The Zone of Respect in the Chinese Party-State: A Preliminary Exploration

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The Zone of Respect in the Chinese Party-State: A Preliminary Exploration

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It is possible to distinguish between a “zone of immunity” for the freedoms of citizens created by the public contract of a liberal state’s constitution and a “zone of indifference” for the freedoms of the people created by a party-state’s policy preferences. Professor Tang Tsou first suggested this distinction. However, to the extent that the political leadership of a party-state is fundamentally committed to popular sovereignty, we can speak of a “zone of respect” for popular freedoms that lies between immunity and indifference. In contrast to the zone of immunity, the zone of respect does not acknowledge the legitimacy of opposition. In contrast to the zone of indifference, the zone of respect recognises and protects the legitimacy of diverse interests and opinions as a constitutional commitment rather than as a changeable policy commitment.

The economic development of China during the reform era is often described as “crossing the stream by feeling the stones”. Likewise, China’s political development can be described as a similar process of cumulative development through tentative experimentation.1 The metaphor implies that mistakes are made and that the path is crooked. Indeed, correcting the leftist mistakes of the preceding era was the starting point for both economic and political reform. But the process of pragmatic experimentation continued beyond the repudiation of the Cultural Revolution. In both economics and politics, not only does the path change, but the river changes as well. Thus there is no final solution or perfect model for either economic or political reform, but rather ongoing adjustment.

Despite the tentativeness of the reform process and its changing challenges, general logics and directions can be discerned. In economics, the content of the interaction between public guidance and market forces has changed considerably, but the importance of both has been established, and there is greater confidence in the general principles of economic development. The major differences between the economics of the 1980s and the forward-looking economic planning of the “new....


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normal” derive primarily from the shift of objectives from maximum growth to sustainable growth, and from a labour-rich, capital-poor situation to one that is more prosperous and diverse. New challenges do not lead to retreat, but rather to different steps forward.

The course of political reform is analogous to economic reform in that it too has been shaped by policies from above, and pressures and responses from below. Much progress has been made both in the institutionalisation of political leadership and the expansion of the realm of personal choice of citizens. However, it is less clear what the underlying logic of political reform has been and what challenges it faces. This article is a tentative exploration of the logic of political reform as it concerns the basic democratic question of the relationship of people and government. The relationship can be called “constitutional” in the general sense that it is inherent in the institutionalised logic of the political system.

I begin by discussing the distinction made 30 years ago by the late Professor Tang Tsou (Zou Dang) between the “zone of immunity” of citizen freedoms granted by liberal, limited states, and the “zone of indifference” of personal freedoms that he saw expanding in China during the early years of the reform era. This important distinction has been influential, but the zone of indifference, while useful empirically, does not explain the overall direction and logic of political reform since 1978. I then consider the democratic precommitments of the Chinese Party-state and argue for the constitutional existence of a “zone of respect” for popular interests and opinions. The next steps are to further distinguish between the proposed zone of respect and Tsou’s dichotomy of immunity and indifference. In the conclusion, the question of sustaining a zone of respect is briefly addressed.

The task here is a preliminary differentiation of the rationales of these three modes of delineating personal freedoms. It is not assumed that China—or any other state—completely fulfils its constitutional obligations in practice. Moreover, the Chinese leadership—like political leadership everywhere—has its own instrumental interests in mind while pursuing reforms well as constitutional concerns. Lastly, both the “zone of indifference” and the “zone of respect” are not part of official Chinese discourse, but rather outside attempts to articulate a perceived basic policy rationale. Nevertheless, the distinctions appear to be salient for the course of reform and for the Party’s understanding of its own mission.

THE ZONES OF IMMUNITY AND INDIFFERENCE

The late Professor Tang Tsou of the University of Chicago observed the transition from the Mao era to the Deng Xiaoping era with particular insight. At the time, many outside observers either dismissed political reforms in China as insignificant or

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considered them “liberalisation” or movement towards a Western-style limited government. However, he argued that the Party's relaxation of political controls was a significant development central to Deng Xiaoping's new approach, but that it was fundamentally different from a liberal state. On the one hand, Deng replaced Mao Zedong's emphasis on an ideological “struggle between two lines” with a pragmatic “struggle on two fronts” that permitted a broad middle ground. On the other hand, the Party remained in control of its middle course. The political relaxation was the result of self-correction and self-restraint rather than a compromise resulting from a confrontational stalemate with autonomous social forces.3

Expansion of personal freedoms was permitted because it was a sphere of activity that did not affect Party policy or leadership, and therefore the Party was indifferent to behaviour in this area. The “zone of indifference” was very important, and it changed everyday life in China. However, as the short-lived “Anti-Spiritual Pollution” campaign of 1983–84 demonstrated, the Party could decide that it was no longer indifferent to certain behaviours and therefore it could reassert control.4 Even though the general line of the reform era, “reform and openness”, involved more personal as well as economic freedoms, both remained under the Party's control.

By contrast, Western states were formed by the tensions between government and society, and their constitutions limited the power of the state. Liberal constitutions established a private sphere of choice that was in principle beyond state control, a “zone of immunity”. The constitutions were public contracts between state and society that implied the separate autonomy of both sides. Originally, the “society” side was limited in most places to the estates: the aristocracy, the Church and the city leaders. After the American and French revolutions, it was gradually extended to broader reaches of the citizenry. As John Locke argued, the creation of public contracts was not due to the wisdom or initiative of the rulers, but rather to the resistance of society to the excesses of the rulers.5 Since limits were imposed on the state by society (a classic example is the Magna Carta imposed on King John of England by the barons in 1215), society was free to do whatever it wanted within its zone of immunity. If the state transgressed the zone of immunity, society could rebel. This principle was expressed most eloquently by Thomas Jefferson in the American Declaration of Independence: “Whenever any Form of Government becomes destructive of these ends [of Life, Liberty, and the pursuit of Happiness], it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.”

In both zones of indifference and of immunity, realms of popular freedom were created, but they differed in kind as well as in origin. The Western zone of immunity originated in a political accommodation between society and state, and therefore political freedoms were central. From the time of England’s Glorious Revolution of 1688, the notion that opposition could be legitimate became part of parliamentary tradition. By the 19th century, the zone of immunity not only included freedom from government, but also freedom to choose governments. The democratisation of society was not without its problems. John Stuart Mill’s classic essay, *On Liberty* (1859), was written against the “tyranny of the majority” rather than against the tyranny of kings. But an essential principle of the zone of immunity is that there can be legitimate opposition, and therefore the political process is based on the contention of political parties for citizen support. Our current model of a constitutional zone of immunity is an idealisation of a mature liberal state such as the United States.

China’s zone of indifference, as Tsou describes it, originated in the self-restraint of the Party after the calamity of the Cultural Revolution. The zone did not grant autonomy to society, but rather recognised that much of what people did in their daily lives had little relevance to politics. Moreover, the Party’s new general line of reform and openness required more initiative and experimentation from the bottom up. The zone of indifference expanded social and economic freedoms, but was quite limited on political freedoms. Instead of society and state agreeing on a boundary line between them, the three—Party, state and society—remained enmeshed, and they were expected to pursue goals along the same general direction. Opposition was not legitimate. Nevertheless, the freedoms allowed to citizens continued to expand, institutionalisation was encouraged, and improvements in the legal system stabilised the zone of indifference.

Conceptually, the difference between the two zones is clear, but in practice there is some overlap. A liberal state does not permit citizens to threaten the constitutional order, and it can regulate behaviour that is harmful to others or to the self. As Oliver Wendell Holmes put it in 1908:

> All rights tend to declare themselves in their logical extreme. Yet all in fact are limited by the neighborhood of principles of policy which are other than those on which a particular right is founded, and which become strong enough to hold their own when a certain point is reached.⁶

Immunity is thus not absolute, but the practical meaning of immunity is that an exception can only be made on the basis of a principle that takes precedence. Moreover, around the zone of immunity, there is a fluid space of indifference in which the state and its officers decide whether or not to interfere. An example to explain this would be a highway speed limit. Below the speed limit, the driver is protected by law. Slightly above the speed limit, the driver is illegal, but it is up to the policeman whether

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to enforce the law. In a party-state’s zone of indifference, institutions create routines and standards, the legal system specifies legal and illegal activities, and the constitution lists citizen rights, though they are explicitly subordinated to the common good as determined by the party-state. A party-state constitution is an organic law that specifies citizen rights and underpins the rule of law, but it is not a public contract limiting the relationship between state and society.

CONCEPTUALISING A ZONE OF RESPECT

Even though Tsou’s concept of the zone of indifference was formulated 30 years ago at the beginning of the reform era, it provides a useful empirical framework for analysing Chinese political development. Joseph Fewsmith in his book, *The Logic and Limits of Political Reform in China*, uses the concept to analyse many local experiments in political reform. Despite the experiments, however, he points out that the watershed between indifference and immunity has not been crossed. There are no hard boundaries that protect new freedoms from changes in the policy wind, and he describes many cases in which the innovations of one local leader are abandoned by his or her successor. Moreover, he points out that most innovations occurred in poor areas and because of mass unrest, and yet no “social contract” resulted.

However, interwoven with Fewsmith’s accounts of popular unrest and local innovations are instances of support for innovation by higher and especially by central authorities. Fewsmith interprets the support as necessary to the Party’s survival, but repression would be an obvious alternative approach. Moreover, he interprets the political innovation of leadership in poor areas as a path to promotion that is attractive because the normal path of economic success is not available. But why would political innovation be desirable to the centre? Fewsmith argues persuasively that local-level political innovation is not creating a public contract, but at the same time, he is describing a not inconsiderable reform momentum within the zone of indifference that is encouraged by the centre. Political development has come a long way, according to this analysis, but measured by the standards of a limited state, it is not getting anywhere.

Although the realm of personal freedoms and political participation fluctuates, the positive encouragement of innovators and the spread of their ideas to other areas go well beyond indifference. As Michael Dowdle has argued on the basis of national reform:

> The best interpretation of existing evidence is that the notions of democracy and rule of law enjoy normative support in China’s constitutional and larger political environments, support that is sufficient to allow the shifting of discourse to propel constitutional development.

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Yu Keping concurs, saying that there has been a trend "from totalistic government [quanneng zhengzhi] to limited government".9 Political reform, especially but not exclusively at the local level, has been a general trend in the reform era.

The thesis of this article is that the promotion of political reform stems from the Party-state's commitment to popular welfare and sovereignty. The experience of the excesses of the Cultural Revolution gave decisive impetus to institutionalised political reform, but the commitment to respect can be traced back to the Party's revolutionary origins.10 As with economic reform, political reform has been a pragmatic process. However, over time, a sphere of respect for popular freedoms has grown and become more structured, extensive and solid, creating a zone of respect that is distinct from either indifference or immunity.

A zone of respect encompasses people's activities that are congruent with popular sovereignty in a party-state. While they are not freedoms on the outside of a limited state, they are freedoms inside a democratic party-state. Besides non-political freedoms to which the party-state is indifferent, the zone of respect includes rights of popular participation in the party-state as well as protections from the abuse of party-state power. The zone of respect changes in its content, but the legitimacy of popular participation is fundamental to a democratic party-state. A party-state that denies in principle the legitimacy of popular participation, or ignores the illegitimacy of the abuse of power against the people, cannot claim to be a democratic party-state.

I use the term "people" rather than "citizen" because the commitment to popular participation in a party-state must be more extensive than the realm of citizen freedoms as they relate to the state. If there is only one governing party, then the concept of party-state democracy must concern itself with freedom of participation within the party and also with the relationship of the party to non-members. Although China has eight smaller parties that originated as part of the united front in the civil war and are represented in the China People's Political Consultative Conference, they are each committed to upholding the leading role of the Communist Party of China. Every political system must culminate in an institution of decisive leadership, but for that system to claim to be democratic, the people must have means of influencing the leadership. If there is constitutionally a single governing party, then in order for the system to be democratic, the party itself must be democratic. The rights of the people in the People's Republic of China must extend beyond their citizen rights in the state structure to include rights of access in the Party structure.


In contrast to the separation of powers in most liberal states, the party-state not only enmeshes political leadership and official administration; it is also an essential part of the structure and guidance of unofficial society. Therefore, the responsibilities of democratic governance reach beyond the relationship of state and society, to the enmeshed system of party, state and structured society. While the party-state determines the practical limits of the zone of respect, its commitment in principle to respect the people is an essential part of its democratic constitution.

The zone of respect is an essential and increasingly important part of a larger commitment to popular welfare by a democratic party-state. Unlike the long Western evolution from elite privileges to citizen political rights to social and economic welfare policies, China has moved from mass mobilisation for social and economic ends to a more focused concern with the political prerequisites of a modern society. If we consider President Xi Jinping’s “four comprehensives”—comprehensively building a moderately prosperous society, deepening reform, advancing the rule of law and strictly governing the Communist Party of China—two of the four focus on problems of governance.11

The zone of respect involves respect for the people as the base and purpose of party-state governance. Although the politics of the reform era is no longer based on class struggle and the categorical attribution of “enemies of the people”, it does not legitimate opposition.12 The zone of respect is based on the presumption that harmony is possible despite differences in interests and viewpoints. No partial interest can prevail against the interests of the whole; however, the interest of the whole includes the interests of its parts, implying respect for the articulation of partial interests. The whole is acknowledged to be a differentiated whole, and therefore respect for differences is a constitutional obligation of leadership. Besides being the basis of the relationship of political authority and the people, harmony is also the basis for the enmeshment of party, state and societal functions. However, the presumption of harmony is a constitutional presumption that harmony is desirable and possible, not a presumption that people will always agree, or that authorities are always correct. Moreover, institutional enmeshment in the reform era presumes distinctive responsibilities and legitimate autonomy for state and societal organisations. Popular and institutional differentiations are legitimate.

The zone of respect is not merely a zone of tolerance, nor is it simply an abstract commitment to popular welfare as the goal of the party-state. While it is better to have a tolerant government instead of an intolerant one, toleration is a gratuitous action by an authority rather than an obligation of a democratic authority. Not only can a tolerant attitude be changed at will, it does not relate to the nature of the party-state.

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11 First announced in Renmin ribao (People’s Daily), 24 February 2015.
12 The PRC Constitution still asserts, “The exploiting classes as such have been abolished in our country. However, class struggle will continue to exist within certain bounds for a long time to come. The Chinese people must fight against those forces and elements, both at home and abroad, that are hostile to China’s socialist system and try to undermine it” (2004 revision).
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authorities. A king can be tolerant. A slave master can be tolerant. By contrast, respect for the people is a defining obligation of a democratic regime. Similarly, a general, abstract goal of popular welfare can be proclaimed by any regime without consequences for its actual political processes or its actual relationship to the people. One could say that even a theocratic regime can be abstractly committed to popular welfare, but in the next life rather than in the current one.

DISTINGUISHING BETWEEN RESPECT AND INDIFFERENCE

Tsou’s zone of indifference reflects the growth of greater personal freedoms at the beginning of the reform era despite the continuing enmeshment of Party, state and society. At the time, the most impressive change was the grand change in policy from Mao Zedong to Deng Xiaoping, so it is not surprising that he would concentrate on the importance of policy in determining freedoms. Moreover, the brief appearance of the Democracy Wall in December 1978 and its subsequent removal drew a clear line between the Party’s new policy and a trend towards a liberal state. Finally, the change of focus from leftist politics to economic growth meant that areas of behaviour that authorities had been closely watching until 1978 were no longer of interest. Thus “indifference” was a good name for the new sphere of freedoms, and policy change was its origin.

Nevertheless, even in the 1979–82 period, the Party-state state showed a commitment to respect that went beyond indifference. The most basic personal respect was shown by the renunciation of “hats” and of mass struggle sessions. There was also a vast amount of political institutionalisation, including the 1982 Party and state constitutions, as well as strengthening the people’s congress system and election laws. Since then, it is true that the zone of indifference has expanded, but the zone of respect has expanded as well.

The major difference between the zones of indifference and of respect is that indifference excludes in principle political freedoms while respect includes them. It could be argued that the Party-state permits village-level political reform precisely because village-level elections are below the formal political system. While it is true that the most extensive electoral reforms have occurred at the village level, the reforms themselves show respect for the input of villagers. Additionally, more modest electoral reforms have occurred at higher levels and within the structures of the Party and of the people’s congress system. Moreover, the responses of local leaders to crises have been rewarded and publicised when the leaders accommodated protests; and in instances where they were repressive, the leaders have not enjoyed good publicity, and have sometimes been punished.

The inclusion of popular opinion in the processes of leadership selection and policy direction is a fundamental institutionalisation of respect for the people as

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sovereign. It is true not only of the relationship between citizens and their representative state institutions, but also within party, state and societal organisations. The party-state serves the people not because it declares that it serves the people, but because it is responsive to the people. Moreover, the ultimately decisive judge of the party-state’s responsiveness is not the party-state itself, but the people.

Both the zone of indifference and the zone of respect are based on leadership policy, and the boundaries of both are determined by authorities. However, in a zone of respect, the constitutional obligation of democratic leadership creates an obligation to maximise respect, setting thereby the direction of reform progress and creating a burden of justification if the party-state limits popular participation. The zone of indifference puts the discretion of determining when to be indifferent in the hands of every level of authority: a local leader can decide that he/she is no longer indifferent to a particular action, and the public has no recourse. In a zone of respect, however, the people have the right to be respected—codified in law but not restricted to law—and every level of official is under the obligation to respect differences and be accountable to superiors, the courts and the people.

DISTINGUISHING BETWEEN RESPECT AND IMMUNITY

In an ideal limited state, the constitution grants rights to citizens. The citizens possess these rights and can do what they want with them. Moreover, the same approach of definition and delimitation of authority creates a constitutional separation of state powers, especially between the judiciary and the other branches of government. The judiciary is the ultimate judge of constitutional issues, including boundaries of state power, so it must be able to render independent decisions. Hence there is a zone of immunity, and the chief rights within the zone are political. The personnel and policies of the state depend ultimately on elections. The legitimacy of the regime depends on free and fair elections. Due to the unrestricted political role of elections, the state does not need to involve itself in the internal structuring of political parties. Legitimacy is guaranteed by competition and non-interference. Even an incompetent government can be legitimate because it has been chosen by the citizens, and it remains limited by the constitution and laws.

While legitimacy in an ideal democratic party-state is not based on oppositional contestation, its political task is not to eliminate opposition or to prevent its expression, but rather to include it. If everyone with a political disagreement were simply put into a “zone of disrespect” and treated as enemies of the people, then “harmony” would mean nothing more than enforced unanimity. The task of truly harmonious governance is to accommodate and to encourage popular interests. This involves a continuing process of adjustment (mohe) in which confrontations will occur, but confrontation must be incorporated as part of the process and mechanism of responsiveness. The legitimacy and survival of a democratic party-state rests primarily on its inclusiveness. Only those who are alienated and excluded would want to overthrow it.
In both limited states and democratic party-states, the practical definition of popular freedoms is provided by laws and administered by institutions. Law specifies freedoms that are not only guaranteed in principle but are also protected from abuse by the legal system. Therefore both systems require the rule of law and an independent, credible judiciary. While judges and all officials must have the personal discretion appropriate to their function, the rule of law is incompatible with arbitrary and unaccountable official power. The difference between limited states and party-states does not lie in the rule of law but rather in the mode of democratic governance.

In a democratic party-state, the zone of respect is created by the democratic obligations of the party-state rather than by the limitations of its power. The goal of harmony between party, state, society and people implies that leadership can be responsive even if it cannot be challenged. The presumption of responsiveness justifies the establishment of a governing party as the sole source of political leadership. However, the party's constitutional monopoly of political leadership also extends the democratic responsibility of the party-state constitution to include the democratic structure, representativeness and transparency of the party itself.

If there is only one governing party, then the party itself bears a heavy constitutional responsibility to be inclusive and responsive to the interests of its members and to the interests of all the people. Inclusiveness is of primary importance. The admission of entrepreneurs into the Party under the “Three Represents” policy was major progress in this direction. There should be no category of people excluded from membership. The Party has standards for membership, but these are applied to individual applicants and their qualifications. If, for instance, the state permits different religions, the Party should respect the religious choices made by individuals and not exclude them from membership. Within the Party, the autonomy and views of members should be respected. The democratic side of democratic centralism should be strengthened. The 1982 Party Constitution was a milestone. But political democracy is not simply intra-Party democracy. The Party needs to be more transparent in its operations to non-Party members and responsive to the views of people outside the Party.

There are some fundamental similarities between the zone of immunity of limited states and the zone of respect that I describe. First, immunity is not absolute. Even limited states may not allow fundamental challenges to the political system, and they may restrict normal citizen freedoms in times of general crisis. Second, in both systems, the law provides the protected and enforceable definition of freedoms, and the legal system must provide fair and effective enforcement. Third, democracy, regardless of which system, requires political structures that facilitate popular influence.

**CONCLUSION**

Exploring the implications of a zone of respect is a preliminary and tentative step towards developing a metric for political reform within a party-state that claims to be democratic and that aspires to be more democratic. Of course, there are many
shortcomings in Chinese politics. Moreover, while improvements can be made, politics is never a matter of perfection nor the dogmatic application of abstract principles. Confucius and Aristotle would agree that governance is a matter of prudence (zhongyong, phronesis) worked out in practice. Nevertheless, principles and overall direction are important. In the long run, a party-state must pursue democratisation in order to deserve to survive.

It could be argued that the party-state can survive as long as it can handle the tasks of modern governance well. “Governance”, as distinct from “government”, is essentially the instrumental challenge of effectively maximising popular welfare, something that all forms of government aspire towards. Certainly China (and Vietnam) have handled well the tasks of modernising governance, measured not only by rates of development but also by the accomplishments of their middle-income peers. The growth of political reform has accompanied the success of economic reform, and the context of both political and economic reform has been transformed by earlier successes. Now the primary task of economic management is the sustainability of an increasingly modern and diverse economy for the long-term good of the people. Similarly, the task of political reform is the sustainability of political governance for the good of the people. Neither task is simply a matter of leadership policy. Economic management requires responsiveness to the market and guidance rather than a command approach. Political governance requires responsiveness to an increasingly diverse population. The zone of respect in Chinese politics needs continual expansion and institutionalisation in order to serve emerging popular interests. This is necessary to ensure that the interests of a differentiating whole remain well served. The Party-state’s zone of respect must be as inclusive as the society it serves, and Chinese society continues to evolve and diversify.

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