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## REFORM OR TRANSFORM: THE RISE OF CHINA'S NATIONAL SUPERVISION SYSTEM<sup>1</sup>

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### **Abstract**

China's 2018 constitutional adoption of the National Supervision Commission marked a watershed in the country's supervision system and anti-corruption work. This article seeks to investigate the power dynamics between the state machinery and the Chinese Communist Party as the newly supervisory power has come into being. It delves into the National Supervision Commission's origins, mandate, structure, and potential impacts on China's political sphere. It suggests that the emergence of the National Supervision Commission is a testament to the consolidation of the Chinese Communist Party control, potentially contradicting earlier attempts to separate party and state functions. This institutional novelty represents a paradigm change. The article proposes a nuanced understanding of the National Supervision Commission, considering both its potential to strengthen party authority and its bifurcated relationship with other state bodies.

**Keywords:** *National Supervision Commission, supervisory power, Party-state relation, anti-corruption, China.*

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## 1. Introduction

Anti-corruption is the main drive for the establishment of the new supervision system in the People's Republic of China's (PRC) (Guo, 2023). The fight against graft in China has a long history which was dated back to the imperial era. The Qin and Han Dynasties established specialized monitoring offices exclusively devoted to preserving justice and public ethics (Xue & Zhou, 2021). Despite changes over time, those institutions set the foundation for modern approach. Since its founding, the Chinese Communist Party (CCP) has placed a strong emphasis on internal discipline with the leading role of the Central Commission for Discipline Inspection (CCDI) (Li, 2021). Prior to the 2018 constitutional amendments, however, it was considered a disjointed system, where multiple state actors, including the Supreme People's Procuratorate, the CCDI, had partaken in varying stages of the anti-graft process. Yet, drawbacks were inherent to this approach since overlapping authorities led to concerns relating to political accountability, compromise, infighting and deadlocks (Fu, 2015).

Anti-corruption has featured in Chinese party chief Xi Jinping's flagship theme since he assumed office in 2012. Against this backdrop, China has seen the downfall of several powerful party leaders. With the official constitutional establishment of the National Supervision Commission (NSC) in 2018, this drive has reached a new height (Fu, 2020). This entrenchment formally puts the NSC on level with the State Council, Supreme People's Court, and Supreme People's Procuratorate, giving it a strong role inside the state structure. It centralizes and consolidates anti-corruption powers previously dispersed among various agencies, creating a more streamlined and powerful body to investigate and prosecute corrupt officials. The Commission's authority and mandate were further delineated in the 2018 Supervision Law. The NSC has a broader mandate than previous anti-corruption agencies, overseeing a wider range of public officials and institutions. Undoubtedly, the establishment of the NSC is a major step to bolster China's anti-corruption initiatives. It integrates the functions of various anti-corruption bodies, streamlining investigations and enforcement. With the emergence of this potent new entity, the nation's anti-corruption framework underwent a significant shift, strengthening and broadening President Xi's influence beyond Party politics (Li, 2019).

Despite growing scholarly attention, many questions remain unresolved as to independent supervision procedures of this newly introduced body and the emphasis on allegiance to the Party leadership. A thorough examination of the nature and implications of the supervisory reform is necessary in order to grapple with this new and evolving institution. This article makes a contribution to the existing literature on the NSC by giving a synopsis of the legal structure of the supervisory reform and arguing that the establishment of this body departs from the trend of party-state separation since the Dengist era.

The paper will proceed as follows. Section 2 will trace the historical origin of power centralization and the Leninist state model on which the Chinese party-state is premised. It suggests that the ideological turmoil orchestrated by Mao Zedong was the catalyst for post-Mao reforms. Section 3 will analyse Deng Xiaoping's attempts to separate the party and the state as a response to the personal rule. This undertaking bore fruits for China as the country saw rapid economic development. This section will also discuss academic endeavours to conceptualize Chinese-style constitutional developments. Section 4 will present the political background of the supervision system reform, as well as its origins, mandate, structure, and the potential impact it holds for China's political landscape. Section 5 discusses institutional puzzles posed by the institutional novelty. It argues that the 2018 constitutional overhaul has transformed China's supervision system and its institutional relations, representing a paradigm shift. This novelty effectively challenges the previous academic efforts to conceptualize China's constitutional trajectory. While the idea of separating the party from the state was an essential part of political reform plans in the 1980s, it did not materialize. The post-1989 events prompted the party leadership to put reforms on back burner in the interest of regime stability. However, the newly introduced supervision system has reversed this course, demonstrating the merging of the party and the state, as well as the tightening of party grip over governance matters. Concluding remarks will be provided in the last section of the paper.

## **2. Power Centralization as a Defining Feature of the Leninist State Model**

It is no secret that the Soviet constitutional tradition was hostile to the separated powers doctrine that originated in the West. This was also due to the fact that communist scholars perceived this theory as "bourgeois formalism," which hid the bourgeois rulers' oppressive and exploitative character (Osakwe, 1977). Furthermore, Leninists believed that the establishment of the division of powers carried the risk of undermining the communist party's institutionalized, unified vision and position regarding the structure of the state and society (Osakwe, 1977). Lenin adapted Marxist principles, which focused on the working-class revolution against capitalism, to the conditions of early 20th-century Russia. Leninist core tenets include: (i) Vanguard Party: A highly disciplined, centralized party of professional revolutionaries would lead a worker-led overthrow of the existing government; (ii) Democratic Centralism: A hierarchical structure within the party where decisions made at the top were binding on all members<sup>2</sup>; (iii) Dictatorship of the Proletariat: A transitional state

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<sup>2</sup> Democratic centralism is described as "freedom of discussion" and "unity of action." In this system, the election and appointment of leaders and officers as well as decision-making are based on free discussion and then unanimously realized through united action. Simply put, after democratic discussion, an order is issued by the higher authority and shall be observed by all inferiors. The principle first appeared in 1905

would be established after the revolution, led by the communist party, in which power resided with the working class (Brinkley, 1998). Centralizing authority is a top priority for the Leninist state for a number of reasons (Osakwe, 1977; Thornton, 2021). All significant institutions, such as the military, the court system, and the bureaucracy were under party control (Osakwe, 1979).

The critical determinant that drove the PRC toward turmoil was Mao's conservative ideological vision during late 1950s. As a distraction from his waning legitimacy at home, Mao launched an ideological hostility against Nikita Khrushchev, accusing the USSR leader's policies of de-Stalinization and peaceful co-existence with the Western bloc of revisionism and betrayal to the orthodox Marxism – Leninism (Lüthi, 2008). At home, Mao began to merge the Sino – Soviet standoffs with his domestic frictions. In an attempt to realize the Marxist vision, Mao revived the early Stalinist economic model, which was discredited by the USSR, with the Great Leap Forward of 1958-1960, only to suffer the most catastrophic famine in the world's history to which tens of millions lost their lives (Smil, 1999).

In 1966, Mao launched the Great Proletarian Cultural Revolution, a violent socio-political movement claiming to eradicate capitalist remnants and traditional counterrevolutionary elements in China's society (Rothbard, 2010). Suddenly, many reformists found themselves running afoul of Mao's radical ideas. Mao's comrades-in-arms, President Liu Shaoqi and Vice Premier Deng Xiaoping, also fell victim to the Cultural Revolution and were subject to purges; only the latter came out on top of the power hierarchy in the post-Mao era. The death tolls of the Cultural Revolution, now also referred to as the Chinese version of the Holocaust, were estimated at millions until Mao's death in 1976 (Pye, 1986).

The legal reform, unfinished since 1954, began to encounter strong headwinds at the constitutional level. Chinese Premier Zhou Enlai was vocal against the constraining effect of the law on class struggle and advocated that the state should have been able to do whatever it pleased (Chen, 2015). Evidently, this mentality was hegemonic during the Cultural Revolution in 1966–1976 as the extreme leftists took control of the CCP. The dark era witnessed the decimation of virtually all laws, with official news outlets publishing pieces titled “In Praise of Lawlessness” (Pils, 2017). Personal pronouncements and party policies reigned over laws. For clarity, the critical setback did not imply the law and legal institutions vanished into thin air. But the existence of the law in this era must be in line with Leninist class struggle and Mao Zedong Thought. To that end, the overhaul of the 1954 Constitution was initiated to accommodate Mao's need for constitutional flexibility without much constraint on his power (Kim, 1977).

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and then was advanced by the Bolsheviks so as to impose “iron discipline” from above rather than calling for participation from below.

### **3. The Separation of the Party and the State as a Response to the Maoist Personal Rule**

Mao's death in 1976, followed by the purge of the Gang of Four – those notoriously responsible for the excesses of the Cultural Revolution, led to changes in the CCP's leadership and institutions. The lawlessness and its disastrous consequences during the Mao era compelled the CCP to undertake drastic reforms in all spheres of activity. It was suggested in a party document that “the kind of chaotic situation that was obtained in the Cultural Revolution must never be allowed to happen again in any sphere” (Fan, 2016).

In the late 1970s, Deng Xiaoping, a reform-minded leader, outmanoeuvred the party chief Hua Guofeng, and managed to return to the political stage. In repudiating the Cultural Revolution, Deng considered a legalistic approach essential for China's social stability and economic growth (Chen, 2015). A difference between Deng and Mao should be noted. While inclined to “the rule of man,” on several occasions, Mao stressed the need for a legal system. Mao's reference to law coincided with every conclusion of a revolution, and then national development topped his post-revolution agenda (Leng, 1977). His repudiation of the law meant an upcoming “uninterrupted revolution”, serving as a cause to overthrow the old order and establish a new one. Thus, Mao's erratic approach differed from Deng's embracing of legal stability. For Deng, since he was a victim of Mao's revolution, chaos and suffering were too much of a burden to bear; stability and development must therefore take priority. The instrumentalist difference between Mao and Deng should not be overplayed, nonetheless. In Deng's view, the constitution and laws remained a tool of the party to secure and institutionalize “*ad hoc* policies in a universal manner” and to establish “stability and order through state coercive forces for economic development” (Chen, 2015). The reform program delimited the nature and extent of legal transformation (Chen, 2023). In this light, the constitution and laws were not an end in themselves but “the mature form of [the party's] policy” (Foster, 1982; Keller, 1989).

Attempts were made to restore the spirit of the 1954 Constitution, marking the third period of Chinese constitutional development – constitutional afterlife. For reform purposes, Deng Xiaoping was gripped by two concerns. The first was that a denouncement of Mao Zedong's era would jeopardize – rather than stabilize – the feeble nation. The Chinese party-state's legitimacy was intertwined with Mao's personality cult and his legacies. Deng's faction was standing between a rock and a hard place: They could not espouse or ditch Mao's heritage. Deng allowed mild public criticisms of the Cultural Revolution and Mao Zedong. The critics must, however, observe Deng's proposed “Four Cardinal Principles,” under which the leadership of the CCP was indisputable. In Deng's words, Mao was “seven parts good, three parts bad” (Schmidt-Glintzer, 2017); the excesses of the Cultural Revolution were undoubtedly associated with those “three parts.” In so doing, Deng partly detached Mao from the CCP, salvaging the remaining legitimacy of the latter. Another fear that

haunted Deng was the concentration of power into a person's hand, or a group of persons, as witnessed in the lawlessness era. In his report to the CCP's Politburo in August 1980, Deng raised the matter of "preventing the over-concentration of power" to be considered in a constitutional revision. To prevent power abuse and preserve the rule of the CCP, Deng predetermined that the constitutional structure of the pre-Cultural Revolution epoch was more favourable. The 1954 Constitution – the document enacted during the communist apex with the power shared by Mao Zedong, Liu Shaoqi, and Deng Xiaoping – was thus brought back into life, despite different social landscapes (Zhang, 2012).

Over the time, the separation of the party and the state was manifest in various governance aspects. To avoid the personal rule and facilitate peaceful leadership transition, party cadres and government officials were subject to stricter age restrictions and required retirement ages. Moreover, to lessen ideological conflicts, a merit-based system was put in place for assessment of officials' performance during appointments. An evidence of this is Deng's famous saying that "it does not matter whether a cat is black or white, as long as it catches mice" (Simpson & Speake, 2008). The "rule of law" aspiration was also a catalyst (Peerenboom, 2008). Formalizing laws and regulations were pushed through in an effort to reduce reliance on the whims of local party leaders and increase predictability in governance. More autonomy was granted to local and provincial governments over resource management and economic decisions. The tight state-owned economy was eased, making room for the rise of the private sector and the market economy. The goal of those developments was to decouple party control of economic power, personnel appointment, excessive prioritization of loyalty over performance.

Since President Xi Jinping assumed office in 2012, China's state machinery had grown significantly after more than thirty years of state-building efforts. This expansion took two main forms. First, there was an increased level of specialization in State institutions, suggesting a more intricate and distinct bureaucracy (Fu, 2015). Second, the state's legal system that was both comprehensive and self-contained had been established, incorporating the majority of the fundamental elements present in established legal systems (Li, 2019). It is clear that as governmental institutions expand, there would inevitably be an increase in the demand for more freedom and autonomy. Furthermore, it might be assumed that a growing gulf would develop between the party and the state. But the "shared control" paradigm was central to the Party's traditional management of public affairs through state institutions. This model entails indirectly, selectively, and frequently only after the fact influencing decision-making in various organizations. Upon the rise of President Xi, the CCP was facing a serious dilemma.

The co-existence of the party and the state in China's system has prompted heated debates on whether China was moving towards the Western-style constitutionalism. While some held high hope for the prospect of

democratization, others rejected China's constitutional order as having a "constitution without constitutionalism". In the early 2010s, Jiang Shigong and Larry C. Backer engaged in intellectual conversation that gave rise to the concept of "party-state constitutionalism" (Backer, 2009, 2014; Jiang, 2010, 2014). According to Jiang, the Chinese Party-state system upholds the values of the constitution. His reasoning is based on a "non-formalistic" reading of constitutional standards, which includes both the formal constitution and other, more inclusive components. These consist of the Party charter, "constitutional conventions" (the People's Liberation Army, the state, and the Party as the leadership "trinity"), "constitutional doctrine" (which defines the relationship between the central and local governments), and "constitutional statutes" (such as the Hong Kong Basic Law, which was passed in 2010). In order to institutionalize the CCP's position inside a constitutional framework, Backer (2009) supports this viewpoint by arguing in favour of a constitutional court within the party. As a fundamental component of party-state constitutionalism, both scholars stress the division of functions between the Party and the State (Backer, 2014; Jiang, 2014). In this light, Chinese constitutionalism is unique in that the CCP as an institutionalized collective "has principal responsibility for constitutional values – for shaping the form and values substance of the rule of law" (Backer, 2012).

Partially different from Jiang's and Backer's conceptual propositions, Ling Li (2015) constructed a theoretical framework termed the "dual normative system" to elucidate the Chinese Communist Party's assertion and exercise of its prerogatives within the context of state governance, independent of reliance on constitutional provisions. Li's "dual normative system" presents the division in a pragmatic manner instead of implying state autonomy. Backer (2014) and Jiang (2014) see the divide as a symbol of state independence. According to Jiang (2014), the Party wields its power through "indirect and flexible governance," with the State taking direct actions. The Party serves as a governing body within "Chinese-style constitutionalism," providing the State with "substantive political values and norms." The Party has committed to the State's upholding of the rule of law (Jiang, 2014).

Li's framework contrasts with the orthodox constitutional approach, wherein the Party would formally codify its prerogatives within the constitution to ensure their preservation (Li, 2015). It is suggested that the CCP maintains a "prerogative state" through the confluence of four key institutional mechanisms: (i) The Party and State are deeply intertwined, blurring the lines between their respective functions; (ii) The State cedes a degree of authority to the Party, implying a level of inherent sovereignty on the part of the Party; (iii) Decision-making within state institutions is divided, allowing the Party to exert influence at critical junctures; (iv) The Party and State operate under distinct sets of norms and principles, enabling the Party to prioritize its own objectives when necessary (Li, 2015).

The Party and the state are integrated through a complicated interaction in which Party institutions coexist with state institutions but maintain their separate identities. Party institutions follow the Party's normative framework only with their structure and operations outlined in the Party charter, while the state's legitimacy flows from different sources. The national constitution provides guiding principles, mandates, organization and operation rules for state institutions. State laws are passed by the people's congresses and upheld by people's courts, whose judges are chosen by the same bodies. Despite their autonomy, the Party and state systems are integrated into a power structure that grants the Party direct influence over state decision-making processes (Li, 2015). This intricate relationship underscores the unique nature of the Chinese political system.

This bifurcation makes it easier for two different normative systems to coexist. On the one hand, Party normative system establishes power structures and implements Party policies that are upheld by disciplinary organizations within the Party. It controls the Party-state domain. On the other, State normative system controls social and economic activities within the state-society domain. State laws provide the foundation for regulation, which is upheld by the state legal system (Li, 2015). Due to Party approval of state laws, they are normally compatible; but, when Party interests and state laws diverge, problems may arise. In these cases, the Party normative system—which functions in an opaque manner in parallel with the more transparent state decision-making process—retains ultimate authority. This division is used to hide possible conflicts between the Party and the government (Li, 2015). Unlike other one-party systems, its design encourages a Party-state normative structure that is more intricate, flexible, and even resilient (Dimitrov, 2013; Li, 2021).

#### **4. Tightening Party Grip: The Rise of Supervisory Power**

Prior to the supervision reform, China was known for having “more anti-corruption agencies than any other nation globally” (Li et al., 2017). These agencies encompassed the CCP's Central Committee Discipline Inspection (CCDI), the Ministry of Supervision (MOS) as a constituent of the State Council, and the Supreme People's Procuratorate and Court. In other words, anti-graft work was divided between the CCP and the state with the CCDI as the lead (Horsley, 2018). The MOS had authority over non-party members within the civil service, including investigation of allegations pertaining to graft, misappropriation of public funds, and other violations of professional conduct (Bian, 2023). The Supreme People's Procuratorate maintained specialized departments tasked with the investigation of diverse forms of corruption and official misconduct. Meanwhile, the function of the State Council's National Bureau of Corruption Prevention was mostly advisory and coordinative. In general, each of these agencies had equivalent entities at the provincial, municipal, and county levels. Consequently, the Chinese supervisory model could be characterized as a ‘troika’ system (Li et al., 2017).

The CCP's disciplinary system places great emphasis on the authority to launch and manage disciplinary investigations, since this has a substantial bearing on the results of any subsequent disciplinary proceedings. As observed by Li Ling (2021), the creation and operation of the CCDI and its local manifestation – Commissions of Discipline and Inspection (CDIs) – during 1949–1954 gave the CCP the exclusive authority to look into claims of disciplinary offenses made by any civil servant, regardless of party affiliation. This monopoly continued with the Party Supervisory Committee replacing the CCDI during 1955–1966. It was only put to a halt in the post-Cultural Revolution era when the CCP embarked on a state-building process since 1978 (Li, 2021). Since the mid-1970s, the CCDI and its regional and local CDIs were re-established at all administrative levels and in grassroots party organizations, alongside with many party regulations and directives on disciplinary work and procedures being introduced. Nevertheless, it should be emphasised that the CCDI did not enjoy supervisory authority outside the CCP circle.

Instead, as a result of the CCP's endorsement of state authority in national governance and its strategic promotion of an independent state legal system under the rule of law, the People's Procuratorates and MOS were restored in the late 1970s and 1980s, respectively. In 1993, the CCDI began 'office sharing' with the MOS, allowing the them to share both the operational resources and legal authorities of the latter (Fu, 2020). But the MOS and the People's Procuratorates retained a certain degree of institutional independence. On the one hand, state institutions could independently legitimise their actions due to authorisation by state laws. On the other, this separation allowed the CCP to borrow state authority from the MOS to legitimize disciplinary actions against non-party officials who were outside the CCP's disciplinary authority. However, since a large proportion of civil servants were party members, the jurisdiction of the procuracy and the CCDI overlap. This means that the procuracy, as a state agency, had the right to investigate crimes committed by party members independently of the CCDI. As for investigations conducted by the procuracy, the CCDI could only control indirectly and selectively through a general control approach to maintain the nominal independence of state agencies. In practice, procuratorates were required to share investigative leads and coordinate their investigative activities with the local Commissions for Discipline Inspection (CDIs), which they often did. This did not, however, change the reality that the CCP was no longer the only entity with the authority to look into disciplinary offenses taken by Party members (Li & Zhou, 2019). The institutional reach of procuratorates grew along with the extent and intensity of corruption during the post-Mao state-building era. It became increasingly laborious for the CCP to direct the investigation and shape its conclusions as the procuratorates' authority and resources grew (Li, 2021). While this may not have led to a decisive loss of control for the CCP, given the prevalence of Party members in public offices, it became clear that the state continued to expand its authority at the expense of the Party system.

The legitimacy of the coercive investigative measures employed by the Party began to be subjected to strict scrutiny. In the 1990s, the CDIs were authorised by the CCP to enforce coercive measures to investigate corruption-related disciplinary infractions committed by public officials. These measures encompassed the solitary confinement of suspects for an extended period without judicial authorization (commonly referred to as *shuanggui*), search and seizure, and the freezing and confiscation of assets (Keller, 2009; Li, 2016). None of these measures received any form of authorisation from the state, leading to frequent challenges regarding their legality (Clarke, 2020). The friction surrounding the legitimacy of *shuanggui* grew as the CCP emphasized its declared commitment to a law-based governance system (Backer, 2012) and a significant increase in awareness of rights protection over time (Nguyen & Viola, 2022). This entangled complexity encircled the CCP. On the one hand, it became harder for resorting to coercion under the banner of the rule of law, since that was the responsibility of specific state agencies in accordance with the constitutional values to which the CCP had declared to commit. On the other hand, as corruption became more localised and clandestine, the CCP became reliant on *shuanggui* to extract confessions from suspects, which were subsequently used as evidence of guilt in courts (Fu, 2015). Without *shuanggui*, the CCP's entire disciplinary regime would be rendered ineffective and powerless (Li, 2021). It may be said that while the CCP was aware of the murky constitutionality of *shuanggui*, its practical perks outweigh the concerns.

Departing from the previous trajectory, General Secretary of the CCP and State President, Xi Jinping, intensified efforts to bolster party authority over the government. This decision was made out of concern that if the gap between the party and the state continued to widen, it would eventually bring about the collapse of the Chinese party-state (Li, 2021), as was the case in the former USSR. Against this backdrop, President Xi unveiled his historic anti-corruption drive and “supervision institutional reform,” which was unprecedented in terms of its length, breadth, and scope (Deng, 2018). The emergence of the NSC should not be divorced from the political landscape in which state organs are progressively integrated into the political apparatus of the Party (Fu, 2020).

The supervision reform aimed not only to legitimise the Party's coercive investigative measures but also to enable the Party to incorporate the anti-corruption agencies under the auspices of the CCDI. This move was anticipated to encounter resistance from both legal critics and the procuratorates (Deng, 2018). To alleviate this resistance, the reform was initially introduced as experimental pilot programs in three provinces, which largely went unnoticed by critics and observers (Reuters, 2017). This preliminary phase lasted for one year before the Party declared its successful completion and commenced nationwide implementation of the reform at the end of 2017. The implementation was executed in the form of an enforcement campaign, where directives were sent directly to the leaders of Party committees at all administrative levels. These individuals were tasked with executing the reform

plan akin to a military mission within a span of three months. As expected, the NSC was inaugurated in March 2018 as per schedule, signifying the success of the pilot scheme (Li, 2021).

In realizing the supervisory reform, a new section entitled “Supervisory Commissions,” was added to Chapter III “The Structure of the State of the PRC Constitution through the 2018 constitutional amendment. This section outlines an overview of the basic features of the supervisory system, with the specifics to be elaborated in a separate legislative document, the Supervision Law of 2018.

While the 2018 Law essentially restates and expands upon the fundamental ideas found in the Constitution, it offers crucial details regarding the functioning of supervisory bodies. Article 123 of the Constitution characterises supervisory commissions as ‘the supervisory organs of the State’. These commissions are established at various local levels, with the NSC serving as the highest supervisory organ. Each commission is composed of a chairman, several vice-chairmen, and members, with the chairman’s term of office aligning with that of the people’s congress at the corresponding level. Article 127 of the Constitution is significant in that it establishes two fundamental principles: the independent exercise of supervisory power and cooperation and mutual checks with judicial, procuratorial, and law enforcement organs.

As is customary for party and state organs in China, both vertical and horizontal lines of authority were established. Vertically, higher-level commissions oversee the work of those at lower levels, with local commissions being accountable to the immediately higher level. Horizontally, local commissions are also created by and answerable to the people’s congress at the corresponding level. Interestingly, Chapter VII of the Supervision Law establishes the system for monitoring the supervisory system, which implies that the constitution drafters had given full consideration to the thorny question of “the ultimate guardian.” In addition, Chapter VIII of the Law lays out the legal ramifications and corrective actions for violating this Law, whether those in charge of supervising others or supervisory organs and staff themselves. The emergence of the NSC is significant in three aspects.

Firstly, the NSC has evolved into an autonomous branch of the state, equalling the state legislature, the State Council, the Supreme People’s Court, and the Supreme People’s Procuratorate in rank. As a result, the supervisory purview of this body is widened both in subject and scope (Lin, 2019). On the one hand, as Zhang and Ginsburg argue, the Supervision Commission’s inception can smooth the path for “more frequent, predictable, and procedurally transparent” investigations on anti-corruption with constitutional authorization (Zhang & Ginsburg, 2019). On the other, the body’s creation denotes the CCP’s cognizance of the unconstitutionality of its practice – “zone of lawlessness” in Flora Sapio’s words (Sapio, 2010) – and efforts to bring it in line with the basic law. This seems to honour Xi’s promise on the relevance of the constitution.

Nonetheless, a counterargument can be that by constitutionalizing the unconstitutionality, the CCP actually operates above the law, which makes it a typical example of “rule by law” instead of law (Lin, 2019).

Moreover, the Supervision Law expands the discretion of this body by annexing the anti-corruption units and their functions. The new system has assimilated the mandate and human resources of three crucial anti-corruption units of the procuratorates – the Anti-Embezzlement and Bribery Bureau, the Bureau of Anti-Dereliction and Rights Infringement, and the Crime Prevention Bureau Concerning Public Duty-Related Offenses. In accordance with the previous office-sharing practice between the CCDI and the MOS, the supervision commissions now share all their operational resources and legal authorisations. This signifies that the reform has accomplished three significant objectives in one move: to re-establish the Party’s exclusive control over the entire process of investigation of disciplinary violations of Party members, to broaden the scope of the Party’s investigative power to public employees who are not Party members, and to legitimise the Party’s application of coercive measures in its disciplinary investigations. This approach is known as “regurgitation” in order to maintain or regain the CCP’s authority over the government (Li, 2021). This procedure entails first cultivating the state and then pressuring the state to provide its resources to the party through the office-sharing mechanism. By doing this, the CCP can preserve a minimal level of structural coherence within the state system while also enhancing the effectiveness of the chain of command that emanates from its own power centre. This institutional arrangement indicates a fusion of the party and state organs, diverging from China’s separation of the party and the state in Deng Xiaoping’s era (Fu, 2020).

Secondly, it gives way for the controversial coercive measures *shuanggui*, now known as *liuzhi* (Fu, 2020). Article 22 of the Supervision Law allows supervisory organs to detain a suspect pending further investigation under in the following circumstances: (i) the case is major or complex; (ii) the suspect may escape or commit suicide; (iii) the suspect may make a false confession in collusion or forge, conceal, or destroy evidence; or (iv) the suspect may engage in other behaviour that obstructs investigation. Certain procedural constraints have been introduced. Article 43 of the Supervision Law stipulates that obtaining the required approval is a prerequisite to implementing the detention procedure. For record-keeping purposes, supervisory commissions operating at the provincial level only need to submit a report to the NSC; supervisory entities operating at or below the district-city level, however, must obtain approval from their designated immediate superior organ. Additionally, Article 43 of the Supervision Law regulates the length of the detention procedure. The term is often limited to a duration of three months. This period may be extended by an extra three months under extraordinary circumstances, which must require permission from the higher-level supervisory body. A conspicuous concern that emerges is the absence of any

provision for the entitlement to legal representation during the detention phase. The official rationale appears to be that pre-trial detention is a supervisory measure, distinct from the formal legal proceedings (Lee, 2023). Consequently, the provision for the right to legal representation, as stipulated under the Criminal Procedure Law, would only become relevant once the case is forwarded to the procuratorate for prosecution. This situation underscores the inherent tension between the parallel structures of the supervisory system and the legal system, and contradicts academic suggestions in China (Fu, 2020; Lee, 2023).

Thirdly, the NSC is generally characterized as enjoying “comprehensive substantive powers with weak procedural limits” (Bian, 2021). Significantly, this body is endowed with the power to legislate, interpret and supervise all supervision-related regulations, which stands in stark contrast to the doctrine of separated power (Bian, 2021). It casts doubt on what genre of rule of law China is building since such centralization of potent powers goes against the doctrine of separation of power. By and large, the newly adopted body would have a considerable impact on China's constitutional structure, the relationship between state powers, and the party-state relationship.

#### **5. Institutional Puzzles: The National Supervision Commission in the Party-State System**

The emergence of the NSC has raised fundamental questions on the party-state structure and the allocation of state power. The first institutional puzzle lies in the relationship between the NSC and the People's Congress system and other state bodies. Supervisory organs, like other branches of state power, are accountable to the people's congresses that established them and to the supervisory commissions at the next higher level. The National People's Congress (NPC) – a supreme state body akin to legislatures in other political systems (Partlett & Ip, 2016), and its standing committee have the power to appoint and remove the Chairman and members of the NSC, and to oversee its work. The NPC and local People's Congresses, established through democratic elections and accountable to the people, are the medium through which the people exercise state power. All administrative, supervisory, judicial, and procuratorial organs are created by, responsible to, and overseen by the People's Congresses.

According to Article 15(1) of the Supervision Law, however, the supervisory commissions are intended to supervise all public officials. This may include personnel of the People's Congresses and their standing committees. In other words, the NSC's mandate to supervise virtually all state bodies including the National People's Congress – the supreme power – seems to suggest that its actual status surpasses that of these institutions (Horsley, 2018). The circular supervisory mechanism has sparked debate among scholars about whether this supervision should extend to deputies of the NPC and local people's congresses (Lee, 2023). The People's Congresses' oversight of supervisory commissions is similar to their supervision of other state organs

and is essential given the substantial powers of the supervisory organs. The Supervision Law mandates that supervisory commissions accept oversight from people's congresses at the corresponding level and establishes mechanisms for this oversight. However, unlike other state organs, supervisory organs are only required to deliver special work reports, not general reports on their work (Lee, 2023). This reflects the unique dynamics in the institutional relationship between the two branches.

The relationship between supervisory commissions and other state bodies should also garner scholarly attention. Article 127 of the Constitution establishes the principles of independent exercise of supervisory power and mutual cooperation and checks between supervisory commissions and other organs. As observed by Lee (2023), supervisory commissions are seen as broadly analogous to courts and procuratorates, requiring a level of institutional independence and cooperation with other state organs. Due to efforts to strengthen the CCDI's vertical control over the party disciplinary system, the supervisory commissions are expected to attain a certain degree of institutional independence. The current regulations governing the interactions between procuratorates, courts, and public security organs serve as the basis for the concept of "mutual checks and cooperation" between supervisory commissions and other organs. However, because public security agencies hold a dominant position, there is an imbalance of power that results in a system that is investigation-oriented and provides no protection against police power abuse.

The dynamics between supervisory commissions and other state branches such as courts and procuratorates could be asymmetrical due to the former's alignment with the powerful party disciplinary system (Lee, 2023). As observed by Fu Hualing (2020), the early attempts to legalise the NSC made clear that this body would not be subject to regular legal or judicial constraints during its investigations, but function independently. Ultimately, the argument advanced was that the NSC was answerable to National People's Congress as a "political organ," but it is not constrained by other legal obligations or outside accountability frameworks.

Cooperation with other state organs is crucial for successful anti-corruption enforcement (Lee, 2023). According to the Supervision Law, during an investigation, supervisory organs may turn to public security organs for assistance. Even though they no longer have the investigative power to look into corruption allegations, procuratorates are still in charge of reviewing the evidence provided by oversight bodies and making the decision to file charges. The law does, however, also stress the need of supervisory organs in the management of instances involving corruption and other offenses related to official duties. There is a possibility that the supervisory-party disciplinary system will take centre stage in processing corruption cases, which might make it more difficult for other state agencies to carry out their own duties autonomously and to provide significant checks on its authority. Constitutional law scholar Qin Qianhong (2023) has warned against overemphasizing mutual

cooperation at the expense of mutual checks and the emergence of “supervision-centrism,” advocating for the reaffirmation of “trial-centrism” in relation to cases handled by supervisory organs.

The supervision reform's impact on the nature and system of administrative supervision is also a key consideration (Lee, 2023; Li, 2019). With the formal abolition of the MOS and the repeal of the Administrative Supervision Law, the supervisory commissions, established under the new Supervision Law, are inferred to take over the previously internal function of administrative supervision. This is consistent with the overarching goal of developing a single, centralized supervisory framework. The earlier definition of administrative supervision, on the other hand, was broader in scope and addressed topics other than clean government and administrative discipline which fall under the mandate of the NSC. With supervisory commissions primarily focusing on anti-corruption work, the supervisory reform has been characterised as an “incomplete consolidation of the function of administrative supervision,” failing to cover other pressing needs such as law enforcement supervision and efficiency supervision (Lee, 2023). It remains uncertain how these remaining functions will be performed, possibly by other existing administrative organs, and whether this would lead to a general re-conceptualisation of administrative supervision.

Another institutional enigma rests with party-state relations. China's political regime is characterized by the co-existence and parallel operation of both party and state institutions. The supervision reform, therefore, needs to be considered in terms of its impact on the entire party-state, especially given the significant role played by party organs in the new institutional design. In contrast to an autonomous entity capable of independent political action, the NSC has effectively been absorbed by the CCDI, diminishing its role to that of a subordinate partner (Fu, 2020). Primarily defined as a “political organ” under the CCDI, the NSC lacks an independent Party group, a characteristic typical of state organs in China. The NSC is thoroughly incorporated into the CCP infrastructure and functions as a subordinate body within the CCDI framework, notwithstanding its constitutional legality (Fu, 2020). There is no mistaking this subordination in the leadership hierarchy. Zhao Leji is a member of the Politburo Standing Committee and the CCDI's secretary as well as the NSC's commissioner. Yang Xiaodu, the CCDI's deputy secretary, became the first chairperson of the NSC during 2018-2023. In a similar vein, Liu Jinguo, the incumbent head of NSC since 2023, has also served as the CCDI's deputy secretary. At the provincial level, where the same people frequently serve as both the Commissioner of the Supervision Commission and the Secretary of the CDI, the NSC's institutional subordination to the latter is rarely reproduced (Fu, 2020). This arrangement, which extends from the highest level of the NSC and the CCDI to local levels, aims to facilitate mutual reinforcement between the two systems.

A key feature of the supervision reform is the ‘joint office’ arrangement between supervision commissions and CDIs, allowing them to remain separate entities in name but share the same office and work closely together. The CDIs and the supervision system share offices, personnel, legal powers, and even websites, with the CCDI’s leadership and dominance openly displayed. The new institutional design elevates supervisory organs to the status of a separate branch of constitutional organs, creating a more powerful partner for the CDI system. With this important source of support and authority, it empowers the new body to command respect and obedience from other institutional actors. Overall, the concentration of power in the conjoined system of party disciplinary and supervisory organs aligns with the objective of creating a unitary, effective, and authoritative anti-corruption institution. This likely contributes to addressing the weaknesses of the previous dual-track system and enhancing the effectiveness of anti-corruption work (Fu, 2020; Li, 2021).

Complex challenges emerge in China as a consequence of the strong relationship between party and state organs. At the outset, party discipline is enforced by the CDIs in accordance with the Party Charter and a substantial body of Party norms and regulations, which are separate from and in addition to national legislation. However, the “joint office” arrangement with supervisory organs after the supervisory reform means that CDIs would also become involved in enforcing national laws and transferring criminal cases to the formal legal system. This could blur the boundary between party regulations and national laws, and potentially conflate the roles of supervisory and disciplinary inspection organs in enforcing the relevant regulatory framework. The Supervision Law empowers supervisory organs to issue ‘governmental sanctions’ against public officials who violate the law, a power now fully legalized under the Law on Governmental Sanctions for Public Officials 2020. It is necessary to maintain a clear boundary between party discipline and national laws, but also to establish a proper link between the two systems, as well as between the supervisory system and the formal legal system. This complex issue has been a topic of discussion among Chinese scholars.

The integration of the party disciplinary system into the state structure, facilitated by a prominent constitutional amendment and the establishment of a corresponding branch of state organs, signifies a marked departure from the principle of separation. This shift underscores the Party’s intent to assume a more conspicuous role in state affairs and reaffirm Party leadership. Indeed, the collaboration between supervisory commissions and CDIs is merely the most visible aspect of a broader trend of institutional reforms under President Xi’s leadership, where party organs have assumed the functions of state organs across all domains. These developments, along with the incorporation of the principle of Party leadership into the PRC Constitution through the 2018 amendments, suggest an unprecedented intertwining of the Party and the state apparatus since 1978. This raises questions about the continued relevance of

the separation between political and administrative power, as proposed by Jiang and Backer, in the context of the Chinese-style constitutionalism.

China's institutional novelty challenges the theories of Chinese-style constitutionalism. With the fused functions of the Supervision Commission in both the CCP and state system, the core separation of the party and the state is no longer sustained. This body reflects a conflation of both the party apparatus and the state apparatus. The institutional reform since 2018 continues the trend of merging administrative and party organs (Lin, 2019), posing a challenge to theories that justify the China model based on the party-state separation.

## **6. Conclusion**

The intricate dynamics influencing the relationship between the CCP and the government have been examined in this essay. We looked at the Leninist paradigm as the source of centralized authority and how Mao Zedong's upheavals sparked post-Mao reforms. Despite Deng Xiaoping's efforts to differentiate between the functions of the party and the state, this division ultimately turned out to be flimsy, particularly in the wake of the 1989 events. However, the recent constitutional overhaul of the monitoring system represents a watershed. The establishment of the NSC in China marks a significant departure from the Deng Xiaoping-era reforms that sought to separate the CCP and state functions. This institutional shift is not merely a structural change but a paradigm shift that will produce profound implications for China's political landscape. The NSC's integration into the state apparatus, coupled with its close ties to the CCP's discipline inspection system, signifies a consolidation of Party power and a blurring of the lines between Party and state.

On the academic front, this development challenges the conventional understanding of 'party-state separation' and necessitates a re-evaluation of the theoretical frameworks used to analyse China's evolving political system. The NSC's emergence as a powerful supervisory body with a broad mandate and the authority to employ coercive measures raises concerns about the balance of power within the state and the potential for unchecked authority. While the NSC's establishment may be seen as a response to the challenges of corruption and the need for effective governance, its implications for the rule of law and the protection of individual rights warrant thorough scrutiny. The fusion of Party and state functions within the NSC represents a significant departure from the trajectory of political reform envisioned by Deng Xiaoping. It underscores the CCP's determination to maintain its dominance over all aspects of governance and challenges the notion of a gradual separation between the Party and the state. Further research is essential to grasp the profound implications of this paradigm shift and how it will reshape China's political landscape long-term.

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