. But even where village elections have been successful, pressures to raise them to higher levels have been resisted. Although the central government at one time seemed interested in raising the level of elections to the township level, experiments have largely ended.

Democratic activism and civil society

One of the more interesting developments of recent years has been the effort of democratic activists to be elected to township-level people's congresses. The best known of these activists is Yao Lifa, a 'dissident', who, after years of trying, managed to get elected to the Qianjiang City Peoples Congress in 1999. While in office, Yao was an energetic thorn in the side of local government. He alone raised 187 of the 459 suggestions, opinions, and criticisms

presented to the local people's congress over the five-year term. Yao also undertook a survey of the 329 villages under Qianjiang City. He found that 187 village chairmen and 432 vice chairmen and village committee members in 269 villages who had been elected in 1999, some 57 per cent of the total, had been dismissed over the course of the following three years. Alas, concerted efforts by local authorities prevented him from being re-elected in 2004. This infers that while there are demands for more democratic governance at the local level, the local state has been effective in stopping such progress.⁷

If it is true, as it appears, that demands for political reform are stronger in the countryside than in the city, urbanization will work against democratization for many years into the future. First-generation migrants, more concerned with making a living and raising their children, seem an unlikely group to demand democratization. Whereas urban residents already established are more likely to resist than encourage the extension of citizenship rights to recent incomers.

Economic development and democratization

Pei's argument is not that China will remain in a trapped transition forever, only for a certain, but prolonged, period. What will release China from this trapped transition? Peerenboom suggests that development *per se* will do the trick. Building on the literature that notes the very high level of correlation between economic development and democratization, Peerenboom suggests that Chinese authoritarianism is digging its own grave, simply by developing economically. As the economy develops a growing middle class will increasingly demand rights. Hard authoritarianism will shift to soft authoritarianism; that has arguably already taken place. Soft authoritarianism will eventually yield to

5. Lu Xueyi, (ed.) (2002) *Dangdai Zhongguo shehui yanjiu baogao* ('Research report on contemporary Chinese society'). Beijing: Shehui kexue wenxian chubanshe.

6. Lu Xueyi, (2004) *Dangdai Zhongguo shehui liudong* ('Social mobility in contemporary China'). Beijing: Shehui kexue wenxian chubanshe.

7. Zhu Ling, (2006) *Wo fandui – yige renda daibiao de canzheng chuanqi* ('I oppose – the strange story of one people's congress representative's participation in government'). Haikou: Hainan chubanshe.

democracy.⁸ Conversely, Pei sees the current phase of development as one in which a socio-economic elite will, over time, become so corrupt so as to distort the patterns of economic growth, and the system will eventually collapse from internal rot.

Bruce Dickson has contrastingly argued that co-optation of private entrepreneurs into the Leninist system has begun to erode the organizational competencies of Leninism in ways that will eventually make the system collapse. It should be noted that Dickson does not think that Leninism can evolve peacefully and incrementally into a non-Leninist system. Societal corporatism, he states, is not compatible with Leninism. However successful the Leninist system has been in co-opting entrepreneurs, and no matter how docile and undemanding these entrepreneurs may be, at some point the fabric of Leninism will be stretched beyond its endurance and the system will end quickly and violently.⁹

Local business associations

The development of local society tells yet another story. I have spent some time looking at the development of chambers of commerce and industry associations in Wenzhou. Wenzhou is obviously not typical, but looking at it suggests some of the limits of the development of civil society in contemporary China. It is not clear that the development of civil society generates democratization. But without it, democratic rule is not likely to be consolidated.¹⁰

Unlike its northern counterparts, Wenzhou has witnessed the rapid development of business associations. What is particularly intriguing is that Wenzhou entrepreneurs have developed 134 associations of Wenzhou entrepreneurs outside of Wenzhou (known as *yidi shanghui*). There are at least

several features of Wenzhou business associations, whether in Wenzhou or elsewhere. At least some of them, including some of the most powerful, have been created from the bottom up. Although they have sponsorship with either the Wenzhou Industrial and Commercial Federation or the Wenzhou Economic and Trade Commission, many were not created by the government, but rather from society.

Moreover, they are voluntary, thus violating the corporatist tenet that associations be compulsory. Contrary to elsewhere, at least some have highly competitive elections for the officers. They are also entirely self-funded. Moreover, the *yidi shanghui* represent all Wenzhou entrepreneurs in that particular area, thus violating the corporatist stricture of 'one trade, one association, one place'. And those *yidi shanghui* maintain ties with Wenzhou and other *yidi shanghui*, thus breaking through the corporatist, not to mention Leninist, notions that associations should be organized hierarchically. Indeed, the *yidi shanghui* from Wenzhou convene biannual meetings to discuss issues of common interest.

For those with an understanding of late Qing and Republican China, there is a sense of nostalgia as business associations and contemporary equivalents of *huiguan* (guild or *landsmanschaften* organizations) reappear.

Civil society as an agent of political change

So can we say that civil society is finally emerging in China? And might such civil society be the agent of political change? I think not. Firstly, the legal status of business associations is far from certain; there is to-date no chamber of commerce law, though many people would like to see one in place. This uncertain status puts a premium on the development of informal ties. Indeed, the extent to which chambers of commerce are effective is due to the combination of the unity of the entrepreneurial community on the one hand, and the cultivation of informal ties with political leaders on the other. Far from challenging the political establishment, successful business leaders are often rewarded with prestigious positions on the local National People's Congress

8. Peerenboom, R. (2007) *China Modernizes: Threat to the West or Model for the Rest?* Oxford: Oxford University Press.

9. Dickson, B. J. (2003) *Red Capitalists in China: The Party, Private Entrepreneurs and Prospects for Political Change*. Cambridge: Cambridge University Press.

10. Weller, R. P. (2001) *Alternate Civilities: Democracy and Culture in China and Taiwan*. Boulder (CO): Westview.

(NPC) or the Chinese People's Political Consultative Conference (CPPC). Such ties then reinforce and legitimize links between the business community and local officials. We are seeing, therefore, the development of social capital but not civil society.

Certainly the development of social capital can be good. It can evolve into civil society that can help consolidate democratic politics, should a political transition occur; the trigger for transition coming from within the political system rather than from society. But this sort of *guanxiwang* (informal network) can also consolidate a local politico-economic order that promotes economic development and institutionalizes corruption. It can delay the implementation of laws and regulations that might transform the semi-reformed political economy, that benefits a relatively small elite, into one that would deliver public goods to all citizens. This point is even stronger, if it is borne in mind that only certain types of associations are allowed; workers have not been able to develop the same sort of associations as entrepreneurs have done.

Conclusions

The trapped transition thesis that Minxin Pei develops usefully highlights certain features of post-Tiananmen China: the converging interests of the economic, political, and intellectual elite; the distortions in governance generated by this political economy; the greater resources possessed by the centre that can be used to strengthen the political system through both repression and patronage; and the difficulty the centre has in monitoring and controlling its local agents. Indeed, attention to certain features of Leninism and the impact of the urban-rural divide suggest that many of the patterns Pei sets out are likely to be features of the political system for some time to come.

Nevertheless, there are important parts of the political economy that the trapped transition thesis does not capture. In particular, the Chinese political system has developed mechanisms that make it surprisingly responsive to social and political problems. There is a very large apparatus, both in the state and society, which monitors social

conditions and identifies problems. It often takes a long time for problems to force their way on to the policy agenda, or for solutions, at least partial solutions, to be identified and resources committed. Yet one of the remarkable things about post-Mao China is that the system has repeatedly responded to its most critical problems: from the de-collectivization of agriculture through the restructuring of the state sector to, now, the crying needs of the countryside. It may be that such remedies come slowly and address issues incompletely, leaving substantial problems only partially addressed. But the responsiveness of the system has been substantial.

The system's responsiveness

The responsiveness of the system has included a willingness to take on substantial interests and to experiment with different political arrangements, such as village-level elections, inner-party democracy, and the incorporation of certain interest groups. The state is extremely cautious about the emergence of non-state actors, such as non-governmental organizations (NGOs). Nevertheless, there are now a substantial number of NGOs involved in everything from environmental issues to business representation. This development suggests a systemic flexibility not captured by the notion of a trapped transition.

Fundamental political change

However, it is important to bear in mind that this system is unlikely to accept fundamental political change easily. For instance, over the past several years, there has been a stress on developing the Chinese Communist Party as a ruling rather than as a revolutionary party. This suggests a change in the role of political actors from mobilizing cadres to administrative functionaries. This evolution comports with the stress we have seen in recent years on the role of law and the importance of procedural legitimacy. But this creeping Weberianism stands awkwardly alongside a system that still employs campaign style politics: strike hard campaigns against crime, wars against corruption, mobilization against SARS, and so forth. This hybrid system is likely to continue for a substantial period of time.



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