

China's Illiberal Regulatory State in Comparative Perspective

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Abstract This study reviews the development of Chinese regulation against the history of the development of the regulatory state in the West. Section One discusses the rise of the regulatory state in western democracies in an age of concern about state expansion. It notes that, generally speaking, the regulatory state in a liberal democratic setting has become accepted as enabling liberal democracies to combine democratic legitimacy with the independence and professionalism of unelected regulatory bodies. Section Two offers a quick overview of the establishment and proliferation of regulatory institutions in China in the context of continued single-Party rule and strong state dominance. Section Three delineates the politics of changes to the regulatory regime from the perspective of political risk and points to dynamics that are animating regulatory state building with Chinese characteristics, with special reference to environmental regulation. Section Four concludes.

Keywords China · United States · Regulatory state · Environmental governance · Comparative regulation

1 Regulatory State, Democracy and the Rule of Law

In the 1980s, in the age of Ronald Reagan and Margaret Thatcher, social scientists rediscovered the state.¹ In hindsight, one cannot fail to note the tinge of irony in what I have just put down in the last sentence: the renewed scholarly attention to the

¹ The signature book for the “rediscovery” was *Bringing the state back in* (Evans et al. 1985). Needless to say, it was an overstatement to say that the state was rediscovered and many scholars prior to this time period, especially those who studied developing and socialist societies, could not afford to lose sight of

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state occurred at a time when Reagan and Thatcher were leading their respective drives to shrink the government, particularly the federal government in the case of the United States.

For Ronald Reagan, a major passion of his administration was to roll back the regulatory excesses that had built up in prior decades (Friedman 1995; Cooper 2009). This attack on regulation drew for inspiration on academic studies, led by a group of University of Chicago economists (and Judge Richard Posner), that found that the so-called independent regulatory agencies were often “captured” by specific industry interests (Stigler 1971; Posner 1971, 1974; Peltzman 1976; Becker 1983). The Securities and Exchange Commission protected stock exchanges and brokers from new entrants, the National Labor Relation Board supported labor organizations, and the Federal Communications Commission imposed limits on competition in broadcasting and telephony. With the Reagan revolution, deregulation led to greater competition and consumer benefit in industries ranging from airlines to telecoms.

Across the Atlantic, deregulation and privatization went hand in hand. With the collapse of communism in the former U.S.S.R. and Eastern Europe in the early 1990s and the pursuit of market-oriented reforms in China and India, it was hard not to be smitten by the apparent triumph of the Washington consensus, which called for liberalization, privatization, and deregulation in economy and society (Williamson 1989). In *The Rise and Decline of the State*, van Creveld (1999, 410–12) captured well the prevailing sentiment that the modern state had become dysfunctional: it demands more and more but offers less and less and its ability to attract people’s loyalties is on the wane. He concludes: “the state is not so much served and admired as endured and tolerated. The days when, as used to be the case during the era of total war in particular, it could set itself up as a god on earth are clearly over” (Van Creveld 1999, 414). Shrinking the state was the order of the day (Feigenbaum et al. 1998).

Indeed, the shrinking and transformation of the state are not only considered normatively desirable but also are happening as a result of the advent of techno-economic changes in the information age. On this account, power is increasingly diffused to non-state entities at the expense of the existing hierarchical state organizations (Guéhenno 1995; Strange 1996). Writing in the halcyon days before 9.11, Ohmae (1995, 1990) pronounced the end of the nation state and the arrival of a borderless world and exhorted businesses to live up to and profit from the global marketplace. We are entering the age of the virtual state, declared the political scientist Richard Rosecrance (1999): “Imperial Great Britain may have been the model for the nineteenth century, but Hong Kong (now the Special Administrative Region of China) will be the model for the twenty-first.”

No one would deny that the information age has wrought major changes to the structures of politics, economy and culture (Castells 2010). Yet the breathtaking vision of the end of the state that seemed to be so captivating in the 1990s was

Footnote 1 continued

the state. As Joel Migdal (1988, xvi) noted, the literature on the Third World was in fact “too state-centered.”

clearly over-blown. van Crevelde (1999, 410) was quick to note that even in the United States, known for its cultural emphasis on rugged individualism and self-reliance, the size of the bureaucracy and the government's share of GDP hardly shrank during the age of Reagan. For others such as Linda Weiss (1998), the "powerless state" was simply a myth.

Much of the effort to shrink the state was focused on cutting spending and reducing direct state ownership of businesses. In spite of strong rhetoric by Carter, Reagan and their followers from both major American political parties to roll back government regulation, the role of the state in regulation, which had already undergone dramatic expansion in the 1970s especially in the regulation of health, safety, and environmental quality, has become further enhanced.² In some ways the turn to independent regulatory agencies was as prescribed by theorists such as Theodore Lowi (1969) and responded to the crisis of public authority. More fundamentally, freer markets do not function on their own and deregulation has been accompanied by the creation of more rules as well as rule-making institutions (Vogel 1996; Moran 2003). Independent regulatory institutions have proliferated and spread across the world (Levi-Faur 2005).

The rise and expansion of the regulatory state have spawned a mini-industry in the study of the regulatory state (Levi-Faur 2011a, b; Baldwin et al. 2010). Economic theories of regulation are strong in delineating how markets may malfunction and result in situations of market failure and thus offer powerful arguments for regulation (Viscusi et al. 2005). In practice, scholars have noted significant inter-temporal as well as cross-country variation in regulation that cannot be attributed to economic rationale alone and need to be understood from a variety of other perspectives, including that of politics (Yeung 2010). One only needs to recall the struggles for regulation in the United States before, during and since the Progressive Era to appreciate the political complexities of the American regulatory state.

The variations in regulatory institutions and behavior have posed a challenge to those who seek a unified definition of the regulatory state concept. Moreover, the state is not the sole provider of regulation; non-state actors, both domestic and international, have also become significant (Johnson 2014). Some scholars, such as John Braithwaite (2008), have eschewed the concept of "regulatory state" in favor of "regulatory capitalism" and "regulatory governance" (see also Levi-Faur 2011b). There also exist significant disciplinary variations in defining what regulation is. Through systematic analysis of leading studies on regulation in several social science disciplines, Koop and Lodge (2015, 11) conclude that there is substantial agreement on the meaning of regulation even though this is an excessively narrow definition and fails to include the regulation of non-economic activities and non-private-sector actors:

regulation can be defined as *intentional intervention in the activities of a target population, where the intervention is typically direct – involving binding standard-setting, monitoring, and sanctioning – and exercised by public-sector actors on the economic activities of private-sector actors.*

² In environmental policy, proponents and opponents of regulation fought to a sort of draw and created a sort of policy gridlock (Klyza and Sousa 2008).

Generally speaking, the key players in modern regulatory regimes are independent regulatory agencies and their numbers have proliferated since the 1970s. The major strengths of the independent regulatory agencies are professionalism, expertise, and autonomy (Carpenter 2001). Their leaders being unelected and largely politically insulated, such agencies bring expertise to tackle some of the most challenging missions, such as aviation safety, drug safety, or monetary policy, with reliable efficiency. They may well be considered the embodiment of the spirit of Max Weber's ideal—typical rational bureaucracy (Weber 1946).

Well before the present age of the regulatory state, questions were raised of the relationship between government and freedom. In *Democracy in America*, Alexis de Tocqueville (1848, 296) warned against an “administrative tyranny” because the central government “must entrust the execution of its will to agents, over whom it frequently has no control, and whom it cannot perpetually direct.” Thankfully, the American Republic lacked a centralized administration and thus could avoid what he imagined would have been an “insufferable despotism”. More recently, Edling (2003) argued that the Federalists among the framers of the American Constitution were primarily concerned with building a strong federal government for the defense of American interests but they designed the government in such a way that it would be powerful in crisis only, in deference to the strong anti-statist tradition. Nonetheless, even though nineteenth century America is conventionally known for being *laissez faire*, recent research suggests the US national government actually intervened quite powerfully in the economy and society during that period and in the absence of a strong bureaucracy (Balogh 2009).

As the United States became the world's largest economy, American administrative capacities also increased, as did concerns about the expansion of the American state (Skowronek 1982). Writing in 1920, Charles Evans Hughes, who in 1914, as an associate justice had supported the Interstate Commerce Commission and would later serve as Chief Justice of the United States Supreme Court (1930–1941), noted: “The pressing problem is how we are to adapt government to imperative needs and remain free (Ernst 2014: 14).” The publication in 1948 of Dwight Waldo's *The Administrative State* (Waldo 1948) shook up the comforting gospel of bureaucratic efficiency by asking the question of “efficiency for what?” and thus problematized the relationship between bureaucratic efficiency and democratic governance.

The vast expansion of regulation and of regulatory institutions in recent decades has rekindled the unease with government and such unease has provided succor for the rhetoric against big government from Jimmy Carter, Ronald Reagan, to Bill Clinton and most recently Donald Trump. In his State of the Union Address in January 1996, President Bill Clinton, a Democrat, declared: “We know big government does not have all the answers. We know there's not a program for every problem. We have worked to give the American people a smaller, less bureaucratic government in Washington. And we have to give the American people one that lives within its means. The era of big government is over.”

It thus seems paradoxical that the effort to restrain big government in the 1980s and beyond has gone hand in hand with the rise of the unelected regulatory bodies. The proliferation and expansion of such unelected bodies in modern societies have raised challenging questions about legitimacy and accountability (Crozier 1963;

Ostrom 2008). Some suggest that the functions of these unelected bodies are distinctive enough, focused as they are on the gathering of information and the application of expert knowledge, that they constitute a “new branch” in a new separation of powers (Vibert 2007).

With the passage of time, scholars from multiple disciplines have responded to Vincent Ostrom’s (2008) call for a democratic theory of administration and come to legitimate the administrative state or regulatory state in terms of constitutional principles.³ Says Rohr (1986, 181–82): “Public Administration, like Congress, president, and courts, is an institution of government compatible with the constitutional design of the framers. ... The Public Administration neither constitutes nor heads any branch of government, but is subordinate to all three of them.” In a system imbued with the values of constitutionalism, namely limited government and the rule of law, responsible discretion can and does go to the administrative state. The unelected officials of public agencies who carry out activities based on authority delegated to them by policymakers are Madison’s managers (Bertelli and Lynn 2006). In such a system, declares Brian Cook (2014, 234), “administration, and the discretion it inevitably exercises, [is] is not simply a necessary evil but a critical positive force in keeping the regime in good repair and guiding its further development. Recognizing the constitutiveness of administration draws political leaders and the public away from a single-minded concern for control and directs their attention toward the fostering of responsible discretion.”

In two respects, the legal system has played an outsized role in the development, control, and legitimation of the regulatory state in western developed economies. First, litigation in the courts by private (and public) litigants has become, together with administrative enforcement, one of two major avenues for regulatory enforcement (Viscusi 2002; Farhang 2010; Morriss et al. 2009; Kessler 2011; cf. Shleifer 2012). Second, the regulatory agencies can themselves also become the targets of lawsuits and are subject to judicial review (Tobler 1999; cf Vermeule 2016). In other words, judicial review has become an important method for holding administrators accountable in accordance with the Constitution and laws.⁴

In short, despite some variations from country to country, the modern regulatory state has emerged and developed in western societies with traditions of limited government and rule of law and freedom of the press. In the Progressive Era as well as in the 1970s, democratic politics helped drive the building of the American state. Not only are these unelected regulatory bodies subject to authorization and monitoring and oversight by elected officials and parliaments but they also must contend with a system of laws even while judicial institutions are themselves mostly unelected (Tate and Vallinder 1997). Some realists examining the politics of regulatory state building find that regulatory institutions and processes are efforts to insulate policymaking from the vicissitudes of democratic politics (Hirschl 2009). The rise of the regulatory state in a liberal democratic setting thus enables liberal

³ I should note that there remains occasional voices that challenge the legitimacy of administrative law (see Hamburger 2014).

⁴ For a historical perspective on the rise of judicial review of the administrative state, see Ernst (2014). See also Novak (2002). Grisinger (2012) examines how administrative law was shaped outside the courts; For an overview of the different methods for controlling administrative discretion, see Schuck (2004).

democracies to combine the legitimacy that accrues from electoral democracies with the meritocratic expertise and professionalism of unelected regulatory bodies (Thatcher and Sweet 2002; cf. Majone 1994).

2 China's Regulatory State building

When China embarked on the path to reform and opening up in the late 1970s, it had gone through an extraordinary roller coaster ride under Mao. This includes a turn to Soviet-style central planning in the 1950s, the Great Leap Forward (1958–1961), and the Cultural Revolution (1966–76). By historical happenstance, Mao's evil genius held China back while neighboring economies such as Japan, Singapore, South Korea, and Taiwan surged ahead but China also failed to develop the much more sophisticated central planning apparatuses that the Soviet Union had acquired over many decades.

As the Chinese economy gradually became market-oriented and globalized, the Chinese leadership has also carried out waves of government reforms to rationalize the government structure and adjust it to the changing socio-economic environment. While Chinese reforms in the 1980s under Deng Xiaoping might be described as Hayekian, they took a Polanyian turn in the 1990s and 2000s. China's leaders have reconstituted the sinews of governance and especially sought to strengthen the government's regulatory capacity while reducing the government's direct intervention in state firms. In area after area, they have invoked "chaos" or "turmoil" to justify the need to strengthen or assert control (Yang 2004).

In the financial sector, for example, the People's Bank of China (PBOC) was previously the jack of all trades owner/regulator. Following a financial crisis in 1993, the Chinese leadership revamped the fiscal system in favor of the central government and also began to restructure the PBOC, a process that picked up speed amid the Asian Financial Crisis of 1997–98. The China Securities Regulatory Commission (CSRC) was augmented and the China Insurance Regulatory Commission (CIRC) was established. A dedicated China Banking Regulatory Commission (CBRC) followed in 2003, making China one of the countries with dedicated banking regulators at the time of the Great Recession (2008–2010).

As is well known, China's economy has boomed with the emergence or entry of numerous new economic actors, including collective, private, and foreign firms (see Naughton 1996). As far as the Chinese economy and society were concerned, this deregulatory process with respect to firm entry was akin to the Cambrian explosion in paleontology. An economy half way between administrative command and the market was inviting to all sorts of characters or, as the Chinese would say, tide players (Zha 2011). This changing economy interacted with an equally astonishing socio-moral transformation: in the view of philosopher Ci (1994), the moral compass of Chinese society switched from revolutionary utopianism to hedonism (see also Wang 2002).

In the marketplace, Chinese rapid growth has been accompanied by a proliferation of problems with product quality, food and drug safety, as well as workplace safety (such as pneumoconiosis or black lung disease, coal mine

accidents) and severe environmental degradation. Over time, the Chinese leadership has periodically launched campaigns to rectify market order and has, in addition to the financial regulators mentioned earlier, built the following dedicated ministerial or ministerial-ranked regulatory institutions (in parentheses are abbreviations for the corresponding American regulatory agencies) (Yang 2004, ch. 3).

Ministry of Environmental Protection (EPA).

State Administration of Quality Supervision, Inspection & Quarantine (CPSC).

State Administration of Work Safety [also State Administration of Coalmine Safety] (OSHA).

China Food and Drug Administration (FDA).

Civil Aviation Administration of China (FAA).

Here I should note that the line-up of Chinese ministries and administrations has undergone much change. Most industrial ministries at the core of central planning have disappeared and industrial policy and regulation today fall under the National Development and Reform Commission, the Ministry of Industry and Information Technology, and the Ministry of Commerce. Most other government ministries and administrations also possess significant regulatory functions and some, such as the Ministry of Public Security, Ministry of Civil Affairs, Administration of Press, Publications, Radio, Film & TV (SAPPRFT) and the Administration of Religious Affairs, act both as regulators and political gatekeepers. Chinese regulatory institutions increasingly look like their American or European counterparts. The China Food and Drug Administration (CFDA), for example, was explicitly named to mimic the U.S. FDA, which has a sterling reputation among American regulators.

3 The Politics of Regulation in China

Yet the changes in the names of regulatory agencies do not translate into transformations in functions and competence overnight. The CFDA, among others, has struggled to transform itself from a former industrial association into an independent and professional regulatory agency (Yang 2009). A major constraint on regulatory state building is the political environment in which Chinese regulators have had to operate. The Administration of Press, Publications, Radio, Film, and TV, for example, operate at the behest of Chinese Communist Party (CCP) organs, especially the CCP Central Committee Propaganda Department. Every regulator must also contend with the problems of fragmented authority in both functional and territorial terms that has long plagued the Chinese polity (Lieberthal and Lampton 1992; Mertha 2009). Thus, any attempt to examine the politics of regulation in China must start with the broader political and economic context under the rubric of China's authoritarian developmentalism.

In the rest of this section, special attention is paid to the case and complexities of environmental regulation and how the Chinese leadership has developed strategies to improve environmental governance in recent years.

The guiding principle for the Chinese system in the post-Mao era is summed up succinctly as “one center, two basic points”, officially adopted by the Communist Party leadership at the CCP’s thirteenth national Party Congress in 1987. The “one center” calls for the country to focus on economic development. The two basic points refers to (1) the four cardinal principles (namely, socialism; people’s democratic dictatorship; CCP leadership; and Marxism, Leninism and Mao Zedong Thought) centered on the perpetuation of CCP leadership; (2) reform and opening up.

The tenets of “one center, two basic points” have been drilled into the minds of everyone who has gone to school in China and is the centerpiece of what’s known as Deng Xiaoping Theory.⁵ They are further boiled down to two catchphrases that bear the imprimatur of Deng Xiaoping: “Development is the hard truth” and “Stability [under CCP leadership] trumps everything else.” They are essentially the guiding philosophy of China’s authoritarian developmentalism. Successive leaders since Deng Xiaoping have added to this basic guiding principle. Jiang Zemin had the “three represents”. Hu Jintao introduced the idea of scientific outlook on development and allowed the adoption of the concept of ecological civilization. Xi Jinping is known for his “four comprehensives.”

Given the guiding philosophy of developmentalism as noted above, some deterioration in the environment during the period of rapid growth in China was not unexpected. As is well known, China’s spectacular economic growth has also generated plenty of side effects, including severe environmental degradation that has become highly visible in recent years in the form of airpocalypses as well as heavy water and soil pollution.

The other side of the coin of authoritarian developmentalism was, until recently, the weak status of regulatory institutions. In fact, most Chinese regulatory institutions as we know today did not exist at all at the start of the reform era in the late 1970s and have acquired their existence and influence only gradually. The case of the bureaucracy for environmental regulation is instructive. The Chinese leadership (Zhou Enlai) set up a Small Leading Group on Environmental Protection (SLGEP) in 1973, during the lull of Mao’s Cultural Revolution. During the 1982 round of government reform, a Ministry of Rural–Urban Construction and Environmental Protection was established and the SLGEP office was merged into it to become a constitutive department (bureau). Thus, for much of the 1980s Environmental Protection was subsumed in a ministry oriented toward construction. The State Administration of Environmental Protection (SEPA or 国家环境保护总局) finally came into existence in 1988 and initially carried a vice ministerial rank amid the thicket of central government ministries and commissions. A decade later (1998) SEPA was given a ministerial rank but it was not until 2008 that the Ministry of Environmental Protection (MEP) was created and thus conferred cabinet status (which the U.S. EPA still lacks). Even with cabinet status, the MEP, as the newest ministry, remained a weakling among the lineup of Commissions and Ministries. The awkward existence of such regulatory institutions in the central government is

⁵ Zhao Ziyang, the Party leader who delivered the official report in 1987, was put under house arrest for the rest of his life in 1989.

mirrored in the layers of local authorities (provincial, prefectural, county, and township).

3.1 Regulation and Intergovernmental Relations: Toward Territorial Accountability

Large economies such as the United States have gone through arduous journeys to build unified national markets and a modern regulatory state. In China, symptoms of local protectionism raised concerns of market fragmentation in the 1980–90s (Wedeman 2003; Yang 1997). While the symptoms of local protectionism subsided, they nonetheless underscored the need to promote national markets and build unitary regulatory authorities for such markets.

Yet for all of China's reputation of being an authoritarian regime, the regulatory authorities have faced serious challenges in the localities. The U.S. EPA, for example, directly controls ten regional offices. In China, national environmental regulators have had only a guidance relationship with provincial and subprovincial regulatory administrations. Instead the local regulatory administrations answered first of all to the leaders of local authorities. Because of the public goods nature of many of the regional issues, local authorities, especially those at the lower levels of the government hierarchy, are motivated to under-enforce and often tend to be protective of firms in their jurisdictions on a range of regulatory enforcement issues such as quality and environmental performance.

In the aftermath of the Tiananmen Crisis of 1989 and the breakup of the former Soviet Union, China's leaders became fearful of national fragmentation and have made strenuous efforts to strengthen the central state. In addition to directly controlling the armed forces as well as railways, the major telecoms, airlines, and energy (oil and power) firms, the Chinese leadership has also built a separate central tax system and centralized regulation of the financial sector (including banking, insurance, and securities). In other areas, the Chinese leadership has confronted the unruly markets by strengthening the central government regulatory institutions by providing them with more staff, funding, and other resources as well as higher ranks in administrative standing. The major regulatory administrations were elevated to ministerial rank and the environmental regulator was eventually upgraded to become a cabinet ministry in 2008.

Amid the push for nationally integrated hierarchies, leaders of the regulatory administrations, with encouragement from national leaders, also sought to strengthen hierarchical control by promoting what is known as vertical administration (垂直管理) but they fell short of what was achieved in the financial sector. Instead, they were able to place sub-provincial regulatory offices under the supervision of provincial administrations for Industry and Commerce, Quality, Environmental Protection, Drug Safety, Work Safety (including Coal Mine Safety), among others. Following the change, the provincial administrations are empowered to directly supervise the bureaus in the prefectures and counties or municipalities carrying the prefectural and county ranks in terms of funding, personnel, and enforcement (Mertha 2005; Yang 2004, ch. 3). With the revamp, the Beijing headquarters have also gained clout over the provincial administrations, including

personnel and budgets, even though the provincial leadership remain in the driver's seat on these matters. In short, the push for the centralization of regulatory administrations resulted in a compromise. The provincial regulatory administrations remain subject to the dual leadership of the central government administrations and of the provincial leaderships. The provincial regulatory administrations are the big winners within the provinces. Nonetheless, the sub-provincial regulatory offices remain subject to Party leadership within the localities.

As the Chinese leadership has sought to strengthen hierarchical control, they have also introduced and promoted a practice to hold local authorities, particularly the provincial authorities, responsible for fulfilling certain policy goals and tasks within their jurisdictions. This principle falls under the rubric of jurisdictional or territorial management (属地管理) and has become known as "giving local authorities overall responsibility (地方政府负总责制度)."

Like many initiatives in China, this concept of territorial responsibility did not emerge out of a formal constitutional framework but came about somewhat haphazardly in 1991 in two policy areas, family planning and social stability, both of which were top priorities for China's leaders at the time. In February, the CCP Central Committee and the State Council issued a decision on strengthening the comprehensive management of social order and decided to institute a rigorous system involving pledges of responsibility from level to level (责任书) under the principle of jurisdictional management. This was elaborated as follows: Local authorities are each responsible for maintaining stability in their respective jurisdictions (属地管理) and the leaders of those who fail are subject to veto on their performance audits and cannot receive promotions and other benefits (社会治安综合治理一票否决权制) (*CPC News 中国共产党新闻网* 1991, 1993).⁶ In May, 1991, the Party Central Committee and the State Council issued a decision on strictly controlling population growth and the decision explicitly called on party committees and governments at all levels to "treat family planning and economic construction as being of equal importance" and incorporate population planning into local economic and social development planning. Fulfillment of population planning was an important target for party and government officials and "Top Party and government officials must personally take charge of and must assume overall responsibility for [population planning work]" (*CPC News 中国共产党新闻网* 1991).⁷

It is well known that local leader responsibility systems for population control and social stability have made many local officials obsess with enforcing targets for population growth or preserving stability (especially keeping petitioners at home), sometimes by ruthless means (White 2006; Biddulph 2015; Yang 2016).⁸ Yet the brutal efficiency in these areas has also stimulated widespread admiration from

⁶ 中共中央、国务院关于加强社会治安综合治理的决定 (February 19, 1991). The December 1991 documents are 《关于社会治安综合治理工作实行“属地管理”原则的规定》, 《关于实行社会治安综合治理一票否决权制的规定》. Further elaboration occurred on November 14, 1993: 中央社会治安综合治理委员会、中共中央纪律检查委员会、中共中央组织部、人事部、监察部联合下发《关于实行社会治安综合治理领导责任制的若干规定》.

⁷ 中共中央、国务院关于加强计划生育工作严格控制人口增长的决定 (May 12, 1991).

⁸ On the consequences of population policy enforcement, see White (2006). On the preoccupation with stability see Biddulph (2015) and Yang (2016).

others. In the 2000s, as the central leadership grappled with myriad regulatory challenges, they let regulators in various arenas, including food and drug safety, product quality, and work safety (especially coalmine safety), as well as in the case of post-earthquake reconstruction in Sichuan, to adopt the local leader responsibility system. The State Administration of Environmental Protection (SEPA), in its drive to realize the State Council's targets for energy savings and emissions reduction that started in the eleventh 5-year plan period, began to impose moratoriums on construction project EIA approvals for a number of cities and the major power generating companies beginning in early 2007. With the adoption of the leader responsibility system, some officials were forced to resign to take responsibility because of accidents that occurred on their watch: Beijing mayor Meng Xuenong during the SARS crisis of 2003; Xie Zhenhua, Director General of SEPA in the aftermath of a major chemical spill on the Songhua River; and the head of the Quality Administration and officials in the city of Shijiazhuang following the outbreak of the massive Melamine Milk Scandal in 2008.

Even when there were primarily two hard targets for holding local officials responsible, contradictions were bound to emerge because local officials were primed to rev up growth and revenue generation. Draconian measures to curb births would cause tragedies and grievances and efforts by the aggrieved to seek redress by petitioning higher authorities. Yet with the growing preoccupation with stability, the leaders of a locality would be penalized if the locality were the source of many petitioners. Instead of addressing the root cause of the petitions, however, often local officials used their power and resources to keep the petitioners from going to Beijing. The enormous resources local authorities devoted to keeping Chen Guangcheng, the blind rights advocate, confined to his own home speak volumes about the abuses associated with China's stability maintenance regime (Chen 2015).

With the proliferation of targets that local authorities are required to meet, the issue of competing and indeed contradictory goals is further complicated. Zhou (2009), a leading scholar in Chinese administrative law, writes matter-of-factly that the mechanism for holding local leaders responsible has experienced diminishing returns as targets for fulfillment have proliferated. With a multi-level hierarchy extending from the Party Central/State Council to the provinces, and thence to the prefecture and county/district level and further down to the towns/townships, the pressure to fulfill the competing goals from higher levels of the hierarchy is keenly felt by street-level bureaucrats, namely the officers at the local levels (Hou 侯麟科, Liu 刘明兴, and Tao 陶然 2009). As a study of environmental protection shows, bureaucrats in the localities have developed mechanisms to cope with such pressures in ways that resemble Charles Lindblom's model of "muddling through" (Zhou et al. 2013).

Another issue concerns the tension between the push for top-down influence through vertical administration and the desire for holding local authorities responsible. It is rational for top bureaucrats to wish to keep power and the associated rent-seeking opportunities to themselves while leaving the responsibilities to lower-ranked officials and administrations.

Yet as demands for accountability have risen (more below), and with some back-and-forth in food safety regulation, the trend has decisively shifted toward jurisdictional responsibility. Because the adoption of vertical administration for

regulatory institutions is within the provinces, the province, which is the size of an average country, has become the most significant unit for carrying out regulatory tasks and providing various forms of public goods. By 2014–15, a growing number of provinces had chosen to consolidate the different regulatory administrations (industry/commerce, quality, and food/drug) into a single bureau or commission for market regulation (市场监管局). In environmental regulation, there is also a current push to empower the provincial environmental protection bureaus within the provinces.

3.2 Industry Structure, Vested Interests and the Challenges to Regulatory Capacity

In his review of the state of China's governance, Cheng Li (2012) characterized the state of Chinese politics on the eve of Xi Jinping's rise to the top in terms of three parallel developments: (1) weak leaders, strong factions; (2) weak government, strong interest groups; and (3) weak Party, strong country. Much has changed since Xi Jinping became the CCP General Secretary and President of China in 2012/13 but Cheng Li's invocation of the three "weak" to characterize Chinese politics was striking and contrary to much conventional wisdom on China's authoritarian system. The contrasts he highlighted spoke to the challenges China has had in building an effective regulatory state.

Until recently, the presence of a large state-owned sector and especially of mammoth central government-owned enterprises has posed major challenges to regulatory independence and effective enforcement of environmental regulation. Huang and Yang (2014) examine the effects of state-owned firms on environmental regulation, focusing on the state-owned petroleum and petrochemical enterprises (SOPEs), particularly China National Petroleum Corporation (CNPC and its listed arm PetroChina) and China Petroleum & Chemical Corporation (and its listed arm Sinopec). On the basis of empirical findings, Huang and Yang argue that the clout of SOEs as regime insiders gives these SOEs privileged positions in environmental regulation, so much so that one may speak of the existence of a form of "Regulatory Capture, Chinese style." The SOPEs, in particular, have had outsized influence on the setting and adoption of national motor fuel standards and in the enforcement of environmental rules. They were also able to smother a significant amount of negative media coverage of poor environmental performance by the SOPEs. In an earlier study, Wang and Jin (2007) found that collectively owned enterprises (COEs) performed better on water pollution than SOEs (and private businesses) as COEs appeared to have internalized environmental externalities.

3.3 Corruption, Anticorruption and Regulation

It is now common knowledge that China's era of hyper growth was also a highly lucrative era for those with access to power and rent-seeking opportunities. Zheng Xiaoyu, the head of the State Food and Drug Administration was executed in 2007 for taking bribes and dereliction of duty. In environmental regulation, the environmental impact assessment system (EIA) is known for providing many

rent-seeking opportunities for bureaucrats involved in the preparation and approval of the EIA reports. Procurement of equipment may also offer opportunities for kick-backs for those in charge. For example, Zhang Lijun, a former vice minister of environmental protection who oversaw pollution control and supervision until his retirement in 2013, was put on trial on June 27, 2016 and found to have taken bribes in connection with project approvals and product sales, among others. Various other cases of corruption by officials in the environment system have come to light in provinces such as Hebei.

Since he became CCP General Secretary in late 2012, Xi Jinping, in association with Wang Qishan (Secretary of the Central Discipline Inspection Commission), has carried out the most vigorous crackdown on corruption ever in the post-Mao era. Of the many corruption cases, a large number are from key regulatory areas, including the price bureau in the National Development Reform Commissions, the energy administration, and other regulatory institutions. Most prominently, Yang Dongliang, the ministerial-ranked Chief of the State Administration of Quality Supervision, Inspection, and Quarantine, was convicted of corruption in late 2016.

The anticorruption drive, coupled with a sustained push to streamline and reduce administrative approvals spearheaded by Premier Li Keqiang, has had a serious impact on regulatory effectiveness in two major respects.

First, the largest SOEs such as China National Petroleum, parent of PetroChina, used to be able to get away with environmental infractions and could not be held accountable by local authorities who are easily outranked. With the anticorruption drive, prominent politicians and executives with connection to the oil giants fell, including Zhou Yongkang (former oil executive who served as Secretary of the Central Political and Legal Affairs Commission), Jiang Jiemin (former CNPC Chairman who became head of State-owned Assets Supervision and Administration Commission or SASAC), and other oil industry executives. Chastened by the sweeping anticorruption campaign, executives of the SOEs have taken care to follow national policies. Amid growing official and public concerns about the environment, leaders of the oil majors have become more compliant with environmental requirements than previously.

On the other side of the same coin, it has become possible for the media to vigorously report on environmental damages caused by the SOEs without being shut up while environmental authorities have also shown more mettle in taking on the SOEs. In 2013, the Ministry of Environmental Protection, which had in the past routinely certified the SOEs as environmentally compliant, declared that the SOEs had “comprehensive, systemic problems” in emissions reduction and imposed a moratorium on new refining and petrochemicals projects except for those designed to improve fuel quality and to reduce emissions (Lü 吕明合 et al. 2013). Within a week, in a highly symbolic move, top executives from CNPC and Sinopec showed up at the MEP to seek guidance and to promise remedial action.

Second, the intensification of anticorruption has brought greater discipline to the Party and the bureaucracy and, as a result, has made it easier for Premier Li Keqiang to promote the reduction of bureaucratic approvals. In interviews, I am told that whereas previously bureaucrats eagerly fought for regulatory approval powers and requirements, they have become quite happy to part with such powers as the effects

of the anticorruption drive have become widely felt throughout the country. They now want both to reduce their own tasks as well as to mitigate the possibility of being bribed and thus being at the risk of being caught for corruption. In the environmental system, there has been a systematic push to delink the environment bureaus from the EIA consultancies.

In this context, the principle of jurisdictional/territorial responsibility has acquired special significance. The MEP has championed this principle and now calls for centralizing monitoring and enforcement powers at the provincial level. Conveniently, with augmented powers of its own, the MEP appears to have gained the authority to directly regulate the provincial environmental regulators whereas previously it only had a guidance relationship vis-à-vis the provincial environmental bureaus.

3.4 Weak Laws and Strong Politics: Command and Control

Anyone studying regulation would quickly point to the importance of law in American regulation. Ralph Nader and Erin Brockovich are iconic names in American public consciousness. As important as tort law is in holding private parties, particularly companies accountable, it is equally important that the decisions of administrative agencies can be subjected to judicial review even while they have enjoyed judicial deference in the implementation of the relevant laws. Armed with the Clean Air Act and the Clean Water Act, among others, the U.S. EPA has gained strong capacity to regulate despite of criticisms.

In contrast, in spite of the Chinese leadership's official commitment to the promotion of governance in accordance with law, China does not yet have the rule of law and all too often politics triumphs over law. Lawyers who seek to advocate for rights are often considered to be troublemakers by the state and are treated as enemies. The leading book on environmental litigation in China is subtitled "A Study in Political Ambivalence" (Stern 2013). Public interest litigation in environmental regulation has gained a as-yet-tentative place only grudgingly with the recent enactment of the revised Environmental Protection Law (2014).

Against this background and as the Chinese leadership have become more concerned about growing environmental deterioration and the failure of the existing environmental regulation system, it does not come as a surprise to know that the Chinese leadership have turned to the tools of command and control with the promotion of the Energy Saving and Emissions Reduction Program (ESER). This program is pivoted on intra-state regulation, with the State Council signing contracts with provincial-level authorities.

In its eleventh 5-year plan, the Chinese government announced that between 2006 and 2010 China would reduce by about 20% the amount of energy consumed per unit of GDP and cut the amount of key pollutants (COD or chemical oxygen demand, a measure of water pollution, and sulfur dioxide) by 10% and thus to "basically arrest the trend toward environmental degradation." This plan for energy saving and emission reduction or ESER looked quixotic on arrival. Soon after ESER was announced, official Chinese media began to report that the country was falling short of the announced targets. In the first half of 2006, energy consumption per unit

of GDP actually increased (*International Finance News* 国际金融报 2006).⁹ For 2006 as a whole, energy consumption per unit of GDP declined by 1.2%, well below the 4% reduction target. Discharges of COD and sulfur dioxide actually rose by 1.2 and 1.8%, respectively, against the planned 2% decline (though these were far below the increases of 5.6 and 13.1% in 2005) (*No1Energy* 环球能源网 2007; Wen 温家宝 2007). With more vigorous implementation measures, 2007 saw some improvements in ESER performance. Energy consumption per unit of GDP decreased 3.3% while discharges of COD and sulfur dioxide saw the first declines in many years, by 3.1 and 4.7%, respectively (Wen 温家宝 2008). Nonetheless, as a Xinhua news agency (*Xinhuanet* 新华社 2008) analysis put it, the 2007 numbers, for a second year in a row, fell short of planned targets.

In view of the conventional understanding about the incentives structure in the Chinese system and the obstructive behavior of local officials, it was not surprising that the ESER numbers for 2006–07 fell short. With double-digit annual GDP growth rates, China was then making the most massive investments in heavy industry the world had ever witnessed and local authorities were the midwives to the investments and the associated pollution and energy consumption.

China's national leaders, however, did not give up. In his annual report to the National People's Congress in March 2007, Premier Wen Jiabao (2007) vowed that the planned ESER targets for energy efficiency and emissions were "binding targets" and they "are a very serious matter and cannot be changed, and must be unwaveringly achieved." To catch up with and fulfill the planned targets for 2010, the Center took a multi-pronged approach to strengthen central capacity to monitor local performance, reshape the incentives structure facing local officials, and significantly increase investments to promote energy efficiency and reduce emissions.

With strong backing from Premier Wen, the National Development Reform Commission (NDRC) and the environmental administration (SEPA) pursued a vigorous strategy of holding local officials accountable for ESER performance. In 2007, NDRC signed energy efficiency responsibility contracts (节能目标责任书) with 30 provincial-level governments and made energy efficiency a compulsory component for projects requiring government-approval (核准) (*No1Energy* 环球能源网 2007). At the same time, SEPA—which would become the MEP in March 2008—established regional monitoring centers so that it could independently assess local performance.

Recognizing that the cadre evaluation system made local officials privilege growth at the expense of environmental protection, the State Council in late 2007 put in place standards to hold provincial governments and about 1000 key firms accountable for their ESER performance (*Renminwang* 人民网 2008). Provincial authorities in turn introduced similar accountability systems for sub-provincial units. In what is known as "the environmental veto," those who failed to reach specified ESER targets were barred from promotions (Wang 2013).

The MEP and NDRC did not shy away from using their power and, for the MEP, its newly acquired authority as a cabinet ministry. Every 6 months beginning in 2008, the MEP publicly released data on how each provincial unit performed in

⁹ This report was based on analysis by the official Xinhua news agency.

reducing COD discharges and sulfur dioxide emissions and singled out certain cities and companies for failing to meet performance targets and demanded remedies to be undertaken within a specified time period during which the errant city is barred from submitting major projects for approval and also loses access to certain central government capital funds. In October 2009, the NDRC announced, with much fanfare, the results of its assessment of provincial performance in improving energy efficiency and ranked the provinces on how much progress they have made in fulfilling the ESER targets.

The strict responsibility system has been backed up with major central government funding to invest in treatment facilities and to help shutter pollution-heavy production capacities in iron and steel, paper making, cement industries, and especially small-scale coal mines and power plants. Local authorities have gradually come around to the importance of arresting further environmental degradation. After Yunnan officials found it was lagging behind the national average in the first half of 2009, the provincial leadership quickly sought to catch up and decided to begin building 43 water treatment plants (Jiang 蒋朝晖 2009). In a rare display of the changed ethos, Shanxi received widespread praise for its negative growth and campaign against dirty GDP (An 安洋 2009).

These vigorous measures have helped infuse the ESER ethos throughout the Chinese hierarchy and helped accelerate the pace of the ESER program even while it also generated its own unintended consequences, as when some localities sometimes shut off electricity supply to residents in order to meet energy consumption targets. As a result, China has largely been able to fulfil planned targets for energy savings in the past decade and the resultant gains also emboldened the Chinese leadership to reach a climate deal with the United States in 2014 and, thus, to play a leadership role leading to the Paris Agreement.

This emphasis on top-down aggregate control has been further enhanced in recent years as the MEP has gained greater clout under President Xi Jinping. The revised EPL, enacted in 2014, incorporated some elements of the ESER. With the emphasis on territorial/jurisdictional responsibility, the MEP has turned itself increasingly into the regulator of subnational governments and some provincial environmental bureaus, such as Shandong, has also acquired similar clout over municipalities in the respective provinces. Yet for all the efforts to strengthen environmental regulation, China's leaders have been frustrated by the repeated returns of airpocalypses every winter season in the 2010s. It follows from our framework that the Chinese leadership, Xi Jinping and Li Keqiang in particular, would seek to further enhance political leadership over pollution control and environmental protection. Premier Li Keqiang openly declared war on pollution in March 2014. Borrowing from Premier Li's "Great Inspection (大督查)", the central Party-state, in an admission of the limited effectiveness of the existing regulatory framework, started in 2016 to work with the MEP to dispatch central inspection teams to the provinces. Armed with the imprimaturs of the top leadership, these powerful inspectorates are stationed in the provinces for weeks at a time, forcing local authorities to shutter heavy polluters, detaining individuals for environmental infractions, and holding local leaders accountable. Provincial authorities have in turn dispatched their own inspectors to subprovincial jurisdictions. Observing the

operations of the MEP at close range in times of such inspections, one gets the impression that China's environmental regulators are at war.

4 Conclusion

In a growing number of areas, from food safety to air quality, China today aspires to the same regulatory goals as developed countries. Yet as China has sought to develop its own regulatory institutions and strengthen regulation to meet rising public expectations about clean air and safe food, the emerging Chinese regulatory state is hardly a copy of western regulatory institutions even though the institutional builders often sought to emulate their western and especially American counterparts.

Whereas the regulatory state in western democracies has evolved in response to public demands, it rests on a foundation of the rule of law and must function in a framework of democratic accountability. In contrast, the regulatory institutions in China may be designed to achieve the same regulatory results such as clean air and safe food but in the pursuit of these regulatory outcomes they must contend with a broader political environment characterized by weak laws and inadequate legal institutions, the continuing dominance of the Communist Party, and a strong preoccupation with stability maintenance. As a result, a regulatory state with Chinese characteristics has emerged. Responding to its environmental crisis, the Chinese leadership has placed special emphasis on political command and administrative control even though significant efforts have also been made to amend and toughen the major environmental laws, improve transparency, and allow NGOs and the public greater involvement in environmental governance. In consequence, environmental governance has become the cutting edge of China's governance reforms.

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