

Will Engaging China Promote Good Governance?

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China is modernizing at an astonishing rate. This pace of change is profoundly affecting not only China's domestic situation, but the international security and economic environments as well. A host of challenges confront China, including securing energy sources to fuel its growth; implementing economic reforms that will sustain that growth; mitigating social and economic inequalities among its population that could be destabilizing; and heeding the interest of the Chinese people to have a voice in their governance.

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China's economic rise and growing global participation make it a critical factor in the United States' strategic calculations. But public perception of China in the United States has soured in the face of Chinese actions at home and abroad that seem to challenge U.S. ideals and interests. Many veteran China observers contend that the U.S. policy of engagement with China has failed to generate anticipated economic and political results¹ and that, after years of growing trade, investment, and international cooperation, China is becoming increasingly repressive and authoritarian.² Western media have chronicled a persistent tightening since at least 2008 of the space within China's borders for policy debate, social activism, rights lawyering, academic discourse, and investigative reporting, which some analysts maintain has increased and become more institutionalized since Xi Jinping became general secretary of the Chinese Communist Party (CCP) in November 2012.³

Yet, the CCP is simultaneously engaged in a long-term "reinventing government" project to modernize China's governance tools and institutions to accommodate a rapidly changing society with a more market-oriented economy. Faced with widespread environmental degradation, food safety scandals, illegal land seizures, fraud and corruption, ethnic unrest, social protests, and a fundamental lack of trust within Chinese society and between the government and its people, the Chinese leadership has come to regard law as essential to addressing the complex issues and diverse interests it faces. It has vowed to build a more law-based, transparent, participatory, and accountable government, to enhance both its effectiveness and its legitimacy.

Ongoing reforms, which draw in many respects from American and Western experience, seek to restrain state power and improve domestic governance through increasing government infor-

¹ See, e.g., James Mann, "America's Dangerous 'China Fantasy,'" *New York Times*, October 28, 2016, <http://www.nytimes.com/2016/10/28/opinion/americas-dangerous-china-fantasy.html>; and Robert D. Blackwill and Ashley J. Tellis, "Revising U.S. Grand Strategy Toward China," Council on Foreign Relations, April 2015, <http://www.cfr.org/china/revising-us-grand-strategy-toward-china/p36371>.

² See, e.g., David Shambaugh, "The coming Chinese crackup," *Wall Street Journal*, March 6, 2015, <http://www.wsj.com/articles/the-coming-chinese-crack-up-1425659198>.

³ See, e.g., Minxin Pei, "China's Rule of Fear," Project Syndicate, February 6, 2016, <https://www.project-syndicate.org/commentary/china-fear-bureaucratic-paralysis-by-minxin-pei-2016-02>; and Tom Mitchell, "Xi's China: Smothering dissent," *Financial Times*, July 27, 2016, <https://www.ft.com/content/ccd94b46-4db5-11e6-88c5-db83e98a590a>.

mation disclosure, civic participation, rule of law, and accountability. Chinese citizens are using these new governance institutions to take better control of their lives, participate in decision-making, assert their rights, and press for further improvements. Civic initiative and private entrepreneurship in turn exert pressure for further government accommodations.

This slow, tortuous governance reform process continues to unfold under the Xi Jinping administration. However, these reforms are in fundamental tension with China's authoritarian political system. The CCP ultimately dominates the state structure it leads, including the government, the legislature, and the judicial system, and it seeks to control state and non-state action through legal and extra-legal mechanisms that run in parallel. China's modernization process is full of contradictions and paradoxes, and the Chinese party-state continues to fall back on traditional repressive measures when confronting real and perceived challenges to its authority.

This paper introduces some of China's less-reported governance reforms—in particular, the advent of access to government information and public participation in legislation and decisionmaking—and explores the dynamic between top-down initiatives and bottom-up pressure from a Chinese public that is actively utilizing these new mechanisms. China's new governance institutions, adapted from American and Western practices, provide a case study of how engagement with the country is helping to promote positive domestic developments, even within China's complex and often unpredictable political system. These developments are benefitting ordinary Chinese people in small and large ways. They also hold a promise that a more transparent, participatory, and law-based governance system at home will encourage China's more open and rules-based collaboration

with the United States and the international community. Policymakers, companies, and organizations in the United States can help support and foster these positive developments in China for their mutual benefit through continued government-to-government programs and unofficial exchanges that share both best practices and lessons learned.

China's long-term project to modernize governance

In 1978, former leader Deng Xiaoping launched the "Reform and Opening" initiative in the wake of the chaotic 10-year period known as the Great Proletarian Cultural Revolution. Deng aimed to jump-start an economy that was a shambles; wean society off the "iron rice bowl" of government-guaranteed work, housing, and social welfare; and build a governance structure that would be stable, predictable, and promote material well-being. Deng's approach was two-pronged. First, he would transform China's planned economy by adopting certain market mechanisms and welcoming foreign trade and investment to create a "socialist market economy." Second, he would buttress economic reforms by improving governance, including through building "socialist democracy" and a "socialist legal system" to safeguard the nation against future chaos.

China adopted an aspirational constitution in 1982 that purported to vest all power in the people while promising Western-sounding civil rights such as freedom of speech, association, and religious belief. However, these constitutional promises could only be enforced through the adoption of specific implementing laws. Over the next decades, Chinese legislators poured enormous energy into erecting the foundations of a more modern criminal, commercial, and civil legal sys-

tem, albeit one “with Chinese characteristics,” to order society and the emerging mixed economy.

By the 1990s, Chinese lawmakers had also begun to fashion a modern administrative law system. Their objective was to regulate government operations and restrain government interference with the emergent market economy and a society that was becoming more mobile, urban, and diverse. One approach to constraining government power was to enact laws that implemented the constitutional duty of Chinese citizens to “supervise” government action. In 1989, China’s legislature, the National People’s Congress (NPC), adopted a seminal law that allowed Chinese citizens to sue the government when its actions harmed their rights and interests. A subsequent law limited the government’s authority to require licensing approvals as a precondition to starting a business, practicing a profession, and even marrying and bearing a child. Other laws sought to restrain the government’s ability to assess administrative penalties such as fines and to use coercive law enforcement mechanisms like seizure of property. Emulating U.S. and other foreign legal standards, those laws afforded impacted persons new “due process” rights, including the right to notice and an explanation of the basis for proposed adverse government action, the right to put on a defense and request a hearing, and the right to sue the government if dissatisfied with a decision.

The NPC has not enacted an overarching U.S.-style administrative procedure act. However, a series of policy documents issued by the CCP and the State Council—China’s central government—advance basic principles of rational, impartial, honest, and law-based government administra-

tion. The goal is to “transform government functions” and reinvent government in order to move the Chinese state from the command-and-control governance style of the planned economy to a more service-oriented, open, and participatory administrative system.

As might be expected, enforcing all these new laws and expectations against the Chinese state has proven difficult, especially in a system where politically submissive courts have been asked to rule against local governments to whom they were beholden for funding and personnel. Many Chinese citizens still resort to protests and petitions to seek redress against illegal and unreasonable government action. But others have turned increasingly to the courts, even in spite of their imperfections. The numbers of lawsuits and lawyers have steadily increased, with the courts deciding nearly 18 million cases nationwide in 2015. Reforms instituted under the Xi administration—including many that have been informed by U.S.⁴ and civil law practices—are professionalizing the courts, including by ending their financial dependence on local governments. These reforms are also making it easier to file lawsuits. Meanwhile, the CCP and State Council have continued to call on the government apparatus to improve its methods of making and enforcing decisions, so as to reduce the number of conflicts and achieve a more “harmonious” society.

Bringing governance “into the sunshine”

The introduction in 2007 of China’s first-ever statute on access to government information,

⁴ See, e.g., Susan Finder, “US Federal Judiciary Strategic Plan Attracts Thousands of Chinese Readers,” Supreme People’s Court Monitor, December 11, 2016, <https://supremepeoplescourtmonitor.com/2016/12/11/us-federal-judiciary-strategic-plan-attracts-thousands-of-chinese-readers>.

also referred to as “freedom of information,” has arguably done the most to advance the desired new governance style. Chinese policymakers recognized that the public needs access to government-held records if citizens are to take increasing responsibility for their lives and businesses in the more market-oriented economy. They also realized that the government would benefit from having better informed assistance from the public in making and enforcing laws and decisions, as well as curbing rampant corruption. Drawing on years of local experimentation as well as international experience, including the U.S. Freedom of Information Act, China’s Open Government Information (OGI) Regulations mandate that governments at all levels—down to the township—proactively disclose a wide range of government-held records. The statute also permits the Chinese public to request information that has not already been published, backed up with a clear right to sue should requests be refused.

The declared commitment of a one-party authoritarian state to an information access regime, and one that encourages its courts to entertain lawsuits against the government from aggrieved requesters, was a remarkable development. Equally unexpected was the immediate and active response from the Chinese public. As soon as the OGI Regulations took effect on May 1, 2008, citizens from all walks of life began to file requests for government-held information and pursue administrative appeals and litigation against recalcitrant government departments. As happens in the United States, most requesters sought information

relating to their own lives, such as social security benefits and land use documentation. However, a number of professors, lawyers, social organizations, journalists, and other activists used the new OGI mechanism to obtain information on areas of broader public interest—including budgets (which were still considered a state secret at the time the OGI Regulations were adopted), the discharge of pollutants, and the use of collected highway tolls—to employ in advocacy with or litigation against relevant government agencies.

Chinese activists have also sought information relating to sensitive topics such as gender discrimination, the former one-child policy, police use of torture, and gay rights. These activists knew full well that they were unlikely to obtain the desired

information, but they aimed to draw official and public attention to certain issues as part of a long-term advocacy strategy. In a few cases, requesters have succeeded in securing at least some of the information they sought, as did attorney Zhao Yunheng with his 2014 request to the Public Security Ministry for information on custody and education facilities that sur-

vived after China abolished its much-criticized reeducation-through-labor system.⁵ Lawyers are also using OGI requests to obtain evidence from regulatory agencies to support lawsuits concerning land expropriation, environmental damage, and consumer protection. One Beijing lawyer, for example, told a seminar that in one year alone, he and his firm filed 7,000 OGI requests for information relating to land-taking cases.

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⁵ “Ministry: China Has 116 Custody and Education Centers,” Dui Hua Human Rights Journal, September 4, 2014, <http://www.duihuahrjournal.org/2014/09/mps-china-has-116-custody-and-education.html>.

Moreover, Chinese citizens have organized “watch” groups to monitor and report on government implementation of its OGI obligations. Since 2008, former journalist Ma Jun’s Institute for Public and Environmental Affairs has partnered with the U.S. Natural Resources Defense Council to request and annually publish environmental information from over 100 Chinese cities. Peking University Law School’s Center for Public Participation Studies and Supports founded the OGI Watch project—modeled on the former Washington, D.C.-based OMB Watch—to assess and grade central and local government implementation of disclosure obligations under the OGI Regulations. In its first year, OGI Watch failed all but two central government departments and ended up advising some of them on how to improve compliance and their ranking. Both of these citizen-driven projects attracted widespread media attention and have created competition among and pressure on governments at all levels to take disclosure mandates seriously. Indeed, requiring the use of such third-party assessments of government performance has been incorporated into the State Council’s government accountability reforms.

The scope and depth of government information disclosure has continued to grow since the OGI Regulations were promulgated. The traditional, overly broad concepts of state and work secrecy are slowly being refined through an interactive, iterative process: citizens file information requests, with attendant publicity; court decisions instruct government officials to disclose the requested information or come up with a better justification for withholding it; the CCP and State Council offer periodic top-down policy directives for enhanced transparency; and third parties and the media evaluate how the OGI system is or is not working.

Wide reporting on citizen requests for budget information helped propel declassification of formerly secret budgets and financial expenditures, which have been released in ever-greater detail and by more and more government departments at all levels in recent years. Indeed, transparency with respect to the government’s so-called “Three Official Expenditures”—entertainment, vehicles, and overseas travel—helped enable the State Council to reduce such expenses by half between 2011 and 2015. Pollution information, which was once deemed too sensitive to share with a concerned public, is now published proactively by environmental protection bureaus—in some cases on a daily basis. Information on violations by and penalties imposed on regulated companies such as food suppliers and drug manufacturers was frequently withheld on grounds of being a commercial secret. This information is now published both by government regulators and by companies themselves, enabling the public to make better-informed choices about products and investments.

The trend toward increased disclosure has continued during the Xi administration, which espouses the exercise of power “in the sunshine” under the principle that disclosure is the norm, non-disclosure the exception. Government agencies at all levels annually release millions of documents on their own initiative. In 2015, the central and province-level governments answered nearly 600,000 information requests, while responding to 16,000 lawsuits and 22,000 administrative appeals over unsatisfactory disclosure.⁶

To be sure, government transparency remains uneven and often unsatisfactory. Government officials concede much of the information they proactively release is “garbage.” Requesters fre-

⁶ Jamie P. Horsley, “China’s FOIA Turns Eight,” Freedominfo.org, April 28, 2016, <http://www.freedominfo.org/2016/04/chinas-foia-turns-eight>.

quently do not obtain the information they seek. Some have been detained for their efforts, and the public wins its OGI lawsuits in only 10 percent of cases, on average. Still, Chinese citizens are using the OGI process to obtain information to better manage their daily lives and protect their interests. Their efforts also draw public attention—through media coverage of requests and the information they uncover or the obstacles they encounter—to social issues ranging from food and environmental safety to the rights of disabled persons, to government interference in the stock market, to education reform.

Furthermore, the pressure for greater transparency has spread beyond the government records that are subject to the OGI Regulations. The people’s congresses at all levels now boast of “open-door legislation” that affords the public the right to participate,

albeit on a selective basis, in legislative hearings, as well as to review and comment on draft laws. The Supreme People’s Court has embraced judicial openness to bolster public confidence and encourage citizens to bring their disputes to the courts. It has established online platforms that provide public access to case processing information and the status of judgment enforcement. And over 25 million court decisions made by all levels of Chinese courts, which were formerly confidential, are now accessible through a searchable online database. The court has also endorsed live-streaming of select trials.⁷ Even the CCP, still dominated by a largely opaque decisionmaking process, is re-

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leasing more information about its meetings, decisions, leaders’ biographies, personnel changes, and the ongoing anti-corruption campaign. It has also announced plans—through its first five-year intra-party rulemaking agenda, published in 2013—to formulate regulations on disclosure of information about party affairs.

Policy pronouncements increasingly recognize the importance of effective communication as part of open government. New practices include regular press conferences with government, court, and congressional press spokespersons or officials; published FAQs and infographics;

government social media accounts; and the use of outside experts to explain government decisions to affected populations. The CCP has also established a website, appointed its own press spokespersons, and started publishing more explanations

of its decisions, including the speeches delivered by Xi Jinping at the CCP’s annual plenary sessions. Like the State Council, the CCP is using infographics and other mechanisms to increase understanding of its policies and practices, including in relation to party discipline and anti-corruption initiatives. Moreover, China is learning that failure to swiftly and thoroughly communicate its policies can have global consequences, as occurred in August 2015 and January 2016, when a lack of transparency about foreign exchange and currency decisions riled global markets and undermined foreign investors’ confidence in China’s leadership.⁸

⁷ Susan Finder, “Cameras in the Chinese courts,” Supreme People’s Court Monitor, July 22, 2016, <https://supremepeoplescourtmonitor.com/2016/07/22/cameras-in-the-chinese-courts>.

Expanding the space for civic participation

CCP decisionmaking practices have long called for pooling the “wisdom of the masses” and making decisions that reflect the will of the people. These principles are reflected in constitutional provisions for the people to administer state affairs and manage economic, cultural, and social matters through various channels and for the state to rely on their support, heed their opinions, and accept their supervision. Even so, establishing institutionalized channels for the general public to provide input into the legislative and policymaking process is a more modern concept that is still being tested in practice.

Chinese leaders began to call for “citizens’ orderly political participation” in 2000, the same year the NPC adopted an unprecedented Law on Legislation to standardize legislative procedures. That law provided a national legal basis for the people to participate in lawmaking and government rulemaking. It built on earlier local experiments with civic participation in legislation through workshops and public hearings, a concept derived from Western practices. It also facilitated the development of a written opinion-seeking process that was inspired by U.S. experience with notice-and-comment rulemaking, but which extended that procedure to congressional lawmaking, as well. In fact, China’s legislature may be

the only one in the world that engages routinely in notice-and-comment lawmaking.

Over the past two decades, the CCP and State Council have advocated the development of public participation mechanisms to help inform the drafting of increasingly complex laws and policies, and to win the understanding, trust, and support of the people for such actions.⁹ Legislatures and governments at the national and local levels have taken advantage of the internet to begin publishing draft laws and rules for public comment online, as part of a broader e-government initiative that prompted establishment of official government websites that now number 86,000.¹⁰ State Council policies establish a presumption of public participation in most drafts of government regulations, which are typically published for a 30-day comment period. The State Council has also established a centralized website for central and province-level government departments to post their draft rules, though usage varies.¹¹ Even the Supreme People’s Court regularly publishes draft judicial interpretations and regulations for public comment.

Chinese legislators and officials increasingly seek outside expertise, establish advisory committees that include affected businesses and members of the public, and utilize “co-governance” mechanisms that bridge the government, the market, and society to address complex or controversial issues. They have learned the important role that

⁸ Peter Olsen and Ben S. Bernacke, “China’s Transparency Challenge,” March 8, 2016, <https://www.brookings.edu/blog/ben-bernanke/2016/03/08/chinas-transparency-challenges>.

⁹ CCP documents also provide party members with a “right to participate” in drafting party regulations and decisions. CCP regulations on formulating party rules, however, do not establish a formal notice-and-comment system, relying instead on more-traditional mechanisms such as broad consultation through CCP committees at all levels.

¹⁰ The NPC and State Council websites record the number of commenters and comments received, although not the text of the comments themselves. The Labor Contract Law received the most comments of any proposed law recorded to date: 557,000 in July 2012, followed by 331,000 comments on the revised Budget Law that same month, and 238,000 on the revised Individual Income Tax Law in April 2011. Sixteen draft laws published in 2015 drew a total of 181,569 comments from 91,869 commenters.

¹¹ While this was intended eventually to serve as a kind of Chinese-style Federal Register of all draft rules and regulations, in practice many government agencies and local governments do not post drafts on the State Council website, and interested commenters must instead follow and navigate the separate websites of each agency.

social organizations—the term China uses for NGOs—can play in providing informed, constructive, and representative input. As in the United States, Chinese individuals are more likely to get involved in local issues, like regulation of pets or fireworks, than directly in national legislation. However, academics, lawyers, civic organizations, business and professional associations, and government-backed organizations like the All-China Women’s Federation and All-China Lawyers Association increasingly monitor and submit comments on proposed laws and regulations and participate in informal workshops and other input channels for national and local issues. Foreigners can also participate in these processes. Over the years, the U.S. government, the American Bar Association, and U.S. law firms, business groups, and academics have submitted comments on draft Chinese laws and regulations.

 **The Chinese public has come to count on having an opportunity to participate.**

Legislative and government bodies at the national and local levels now typically also issue explanations of the need for legislation to address a problem. A few local governments like Beijing, Shanghai, and Guangzhou provide feedback on how public comments are considered when producing a final text. The State Council has called for institutionalizing such a feedback system throughout government at all levels. The NPC and local congresses, which normally review draft legislation in three readings prior to adoption, now publish drafts with explanations after the first and second readings, making it possible to trace the impact of public input. For example, when the first draft revision of China’s Environmental Protection Law endorsed public interest lawsuits

but imposed tight restrictions on them, public consultation resulted in broader final language that in principle gave some 700 Chinese environmental organizations standing to sue. When the NPC published a draft of China’s controversial Foreign NGO Law for comment, it drew sharp criticism from domestic and international civil society groups, academics, foreign governments, and businesses that work with NGOs, leading to somewhat relaxed registration and reporting requirements in the final version adopted nearly a year later in April 2016.

Moreover, the Chinese public has come to count on having an opportunity to participate. Citizens complained when the NPC announced technical re-

visions to the Environmental Impact Assessment Law in July without permitting public comment. In another recent example, 168 lawyers petitioned the State Council in October 2016, charging the Ministry of Justice with violating the Law on Legislation by failing to seek public input before revising law firm management regulations in a manner that restricts lawyers’ freedom of speech.¹²

The public is also seeking the right to participate in another arena of government action that the Chinese call “major decisionmaking.” This encompasses significant policies, plans, and decisions on major investment projects, such as nuclear power plants, chemical factories, highways, and garbage incinerators. Many of the large protests reported in the media center on such major decisions, and a number of those protests have resulted in projects being suspended, relocated, or cancelled. Chinese demonstrators typically complain about the lack of information about

¹² Li Jing, “Chinese lawyers petition State Council to recall rules ‘aimed at silencing critics,’” *South China Morning Post*, October 10, 2016, <http://www.scmp.com/news/china/policies-politics/article/2026571/chinese-lawyers-petition-state-council-recall-rules>.

such projects and limited opportunities to participate in the approval process, including through evaluation of environmental impact assessments, drafts of which are supposed to be published for public input prior to approval. In one recent case, a group of villagers appealed a refusal by the local environmental protection bureau to disclose details of a survey that had allegedly been conducted to satisfy the public participation requirement for project approval, but which the unhappy residents near the facility claimed was “faked.” The Ministry of Environmental Protection ordered the local authority to disclose the survey details to the villagers after taking steps to protect any private information.¹³

The CCP and State Council acknowledge the need for government to do a better job of involving the public in major decisions, while asking the public to express its views rationally and in an orderly manner. They have encouraged local experimentation with procedures to ensure a more open, participatory, and rules-based process that will produce better decisions that enjoy general public support. Localities have adopted over 300 regulations relating to decisionmaking procedures to date, and the State Council is now drafting national regulations that will set minimum procedures for major decisions at all levels of government nationwide.

However, institutionalization of public participation in decisionmaking continues to progress slowly. Repeated calls from the CCP and State Council for more-effective public participation in decisionmaking, as well as continued outbreaks

of protests against nontransparent decisionmaking, indicate that the goal of civic participation still faces substantial difficulties in implementation.¹⁴ One challenge is insufficient government personnel and resources to conduct and evaluate public consultation. A more significant obstacle may be the bureaucratic culture that prioritizes speedy economic development, leading officials to worry about getting bogged down by public involvement in decisions. Caught in a web of often conflicting priorities and pressures, Chinese officials may view requirements for an open, participatory, and rules-based decisionmaking process as more of a burden than a benefit.

Nonetheless, China’s leadership continues to promote the development of “orderly” participatory channels for the general public as well as experts and other stakeholders to voice concerns and suggestions regarding laws, regulations, policies, and decisions that impact their lives. Such efforts are advancing even as that same leadership continues to constrain unregulated expression, association, demonstration, media reporting, and public discourse, as well as meaningful electoral participation.¹⁵ These new participatory practices are gradually changing behaviors and expectations of both the Chinese public and the official bureaucracies that are being required to listen and respond to them.

The role of Chinese civil society

As discussed above, Chinese citizens were quick to begin using their new tools of information ac-

¹³ Zhou Tailai and Li Rongde, “Central Government Orders Tianjin to Review Decision on Incinerator,” Caixin, October 11, 2016, <http://english.caixin.com/2016-10-11/100995608.html>.

¹⁴ See, e.g., Jamie P. Horsley, “China Promotes Open Government as it Seeks to Reinvent Its Governance Model,” Freedominfo.org, February 22, 2016, <http://www.freedominfo.org/2016/02/china-promotes-open-government-as-it-seeks-to-reinvent-its-governance-model>.

¹⁵ Javier C. Hernandez, “‘We have a fake election’: China Disrupts Local Campaigns,” *New York Times*, November 15, 2016, <http://www.nytimes.com/2016/11/16/world/asia/beijing-china-local-elections.html>.

cess and public participation to improve their own lives and attempt to hold the government accountable. Easier access to the courts has further enabled the public to assert its rights and interests, often in conjunction with publicity that brings broader issues of social concern to public attention and helps press for change. Recent amendments to the 1989 Administrative Litigation Law and new rules for case docketing prompted a 55-percent increase in the number of lawsuits filed against the Chinese state in 2015, many involving OGI, and the rate of citizen “wins” against the state also has risen gradually.¹⁶

CCP and State Council policies recognize the constructive role that Chinese civil society plays. As of October 2016, there were over 675,000 social organizations registered in the country. Their functions include conveying the concerns of the people; participating in co-governance to address issues in concert with government, the market, and individuals; and delivering social services, often under contract with government agencies that formerly provided such services directly. China’s first Charity Law (adopted by the NPC in March 2016) and revisions that have been proposed to State Council regulations on social organizations each eliminate certain pre-registration barriers—including, importantly, the need for an official government sponsor—for charities, community service organizations, trade associations, and scientific and technology groups. They also relax some restrictions on public fundraising. The opening door for domestic NGOs stands in stark contrast to the tightened restrictions on foreign NGOs under the Foreign NGO Law that took effect January 1, 2017. However, NGOs under both legal regimes are cautioned not to violate national security, ethnic unity, or social morals, and are

subjected to increased transparency and reporting obligations.

Clearly, CCP elites remain ambivalent about the appropriate role of civil society, even as they pursue the open government project to engage and maintain the public’s support and active assistance in addressing problems. While market freedoms, personal liberties, and space for civic engagement have gradually expanded over recent decades, this relaxation has been managed within a prodigious regulatory framework. CCP policy admonitions, buttressed by laws and regulations, attempt to guide public opinion and channel civic action into approved issue areas and “rational” and “orderly” channels. An emerging social credit system penalizes deficient social behavior and illegal actions in an effort to foster greater trustworthiness in a society riddled with fraud and mistrust. Activists pushing the regulatory envelope, especially when perceived to have broad organizational potential, all too often end up in detention or jail.

Ultimately, the future of China rests with the 1.4 billion Chinese people themselves. They are increasingly dynamic, innovative, involved, and networked. The numbers are staggering: 770 million “netizens,” some 225 million middle-class households, an estimated LGBTQ population of 65 million, and 400 million well-educated and relatively affluent millennials. They, like their counterparts elsewhere, have grown up in a very different world from that of their parents and bring differing perspectives on and expectations for their government, including for greater transparency and opportunities to help improve their society and have a say in decisions that impact their lives.¹⁷

¹⁶ Haibo He, “How much progress can a legislation bring?”, draft paper discussed at a panel on developments in Chinese administrative law, American Bar Association Administrative Law Section Annual Conference, December 9, 2016, on file with author.

Policy implications for the United States

Effective cooperation between the United States and China requires a better understanding of the complex array of developments unfolding in China. China's ambitious project to "reinvent" its governance model is one example of a domestic initiative that has largely been underreported but that arguably demonstrates the benefits of mutual engagement and affords continued opportunities for positive cooperation. This open government endeavor has adapted many practices—such as access to government information and public participation—that are typically associated with democracy in the United States but which China's rulers recognized as important in their quest for good governance and legitimacy. Xi Jinping has made clear that his warning against "Western values" does not preclude continued learning from the West's "beneficial" experience. The United States should continue to offer relevant experience and cooperation as China seeks to modernize its governance style and institutions.

To be sure, Chinese aggression in the South China Sea, trade and cybersecurity disputes, widespread protests, and the harsh treatment of Chinese lawyers, journalists, protesters, and other rights activists suggest that China's leaders in fact do not value rule of law and the open government project. While advocating freedom of information, the CCP does not yet tolerate free speech, a free press, or freedom of association.

In spite of rhetorical support for greater civic participation, the party has been slow to grant enforceable participation rights to the public in legislation and decisionmaking. Indeed, the open government project often conflicts with the CCP's strong impulse to control and maintain its preeminent position in China's legal and political systems. Yet, facts on the ground demonstrate that fundamental changes are taking place in China's legal and governance arena, where new values of transparency and participation are gradually being implemented and appear to be taking root in China's complex, dynamic reality.

To the extent that China's domestic challenges reflect those of the United States, such as improving education, social welfare, public health, environmental protection, and infrastructure,

 **Fundamental changes are taking place in China's legal and governance arena.**

both countries can learn from each other. One example is the U.S.-China Climate-Smart/Low-Carbon Cities Initiative, which brings local government leaders,

civil society, and the private sector together to build low-carbon, clean-energy, and climate-resilient economies in both countries.¹⁸ Both sides also stand to benefit from the municipal governance initiative to which Presidents Obama and Xi agreed in Hangzhou in September 2016.¹⁹ This project will promote municipal-level exchanges on environmentally sustainable urban planning, developing healthy communities, public participation, and information disclosure, among other governance issues. Many non-official cooperative initiatives between our two countries also

¹⁷ See, e.g., Kristie Lu Stout, "China's millennials: Under pressure and pushing back," CNN, May 25, 2016, <http://www.cnn.com/2016/05/25/asia/on-china-millennials-klustout>; Christopher Marquis, Yanhua Zhou, and Zoe Yang, "The Emergence of Subversive Charities in China," Stanford Social Innovation Review, Winter 2016, https://ssir.org/articles/entry/the_emergence_of_subversive_charities_in_china.

¹⁸ "Second U.S.-China Climate-Smart/Low-Carbon Cities Summit," Factsheet, June 15, 2016, <http://www.state.gov/r/pa/prs/ps/2016/06/258509.htm>.

promote good governance practices and mutual learning.

Looking at governance on the global level, China's participation record to date is mixed but contains positive examples. These include China's cooperation with the United States on climate change and promoting a new norm prohibiting cyber-enabled theft of intellectual property for commercial advantage. As another recent example, China drew on U.S. and other foreign technical expertise in developing the internal governance structure for the Beijing-based, 57-member Asian Infrastructure Investment Bank (AIIB). Its design was crafted through extensive shareholder negotiations and is supported by foundational documents that comport generally with those of other multilateral development banks like the World Bank and the Asian Development Bank. Indeed, the AIIB launched its first public consultation, on energy policy, in October 2016.²⁰

China has expressed keen interest in participating more actively in international global governance and helping to write and improve the rules of global engagement. CCP and State Council policy documents call for China to collaborate through international platforms like the United Nations and the G-20 to raise new proposals and increase its voice in rules and standards setting. China's growing experience at home with decisionmaking that is more open, participatory, and law-based, even if not consistently realized in practice, might help position the country to engage more constructively in developing norms, as well as mechanisms for transparency and participation, for governing the global community. The United States should welcome China's interest in such participation and continue to strengthen positive engagement on governance issues in our respective countries and within the international arena.

¹⁹ U.S. Fact Sheet for President Obama's Bilateral Meeting with President Xi Jinping, September 3, 2016, <https://www.whitehouse.gov/the-press-office/2016/09/03/us-fact-sheet-president-obamas-bilateral-meeting-president-xi-jinping>.

²⁰ "AIIB Launches First Stage of Energy Strategy Public Consultation," October 17, 2016, http://euweb.aiib.org/html/2016/NEWS_1017/175.html.

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