

THE RULE OF LAW IS NOT ENOUGH GOVERNMENT PATHOLOGIES AND INSTITUTIONAL SAFEGUARDS AGAINST THEM

Charles F. Bingman, Johns Hopkins University

PART I: PERVERSE POLITICS

One of the most fundamental and cherished concepts advocated for any government is that “rightness” should be defined by the “rule of law”; that is, the basic design and operations of governments as stated in constitutions, enacted laws, the enduring structure of the national justice system, a body of common laws and precedents, and a legal structure of governments in which the powers and authorities are both authorized and limited.¹ Citizen’s rights are protected and their obligations defined under these laws, and usually include the right to take legal action to protect themselves. The rule of law has long been considered as the principal means by which governments are kept within proper limits. Even totalitarian governments attempt to hide their arbitrary motives by issuing finely worded constitutions that appear to guarantee a rule of law but that in reality are doomed to be disregarded at the pleasure of the State.

The rule of law is intended to state those roles of government that citizens will accept, and to define what governments may not do. In most countries there is an attempt to create the comfortable feeling that, if only the rule of law is followed, all will be well. But the greatest single source of centrist power is the argument that the good of the individual must be sacrificed for the “good of the State” and that only the State is capable of defining its own good. The right to define “goodness” is reserved (or usurped) by the government. Such definitions are almost always framed by some doctrine that is enunciated, defended and rigidly enforced. In so many cases, this defining doctrine is one calling for a centrist control of power which can be exercised for any purpose without serious constraint. Restraint mechanisms, where they exist, are viewed by tyrants as threats that must be eliminated, frustrated, subverted, co-opted or simply ignored.

The phrase “rule of law” is attributed to Albert V. Dicey, and English jurist and scholar, who wrote in 1855 that “Law and order exists where the rule of law is obeyed; everyone is equal before the law and there should be no arbitrary or discretionary power exercised.” He further stated however that “the rule of law is not to be confused with democracy, justice, equality

Charles F. Bingman spent 30 years as a U. S. government official in NASA, the Transportation Department and the Executive Office of the President, and he has since taught public management at the George Washington University and the Johns Hopkins U. Washington Center. He has undertaken consulting assignments in more than a dozen countries including China. His most recent book is “Why Governments Go Wrong”, iUniverse, 2006.

¹ Concept of the supremacy of regular, as opposed to arbitrary, power; c. the exercise of these powers by those in authority; d. the doctrine that any person is subject to the ordinary laws of the region; e. the As used in this paper, the rule of law is: a. A set of substantive legal principles and laws; b. the doctrine that the general constitutional/legal principles are the result of judicial decisions determining the rights of private individuals in the courts.

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human rights or respect for persons, or for the dignity of man. The rule of law has no moral content.”²

The rule of law concept can be flawed because it rests on the often invalid assumption that the laws and the legal systems they define are themselves good and proper. But even in the best of governments it is becoming increasingly apparent that keeping the laws good and proper is an enormously complex and sophisticated process. In many countries these protections have never reached a safe level of development. Instead the laws themselves are perverted and made to work against the very citizens they are supposed to protect. Anything – any pathological, corrupt, perverse, outrageous and dysfunctional thing – can and has been made legal and the “law of the land.” Pathological politics has proved time and time again that it can frustrate the intent of the rule of law and turn it upside down. When corrupt or pathological laws are enacted, then the whole justice system becomes an instrument for the enforcement of pathologies. Thus, governments have created a great dilemma in which the forces from which citizens need protection are not other elements of society but the State itself, and from this power there is little or no recourse.

Further, the implementation of the body of laws can be ignored, perverted or made dysfunctional. Many legislative bodies contribute to this problem by enacting thousands of laws that are murky, contradictory, pointless or unenforceable. Often, these laws are enacted merely to achieve some short term political visibility and to persuade the public that their political leaders have “solved” some public problem. Prosecutors, law enforcement officials, defense attorneys and the public are faced with a vague and often dysfunctional body of laws that are fully understood by nobody, including those who enacted them. Meanwhile, those who want to be tyrannical or corrupt are able to penetrate the legal system at will, selecting laws and regulations that serve their pathological purposes. For the corrupt official, the laws can be “selectively” enforced. Laws that protect the public or restrain corruption are simply ignored, while others can be enacted to feed any form of pathology. Laws and regulations become the instruments of tyranny and are used to punish one’s enemies and to protect one’s own corrupt actions. Laws and regulations are slanted by skewed interpretation, and by clever manipulation behind the scenes and out of public scrutiny.

In summary, legal systems all over the world are proving to be poorly designed and wholly inadequate to deal even with legally defined corruption much less with the more sophisticated pathologies that politicians get into the laws themselves. What can be done against bad public policy or a corrupt ministerial practice when it is fully legal and enforceable? Standards for legal proof are very stringent to today’s legal climate, and it is difficult to prove much of anything, much less with serious crimes that have been skillfully concealed or which can hide behind the law itself. The law enforcement system can easily be frustrated at every step, from the gathering of evidence by law officers to the fumbling of ineffective prosecutors to the creakiness of an outmoded court system to clever legal blocking maneuvers in the court room. The emphasis in the U. S. legal system for the last half century has been away from understanding “justice” to an emphasis on the simplistic concept that if the right procedures are followed, the outcome will be just.

² Dicey, Albert V., “Law and Constitution”, 1885.

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Further, this ponderous apparatus is, in most countries, so complex and poorly functioning that it is too costly and too time-consuming for average persons or smaller organizations to use. When the government or its cronies are able to use the legal system to protect their own corruption, to attack them in court becomes actually dangerous, either because opponents can be threatened and intimidated or simply because there is such a high likelihood that the “good guys” will lose. Public prosecutors may suffer from the same problems, and often refrain from pursuing their official responsibilities either because they are afraid or because they would be wasting their time. The ultimate insult in some countries is that courts and judges also become corrupt, selling verdicts to the highest bidder, either in terms of money or votes.

All of this is extremely frustrating. It often seems as the poet William Butler Yeats put it that “the best lack all conviction and the worst are full of passionate intensity”. If it is obvious, as in so many countries, that their legal system must be reformed and upgraded, it is far less clear where the skill and courage will come from to undertake the effort. Obviously it will never come where governments are pathological and corrupt. Nor will it happen where governments, even if honest, are too weak or incompetent. Reform must come from within the legal profession itself and from politically active elements in the country. But this means that these forces must rise above their present self-interest in the system that sustains them, corrupt or honest. With lawyers contributing so much money to political campaigns, it is unlikely that lawyer-filled legislatures will be seized by motives for reform.

In the real present world, politicians give speeches saying that all will be well with a return to “the rule of law”. But there is also a more realistic recognition that the rule of law is not enough and that its reform is remote if not impossible, and that society has to learn better ways to protect the legal base from perversion or to find ways to work around it. The distilled argument is this: what can be done to resist a tyrant who perverts the law for pathological purposes? In many countries service in the legislature or the courts is a high risk occupation.

In China, the concept of the rule of law is largely rejected for many reasons. First, it is rejected simply because it is viewed as a potential constraint on the unfettered exercise of political authority. It is also opposed by an old guard of the political elite who prefer the concept of all decisions being made by the good and wise Party. Others argue that China is so huge and diverse that no finite body of laws is even feasible. Another line of reasoning is that the rule of law concept would require such an enormous and complex body of new laws that it would take decades to be drafted and debated. Those new laws that are being drafted now deal primarily with the Party’s two top priorities of economic development and government anti-corruption reforms. And even these have been emerging slowly over the past 20 years and are by no means completed.

The rule of law concept is also tangled up in the web of conflicts over intergovernmental relations. China is now re-defining the distribution of authority between the central government and the governments of provinces, townships, villages and municipalities. This confusion then becomes a reason (or an excuse) to defer any second level clarification of rules to define government authorities and obligations. This is especially true since the central government, in excusing its own culpabilities, tends to lay the blame on local government officials for the scandalous record of government corruption.

The Pathologies of Governments

Every form of government ever invented has proved highly vulnerable to a wide of range of what can be termed “pathological” behavior. In the dictionary sense, pathology is defined as “conditions of abnormality and/or deviations from propriety or the normal state of things.” Pathological means diseased. When applied to governments, this concept means a government that is malfunctioning and abnormal – based on some definition of what is healthy and normal. One of the diseases of pathological governments is corruption. Here the test is primarily a legal one: corruption is defined as an illegal act in violation of duty, induced by improper means. In government it involves deriving personal and private gain from the exercise of official duty, or acts by which others induce government officials to act illegally in violation of duty. But even if corruption were eliminated, it is the premise of this article that there is an extraordinary range of other ways in which governments can be pathological. Any given failure of governments may come about from honest error or insufficient understanding or mere incompetence, and is not necessarily pathological. But there are some valuable practical “indicators” that distinguish pathological behavior:

1. If the law is broken. This is the acid test for corruption.
2. If the intent of a policy or action is pathological – the deliberate sacrifice of the general national well-being in favor of improper self interest.
3. Where, in the face of convincing failure or impropriety, the leadership chooses to ignore the evidence.
4. Where the leadership is incapable or unwilling to admit and correct mistakes, either to avoid negative political consequences or to conceal incompetence or corruption.
5. Where the rule of law is persistently ignored, violated or manipulated for perverse motives.
6. Where professional knowledge about “how to do it right” exists – but is not utilized; where knowledge of best management practices is ignored.
7. If the body of regulations of the government has, either deliberately or incompetently becomes oppressive, excessive or unfairly, ineptly or corruptly enforced.
8. Where the government refuses deliberately or incompetently to make clear how the powers of government are exercised, who is responsible for decisions, who benefits, and what the limits of government authority are.
9. Where corruption is widespread and efforts to prevent or curb it are deliberately inadequate.
10. Where the control of money – both revenues and expenditures – is deliberately or incompetently vague, inadequate or obscured, and where adequate preventative measures for financial management have not been developed.

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The following summary lists and categorizes what the author believes to be the major forms of government pathologies. Obviously any action of government may be either proper or pathological.

A. Pathological Economic Policies and Practices

All governments exert some degree of control or modulation of the national economic condition. There is no such thing as a “pure” private sector; every country is a combination of private and public sector power. In the past, the classic contrast has been the USSR, with almost total public sector control of both the economy and society. The same conditions were true in the first 35 years of the People’s Republic of China. The contrasting system has been the United States where the public sector stayed largely out of the economy, but exerts a substantial presence in the social service elements of society.

The majority of governments in the post World War II era turned to some form of economic socialism. Soviet-style governments including China adapted a highly centralized “command and control” style of government – a style which involved control of most important elements of the economy through direct state ownership where all but the smallest economic units were managed by state owned enterprises, supervised by central government ministries, and controlled ultimately by the reigning communist parties.

Many other countries around the world, especially those newly emerging from former colonial empires, adopted socialist government committed to a dominant public sector which was highly centrist in character. Most adopted the use of the state owned enterprise (SOE), and almost all were heavily committed to national central government control of the economy – either all of it, or what is called the “commanding heights” of the economy.³ These governments varied much in structure and policy, but it is important to recognize that the compelling element of all was a commitment to public sector economic control and direction.

It is now clear that this dominant centrist public sector control of economies is recognized as a failing experience, or at least one that has been markedly less productive than market based economies. Countries all over the world are retreating from this model, including – one might say especially – the People’s Republic of China. In the long and highly complex debate following WW II, the public sector school seemed triumphant. Socialist doctrine, buttressed by an often legitimate distrust of the private sector and the perceived failures of the market place during the Great Depression defined governments intended to control the national economy through a new set of government institutions. On the other side have been advocates of a market based economy largely controlled by private sector institutions and relatively free of state economic control. Somehow, this voice was rarely heard outside of certain economic circles and it seldom appeared in scholarly journals of political science and public administration in the 1950s and 60s.

³ The phrase is attributed to V. I. Lenin in the Communist International Congress in 1922. He sought to avoid total ownership of all productive elements and argued instead for ownership only of “the commanding heights” or most critical and controlling elements of the Soviet economy. See Yergin and Stanislaw, The Commanding Heights, New York; Simon and Schuster, 1998.

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The collapse of the Soviet Union was more than an internal political failure. It was a powerful lesson about the failures of centrist economic control and public sector domination of economic management and development. Further, it showed how the failure of state economic socialism had denied the realities of the growing globalization of economic forces, leaving closed economies in a shambles; obsolete and far behind accelerating economic sophistication elsewhere. State direction of the economy simply did not work very effectively.

What is far less understood has been the fact that the theory of highly centrist and often elitist governments with powerful economic apparatus under their control proved to be the ideal justification for tyrannical and pathological government. Governments could and did write laws to control the economy. They were less successful in designing institutions to control the abuses of this centrist authority. Even where protective institutions and systems were adopted, they proved too weak to protect even their own integrity. Many forms of economic pathology emerged, and the very tools of economic control became the tools of corruption. Tax laws were rewritten, usually in the name of “economic development” to provide for regime allies waivers of taxes, and special relief for such things as foreign earnings, capital improvements, asset depreciation or certain forms of labor redundancy costs. These tools became pathological when they were deliberately designed to favor ruling elites, the political supporters of the elite, or those who were able to corrupt the system for personal gain.

This economic pathology has been practiced at the broadest possible level. Whole economies have been manipulated, in general and in detail. Many developing countries for example engaged in excessive short term borrowing under the rubric of “economic development” and in the process, created massive external debt with only the vaguest notions of how such debt could be repaid. The revenue from this borrowing was often squandered on politically popular programs and the construction of doubtful production capacity or low value public infrastructure. Too many of the elite escaped direct taxation; others benefited from ill advised public subsidies designed to curry political favor. Almost every government agency and state owned enterprise was burdened with a deliberate pattern of worker redundancy, again for political popularity, which seriously hampered any pretensions for operational efficiency. Socialist theoreticians stressed the issues of “market failure” as a basic justification for government control. What was long ignored was “government failure”, a much more common occurrence where governments threw money into high cost low value programs.

One of the most wide-spread economic practices in the period following WW II was the use of state owned enterprises (SOEs). Of the 201 countries in the world only a handful avoided their use, most notably the United States. Now, all over the world governments are drawing back from their use of SOEs, in large part because of their economic inefficiency, but also in part because they proved to be vehicles for corruption on a vast scale. China has divested itself of most of its 75,000 medium sized SOEs, and in the coal industry alone, some 30,000 obsolete SOES were simply shut down. Supervising ministries of government and the politicians behind them failed miserably in their ability to protect the public interest and prevent widespread abuse. In many cases, SOEs were essentially government monopolies that practiced all of the abuses of monopoly power; in fact, worse than any private sector monopoly could have been since SOEs carried the authority of the State. Monopoly power was used to prevent or eliminate private sector competitors. Consumer prices were excessive and services were inefficient. SOE finances were usually concealed, and in worst cases, huge amounts of their revenue could not be

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accounted for. In those SOEs controlled by Chinese central government ministries and SOEs individual bank accounts were permitted and that totally escaped supervision of either income or expenditure. In recent years, more than 107,000 such accounts have been terminated.⁴

Political leadership used SOEs as sources of funding for political maneuvers or personal gain. Many SOEs, despite their power, operated at a deficit and demanded subsidy funding from the government. This led governments to penalize SOE suppliers (for example, power, transport or raw materials) in order to subsidize favored SOEs, and it also meant that funds were diverted from other vital public programs in order to cover SOE losses.

Most of these centrist governments also maintained a full or partial mechanism for price controls throughout the economy, and it has been common for pathological manipulations of prices to occur. Governments can deliberately pay too little for such things as farm crops and too much for the outputs of SOEs. In some cases governments create deliberate shortages of goods in order to drive up prices, thus benefiting producers, at considerable penalty to consumers. This appears to be the intent of most national agricultural policies. Deliberate manipulations of input and output prices have become a form of blackmail and corrupt practices.

Laws authorizing economic regulation have been endlessly skewed to favor a few, to punish enemies, or to generate corrupt revenue for politicians and regulators. As economic regulation and regulatory complexity spreads, so also do opportunities for corruption. In China, thousands of regulations requiring the payment of fees or fines were created at the level of provinces, municipalities and townships/villages primarily to generate revenue

Import policies may be relatively free and open as with the United States, or they may be aimed at forcing import substitution and the protection of domestic producers. A pathological regime will use any policy as a cover or rationale for pathological practices. The right to import may be limited in order to create a government monopoly, or a policy of deliberately favoring one set of economic interests against all others. Import licenses are granted to friends of the regime and denied to their competitors. Fees are charged, and the revenues illegally diverted.

Export controls are similarly vulnerable. The government may exercise, under law, the absolute control of who is permitted to operate a business, and under what conditions. The corrupt sale of licenses is often a flourishing business at all levels of government. Operators of businesses may also find that numerous inspections of their compliance with dozens of regulations can be extremely costly, and these fees do not necessarily end up in the public revenue. In China, since governments continue to own and control the land, the allocation of land use is an enormous source of power, revenue and corruption.

Finally, the internal practices of governments in the economic arena have also become tainted. With such endless opportunities, the traditional forms of corruption have flourished: bribery, influence peddling, patronage, nepotism, selling of licenses, collection of illegal fees, and the whole array of procurement pathologies including bid rigging, kickbacks, improper contractor selection or deliberate overpayments on contract costs. Government programs of loans or loan guarantees are often skewed to reward friends of the regime.

⁴ See Yang, Dali L., Remaking the Chinese Leviathan, Chapters 2 and 3; Stanford University Press, 2004.

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Even where governments have sought to withdraw from its SOEs by privatization, the privatization system itself became a new and innovative source of pathological practices: sales of government assets at deliberately low prices; sales to “insiders” or those paying the highest bribes; deliberately low asset valuations; limits on who could bid; and preferences given to friends of the regime.

B. Pathological Political Policies and Practices

Governments have the right to defend themselves and to survive. But this begs the old dilemma of preventing governments from going too far and become oppressors of their people rather than defenders of their legitimate authority. What is the difference between a terrorist and a freedom fighter? The majority should rule, but how are the rights of minorities protected? A government that is too authoritarian almost inevitably has conflicts with legitimate pressures for change. It is pathological when a government fears change because it is seen as a loss of power, and such fears can lead to pathological measures to disenfranchise the citizenry in favor of retention of centrist elitist power.

The single most important way in which citizens of a country can be effectively disenfranchised is through the operations of special interest politics, which is a dilemma in every country. First, a distinction must be drawn between special interests and special interest politics. People’s lives are a series of special interests – from self and family to the extended family, to a school, union, team or neighborhood. Interests like environmentalism or women’s rights show that people are very willing to invest time, effort, money and stress when they think that such interests are important.

People’s attitudes about their special interests are assertive and defensive; assertive in the sense that they are willing to work for the success of their chosen cause or group; defensive if they feel that their cause is being threatened or ignored. Neither of these attitudes is likely to be wholly rational; much is emotional or uninformed. Institutions also become special interests. Businesses, unions, professional associations and others act severally and collectively to optimize their situation in society and the economy. Thus, everybody seems involved in some form of special interest, and given the breadth of modern politics, this means that most special interests at some stage become political.

Governments both clash with and collude with special interests and usually react to special interests as potential political forces. This means that, as politicians offer inducements to special interest groups, these groups in turn are likely to respond to optimize the advantages that political influence can produce. This “special interest politics” is extraordinarily powerful and ubiquitous, and many governments are best understood by tracking the complex relationships between the government of a country and its network of special interest relationships which in many cases are more important than the formal structure of the government.

Special interests tend to organize themselves so that they have a collective influence and a more powerful voice. Special interest groups will therefore tend to become more organized and bureaucratized and will hire professional staffs to marshal the influence of the group and bring it to bear on the critical elements of the government. This leverage can be at the simple level of information, education and persuasion, but as the leadership of such groups presses

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harder, as they are expected to do, they phase over into “special interest politics” where they actively seek to change laws and regulations to favor their interests or to capture funds and government preferences to aid their cause. The broader the ranges of government activities, the more interests are created and the greater will be the range of negotiations with them. It often follows that the more governments do, the greater is the opportunity for corruption and pathological behavior. On this score alone, it is clear that political leaders need to think carefully when they consider enacting laws that enlarge the scope of government.

Special interest politics has proven to be so successful for three reasons. First, the very broad public participation in some form of special interest gives these interests enormous popularity and political credibility to the point that opposing them seems almost undemocratic. Second, while the “general public interest” is very broad and vague, special interest politics is usually very specific and has a cutting edge to it that makes it easy to penetrate the political system and find backers to carry each interest forward. Third, organized special interest politics involves money and clout, two of the sovereign commodities of the political world.

From the political point of view, the unspoken agenda of special interest politics is maneuvering for a trading of interests. The special interest group will press its agenda; political leaders will seek to trade concessions for political support, campaign contributions, or at least the absence of active political opposition. Government agencies will trade concessions in program funds or favorable regulatory treatment for support of public goals and agency objectives. Politicians will hope to be judged favorably by future historians and therefore they will avoid moves that might offend special interests.

It is usually the ambition of special interest politics to get these concessions locked into statute or regulation, knowing that it is infinitely harder to change a law or regulation once it is enacted than it is in getting it enacted in the first place. Thus, these concessions tend to be “forever” with each special interest stoutly defending and protecting them. Subsequent retreat from such concessions is considered a defeat for the benefiting interest group and also a “betrayal” of their cause by the political actors. Special interest politics tends to be implacable, insatiable and immutable.

The patterns of special interest politics in developing countries tend to be even more powerful than in the U. S. Most special interest politics are economic in character, often deeply cynical, and often corrupt. Where the institutions and systems of government are weak, chances are that special interest politics is the dominant force in the country. While all special interest groups will cloak themselves in the rhetoric of the public good, they remain narrow, specific and self serving in their policies and approaches

Why are politicians so vulnerable to special interest politics? It is not just campaign contribution money or short term political support that counts. It is also the forging of longer term alliances for mutual advantage. It is in fact how many countries are run. Special interests will continue to provide support as long as the politicians continue to deliver. The politicians in turn will continue to deliver as long as they get backing and financing. Once committed

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publicly, it would be embarrassing for the political figure to abandon a previously supported position.

Increasingly, special interest groups have added a degree of sophisticated linking of interests among themselves in order to provide added leverage. In the U. S. for example, labor, education and environmental groups not only tend to support the Democratic Party but they are also frequent allies over specific policy issues. Business groups, industry associations and small business interests will usually form alliances to support government economic development policies and tax reduction issues. These alliances may be semi-permanent but most are likely to be temporary and transient so that each group remains free to optimize its own interests where necessary.

In the last analysis special interest politics, as with all politics, is really about power and only secondarily (if at all) about democratic representation or the ethics of government, or even the general well-being of the country. Special interests can be positive and constructive, but their influence, especially in developing countries is seriously questionable. Too many of these groups move from open public debate to a “back room” political process of bargaining and negotiation that is not visible even to their own membership. Such dealings are not illegal but they have the high potential to become improper and pathological, and at their worst, they can become an enduring network of corrupt relationships. Special interest politics at this level is inherently undemocratic. Special interest politics is by definition not the general public interest, even when it claims to be. By definition, special interest politics opposes even handed policy making. Its entire object is to bias policy in certain directions. Where governments start listening – and responding – more to special interests they also begin to listen less to direct expressions from citizens. Special interest politics tend also to be divisive and to create winners and losers in both economic and social terms – rich versus poor, urban versus rural, unions versus corporations, ethnic groups against each other, and many more. It becomes pathological when both governments and special interests use these divisions as a means to follow perverse ends. Special interest politics is characteristically linked with ruling elites, and one of the most common characteristics of bad governments is their incestuous relationships with special interests.

The Chinese Communist Party (CCP) has proved willing to precipitate economic reforms, but it appears far less willing to accept political reforms. The Party still retains a dominating political control at the center. Both the Party and the bureaucracy continue to oppose elections for all but the most minor of posts. The Party also continues to control the nominations and appointments of most senior national and local government officials. This resistant policy is defended as “not needed” given the strength of economic development. It is also argued that political reform, if really needed, should take place only at the various levels of local government, and not at the center.

There has been some hope that political reform in China would include a substantial element of reform of legislative bodies at all levels of government. While some liberalization has been allowed, the National Peoples Congress is still almost totally controlled by the CCP. The same is true for legislatures at all other levels of government. All bills to create or modify

laws are developed by the CCP, and it appears that draft bills are almost never originated within the legislature itself.⁵

C. Elections and the Rule of Law

There is a growing recognition of the fact that election systems and practices are so vulnerable to perversions, both legal and illegal that they can no longer be relied upon to reflect the will of the people, a refutation of special interests, or a definer of public policy. In the first place, the election system itself can be designed as a vehicle for public disenfranchisement. The United States passed through a long period in which state election laws entirely disenfranchised non-property holders, women and blacks. Blacks in some southern states were precluded from voting by legal – but pathological – tests of “literacy”. In other countries such as Israel or some Muslim countries, there are laws that disenfranchise citizens because of religion. In other cases, election laws may be sound, but illegal means are used to corrupt the actual election process. Voting lists can be tampered with; eligible voters can deliberately left off official eligibility lists or “graveyard” names can be added to be voted by party loyalists. Ballot boxes can be stuffed, or voting results can be falsely reported; or as a last resort, the old tried and true method can be used – collect the ballots and simply lie about the results. In Belarus for example, the Economist reported: “sham results from a sham election for a sham Parliament – in other words, business pretty much as usual.” In this case, the election law allowed the authorities to disqualify dozens of independent candidates, and to rig the count. Each candidate had a few minutes of air time on radio or TV, but the state controlled media blasted out hours of attacks on opposition candidates. Campaigning by opposition candidates was persistently harassed or prevented by the government.⁶

Many election pathologies center around the candidates and opposing parties. It may simply be made legal to limit or prevent the formulation of parties or candidates who oppose the regime. As the Belarus example illustrated, the government, through legal devices can control the media either by direct ownership or by intimidation, and negate opposition campaigning while pumping up the regime’s own candidates. Patronage can be used to influence elections. In Turkey for example civil servants always win big pay raises just before elections, subsidies contribute as much as 50% of rural incomes, and politicians literally bid for rural votes with public money.

A growing form of election theft centers around deliberate violence, not only against parties and candidates but against voters themselves. In Zimbabwe “bands of thugs and ruffians were formed – by the government—to roam the country and prevent opposition candidates from campaigning. Peasants were told that their votes would not be secret and that they would be punished if they voted for the opposition. Farms have been seized and given to loyalists of the regime. Rural hospitals have been ordered to refuse treatment to opposition supporters. Cruelties have been inflicted on teachers, nurses, office workers and others who are able to read and write, and are thus assumed to be supporters of the opposition. Candidates have refused to be cowed, but they are threatened all over the country. Many have been assaulted, threatened

⁵ Pei, Minxin, China’s Trapped Transition, pp. 49-53; Harvard University Press, 2006.

⁶ The Economist, June 10, 2000, p. 63.

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with death, had their families threatened, and have been forced into hiding. The state controlled media refused to report on the activities of opposition party candidates.”⁷

In many countries, the special interest political connections of the government are used to attempt “block voting” such as unions that urge their members to vote for a favored candidate; or government agencies that press their employees to vote for the regime candidate; or state owned enterprises that turn out their employees in an organized fashion. When all else fails, the tried and true method of buying votes remains ever popular.

In China, the prevailing attitude seems to be to oppose elections in the first place. For many, elections are a foreign perversion that threatens socialist doctrine and the concept of the dictatorship of the proletariat. Others argue that China is too big and diverse and elections would simply precipitate dangerous contention and conflict. Still others argue that elections are messy and wasteful, and far less “efficient” than single minded top down direction and control.

Local governments however may favor more open elections, not as a democratic practice but as a means to liberate themselves from some degree of centrist Party control. They do not want the CCP to control the nominations of all candidates, nor are they comfortable with the fact the two thirds of the members of local legislative bodies are party loyalists. While the Party apparatus retains the pathological view that elections simply encourage “resistance”, local officials are far more sensitive to the growing unrest of their citizens, especially the new and better educated economic middle class. But this middle class has yet to find a coherent voice. It remains exceedingly hard in China to initiate a political movement or start an alternative political party. All forms of civic organizations are carefully watched; many are captured by the government and converted into vehicles for government control.

D. The Vulnerabilities of the Legal System

There is an underlying assumption that the legal system itself is, by definition, sound and correct. Further, it is assumed, somewhat naively, that the legal system is the ultimate recourse for correcting abuses in society. But the ability of the legal system is limited. It cannot deal well with the pathologies that the government itself builds into it. Nor can it do much to mitigate a government that, whether deliberately or by neglect, is largely incompetent. The legal system can deal with corruption if and when its police and prosecution elements are willing and able to face up to corruption, and are not part of it.

Further, where a pathological regime has gained control of the lawmaking mechanisms, then the legal system may be forced into the dilemma of sustaining bad laws since bad laws are still laws and must normally be upheld. The mechanisms for avoiding, ignoring or revoking bad laws are all too vulnerable to their own forms of pathology and corruption.

⁷ *Ibid.*, June 24, 2000, p. 49.

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Finally, even where laws are right and proper, the mechanisms available for their fair and equitable implementation (through public programs, regulations, economic and fiscal policies, tax codes and the like) may be woefully inadequate. Governments are all too often riddled with simple incompetence which the legal system cannot be expected to cure, or with such broad power in the hands of the corrupt that the legal system is unequal to tasks of prevention or redress. The legal system itself is vulnerable to countless manipulations. Political leadership may enact laws that are harmful, self-serving, unfair, inequitable, and detrimental to the well-being of the country. Public officials can and do deliberately fail to pursue the guilty and they may choose to harass the innocent. Public institutions may ignore valid laws or may “selectively” implement those laws and regulations that favor their pathological purposes. Courts may be deliberately denied adequate resources to cope with their burdens. Public prosecutor’s offices may be kept understaffed and denied necessary authority; attorneys may be insufficiently trained and consciously underpaid. Judges and prosecutors may be appointed who will favor the regime. All of the skills of threat, blackmail, intimidation or violence may be employed. According to one article, “In Indonesia, a vital part of the country’s life is run strictly for profit. Unfortunately it is the law courts. One businessman was told ‘if you give us so much money, but your opponent gives us more, then the case will be won by your opponent’.” Creditors of favored state owned enterprises in Indonesia cannot win even the most straightforward cases. The Texmaco energy SOE had \$1.9 million in unpaid loans. The President, the Attorney General and the ruling party leadership all told the Minister of State Enterprises to drop attempts to collect, and the courts refused to schedule any hearings.⁸ In Pakistan, the Supreme Court has post-validated three military coups – in 1958, 1977 and again in 2000 – by permitting “constitutional deviations”, citing the “doctrine of state necessity” and agreeing that “there is no other way to remove a corrupt government except through the intervention of the armed forces.”⁹

These election system perversions are so widespread that a new pattern of “international governance” is emerging. International organizations and volunteer groups are increasingly seeking to insist that elections in countries at risk should be subject to international supervision or at least oversight.

PART II. PERVERSE PUBLIC MANAGEMENT

Public programs are all, by definition authorized by enabling statutes that define their purpose, objectives and many of their operating processes. But the management of the government’s business is so complex that it suffers from frequent failure and inadequacy. This is in part a reflection of their inherent complexity plus the added difficulty of implementing them effectively. The business of crafting a new public policy or program is almost always highly controversial, and wrong choices may be made in good faith. Program implementation may be mismanaged or prove excessively costly. Government programs are not inherently pathological but can become so through the perverse intent of politicians or managers, and they are highly vulnerable to corrupt interventions. The following discussions outline some of the most important ways in which public programs are victims to these ills.

⁸ Ibid, July 8, 2001, p. 37.

⁹ Ibid.

A. Government Revenue and Expenditure Problems

The tax system in almost every country is a primary instrument of public policy and it can be perverted in many ways. For example, waivers of taxes, cancellations of taxes, tax deductions, special allowances and tax penalties may be maneuvered to give special advantages for political or policy reasons that are perverse or corrupt. Special interests and political loyalists can reap rewards and their enemies can be punished by the same tax system – all within the framework of the rule of law.

Generating adequate revenues for governments is the urgent business of the highest levels of government, and governments are constantly facing financial shortfalls and crises. Many have resorted to ruinous borrowing from international and private sector lenders. Yet revenues can become the source of some of the most amazing of corrupt maneuvers. Uncontrolled borrowing may become pathological when it is pursued so recklessly that it creates huge debt payment problems that drain away internal revenues to repay debt which in turn hampers economic development and forces the government to divert funds from badly needed domestic programs and public infrastructure. Governments fail to control fiscal budgeting because it is easy and politically popular to spend money on popular programs. “Buying votes” through government programs disbursements may produce short term political advantage at the cost of long term danger. It is not easy to determine exactly when and how a legitimate public program exceeds its genuine value and becomes pathological in its effect. Even with honest intent, battles over budget levels are difficult, and the means for evaluation may be weak or skewed. Probably the biggest problem democratic governments face is financing urgent and desirable public programs where the government has made commitments that it finds impossible to finance, and where the more pressure governments apply to increase revenues, the more solid and effective becomes taxpayer resistance to those pressures.

China’s situation with respect to public revenues and expenditures has been remarkably chaotic. Almost every aspect of government finances is in serious trouble. To begin with, there are major imbalances in the allocation of public revenue that the government is seeking to redress. Too much has been spent on the military and too little on social programs and public infrastructure. There are growing gaps in relative economic well-being, with western provinces, smaller cities, and most rural and township interests neglected. These imbalances had been created and stoutly defended under the oppressive State Plan, which of course was really a reflection of Party thinking. But the Plan proved totally ineffective, especially as a short term budgeting system and has had to be abandoned.

As with many other countries, China has now realized the necessity of drawing back from its huge array of state owned enterprises (SOEs). Many of them have not only failed to generate revenue for the government, but have operated in deficit conditions for years, and have had to be subsidized by other government revenues. This subsidy pattern has proved to be extremely costly and intractable since it reflects the systemic SOE decay through the lack of maintenance, repair and modernization, and the concealed efforts of the government to prop them up through inter enterprise transfers.

In general, the tax system has been underpowered and unable to generate adequate revenues. Tax collection has been chaotic. Tax collection authority has been almost non-

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existent for local governments, and no governments have developed really efficient ways to collect taxes from individuals and non government organizations.

Other sources of revenue are in a vast sea of chaos. Reliance on the revenue producing capacity of SOE's proved false. Many of them have generated nothing but deficits, and many ended up being "dumped" on provinces and municipalities, where they are in the process of redirection. The government also came to realize that almost 5% of its revenue was off-budget; and major efforts are now underway to capture this revenue and feed it into official channels. Between 1978 and 1995, central government revenues fell from 35% of GDP to just 11%. Similarly, expenditure fell from 35% to 12%. Ways to cope with this decline included the neglect of social services, drastic reductions in capital expenditures, and these off-budget sources of revenue and "soft" loans from state banks, many of which have not been repaid. In addition, huge contingent liabilities of the government, such as bad debts, accrued retirement benefit obligations and social services commitments have simply been ignored and in some cases, actively concealed. And as SOEs are terminated, the government is forced to swallow costs for workers laid off or retiring.

Recent efforts to gain control of this chaos have proved positively scary. For example, it was found that every element of government at all levels felt entitled to create their own bank accounts and there was almost no serious control of these accounts, either of income or expenditure. In many cases, income from various sources could not be verified, so that corruption was almost invited. Nor were there real controls over expenditure. Large numbers of even minor officials could authorize expenditures from these accounts, and nobody could be sure where the money was going. This chaos has been replaced by a new centralized processing system run by the state Treasury Ministry. This system includes the pre-payment of fund disbursements, post-expenditure reconciliation of approvals and actual expenditures, and the validity of transfer payments from one government ministry to another. Tax payments now must clear through the Treasury instead of a murky system of inter-bank clearances. In the process of this reform, it was found that many of these bank accounts had no rational justification. It was also found that, based on these accounts, there were thousands of illegal loans to government offices, and no valid accounting could be made as to what had happened to the money. These loans had fallen into default, but the government agencies had simply ignored attempts to collect them.

B. Policy Skewing

Government policy development leading to enabling legislation is always controversial and highly debatable, and honest mistakes are not unusual. But there are many pathological tendencies that can be identified. Policies are deliberately skewed to favor the ruling elite. Special interest politics may generate subsidies for the elite while deliberately ignoring the obvious needs of the general public. Programs are often deliberately structured so that they can be looted by rent seeking practices. Public assets such as natural resources or valuable licenses and permits may be deliberately undervalued and rented or sold at below market value – or simply given away – all within some law.

Ineffective and poorly managed state owned enterprises may be so bad that they suffer heavy business losses, and yet the policy may be to cover these losses by diverting funds

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justified for other needs. Perverse policy may dictate that SOEs have their taxes waived, or their bank loans cancelled or their suppliers forced to furnish goods at below cost, or to deliver power and fuel for next to nothing. The regime seeks to deny that they are somehow responsible for these preposterous failures by attempting to conceal the magnitude of the failure.

Reforms of perverse policies are enormously difficult. Once a policy is locked into law, even honest politicians are reluctant to reveal how wrong they were, and they fear that repudiating even a programmatic disaster will anger its implacable defenders.

C. Government Operations

Imagine the dilemma faced by honest civil service staffs when they try to implement public programs within a pathological political framework where the laws are perverted, the policies are wrong, and the leadership is seen as venal and corrupt. Orders from the top may be totally improper, but they must be obeyed. Also imagine the situation common to most governments but especially in poor countries where allocated money, staff and authority are wholly inadequate to deal with genuine program needs, and it is common knowledge that these inadequacies are deliberate. The result will be poor program delivery, lack of adequate financial controls, runaway contractors, weak regulatory enforcement and other sins of bureaucratic omission or commission. Poor performance may simply be the result of incompetence, but it becomes pathological when the leadership of the government either knows full well what is wrong and refuses to fix things; or is the deliberate creator of the shortcomings, or deliberately denies needed resources for wrongheaded political reasons. For example, there is much evidence that governments under-fund protective oversight capabilities such as auditors, inspectors or investigators – perhaps not wanting to know how bad things are, or perhaps to protect their own corruption or misguided policies. In the U. S. federal government, serious attention has been paid in the last few years to “program performance evaluation” which has the potential to point out more forcefully some program or administrative failures. After ten years of such effort, it is not yet clear whether the political leadership in the White House or Congress has been willing to respond to such evaluations where they seem to threaten the status of long favored programs. Few developing country governments have proved willing to invest in the protective institutional apparatus of audit and investigation that would adequately protect government operations from either mismanagement or corruption.

Some public operations are infamous for their vulnerability to corruption. These include tax collection, customs services, fees and penalties, and most of all, government contracting. For example, the Washington Post reported: “The new head of Mexico’s Customs agency has fired more than 90 people, including virtually all of his top managers in the first purge of government officials since President Vicente Fox took office. Forty-five of forty-seven supervisors were fired. Also 50 commanders of the Federal police force, whose officers work with customs agents at border check points, were also fired. The customs service has long been publicly notorious for corruption ranging from small bribes from individuals to collusion with drug cartels shipping huge amounts of illegal narcotics.” Another interesting example cited was the smuggling of a three ton circus elephant into the country last year. The circus owner paid a \$4,500 bribe to customs agents not to “see” the elephant as it slipped across the border from the U. S. ¹⁰

¹⁰ The Washington Post, Feb. 2, 2001, p. A19.

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To its credit, the government and the Party in China was forced to recognize that it had created one of the worst bureaucracies in the world. It has also apparently recognized that the need for major shifts in its economy could not be fully realized until the government showed the public that it was ready and willing to face up to the destructive consequences of its own corruption. Thus, China is engaged in one of the most extensive programs of organization and management reforms of any government in the world. These are some of the elements of that reform program:

1. A series of new or upgraded government-wide cross-cutting reform agencies have been created including the following:

- a. A Central Commission on Organization and Staff Size
- b. The State Administration of Quality Supervision, Inspection and Quarantine
- c. The National Audit Office
- e. The Bureau of Anti-Corruption and Bribery
- f. The China Banking Regulatory Commission
- g. The China Insurance Regulatory Commission

2. Major efforts have been made to devolve or delegate operational responsibility for the delivery of government programs to local governments, and additional local taxation powers have been created.

3. Government reorganizations have included the institutional rationalization of almost all central government ministries. More than 200 subunits of ministries have been eliminated. Others have been combined, including rationalizations and combinations of field office structures for the purpose of reducing overlap and duplication of functions and reducing the intense bureaucratic wastage faced by citizens dealing with elements of the government.

4. Governments at all levels continue to go through a downsizing program. At least 1.2 million employees have been eliminated. In this process, it was found that many employees appear to have been unauthorized in the first place because of nearly nonexistent personnel hiring controls. This downsizing has extended to the People's Liberation Army where additional 1.8 million or more military and civilian personnel have been released from its various components.

5. There is a total reform under way of budgeting, accounting, revenue collection, expenditure authorization and expenditure control. Often for the first time ever, financial systems are subject to independent auditing. When the authorization of expenditures is seriously tracked, it is often found that the basic public program itself was never officially authorized, nobody is really responsible for oversight, staffing has been excessive and uncontrolled, bank accounts are total mysteries, contractors have received "ghost" payments, and much money has strangely disappeared.

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6. The government is finally fixing on the fact that its past policies have produced a huge backlog of contingent liabilities, most of them required by law and most of them in the category of “unfunded mandates”. These include pension obligations for future retirees in the civil service, the SOEs, and in the general population. Health care has been promised for all. Welfare payments have been promised. None of these obligations can be adequately funded.

In a move that seems particularly drastic by Western standards, government officials are now held fully accountable for any actions undertaken by any of their subordinates including contractors, state owned enterprises and even in public services units not under direct supervision of a government official. The CCP and the supervising ministries of the government retain the right and the power to remove any official for acts of corruption within their overall authority, even where such an official is not directly involved.

D. Public Service Units

All of the reforms discussed above dealing with the Chinese civil service and its state owned enterprises have also been extended to another class of institutions called Public Service Units (PSU).¹¹ These are a separate range of institutions serving public purposes, but they are separate and distinct from either formal government organizations or state owned enterprises. They are defined as “legal persons” and they are established by government agencies. In general, PSUs provide social services while SOEs provide economic operations. Such services include major categories of public service delivery such as schools, universities, hospitals and clinics, research and engineering organizations and many others. Today, there are 1.3 million PSUs employing more than 25 million people or one third of the people working in the public sector. Almost all function under standard civil service rules and regulations.

As with so many other institutions in the Chinese government sphere, these PSUs have suffered from very vague or non-existent ground rules for their creation, supervision, support and financing. Many were created haphazardly as a result of requirements laid forth in the old Central Plan process which is now extinct. It was expected that most of their funding would be supplied by governments, but here again governments proved unable to live up to these commitments and it has been a constant struggle for these service units to find additional financing. They are characterized by a lack of budget control and financial discipline and constantly growing costs. In addition, they pose additional serious concerns since each represents another “unfunded obligation” for employee benefits such as health care and pensions which are now funded out of the current budget. Total costs of PSUs now account for two thirds of government spending. However, progress has been made; 20% of them are now self sustaining, and perhaps 50% of the financing of the others is now coming from sources other than government.

Many have a history of poor performance, but they have suffered from a lack of money, not enough staff, lack of facilities and equipment. Their uncertain future makes them unattractive places to work. Yet the basic problem seems to be that the central government seems to be uncertain about what policy it should pursue. Should these PSUs be considered government organizations, or should they be separated from government in a manner similar to

¹¹ Yang, *op.cit*, pp 49-53, Stanford U. Press, 2004.

the separation of state owned enterprises. Another vague option appears to be to define them as “non-profit organizations” responsible for their own funding –but still under the policy control of the government. In any event, this chaotic sector of the Chinese government strongly needs its own “rule of law” basis.

E. Procurement Reform

Of the many reforms that the government has instituted, none has been more important than the arena of government contracting – for construction, for land leasing, and for letting of contracts for the purchase of goods and services. An estimated 5% of the whole Chinese government funding for contracting has been lost through corrupt practices. There had been no central set of procurement and contracting regulations. Each ministry, province or municipality was left to design its own, and most were unsound or non-existent.

In 1998, less than 20% of public projects used public bidding, and even fewer were really competitive.¹² Construction and land use made up more than 40% of all cases of corruption. Funding for public projects were caught up in a vast spider web of conflicting political and bureaucratic infighting in the complex network of intergovernmental relations. Much of the contracting was between activities owned by the government ministries themselves, or controlled through each ministry’s SOEs, and all were engaged in conniving and “gaming” both officially and under the table. There was too much power, too little supervision, and an open invitation to corruption and pathological maneuvers. And much of this corruption was very obvious to the public and a major source of distrust and suspicion. Major prime contracts could be endlessly subcontracted, and thousands of suppliers of parts, equipment and supplies were involved. There was no central set of procurement regulations; each Ministry, province or municipality made up their own, and this led to too much arbitrary, unlimited decision making authority. In the mid-90’s, there were a few huge scandals in construction projects that were so publicly visible that it forced the government’s hand. In addition, the negotiations of the Chinese government to be accepted into the GATT and WTO system were a great stimulus for reform.

As a consequence of this chaos, the national government created the central Office of Special Inspection for Major Projects (OSIMP) in 1998 for construction project supervision and oversight at all levels of government. This was not only the real beginning of anti-corruption efforts, but also the beginnings of real project management public construction projects. That is, few in government understood how to manage projects, much less control corruption.

A generic Law on Government Procurement was finally enacted in June, 2002. Now, new and more formal bidding processes have been mandated for all processes from bid invitation to contractor selection, and specific prohibitions have been enacted to prevent bids from family, friends or known associates of public officials. Major construction projects are now being broken up into separate packages for design, construction, equipment supply, and provision of materials and maintenance.

The national government has also stepped up its oversight to prevent corrupt contracting practices. A new Law on Public Tendering was enacted in 2000 and most jurisdictions now have

¹² Ibid, Chapter 6.

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some form of “tender board” oversight. Inspection offices are mandated for local governments, and these offices are responsible to a central national government inspection organization and not to local leadership. Official approval is now required for subcontracts. In some cases, corruption on major projects was so bad that contracts were terminated or funding cut off to local governments.

F. Civil Service Reform

China vies with India for the honor of possessing the largest and the most chaotic bureaucracy in the world. As in so many other government arenas, the population of civil servants simply exploded after the Communists came to power. Since the government became responsible for everything, and since the country desperately needed almost every form of public good, this expansion of government bureaucracy is understandable. Every level of government appears to have plunged ahead creating its own organizations, its wave of state owned enterprises and its thousands of public service units with little thought about the long term consequences of these acts of creation. Governments simply evolved their own local “rules of law” which varied wildly from one place to another. Once created, these rules hardened, and almost no government had either the capacity or the will to reform them.

The Chinese government is now finally moving to bring some order and efficiency into civil service systems at all levels. One of the first and most urgent tasks has been to precipitate a massive downsizing of the workforce. Many people were hired without any official authorization – supervisors simply put people on the public payroll. In other cases, people were hired on an emergency basis and never let go. In other cases, many were hired simply so that the Party could reduce the number of unemployed, and many government organizations have had to deal with as much as 40% redundancy in the workforce. But as many as 1.2 million of these redundant or unauthorized people have been released in the last decade. This has been difficult politically, but it has also brought a new sense of hope that government organizations can begin to perform at an acceptable level of productivity and effectiveness.

As part of its civil service reforms, governments are also for the first time facing up to the need for structural rationalization. It was found that too many offices – divisions, branches, sections, field offices – had been created and many could be eliminated or consolidated. Whole layers of unnecessary bureaucratic structure could be torn down. Overlaps and duplications between layers of government could be eliminated. This helped to facilitate the massive downsizing of the staff, and it also helped to reduce literally hundreds of thousands of bureaucratic reviews, approvals, clearances, coordination committees, task forces, working groups, etc. that appear to be a characteristic of Chinese government apparatus. In addition, these eliminations created a sort of bureaucratic game of “musical chairs” in which competition was created for the remaining supervisory jobs.

These efforts to create a new “rule of law” for the civil service are leading toward a single mandated civil service system to be applied at all government levels. Many second and third level jobs have ceased to be political or patronage appointments and are now competed and there are efforts to reduce the number of promotions that appear to be made through bribery and kickbacks. But the CCP continues its firm grip on the senior positions. Political clearances are still required by the CCP, but public resentment of incompetent officials has changed the ethics

of these appointments toward merit and away from simple patronage. For the first time, publication of vacancy announcements is being published. Efforts are reported to develop a realistic means of evaluating employee performance. But the CCP retains its policy of mandatory rotation of senior and some middle level officials (30%/year in some cases); and it is expected that more than 95% will be rotated within a 5 year span. Rotation is officially justified as an anti-corruption measure, but critics maintain that the CCP does not want to see too much rapport growing between senior officials and local interests that may run counter to central interests.

F. Barricaded Governments

Perverse or corrupt practices are often invisible because of deliberate government practices to conceal what is going on. Few governments have adequate provision for making policy and program transactions open for public scrutiny, even by the press. The authority of government agencies is vaguely stated in enabling statutes that are commonly so broad that they offer no limitation to the exercise of political or administrative power. Internally in government agencies the real power to make decisions or to authorize the spending of money is usually left deliberately vague and open ended, in part to facilitate corrupt practices. There is seldom any provision for recourse against government actions when individuals or companies feel they have been harmed. Regulations by the thousands are so numerous and technically complex that nobody – even their administrators – knows exactly what they mean. This creates an infinite source of corruption where bureaucrats “select” from this mass of authority those regulations that they favor or those that can be used to elicit bribes and other favors. Decisions are made about letting contracts, providing subsidies, controlling contract payments, granting licenses and permits, or waiving penalties in a manner that is so obscure that nobody knows who made the final decision and why. This obscurity provides an ideal cover for the corrupt, who feel that they will never be caught. Similarly, auditing of government spending is often so infrequent and so erratic that corrupt officials are emboldened. In short, most of the fail-safe mechanisms of government fail.

In summary, government politics, policy formulation and program implementation are so extraordinarily complex that they virtually beg to become pathological or corrupt. The more extensive the range of public responsibilities, the greater are the opportunities for their perversion. A pathological and corrupt political leadership in a government agency stimulates the next layers of officials to become pathological and corrupt as well. Public managers are both the victims of such pathology and their source of their own forms of corruption. Even in well-developed governments there is no love of the oversight apparatus such as auditors, investigators or anti-corruption agencies. Political interference is universally seen as the “enemy” of professional, efficient and neutral public management.

G. The Tyranny of Regulation

Regulation has become one of the most powerful tools by which governments enforce their will. The power to regulate can be given to almost every government agency at all levels, and it is used to redirect institutional and individual behavior by defining what is prohibited and

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what is “allowed”. The proliferation of regulations is so great in some countries that nobody including those who write them and enforce them understands them all, much less understanding their consequences, which can be enormous. It is unsettling but illuminating to recognize how each power can be made either pathological or corrupt or both.

To quote Bhagwati: “Few outside of India can appreciate in full measure the extent and nature of India’s controls until recently. The Indian planners and bureaucrats sought to regulate both domestic entry and import competition, to eliminate product diversification beyond what was licensed, to penalize unauthorized expansion of capacity, to allocate and prevent the reallocation of imported inputs, and indeed to define and delineate virtually all aspects of investment and production through a maze of Kafkaesque controls. This all-encompassing intrusiveness and omnipotence has no rationale in economic or social logic; it is therefore hard for anyone who is not a victim of it even to begin to understand what it means. The origins of this bureaucratic nightmare lay, for sure, in the combination of two major factors: first, the inability to trust the market when scarcities are acute and the tasks are challenging; and second, the failure to understand that markets will generally work better than central planning as a resource allocation device.”¹³

The problems of destructive regulation are ubiquitous, and often at their worst in less developed countries. Some countries believe that regulations can be used to force organizations to pay their workers more money, with no recognition of the economic realities of the organization. For example, a minimum wage regulation may be set so high that many smaller businesses can’t comply and are driven out of business or forced into the informal economy. Labor standards may require such exceedingly expensive compensation for released workers that companies avoid hiring them in the first place. In one African country for instance, night and weekend work are forbidden, and the minimum wage is 82% of the average value-added per worker. To discharge an employee an employer must first retrain him, place him in another job and pay him a lump sum equivalent to a year and one half of his regular wages. Similarly, bureaucratic complexity makes the creation of new businesses extraordinarily costly and time consuming. According to the Economist: “In Congo it takes 215 days, costs close to nine times the average annual income per person, and firms must start with a minimum paid-up capital of more than a third of that preposterous fee”. These rules are generally regarded as stupid and pointless.

There is virtually no serious intellectual reasoning that helps to define the limits of regulation. Almost nothing in society and life is unregulated, and nobody can say when it should stop and at what level. The basic questions are the hardest to answer: how safe is safe? How safe is safe enough? What, in society should be left essentially unregulated? When and why does regulation become excessive and pathological? For the regulatory mind, the answer seems to be Never!

Another hard question is how far the imperatives of governance and the need to execute public policy should be permitted to overpower the rights of individuals and of institutions? Most people favor control of private sector institutions (at least re health and safety), but are often not aware of how their own individual rights are also constrained

¹³ Bhagwati, Jagdish, India in Transition, p. 49-50, Oxford, Clarendon Press, 1993.

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Governments have proved universally and notoriously unable to regulate themselves. State owned enterprises and other government monopolies are far greater threats to public wellbeing than private monopolies ever were, and many are deliberately exempt from regulatory controls. Laws intended to protect the public are often drawn too broadly, giving too much room for perverse interpretation, and the abuse of power. Political leaders can and do violate even well defined regulations. Many regulations contain the power to allocate valuable resources, and this has proved to be an enormous source of corruption.

Each regulatory authority defined in some enabling statute has precipitated enormous volumes of second and third level regulations generated by the responsible regulatory agency, so voluminous and complicated that nobody can understand them all, and bureaucrats may play the game of “selective” application of the regulations they choose to enforce. Most regulations are highly technical and complex, and it is very difficult to find a basis for challenging those that are seen as unnecessary or perverse. This is the major source of power for the government interpreters of these regulations, and of potential corruption in governments. In many developing countries, salaries are low and police, customs officers, building inspectors, tax officials and contracting officers may cynically regard corrupt income from the interpretation of regulations as an “alternative form” of compensation.

Once put into place, regulations tend to be “forever”, and even in moderate and respected governments, enforcement can be a very corrosive role since it is used to make people or institutions do things that they may not want to do. The more intrusive the regulations the more likely it is that they will be resisted by both people and institutions. Ultimately, excessive regulation can breed suspicion of government itself. Political ambition or an excess of regulatory zeal may produce regulations that are managerial “missions impossible” – dreams or hopes of perfection rather than practical rules that are capable of being achieved. In countries with multiple layers of government, there are serious problems of duplication of regulatory power and conflict of authorities. In Europe, the European Union structure has emerged as yet another “super-national” layer of regulation imposed on the already complex structures of the member states.

There are no effective policies, political or even intellectual limits on the theoretical power of governments to regulate, and there is a tendency of regulators to expand and extrapolate the range and depth of their regulations. Abuses of regulatory power have created a growing feeling that governments can and do go too far, and there are no effective means to limit the expansion of such power. Regulation is intensely bureaucratic: complicated, technically hard to understand, and often lacking adequate justification for their creation. Enforcement is usually costly and time consuming, requiring long time delays, and excessive paperwork. And regulations, once imposed can prove to be highly rigid, difficult to change, and almost immortal.

One of the risks associated with government regulation is that the regulated industries learn to play the “game” better than their government supervisors, and in effect, capture the regulatory apparatus, by fair means or foul. Then, regulations can be softened or avoided, enforcement can be fended off, oversight can be made friendlier, and price or cost control regulations mysteriously turned to the advantage of the regulated.

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But most of the time, the power of the government is so strong that a pathological regime can easily use regulation as a form of tyranny designed deliberately to enhance the power of an authoritarian regime, provide the basis for reward of one's friends and punish one's enemies. It is also possible to avoid the consequences of regulations that would quash corruption such as prohibitions against bribery, influence peddling, money laundering, concealment of assets, extortion, malfeasance, misfeasance, and others.

PART III. DEFINING GOOD AND BAD GOVERNANCE

There is no single concept or pattern that can be used to define good and bad governance, but based on actual experience, many forms of thinking about human affairs have taken shape and have coalesced into doctrines – a body of principles and motives that are strongly held, and are used as a guide or framework within which people want to live and make their personal decisions. From these accepted doctrines, governments define their principles and laws and draw support that can be used to buttress their policies and actions. Such doctrines may be very rigid, or may be loose and undefined. They may not easily translate into guidance for the dilemmas that modern governments face, and often they become impediments to the acceptance of change in a dynamic world. Nevertheless, such doctrines remain among the most important frameworks for defining what governments should or should not do.

A. Religious Doctrine

Predominantly religious states such as modern Iran are really very rare. The prevailing pattern has become the secular state that may allow varying degrees of religious intervention and involvement. The ultimate secular state was that of the Soviet Union, in which religion was officially rejected and given no recognition in the affairs of the government. While few governments have gone so far, there is perhaps a general feeling that religion makes an awkward basis for governments to use. While religious doctrine may offer valuable frameworks of ethics and morality upon which governments can draw, religious zeal and the rigidity of religious doctrine are very difficult to cope with in the political world where the techniques of negotiation and compromise are paramount. Religious leadership tends to think in terms of a two-part society – the faithful and all others. In the United States, the doctrine of “the separation of church and state” has been loosely conceived and has resulted in a relatively comfortable set of civic relationships.

B. Political Doctrines

Every state is a political state and most have constructed a doctrinal framework articulating a whole broad generalized set of policies and programs that define the political and bureaucratic basis for governance. The most prominent political frameworks in recent use have been communism, state socialism, representative democracy and centrist totalitarianism. None of these frameworks are absolute, and they often overlap or are in conflict in some very confusing ways. The permutations of each doctrine may be endless, but in each country the prevailing political framework is seen as a vital way to explain and justify government policies to the people and to provide a test of acceptability for each encountered public policy issue. It is simply not possible for any government to invent a new political theory for every new issue. Therefore overall political doctrine is vitally important as a way to delineate when government is

“right” and when it is “wrong”. In government, corruption is defined by law, but pathologies are almost never illegal and thus it is more difficult to determine that they are pathological and not merely honest error or simple incompetence.

C. Cultural Imperatives as Doctrine

Every society is really based on its culture, which is a combination of ethnic, religious, tribal and social mores. Social coherence is imbedded in deeply held concepts of survival and self protection, identity, mutual support, and broad judgments about what is good and what is bad, and what needs support or resistance. The more forcefully these cultural mores are held the more they tend to become doctrine. Thus, “good” governments are those that find a way to accept these cultural values and incorporate them into public policy.

One of the most powerful of these cultural mores is the sense of nationalism – the degree of national coherence and sense of nationhood beyond the sense of tribalism or narrower geographic identity. In a sense, nations are what tribes become – broader, more inclusive, more powerful, and with higher potential. Nations become more future oriented and more instrumental and “what is good for the country” becomes a powerful determinant of what governments decide to do.

Many such cultural values exist simultaneously and are often in conflict with each other. Ways must be found to treat each with equity in relation to the other element of society. Cultural imperatives are often in conflict with political motives. There is a terrible tendency for politicians to use these conflicts as justification to pit one element of society against another or deliberately to slant political largess to gain short term political advantage. The best role of governments is to play the mediator to produce balanced judgments in the broad public interest.

D. Legal and Bureaucratic Doctrine

All governments create structures of acceptable policies and processes in the form of laws, regulations and ministerial structures with defined authorities and responsibilities all of which define what the government should and should not do. These formulations become doctrine; they endure over long periods of time and are used to guide the great bulk of individual decisions and actions of governments. They are the means of directing the public, and defining public obligations. The whole national justice system is a classic example of a doctrinal legal and procedural base.

How do governments decide what to do? Under girding each legal and bureaucratic framework is the more basic belief that the problems and dilemmas of governments can and should be decided through rational common sense thought and action instead of simply “muddling through”. Governments employ the tools of strategic planning, rational decisions based on logic and evidence, setting of goals and priorities, and efforts to achieve both efficiency and effectiveness. Political rationality may start from a doctrinal base, but it needs negotiation and compromise as the means of resolving conflicts and finding a defensible basis for public decision making. Bureaucratic rationality emphasizes the management skills of optimizing results based on what works and works best. This doctrine is “getting things done” within the ground rules for fixed accountability and responsibility. Every country, even the richest, is

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bound by practical limitations on resources and by conflicting demands in society. None could survive if they did not find some practical solutions, even where they do violence to other doctrines. Also, most countries are highly dynamic and constantly changing in ways that defy current doctrine and the preservation of the status quo.

Part of this rational base is that of professional standard and ethics. Professions such as medicine, engineering, law or education have evolved strong internal standards and ethics that, to a surprising degree, have been adopted and absorbed into value systems of how to run a government program. There are also industrial or commercial standards and organizational or “movement” standards, as for example environmentalism or labor relations. Conforming to these professional standards thus is established as “right” and violating them as wrong, unless compellingly justified.

Finally, because most governments are critically involved in the workings of the national economy and the evolution of national economic development, the need for economic rationality has become compellingly important. Economic decisions are not expected to be “rational”. But this definition of rationality is not in a dramatic period of change. One of the major conflicts in governments since World War II has been that of state socialism versus the concepts of market based economics. Socialist states made economic decisions based on socialist doctrine and thus created a cadre of socialist economists to develop and justify these policies. In the 1990’s, the imperatives of the emerging global economy and the failures of socialist economic institutions and policies have led to a growing abandonment of such doctrines and the triumph of free market doctrine. Governments are now being tested against new doctrines of how to run an economy. The resulting economic changes are forcing new convulsions in both the old political structures and alliances, and are challenging other social and cultural beliefs. As these changes occur, they appear to be moving many staunch socialist governments reluctantly toward some middle ground or “third way” between their socialist past and a much feared and misunderstood market economy.

E. The Doctrine of Authoritarianism

Despite all of the above, it is likely that the predominant doctrine in use in governments today is that of the centrist use of authoritarian power, which means that what is “right” is defined by the holders of power. Such governments feel compelled to regard opposition of any kind as “wrong”. Negotiation and compromise may be employed but not beyond the point where concessions would weaken the grip of centrist authority. The greater the opposition the more likely it is that the regime will apply higher levels of oppression.

Such governments are not immune to cultural pressures nor do they totally ignore rational decision making but public needs or rational choices are modulated so that they do not challenge centrist power. Public officials are appointed not mainly for their competence but for their loyalty to the power leadership. Such governments may not be wholly incompetent but they do redefine the basis on which “success” is judged. Every government has the right to seek its own continuation, but these authoritarian governments beg the question of whether it is right for the State to rule and survive by any means and to defy so much of what society really wants and needs.

PART IV. BROAD NATIONAL CONCEPTS FOR ELIMINATION OF GOVERNMENT PATHOLOGIES

The best answers as to what to do about tyrants appeal to lie in this: limit whenever and wherever possible the authority and power placed in the hands of centrist tyrants. The total power placed in the government can be limited by retaining a good deal of power diffused broadly in society. The power that can and should be held by governments can also be made more diffuse and shared in ways that create countervailing forces against the centrist tyrant or clique. The distribution of power over the national economy is absolutely critical. The decline of Soviet style socialist states, and the world-wide movement to rid governments of monopolistic state owned enterprises reflects not only their economic failure but the growing recognition that government's domination of the economy became a powerful lever for pathological behavior. The following is a summary of broad concepts for the design of governments that rest on countervailing forces against the excessive aggregation of authority. The United States, despite its own follies and foibles stands as perhaps the leading exponent and practitioner of these broad national concepts.

A. Countervailing Forces on Politics

The key to preventing or mitigating pathology and corruption lies at the political level where the rules are determined for good or ill. The most powerful conceptual framework lies in the conflicts between the perceived well-being of the whole population vs. the realities of elitist centrist power politics. This conflict is universal; it led to the American and French revolutions and the surge of independence movements against colonial power over the last 100 years. In contemporary terms, it has prompted many governments, international organizations, scholars and concerned citizens to become advocates for greater democracy, representativeness, citizen influence on government decision making and greater transparency – or penetration – of government activities. The most obvious manifestation of this is strong emphasis on the value of competitive elections with at least two political parties. It is choice that enables countervailing politics to occur. It is choice that also can curb centrist totalitarianism.

Even more fundamentally, it can be argued that societies are learning that they must avoid excessive reliance on government, to the point where they lose the ability to protect their own crucial interests. While it may vary from country to country, each has some critical watershed beyond which an excessively powerful government can overwhelm all other elements of society, creating the ominous potential for the emergence of dictators, tyrants and controlling elites.

Political power is characterized by struggles between conflicting elements of society. The hoped for outcome of these conflicts is successful negotiation, compromise, and a sufficient public consensus to permit the government to function at an effective level. It is vital for societies to maintain a sufficient range and strength of institutions outside of government to prevent the pathological seizure of power. These countervailing forces need not be adversarial; they can just as easily be cooperative and reinforcing in their relationships with governments. History shows that governments can and do become the enemy, and each society must be prepared to strike some safe balance between government as benefactor and government as

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oppressor. The following discusses some of the broad national or societal concepts for the limitation of political pathology.

1. Politics balanced by the views of the general population: citizen participation in government actions; citizen rights to information about what the government is doing. Stated in an even more fundamental way, there should be a general recognition that excessive citizen reliance on the government may be dangerous even if alluring.
2. Politics balanced by the power of the courts. Courts must be granted the power to review laws and the administrative practices of government agencies.
3. Politics challenged by the media. For this to be real, the media must be granted independence from the government, and a legal base established which protects the media from almost any form of political interference.
4. Oversight and challenges by many forms of non-government critics and social advocates must be kept legal, and in fact in the best of governments, it would be encouraged.
5. The “balance of powers” doctrine. This is essentially the balance between the executive, the legislative and the judiciary, but there may be other balances established by ethnic, religious, military or geographic interests.
6. Governance should be diffused between the central national government and regional and local governments. It is widely accepted that the practical affairs of government should be conducted by governments that are closest to the people and most responsive to their needs and desires.
7. Effective and balanced law enforcement that is politically neutral. While the law enforcement institutions must be created and sustained by government, they must be allowed to function within their own defined rules. The rule of law, while “not enough” is nevertheless critical and it is vital that the law enforcement system be given an institutional framework sturdy enough to stand up to pathological interference.
8. Civil disobedience must be tolerated. Every government has the right to perpetuate itself, but the people should also have the right to legitimate protest, vigorous demands for change, and challenges to corruption or lack of equity.
9. The “rule of law” should apply to the institutions of government: clear definitions of power and authority should be spelled out in law, including elements of those laws that limit the discretion of public officials.

Revisiting Dicey’s statements as presented earlier in this article, it would be wise to challenge his contention that “Parliament has the right to make or unmake any laws whatsoever – and there can be no limits to its legislative power.” The lesson has been learned: a genuine rule of law requires that power of the political leadership must be constrained and balanced by countervailing power elsewhere in society. The government is not the whole country, and the well-being of the government is not always the same as the well-being of the country.

B. Countervailing Relationships with the Private Sector

As more governments withdraw from the stricter interpretations of state socialism and move to develop more market based economies, the role of the private sector will expand and it will be more acceptable that private interests become players in national politics. Much of this influence will be to mitigate government efforts to place excessive limitations on the private sector or to exert interference against legitimate business practices. In addition, it is more widely understood that governments must provide a body of laws that set forth the framework for the proper functioning of the private sector: legislated protections for ownership of land and buildings, the acceptance of standard commercial practices, enforcement of the rights of contract and rational patterns of regulation and taxation. Once this body of laws is in place and it is equitably maintained, the private sector is generally willing and able to conduct its own relationships with the government.

But it is also appropriate for governments to protect the general public against abuses by the private sector. Private sector activities can and should be modulated by government regulation. Recent trends in most countries have been to draw back from economic regulation where it interferes with the legitimate functioning of the private sector, but to emphasize the regulation of the private sector where it directly threatens the health and safety of citizens or other institutions. Thus, many forms of government economic oversight remain valid: oversight of financial sector banking and insurance; marketing and advertising; securities transactions and information and investigations of fraud and malpractice. The essential attribute to be retained in the protection of the general public against harm.

It is still relevant to expect the government to offer some protection against unfair business practices or unfair competition. It is especially ironic that, in many socialist countries some (largely obsolete) regulations against private sector monopolies persist along side of large numbers of state created monopolies or oligopolies of great power. In addition, many of these monopolies abused their power and were highly inefficient, yet were stoutly defended by the government from which there has been virtually no recourse.

The “private sector” also means far more than just corporations. One form of economic oversight that governments still justify is the protection of workers and the maintenance of appropriate institutions for equitable labor-management relationships. This means protection of the rights of individuals in the workplace whether they are unionized or not. But it also means prevention of union corruption and abuse of their members. It is valuable also to cultivate private sector “modulation” systems such as external auditing, the development of professional and managerial ethics and standards of conduct, and the right to seek legal recourse to protect commercial rights and contract commitments.

C. Countervailing Forces within the Bureaucracy

Even if we assume that the rule of law is properly defined, many of the failures of government, and the greatest potentials for pathology and corruption lie in institutions and people who manage public programs and administer laws.

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It should be emphasized that, in every government, the “management” responsibilities are shared between the political leadership and the workforce of the professional civil service. In addition, the functioning of governments has massively shifted away from performance by government employees alone and toward the use of “third parties” – contractors and recipients of grants-in-aid. Thus the actions of private sector companies, and the functioning of regional or local governments have become a vital part of performance of government programs. It is necessary therefore to design the institutions of government so that they respond to political leadership but remain capable of countering unwarranted political interference. These institutional arrangements include the following:

1. There needs to be a commitment to public service accountability set out in clear principles, policies and procedures. There should be no doubt in the minds of public officials as to what is legal and acceptable public practice. This cannot be done without many areas of doubt, but as much as possible should be clear and unambiguous. Every public process should be deliberately designed to eliminate or reduce the possibilities for corruption. Government must be open all the way from legislative policy formulation and drafting down to the essential elements of management procedures. It is not enough to make the functioning of the bureaucracy open if the political process is concealed.
2. It should be clear that it is important for the government to be able and willing to act – to respond to important public needs or threats. It is pathological for the government simply to be inert – to fail to decide – or to be unable or unwilling to take action. Specifically, it can be judged pathological when it is clear that the government knows there is a problem or an opportunity and fails to (at least try) to act.
3. While political decision making is broadening, it remains true that there are levels of governance where the professional government should remain the dominant force. The best outcomes for many government activities will come from the exercise of good management, and the use of professional ethics and standards, and not through the imposition of political motivations. In the conflict of “politics vs. management” management should often win.
4. Every government interacts with the public in a surprisingly large number of ways including money payments such as social security and unemployment compensation; the collection of taxes, the provision of public services and many programs of public information and education. In the U. S. for example, there are more than 900 categorical grant-in-aid programs administered largely through state and local governments in such areas as education, welfare, highways and mass transit, agricultural subsidies, and health care. It therefore becomes important that the public knows and understands what they are and are not entitled to and what responsibilities of the government are in providing those services. Where there are clearly defined government processes, it becomes easier to identify when and how these processes are being perverted. Systematic, integrated and comprehensive management procedures are not only a benefit to the internal management of an agency but they give the public transparency and stability in their relations with the government. Further, such processes are the basis for effective internal controls against corruption.

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Every country deserves a well trained and motivated civil service, imbued with a spirit of honesty from the top down. Whether they get them or not is another matter. All too many governments ignore or undervalue their career managers and officials; in some cases this neglect is deliberate since a strong career service can become a force against pathological politics. Similarly, internal corruption is an almost inevitable consequence of a poorly paid, badly motivated workforce – especially when they are exposed to corruption at the top. A sound civil service is necessary for real government operational effectiveness. Governments that neglect their public managers almost always pay dearly for such shortsightedness.

Just as police officers rely heavily on street informants or on calls from the public, government agencies also find that the public is probably the most valuable source for identifying corruption, incompetence, and the outrages of pathological policies. Therefore, the widest possible knowledge about government in the hands of the public is highly desirable. Tyrannical regimes that try to barricade the government against public knowledge are acting in a pathological way.

Government agencies can and should be deliberately designed and organized to prevent corruption and pathological practices. In most governments there are constitutions and basic legislation defining public programs and institutions that provide for such agency protective institutions as inspectors general, independent audit organizations and investigators of accusations of wrongdoing. There are government-wide audit agencies, special anti-corruption agencies, and legislative oversight. In addition, independent external forces include citizen scrutiny, interest group critics and the media. One of the most interesting developments in this arena is the degree to which such organizations as the World Bank, the United Nations or regional development banks have become external counter-forces against economic pathologies; and how donor organizations giving away money to developing countries have had to become counter-forces against corruption.

Special anti-corruption agencies have had a mixed record of success. Where they succeed they tend to have these characteristics: they are independent, reporting to the highest levels of the government, or independently to the legislative body. They must have a combination of skills including intelligence gathering and analysis, field investigation capability, the legal authority to demand records and information, and the authority to arrest and to initiate legal actions. They must establish a track record of staff neutrality and not be seen as captive to some political interest. And most critically they must not be confined to the investigation of civil servants or contractors but must be allowed to evaluate the performance of politicians as well without the fear of political retaliation. These anti-corruption agencies need not be large, but they must be skilled and independent.

Finally, all of the above approaches assume the willingness of a large share of society to become and remain more actively involved in the machinations of their own governments. Without community involvement on a grand scale, it remains all too easy for tyrants to seize the instruments of power and for pathological governance controlled by corrupt elite.

Long standing corruption becomes especially intractable. Such situations tend to become very secretive, self sustaining, highly organized and self defensive. The corrupt are highly motivated to protect each other in concealing information, ferreting out and frustrating

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investigators, and practicing the fine arts of intimidation and extortion. Most corruption tends to be vertical as layers of supervisors find out what is going on and, rather than stopping it, they negotiate a piece of the action. There is never any real expectation that corruption can be eliminated. Rather, organizations and even countries might be able to move from high corruption to relatively low corruption through better top down management control, strengthening of internal guardian activities, and better internal checks and balances, especially in relation to financial transactions.

As ever, the key to the corruption and pathology record of any government is heavily contingent on the nature of its political environment and leadership. In broad terms, corruption can be reduced by reducing the complexity of government and thus reducing the numbers of opportunities for corrupt behavior. Many public programs are recognized to be of marginal value and could be eliminated or drastically reduced if there was the political will to do so. Internal operating procedures in government agencies can be simplified and streamlined. The numbers of officials who can approve the allocation of money and other resources can and should be deliberately kept to a minimum.

Many politicians simply don't care; it is not apparent to them that tolerance of corruption will ultimately destroy their political position. Whether this is true depends on whether there is sufficient public awareness of what the government is doing. Incumbent political leaders tend to defend their preferred positions or to fear to allow the failings during their tenure to be scrutinized. But it is now apparent for example, that one of the most serious and significant threats being confronted by the CCP is the consequences of its own corrupt past, and similar conflicts are posed in many other countries. Thus, it is of great value if the government can be persuaded or forced to publicize its intended future actions (for example a draft law being considered, or the publication of advanced notices of intent to issue a regulation, or the public publication of official policies and procedures). In some cases, the creation of "hot lines" and publication of where the public can go to report suspected malfeasance has had striking results.

Newly elected politicians have a window of opportunity in which they can become the vigorous advocates of the need for special anticorruption campaigns, the creation of anticorruption agencies, and more intense investigation of some of the worst activities such as customs services or contracting. Finally, the rule of law can be reinforced. Vague laws that grant too much authority without limit can be amended. Laws that are impractical and unenforceable can be modified or ignored.

In the realm of economics, one of the most powerful tides running in governments around the world has been the withdrawal from state controlled and directed economies toward market based economies and a greater involvement by the private sector. As the state has withdrawn from hundreds of thousands of government controlled enterprises, the opportunities for government corruption have been drastically reduced. Many of these SOEs were government monopolies, and it is hoped that the promotion of competition will not only produce better economic results but will reduce the use of these SOEs for corrupt purposes.

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There are also many management strategies and approaches that have proved effective. It is possible to reduce the benefits from corruption or to make the potential costs greater than the benefits through tougher penalties such as fines, firings, criminal proceedings, suspensions and ruined careers. The likelihood of detection can be increased through the presence of more and better auditors and inspectors, the encouragement of whistle blowing, and perhaps rewards for reporting of suspicious activities. Managers of every public program can be made to understand that they are the first line watchdog for their program. Managerial approval authority can be either constrained or more carefully reviewed to reduce the chances of misuse. The rule of law may not be enough, but it is not inevitable that it should be abused and neglected, and it is vital to the public interest that it not allowed to become pathological.