Three Models of Democracy

Intellectual and Moral Foundations of Liberal Democracy and Preconditions for its Establishment in Contemporary China

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Except where otherwise acknowledged, this thesis is my own work

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This thesis is dedicated to those who sacrificed their lives, and suffered in or out of jail because of their participation, in the 1989 Democratic Movement. I took on this research project in order to help to give meaning and effect to their efforts and sacrifices.

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Abstract

The thesis examines democratic ideas, their political implications and democratisation in contemporary China. It intends to offer both a map of the main democratic ideas, the key positions and arguments as well as a series of critical reflections upon them, and particularly upon liberal ideas of democracy in China. There are three overriding objectives. The first is to provide an introduction to, and discussion of, three competing models of democracy, namely, radical, official and liberal, in contemporary China. Second, the thesis offers a critical review of liberal ideas of human rights, evil and proceduralism, and provides a liberal constructive critique of the intellectual and moral foundations of the Chinese liberal theory of democracy. The third objective is to analyse carefully the issue of the practical feasibility of liberal democracy as well as basic problems associated with Chinese democratization from the aspects of political culture, civil society and legitimacy.

The whole thesis is organized around the idea that the process of democratization in China can be seen in terms of both intellectual and practical activities of planting the democratic "seed" in Chinese "soil". According to this metaphor, the thesis is divided into three parts to deal with seed selection, raising seedling and soil amelioration respectively.

Part One deals with seed selection, that is, it will provide political philosophical and practical justifications for Chinese liberal rejection of both the radical and Chinese official paternalistic models of democracy, and of Chinese liberal selection of the liberal "seed" democracy in contemporary China. Thus, Part One analyzes the variants of democracy and illuminates why liberal democracy is more attractive than the other models. This is partly a chronological review of democratic ideas and partly a critical and comparative analysis of them. It provides a very brief historical background of, and a detailed theoretical introduction to, each model of democracy.

Part One consists of three chapters. Chapter 1 examines the radical ideas of populist democracy viewed by Yang Xiguang (1968), Li Yizhe's group (1974) and Chen Erjin (1976), and shows a shift from the radical to the liberal model of democracy in the 1980s. Chapter 2 examines Deng Xiaoping's official paternalistic model of democracy and the liberal critique of that

liberal ideas of democracy. Chapter 3 undertakes a full-scale review of how three contemporary Chinese liberal thinkers, Wei Jingsheng, Hu Ping, and Yan Jiaqi, view democracy.

Part Two deals with raising seedling, that is, the attempt to raise the liberal "seed" of democracy by eradicating and overcoming internal tensions in Chinese liberal ideas of democracy and providing a more coherent theoretical foundation for the Chinese liberal theory of democracy. Thus, Part Two offers a detailed critical review of liberal ideas of human rights, evil and proceduralism or constitutionalism, and discusses a number of the issues associated with the intellectual and moral foundations of Chinese liberal theory of democracy. It further explains the decline of the Chinese Marxist idea of democracy and the rise of the liberal discourse of democracy. More importantly, it focuses on <u>moral</u> and <u>intellectual</u> foundations for Chinese liberal democratic theory and for Chinese political institutional design.

Part Two consists of four chapters. Chapter 4 explores the problem of the coherence of the Chinese liberals' ideas of human rights by examining the roles of, and operation of, their ideas of human rights in the process of realizing those rights. It also attempts to address a set of difficult problems relating to putting their ideal of human rights into practice in China.

Yan Jiaqi argues that the idea that human beings are potentially evil is the starting-point for the rule of the law and procedural systems (Yan, 1986c, 1988, 1991a, 54-8). Also Liao Xun (1987, 7) claims that the principle of preventing evil is a theoretical basis for democracy. Chapter 5 attempts to describe, discuss and develop this supposition of evil and to provide a reliable theoretical foundation for the Chinese liberal arguments for democratic institutional design.

Chapter 6 defends Yan Jiaqi's idea of procedural democracy by dealing with the difficult question of the problem of the exception, raised by Carl Schmitt, which challenges the coherence of procedural democracy; it also undertakes a critique of Schmitt's doctrine of the exception and outlines the liberal ideas of the exception.

Chapter 7 focuses on creating a solid moral foundation for Chinese liberal institutional design by discussing what might be called the project of

infusing rights-based morality into political institutions. That is, democratic institutional arrangements require a morality which is characterized by urgent recognition of the following: equal liberties, institutional protection of rights and fair procedures. This chapter also examines and rejects a number of arguments against that project such as the argument of the independence of politics from morality, the practical argument concerning the catastrophic consequences of that project and the cultural relativist argument.

Part Three deals with soil amelioration, that is, it will demonstrate the existing democratic "soil" in Chinese political culture, social structure and leadership on the one hand, and investigate the problems associated with "soil" for Chinese democracy on the other hand. In other words, Part Three addresses the issue of the feasibility of liberal democracy as well as basic problems associated with Chinese democratization.

Part Three consists of three chapters. Chapter 8 examines the emergent democratic cultural conditions under which Chinese liberal ideas of democracy will develop and prove feasible in China. It also examines a number of cultural problems posed for the liberals in China.

Chapter 9 studies emergent civil society as a social base for Chinese democracy. It assesses the positive impact of civil society on the Chinese democratic movement in 1989. It also explores the dual roles of civil society, the self-limitations and the problems civil society poses for Chinese democratization.

Chapter 10 investigates the search for new foundations of legitimacy by Deng's leadership and examines changes in legitimating techniques in relation to the move towards democratization in China after 1978, and particularly since 1989. The central objective is to investigate the relationship between legitimacy (old and new forms of legitimation) and democracy in contemporary China. The purposes of this Chapter are (1) to identify changes in the conceptions of legitimacy, particularly the recent adjustment of legitimating techniques; (2) to assess the impact of these changes on the direction of political development by examining the possibility of playing the democratic card by reformer factions within the

CCP; and finally (3) to discuss the limits and the problems associated with the Party's search for new legitimacy.

I have also included an appendix which critically examines David Humqe's supposition of knavery in institutional design. This is an extended discussion of the problem of evil in relation to institutional design introduced in Chapter 5.

INTRODUCTION

Background to Study[1]

Various Western "democratic seeds" have been "planted" in Chinese political institutions and culture in modern China. At the begining of this century, China adopted Western democratic institutions such as the first formally democratic institution of the gentry -- the city Council (1905-1914) and the representative institutions (1909-1913) at local and national levels. However, these institutions failed in the end. After that, both the Nationalist Party (1930s-1940s) and the CCP after 1949 established autocratic or totalitarian systems in the names of either Sun Yat-sen's idea of democracy or the Chinese Marxist view of democracy. But, since the 1970s, demanding true democracy has been a major theme in Chinese communities: two major democratic movements (1978-1989) in Mainland China, the democratic breakthrough in Taiwan in the later 1980s and the success of a democratic party in the 1991 election in Hong Kong.

Particularly, the tragedy of the Cultural Revolution (1966-1976) resulted in or, more precisely, was a prelude to the democratic movements in contemporary China. As Friedman argues, just as the religious wars of Europe helped give birth to toleration, the bloody vigilante violence of Mao's Cultural Revolution may give birth to new and creative democratisation.

The tragedy of the Cultural Revolution revealed the weaknesses and shortcomings of the Chinese Communist system, and discredited Mao Zedong's ideal of "proletarian democracy". There emerged populist, paternalistic and liberal ideas of democracy which directly reacted to the Cultural Revolution; these are the three contestants in Chinese ideological in-fighting today and will likely remain so (Chapters 1, 2 & 3).

First, there emerged the populist model of democracy of Yang Xiguang (*Whither China* in 1968), Li Yizhe's group (*On Democracy and the Socialist Legal system* in 1974) and Chen Erjin (*On Proletarian-Democratic Revolution* in 1976), which inspired the young generation of that time, and

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[1]Here I only provide a very brief background to my study. For more information about this background, see Section 6 of Chapter 1, Section 1 of Chapter 2, Section 1 of Chapter 5, Section 2 of Chapter 6, Section 4 of Chapter 7, Section 2 of Chapter 8, and Section 1 of Chapter 10.

influenced China's Democracy Movement in the later 1970s and early 1980s. They advocated a direct mass democracy which is the antithesis of bureaucratic apparatus and in which the working class or proletarian class has power of final control of state affairs.

Second, since the end of the Cultural Revolution, Deng Xiaoping developed a paternalistic model of "people's democracy" characterized by collectivism, limitations on political freedom and the mixture of formalistic democracy and paternalistic authority (Chapter 2). This model of democracy also used the state-civil society schema as a new art of rule, albeit limited in the economic area (Chapter 10). This model of democracy was designed by Deng to give a measure of legitimacy to the Chinese communist regime which faced serious legitimacy crises whilst leaving the realities of party rule and power untouched by popular intrusion. As well as legitimising the established set-up, the model also modified elements of Mao Zedong's perspective on politics and popular participation, criticized radical populist and liberal models of democracy, and even posed a challenge to Western "bourgeois" democratic theory.

Third, since the end of the Cultural Revolution, Chinese liberals such as Wei Jingsheng, Hu Ping and Yan Jiaqi have established a liberal model of democracy which advocates human rights to fight tyranny, upholds moral scepticism to undermine official dogma and to check hierarchies of status, and believes in political competition to disrupt monopolies of political power. The rise of liberal ideas of democracy was the major intellectual challenge to paternalistic democracy and was the product of a response to the Chinese totalitarian system. Liberalism is attractive to Chinese intellectuals not because it is being forced on them by an aggressive and hostile world but because it appears to some Chinese intellectuals to offer potential solutions to pressing problems.[2]

Among certain circles of Chinese intellectuals, there have been a number of shifts in orientation towards crucial questions in political theory. In the first place, Chinese liberals such as Wei Jingsheng and Hu Ping have turned away from collectivism and egalitarianism toward individualism, and from the idea that Marxism-Leninism-Mao Zedong Thought is the one

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[2]Hu Ping has discussed in detail the ideas and works of liberal Chinese authors in the past ten years. See Hu Ping, 1991a, esp. No. 2, 36-8, and No. 3, 46-49. Also see Wu Guoguang, 1990.

and only absolute and infallible truth to the idea that all human knowledge is inherently fallible.

Another important change is that, as a result of the violence and social disruption during the "Cultural Revolution", Chinese liberals such as Hu Ping and Yan Jiaqi have abandoned the Maoist idea of the goodness of human nature which constitutes a basis for an ideal of communist society, and have instead adopted the view that human nature is potentially evil. This is the philosophical basis underlying their conviction that orderly society and government cannot be established by relying on the good-will and moral character of the leadership, but must be based on a coherent, institutionalized system of checks and balances aimed at preventing corruption and over-concentration of power.

Moreover, more liberal-minded intellectuals no longer support the Party's aim of reaching the ideal Communist society by "continuous revolution", which implies the right of the State to interfere in society and in the lives of individuals. They repudiate the official model of "socialist democracy", and are searching for liberal-democratic solutions to China's present political problems.

Among the models of democracy above, the liberal one is the strongest in China and, by most estimates, has gained currency in China throughout the 1980s and 1990s. Political liberalism, which is an echo of Chinese liberalism of the period between the 1890s-1940s, is undoubtedly the dominant current of thought in China.[3] It will have an important role in defining the future of China (the Conclusion).

I should perhaps emphasise that I have selected only these three models of democracy, which I consider to be of central importance to political development in China. As David Held (1987) does, I take the view that an extensive, in-depth coverage of a number of the most central ideas and themes is preferable to a superficial review of all. Thus, the thesis does not not include an introduction and analysis of, for example, Chinese Marxist humanists' ideas of democracy;[4] because humanists' ideas of democracy neither provide a distinctive model of democracy at a theoretical

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[3] As for Chinese liberalism between the 1890s-1940s, see Elvin, 1969; Fincher, 1989; Nathan,1986; Grieder, 1970.

[4] Marxist humanists' idea of democracy contains and supports core liberal elements of individual rights, legality, pluralism and proceduralism (See Hua Shiping, 1992).

level, nor have extreme importance to future political development in China (reasons for that see Chapters 5 and 10) and, finally, Brugger and Kelly (1990) have already studied them in detail.

Also I should acknowledge that the idea of a model of democracy is borrowed from David Held (1987). This refers to a theoretical construction designed to reveal and explain the chief elements of a democratic form and its underlying structure or relations. Models of democracy also involve necessarily a shifting balance between descriptive and explanatory and normative statements. Also, I should say clearly, the above models of democracy are ideal types and distinguished as independent solely for analytical purpose. In the complex real life of political activities, these ideas are so overlapping that they are not clear-cut as the thesis suggests. However, these models are useful for understanding the distinctive features and the developments of democratic ideas, and for analyzing their political implications in contemporary China.

General Aims and Focus of the Thesis

There is a growing body of literature (Nathan, 1986, 1990a; Seymour, 1980; John P. Burns, 1988; Barrett L. McCormick, 1990, 1992, 1993a & b; Friedman, 1989, 1991, 1993a, 1993b; Womack, 1984 and 1990; Gittings, 1990, Chap. 8 & 10; Julia Ching, 1990, Chap. 9; Bachman & Yang, 1991, Unger, 1991b; White, 1993, 1994; Rosen, 1985, 1991, 1993, and Saich, 1989) focusing on Chinese democratic ideas and practices in the historical, political and intellectual contexts. These studies have made a great contribution to the understanding of Chinese democratic ideas and democratisation. Particularly, the detailed studies of historical, political and cultural backgrounds of Chinese ideas of democracy have enriched our sociological knowledge of Chinese democracy; for example, Barret McCormick's (1993b) study of the people's congress system in China. These studies have also examined strategies of Chinese writings such as their use of the words of Mao and of others, the political atmosphere where a certain degree of freedom was allowed, access to alternative ideas, and finally survival considerations, which are very important to understanding Chinese democratic ideas.[5]

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[5]For example, Unger has studied in detail Yang's personal development and the social milieu that influenced his political stance and thought. See Jonathan Unger, 1991a. Also see Rosen, 1985; Seymour, 1983.

However, little has been said about different conceptions of democracy, and, particularly, their political implications for different types of political developments in China. This thesis attempts to overcome some of the above problems.

The thesis examines democratic ideas, their political implications and democratisation in contemporary China. It intends to offer both a map of the main democratic ideas, the key positions and arguments as well as a series of critical reflections upon them, and particularly upon liberal ideas of democracy in China. There are three overriding objectives. The first is to provide an introduction to, and discussion of, three competing models of democracy, namely, radical, official and liberal, in contemporary China. Second, the thesis offers a critical review of liberal ideas of human rights, evil and proceduralism, and provides a liberal constructive critique of the intellectual and moral foundations of the Chinese liberal theory of democracy. The third objective is to analyse carefully the issue of the practical feasibility of liberal democracy as well as basic problems associated with Chinese democratization from the aspects of political culture, civil society and legitimacy.

Among the above models of democracy, the liberal one is a central focus of my thesis. The reasons for this focus are as follows. Most liberal-minded Chinese intellectuals have become increasingly pragmatic and less and less interested in exploring the foundations and principles of democracy in past decades. This pragmatic approach leaves Chinese liberal democratic theory as well as ideas of political reform without solid intellectual and moral foundations. Thus there is a need to develop the current liberal ideas into a systematic theory of democracy. Efforts towards this end have been made. For example, a few liberal scholars and activists such as Wei Jingsheng, Yan Jiaqi, Hu Ping and Jin Guantao have paid attention to the issue of a reliable and coherent foundation for democratic theory. For them, China needs liberal and decent philosophers at the core. Their intellectual efforts are highly laudable; but, more work needs to be done in regard to critical examination of their assumptions, internal tensions and implications, and the translation of principles into practical programs which will enable political liberalism to tackle concrete political, economic, and social problems at the policy-making level.

Influenced by the attempt to establish an academic liberal tradition in China by Jin Guantao (1988), Lin Yusheng (1988) and Zhang Hao (1989), and particularly by Barry Hindess' (1991, 1993) sharp intellectual critiques of democratic ideas and liberalism, I attempt to undertake a reconstruction, criticism and tentative extension of some particular theoretical positions that need to be fortified by more stringent theoretical investigation into Chinese liberal theory of democracy. Particularly, I attempt to develop the existing work done by Wei Jingsheng, Hu Ping and Yan Jiaqi by providing a more coherent theoretical foundation for Chinese liberal theory of democracy.

I should say immediately that by use of the term foundation, I do not mean to take up a position here in methodological and foundationalist debates. Rather, I believe that it is possible to develop a practical social dimension of political philosophy independent of certain controversial philosophical questions; that is, I present a set of practical arguments for choosing political principles which are upheld on a rational basis by liberal-minded Chinese. An intellectual foundation, I see, has the following three features.

(1) Priority: when there are conflicts between values, certain basic values have priority over other values.

(2) Reductionism: Chinese liberal theory of democracy and of institutional design is reducible to certain starting-points. In other words, we can derive the plan of political institutional design from certain starting-points and premises.

(3) Coherence: there must be consistency among certain values and starting-points, as well as between premises and arguments based on those premises.

There are two things to be considered when investigating foundations: moral principles and intellectual concepts such as natural rights, evil and procedure. The former focuses on a rights-based morality; the latter discusses intellectual utility or necessity of concepts of natural rights, evil and procedure. Obviously, the distinction is arbitrary because these two things do overlap; but it is distinction that serves well my analytical purpose.

Thus the thesis will undertake a constructive critique of three basic concepts -- human rights, evil and proceduralism -- which serve as the intellectual foundation of liberal theory of democracy in contemporary China. I will identify possible or existing tensions and inconsistencies associated with these three concepts in Chinese liberal thinking of democracy, and suggest ways of dissolving or resolving these tensions. The thesis also will examine a rights-based political morality which serves as a moral foundation for liberal democratic institutional design. I will investigate the reasons why Chinese liberals have chosen rights-based political morality, how rights-based political morality serves as a foundation for democratic institutional design, and why we need to distinguish the sage conception of morality from the procedural conception of morality, and further reject the sage conception of morality (Chapter 7).

I should acknowledge that I am, in fact, largely in sympathy with the fundamental tenets of Chinese liberal views of democracy, yet worried about some theoretical problems and the neglect of certain elementary tensions in these views of democracy. Also, my critique of the internal limits and the problems of Chinese liberal theory of democracy is for the sake of actually realizing political liberalism in China.

In exploring democratic ideas, we cannot escape too far from the aspect of preconditions for, and their restrictions on, liberal democracy at a practical level. Thus, the thesis will also focus on the issue of the feasibility of liberal democracy. It will examine the preconditions of political culture, social structure and leadership on the one hand, and investigate the problems associated with Chinese democratisation on the other hand. Here the thesis has three tasks. The first is to examine anti-democratic arguments concerning the current cultural, political, social and demographic conditions in China. The second task is to demonstrate the existing practical bases of these for Chinese democracy. The third task is to examine a set of serious problems for Chinese democracy associated with the existing cultural, political, social and demographic conditions, and critically analyze the solutions adopted by Chinese liberals to resolve these problems. The Conclusion will provide more detailed reflections on Chinese democratisation.

Methodology

I. An Inside Normative Approach

The important role of values such as democracy, liberty and justice has been emphasized by a number of scholars on Chinese politics. Nathan (1990b, 314), for example, calls for the incorporation of values issue, as he argues that area studies cannot treat itself as detached from the great issues. However, most works on Chinese politics adopt an empiricist, scientific, objective position, or what I might call <u>an outside observing perspective</u>. This outside observing approach has some limits. For example, some works (see Burns, 1988, Unger, 1991a and Saich, 1989) are not interested in, so as to overlook, significant theoretical issues of Chinese democratic ideas. Some (see Jenner, 1992) deny the relevance of the normative approach in examining democratic ideas in China; one reason being that Chinese culture teaches us that no natural rights exist. As a result, these scholars tend to make no value judgments, so that the basic value of equal liberty is ignored in the context of Chinese political studies.

Encouraged by Nathan and Apter,[6] I have decided to adopt <u>an inside normative approach</u> which attempts to overcome the problems associated with the outside approach discussed above. Not only as an outside observer, but as an inside participant, I have joined in internal debates over different theoretical issues, brought some theoretical concepts to life, and made them relevant to Chinese political development.

The insider normative approach holds that a study of Chinese ideas of democracy has to take account of the normative dimension, to deal with the fundamental issues of politics, and to focus on the development of a democratic political culture. This is because a new democratic political culture has the task of breaking the communist political cultural value system in the transitional period. It also must make justice, rather than power the primary virtue of social institutions (Apter, 1987, 3). The traditional and communist political cultures must be evaluated according to democratic values, and be reconstructed and adapted to meet the needs of

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[6]David Apter also claims that the rationality of developmental theories enables democracy to substantiate its claim to moral uniqueness, and to maintain itself as a self-evidently superior form of politics (Apter, 1987, 7).

democratic institutions.[7] Institutions also have a normative content. To develop a democratic political culture demands, in short, a radical restructuring of all aspects of the political organizations and associations of everyday life in China. It is not only possible but also necessary to establish a fruitful link between the exposition of democratic values and the redesigning of political institutions.

The normative approach also defends the importance of the conceptions of natural rights, evil and proceduralism. These conceptions are intellectual constructs. So is a right-based political morality. As Hume (1949b) argues about justice: it is an "artificial virtue" and is "invented" as a virtue because of the advantages it brings indirectly.

The important issue is to investigate what, how and why certain intellectual inventions are rejected and defended. Chapters 1, 2 and 3 of the thesis will show the decline of the official idea of communist society and of the radical idea of populist democracy, and the rise of the liberal intellectual invention of the ideas of natural rights, evil and proceduralism. Chapters 4, 5 and 6 will explain why Chinese liberals choose the notion of natural rights, evil and proceduralism as normative premises for democratic institutional design and how these intellectual conceptions serve as a normative basis for democratic institutional design.

Further, the inside normative approach holds that Chinese liberals' assertions about natural rights are assertions of what ought to be as the result of human choice. To assert that "All men are of equal worth" is not to state a fact but to choose a side. It announces *This is where I stand* (Macdonald, 1984, 34, also see Hu Ping, 1990b, 38). The value claims or statements which are logically certain are tautological or analytic and are neither verified nor falsified by what exists (Macdonald, 1984, 26, also see Hu Ping, 1990b, 38). Thus, since the liberal ideal of democracy is purely hypothetical, it is not a valid objection to say that some conditions for an ideal arrangement have never been nor ever will be satisfied (see Rawls, 1971, 167). The failure of democratic politics in modern China does not

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[7]Political culture discourse which emerged in the 1980s in China, has a subversive and critical character. Conversely, empirical political cultural discourse in the West, according to Luke, lacks a critical perspective, and constitutes a system of rules for creating and legitimising apathy, docility and passivity in mass politics. See Luke, 1989, 142-7, Carol Pateman, in Almond & Verba, 1980, 61.

disprove the ideal of liberal democracy and does not constitute a powerful reason for rejection of, or not acting in light of, the liberal ideal of democracy although it does raise difficult problems for implementing the liberal ideal of democracy. The reason for this is that the liberal ideal of democracy has been chosen by Chinese thinkers such as Hu Ping and Yan Jiaqi on the basis of moral conviction, and the existing problems associated with Chinese political culture should not inhibit the choice of the just principle of right-based morality although these might inhibit its application. Further, a set of failures of liberalism in various ways in modern China does not prove that political liberalism is unsuitable in China. As Rawls asserts, a conception of justice for the basic structure is worth having for its own sake. It should not be dismissed because its principles are not everywhere satisfactory (Rawls, 1971, 9).

Also, intellectual invention is not totally disconnected from social fact. The discourse of the idea of natural rights results from the tragedy of the Cultural Revolution, and from the historical lesson that theoretical justifications of the violation of human rights always depend on the denial of the idea of natural rights (Chapters 4 and 7). Further, the idea of infusing the right-based morality into political institutions mirrors the economic development in China. Fairness is required by the development of market economics in China. And further development of market economics demands that the state should protect the legitimate rights and interests of private enterprises.

II. The Principle of Methodological Complementarity

I attempt, throughout the whole thesis, to bridge the gap, or reduce the tension, between the desirable and the feasible by seeking a combination of the normative and practical approaches. A methodological complementarity is a guiding principle for me in arguing further that it is necessary to combine these two approaches.[8]

Here, intellectual virtues of the normative philosophical approach can help us to establish a relatively, autonomously ideal world. When ugly reality conflicts with an ideal world, an idealist will not surrender but struggle for the ideal; with the help of the normative and regular ideal,

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[8]I have adopted this principle in arguing for a combination of the cultural and institutional approaches, see He Baogang, 1992c.

people can protect themselves against ugly reality. At the same time, the actual meaning of normative thinking must be fully understood only in the context of an analysis of the crucial problems pertaining to the process of realizing a normative ideal such as political liberalism in the transitional period. Normative thinking risks falling apart if it ignores practical problems and engages in wishful thinking to risk the charge of practical irrelevance. Further, if a normative philosophical approach does not incorporate the practical approach, it will be solely concerned with what is desirable; this way of thinking will lead to little more than utopian solutions to existing problems. Thus a combination of the normative and practical approaches, therefore, is needed, and we need to become realistic idealists, or idealistic realists. In short, practical considerations should be incorporated as an explicit element of normative political theory.

The normative and practical approaches are complementary in this sense: a normative approach describes an ideal arrangement and defines principles, which are a guide in employing the practical approach; a practical approach attempts to understand the actual problems of the ideal arrangement and provides a realistic way of thinking about how we might achieve the ideal arrangement. In this thesis, while the normative approach is used as the major method, the practical approach is subordinated to the normative approach, and used to supplement the philosophical arguments.

Under the guiding principle of the above methodological complementarity, in my work I attempt to combine the normative approach of John Rawls and the practical approach of Lucian Pye in a constructive critique of Chinese liberal ideas of democracy. It seems to me that the major problem in Western study of Chinese political life is that the Rawlsian kind of political philosophy has been separated from the Pyesian kind of theory of political development. The works of neither Rawls nor Pye are self-sufficient in the Chinese context. Although Pye has studied the problems in the process of Chinese political development and made a great contribution in doing so, he never justifies the basic value of liberty and its role in political development, and seldom analyzes the process of realizing the ideal of freedom. Rawls, on the other hand, provides us with sophisticated philosophical justifications of the priority of basic equal liberties, but his theory does little about how the priority of freedom can be set up, and how the priority of freedom can be justified in another political community such

as China. My work has attempted to fill the above gap in the way that it has applied Rawls's theory in a critique of Chinese liberal ideas of democracy and applied Pye's theory of Chinese politics in a deeper understanding of the difficulties associated with Chinese democratisation.

Certainly there are always tensions between these two approaches. For example, while my argument for the rights-based morality implies a deontological position which focuses on honoring liberty, my practical considerations of self-limiting rights implies a consequentialist position which stresses promoting liberty (an analytical distinction between a consequentialist and a deontological attitude towards liberty, see Pettit, 1991 & 1993). These two different philosophical positions come into conflict when applied to particular issues such as whether or not the official tough birth control measure should be continued in China, or whether or not the Tibetans should exercise their right of autonomy to separate Tibet from Mainland China. In order to reduce the tensions, and so ensure combining the moral normative and moderate realistic approaches, we need to become skilful masters of the methods we use, and we need a reflective and dynamic equilibrium (see Rawls, 1971, 20, 48-51, 120, 430, 434, 579) to deal with realistic judgments. It is necessary for Chinese liberals to limit, revise and withdraw some realistic judgments in order to arrive at the just principles.

Arrangement of the Thesis

The whole thesis is organized around the idea that the process of democratization in China can be seen in terms of both intellectual and practical activities of planting the democratic "seed" in Chinese "soil". According to this metaphor, the thesis is divided into three parts to deal with "seed selection", "raising seedling" and "soil amelioration" respectively.

Part One deals with "seed selection", that is, it will provide political philosophical and practical justifications for Chinese liberal rejection of both the radical and Chinese official paternalistic models of democracy, and of Chinese liberal selection of the liberal "seed" democracy in contemporary China. Thus, Part One analyzes the variants of democracy and illuminates why liberal democracy is more attractive than the other models. This is partly a chronological review of democratic ideas and partly a critical and

comparative analysis of them. It provides a very brief historical background of, and a detailed theoretical introduction to, each model of democracy.

Part One consists of three chapters. Chapter 1 examines the radical ideas of populist democracy viewed by Yang Xiguang (1968), Li Yizhe's group (1974) and Chen Erjin (1976), and shows a shift from the radical to the liberal model of democracy in the 1980s. Chapter 2 examines Deng Xiaoping's official paternalistic model of democracy and the liberal critique of that model. It shows the major ideological struggle between the official and liberal ideas of democracy. Chapter 3 undertakes a full-scale review of how three contemporary Chinese liberal thinkers, Wei Jingsheng, Hu Ping, and Yan Jiaqi, view democracy.

Part Two deals with "raising seedling", that is, the attempt to raise the liberal "seed" of democracy by eradicating and overcoming internal tensions in Chinese liberal ideas of democracy and providing a more coherent theoretical foundation for the Chinese liberal theory of democracy. Thus, Part Two offers a detailed critical review of liberal ideas of human rights, evil and proceduralism or constitutionalism, and discusses a number of the issues associated with the intellectual and moral foundations of Chinese liberal theory of democracy. It further explains the decline of the Chinese Marxist idea of democracy and the rise of the liberal discourse of democracy. More importantly, it focuses on moral and intellectual foundations for Chinese liberal democratic theory and for Chinese political institutional design.

Part Two consists of four chapters. Chapter 4 explores the problem of the coherence of the Chinese liberals' ideas of human rights by examining the roles of, and operation of, their ideas of human rights in the process of realizing those rights. It also attempts to address a set of difficult problems relating to putting their ideal of human rights into practice in China.

Yan Jiaqi argues that the idea that human beings are potentially evil is the starting-point for the rule of the law and procedural systems (Yan, 1986c, 1988, 1991a, 54-8). Also Liao Xun (1987, 7) claims that the principle of preventing evil is a theoretical basis for democracy. Chapter 5 attempts to describe, discuss and develop this supposition of evil and to provide a reliable theoretical foundation for the Chinese liberal arguments for democratic institutional design.

Chapter 6 defends Yan Jiaqi's idea of procedural democracy by dealing with the difficult question of the problem of the exception, raised by Carl Schmitt, which challenges the coherence of procedural democracy; it also undertakes a critique of Schmitt's doctrine of the exception and outlines the liberal ideas of the exception.

Chapter 7 focuses on creating a solid moral foundation for Chinese liberal institutional design by discussing what might be called the project of infusing rights-based morality into political institutions. That is, democratic institutional arrangements require a morality which is characterized by urgent recognition of the following: equal liberties, institutional protection of rights and fair procedures. This chapter also examines and rejects a number of arguments against that project such as the argument of the independence of politics from morality, the practical argument concerning the catastrophic consequences of that project and the cultural relativist argument.

Part Three deals with "soil amelioration", that is, it will demonstrate the existing democratic "soil" in Chinese political culture, social structure and leadership on the one hand, and investigate the problems associated with "soil" for Chinese democracy on the other hand. In other words, Part Three addresses the issue of the feasibility of liberal democracy as well as basic problems associated with Chinese democratization.

Part Three consists of three chapters. Chapter 8 examines the emergent democratic cultural conditions under which Chinese liberal ideas of democracy will develop and prove feasible in China. It also examines a number of cultural problems posed for the liberals in China.

Chapter 9 studies emergent civil society as a social base for Chinese democracy. It assesses the positive impact of civil society on the Chinese democratic movement in 1989. It also explores the dual roles of civil society, the self-limitations and the problems civil society poses for Chinese democratization.

Chapter 10 investigates the search for new foundations of legitimacy by Deng's leadership and examines changes in legitimating techniques in relation to the move towards democratization in China after 1978, and particularly since 1989. The central objective is to investigate the

relationship between legitimacy (old and new forms of legitimation) and democracy in contemporary China. The purposes of this Chapter are (1) to identify changes in the conceptions of legitimacy, particularly the recent adjustment of legitimating techniques; (2) to assess the impact of these changes on the direction of political development by examining the possibility of playing the democratic card by reformer factions within the CCP; and finally (3) to discuss the limits and the problems associated with the Party's search for new legitimacy.

I have also included an appendix which critically examines David Humqe's supposition of knavery in institutional design. This is an extended discussion of the problem of evil in relation to institutional design introduced in Chapter 5.

PART ONE

MODELS OF DEMOCRACY

CHAPTER 1

The Radical Model of Populist Democracy

This chapter discusses the radical model of populist democracy of Yang Xiguang (*Whither China* in 1968), Li Yizhe's group (*On Democracy and the Socialist Legal System* in 1974) and Chen Erjin (*On Proletarian-Democratic Revolution* in 1976), which inspired the young generation of that time, and influenced China's Democracy Movement in the later 1970s and early 1980s. It focuses on the theoretical relationships between their ideas of democracy, their ideas of an emerging "new class" and their assessments of the "Cultural Revolution". Populist democracy in this chapter is defined as a direct mass democracy which is the antithesis of bureaucratic apparatus and in which the working class or proletarian class has power of final control of state affairs.

This Chinese radical model of populist democracy is usually now regarded merely as politically irrelevant to today's China and is remembered as an historical curiosity. However, for some Chinese dissidents, the June 4th Events in 1989 re-raise the issue of a new class and radical means to achieve democracy in China. This new development thus calls for a re-examination of populist democracy, which will likely remain one of the major ideologies in the field of political thoughts in future China. Further, the above writings on democracy contain some elements of the liberal idea of democracy; these can be seen as a theoretical stage of the transition to a liberal model of democracy in contemporary China. A study of the populist idea of democracy, therefore, helps us to understand the intellectual development of democratic thought from the populist to the liberal model of democracy in contemporary China (Chapter 3). Also, despite the difficult circumstances and narrow limits within which the above writers worked, their writings have enough intellectual substance to be accorded the dignity of an intellectual critique. The study of their intellectual merits and weaknesses, therefore, helps us to understand the advantages and the limits of Chinese liberal idea of democracy.

I draw a distinction between sociological understanding of why and what they wrote and a substantive analytical critique. The chapter focuses on the latter, because a growing literature has already studied strategies of

their writings such as their use of the words of Mao and of others, the political atmosphere where a certain degree of freedom was allowed, access to alternative ideas, and finally survival considerations, which are very important to understanding their democratic ideas (see Unger, 1991a).

The chapter is partly descriptive and partly analytical. It has six sections. The first three sections review the populist ideas of democracy of Yang Xiguang, Li Yizhe's group and Chen Erjin respectively. Section 4 describes the transformation of the assessments of the "Cultural Revolution" with reference to a shift from a populist to a liberal model of democracy. Section 5 is a liberal critique (including self-critiques by Li Zhengtian and Yang Xiguang) of the idea of a "new class" and class analysis, constituting a rejection of a key feature of the populist model of democracy. Section 6 discusses the decline of the populist model of democracy and the possibility of revival of that model.

1. Yang Xiguang: Whither China? [9]

The tragedy of the "Cultural Revolution" has led to the rise of democratic movements in recent decades; and to understand democratic ideas in contemporary China, we need to trace the origin and process of the "Cultural Revolution" and the impact of the "Cultural Revolution" on Chinese democratic ideas (Liu Guokai, 1986-87, Wang Bingzhang, 1985).

The early phase of the "Cultural Revolution" went through a set of political events such as Zhang Chunqiao's suppression of Shanghai's "Red Guards Revolutionary Committee," liberation of the majority of the cadres, and a change in policy by the Central Cultural Revolution Committee over "Ferreting out a handful of capitalist-roaders in the PLA." These events awakened the radical rebels to the fact that, during all that time, their so-called spontaneous grass-roots movement had in reality been manipulated by those at the top. They started to shout the slogan: "We want a genuine mass movement, not a manipulation of the mass movement!" (Liu Guokai, 1986-87, 115).

Among these radicals was Yang Xiguang who belonged to an "Ultra-Left" group, *shengwulian*, and was a 18-year-old high school student in

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[9]The biographical information about Yang Xiguang, see, Unger, 1991a, and Yang's curriculum vitae which he sent me.

early 1968. Born in 1950, Yang Xiguang was from an elite political family, whose father sat on the Hunan provincial Party committee and headed the committee's Secretariat (*mishuzhang*) and whose mother served as deputy head of the provincial trade union organization. In 1966, Yang participated in a secretive group of officials' children in response to the national movement. But his parents soon came under attack from above and Yang himself was criticized as a "counter-revolutionary revisionist." In 1967 he organized a small group of seven students to support the Xiang River Storm, a mass rebel organization. He was arrested for forty days and was released in March 1967. Yang later took active part in *Shengwulian*, the Hunan Provincial Proletarian Revolutionary Alliance Committee. In the name of *Shengwulian* Yang composed a short essay, *Whither China*, arguing for the establishment of a People's Commune of China, a model of direct democracy, as a solution to the political problem of the "new class" in China. Because of his dissident views, Yang was sentenced 10 years. In 1978 He (renamed Yang Xiaokai) went to the Hunan University to study mathematics, and later on to the Chinese Academy of Social Science studying quantitative economics. He was granted a Ph.D degree in 1988 from Princeton University. Now Yang is a reader in the Department of Economics, Monash University, Australia.

At that time, rebels held various ideologies, ranging from Maoism, Trotskyism to Chiang Kai-shek's ideas; there was no unified ideology. However, certain groups such as the Support Station of the United Headquarters in Shanghai, the October Revolution Group in Shandong, the Big Dipper Society in Wuhan, the April 3rd faction and the Communist Group in Beijing, all exchanged and shared the idea of the "new class." Yang's view of the "new class" and of the ideal of direct democracy can be seen as representative of the views of these groups.

Yang's views of the "new class" and direct democracy, according to Unger, derived from the following three sources: (1) Mao's idea of a new bourgeois class; (2) 1966 Cultural Revolution articles commemorating the 95th anniversary of the Paris Commune, and the Red Flag editorial of January 1967 supporting the Paris Commune's principles; and finally (3) a

Beijing student Red Guard proclamation entitled "Redistribution of Power and Property: Manifesto of the April 3rd Faction."[10]

Mao had posited the existence in China of a new bourgeois class whose leading representatives, located at the summit of the Communist Party, were bent on carrying out a "capitalist restoration." Yang mulled over phrases lifted from Mao such as "new bourgeois class" and "capitalist restoration," and subtly reformulated them as "red capitalist class." Yang also developed Mao's idea in the sense that Yang explained the political events of the early "Cultural Revolution" in terms of class struggle between this "new class" and masses. He felt the two-line struggle thesis couldn't explain the mass conflicts of the "Cultural Revolution," that it could only refer to the pre-Cultural Revolution political differences among the political elite (Unger, 1991a, 27). He stated that the root problem lay with the monopoly on power of a Leninist *nomenklatura* that gradually and inevitably had become transformed into a grasping self-perpetuating "new class." He argued that to comprehend why people hated cadres so much, a class analysis was needed. He viewed events, such as the January Storm of 1967 and the February Adverse Current through the prism of a class struggle between the new bureaucratic class maneuvering desperately to stay in power, and the hitherto powerless masses (Yang Xiguang, 1976, 62-3).

Further, in Yang's view, an institutionalized means was needed to constrain and weaken and thwart these political *apparachikis*, in other words, a more pluralistic and democratic polity was necessary. Thus, Yang advocated the establishment of a "People's Commune of China," modelled on the Paris Commune,[11] which would eliminate the need for bureaucrats (Yang Xiguang, 1976, 62-3). This, in Yang's view, was the political direction towards which China should go. Yang took seriously the egalitarian principles of the Paris Commune where officials would have no special privileges. Economically, they would receive the same treatment as the masses in general. Politically they should be elected by people rather than

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[10]Manifesto of the April 3rd Faction declared that the target of the "Cultural Revolution" was to be the redistribution of property and the overthrow of the privileged. As to the question of how these three sources influenced Yang's idea, see Unger, 1991a, 25-7.

[11]The role of the idea of the Paris Commune in the "Cultural Revolution", see, *The Cultural Revolution in the Provinces*, ed and published by East Asian Research Centre, Cambridge: Harvard University Press, 1971, 2-3. The Paris Commune model was still supported even in the 1980s. See Hu Jiewei & Chang Dalin, 1982; Rong Jian & Yang Fengshun, 1989.

appointed by the bureaucracy. They could be dismissed or replaced at any time at the request of the masses.

Here, Yang was different from Mao who initially praised the Paris Commune in June 1966 but finally rejected the inauguration of the "Shanghai People's commune" model for a new form of government in late January 1967 and turned to favour the model of the revolutionary committees -- the new administrative organs set up in the wake of "power seizures" from the beginning of 1967. It was Mao's rejection of the Paris Commune model that led Yang to the belief that Mao was not a pure Marxist, that he would not put the principle of the Paris Commune into practice and that only from the masses themselves, could the ideal of the Paris Commune be realized in China. Further, Yang rejected the revolutionary committees as "bourgeois reformism," still under the domination of the "Red Capitalists" (Yang Xiguang, 1976, 64-5). He saw the "Cultural Revolution" as only the beginning of socialist revolution in China, as a violent action of overthrowing one class by another (Yang Xiguang, 1976, 75). Thus He supported the following methods to achieve a "Paris Commune of China": "Overthrow the new bureaucratic bourgeoisie," "abolish bureaucratic organs," and "thoroughly smash the state machinery." These were accompanied by the celebration of incidents of armed struggle in the "Cultural Revolution," and support for the seizure of arms from the Army, which the leaders of the "Cultural Revolution" had condemned (Yang Xiguang, 1976, 66, 88).

Yang's ideas of a "new class" and of direct democracy had influence on the Li Yizhe group's famous dissident manifesto "On Socialist Democracy and the Legal System" (Unger, 1991a, 33). His explanation of the "Cultural Revolution" in terms of social conflicts also had influence on Liu Guokai's writing on the "Cultural Revolution." Wang Xizhe observed in 1980 that "the Yang Xiguang group was the forerunner of the Thinking Generation" (Wang Xizhe, 1980, 252).

2. Li Yizhe's Group: On Socialist Democracy and the Legal System

The group who posted up the famous *On Socialist Democracy and the Legal system* posters[12] examining the central theme of the connection between

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[12]Chinese version of their posters was included in Ding Wang, 1976. English translation see Chan, Rosen and Unger, 1985.

the rule of law and popular participation in politics, at a busy junction of Canton's Beijing Road on November 10, 1974, was composed of Li Zhengtian, Chen Yiyang, Wang Xizhe and Guo Hongzhi.[13]

Without ever having read Djilas, the Li Yizhe authors eloquently propounded ideas strikingly similar to those in Djilas's critique of the "New Class." It was the inspiration of the harsh realities of the class struggle that led Li Yizhe's group to the question of the newborn bourgeois class, the way it appropriated possessions, and the need for struggle against it (Li Yizhe, 1976, 2-3).

The group argued that whether recognized or not, there was an emerging privileged stratum in China similar to that in the Soviet Union. Each level of the Party and government leadership, according to this group, had completed a qualitative change from being "the servants of the people" to being "the masters of the people." Liu Shaoqi and Lin Biao were no more than its political agents (Li Yizhe, 1976, 27-8). They further argued that the essence of the appropriation of possessions by the "new bourgeois class" was to "turn public into private" while still maintaining a system of socialist ownership of the means of production. In order to protect privileges already acquired and to obtain further privileges, the "new class" must suppress the masses who rose to oppose their privileges and must illegally deprive [them] of their political rights and economic interests (Li Yizhe, 1976, 2-4).

The new problem then was, according to Li Yizhe's group: what the Liu Shaoqi clique, and especially the Lin Biao clique, attempted to establish was not ordinary bourgeois dictatorship, but a feudalistic socialist-fascist despotism which was China's main danger (Li Yizhe, 1976, 25-6). The term, "a feudalistic socialist-fascist despotism" was mainly rhetorical and polemic in the sense that it was used politically to condemn the Lin Biao system, or

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[13]Li Zhengtian, author of the first draft of the "Socialist Democracy" poster, had been a leader of Rebel Red Guard group. He was detained in August 1968, at the close of the "Cultural Revolution" fighting, and not released until 1972. With the fall of Li Biao, Li Zhengtian was released in 1972 in a general amnesty as China entered a period of leniency. He obtained a temporary job in the library of Canton Fine Arts Institute, and there finished the first draft of the "Socialist Democracy" essay in early 1973. Wang Xizhe played the largest role in authoring the third and final draft and its preface. He had participated in Li Zhengtian's Red Guard group and, when the rebels were repressed in 1968, was assigned to settle in the Guangdong countryside. In 1969, perhaps through the intervention of his family, Wang Xizhe had managed to returned to Canton and was assigned to a job as a boiler worker in a cod-liver oil factory, a post that he would hold, in between arrests, until his final imprisonment in 1981. See, Chan, Rosen and Unger, 1985, 2-4, 9-10.

feudal and fascist systems in the name of socialism. It was also a conceptual innovation in the sense that it insisted that the major task was in opposition to feudalism rather than capitalism. Here they differed from Mao who warned of capitalist restoration in China. For Li Yizhe's group, it was impossible for a new privileged class to share its gains with the old overthrown landlords and compradors.[14] New bourgeoisie could only implement a feudalistic socialist-fascist despotism under the social-economic conditions of the country (Li Yizhe, 1976, 25-6).

The Li Yizhe group also saw the "Cultural Revolution" as practices to resolve the problem of the new class. The essential form of the "Cultural Revolution," according to Li Yizhe, was the mass movement and a comprehensive people's revolutionary mass democracy. They declared:

Freedom of speech, freedom of the press, freedom of assembly, and freedom of association, which are all incorporated in the Constitution, and the freedom to travel to meet other people [chuanlian], which is not yet in the Constitution, have been truly practised and moreover have received the support of the Party Centre headed by Chairperson Mao. This is a vivid and momentous revolutionary accomplishment that has had no counterpart among the Chinese people during these past several thousand years (Li Yizhe, 1976, 19, also see Chan, Stanley & Unger, 1985, 63).

However, for Li Yizhe's group, the "Cultural Revolution" revealed its limitations and problems. First, the "Cultural Revolution" had not completed its task of institutionalizing these practices in a comprehensive socialist democracy (Li Yizhe, 1976, 4-5). Second, the Cultural Revolution, the experiment of class struggle, had become the factional struggle among the people; or in other words, Marxist class democracy had become a "factional democracy" (Li Yizhe, 1976, 24-5). Third, there was a fundamental contradiction of the Cultural Revolution. On the one hand, the centralized leadership of the Party could not be shaken. On the other hand, the focus of the Cultural Revolution was to rectify the captalist-roaders in the Party. At the same time, these captalist-roaders were the concrete expressions of the

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[14]However, Li Yizhe's group still employed the term of capitalism as contrast to socialism to explain the task of the "Cultural Revolution". This contradicts their exclusion of "capitalism restoration" in their idea of "feudalistic socialist-fascist despotism". The contradiction may be due to the historical fact that they had to use thus term in the political conditions in the mid 1970s.

centralized leadership in the places and the departments under their control (Li Yizhe, 1976, 26).

The lesson that they learnt was that both factions should be entitled to rights of democracy; the suppression of one faction by another does not work. As they asserted, unless we change the previous relation of suppression and being suppressed into a relationship based on united criticism and counter-criticism, Marxist class-based democracy cannot exist (Li Yizhe, 1976, 24-5). This was a logic that led them to the idea of the protection of rights. An alternative solution, according to Li Yizhe's group, was to institutionalize the protection of rights and to realize genuine participatory democracy. In their letter to Chairman Mao and the Fourth National People's Congress in 1974, they presented their ideal of democracy as follows:

(1) Democracy is a rule of law. They had witnessed that the rule of law did not work and that across the length and breadth of the land, everywhere there was suppression and imprisonment of the innocent. Thus they argued the need to guard against substituting Party leadership for legislative and judicial powers. Li Zhengtian later in 1979 used the case of Zhang Zhixin[15] to argue for a continuing need to institutionalize a whole list of human rights safeguards: from laws guaranteeing freedom of the press and of association to the establishment of a system of judicially independent defense attorneys. He urged that administrative power must be prevented from interfering with legislative and judicial powers. Appellate courts must also be set up to protect the legitimate right of the defendant (Li Zhengtian, 1985, 170-2).

(2) Democracy is an election system. The group argued that when certain cadres (especially high-level cadres of the central organs) lose the trust of the broad masses of people, the people's right to replace them at any time should be addressed by the Fourth National People's Congress (Li Yizhe, 1976, 28). Li Zhengtian later in 1979 argued, if the masses do not truly enjoy the right to elect and recall, the cadres would not deem themselves public

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[15]Zhang Zhixin, a Party member in Liaoning province, had been imprisoned in 1969 for having injudiciously confided her inner feelings to friends. She denied the charge that she had sympathized with Mao Zedong's opponents ever since Peng Dehuai's fall in 1959, but she insisted that by Party tradition she did have the right to oppose a leader's positions. To silence her, her vocal chords were severed in prison. She was executed after five years of gruesome treatment.

servants of the people; they would only see themselves as officials appointed by the higher authorities (Li Zhengtian, 1985, 161).

(3) Democracy is to safeguard the most fundamental right of the people, the power of the people to manage the state and society. Li Yizhe's group thought that the masses' right of revolutionary supervision over the Party's and the country's various levels of leadership -- for example, the right of the people to exercise the unconditional use of big character posters as the people's broad democratic weapon -- should be guaranteed by a new constitution (Li Yizhe, 1976, 28-9).

Li Yizhe's group realized that the Party Constitution and Central Committee documents did grant democratic rights to the people. But unfortunately, in practice, these rights had often not been safeguarded. They stated that the people's "great democracy" cannot depart from the correct line. Otherwise, the revolution not only cannot complete its own task, but in fact will be used by bourgeois opportunists. Thus, the solution, according to Li Yizhe's group, was to consolidate the proletarian dictatorship under the guidance of the correct political line (Li Yizhe, 1976, 29). This gives rise to a tension between their ideal of democracy and their idea of the guidance of the correct political line. The latter undermines the former which contains some elements of liberal democracy. The contradiction is partially due to the historical constraints which forced them to use the concept of the correct line; it is also partially due to their commitment to the idea of the correct line which was then taken for granted as a fundamental principle for politics.

3. Chen Erjin: On Proletarian-Democratic Revolution

Chen Erjin[16] played an active part in the "Cultural Revolution" as leader of a Rebel Red Guard group in Kunming. From the early 1970s onwards, he worked as a statistician in a local mine, and it was during this period that he wrote *On Proletarian-Democratic Revolution*. In early 1978, he was arrested after submitting the work to official publishing bodies. He spent ten months in prison. He was thereupon freed and declared to have been a victim of the "Gang of Four" in early 1979. Shortly after his release from prison, Chen went to Beijing with the aim of having his book published officially, but he

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[16]The following biographical information was taken from Robin Munro's introduction, in Chen Erjin, 1984.

met with no success. He there contacted the *April 5th Forum* unofficial publishing group. Finally, *On Proletarian-Democratic Revolution* appeared as a *samizdat* edition. Chen was arrested again in April 1981 for his involvement in the Democracy Wall movement. The following year, A Kunming court sentenced him to ten year's imprisonment and five years' deprivation of political rights for "plotting the creation of a counter-revolutionary party." He should have been released in April 1991, but the Chinese government has provided no information about his current status or whereabouts.[17]

Chen Erjin continued the populist tradition. With Chen's long essay, *On Proletarian-Democratic Revolution*, the populist tradition peaked at a theoretical level in the sense that he developed a systematic theory of the origin of the new class, the origin and nature of the "Cultural Revolution" and an ideal model of populist democracy.

Chen regarded the "new class" not as capitalists, but as the representatives of qualitatively different exploitative relations of production. Chen argued that socialist production, through the dual agency of state power and public ownership, imposed upon this social production a greater degree of concentration and monopoly, generated a high level of organization, united and integrated the powers of political leadership and economic control, and led to the formation of more formidable productive forces than before. Political power thus formed the dominant and controlling resource in the sphere of socialist public production (Chen Erjin, 1984, 88). Further, Chen pointed out that in a public ownership society, capital takes the form of privilege; whereas in private-ownership society, capital is money capable of generating more money. There was, according to Chen, a new polarization of class relations, the sharp antagonism between labour and privilege, the working people and the bureaucrat-monopoly privileged class which was in a day-to-day condition of intense mutual contradiction and antagonism (Chen Erjin, 1984, 110-19).

Drawing on the above idea of the antagonism between privilege and labour, Chen perceived the basic issue in the "Cultural Revolution" as the serious conflicts between the elite and the masses in the Chinese political system. Thus the "Cultural Revolution" was, in Chen's view, the result of

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[17]This information is drawn from *Human Rights Tribune*, Vol. 2, No. 6, p. 20.

new social contradictions and was bound to happen according to historical law. Further, Chen held that the "Cultural Revolution" amounted to the turning of the first page in the history of the struggle to oppose the revisionist system and prevent it from enslaving mankind (Chen Erjin, 1984, 81).

Chen claimed that the system of revisionism in the Soviet Union was a new kind of social system, one in which the oppression and exploitation of man by man proceeded in a manner more devious and rapacious, more sinister and diabolical than any previously known. Chinese society was seen by him to be at the crossroads: a transition to socialism or towards revisionism (Chen Erjin, 1984, 71-9). But there was a basic contradiction in this "crossroads", according to Chen, which was the incompatibility between, on the one hand, highly organized and politico-economically unicorporate social production under public ownership, and on the other, coercive monopolization of power by the minority (Chen Erjin, 1984, 86-7). The real question, for Chen, was this: are the working people, the creators of history, to be relied upon to choose their own leaders, or are leaders simply to be forced upon them (Chen Erjin, 1984, 88-94)?

Chen argued that democracy as a solution to social contradictions has to take the populist form in which the working class is able to control the organ of the state and the "new class" is eliminated. The "Cultural Revolution," in Chen's view, was to allow the Chinese people, through individual participation in the struggle against revisionism, to accumulate concrete political experience and learn concrete political lessons, and was to lead to the formation of a broad contingent of theorists dedicated to the cause of struggle against revisionism (Chen Erjin, 1984, 81). Nevertheless, he thought, there were two limitations of the "Cultural Revolution," (1) the guiding ideology offered insufficient insight into the basic contradiction in the new mode of production, and (2) there was merely the search for change within a conventional framework of existing forms, and no pursuit of transformation, no break with this conventional framework (Chen Erjin, 1984, 141-2). Therefore, proletarian-democratic revolution was now urgently required. To continue the "Cultural Revolution," according to Chen Erjin, was to realize the ideal of populist democracy characteristic of mass rule and direct mass participation.

Chen's idea of a proletarian-democratic system with its six features represented well this ideal and provided a much better picture of a model of populist democracy than that of Yang and the Li Yizhe group (Chen Erjin, 1984, 164-97).

(1) There would be the written Marxist constitution that represents the supreme leadership of the State and functions as the highest arbiter in the state. All would be equal before the Constitution, and all, no matter who, would be obliged to respect, obey and be restricted by the terms of the Constitution.

(2) The present single-party system would be replaced by a proletarian two-party system, in which the two parties would not represent different classes, but rather put forward different strategies and policy proposals towards the consensual attainment of common goals. Thus, political parties would be converted from being instruments of privilege, or means whereby the bureaucratic class exercises dictatorship over the proletariat, into instruments of true, authentic proletarian dictatorship. The fundamental aim and principle of proletarian democracy would be: the implementation of a class dictatorship of the proletariat, one which would establish the latter, in its own right rather than through any paternalistic agency, as the true, direct master of society, and would thus bring about the liberation of both the workers and the productive forces.

(3) A people's democratic republican system (renmin minzhu gonghe zhidu) of universal suffrage, whereby every worker would enjoy the right to vote and the right to stand for election, would constitute the basis of state power as a whole.

(4) The upper-level structure of power would be divided into three parts: the people's conference would be, both in name and in fact, an organ of legislative power; the executive power of the state would be vested in the president; the judicial power of the state would rest with the Supreme People's Court, with Higher, Intermediate and Primary People's Courts designed by the people's conferences, and with the Court of Appeal.

(5) The grass-roots structure of power would be located in three areas. In factories, the workers would exercise their powers of legislation and supervision through a conference of workers' delegates. In the countryside,

the post of production team leader would be subject to annual election. In the military, squad, platoon, company, battalion and regiment leaders would be elected by the rank-and-file soldiers and the committees at the different levels. And the state would gradually abolish the standing army, and would carry out the transition to universal military service and the arming of the whole people.

(6) The people would enjoy the rights of the individual citizen, such as genuine freedom of speech, publication, assembly and association.

Chen acknowledged the three sources for his ideal of democracy: (1) from his own interpretations of the events since the October revolution, and particularly of the Great Proletarian Cultural Revolution, (2) from the ideas of Marx, Engels and Lenin about the Paris Commune, and finally (3) from his idea of assimilation of the more positive features of the Euro-American social system (Chen Erjin, 1984, 155-63). Thus, while Chen's ideas of the electorate's power to recall and dismiss strictly mandated delegates, the need to reduce the social division of labour and the extensive powers of self-government were drawn from the second source, his ideas of a proletarian two-party system and the separation of powers in a tripartite division between legislative, executive and judiciary obviously were drawn from the third source. Chen's model of democracy, nevertheless, is different from that of the democracy of Marx and Mao in the following ways. First, Chen develops Marx's idea of proletarian dictatorship in the sense that his idea of the advanced form of proletarian dictatorship incorporates the two-party system and the separation of powers. Second, Chen boldly attempted, in 1976, to appropriate the bourgeois democratic state structure for the proletarian cause on the ground that "sublation" or "synthesis," a particular movement of the dialectics, is necessary in democratic thinking.[18] However, in doing so, Chen did not see a tension of the combination approach; that is, sources 2 and 3 are not incontradictory. For an example, his advocacy of a separation of legislative and executive contradicts the Paris Commune model because the Commune, according to Marx, "was to be a working, not a parliamentary, body, executive and legislative at the same time" (Marx, 1970, 60-70).

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[18]More discussion of how Chen differs from Marxism, Maoism and the "Gang of Four", and of what his contribution to Marxism is, can be found in Munro's introduction, in Chen Erjin, 1984.

Further, Chen's definition of the "people" and the "enemy" involves totalitarian overtones and demonstrates Chen's crucial shortcoming in his democratic thinking. Chen has claimed that during the period of proletarian-democratic revolution -- a present stage -- it is the nature of the stance adopted towards that revolution which provides the new criterion for distinguishing between the people and the enemy, between revolution and counter-revolution. According to Chen, all classes, strata, social groups and individuals which endorse, support and participate in the proletarian-democratic revolution, and struggle for the establishment of a proletarian-democratic system, belong to the category of the people, represent the stand-point of revolution and are our comrades. Conversely, it is argued, all social forces, social groups and individuals which oppose and sabotage the establishment of a proletarian-democratic revolution, and are hostile towards and sabotage the establishment of a proletarian-democratic system, constitute the enemies of the people, represent the stand-point of counter-revolution and are reactionaries (Chen Erjin, 1984, 232). Here, the definition of the people is arbitrary, accidental and uncertain; and he draws an ideological dividing line between people and foe.[19] According to this definition, the member of the working class, which, in Chen's view, plays the leading role in the proletarian revolution, will become "enemy" if they do not endorse, support and participate in this revolution. This is also true of individual citizens if they do not to do so. Thus, Chen's definition of people contradicts his idea of the rights of citizens, which, according to Chen's model of democracy, should be universally protected by laws; and it definitely will lead to the limits on human rights that Chen does not want. There is thus a tension between Chen's idea of dictatorship, which leads to the limiting of freedom, and freedom of speech as a universal right, which tends to oppose any dictatorship. Further, there is a tension between his demand for a legal system and citizens' rights on the one hand and his definition of people and enemy as well as his emphasis on the proletarian class's nature in his political thinking on democracy on the other hand. This is because his criterion of people and his class elements of the legal system undermine the equal nature of the legal system if we suppose that the legal system should be neutral.

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[19] If Chen were to follow his idea of the written Marxist constitution, he should have drawn a institutional dividing line between the people and foe in terms of the Constitution. That is, the people are friends of the Constitution and understand the constitutional order, foes of the

4. A Shift of the Assessments of the "Cultural Revolution"

As the above shows, Yang Xiguang, Li Yizhe's group and Chen Erjin all regarded the "Cultural Revolution" as a movement to resolve the problem of the "new class" within the Party. Li Yizhe's group and Chen Erjin even regarded the "Cultural Revolution" as a form of mass democracy. At the same time, all were dissatisfied with the limitations of the "Cultural Revolution"; they wanted to lead and push the "Cultural Revolution" towards radical democratization.

In this respect, Liu Guokai, who was influenced by Yang Xiguang, summarized well in 1980 the great practical significance and far-reaching historical importance of the "Cultural Revolution": (1) democratic rights in the Constitution became partly true; (2) people gained a deeper understanding of the existing regime; (3) the "Cultural Revolution" enabled people to see Mao in a new light: "Mao is the root cause of all the injustices;" (4) the "ultra-left" trend of thought emerging in the later stage of the "Cultural Revolution" was like a heavy bombshell in the field of ideology. It went beyond factionalism, and focused on the fundamental problems of the existing system. It put forward far-reaching democratic ideas which inspired more followers and supporters (Liu Guokai, 1986-7, 139-45).

This then was the logic of the relationship between a positive assessment of the "Cultural Revolution" and a populist form of democracy in the radicals' view. The "Cultural Revolution" originated in social contradictions; and it struggled against the "new class." If the "Cultural Revolution" was evaluated, then the ideal of democracy for China could be modelled on the form of the "Cultural Revolution." And if the "Cultural Revolution" carried democratic implications, then the question was how to institutionalize democratic rights and how to legitimize independent political organizations. But if the "Cultural Revolution" was completely negated, then the people's demand for democracy, the struggle against bureaucrats and the urge for reform and protection of political rights (for example, "sida") would be denied.

Nevertheless, Wang Xizhe, one of Li Yizhe's group, eventually changed his assessment of the "Cultural Revolution." By 1980 Wang

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Constitution are enemies of the state. This suggestion may overcome the weakness of the ideological dividing line, but it is still arbitrary.

thought that the "Cultural Revolution" was the product of Mao's manipulation in serving to strengthen his power. Wang asked: "Why did students beat their teachers half to death? Was it because of a sharpening of social contradictions?" The answer is that it was not the result of their feeling of being oppressed at the time but rather of their having been deceived by Mao Zedong (Wang Xizhe, 1985, 256).

Today, Yang Xiaokai (Yang Xiguang) reinterprets the "Cultural Revolution": it has allowed people to seek human rights and free association. Thus, according to Yang, the "Cultural Revolution" still has its implications for those who are pursuing democracy. Although Yang Xiaokai positively evaluates rebels in the "Cultural Revolution," he goes beyond the question of whether rebels should be rehabilitated. For Yang, the most important lesson drawn from the "Cultural Revolution" is to set up a fair system of rules which protects equal opportunities and rights (Yang Xiaokai, 1990b, 1991a & 1990b). Yang also stresses that the factional conflicts brought about by free association during the "Cultural Revolution" would and did influence the development of party politics in China and that there was a tradeoff between social order and free association and free press (Yang Xiaokai, 1991c). Further, Yang has criticized the populist model of democracy as impossible and destructive to a society; he has avowed an elitist democracy. Democracy, in Yang's view, is a check-balance mechanism between professional politicians and elites, and fair competition at the top layer of the hierarchy. For Yang, mass participation is merely a side-issue.[20] Gu Xin, a young liberal scholar, also argues that it is impossible to institutionalize universal participation in political life on a large scale at the national level (Gu, 1988a, 19). In particular, he argues that, in a situation where Chinese culture allows no central place for individual liberty and rights, if mass participation is taken as a major task of democracy, this direct democracy will easily become formalistic in reality (Gu, 1988b, 20). Gu argues further, an elitist democracy does not deny the right to participation; rather this is possible through its institutional structure such as elections which are open to those who are interested in political affairs (Gu, 1988b, 20).

Also Yan Jiaqi, a liberal, has negated completely the form of the "Cultural Revolution", which, in his view, was a new form of dictatorship.

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[20]Yang informed me this in our talk, in his comments on my draft and his letter of 28th October 1992.

He remarked negatively that what was billed as the era of the Cultural Revolution was a time when feudalism ran wild as never before (JPRS-CAR-88-075, 23 November 1988, 39). Yan has adopted the power-struggle approach which views the Cultural Revolution as a result of a power struggle within the elites.[21] Why did Mao Zedong decide to do away with Liu Shaoqi before the Cultural Revolution? Yan has used the story that Mao told Edgar Snow in January 1965:

> I have two books, one is the Constitution and the other is the party constitution. The Constitution provides me with a citizen's rights and the party constitution provides me with a party member's rights. Now, one person (Liu Shaoqi) does not let me speak and another (Deng Xiaoping) does not let me attend the meeting (FBIS-CHI-89-020, 1 February 1989, 38).

Thus Yan has explained that by that time, the contradiction between Mao and Liu had come into the open for the first time. He has further remarked that in the pre-Cultural Revolution period, Liu Shaoqi, Peng Zhen, and others had actually become centres of power not totally under Mao Zedong's control. Thus Mao Zedong needed to unleash a massive struggle to weaken and destroy their centres of power (JPRS-CAR-88-075, 23 November 1988, 40). In Yan's political thinking, up until the Cultural Revolution, Chinese politics still adhered to this ancient unshakable rule: there exists in the state a supreme power which is indivisible and untransferable and around which political struggles are waged (JPRS-CAR-88-075, 23 November 1988, 40).

Yan has further held that mass participation in the Cultural Revolution led to social disorder in the process of political development because there was an absence of well-established institutions. Yan has quoted and agreed with Huntington's view that if the rate of political participation significantly exceeds the rate of political institutionalization for a lengthy period of time then political decay will occur (Yan Jiaqi, 1988, 54; also Huntington, 1968, 79). Having learnt a lesson from the Cultural

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[21]Liu Guokai believes the Cultural Revolution to have occurred in a three-year period from mid-1966 to mid-1969, while Yan Jiaqi adopts the official Chinese designation of "ten years of the Cultural Revolution" from 1966 to 1976. This matters in terms of assessing the Cultural Revolution. Because, for radicals, there were some democratic elements within the period from 1966-1967. But for Yan Jiaqi, the term of ten years of the Cultural Revolution is seen as the period of terror. See, Yan Jiaqi, 1987.

Revolution, Yan has advocated "elitist democracy" which is open to elites from various strata and groups and is designed to absorb these elites. As far as Chinese political reforms are concerned, Yan has proposed to establish the authority of the Constitution and the National People's Congress, and stresses the democratization of the elite's power basis.

The logic of Yan is thus: the Cultural Revolution was not a form of democracy, rather it was a form of dictatorship; an ideal of democracy, therefore, cannot be drawn from the form of the Cultural Revolution. If the Cultural Revolution reveals the weakness of the political institutionalization of power -- in particular, shortcomings of the political succession system -- the ideal of a democratic system should then be understood as procedural politics capable of resolving the political succession problem.

5. A Critique of the Idea of a "new class" and Class Analysis[22]

The above writers took seriously the issue of the "new class," and there was a logic in the development of their analysis of that class. Initially, Yang's term "red capitalist class" identified the danger of <u>capitalist</u> restoration through the new class within the Party. The developments of the "Cultural Revolution," nevertheless, certified that it was impossible for a new privileged class to share its gains with the old overthrown landlords and compradors. Thus, the Li Yizhe group argued that a feudalistic <u>despotism,</u> rather than capitalism, was China's main danger. While this view was shared and followed by Chen, however, he was not satisfied with the Li Yizhe group's rhetorical and polemic condemnation of the new class. Thus, Chen developed an analysis of the economic root of the new class. Chen saw the "new class" as the result of socialist production which gave rise necessarily to a new polarization of class relations and the sharp antagonism between the working people and the bureaucrat-monopoly privileged class.

In short, all the writers contributed greatly to Milovan Djilas' theory of the new class and to the understanding of the nature of the communist system in terms of the identification of the serious problem of the new class,

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[22]White (1976) has provided an excellent sociological analysis of the discourse of class in the early part of the Cultural Revolution. Also, my critique of a new class analysis is influenced by Hindess who has rejected the class analyses of politics by Marx and Weber, see Hindess, 1987.

the criticisms of that, and the explanation of its origin. These ideas may still be relevant to today's China at least for some radicals. However, there are serious theoretical problems associated with the populist idea of the new class and the class analysis which undermines the intellectual merit.

The first problem is that it is very difficult, perhaps impossible, to define the "new class" and to identify its members (Djilas, 1957, 39). What criterion can be used to define who are and who are not members of the "new class" among all cadres? A political criterion, which regards those who hold power as members of the "new class," does not work because it implies that all officials are members of the "new class" and should be swept away, thus it implies an utopian anarchy. There is also an ideological criterion elaborated on by Chen Erjin, which regards those who do not comply with the correct line as members of the "new class." But this ideological criterion is subjective depending on the explanation of what the correct line is, and carries totalitarian elements which I have discussed in Section 3.

The second problem with the idea of the "new class" and the class analysis is that it faces the problem of how to classify a society, and of how to define the working class. Li Zhengtian, one of Li Yizhe's group, rethought the concept of the working class in 1979:

> Today, how should we divide Chinese society into classes? Who should be included in the proletariat? If we say that the proletariat is the working class, then can the peasants in collectives be considered working class? Then there are the intellectuals; can they be considered working class? How do you draw the line? Doesn't the problem stem precisely from our attempts to transform the labourers' position from that of proletarians (Li Zhengtian, 1985, 159)?

Li Zhengtian also rejected the previously held concept of proletarian dictatorship or democracy. He denounced the concept of "dictatorship by the entire proletarian class," which his early colleague, Wang Xizhe still held, as groundless and unscientific, because, in Li's view, when a class is without the means of production, it has no way of exercising dictatorship; and when it can exercise dictatorship, it has ceased to be proletarian (Li Zhengtian, 1985, 159). Li argued that so long as the proletariat in its original meaning is preserved, there is no way for it to exercise dictatorship. Therefore it is

unscientific and grossly inaccurate to propose the slogan "Strive for the Class Dictatorship of the Proletariat." Li said:

> The proletariat should not, and cannot, exercise any sort of dictatorship for its own special class privileges; it can emancipate itself at the end only by liberating all mankind. . . . Irrespective of your subjective wishes, if you seek class dictatorship, it can easily be made indistinguishable objectively from totalitarian dictatorship (Li Zhengtian, 1985, 158).[23]

The third problem associated with the populist idea of class analysis is that it presupposes an ideal of a society without classes and hierarchy. Yang Xiaokai (Yang Xiguang) has challenged this assumption. In his article, "The Optimum Hierarchy" (Yang Xiaokai and Geoff Hogbin, 1990a, 125-40), Yang investigates the optimum number of layers in centralized and decentralized hierarchies. In doing so, he justifies the existence of a hierarchical system in terms of efficiency. For Yang, a hierarchical class society tends to be more efficient than an egalitarian society; and if a society lacks a hierarchy of classes it will break down. If his early work, *Whither China* expressed his romantic feeling towards an ideal of society, we may say that his "The Optimum Hierarchy" shows his cool-reasoning about a rational society; that is, for the rational society, class privilege and private property rights are useful to maintain social order and it is the privileged class that attempts to maintain the existing order through legal regulation. From Yang's *Whither China* to "the Optimum Hierarchy," Yang has completed his ideological transition from believing in the Paris Commune to believing in a decentralized hierarchical society which spontaneously emerges from fair competition and individuals' free mobility across different layers of the hierarchy.

The fourth problem is that the concept of class-based democracy is not compatible with a liberal concept of democracy. The former undermines the idea of universal protection of basic human rights for all as shown in Chen Erjin's definition of "people" and "enemy" which I have discussed in Section 3.

Drawing on the above criticisms, I would argue that the populists' class analysis has little of a constructive nature to contribute to a practical and

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[23]Dong Fang has made a similar argument, see Chen Erjin, 1984, 54.

positive solution to the socialist problems. And the populist's idea of a "new class" will not produce powerful effects in reality and a proper policy to deal with the concrete class relationships in political life. The application of class analysis to the resolving of China's practical problems is simplistic and misleading. In short, as Graham Young and Dennis Woodward have argued, the analysis of the emergence of a "new class" in socialist society has been superficial and fragmentary with some confusion, or at least vagueness, on the main points of the new-class argument (Graham Young & Dennis Woodward, 1978, 43).

6. Decline of the Populist Idea of Democracy and Possible Revival?

In the past 10 years or so, there has been a gradual weakening of the Chinese populist Marxist-Maoist model of democracy and an increased awareness of the individualistic and institutional model of democracy. The same is true in Poland and Hungary where in the 1950s there was a major thrust for direct democracy, whereas today nothing of the sort can be observed (Ference Fehér and Agnes Heller, 1990, 17). Also among sinologists in the West there has been a similar shift from regarding Maoist democracy as an alternative to liberal democracy, to taking liberal democracy as a second best choice for China.

Chinese officials have suppressed cruelly and put in jail those who hold the populist view of democracy such as Yang Xiguang, Li Yizhe's group and Chen Erjin. Suppression, however, is not the main reason why populism has declined in popularity; there have remained followers of the populists among a few intellectuals and workers despite official Chinese suppression of their ideas.[24] A more plausible explanation of that decline is that Deng's reforms and soft cultural environment made it difficult for the radical-populist ideas of democracy to become widespread and acceptable throughout the country. Also, violent revolution such as the form of the "Cultural Revolution" to achieve populist democracy is commonly regarded as impractical, and as something which would create a new dictator. People are also tired of civil fighting from the "Cultural

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[24]I was very impressed by a worker, 40 year old, who attempted to develop the idea of Chen Erjin in 1981 when I was undergraduate in Hangzhow University. The most impressive fact is that after I presented my analysis of the impractical elements of Chen's idea of democracy in the future of China, the worker cried, because he lost his personal value: populist democracy was his life and his "religion".

Revolution." Most people demand a stable social order and are more interested in improving their material lives. Take the example of Yang Xiguang who, even after a stay in jail (1968-78), has criticized his own advocacy of violent revolution and realized that violence only creates a new dictator and that only through non-violence and political compromise, can democracy be achieved. In his article entitled "On Political Reforms in China" published in 1987, Yang pointed out the logic of violence: a revolution which wants to overthrow a tyrant, has to centralize power which is required to be much stronger than that of a tyrant. Thus, in the process of overthrowing an old tyrant, what emerges at the same time is a new tyrant of revolution who is not able to be controlled by people. This new tyrant will produce a new revolution. Thus violent revolution' implies a vicious circle (Yang Xiaokai, 1987, 35). Since the June 4th Events in 1989, there has been a call for violent revolution to overthrow the rule of the Communist Party in China. Yang has worried about the negative consequences of violent revolution and has strongly criticized this advocacy.

Li Zhengtian, one of Li Yizhe's group, provides a good example of explaining the effect of Deng's reform and soft policies. Li Zhengtian believed in 1979-80 that the Party was carrying out reforms. He therefore preferred to write for the official press and sought to persuade government leaders to reform administrative and legal institutions that would safeguard the due process of law and freedom of expression. Li Zhengtian disagreed with the pessimistic view of Wang Xizhe, another of Li Yizhe's group, that Party reformers would not act spontaneously to bring about either democracy or any significant extensions of freedom. Thus, in 1979-80, Li refused to join the populist actions of Wang Xizhe who participated in a national network of dissident organizations that were totally independent from the Party's sway; for which Wang was sentenced to 14 years in prison on April 20, 1981.

Another reason why the idea of populist democracy is in decline is that Chinese intellectuals have been dominating the field of political thought in the last decade, whereas little has been heard from the workers and peasants at a theoretical level. Thus the democratic idea is confined to intellectual discourse. It has also served as an ideology for the intellectuals' road to power, and to legitimize their political actions for power. The point is that

the "big intellectuals" of China are becoming members of a privileged group. That is why some Chinese intellectuals enter into the "new class" discourse only reluctantly, and accept the official Chinese criticism of the populist ideas of a "new class."

Also, the Paris Commune as a particular form of government was the sole theoretical choice in the "Cultural Revolution." However, in the 1980s the Western liberal idea of democracy became an option. Take the example of Yang Xiguang (Yang Xiaokai). After spending several years in the USA working on his Ph.D, it seemed to Yang that liberal democracy, particularly, private property rights, is practical and relevant to Chinese reality, while the Paris Commune is but a utopian ideal. Thus Yang Xiguang himself, let alone others of his generation, abandoned the idealistic dream of a polity shaped on the model of the Paris Commune. Yang, within the past decade, writing under the name of Yang Xiaokai in journals and newspapers such as Shanghai's *World Economic Herald* (e.g., Feb 20, 1989), has developed a reputation in China as a champion of "bourgeois democracy" and of a decentralized, indeed privatized, economy (Unger, 1991, 34).

Now let me turn to the question of the possibility of the revival of the model of populist democracy through modification and creative transformation. Certainly, the radical and romantic idea of democracy is able to provide some radicals with a theoretical basis for the populist and revolutionary strategy calling for violent revolution to resolve political problems in China. Even before these 1989 June 4 events, there had already been such calls (Cheng Shi, 1988, Yang Jiying, 1988). After the events, a radical common sense has been growing among overseas Chinese dissidents that there indeed exists a privileged class within the communist party, and that this "new class" can only be overthrown by revolution. Some Chinese in the USA and Japan are preoccupied with hatred of the CCP, rethinking the issue of the "new class" and the possibility of revolution, and adopting the more radical strategy for democratization in China. As Da Luren argues, the June 4th events demonstrate the failure of "reform within the system," and necessitate violent revolution "outside the system" (Da Luren, 1990).[25] Following Da's line of thought, one might argue further that the June 4th Events in 1989 were the result of the failure of reforms dealing with the

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[25]Also see the strategy of the Chinese Liberal Democratic Party overseas, in *Central Daily News*, in Taiwan, August 20, 1990.

problem of a new class; and it was this new class, its corruption and the social gap between the new class and ordinary people that led to popular support for the students' demonstration in 1989. Further, Ni Yuxian, a radical, argues that the reason why the democratic movement in 1989 failed was its commitment to non-violent strategies. He further argues that the students were misled by reformers so that they could not see the true nature of the Party. He also points out that the evolutionary or non-violent approach has failed; and it has blocked the process of democratization in China. Finally, Ni claims that the execution of Ceausescu and his wife Elena in Romania evidences the possibility of successful violent revolution, and that the failure of the Chinese democratic movement necessitates violent revolution in China (Ni Yuxian, 1990, 85-7).

Thus these claims made in 1989, I think, return to the conclusion that Chen reached more than 13 years ago. Chen claimed that reformism is no solution because the reformist line seeks not the destruction of the bureaucratic-military machine, but merely its passage from the control of one group of individuals to that of another group of individuals. However, the basic contradiction in socialist society at the crossroads, in Chen's view, is an antagonistic one, an irreconcilable one. The reformist line, therefore, is doomed to failure from the outset (Chen Erjin, 1984, 120-22).

Nevertheless, those who hold the radical view are a minority at the moment. Further, the possibility of revival of the populist model of democracy depends on the following conditions: that the reform programme fails in the end, and that liberal ideas of politics and democracy prove an impractical solution during serious political crises. So far, the current regime still carries out reforms, and the evolutionary method of changing the system is the dominant strategy of both leaders and opposition organizations. As this is so, there is less likely to be a revival of the idea of populist democracy in the near future.

Conclusion

The populist democratic ideas of Yang Xiguang, the Li Yizhe group and Chen Erjin, in terms of theoretical construction, fall into the tradition of Marxism and Maoism. Initially, the populists believed Mao on his word that the "Cultural Revolution" was a movement to combat the rise of the "new class" among the Party and State bureaucracy. But, later on, they felt

that it failed to meet this goal, and proposed populist democracy as an alternative remedy.[26] Thus all the writers became <u>dissidents</u> in challenging the Maoist position; and in doing that, all have paid the high price of being sent to jail.

There are four common assumptions or distinctive features of the populist democracy of the above writers. (1) The "new class" is the serious problem with which populist democracy wants to deal. (2) Direct control of state affairs by the working class is an ideal objective of that model of democracy. (3) Radical strategy, a new revolution and an attempt to legitimize that, is the only way to achieve such democracy. On this matter, whereas Yang advocated violent revolution, Li Yizhe's group and Chen Erjin celebrated the masses movement, the form of the "Cultural Revolution".[27] (4) Their ideas of populist democracy contain liberal elements or seeds in terms of their emphasis on limiting special privileges and electing cadres. Particularly, for Li Yizhe's group and Chen Erjin, populist democracy has to protect basic human rights and to take the form of constitutionalism. This is also compatible with the form of representative democracy. However, there are theoretical tensions in Li Yizhe's emphasis on the "correct line" and Chen's definition of "people" and "enemy."

All the writers were <u>populist</u> in the sense that they appealed to a mass audience and urged direct democracy. This contrasts with liberals such as today's Yang Xiaokai and Yan Jiaqi who appeal to elitist rather than participatory democracy and have no interest in the model of the Paris Commune. The populists also represented a contemporary political <u>romantic</u> position in the sense that they have idealized politics both as an

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[26]As Walder (1991, 59-60) remarks: "In taking class analysis more seriously than did leading Maoists, dissidents radicals departed from the ambiguous premises of official Maoism and approached a position not unlike reformers, but expressed in radical Marxist-Leninist language. Some dissident radicals, when they later became leaders of China's democracy movement of the 1970s, would make their break with Maoism clear in a way they did not in the 1960s."

[27]For example, Li Yizhe asserted that revolution is without doubt the most powerful and authoritative occurrence in the world; the mass movement is the richest source for the maintenance of the revolutionary spirit of the revolutionaries. See, Li Yizhe, 1976, 25, 28. Also Chen Erjin claimed that if state political power has fallen into the hands of revisionists, then, an interim period of armed struggle for the conquest of power will be necessary: one of even greater complexity, one still more cruel and bloody, than that whereby political power was wrested from the hands of the bourgeoisie - in other words, the unfolding of violent revolution at a still higher level" (Chen Erjin, 1984, 222). Here, in line with Yang Xiguang, Chen seemed to advocate a violent revolution.

object of perfection which we would attain, and as the revolutionary means and enthusiasm whereby the ideal of democracy can be reached. This is also in contrast to liberals who take the pessimistic view of human nature, regarding liberal democracy as a second best rather than a perfect choice, and adopting a moderate non-violent strategy for democracy.

Further, the radical view of populist democracy raises the following questions which are overlooked by Chinese liberals.[28] (1) The rights of workers and peasants to participate in political affairs should be institutionalized. (2) Although there are theoretical problems associated with the populists' view of the new class, there is still a challenging question for liberals: how do they see the problem of the new class and deal with "a privileged class" within the communist party? (3) Can reforms resolve "the new class" problem? Is it necessary to resolve the problem through revolution? In so far as the populists pose these challenges and speak more directly to the issue of the new class than liberals do, the radical idea of populist democracy remains one of the major ideologies in the field of political thought in future China. If both the Party's reform and the liberal solution fail, social gaps become wider, and the corruption of the new class cannot be tolerated by the whole of society, then the question of the potential development of the idea of populist democracy and even a populist upsurge in the early next century should remain open.

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[28]Except that Wei Jingsheng's idea of equal rights has an implicit implication for the rights of workers and peasants, see Chapter 4.

CHAPTER 2

The Official Model of Paternalistic Democracy

This chapter examines Deng Xiaoping's paternalistic model of democracy characterized by collectivism, limitations on political freedom and a mixture of formalistic democracy and paternalistic authority. The task of this chapter is to explore the various tensions within Deng's type of democracy and and to show that it has proved unsatisfactory both in theory and practice.

I use the concept, "paternalism" to provide a basic framework for a discussion on Deng's democracy. "Paternalism" as defined by Lucian W. Pye is an appropriate term to describe the cardinal feature of Chinese politics. As he observes:

> Probably the cardinal feature of Asian paternalistic power is an overriding concern for unity, for holding the national community together. Paternalistic authority, especially in the Confucian cultures, can demand conformity on the basis that everyone should be willing to make sacrifices for the collective good. In terms of political development the demand for unity and conformity has been translated into unquestioning patriotism (1985, 329).[29]

In brief, Chinese paternalism has two major features: (1) limitations on individual liberty, and (2) collectivism as a base for such limitations. These two features have directly influenced the Chinese communist leaders' model of democracy. Although the validity of paternalism as a way of describing the basic characteristics of socialism may be limited, it does help in understanding Deng Xiaoping's idea of a "socialist model of democracy" and the "characteristically Chinese road to democracy" which is based on

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[29]Pye's collectivist definition of paternalism is different from an individual definition; while the former stresses the value of a community, the latter focuses the interests of a person whose liberty is limited. See, Miller (1987, 367) who defines paternalism as follows: "In modern use the term usually refers to those laws and public policies which restrict the freedom of a person in order that their interests may better be served" (Miller, 1987, 367). Gerald Dworkin (1977, 78) specified paternalism roughly as, "the interference with a person's liberty of action justified by reasons referring exclusively to the welfare, good, happiness, need, interests, or values of the being coerced".

limitations upon liberty and individuality, and a strong insistence on collectivism.

This chapter is in four sections. Section 1 examines and analyzes why Chinese paternalistic leaders such as Deng Xiaoping want democracy. Section 2 investigates what concept of democracy they currently hold, and what kind of democracy they wish to establish. Section 3 analyzes two premises of the Chinese paternalistic model of democracy: collectivism, and limitations on liberty. Section 4 examines and disproves Deng's claim to have put into practice a new type of non-liberal democracy -- the mainland Chinese paternalistic variety -- which co-exists with Western liberal-democracy by discussing the incompatibility between paternalistic authority and liberal democracy.

1. Why Democracy

In the official documents and newspapers, the Party claims to seek to establish democracy for its own sake, as in the slogan "without democracy there is no socialism". But, in reality, the major reasons why the current Chinese leadership seeks to establish democracy are (1) to resolve the authority crisis in politics, (2) to make the nation more powerful and to provide better welfare, and (3) to respond to the need for modernization, and especially for economic reform.

In contemporary China the demand for democracy came in response to what Li Yizhe (Chan, Rosen and Unger, 1985) called "feudalistic fascist dictatorship" in the Cultural Revolution (1966-76), and became recognized as an instrument which might both resolve the problem of corruption and legitimize the rule of the Communist party. Arguments for democracy in China are concerned with modernization; the avoidance of another Cultural Revolution; the establishment of China as a Great Power; the realization of the "greater interests" of the people; and, finally, opposition to corrupt officials. Deng Xiaoping believes that democracy can assist in tapping the collective wisdom necessary for economic development; assure the smooth transition to a new leadership, supply new and more able cadres for local posts, limit the overcentralisation of power and the consequent bureaucratic immobility, and prevent the reemergence of a one-man dictatorship (Nathan, 1986, 224). This attitude is even shared by some dissidents: "For the average citizen, the purpose of demanding democracy

and rights is to promote national construction and prosperity for the whole nation. There should be no other purposes."[30]

Thus the starting point, purpose and premises for the demand for democracy are collectively (rather than individually) oriented, and the underlying attitude to democracy is functional (rather than idealistic). Those are the fundamental and inherent limitations and "congenital deficiencies" in Deng Xiaoping's demands for democracy (also see Zhao Suisheng, in *Democratic China*, No. 4, Oct, 1990, 75). They have directly or indirectly limited the paternalistic leaders' choices, the scope of conceptions and models of democracy, and the future prospects of Chinese democracy.

Firstly, Chinese paternalistic democracy as a solution to the authority crisis is expected to contribute to an orderly, productive, and popular governmental system with a more competent and effective leadership structure. It is expected to reconstruct and strengthen paternalistic authority. As a result, it tends to overlook the necessity for limits on power at the highest level. As Womack correctly observes:

> The basic purpose of Chinese constitutional and legal reform is not the limitation of government itself by citizens' rights but the establishment and strengthening of public rules and the limitation of arbitrary behaviours by officials.

> This starting point [demand for democracy] is very different from that of Western parliamentarism. Western democracy emerged slowly, from a relatively short period of absolutism, in a process of political contention, piecemeal improvement, and institutional restriction of the public power (1984, 422, 435).

Secondly, Chinese paternalistic democracy as a means for establishing China as a Great Power and serving the interests of the vast majority of people is likely to overlook individual freedom and rights, and the development of individual potentialities. In contrast, the dominant rationale of Western democracy is rights for all individuals, which were "extended slowly, from civil to political to welfare rights in content, and from elite to propertied to general citizenry in scope" (Womack, 1984, 435).

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[30]An unknown dissident quoted in James D. Seymour, 1980, 35. This point should not be overestimated. Most liberal intellectuals have taken the position that democracy is an end in itself. See Chap. 3.

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The collective orientation of the Chinese has controlled and guided the construction of a particular Chinese model of democracy through the process of choosing among different Western concepts of democracy. Liang Qichao, Sun Yat-sen, Mao Zedong, and Deng Xiaoping adapted their own collectivist experience to the ideas of collective democracy outlined by Rousseau and Marx; they then modified the ideas of individualistic democracy within their own collectivist framework and paternalistic culture. For example, when Liang Qichao referred to the concept of individual freedom, he did not emphasis individual liberty but the freedom of participation that "the citizenry as a whole has achieved vis-a-vis the government", and "national freedom" or nation-building. Liang argued that "the individual could have no freedom if the group to which he belonged was conquered, so the freedom of participation required the independence of the state".[31] Another example is Deng's stress on the strict distinction between collective and socialist democracy on the one hand and individualist and bourgeois democracy on the other (Deng Xiaoping, 1983, 183).

Thirdly, as Andrew Nathan (1986, xi) asserts, "When the concept of democracy came to China it was presented as an ornament of modernity and an asset for rulers". This underlying functional and pragmatic attitude toward democracy influences the way that the Chinese leaders have adopted Western democratic practices. It leads paternalistic leaders to reject essential elements of Western democracy and only take advantage of certain formalistic elements of Western democracy for the sake of pragmatism. They regard democracy as mere wordplay or rhetoric rather than as a serious or significant business. Chinese democracy, as a response to the need of modernization, is expected to be a means rather than an end and thus is secondary to the supreme value of power. The priority of nationalism over democracy, patriotism over individual rights, has led the Chinese Communists to sacrifice democracy to "revolutionary necessity" in their struggle to make China a Great Power. This attitude guides, and confines,

[31]Liang Qichao quoted in Nathan, 1986, 56. Machiavelli also stresses the priority of national freedom to individual freedom. He argues that freedom is a form of service, since development to public service is held to be a necessary condition of maintaining personal liberty. If we wish to maximize our freedom to control our private affairs without anxiety or interference, the moral is that we must first turn ourselves into whole-hearted servants of the public good. See, Skinner, 1983, 4.

the political actions of paternalistic leaders; they always hesitate and falter when faced with the challenge of democratization.

2. The Paternalist's Concept of Democracy

According to the official ideology of China, which is based on Marxism-Leninism and Mao Zedong Thought, the dominant concept of democracy is not that of liberal-democracy. Instead, democracy is seen in Mao's terms: the masses keeping watch over the bureaucracy under the monocratic guidance of a national leader. It is also seen as a good government "serving the people". Marx called democracy "proletarian rule" and this constitutes the key concept of democracy held by the Chinese elites. In contrast to the Western individualistic tradition which was liberal first and democratic later (Macpherson, 1976, 6), China has sought to combine democracy with authority, dictatorship and centralism rather than with freedom. Its leaders believe that individual freedom conflicts with democracy, as was demonstrated in Deng's campaigns against "bourgeois liberalization" in both 1983 and 1987, and expressed in Deng Xiaoping's understanding of democracy: "The dictatorship of the proletariat means socialist democracy for the people, democracy enjoyed by the workers, peasants, intellectuals and other working people, the broadest democracy that has ever existed in history" (1983, 176). Deng explains some features of socialist democracy:

> We must make a special effort to explain the question of democracy clearly to the people, and to our youth in particular. The socialist road, the dictatorship of the proletariat, the leadership of the Communist Party and Marxism-Leninism and Mao Zedong Thought -- all these are tied up with democracy. What kind of democracy do the Chinese people need today? It can only be socialist democracy, people's democracy, and not bourgeois democracy,individual democracy. People's democracy is inseparable from dictatorship over the enemy and from centralism based on democracy. We practice democratic centralism, which is the integration of centralism based on democracy with democracy under the guidance of centralism. Democratic centralism is an integral part of the socialist system. Under this system, personal interests must be subordinated to collective ones, the interests of part to those of the whole, and

immediate to long-term interests. In other words, limited interests must be subordinated to overall interests, and minor interests to major ones. Our advocacy and practice of those principles in no way means that we can ignore personal, local and immediate interests (1983, 182-183).

In Deng's thinking, there are three elements to which we should pay attention: (1) the people's rule over the government, which is the main principle of democracy; (2) leadership and centralism, which is the necessary condition for democracy; and (3) collectivism, which is not only the starting point for his concept of socialist democracy but also the major principle for resolving the conflicts of different interests in practice. In this concept of democracy, Deng rejects the Western power system:

In developing our democracy, we cannot simply copy bourgeois democracy, or introduce the system of a balance of three powers. I have often criticized people in power in the United States, saying that actually they have three governments. Of course, the American bourgeoisie uses this system in dealing with other countries, but when it comes to internal affairs, the three branches often pull in different directions and that makes trouble. We cannot adopt such a system (1987: 163).

He claims superiority for Chinese socialism:

The greatest advantage of the socialist system is that when the central leadership makes a decision it is promptly implemented without interference from any other quarters. When we decided to reform the economic structure, the whole country responded; when we decided to establish the special economic zones, they were soon set up. We don't have to go through a lot of repetitive discussion and consultation, with one branch of government holding up another and decisions being made but not carried out. From this point of view, our system is very efficient. We should neither copy western democracy nor introduce the system of a balance of three powers. We should uphold socialist democracy, so as to retain the advantages of the socialist system (1987: 192).

To maintain the political leadership of the Communist Party, Deng was already to suppress by force any opposition movement which challenged Communist authority. As he claimed in 1986:

> We cannot do without dictatorship. We must not only affirm the need for it but exercise it when necessary. Of course, we must be cautious about resorting to dictatorial means and make as few arrests as possible. But if some people attempt to provoke bloodshed, what are we going to do about it? We should first expose their plot and then do our best to avoid shedding blood, even if that means some of our own people get hurt (1987: 163-164).

3. The Paternalistic Model of Democracy

The Chinese paternalistic model of democracy is a "protective democracy", under the monocratic guidance of paternalistic leaders, which maintains and strengthens national power rather than protects individual rights. In contrast, it is said of the "protective democracy" of liberal theory that "nothing less could in principle protect the governed from oppression by the government" (Macpherson, 1979, 22). The Chinese paternalistic model of democracy is, too, a "developmental democracy", which prefers to develop the nation rather than the individual, whereas the term "developmental democracy" in liberal theory is used to mean "a means of individual self-development" (Macpherson, 1979, 22). Also, when conflicts occur between the collective interests and individual liberty, the Chinese paternalistic model of democracy affirms the supreme value of the former over the latter, and liberty must be subordinated to collective interests. Finally, the Chinese paternalistic model of democracy has not emerged from the ideas and practices of private property and a free market economy; rather it is a mechanism through which the state intervenes in certain issues concerning social equality, especially those which are conducive to a stable and secure society. Contrarily, the demand for liberal democracy and rights-based morality in China results from the development of a private market economy which is significant as the foundation of social power independent of the state (Chapter 7).

Mao's model of democracy placed great emphasis on equality and social-security-achieving-communism at the expense of liberty. Deng gave

less emphasis to equality and social-security-achieving-communism, allowing more scope for individual opinion and behaviour in policy decisions but still disregarding liberty in the official ideology. Both Mao's and Deng's models of democracy share a common emphasis on leadership and centralism as the necessary condition for democracy in China. As Pye argues:

> Distaste for open criticism of authority, fear of upsetting the unity of the community, and knowledge that any violation of the community's rules of propriety will lead to ostracism, all combine to limit the appeal of Western democracy. As a result, the development of more open and enlightened politics in Asia is likely to produce a much more contained form of popular participation in public life. At best it is likely to be a form of democracy which is blended with much that Westerners might regard as authoritarian (1985, 341).

Another feature of the particularly Chinese form of democracy is the mixture of formalistic democracy and paternalistic authority which will be discussed in the final section of this chapter.

Let us now examine two central premises of this model of democracy: (1) collectivism, and (2) limitations on freedom.

i. Collective Democracy

In western political culture, it is often acknowledged that the political process can legitimately be used by individuals and groups to try to force the state to serve their own interests. In comparison, in Chinese political culture, the major principle is collectivism -- the supremacy of public interests over citizens' rights. Individual interests are never taken as a fundamental principle in politics; even the interests of leaders have no legitimacy in Chinese political culture. Pye argues that:

> The Chinese system lacked any explicitly acknowledged and legitimately accepted linkage between the realm of government and that of private interests. In traditional China there was no legitimized interplay among privately based power groups, and people had to be taught that it is improper and dangerous to assert

self-interests in making any claim upon the political system (1968, 16).

The concept of collectivism held by Chinese paternalistic leaders may be seen from the following two perspectives. First, collectivism, in a narrow sense is, the theory that the means of production, distribution and exchange should be owned and controlled collectively, so that all major decisions are the results of collective choice rather than individual preference. Deng's (1983, 175) conception of socialism is collectively oriented: "The socialist economy is based on public ownership".

Second, collectivism is a principle which allows a collective or the leaders of the collective to have rights that can override the rights of its members. The leader can demand conformity on the basis that everyone should be willing to make sacrifices for the collective good. As Deng (1983, 182-183) claims that, under a socialist system, "personal interests must be subordinated to collective ones, the interests of the part to those of the whole, and immediate to long-term interests".

However, the first aspect of collectivism presents several problems. In terms of control and arrangement of public property, in reality only a few leaders control the public means of production. Those who have economic power over public property enjoy and share the political power and political privileges. Existing within such a paternalistic ownership system, the Chinese model of democracy fails to offer equality of political rights on account of this unequal distribution of the means of production and of wealth. In reality it tends toward totalitarianism or authoritarianism.

In theory, workers should and can own their property; in reality under a socialist ownership system they own nothing. So, on the one hand, workers lack any individual motivation and responsibility for collective enterprise; on the other hand, they depend on the collectivity for their life, happiness, order and security, as well as their housing, food and children's education. This dependence reinforces paternalistic authority. As Pye (1985, 330-331) claims: "Paternalistic authority thus must be coupled with feeling of dependence. . . . The expectation that authority should produce tidiness and order also justifies the practice of obtrusive authority. It is accepted that the state can and should probe into the recesses of society."

Here I would like to comment on the relationship between the first aspect of collectivism and the suppression of freedom of speech. Talmon (1970, 250) observes that communists saw "the essence of freedom in ownership of everything by the State and the use of public force to ensure a rigidly equal distribution of the national income, and spiritual conformity" Talmon (1970, 255) asks further but does not presume to answer the following question: "must economic centralization aiming at social security sweep away spiritual freedom"? Here, I can give a definite answer because the Party which controls the public means of production can easily control the mass media and suppress freedom of speech (also see Hu Ping, 1988).

A second aspect of collectivism must also be examined. The principle of collectivism is that the people, under socialist ownership systems, should participate in controlling and discussing public affairs and should be oriented toward the group outcome or the common good, and that they should exchange their ideas in a way that has regard for common rather than selfish interests. In Mao's time, this principle was enforced in ways that were radical and extreme, and the legitimacy of individual interests and rights in public discussion was denied. As a result, people acted one way in public and another way in private, so that China became a nation of hypocrites. Mao wanted to transform human nature, that is, to develop a sense of collectivity, and get rid of selfish interests; but he ultimately failed in this attempt. Mao's failure, in the Chinese liberal view, was due to that his concept of human nature denied the legitimacy of the egoistic nature of man (see Chapter 5).

In contemporary China, radical collectivism has been modified to take into account individual interests. Deng (1983, 182-3) has claimed that, "Our advocacy and practice of those [collective] principles in no way means that we can ignore personal, local and immediate interests." However, the political rights of the minority are still not acknowledged; and if necessary, individual interests must be subordinated to, or sacrificed for, collective ones, when there are conflicts between them.

Let us examine the notion of collective interest. In China, the pursuit of goals by common action usually, though not necessarily, is on the level of the nation as the largest collectivity, and through the agency of the state. So one part of the collective interest is "national interests", which can encompass national independence, state security, stability and unity. How

are these collective interests ascertained? Paternalism provides one answer: collective interests are decided by enlightened elites. This is a less than democratic solution, for ordinary people have no influence over decision-making concerning collective interests. A crucial question is, according to Wei Jingsheng (see Chap. 3), whether the decisions made by paternalistic leaders really represent and aggregate interests of individuals. This cannot be guaranteed, for there are no social choice mechanisms and well-established representative systems which can coordinate or aggregate individual interests and preferences.[32]

Moreover, paternalistic leaders often abuse "collective interests" to suppress the majority, to maintain their own privileges, to legitimate actions which violate individual rights and interests, and to ask people to make sacrifices in the name of the "collective" which are actually for the benefit of the paternalistic leaders themselves (Wei, in Seymour, 1980, 62). This rhetorical use of "collective interests" is evidenced in Deng's campaigns against "bourgeois pollution" and the crackdown on the students demonstrations in 1989. In such cases, "collective interests" may be equated with paternalistic interests, and "collectivism" becomes merely an empty rhetoric. Hence Chinese collectivism is the tool of paternalism; and the ideal of Chinese collective democracy has failed in practice.

In conclusion, I would like to quote Pennock's (1979, 108-10) statements that there are three reasons why collectivism is unsympathetic to the liberal democratic ideal:

> [The collectivist] who would bend all efforts to the development of a political whole that absorbs all individuality into itself might well hesitate to entrust this operation equally to all men. The second reason grows out of the collectivist's distinction between "real" and "artificial" desires...that distinction soon runs into difficulties....It is easy to see why the collectivist is here tempted to opt for a less than democratic solution. The third reason for the collectivist's tendency toward elitism is that he cannot accept the high valuation placed upon the individual **as he is at any given time and place**, which is the heart of individualistic democratic theory.

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[32]It might be also a problem for a theory of collective choice, see Arrow, 1950, Sen, 1970.

ii. Paternalistic limitations upon Liberty

Deng's economic reform allowed a limited economic freedom but prohibited political freedoms and opposition. Also Deng wanted to develop "socialist democracy", but strongly criticized "bourgeois liberalization." His concept of democracy denied liberty as the first and major value and his model of democracy was based on a paternalistic limitation of liberty. It is, therefore, important to examine the arguments for restrictions upon liberty.

It may be argued by paternalistic leaders that freedom is nothing more than a means to promote the individual's interests, and there are values such as equality, justice and security which are more important than freedom. Freedom has positive and <u>negative</u> consequences depending on the individual's attitude to it, and paternalistic guidance may help people to achieve the positive consequences and avoid the negative ones. Also liberty is not the ultimate value or solid foundation of democracy but, the idea of development is the foundation of liberty. It might be argued further that paternalism contributes positively and effectively to the personal development of those who are uncivilized, so it is rational to limit their freedom. If uncivilized and benighted people have too much freedom and are not accustomed to obeying laws and regulations, this will produce disorder and destructive conduct. This situation, it may be claimed, was demonstrated in China: when the peasants were given control over the land, they cut down and used all of the trees before the freedom to do so could be taken away from them. Moreover, it is argued, Chinese workers and peasants at present have more need for security and basic material necessities than for freedom, and that according to Hegel's dialectics, the limitation of freedom now will lead to more freedom in the future. Liang Qichao laid down the rationale which would be used to justify authoritarianism and the acceptance of authoritarianism: "They [Chinese people] must be trained as citizens first; until then, freedom would lead only to disorder" (in Nathan, 1986, 62-63).

In countering these arguments we must recognise the tensions between limitation on individual freedom and "socialist democracy". If ordinary people are not free to express their preferences and opinions, do not have influence over or the power to be involved in decision-making, how can there be majority rule ? When paternalistic leaders make wrong decisions and there is neither freedom of speech nor a well-established

system of elections through which unpopular leaders may be dismissed or mistaken policies stopped, how can we say it is a democratic system and that people are masters of the country?

If individual rights and personal freedom are denied, every act becomes open to examination in the light of revolutionary public interests, which inevitably invites authoritarianism rather than Marx's original ideal of proletarian democracy. During the Cultural Revolution, the official ideology, to a great extent, denied the legitimacy of private affairs. In the post-Mao era, article 51 of the new constitution contains a clause that states "the exercise by citizens . . . of their freedoms and rights may not infringe upon the interests of the state, of society and the collective, or upon the lawful freedoms and rights of other citizens."[33] Paternalistic leaders are expected to determine state interests and there is ultimately no absolute and explicit legal guarantee of personal liberty under the new Chinese constitution.

Democracy in the broader sense, according to C. B. Macpherson, has always been based on an idea of human equality (Macpherson, 1976, 20-22). Without equal individual liberties, those who have political power are in a position to enjoy their political privilege. By contrast, those without power only have the "freedom" to sacrifice their interests for, and to subordinate their preferences to, those of the paternalistic leaders. Hence equality, which is a central feature of socialist democracy, no longer exists. What we can see in reality is that paternalistic authority in China suppresses freedom and maintains an unequal political structure. So the basic conclusion must be reached that, without basic political liberty, there is no chance of achieving equality and justice.

Sherover (1968, 590 f) recognizes that, essentially, liberty and equality stand in mutual opposition. This view is debatable. One might argue that equality means many things and there are some aspects in which liberty presupposes equality. Here, I would revise Sherover's argument: there are more tensions between non-liberty and equality than between liberty and equality. Without personal freedom, there can be no equal rights and opportunities or even an equal distribution of welfare and resources. The people's lack of liberty inevitably invites and maintains paternalistic

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[33]"Constitution of the PRC", 1982, *Beijing Review*, 52 (27 December, 1982).

political privileges and political inequality in the whole society, which in turn inevitably enlarges or deepens the unequal distribution of welfare and resources, as demonstrated by the serious official corruption under the Chinese communist system. If individual liberties are recognized, although inequality still exists, people can freely demand that this situation of inequality be changed. Political freedom opens up the possibility of overcoming at least some of the problems of political privilege. Hence it must be concluded that the value of freedom is more important than that of equality. Only if we have basic liberty can we hope to achieve political equality and democracy.

The legal protection of basic liberty has further consequences for the paternalistic position. If liberty is protected and guaranteed by the legal system, it might help to produce both order and constructive conduct.[34] For example, in the case cited above, the peasants would not have cut down the trees for fear of inviting disaster, if their freedom to do so had been guaranteed. The reason the peasants did cut down the trees is that they were worried about how long their freedom to use the land would last. Moreover, the argument that a temporary limitation on liberty will lead to more freedom in the future is also fallacious. As Talmon points out:

> The promise of a state of perfect harmonious freedom to come after the total victory of the transitional Revolutionary dictatorship represents a contradiction in terms...the implication underlying totalitarian democracy, that freedom could not be granted as long as there is an opposition or reaction to fear, renders the promised freedom meaningless (1970, 253-254).

The arguments presented above do not imply a total rejection of limitations on freedom; rather it is necessary to examine why, how and under what conditions any limitations on liberty are to be imposed. Here I would like to make a simple comparison between the arguments of the paternalists and of the liberal theorists for limitations on freedom. Although John Rawls claims that rational persons would permit paternalism and its restriction on liberty, such limitations would be, "for the sake of liberty itself and [would] result in a lesser but still equal freedom" (Rawls, 1971, 247). The conditions for permitting paternalism are clear,

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[34]It might have negative consequences in the process of realizing human rights in the transitional period, as will be discussed in Chapter 4.

concrete and necessary, that is: "paternalistic intervention must be justified by the evident failure and absence of reason and will; and it must be guided by the principles of justice and what is known about the subject's more permanent aims and preferences, or by the account of primary goods" (Rawls, 1971, 250). By contrast, the starting point and purpose of the paternalistic limitations on liberty are, theoretically, for the sake of the collective's interests, security and equality; but in practice, they may be used in the interests of the power elites. This outcome is partly due to the loose, unexplicit and unlimited conditions; and partly due to the paternalistic subjective will which play a significant role in limitations on liberty.

4. Is Paternalism Compatible with Democracy?

Deng (1983, 183) has claimed that, " We must link democracy for the people with dictatorship over the enemy, and with centralism, legality, discipline and the leadership of the Communist Party." In comparing the arguments of democrats like Liang Qichao in the late Qing (Ch'ing) period with those of Deng, we find that they have faced a basic problem: how might a powerful government be reconciled with the exercise of influence from below, and how could the rules be reconciled with strong authority (Nathan, 1986, xiii). In other words, is it possible to modify Western democracy to harmonize with Chinese paternalistic authority and collectivism?

Although J. S. Mill and John Rawls permit "despotic democracy", or paternalism, to occur under certain conditions,[35] in essence paternalism clashes with liberal democracy where equal liberty is concerned.

Macpherson has acknowledged that socialist democracy is one type of non-liberal democracy which differs from western liberal democracy. In line with Macpherson, Womack (1990, 21-3) develops a theory of party-state democracy. This is characterized by the continuous domination of the Party, democratization of the Party itself, encouragement of societal articulation, guarantees of citizen welfare as well as citizens' rights and their significant influence over personnel, and finally the emphasis of the role of the People's Congress System. The question is, can paternalism be reconciled

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[35]Mill argues for the possibility of a legitimate "benevolent despotism" (see, Gaus, 1983, 221). Rawls (1971, 250) argues for two stipulations which are necessary for paternalistic intervention.

with non-liberal democracy? And also, is the idea of non-liberal democracy a coherent one?

Mao's revolutionary and charismatic rule not only resorted to the principle of the people as sovereign but also established a paternalistic model of democracy. Such a model of democracy, based on collectivism and limitation on liberty, failed in practice and was inevitably open to authoritarianism or totalitarianism. At best, this model of democracy may be acknowledged to be a particular type of formalistic democracy with its electoral system, multi-level system of people's congresses, "democratic parties", and a press which is claimed to act as the most important institutional link between citizens and the state. But any real public involvement in the exercise of power is limited under this kind of democracy; small parties are allowed to exist but are prevented from becoming rivals for real power. So formalistic democracy is a means to justify paternalistic power rather than a means of public control over the government. To some extent, formalistic democratic structures are easily compatible with paternalism because under such a system liberal democracy is limited. Furthermore, these structures can justify, support and strengthen revolutionary paternalism. Paternalism and formalistic democracy are complementary. Paternalistic power is maintained, reinforced and legitimatized by formalistic democracy; while only under the guidance of paternalistic leaders can formalistic democracy be established and developed. In common terms, it is "democracy from the top".

In the short term, formalistic democracy was used, as Mao has shown, to resolve the paternalistic authority crisis. But in the long term, formalistic democracy cannot fundamentally resolve the crisis of paternalism, as the problems of paternalism such as official corruption, gerontocracy, pliable institutions, and the struggle over succession still continue. Furthermore, periodic power struggles create and deepen the crisis of paternalism, for they lead more and more Chinese people to doubt the genuine official ideology and the integrity of Communist leaders.

Even more important is the theoretical contradiction in the concept of "democratic centralism" in terms of substantial rather than formalistic democracy. Substantial democracy is, in Marx's sense, the majority principle that people, workers and peasants, can effectively participate in controlling the social arrangement and become masters of their own country. Logically,

it demands that people play a genuinely active and important role in decision-making. If that is the case, then paternalistic leaders must in reality share their political rights with the people, thus limiting their will and challenging paternalistic centralism. If paternalistic leaders want to maintain their centralized power, they have to limit or distort substantial democracy. As a result, revolutionary paternalism is clearly not compatible with essential democracy. In fact, to enable them to harmonize the paternalistic conception of democracy with centralism, paternalistic leaders really only seek to maintain a formalistic democracy. In short, the concept of democratic centralism is a theoretically misleading notion and it does not work in practice. Furthermore, in practice the term, "democratic centralism" becomes mere rhetoric which has been used by paternalistic leaders at will. For example, in December 1978 Deng (1983, 155) stated "at present, we must lay particular stress on democracy, because for quite a long time democratic centralism was not genuinely practiced: centralism was divorced from democracy and there was too little democracy. Even today, only a few advanced people dare to speak up." However in February 1980, Deng (1983, 267) said: "We should promote democracy, but at the same time we need centralism. Now and perhaps for a rather long time to come, we will have to stress centralization where it is really required, so as to increase efficiency."

There also is a conflict between theory and practice. Although the Chinese people theoretically control their rulers, in fact they cannot control those who make and enforce political decisions. To avoid that contradiction, paternalistic leaders tend to resort to the vanguard theory. Yet, as Macpherson has argued, paternalistic authority even justified by the vanguard theory, "may be a government for the people but it is not government by the people, or even by the choice of the people. A vanguard state cannot in principle be a democratic state in the narrow sense, since the whole reason for vanguard rule is that the majority of the people are said to be too debased, too impregnated with the ethics and values of the inhuman society, to be trusted with immediate power (Macpherson, 1976, 20)." It is the idea of "government by the people" that always, both in theory and in practice, creates the tension between paternalistic leaders and those demanding essential democracy. In modern China people have a justified tool in the principle of "the people as sovereign" with which they can struggle against any form of paternalism.

However, Macpherson (1976, 22) has argued that in terms of the broader concept of democracy as equality "the vanguard state, so long as it remains true to its purpose, may be called democratic". Can this idea of Macpherson be applicable in China so as to acknowledge Deng's model of democracy? My answer is no. The Chinese vanguard state did not remain true to its purpose. My analysis of the Chinese model of democracy has demonstrated that the vanguard state neither has achieved political equality in reality nor tends to more political equality through the action of the vanguard; rather it tends to increase and enlarge political and economic inequality. So even in terms of equality, paternalistic authority is not compatible with essential democracy.

Now let me make a final comment about Womack's model of party-state democracy. I have no objection to Womack's theory of party-state democracy as democratic strategy, insofar as it attempts to utilize the existing institutions and habits and at the same time open them up to redirection and modification. However, I reject Womack's (1990, 12-16, 24) theory of party-state democracy as an ideal model. The reasons are as follows:

(1) Even if the Party and its policies are popular and internal democratization is occurring, this can hardly be called 'democratic' because all authority still flows down and out from the Party centre, and any oppositional party is still rejected as counter-revolutionary. There will be no sincere and genuine internal democratization of the Party itself given that there will be no external pressure from oppositional parties independent of the control of the Party.

(2) If the Party maintains its domination, this certainly conflicts with guarantees of citizen rights, in particular, civil and political rights; if civil and political rights are guaranteed and institutionalized, this goes directly against party-state democracy.

(3) In the same way, continued domination by the Party excludes the People's Congress System from becoming the highest authority; if popular sovereignty is exercised through the organ of the People's Congress System, this directly undermines party-state democracy. In short, the concept of party-state democracy is self-contradictory and self-rejecting.

Conclusion

This chapter has discussed the Chinese official paternalistic model of democracy which has two basic premises: collectivism and limitations on liberty. These result in a contradictory mixture of formalistic democracy and paternalistic authority. The paternalistic model of democracy is unsatisfactory both in practice and in theory. It failed in practice and led to or supported totalitarianism or authoritarianism in China. It served as a means to justify paternalistic power rather than a means of public control of government. It gave rise to a conflict between theory and practice: the Chinese people theoretically control their rulers, but actually cannot control those who make and enforce political decisions. There is also a theoretical contradiction in the concept of "democratic centralism", and paternalistic authority is not compatible with democratic institutions.

CHAPTER 3

The Liberal Model of Democracy

This chapter focuses on how three contemporary Chinese liberal thinkers, Wei Jingsheng, Hu Ping, and Yan Jiaqi, view democracy. It is largely descriptive, outlining the content and context of their ideas on democracy, and the similarities and differences in their views. These descriptive accounts will serve as the basis for later discussion in Chapters 4, 5, 6 and 7. The historical development of each man's thought, and a comparison between their ideas and Western liberal ideas, will not be attempted here; it would be beyond the scope of this thesis to do so.

I define Wei Jingsheng, Hu Ping and Yan Jiaqi, as being liberals on the basis of Eugene Lubot's criteria: (1) they look for moderate, non-violent ways of reform; (2) they exhibit a genuine concern to protect basic civil liberties such as freedom of speech and of the press; (3) they favor a constitutional government in order to support the democratization process and provide institutional checks on authoritarianism.[36] I select these three as representative of Chinese liberals' thinking on democracy, because their works are relatively systematic and well-argued, and have greatly influenced today's China. Since all three are alive and they will surely change their thinking on democracy, my current work is limited to a study of their works up to 1990 although I have made an effort to catch up with their latest developments.

This chapter is in four sections. Sections 1, 2 and 3 review the concepts of democracy of Wei Jingsheng, Hu Ping and Yan Jiaqi respectively. Section 4 discusses their similarities and differences.

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[36]See Eugene Lubot, 1982, 3-4. One might argue that Wei, Hu and Yan are Marxists because they quote Marx's works in their writings, but in my opinion, they do so only for reasons of political prudence. Liberal intellectuals must dress up their liberalism with a coat of Marxism. As Yan Jiaqi says,"As for myself, when I was on the mainland I never openly criticized Marxism, but used every possible opportunity to press for democracy and freedom". See Yan Jiaqi, 1992b.

1. Wei Jingsheng: An "Old Red Guard" Turned Dissident

Wei Jingsheng was born in Beijing in 1950, into a family originally from a small village in Anhui Province.[37] His father, a People's Liberation Army veteran, was a tenth-grade cadre and Vice-President of a department in the important Commission for Capital Construction.

When the "Cultural Revolution" was launched, Wei Jingsheng was in the process of completing the first part of his secondary education in the school attached to the People's University of China which was, with the secondary school attached to Qinghua University, one of the first places where Red Guards manifested themselves. He was one of the "Old Red Guards" who, at the end of 1966, formed the famous "Committee for United Action" hostile to Jiang Qing.

At the end of 1967, he was imprisoned for three months, and in 1968 took refuge in his family village in Anhui. He then spent four years in the army (1969-1973), and on demobilization found work as an electrician in the Peking Zoo.

He personally witnessed the events of 5 April 1976 in Tiananmen Square, when a crowd assembled to mourn Zhou Enlai and to criticize the "Gang of Four". This made a strong impression on him, and he became convinced that China needed a new kind of politics. He began writing political essays,[38] and established the dissident journal *Tansuo* (*Exploration*), which was the most militant of all underground publications. It carried many articles which were highly critical of Marxist ideology and of the Chinese government. It dealt penetratingly with the subject of democracy and modernization, and it contained shocking exposés of the appalling situation in political prisons. On 29 March 1979, Wei was imprisoned, later to be sentenced to fifteen years as a "counter-revolutionary".[39]

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[37]The following biographical information was taken from Claude Widor, 1981, 38-39; James D. Seymour, 1980; and from Andrew Nathan, 1986, 14-15, 22-23, 34, 40, 43, 118, 208.

[38]For examples, "The Fifth Modernization", "Human Rights, Equality and Democracy", and "A Twentieth-Century Bastille", included in Widor, 1981, Seymour, 1980.

[39]On 6 February 1989, dissident astrophysicist Fang Lizhi sent an open letter to the Party leadership, demanding the release of all political prisoners, and of Wei Jingsheng in particular. Fang's action was a prelude to the 1989 student movement.

Democracy: "The Fifth Modernization"

Wei Jingsheng has become famous for his dictum that China needs democracy as a "Fifth Modernization" in addition to Deng Xiaoping's "Four Modernizations" (i.e. of agriculture, industry, science and technology, and defense). He lists three reasons for demanding democracy:

(1) *Human rights*. Democracy is a cooperative system that recognizes the equal rights of all human beings, and resolves all social problems on the basis of cooperation.[40] It is the opposite of autocracy, which protects the privileges of a small elite, and denies the human rights of everyone else. Democracy and autocracy are the two main categories into which all the political systems of the human race can be divided. China's political system belongs to the autocratic type, as it is "the dictatorship of the proletariat" and "a variation of Russian autocracy". Although the Communists claim that the people are the masters of history, it is, in fact, Wei states, more correct to call these "masters" slaves (in Widor, 1981, 52; and in Seymour, 1980, 49-50).

(2) *Prosperity*. Democracy is the prerequisite for rapid economic modernization (in Seymour, 1980, 63, 54, 146). Autocrats are wont to engage in conspiracy and violence in their struggle for power, causing great social upheavals and causing irremediable damage to production and living conditions. The example of Fascism shows that totalitarianism can only bring disaster (in Seymour, 1980, 54). In contrast, the American democratic system has provided the most favorable conditions for rapid social development.

(3) *Freedom*. Democracy, because it promotes prosperity, creates optimal opportunities for the pursuit of freedom, which is the first goal of happiness. Democracy provides the maximum attainable freedom so far known to human beings (in Seymour, 1980, 54).

An Individualistic Conception of "The People"

Wei is concerned in discussing the theme of democracy from as many angles as possible, giving various different definitions of democracy. Let us look at a number of them:

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[40]See Wei Jingsheng, "Diwuge xiandaihua" ("The Fifth Modernization"), in Widor, 1981, 79; and in Seymour, 1980, 65.

[Democracy] means that people have the right to exercise control over everything in society, including economic, political, cultural and social affairs (in Seymour, 1980, 144).

True democracy means the holding of power by the laboring masses, the right of the people to choose their own representatives to work according to their will and in their own interests. Only this can be called democracy. Furthermore, the people must also have the power to replace their representatives at any time when they are found to deceive others in the name of the people (in Seymour, 1980, 52).

In the first place, [democracy] is a political system; in the second place, it is an economic system. It is not a system of subordination or enslavement designed to do away with people's freedom, but one which protects people's freedom and consequently provides them with a chance to work in cooperation with each other . . . Democracy may not be a means for promoting centralism, nor may [the pretext of] freedom be used to enforce discipline. Democracy is a means of protecting freedom, and discipline is the pillar of democracy. If we recklessly reverse the means and the end, we will only find ourselves sinking back into the quagmire of Maoist dictatorship (in Seymour, 1980, 144).

Importantly, Wei opposes the official Marxist collectivist view of "the people", and offers an individualistic definition of the concept:

"People" stands for a large number of individuals as well as for each individual. This is my definition of the term "people". ... At present, in a social system where there is no room for the independent existence of individualism, there can be no collectivism to speak of. What [is presently called "collectivism"] is actually "autocratic individualism" and small group mentality (in Seymour, 1980, 62).

Wei here criticizes the suppression of the interests of the individual by the ideology of collectivism, which, in reality, is aimed at furthering the interests of a small group. He points out how rulers have always tried to

make autocracy acceptable to the population by pretending that it promoted the "interests of society":

Despite differences in vocabulary, autocratic rulers of all ages have invariably taught the people that since men are social beings, social interest should predominate [over individual interests]; that, since everyone has a stake in the interests of society, centralized management or administration is necessary; that, since rule by a minority, or even by a single person, is the pinnacle of centralization, autocracy is the most ideal form.

In contrast to this, Wei is of the opinion that man's individuality is more important than his sociability. In his view, society is composed of individuals who exist independently from each other, on the basis of their own natural instincts. Sociability is grounded in the common character and the common interests of many different individuals. Therefore, although both sociability and individuality are important constituents of human nature, it is sociability which depends on individuality, not the other way around. Wei argues that individuality is primary and sociability secondary (in Seymour, 1980, 57). Thus, Wei believes that in evaluating social arrangements our concern must be with the well-being of the individual. Wei's idea reinforces the Western liberal position that collectives matter only because they are essential for the well-being of the individual (see Kukathas, 1990, 12-16; 1992, 112).

Democracy as Harmony and Cooperation

According to Wei, the difference between totalitarianism and democracy does not lie in the difference between individuality and sociability, but in the different forms of sociability on which they rest (in Seymour, 1980, 58). Totalitarianism, he argues, regards suppression of individuality as the basic condition of its survival. In essence, it is a form of enslavement. Democracy, on the other hand, regards harmony with individuality as the basic condition of its existence. In essence, it is a form of cooperation.

Wei argues that the main difference between totalitarianism and democracy lies in the exactly opposite views they have on human individuals, and in the vastly different living conditions they provide for the population (in Seymour, 1980, 58). He holds that socialism is not synonymous with totalitarianism, but that, on the contrary, socialism and

democracy are compatible. While disagreeing with the orthodox interpretation of "socialism", he also disagrees with the hostile view that "socialism" means modern totalitarianism.

Chinese official ideology holds that socialist society is the most rational means of transition to the ideal communist society, but Wei argues that all forms of totalitarianism use the promise of an ideal future as a pretext to legitimize the sacrificing of people in the present for the sake of a future ideal, which, in reality, is unattainable. He states that if we continue to uphold this Utopian kind of socialism, we actually support totalitarianism or autocratic Fascism (in Seymour, 1980, 60-1).

He is hostile to the idea of "Chinese socialism" because it neglected the human rights issue, and because Marxist economics -- "scientific socialism" -- had not led to the promised wealth (in Seymour, 1980, 141). The Marxist socialist experiment of using dictatorship to achieve equal rights has, after so many decades, finally been proved to be impossible by the actual facts. Furthermore, he states, the plan to realize the ideal society through a "dictatorship of the majority" is a Utopian dream, since a dictatorship, albeit of the majority, is still a dictatorship. It will always lead to power falling into the hands of the few (in Seymour, 1980, 68).

On the other hand, Wei finds the view that the concept "socialism" is synonymous with modern totalitarianism too narrow, stating that this view fails to analyze the entire process of the development of socialism, and to appreciate its significance. This significance, he claims, originally lies in the socialization of production and consumption.

Wei regards socialization as the process whereby all individuals receive equal rights and duties concerning the use of the means of production, and equal opportunities to enjoy economic wealth. Real socialism consists of ensuring equal rights for individuals in making a living, and ensuring that these rights can be realized through free organization and coordination in a democratic political system. He believes that socialism has an inherent tendency toward democracy (in Seymour, 1980, 61-2).

Democracy, in his view, is the form of government by which the equal rights of all are protected. Founded on the recognition of everyone's right to preserve his life, democracy will provide everyone with an equal

opportunity to realize this right. Wei emphasizes that people can be said to enjoy equal rights if nobody is allowed to infringe upon the rights of others, and if everyone has the actual opportunity to realize his/her rights. The point of democracy is that everyone should have equal opportunities to realize the right to preserve one's life and to earn a living, not whether or not the final result is perfect equality (in Seymour, 1980, 67).

Some Critical Observations

Wei had a somewhat idealized and over-simplified view of democracy, in so far as he assumed that there is no tension between democracy, individualism, and harmony. He believed that in a democracy, no single idea can become the dominating dogma, and that nobody will succeed in imposing a single ideology upon society (in Seymour, 1980, 145).

The main reason that Wei presented an idealized image of democracy was probably in order to use it as a forceful polemical instrument in his criticism of the Chinese autocratic system. Although he strongly criticized the Utopianism underlying "socialist democracy", his idealized image of democracy does not provide any clues to how liberal democracy can be achieved in practice in China.

Nevertheless, it should be remembered that, as a political dissident, he was a major pioneer in China. In the late 1970s, he was the first openly to call for democracy, paving the way for the dissidents of the 1980s. Sentenced to 15 years in jail, and recently reported to be in very bad health, he has paid an extremely heavy price for his courage and outspokenness.

2. Hu Ping: From Outcast to Exile

Hu Ping, who was President of *the Chinese Alliance for Democracy* (CAD) in the USA from January 1988 to June 1991, was born in Sichuan in 1947.[41] The son of an executed "counter-revolutionary", his lot was a life of poverty throughout the 1950s. His first encounter with political discrimination was at the age of 15, when he was denied admission to the Communist Youth League because of his "bad class background", and later, he was denied entry to the ranks of the Red Guards in the early days of the "Cultural Revolution". He was sent to a remote village to live among the peasants.

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[41]The following biographical information was taken from Nathan, 1986, 206-208; 1990a, 3-4.

There, he had the enforced leisure to think, and in the early 1970s, he formed his commitment to freedom of speech.

In 1978, he was admitted to Beijing University as a graduate student in European philosophy, specializing in Hobbes, Locke, and Hume. He became a contributor to the unofficial periodical *Wotu* (*Fertile*), in which he published his long essay, "Lun yanlun ziyou" (On Freedom of Speech), defending the thesis that freedom of speech benefits society.[42]

He was elected a representative on 11 December 1980 in the county-level elections, during which he had campaigned for freedom of speech, obtaining 57 percent of the vote. His political stance made him so controversial that, after he obtained his MA, the university was unable to find him a job. He remained unemployed for five years -- the price he paid for having actively championed freedom of speech.

In 1987, he enroled in Harvard University in the USA to obtain a PhD in Western political thought. He gave up his academic work when he was elected CAD Chairman a year later. In 1989, a split occurred between him and former CAD Chairman Wang Bingzhang, culminating in a lawsuit against Wang for alleged private use of part of the CAD funds.

Freedom of Speech: a "Fulcrum"

Hu is an outspoken libertarian whose predominant concern is the protection of the citizen against abuse of power by the government (Hu Ping 1991a, No. 4, 53). He has criticized the Chinese Communist idea of positive freedom, adopting instead Isaiah Berlin's idea of negative liberty. The reading of William Shirer's *The Rise and Fall of the Third Reich* awakened terrible visions in his mind of how the contemporary world would have looked if Hitler had succeeded in completing his plan of military expansion (Hu Ping , 1988, 3). He stated that of the two major problems of today, namely, how freedom can be maintained in liberal societies, and how

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[42]The essay was written in 1975, and first appeared in *Wotu* in 1979. Reprints in *Qishi niandai*, Nos. 3-6, 1981; *Spear Head*, Nos. 12-13, 1982 (translated in English); *Qingnian luntai*, Nos. 7 and 9, 1986; *Zhongguo zhichun* (China Spring), Nos. 50-52, 1987. Also included in a collection of his works: Hu Ping, *Gei wo yige zhidian* (*Give me a fulcrum*), Taiwan: Lian-jing chuban gongshi, 1988. This is the source used in this book, hereafter referred to as "Hu Ping 1988".

despotic regimes can be toppled in totalitarian societies, the second problem is more pressing than the first (Hu Ping , 1988, 8).

Hu defines freedom of speech as the freedom to express different views, including wrong ones, which implies that expressing one's view may never lead to one being accused of a crime (Hu Ping, 1988, 98). This goes against the official CCP definition, which states that freedom of speech is limited to what the leadership allows to be expressed (Hu Ping, 1988, 48).

He regards freedom of speech as the "fulcrum" upon which to rest a lever to "lift up this world", i.e. activate it into changing the totalitarian system (Hu Ping , 1988, 47). He is well aware of the problem that a totalitarian regime can only be overthrown if an autonomous oppositional force is established, but that the very aim of any totalitarian regime is exactly to prevent the rise of such a force (Hu Ping , 1988, 14, 17-8). The only way out of this predicament, as Hu sees it, is to promote freedom of speech rather than to seek political power. He argues that freedom of speech strikes directly at one of the weakest spots in the totalitarian system: the power of modern totalitarianism is not only based on violent repression, but also on deception.

Although the "Gang of Four" had lost the support of the people, Hu points out, they nevertheless enjoyed great power during the "Cultural Revolution", because they had succeeded in suppressing freedom of speech so that the people could not communicate with each other and were unaware of what was really going on, and therefore felt powerless (Hu Ping, 1988, 110-1). However, once in possession of freedom of speech, the citizens will be able to triumph over totalitarianism.[43] The major flaw in previous Chinese democratic movements, according to Hu, was that the principle of freedom of speech did not take root in the people's hearts (Hu Ping , 1988, 119). For this reason, the principle of freedom of speech must now be as widely disseminated as possible (Hu Ping, 1988, 149).

In 1975, Hu defined a democracy as the political system in which the freedom of speech, especially that of the minority, is guaranteed and protected (Hu Ping, 1988, 96, 151). He also defined it as being a set of generally recognized rules governing the competition for political power on the basis of a rejection of violent revolution, and the protection of "the basic

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[43]This is the central theme of "On Freedom of Speech". See Hu Ping 1988, 479.

human rights of political parties" (Hu Ping, 1988, 424). As is to be expected, Hu's definition of the role of the Constitution goes against the CCP's view of the matter: he states that it is the task of the Constitution to put limitations on the power of government, and to protect the freedom of speech. The legitimacy of freedom of speech is not derived from the Constitution, but rather vice versa: the legitimacy of the Constitution is dependent on freedom of speech (Hu Ping, 1988, 433-4). Freedom of speech is the basis on which Constitutions can be openly criticized (Hu Ping, 1988, 51). Thus, Hu implicitly called into question the legitimacy of the Chinese State Constitution, as freedom of speech in China is a dead letter.

In a study written in 1991, he formulated more precise definitions of freedom on the one hand, and democracy on the other. Liberalization, he wrote, refers to the process of narrowing the scope of State power, and extending the autonomy of civil society. Democratization refers to the process of extending political participation, on the basis of the equal rights of all parties to enter the competition for power. Democratization is concerned with who rules and how this rule is exercised; liberalization is only concerned with the degree of rule (Hu Ping, 1991a, No. 2, 33).

Private Ownership

Hu explores the complex relationship between democracy and private ownership in his essay "Private Ownership and Democracy". In this essay, he concedes that, at least in theory, democracy is compatible with a centralized planned economy. It is theoretically possible for people to enjoy political rights under the public ownership system. The real basis of the suppression of the democratic movement in the early 1980s, Hu states, was political violence rather than the public ownership system.

However, the public ownership system and the centralized planned economy have, in reality, encroached upon citizens' private property. It has also put strict limits on their freedom to engage in economic activities, and increased the power of the government to interfere with the economy. Hu agrees with Hayek that democracy must rest on private ownership: freedom, democracy and autonomy of action presupposes private ownership and a free market economy. Just as the origin of totalitarianism lies in the annihilation of private ownership and the middle class by political violence, so the establishment of freedom and democracy is a necessary

condition for the development of private ownership and the middle class (Hu Ping, 1988, 154-64).

Dialogue and Non-Violence

It is often said that China cannot realize democracy because the country is poor, and its people lack sufficient knowledge of democracy, and do not want democracy anyway. Against these views, Hu argues that, if democracy is defined as the existence of a representative government and local self-government, then it is not necessary for each citizen to decide personally on all major policies. It is sufficient if the people are enabled to elect their own representatives. Moreover, he states, a belief in democracy is a necessary condition for its realization. If the Chinese believe in democracy, it will work, and if they don't, it won't (Hu Ping, 1988, 188-95).

Freedom of speech is, he argues, a basic principle which can be easily understood and maintained without too much courage. Around this principle, a consensus can be formed between people with different views, so that "wide-ranging prospects for the improvement of democracy" can be opened (Hu Ping, 1988, 132-3). However, Hu fails to address the problems of how individual liberty can be combined with the interests of the nation as a whole. Earlier generations of Chinese liberals failed to arrive at a consensus by way of democratic institutions and procedures, which led them to over-emphasize social stability at the cost of freedom.[44]

Hu Ping rejects the use of violence in overthrowing the totalitarian regime, advocating rationality, dialogue and non-violence. Initially, while acknowledging the legitimacy of the CCP as the ruling party, he aimed at the discontinuation of the CCP's power monopoly. Since the June 1989 massacre, he denies the legitimacy of the CCP, but he is still committed to a peaceful and rational dialogue by which to resolve the disagreements between the CCP and the CAD.[45] In his view, the struggle for democracy must be conducted by democratic means (Hu Ping, 1988, 258).

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[44]On the failure of Chinese liberalism in modern China, see Jerome B. Grieder, 1970.
[45]"Substitution of Dialogue for Antagonism", in Hu Ping 1988, pp. 356-7.

Some Critical Observations

Hu Ping's rebellious, libertarian view of negative liberty is a product of, and is reactive to, the Chinese totalitarian system which is based on suppression of human rights and aggression. Interpretation of liberty as "being let alone" or "noninterference", as Yin Haiguang (1988, 120) observes, originates in psychological anti-autocracy or anti-totalitarianism. This rebellious libertarian view of negative liberty proves unsatisfactory in discussing how to protect the rights of those who are supposed to be the "enemies" of democracy and freedom; how to keep a balance between individual rights and social obligations; how to deal with conflicts between rights; how to justify the priority of rights and limits on rights at the same time. It seems that this rebellious concept of negative liberty has more political uses in struggling against totalitarianism than in managing state affairs as a guiding principle. In other words, it might be of more use in the struggle for the power to attack totalitarianism than in ensuring social order after the collapse of totalitarianism. The possible danger is that the rebellious libertarians may come close to the anti-state position of anarchism.

3. Yan Jiaqi: Natural and Political Scientist

Yan Jiaqi was born in 1942 in Jiangsu Province.[46] In 1960, he enroled in the Department of Applied Mathematics and Electronic Computing at the Chinese University of Science and Technology in Beijing. Later, he became a graduate student in the Institute of Philosophy in the Chinese Academy of Social Sciences (CASS), under the supervision of the famous philosopher and economist, Yu Guangyuan. During the "Cultural Revolution", he was involved in the editing of a collection of the writings of Marx, Engels, Lenin, Stalin, Mao Zedong and Lin Biao on war and revolution.

From 1972 onwards, he began to make a systematic study of the history of political thought, and international political systems. In 1982, he left the Institute of Philosophy where he had been working for 18 years, and was put in charge of the re-establishment of the CASS Institute of Political Science.

In 1985, when the CASS experimented with allowing the researchers to elect their own institute directors, Yan was elected Director of the Institute

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[46]The following biographical information was taken from Yan Jiaqi, 1988, 5-56; 1991a, xiv-xxxii.

of Political Science. At 43, he was the youngest CASS Institute director. In October 1986, he was assigned to Zhao Ziyang's Central Research Group for Reform of Political Structure, headed by Bao Tong.

In 1989, Yan played a major role as one of the leaders of the Association of the Intellectual Circle in Beijing. On 17 May, Yan was a member of the group of intellectuals who issued a sharply worded statement attacking Deng Xiaoping as "China's uncrowned Emperor and a senile, muddle-headed dictator", and demanding his resignation.

After the massacre, Yan and his wife Gao Gao fled to France, and, on 20 July 1989, co-founded *the Federation Democracy of China* in Paris, of which he was later elected Chairman. Since June 1989, there have been some changes in his political thought, especially with regard to his view of the nature of the CCP (he is no longer as optimistic as before about its ability to transform itself), but he has retained most of his former ideas on democracy (Yan 1991a, xxxiv).

Democracy to End Despotism and the Violent Transfer of Power

Yan Jiaqi (1987, 2-6) advocates the establishment of democratic institutions and procedures as a means of curbing power. Power relationships between individuals and groups are what hold all human organizations together (he calls it their "cement"). Organization is, in fact, the means of stabilizing power relationships in social groups. Although the exercise of power often produces injustice, power relationships cannot be abolished. Rather, the exercise of power must be rationalized, i.e. made to follow precisely defined procedures (Yan, 1987, 1-9).

According to Yan, the basic problem in Chinese political history is the so-called "boom-and-bust" cycle: the gradual decline and corruption of a dynasty after its rise to power, its removal by a peasant rebellion, and succession by a new dynasty which reigns until it in turn becomes corrupt, and is overthrown by another peasant rebellion, etc. Yan holds that this recurrent pattern of succession crises and violent transfer of power is caused by four characteristics of the traditional Chinese political system: (1) the concentration of absolute, indivisible and untransferable power in the hands of one man; (2) the existence of a nationwide monolithic, pyramidal power structure, without any horizontal division of power among the

people; (3) the lack of legal limits on absolute power,[47] enabling those in power to intervene in all aspects of social life, combined with the lack of any solid psychological resistance in Chinese society against despotism; (4) the exercise and succession of power without following formal, institutionalized procedures (Yan, 1989, 80).

The overthrow of a dynasty by a peasant rebellion, Yan points out, never changed the feudal characteristics of the Chinese political system: all the rebels did was to change the ruler, but the despotic system remained the same (Yan, 1987, 88).

Both traditional and modern China lacked rules for power transfer: the Chinese political system is what Yan calls "non-procedural". In contrast, "procedural" political systems possess basic rules and procedures for power transfer, such as those laid down in the Constitution of the USA.[48] The third category is "the middle political system", a type in between procedural and non-procedural systems (Yan, 1986a, 18-9).[49] Yan's main concern is that political matters should be handled strictly in accordance with democratic procedures. In particular, the non-procedural replacement of Party and government leaders should not be allowed (Yan, 1991a, 96-108).

He states that the history of socialist countries proves that the transformation from "collective leadership" into "individual centralism" takes place through "inner Party struggle", without any procedural framework. Since Mao Zedong's chairmanship was a life appointment, and his power was untransferable, modern Chinese politics inevitably took on the non-procedural form of traditional Chinese politics. The "personality cult" was not really, as some people argue, a question of "exaggerating the role of an individual in history". Rather, it was the inevitable instrument of strengthening one individual's indivisible and untransferable power (Yan, 1989, 83-9).

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[47]However, Yu Yingshi points out that absolute power was in fact limited by Confucian ideology, which contained norms for behavior of the emperor and the bureaucracy. See Yu Yingshi, 1976, 50-2.

[48]Nixon's fall, in Yan's view, was a success of procedural democracy in the USA. Also see Emmette S. Redford, 1976.

[49]This emphasis on procedures as the major criterion for distinguishing political systems is not present in the thought of Wei Jingsheng and Hu Ping, who both hold that there are only two, mutually exclusive, types, i.e. autocracy (or totalitarianism) and democracy.

Up until the "Cultural Revolution", Yan states, Chinese politics remained traditional in that they were based on the assumption that supreme power, indivisible and untransferable, should be vested in a single man, resulting in a series of succession crises and fierce power struggles. The Chinese political systems of today and yesterday are basically the same, although supreme power, in the modern system, is not conferred by "Heaven", nor hereditary, but is based on the correctness of the ideology of the individual who exercises it (Yan, 1988, 80).

Yan regards the "Cultural Revolution" as a direct result of the lack of procedures for power transfer, and the ensuing succession crisis brought about by Mao Zedong's attempt to unseat Liu Shaoqi (also see Section 4 of Chapter 1). It was a struggle for power along traditional feudal lines, without any institutionalized framework of rules and procedures, leading, as usual, to immense suffering among the population. In contrast, Yan argues, the bourgeoisie in Western countries established democracy precisely by abolishing the indivisibility and untransferability of supreme power:

(1) in democratic systems, legislative power no longer belongs to the individual, but to parliament, which is newly elected at fixed intervals. Thus, the supreme power of legislation is separate from other powers;

(2) in democratic systems, the executive power of the president and prime minister is limited by parliament, and by the rule that office is held for fixed terms only. This, Yan emphasizes, stands in marked contrast with the Chinese feudal system, in which office is held for life. In democratic systems, within certain constitutional limits, power is no longer untransferable.

Yan explains that the succession process in democratic countries is determined by "rules of the game", in the form of legal regulations and constitutional conventions. Statutes determine the fixed or maximum term of office for any top leader, the method of election is prescribed by law, and political parties have their own rules and regulations governing the selection of candidates, etc. He regards the establishment of modern democracy as a great advance in human history, ending wars of succession, palace coups, and all other bloodshed previously accompanying periods of power transfer (Yan, 1987, 96).

His major work, *Shou nao lun* (*On the Head of State*)[50] is based on his extensive investigations into the many forms of government and the various succession crises in world history, and in it, he recommends the democratic system of checks-and-balances as a way of overcoming the over-centralization of power in China, and of establishing a non-violent, procedural means of power transfer (Yan Jiaqi, 1986a).

Two Stages of Political Reform

In "On Concepts of Democracy", Yan defines three characteristics of the concept of "democracy" which he thinks are immediately relevant to democratic practice: (1) it is a political system based on rule by the people, and in which the people's right to rule must be protected by a set of political institutions; (2) it guarantees the freedom of people to express their opinions;[51] (3) it is a political system providing people with direct and indirect ways of making and amending decisions on State affairs, in accordance with prescribed procedures defined by the Constitution and the laws, and the majority principle (Yan, 1987, 33).

Yan also points out, a democratic system is not concerned with the search for the perfect man. Rather, it recognizes that human nature is imperfect and that man is inherently prone to making mistakes. It establishes rules and procedures to deal specifically with the fact that power corrupts.

Democracy, Yan points out, does not guarantee that the policy decisions it produces are completely correct, but it does guarantee that if policies turn out to be wrong, they will be corrected in accordance with predetermined procedures. Also, if decision-makers turn out to be incompetent, they can be

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[50]This book was circulated throughout China. In 1987, 310,000 copies rolled off the press in 6 successive printings. In early 1987, the Xinhua bookstore in Guangzhou rated the book as one of the ten best-sellers of 1986. At the first meeting of the East China region to select outstanding books on political science theory held in Hefei, Anhui Province, it won the first prize. At a Beijing public "book appraisal" meeting, the book won the 1987 "Golden Key Prize". Soon after, it was also published in Shanghai, the China Bookstore in Hong Kong, and the Yuanliu Publishing Company in Taiwan. During the "Chinese Cultural Plaza" in Taiwan, the public rated the book as one of "Taiwan's ten most influential books in 1987".

[51]Yan Jiaqi praised the freedom of the press in Western countries, calling for the lifting of press bans in China. See FBIS-CHI-89-200, 18 October 1989, p. 22. He even put forward a proposal to establish three kinds of newspaper, published independently by the State, government, and social associations respectively. See Yan Jiaqi, 1989, 39-40.

replaced through predetermined procedures. Without democracy, the people can correct neither of these situations (Yan, 1987, 87-8).

According to his understanding of democracy, Yan proposes a two-stage process of political reforms. The first stage should include those aspects which are closely linked with economic reform: reform of the cadre system, the separation of Party and government, and the separation of government and enterprise.

The second stage is one aimed at realizing the long-range goal of political reform, namely putting an end to the over-centralization of power through the establishment of a highly democratic socialist political system, and a system of scientific policy-making and scientific decision-making. In concrete terms, the overcentralisation of power should be dealt with in four different ways: (1) perfection of the people's participation in government, including the system of people's congresses. The National People's Congress (NPC) rather than the Communist Party's Central Committee should be the ultimate organ of State power; (2) the horizontal separation of power between Party and government, in order correctly to define a suitable position for the Party in the political structure of the State; (3) the vertical decentralization of power; (4) the demarcation between governmental and social organizations, and the definition of the government's sphere of authority. This includes the establishment of a national civil service system, as well as freedom of speech, press, and association (Yan, 1988, 79-86).

In this way, the four characteristics underlying the "rule of man" of traditional Chinese politics will be replaced by a democratic system based on the "rule of law" (Yan, 1988, 88-9, also see FBIS-CHI-80-230, 30th November 1988, 22-3).

At the moment, the power assigned by the Constitution to government leaders is in fact exercised by Party leaders. The essence of party-government separation, Yan explains, consists of more than merely assigning different functions to Party and State organs; it also involves establishing the paramount position of the Constitution and the law, so that the highest State power is assigned, exercised, and transferred in full accordance with constitutionally and legally prescribed procedures. Here Yan follows traditional Chinese constitutionalists, such as Liang Qichao and Zhang

Jiumei, advocating China's need for a socialist "Washington" (FBIS-CHI-88-230, 30th November 1988, 23).

Defending the Constitution

Yan states that a Constitution should stipulate the basic principles of a country's social and political system. The idea of a Constitution, he holds, originated in the struggle against the feudal autocracy, and was aimed at limiting the power of the monarch. "Constitution", in the modern sense, refers to "basic laws" which transcend the laws defined by the King and anyone else, and occupy a position of supreme authority and dignity (Yan, 1988, 168).

Yan holds the liberal view that the role of the Constitution is to stipulate civil rights, and limit the power of the government. The Constitution provides the most authoritative basic rules according to which political struggles are to be resolved. The aim and process of democratization, according to Yan, involves establishing the paramount position of the Constitution.

In the early 1980s, Yan was one of the first to oppose the life tenure system, advocating that the Constitution ought to stipulate the term of office of both the Head of State, and the Head of Government, with a maximum of two successive terms. On 28 December 1988, a group of middle-aged and young political theorists held a forum in Beijing, at which Yan defended the idea that, if we want to follow democratic procedure to resolve political problems, we have to amend the Constitution on the basis of discussion by the whole nation (FBIS-CHI-89-023, 6 February 1989, 34).

Yan has taken a series of actions to defend the Constitution's authority. On 26 May 1989, shortly before the June massacre in Beijing, he published an article entitled "Resolving the Present Problems in China Within the Framework of Democracy and the Legal System: A Letter to Li Peng", calling for the use of Constitutional means to depose the Li Peng government. On 26 June 1989, after he escaped to Hong Kong, he issued an open letter, saying: "I hope that the China of the future . . . will draw up a Constitution that is everlasting and which will eliminate political disasters like the one now taking place. I would like to include in the Constitution's basic principles the separation of the three powers, a federal system, and a

national, non-politicized army, with troops belonging to the State, not to any political party" (FBIS-CHI-89-177, 14 September 1989, 21).

Yan realizes very well that the modernization of Chinese politics he envisages is a long-term process, and that politicians are known to manipulate the rules in their own interest (Yan, 1986a, 85, 95, 302; 1989, 88-9). He is aware of the fact that it is impossible for leaders to comply completely with the rules of the political system, and that rules and procedures themselves are relative, and change from time to time. The procedures which are regarded as the best to adopt today may well exhibit serious shortcomings tomorrow (Yan, 1986a, 303).

Some Critical Observations

Ever since the Western impact on China made itself felt, Chinese intellectuals have always yearned to find the ultimate recipe for national salvation, tending to overlook the tension between this desire and the issue of liberty.[52] In the works of Yan, there is a conflict between his democratic ideals and his elitism. He presumes that there is no friction between the interests of the people as a whole, and the representation of those interests by intellectuals. Yan seems to believe that representation by intellectuals will be an adequate expression of the "general will", and as such, identical with democratic representation. This intellectual paternalistic presumption may hinder the development of a non-elitist system of representation, and of a system of competing interest groups.

Yan seems to hold an old image of science as equivalent to reason, and as therefore capable of final solutions to any and all problems of both knowledge and value. This leads to an obvious tension between the principle of equal rights and the belief of Yan Jiaqi that his political views have scientific status, i.e. are absolutely rational (1988, 143-4, 1991a, 35-7, 63-76). Yan seems to claim that his idea of democracy is "objectively and scientifically" true, offering a coherent and complete answer to all problems. This claim to absolute comprehensiveness and omniscience is incompatible with liberty, as it a priori excludes other theories, thereby undermining freedom of thought.

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[52]This attitude has often led to self-deception and defenselessness vis-á-vis totalitarianism. See J.L. Talmon, 1970, 253.

When Yan argues that democratic politics is the politics of procedures, he takes for granted the "principle of majority decision making". Yan seems to pay scarce attention to discussing the tension between majority rule and individual rights, and the possibility of the tyranny of the majority.

4. A Comparison

There are three common ideas in the political thought of Wei Jingsheng, Hu Ping, and Yan Jiaqi, which constitute intellectual and moral foundations for Chinese liberal theory of democracy:

1. *A predominant concern for human rights and freedom*

All three men, in spite of the fact that they have different formal education levels, intellectual backgrounds and interests, are in fundamental agreement on the urgent importance of human rights and freedom: this constitutes one of the basic elements in their ideal of democracy. There are, however, some differences in emphasis, which will be discussed in detail in Chapter 4.

2. *The conviction that the principle of preventing evil is a theoretical basis for institutional constraints on power*

On the basis of their own experience during the past decades, all three men have thoroughly rejected the Marxist belief that human nature can be moulded at will by exposing it to proper external conditioning, agreeing with Hobbes that human nature contains ineradicable selfish instincts. Wei (in Widor, 1981, 160-4) has warned that Deng Xiaoping might become a new dictator on the basis that leaders tend to abuse power if there is a lack of a democratic power-check system. Although Hu Ping (1990a, 150) disagrees with the Hobbesian war of all against all, he does argue that democracy is meant to prevent the abuse of power, and that this implies a deep scepticism of human nature (Hu Ping, 1990b, 42). Yan Jiaqi argues in detail that the idea that human nature is potentially evil is the starting-point for the rule of law and the procedural system (Yan, 1986c, 1988, 1991a, 54-8). Hu Ping and Yan Jiaqi, however, while recognizing that the establishment of democracy in China necessitates an analysis of evil human nature, also emphasize that human nature is capable of goodness -- it is this goodness on which the

possibility of democracy in China depends.[53] I will discuss this in detail in Chapter 5.

3. *An emphasis on procedure, rule of law and rules of games*

All three agree that the real purpose of a democratic system is to realize the rule of law. While Wei (in Widor, 1981, 81-2) stresses democratic rule of law, Hu Ping (1988, 398-406) emphasizes the priority of rules or rights over truth, and Yan Jiaqi specifies the procedural aspect of democracy. Here I would like to sum up the important points.

(1) Democratic politics is one form of constitutional procedural politics. "Democracy", in a broad sense, is a process of making and amending decisions according to the prescribed procedure (defined by the Constitution and laws) and the majority principle.

(2) Procedural democracy means establishing the paramount position of the Constitution and the law so that the creation, exercise and change of the highest state power is effected fully in accordance with constitutionally and legally prescribed procedures so as to maintain political stability and reduce the people's suffering.

(3) Representative democracy is a publicly justified procedure for resolving disputes about political decisions. (4) Procedure is understood as abstract and impersonal norms and laws with the universality of formal criteria. The legal norms are absolute, and hence a degree of objectivity is assured.

(5) Proceduralism will be put into effect in China, and will have a normative force. These ideas serve a basis for procedural democracy in China, which I will discuss in Chapter 6.

There are differences among them. For Wei Jingsheng, democracy is desirable mainly for two reasons: freedom is one, and prosperity is another. On the one hand, he regards freedom as the first goal of the human race,[54] although he did not, like Hu Ping, state that freedom of speech can be used

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[53]See Hu Ping 1988, 268, also see *Democratic China*, No. 1, April, 1990, 42-3; Yan Jiaqi, 1986a, 287-91, and in *Zhongyang ribao*, Taiwan, 15 May 1990.

[54]In the preface of Exploration, he claims that "our basic guiding premises" should be freedom of speech, publication, and association as stipulated by the Constitution. See Seymour, 1980, 34.

as a practical lever to change the communist system, nor did he, like Yan Jiaqi, work out concrete details for the protection of freedom by Constitutional principles and organizational procedures.

As a worker, Wei regarded democracy not only as an election system, a system of cooperation between individuals, and a means to protect equal rights and freedom, but also, and much more importantly, as a system of people's management: a system in which the laboring masses hold the actual power to manage the means of production. Wei combined a Marxist concern with people's management with ideas taken from democratic practice in the USA and Japan, while Hu Ping explicitly advocated privatization of the ownership system. For Hu Ping, democracy is primarily associated with protection of freedom and civil rights -- the ownership system is secondary. In this context, it should be remembered that Wei wrote his articles almost ten years before Hu wrote his.[55] For Wei, who wrote in 1978, it would have been unthinkable not to support "socialism".[56]

For Yan Jiaqi, "democracy" is defined as "rule by the people", and his predominant concern has been to specify the details of the procedural framework within which this rule should be exercised. As human beings are prone to making wrong decisions, the political system must be organized in such a way that small errors do not lead to big ones, and that incompetent or corrupt people can be removed from positions of power in time.

Here, it should be noted that Yan, as an intellectual, presuppose that "democracy" means rule over the majority by a minority (presumably intellectuals). Unlike Wei Jingsheng, who combined individualism with populism, Yan's view of democracy is elitist. This could have significant implications for his answer to the question, which often crops up in Chinese debates on democratization, whether or not political participation of the masses should be limited for a certain period during the democratization process.

Before June 1989, a major difference between Hu Ping and Yan Jiaqi was that Hu was an anti-totalitarian libertarian from the outset, while Yan Jiaqi was not. Yan started out as a moderate reformer who attempted to

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[55]Hu's article "Ownership and Democracy" was written in 1987 at Harvard University.

[56] I am grateful to Professor James Seymour for drawing my attention to this point.

make adjustments and improvements within the existing system, preferably in cooperation with the Party. In Chinese terms, Hu was a reformer "outside the system", while Yan was a reformer "within the system". Even now, their different ideas on democracy could constitute a basis for two different opposition parties with different aims and social and economic policies. For Hu Ping, democracy is based on private ownership, and he would definitely support privatization as a solution to China's present economic problems. Yan Jiaqi is relatively more concerned with social justice and equality, and has proposed to reform the existing system of public ownership from within (1989, 203-18; also see 1991b.).

Conclusion

This chapter describes the liberal views of democracy of Wei Jingsheng, Hu Ping, and Yan Jiaqi, outlining the content and context, and the similarities and differences. Wei Jingsheng combines idea of democracy with individualism. Hu Ping emphasizes the importance of liberty as the basis of democracy, and regards freedom of speech as the key to the development of the population's political awareness, so that the totalitarian system can be gradually changed in a concrete fashion. Yan Jiaqi views democracy primarily in terms of institutions and procedures, and his predominant concern is how democracy can be used in stabilizing Chinese politics, and in preventing political violence.

There are three common ideas in the political thought of Wei Jingsheng, Hu Ping and Yan Jiaqi: (1) a predominant concern for human rights and freedom; (2) the conviction that the principle of preventing evil is a theoretical basis for institutional constraints on power; and finally (3) an emphasis on procedure and the rule of law. These common ideas constitute intellectual and moral foundations for democracy, which I will examine in detail in the following three chapters (4, 5 and 6) respectively.

PART TWO

INTELLECTUAL AND MORAL FOUNDATIONS

CHAPTER 4

The Principle of Human Rights in Institutional Design

As briefly mentioned in Chapter 3, Chinese liberals, in spite of the fact that they all have different formal education levels, intellectual backgrounds and interests, are in fundamental agreement on the urgent importance of human rights and freedom. This chapter reviews and discusses this in detail. The purposes of this chapter are (1) to investigate how the idea of human rights, precisely, the idea of natural rights, provides a basis for Chinese liberals to think about re-designing political institutions in China; (2) to discusses whether the similarities between the official and liberal ideas of human rights can provide a basis for political negotiation between the government and Chinese liberals; and finally (3) to undertake a reconstruction, criticism and tentative extension of some particular theoretical positions.

The chapter consists of six sections. Section 1 reviews the ideas of human rights of Wei Jingsheng, Hu Ping and Yan Jiaqi. Section 2 reviews the current official view of human rights, discusses the similarities and differences between the official and liberal ideas of human rights, and investigates the possibility of a political negotiation between the government and Chinese liberals provided by a minimal consensus on the idea of human rights. Section 3 discusses the problem of the degree of coherence of their ideas of natural rights. Section 4 argues for liberal limitation on liberty. Section 5 argues for compatibility between state power and individual rights. Section 6 addresses a set of difficult problems relating to putting their ideal of human rights into practice in China. I will elucidate, at least, the four major problems: validity of the Constitution and laws, conflicts between rights, distorted forms of rights and a burden of rights. It needs to be made clear that to demonstrate the problems is not to deny the value of human rights and freedom in China, but rather to defend them in a way that shows awareness of the serious problems in the transitional period while attempting to resolve them.

1. The Chinese Liberals' Ideas of Human Rights

In practice, the Chinese people were persecuted by ad hoc authorities through non-legal procedures for acts that were deemed political crimes on no legal basis during the Cultural Revolution.[57] The Chinese official idea of human rights and the violation of human rights in practice, to which all of the liberal's ideas of human rights react, are the object of the Chinese liberals' attack. There has been a struggle between rights and political privilege, liberty and paternalistic authority. This struggle is the most conspicuous feature in contemporary China and constitutes the social context in which the Chinese liberals have developed their ideas of human rights in relation to democracy. Their central concerns are how can human rights be protected, and how can liberty overcome totalitarianism (Yan Jiaqi, 1988, 59-66, Hu Ping, 1988, 3). This is the context of enquiry which governs their arguments on human rights and accounts for their strengths and shortcomings.

I selected Wei Jingsheng, Hu Ping and Yan Jiaqi as representative of different ways in which the Chinese liberals perceive human rights. Wei Jingsheng takes an individualistic view of human rights. Hu Ping holds the idea of the priority of liberty over other political values. Yan Jiaqi favours an institutionalist notion of human rights.

Wei Jingsheng defines human rights as denoting the rights of an individual inherent in his humanity. He claims that:

> What rights does a person have? He or she has the rights to live, to live a meaningful life. The reason one must have these rights is that life will not be worth fighting for without such rights, and that he or she will be able to win for himself or herself some station in life through these rights (Wei in Seymour, 1980, 65).

Human rights, according to Wei, are not bestowed but, rather, are inherent. At the same time, Wei argues that human rights only exist in relation to other things and relate, directly or indirectly, to their environment. Thus, it is argued, human rights are limited and relative

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[57] As for the practices of human rights in China since 1949, see Ann Kent, 1991.

rather than unlimited and absolute. This limitation constantly grows and changes with the development of the history of mankind and with human's quest to tame and control his or her surroundings. There is, therefore in Wei's opinion, no such thing as "ultimately achieving" human rights (Wei in Seymour, 1980, 142).

Wei further argues that politics is the activity of obtaining or suppressing human rights. Through politics, people's rights to manage their lives are either realized or suppressed (Wei in Seymour, 1980, 142). Therefore the political systems of the human race, divergent and numerous as they are, can be grouped into two categories: (1) Autocracy, such as the system of servitude, protects the special "rights" of the few, but denies everyone else their rights as human beings, and (2) Democracy, a cooperative system, recognizes the equal rights of all human beings and resolves all social problems on the basis of cooperation (Wei in Seymour, 1980, 65).

Wei defines freedom in terms of rights and equality. Freedom is said to be the right to use one's capabilities to satisfy one's desires, though not the right to satisfy any kind of desire one pleases. Only when one's right to choose is not hindered can everyone's activities be protected and accommodated. According to Wei, the freedom we recognize is the kind that provides opportunities for unlimited choices and possibilities; it is not the kind of freedom that results in everyone acting exactly as they wish to satisfy their desires; this would actually be a denial of freedom for the majority, because inevitably a minority would satisfy their desires at the expense of the majority. Thus, for Wei, freedom can only be obtained if it is enjoyed by all mankind, and it can only be realized under conditions of mutual protection; it cannot be realized by some people depriving others of their freedom, nor can it be attained through the wilful satisfaction of the desires of a minority (Wei in Seymour, 1980, 144).

Wei continues with the argument that the basic political rights are freedoms of speech, assembly, association, the press, religion, movement, and the right to strike. These freedoms, according to Wei, are the conditions that protect the people when equal rights are endangered and that come to bear at any time to defend equal rights. Thus, basic political rights are the preconditions for equal human rights. It must be acknowledged, in Wei's

view, in theory at least, that these freedoms should be unrestricted within their various spheres. After all, in an ever-changing world no one can possibly determine what ways and means may be used to deny one's human rights . . . Inasmuch as there are many people who abuse human rights to gain social power, and since the powerless common people find it relatively easy to use the above freedoms as methods of struggle, these freedoms must be unrestricted in theory and unregulated in reality (Wei in Seymour, 1980, 142-143). Here, Wei's concept of liberty is negative: freedoms are useful weapons to attack the communist system. Wei contradicts his argument set out above that human rights are limited and relative rather than unlimited and absolute. Also he assumes that any limitation imposed by the state on the individual should be denied; the alternative, therefore, is between state interference and no interference at all.

Human rights and equality are seen as inseparable because, without human rights, equality is an empty expression. Because human rights and equality are two aspects of the same issue, Wei uses the term "the equal human rights issue" (pingdeng renquan de wenti) (Wei in Seymour, 1980, 141). In a despotic society, according to Wei, people do not enjoy equal rights of existence. Some people have the right to live by enslaving others. The majority of the people only have the right to live as slaves (Wei in Seymour, 1980, 146).

From the angle of protecting equal rights, Wei discusses the nature of the rule of law:

> Law is the permanent part of a political system. Since law is needed all the time, it is reduced to writing to form the basis of a system, which is normally not subject to change. The rule of law backed up by criminal sanctions is a vital political vehicle to sustain society. It is used by democracies as well as by autocracies. It all depends on the actual nature of the political system concerned. There are autocratic rules of law, such as that exercised by Qin Shi Huang and the Gang of Four, and democratic rules of law. Therefore the rule of law and autocracy are diametrically not opposed and the law does not mean democracy (Wei in Seymour, 1980, 67).

Wei further argues that we need the rule of law, but we need the kind of law which is conducive to the realization of equal rights. The people must attentively watch the progress of law-making and be sure that the law being adopted is the kind of law designed to protect equal rights (Wei in Seymour, 1980, 69).

Echoing Berlin, Hu Ping criticizes the Marxist doctrine of positive liberty which provides a moral justification for depriving others of their rights, and therefore argues for negative liberty (Hu Ping, 1991a, No. 5, 51-2). Hu further notes the distinction between political and civil rights and social and economic rights. While political rights such as freedoms of speech and association are designed to limit the power of states; social and economic rights require positive interference of state power in promoting both social welfare and a variety of community benefits (Hu Ping, 1991a, No. 4, 51-2). He emphasizes, the priority of political and civil rights over social and economic rights, as well as the priority of democracy and freedom over economic development. Rights have complete priority over certain other independent goals such as that of increasing the GNP of a society.[58] Hu carefully argues that we have to recognize the fact that it is possible to achieve modernization under an efficient autocracy, such as has been done in Russia and Germany. He continues with the argument that there indeed has been realization of modernization without democracy, but we should be made aware that (1) the economic development created by autocracy is a painful process because it inevitably involves cruel purges, and (2) the human race does not seek economic development alone. Democracy, human rights and dignity, according to Hu, are also goals which are much more important than the goal of economic development. We cannot develop the economy at the expense of democracy (Hu, 1988, 136-40).

To legitimize his rejection of the priority of national claims over individual claims in China, he advocates the idea of the priority of rights over truth. In his early work, *On Freedom of Speech*, he claims that the right to express one's own independent view cannot be transferred. Hu Ping

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[58]Rawls (1982, 5) lists basic liberties as follows: "freedom of thought and liberty of conscience; the political liberties and freedom of association, as well as the freedoms specified by the liberty and integrity of the person; and finally, the rights and liberties covered by the rule of law". He (1982, 72) also emphasizes that "the basic liberties constitute a family, and that it is this family that has priority and not any single liberty by itself".

also wrote an essay in 1987, *Priority of Rights over Truth,* in which he defended the legitimacy (the right to exist) of *the Chinese Alliance for Democracy* and refuted the charge by the Chinese government that the Chinese Alliance for Democracy was a "reactionary organization". In this essay he argues further that one of the basic principles of democracy is the priority of rights over truth, which means every citizen has a right to express and advocate his own political view through the freedoms of speech, press, assembly and association, no matter whether this view itself is wrong or not. You may, it is argued, disagree with what another says, and, in the same way, present your view and argue against the views of others in the same way, but no one, including any ruling party or government, has the right to suppress other people's freedom of speech. The protection of equal rights is primary -- the question whether a view is right or wrong is secondary. This is what Hu calls "the priority of rights over truth" (Hu Ping, 1988, 400). Therefore, Hu claims, even if the political view of CAD were wrong, it nevertheless has a right to exist.

Hu emphasizes three points: (1) to violate a single person's right is potentially to threaten the right of others; (2) we must learn how to protect the right of the existence of unorthodox opinions; (3) a dutiful citizen is one who strongly defends civil rights (1988, 401-8). Hu defends the idea of an independent citizen and the right of a citizen to oppose any government: "I willingly support a government that I can oppose, but I firmly oppose a government that I can only support" (Hu, 1988, 372).

Yan Jiaqi holds that civil and political rights are natural rights which should have priority over economic and social rights; and these rights do not depend on political, social and cultural conditions and can be realized right now (Yan Jiaqi, 1992a, 50). He further argues that the concept of human rights is devised to limit state power, and human rights is the specific sphere in which political power cannot interfere. Here he makes the assumption that state power and rights, state actions and liberty are antithetical; and an increase in the power of the state is prejudicial to liberty. Yan further argues that the notion of human rights belongs to an essentially universal culture, and it is a rationalized and civilized common rule or criterion for political civilization as discovered by human beings both in the West and in the East (Yan, 1988, 59-66, also in *Democratic China*, No. 2, 1990, 35-6). The tragedy of Chinese politics lies in the fact that no distinction

between rights and power has been made, that human rights have been violated and that political power has never been limited, all of which led to the June 4 events in 1989. The goal of Chinese democratization, according to Yan, is fully to protect human rights and strictly to limit totalitarian power.[59] As the chairperson of *the Federation for a Democratic China* (FDC), Yan sets up the basic items of the Constitution of the FDC, which regards human rights as the cornerstone of modern, civilized society and the precondition of democratic politics: A guarantee to every person of inalienable human rights: the right to live and develop; the right to pursue happiness; and the inviolable rights of the individual to dignity and security.[60] Yan further believes that "only when people enjoy the right to express themselves freely, only when people have the right, directly or indirectly, to influence state policies, only when the people's freedom and rights are protected in their own country, can they truly link themselves to the future and fate of their country" (Yan Jiaqi, 1991a, 145).

In conclusion, common to all authors is an emphasis on the urgent importance of human rights and freedom, which constitute one of the basic elements of their ideal of democracy. There are, nevertheless, differences among them. Wei Jingsheng adopts a liberal approach, with a few remnants of Chinese Marxism, to analyze human rights. By contrast, Hu Ping and Yan Jiaqi reject class analysis of human rights and take a more universal attitude towards the issue of human rights. Changes in the political thinking on human rights from class analysis to a universal and liberal one demonstrate that there has been a process of divergence from the Chinese Marxist discourse on human rights, and of reducing the theoretical tension between the Chinese Marxist and liberal ideas of human rights. In effect, in order to obtain acceptance of his work in the early 1980s, Wei Jingsheng, an early democrat, had to use Marxist class analysis, which was not only very popular and predominant, but the only analytic tool available. Conversely, Hu Ping and Yan Jiaqi did not need to make use of Marxist class analysis in their discussion of human rights because of the official rejection of class discourse and the soft cultural background of the middle 1980s.

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[59]Yan Jiaqi's preface, in Zhang Jiefeng, etc., 1989, ii-iii.
[60]See *Manifesto of the Federation for Democracy*, in *Journal of Democracy*, 1990, Winter, 1(1):122-23.

2. A Weak Basis for Political Dialogue?

In the past, the Chinese official ideology rejected the concept of fixed and universal "human rights." In the words of Red Flag:

> Human rights are not "heaven-given", they are given and regulated by the state and by law; they are not universal, but have a clear class nature; they are not abstract but concrete; they are not absolute but limited by law and morality; they are not eternally fixed and unchanging but change their nature and proper scope in accordance with changes in the functions and position of people in the midst of shifting conditions of material production.[61]

However, there are now three new elements associated with the official Chinese position in the *White Paper* on human rights, to which we should pay attention.

(1) The current Chinese government does acknowledge the protection of human rights as a major goal of the government. This points to a change in the basis of legitimacy from the utopian goal of communist society to the goal of protection and improvement of human rights although the form of goal-rational legitimation remains.

(2) The current Chinese government claims to appraise highly the Universal Declaration of Human Rights as an international or universal enterprise (*Beijing Review*, Nov. 4-10th, 1991, 8-9). Also, there is an emerging international law of human rights which sets standards for all states, and China is moving toward acceptance of this international law.[62] China has ratified seven international conventions pertaining to human rights issues while the US has ratified only two conventions. This acceptance of the minimal international law by the Chinese Government

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[61]See Edwards, 1986, 130, also see FBIS-CHI-90-166, 27 August 1990, 17.

[62]As the *White Paper* says, China has always held that to effect international protection of human rights, the international community should interfere with and stop acts that endanger world peace and security, such as gross human rights violations caused by colonialism, racism, foreign aggression and occupation, as well as apartheid, racial discrimination, genocide, slave trade and serious violation of human rights by international terrorist organizations. These are important aspects of international cooperation in the realm of human rights and an arduous task facing current international human rights protection activities. *Beijing Review*, Nov. 4-10th, 1991, 45.

constitutes a basis for international dialogue and cooperation between Chinese and Western governments, on which a positive interplay between China and other countries may be hopefully expected. Although it might be wrong to claim that human rights has now become a concern in Chinese foreign policy decision-making, it is certainly right to argue that Chinese foreign policy will be justified in terms of the idea that state sovereignty is a basis of human rights.[63]

(3) Chinese officials have in the past adopted Marxist class and economic analyses of human rights. For example, the Chinese government has always claimed that human rights are not "heaven-given;" they are given and regulated by the state and by law; they are not universal, but have a <u>clear class nature</u> (see FBIS-CHI-90-166, 27 August 1990, 17). However, these kinds of analyses are no longer used in the official *White Paper*. This certainly shows ideological flexibility and one step towards an international conception of human rights. The Chinese government now realizes that human rights are a spiritual wealth created jointly by the whole of mankind; they are not the "privilege" of Western capitalists (FBIS-CHI-90-166, 27 August 1990, 17).

If the above understanding is correct, the Chinese government and dissidents share at least the following common views.

(1) There is recognition of human rights as the most important issue. The *White Paper* states that to promote human rights and strive for the noble goal of full implementation of human rights is required by China's socialism (*Beijing Review*, Nov. 4-10th, 1991, 9). Similarly, Wei Jingsheng, Hu Ping and Yan Jiaqi, among other Chinese dissidents, are in fundamental agreement on the urgent importance of human rights: this constitutes one of the basic elements in their ideal of democracy.

(2) Both seek minimal institutional protection of rights. As the *White Paper* states, the Constitution and law of China always gave priority to human rights protection. Similarly, Chinese dissidents also stress democratic institutions such as the rules of law, and the proceduralism needed to protect rights.

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[63]See the speech of Jin Yongjiang, ambassador to UN, *Renmin renbao*, Nove 24, 1991.

(3) Both use, to some degree, a <u>utilitarian</u> justification of human rights. The ideas of the right to subsistence and of the right to development have been of practical appeal. Similarly, Hu Ping's justification of freedom of speech is also practically oriented (see Section 3). Here I should say that what they share is only <u>a way of thinking</u> at a philosophical level which is deeply rooted in Chinese "practical rationality".[64]

These common views seem to indicate a first step towards convergence on the human rights issue between the Chinese government and Chinese dissidents, and importantly seem to constitute a minimal consensus for political dialogue between the Government and dissidents. This is obviously a practical chance available to Chinese liberal intellectuals on the Mainland and overseas to pursue their demand for further democratization and legalization in China. But further development of the convergence and the maintaining of a minimal consensus rely on the spirit of seeking common ground while reserving differences, and depend on the following conditions. On the Chinese government's side, self-contradictory statements about human rights, in particular about universal and particular views of human rights should be reduced. On the Chinese dissidents' side, feelings of hatred towards the Party should be controlled, hope rather than cynical attitudes should be preserved, and finally anger must give away to cool reason and tolerance. Thus a positive rather than a negative interplay between the Government and dissidents might be expected to develop.

The convergence and the minimal consensus is, in my personal view, significant. The process of democratisation in China, I believe, entails moving away from denial of the democratic principle to recognition of it as a *modus vivendi*. In this respect, the significance of the changes in the current official views about human rights is that at the moment, as a result of various historical events and internal and external pressures, human rights have come to be accepted as a mere *modus vivendi*. This acceptance

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[64]Some western scholars criticize Chinese utilitarian attitudes towards democracy. This criticism is unfair because social utility is seen as origin of Western democracy; it is also misleading in the sense that the reason why dissidents such as Hu Ping hold the utilitarian argument is in older to convince leaders to accept democratic institutions. In fact, Hu Ping regards human rights as an independent value. Also if we accept Ip's (1991) distinction between nation-oriented and individual utilitarian commitment to democracy, I would argue that while Deng's utilitarian consideration of democracy is collective-oriented, Hu Ping's is individual-oriented.

has come about, we may assume, at first reluctantly, but nevertheless as providing the only alternative to endless and destructive civil strife. It is probable that improving the human rights situation in China is a way of improving the power of the government; and to use western terms such as "human rights" is a way of re-establishing the legitimacy of the Party. Importantly, the political agents are those who are commonly regarded as *taizidang* (new elites); they want to establish their legitimacy; they are seeking for something new, and they might create an opportunity for a political dialogue.

However, the basis for political dialogue is very weak. Apart from practical reasons, the idea that the basis is weak and unstable comes from the fundamental differences which lie behind the seemingly common views. There are the following differences in the views of human rights of the Chinese government and dissidents.

(1) The order of priority of rights: the right to subsistence and the right to development, in the Chinese government's view, are most urgent, and civil and political rights are not urgent in developing countries such as China (*Beijing Review*, Nov. 4-10th, 1991, 42-4). Also, to protect social and economic rights implies an expansion of, and an increase in, the power of the Government. Conversely, according to Chinese dissidents, civil and political rights are natural rights which should have priority over economic and social rights; and these rights do not depend on political, social and cultural conditions and can be realized right now (Yan Jiaqi, 1992a, 50). Far more importantly, to protect civil and political rights implies a limitation on, and decentralization of, the power of the Government. As Yan Jiaqi argues, the concept of human rights is devised to limit state power, and the idea of human rights demarcates a specific sphere in which political power cannot interfere (1988, 59-66, also see Section 1 of this chapter).

(2) Collective vs individual rights: the Chinese government perceives the right to subsistence and the right to development as collective rights, which are far more important than individual rights such as civil rights (*Beijing Review*, Nov. 4-10th, 1991, 44), while Chinese dissidents, such as Wei Jingsheng, Hu Ping and Yan Jiaqi, regard individual rights as primary. Yan also criticizes the Chinese government's abuse of "collective rights" to deliberately confuse the rights issue (Yan, 1992a, 49).

(3) Different institutional designs: the Chinese government does emphasize the aspect of constitutional and judicial protection of human rights (*Beijing Review*, Nov. 4-10th, 1991, 21), but does not want to change the Party-rule system. It appeals to a resolution of the UN General Assembly at its 45th session: "Each State has the right freely to choose and develop its political, social, economic and cultural systems" (*Beijing Review*, Nov. 4-10th, 1991, 21). Chinese dissidents, however, see the Party-rule system as an obstruction to the implementation of human rights and they want to introduce the system of division of three powers in China. As Wei Jingsheng argues, we need the rule of law, but we need the kind of law which is conducive to the realization of equal rights. The people must attentively watch the progress of law-making and be sure that the law being adopted is the kind of law designed to protect equal rights.

(4) Philosophical justification: although both sides employ a utilitarian justification of human rights, this similarity should not be exaggerated, and importantly, Chinese dissidents believe, and are committed to, a contractarian view of human rights. They view rights as natural and inviolable.

In conclusion, to seek common ground while reserving differences is only rhetorical for both sides. It is difficult for the Chinese government and Chinese liberal intellectuals to reach agreement about issues such as the order of priority of rights, institutional arrangements and contractarian assumptions because of their different political positions, different backgrounds and the different major problems concerned. These difficulties will undermine the possible basis for political dialogue.

3. The Idea of Natural Rights and its Priority

The Chinese Communists' denial of the idea of natural rights has a historical precedent. When the idea of natural rights was introduced into China in the late 19th century, it was little understood. Liang Qichao treated the notion that man had ever existed outside of society in a state of nature as a curiosity (in Edwards, 1986, 128). John C. H. Wu, a draftsman of the 1946 Constitution, accepted Western legal positivism and held that rights do not pre-exist, but are granted by the state (Greiff, 1985, 446).

Wei Jingsheng's idea of rights goes beyond Liang's and Wu's in terms of his acceptance of the idea of natural rights. He argues that such a right is not granted by external agents, but is self-existent. He uses the following example to illustrate this: the stone, since it occupies a certain space, is entitled to have the right to exist in relationship to anything around it. That is a natural right which does not need to be bestowed by external agents (Wei in Claude Widor, 1981, 115). Thus in Wei's view, rights are conceived of as the attributes of individual human subjects deriving from their nature or essence, i.e. from their being free beings; being ends themselves rather than being means to an end.

Wei's argument that human rights are inherent may be compatible with his argument that human rights are contingent on social conditions if we accept the following: while the idea of natural rights provides us with an ideal and a criterion for actions, it is social conditions that provide us with practical means of realizing the ideal of human rights. There is an interdependent relationship between philosophical presupposition about natural rights and realistic consideration about rights which are social products. On the one hand, the idea of natural rights provides us with the highest authority over society, an axiom and a criterion to deal with conflicts between rights and political power, as well as conflicts of rights in practice. The social demand for changes to the Chinese communist system calls for, from within the society itself, the idea of natural rights so as to ensure that equal rights will be protected. The argument that human rights are contingent on social conditions can be used to justify the idea of natural rights in the Chinese social context. It is the Chinese social background, in particular the violation of human rights in current everyday life, that brings about the discourse of the idea of natural rights. On other hand, the idea of natural rights has to be contingent on certain social conditions and development within society; the universal idea of natural rights has to take concrete forms under certain social conditions. It is here, nevertheless, that the concrete forms of rights, such as the distorted forms of rights discussed in Section 6 of this chapter, may undermine the universal idea of rights. To defend the idea of human rights, a distinction between problems of liberty and rights as an ideal and problems of liberty and rights as actual institutional norms needs to be made. The same can be said of the distinctions between the principle of human rights and the consequences of

implementing the principle of human rights. Essentially, the universal idea of natural rights is a value claim.

Wei's argument that human rights are inherent may be incompatible with his argument that human rights are contingent on social conditions if he accepts that the idea of natural rights implies that rights should not be limited; as in the case of Wei's arguments about whether or not rights should be limited. On the one hand, Wei argues that basic political rights, such as freedoms of speech, assembly, association, the press, religion, movement, and the right to strike should be unrestricted within their various spheres. At the same time, Wei contradicts this by arguing that human rights only exist in relation to other things and relate, directly or indirectly, to their environment. Thus, it is argued that human rights are limited and relative rather than unlimited and absolute.[65]

There are also problems with Hu Ping's view of natural rights. Hu emphasizes the priority of rights and freedom over truth, and that a right is a "trump card" held by a citizen which may be played even against civil authority. But Hu's understanding of the priority of rights and freedom over truth is not based on the idea of natural rights; and he does not see that the rights which are held by citizens are prior to their entry into political society; not chronologically prior to the formation of civil society, but logically prior to government. As Hu (1990a, 151) claims, the idea of social contract is a myth, and has no base in reality although it does help to uncover the real origin of political power. Hu (1991a, No. 4, 50) also suggests that we do not need to have a theory of natural law to develop idea of human rights. Due to the lack of an idea of natural rights, Hu justifies freedom in terms of social utility.[66] It is argued that to protect freedom of speech will benefit the quest for truth and development of the truth, the

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[65]Here I reject Wei's Marxist dialectical discourse. If one recognizes the Marxist dialectical method, he would argue there is no tension in Wei's thinking on human rights.

[66]In Hu's letter to me, he explains that since the ideas of natural rights and of natural law were too alien to be acceptable among the populace in the 1970s, he decided to use more utilitarian arguments for freedom of speech. This implies that Hu himself favours the idea of natural rights.

"fostering of the real Marxists", and the "strengthening of the unity of nation and political power" (Hu, 1988, 74-99).[67]

Hu's argument about the priority of rights and freedom over truth may be compatible with social utilitarian arguments[68] about freedom of speech if we presuppose the idea of natural rights and use social utilitarian arguments to supplement the rights-based arguments. However, any philosophical justification of rights in terms of social utility has dual functions: it may either defend rights or limit and even withdraw them. Utilitarian argument is insufficient to justify rights and may be incompatible with the rights-based arguments if social utility is used to argue for deprivation of rights. For example, one might argue that it is necessary to deny individual rights in order to avoid social tragedy if conflicts between rights cannot be resolved, and such conflicts of rights will lead to civil war. The intellectual history of modern China proves that theoretical justifications of the violation of human rights always come from utilitarian arguments. In short, to quote Waldron (1984, 18) "attempts have been made to produce utilitarian arguments for free speech, civil liberty, economic equality, toleration, and so on, but the arguments are always at best marginal and contingent and, in any case, much more heavily qualified than the corresponding liberal principles."

The Chinese liberals' ideas of human rights may be vulnerable to the charge that rights are constructed; they are not inviolable, and they have no ontological status. To defend the value of freedom and rights, a philosophical idea of natural rights is needed; and the idea that liberty is the source of all rights should be emphasized. The idea of contract also is needed to justify rights as a "trump" card overriding the purposes of government and other public agencies. According to Heller, the law of natural right (according to which all humans are born free and are equally endowed with reason) is the axiom, the self-evident starting point of the

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[67]The Taiwanese scholar Sheng Qingsong has defined an additional justification for freedom of speech: apart from the consideration of protecting democratic institutions and of stimulating the quest for truth, he believes that freedom of speech is also helpful to the realization of the self. See *Zhongyang ribao* (*Central Daily News*), 10 March 1990, Taiwan.
[68]Hardin (1988) gives a wonderfully systematic utilitarian justification for the value of rights. But I still believe that utilitarian justification is insufficient.

whole enterprise of human rights, and is the source of all rights.[69] Heller further argues that rights stand in a hierarchical relation to each other; there are basic ones and inferred ones and only the highest have an absolute moral claim. In Heller's view, freedom is the axiom of all human rights, an ontological statement and a value, which the opposite (such as unfreedom, slavery, etc) cannot be chosen for a value (Heller, 1987, 150-9). As we know, the claims that all human beings are born free and equal in dignity and rights, and are endowed with reason and conscience serve as <u>axioms</u> in the United States' Declaration of Independence and the Universal Declaration of Human Rights (1948). In line with Heller's arguments, I add the following arguments in defence of the idea of natural rights,[70] while taking account of the Chinese intellectual and political context.[71]

First, from a practical point of view, although the idea of natural rights cannot guarantee equal rights in political life, it is, definitely, a powerful weapon that can be used to oppose any ideology whose theme is designed to suppress, restrict and suspend rights. The Chinese Marxist view that rights are granted by the state in particular social conditions offers justification for rights provisions to be programmatic, for the state to grant rights only to those who are friendly or loyal to it, and for power holders to restrict, even deprive those they do not like of their rights (Nathan, in Edwards, etc., 1986, 130-1). We observe that the Chinese Marxist ideas of rights can not ensure human rights in political life, because revolutionary claims are primary and individual rights are subordinated to revolutionary claims; conversely, the idea of natural right can indeed ensure that equal rights are protected, because the idea of natural rights implies a restriction on revolutionary claims rather than an aid to them.

Second, the key point is that the Chinese social demand for changes to the Chinese communist system calls for the highest authority to be placed over political authority and to act as a supreme criterion by which to deal with conflicts between rights and political power as well as conflicts of

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[69]Whether or not the law of natural right is self-evident is a debatable issue.

[70]I am aware that in the Western literature the idea of natural rights is a debatable issue, and that in Hobbes' theory of the state of nature the idea of natural rights has been used to justify unlimited authority. Here I believe that Locke has corrected Hobbes' mistake.

[71]Lin Yusheng suggests that the Confucian concept of moral autonomy can justify the idea of basic rights. This is a challenging topic that need to be examined. See Lin Yusheng, 1988, 320.

rights. The idea of natural rights satisfies this social demand if the Chinese accept it; and it has the theoretical potentiality to ensure that the sphere of realization of human rights will be enlarged.

Third, one may avoid the question of whether or not the idea of natural rights is fiction, and simply examine how the idea of natural rights came about in contemporary China. Although the idea of natural rights is a theoretical presupposition, it is important to note that the presupposition comes from Chinese social practice. The discourse of the idea of natural rights results from the tragedy of the Cultural Revolution, and from the historical lesson that theoretical justifications of the violation of human rights always depend on the denial of the idea of natural rights. Those who deny the idea of natural rights tend to regard it as theoretical fiction, but it seems to some Chinese liberals that denial of the idea of natural rights means tragedy, unhappiness and suffering. The idea of natural rights easily takes root in the hearts of those who have suffered violations of human rights. They are happy to choose the idea of natural rights and treat it as an absolute truth. This is the practical reason why Yan Jiaqi advocates the universal idea of human rights.

Those who have enjoyed "bourgeois" human rights, such as Marx, criticised the idea of natural rights. But such criticism is irrelevant to Chinese practice, and even becomes an enemy of basic freedom. That is why Hu Ping and Yan Jiaqi have rejected the Chinese Marxist discourse of human rights. One even imagines that if Marx were living in Chinese communist society, he would reject his own criticism of the idea of natural rights and turn to support it.

4. Justification of Limitations on Rights

To criticize the official ideological claim that rights should be limited, we need to put aside rebellious attitudes and explore fully the possible legitimate and legal limits on rights. It is possible to distinguish paternalistic and liberal claims about limits on rights and liberty with reference to different purposes, conditions and procedures which I have discussed in Section 3 of Chapter 2.

Chinese liberals differ in their views of limitation on liberty. Wei Jingsheng and Hu Ping, from the aspect of individual freedom, give a

liberal definition of democracy and seldom talk about the limitation on freedom.[72] Yan argues that legal limitation on freedom by means of laws and institutions is necessary.

Although Wei Jingsheng and Yan Jiaqi mention limitation on rights, in general, all three overlook the issue of how laws regulate and limit rights through institutional norms, and how, why and under what conditions rights are to be limited. This is understandable because there has been too much talk about the limitation on rights in contemporary China and not enough about the protection of rights (see Judy Polumbaum, 1991). More importantly, the 1982 Constitutions clearly limit rights so as to render them meaningless to any Chinese citizen who might have wished to invoke them against arbitrary treatment at the hands of government.

Although Wei and Hu adopt an individualistic approach in looking at democracy, human rights and the political system, they do not make a clear demarcation between the individual and the social within the framework of the law.[73] In Mill's (1947) liberal theory, law determines which actions are and are not within the government's sphere of duty. Law rules government by excluding it from interfering with the citizenry within the citizen's private realm. At the individual level, the individual enjoys personal freedom and the right to privacy, and state interference is unnecessary provided the right to privacy does not lead to self-harm or harm of others. Rights, therefore, are infringed if the state interferes with the individual life. It is important to create and expand zones of privacy through various guarantees in China. Yin Ding (1991) has actually listed the following rights to privacy: the right not to participate in political life, the right to pursue personal interests, the right to express personal opinions and beliefs, the right to have a sexual life unhindered by state intervention,

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[72]Freedoms in Wei's thinking are only limited in the sense that freedoms are not open to those who have opposite views, as he claims that we oppose any statements and theories which support bureaucratism and fascism, and as for those who are not prepared to allow freedom to other people, we should deny their right to publish in our magazine (Wei, in Seymour, 1980, 34).

[73]This demarcation is debatable. As John Keane (1988) has pointed out that the boundary between public and private has been dissolved. For example, welfare-state intervention is geared to solving basic economic and social problems, and thereby touches on and redefines the more intimate areas of private life. However, the distinction between private and public has, I think, obvious normative relevance to Chinese institutional design.

the right to have variety in life-styles, the right to choose and believe in religion, and the right freely to choose partners in marriage. The above rights should not be condemned by public morality. These rights define a sphere within which the power of the state can not interfere.

But as to areas of human life which chiefly interest society, state interference becomes more complex. Rights are often related to other rights of other people. There is a conflict between rights, which this chapter will deal with later. The point here is to present the necessary regulations and limitations on rights if conflicts between rights occur. The justification for state interference[74] is that it saves individuals from being interfered with by other individuals who are more powerful than they are. Freedom, therefore, demands constraints on the rich to prevent corrupt government and prevent the poor being interfered with by the rich. A restriction of liberty comes from the demand for just social arrangements and distribution of rights as well as the reduction of injustice which already exists (Rawls, 1971, 244-5). Only through this limitation can the ideal of equal human rights be protected. Freedom and rights have to be developed and improved in ways that limit themselves. The key resides in democratic institutional limitations on rights. That is, if the state substitutes ordered and reasonable interference for arbitrary interference with individuals, it increases freedom. The extent to which state interference increases and promotes rights will depend on democratic institutions, procedures and wisdom displayed in the interference, and procedures and wisdom cannot be determined beforehand by rulers. There is, therefore, a vital connection between rights and liberty on the one hand and democratic government and procedures on the other, inasmuch as democracy is an effort to ensure that government shall only be exercised subject to popular control and criticism (A. D. Lindsay's Introduction in J. S. Mill, 1947, xxii).

5. Rights and State Power

Conflicts between rights and political power become a serious problem when the discourse of human rights is popularized and used by people to struggle against the Chinese communist authority. Given that the Chinese

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[74]Also see Hardin's (1988, 86) utilitarian justification for state interference.

communist system is based on suppression of the expression of aggression against the state, when people are granted civil rights, these rights easily become a powerful and subversive weapon to struggle against the political system characterized by suppression of rights. Thus, the granting of individual human freedom and rights challenges the party's control (see Wu Yuanli, 1988, 75). In this sense, state power and individual rights, state actions and liberty are antithetical. Yan is right in the sense that the right to privacy should be protected so that state power may not legitimately interfere with individual life. However, Yan's assumption that state power and rights, state actions and liberty are antithetical is wrong in the sense that individual liberty is compatible with the power of democratic political organization;[75] state power sometimes needs to be increased in making laws, which are designed to protect rights, and in making them efficient.[76] It is compatible to combine rights and a reasonable exercise of power.[77] For example, the right to elect and to be elected is a right to act but not a right to threaten the state.

The weakness of the Chinese liberals' ideas of rights also lies in their overlooking the protection of the rights of "cadres" insofar as cadres are human beings. It is understandable for them not to discuss the rights of "cadres" because of their hatred of "cadres" and of the antagonism between liberals and Communist officials. However, to protect the rights of cadres to life within the law is a necessary condition to enable power holders to make concessions easily in the struggle. Only if cadres feel secure and protected by law in the struggle can they change their attitudes towards human rights from suppression to sympathy. The key issue is to realize the rule of law. The aspects of compatibility between rights and power and protection of the right of "cadres" to life provide a rational foundation of political strategy for democratization in China. In the process of political development, the key element is that political leaders, under popular pressure, might accept the ideal of rights and make concessions provided that rights are compatible

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[75]Yin argues that individual liberty is compatible with Lockenian political organization and not with Leninist political organization (Yin Haiguang , 1988, 233-46).

[76]Yang Guoshu argues that the power of government to maintain social order in the transitional period is primary. See his speech in *China Tribune*, No. 317, December, 1989, 17.

[77]The interesting thing is that the Chinese term *quan li* for "rights" originally combines the character *quan* meaning power, influence and privilege (among other things) and *li* meaning profit and benefits (Wang Gungwu, 1979, 3).

with state power and their right to life is protected. The realization of human rights depends on both the struggle waged by the people from below and the concessions made by the leaders from above.[78] As a matter of practical necessity, human rights can only become a living reality in Chinese politics if we recognize their self-limiting nature; human rights must, as a matter of principle, not only limit the power of the state over society, but also limit the power used by society against the members of the state.

6. The Difficult Problems in Realizing the Ideal of Human Rights

The actual meaning of rights can be fully understood only on the basis of an analysis of the crucial problems pertaining to the process of realization of human rights in the transitional period. The nature of the process of the realization of human rights in China lies in a shift from totalitarian control and suppression of rights to a liberal guarantee and protection of basic human rights. But this change is subject to social, political and cultural conditions under which human rights can be realized. In this transition, therefore, it follows that there will be intense conflicts and social disorder. Here a distinction between the meaning of liberties relating to ways of life and the principle of liberty (consequences of liberties and the principle of liberty) is made, and there is the assumption that the actual value of liberty is much more important than the abstract form of liberty itself.

i. The Validity of Constitution and Law

Here we face the problems similar to those of the Weimar Constitution of August 1919;[79] that is, the Communist Party only manipulates the Constitution, and does not respect it enough to act seriously upon it. At the same time, the oppositional organizations such as FDC & CAD are hostile to the 1982 Constitution, although they hope to draw up a new constitution.

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[78]As to the role of leaders in the transitional period, see Jadwiga Staniszkis (1989 & 1990), Samuel P. Huntington, 1984, 213, Larry Diamond, 1989, 151, and Higley & Gunther, 1992. This opens up the whole problem of the transition from authoritarian rule.
[79]In the 1920s, the Communists and National Socialists were hostile to the Weimar Constitution. See Neumman, in Keith Tribe, 1987, 7.

In principle, equal rights must be protected by institutional arrangements such as a constitution and laws; the aim of laws is not primarily to make people good, but to uphold a system of rights. But the problems lie in the nature of the laws and the process of law-making and law-implementing. According to Wei Jingsheng, we have only autocratic rules of law, such as those exercised by Qin Shi Huang and the Gang of Four, without democratic rules of law in China. Lin Yusheng argues differently that traditional China has only "rule by laws"; that is, law as the instrument of rule which weakens the meaning of legality and even creates an efficient totalitarian society.[80] Following Lin's view, we may claim that Deng Xiaoping's legal reforms were instrumental to changes in the economy and functionally useful in the modernisation process, and not ends in themselves. It follows that the most serious problems are: (1) Laws themselves are unjust in the sense that legislation in China must first comply with the so called "Four Cardinal Principles" in the 1982 Constitution and that the Communist Party has policy superiority over the state and economy. (2) The Party is above the legal system; the legal system in China gives the Party a special form of authority; and legal regulations are greatly influenced and even decided by the subjective will of paternalistic leaders.[81] (3) Although there is a positive and workable law, in practice it is not taken seriously by either the leaders or the masses.

It is justifiable for a citizen not to obey the old laws, because the laws themselves are problematic, and some of them are unjust. Thus the notion of a general duty to obey the law that holds in all cases must be abandoned. In the transitional period, the old legal system has been discredited, and the new legal system does not yet function well. The new law which aims to protect equal rights implies that the duty to obey the law is justifiably required. There is, however, a paradox between obeying the law and not

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[80]Lin further argues that the rule by laws is totally different from the rule of laws which presupposes basic human rights and implies that any laws and regulations must comply with a meta-legal doctrine - the idea of natural rights (Lin Yusheng, 1988, 58, 79, 292, 381, 319).

[81]The view may be well elaborated by Feng Xuefeng's fable in 1956 that a snake decides to make a law that no one can interfere with another animal's privacy without due process. Then to teach the timid hare how to use this law, the snake barges into his den and bites one of the baby hares to death. He waits by the door for the hare to come out and follow the new law by charging him with breaking it (see Nathan, 1986, 161-2).

obeying the law in the transitional period. It is this paradox that makes laws and their protection of rights ineffective.

However, a more serious problem resides not in the justification of obeying or not obeying laws, but in the practical implementation of laws. Let us examine the effects of corruption. One often talks about the serious corruption in China and in doing so refers only to officials or cadres. Nevertheless, the problem of mass corruption should be drawn to attention. Ordinary people, like taxi drivers, doctors, ticket sellers and shop assistants, do use their power for personal gain. A common attitude is that if you do not use what power is available to you, then it will expire as quickly as a film ticket. This attitude is so popular that it seems to legitimize "the back door" and abuse of power. The seeming legitimacy of "the back door" and abuse of power implies that people and cadres do not make a clear distinction between what is legal and what is illegal. It follows than that if people do not have a clear sense of laws and do not care about them, it is difficult to implement the rule of law. As Machiavelli claims, when it is corrupt, good legislation is of no avail; and a corrupted people, having acquired liberty, can maintain it only with the greatest difficulty (Machiavelli, 1970, 157-60, also see Skinner, 1983). If laws and regulations are not effective, freedom in its operation is not action within the limits of law but a kind of anarchic action. Thus, without the rule of law this form of freedom inevitably increases social disorder and becomes a "negative force" rather than a constructive one.

ii. Conflicts between Rights

The realization of freedom is always associated with what Jean-Paul Sartre calls moral dilemmas or emotional contradictions on the individual level (B. H. Slater, 1988, 317). There are more intimate links between contradictions and freedom on the collective level than on the individual level.

The operation of rights at both the dyadic (the right of voluntary exchange or contract) and collective (the right of associations and state organizations) levels is subject to, and affected by, certain social, political and cultural conditions as well as social relationships under which human rights can be realized. Rights, therefore, are often related to other rights of

other people. There are conflicts between rights. According to Hardin, the protected actions of one party coincidentally bring harm to another party, typically because of the external effects of the actions. And the protected dyadic right of contract conflicts with collective rights that would deny members of relevant collectivities the right to enter certain dyadic contracts (Hardin, 1988, 117). Let us examine the example of tensions between human rights and democracy in terms of political development. When the control and suppression of minority nationalities by the ruling party loosen, conflicts between nationalities increase; and nationalism will override democracy given abuse of the right to autonomy. For example, the operation of the right to regional autonomy may undermine a possibility of the realization of a democratic federal system if conflicts between rights occur. If people in Taiwan and Tibet are supposed to be granted fully the right of autonomy, they may choose to build an independent nation. Therefore the rights of autonomy may contradict the idea of a democratic federal system as proposed by Yan Jiaqi. In short, the Chinese liberals have not set up principles for dealing with these conflicts of rights.

The Chinese liberals also overlook the consequences of the operation of the right to property. The right to property and its protection in the legal system may become an even greater source of political conflict in Chinese social life. To protect the right to property in Chinese economic life means, at times, that political privilege turns into economic privilege given the corruption of power and the absence of fair rules. Thus economic privilege leads to unequal competition and injustice. The close relationship between democracy and the right to property and private ownership is mere wishful thinking.

The conflicts between rights cannot be attributed to the old system but to the nature of rights operating in the transitional period. This will bring forth a new problem, more serious than the conflicts between political power and individual rights if the collapse of the Chinese communist party's monopoly control occurs. The greatest difficulty for the realization of human rights lies in the overlapping of the old and new problems. And the old problems such as political privilege, corruption and the crisis of succession have not been resolved; while new problems -- tensions between

rights, distorted forms of rights and a burden of rights arise from the actual social and political background in China.[82]

iii. Distorted Forms of Rights

In adhering to a "perfected" ideal of human rights, there will be an increase in the inevitable distortions attaching to the processes of realizing human rights. First, freedom and rights operate in an anarchic way or, what Wei Zhengtong calls, "break from any bondage" in China. Thus liberty is understood to be completely antagonistic to tradition and its culture. As Wei Zhengtong observes, in modern China liberty takes the form of anti-tradition: if we have tradition, then we have no freedom; if we want freedom, we have to break with tradition completely (Wei Zhengtong, 1976, 55-69, in particular, 66). Thus this rebellious kind of negative liberty not only contains the idea that liberty is being let alone, but become a subversive force set up to oppose the existing political and cultural system.[83]

Second, in Mao's time, there was roughly an egalitarian distribution of wealth but there was a lack of equal rights and opportunity.[84] Conversely, in Deng's time, there was neither equal rights and opportunity nor equal distribution of wealth. Injustice has become a crucial social problem. We see

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[82]As to the study of the contradictions in the transition period in the Communist societies, see Jadwiga Staniszkis (1989 & 1990).

[83]In order to overcome these theoretical problems, I suggest that Philip Pettit's (1990) republican conception of negative liberty is an alternative intellectual basis for Chinese democratic institutional design, because of the following intellectual virtues: (1) The republic conception of negative liberty emphasizes equal liberty in the context of a particular society where individuals exist and interact with one another. This conception requires that a person be let alone to the greatest extent that is standard for anyone in the society; and that he (she) is given a status in law, and perhaps a status *vis-a-vis* social convention generally, that provides some objective assurance against interference; and finally that he (she) and others must share an awareness that he (she) enjoys this status (Pettit, 1990, 164-5, 176). This conception is contrary to Chinese liberals' slight attention to the problems of in realizing the ideal of human rights due to their rebellious attitude towards the Chinese totalitarian regime. (2) The republic conception of negative liberty favours the right political products for the state to deliver such as criminal justice, social welfare and a variety of community benefits (Pettit, 1990, 168-72). This conception is contrary to Yan's implicit assumption that rights and the power of the state are antithetical. (3) The republic conception of negative liberty see citizens not only as consumers of the political product, but also as active, deliberative participants in the political process (Pettit, 1990, 172-6). This conception is contrary to Yan's elite democracy.

[84]The degree of egalitarian distribution of wealth in Mao's China is subject to debate.

that some people enjoy economic freedom on the basis of suppression of others' freedom. The poor and powerless are controlled by the rich and and power holders in political and economic life. Also freedom of contract and enterprise makes sense only in the context of a free market system in which the workers and employers are both free to give or withhold work. But under political monopoly, freedom of contract and of enterprise becomes a privilege and a new tool of exploitation on the part of political power holders.[85] That sort of freedom and rights becomes despotism.

Third, a person, freed from the bonds of a totalitarian society, which simultaneously gave him security and limited him, has not gained freedom in the positive sense of realization of his individual intellectual, emotional and moral potentialities. Some people break free from political oppression but, unfortunately, are then worse off because they are enslaved under economic oppression. For those people, nothing is gained except alteration of the form and sphere of enslavement.

Fourth, freedom and rights are supposed to be a consensus for political institutional arrangements and actions, but in reality China is currently an unprincipled society which lacks consensus and trust between and among governors and the governed; and the principle of freedom and rights is often manipulated by politicians and even Chinese democrats living overseas for their own interests.

Using analysis of the distorted forms of rights, we further argue that the political system in China is a mixture of totalitarianism and distorted forms of rights and freedoms; it has become part authoritarian and part free. The classic polar opposites of totalitarianism and democracy, therefore, are not an analytical value to analyze the political system in the transition period (Pye, 1990c, 14).

iv. Burden of Rights

While John Rawls (1989, 235-8) discusses the burden of reason, and Erich Fromm (1960) the burden of liberty, here, we emphasize that rights may

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[85]Also See Franz Neumann "On the Preconditions and the Legal Concept of an Economic Constitution", in Keith Tribe, 1987, 48.

become a burden in the following cases in which (1) people do not know how to make a choice when there is a conflict of rights; and in which (2) certain people do not want to be held responsible for their choices which, while ensuring independence, leave them uncertain of whether or not there will be a price to pay for their choice. The point here is to show that at the crossroads for liberty, the burden of rights may, during the transition, contribute to the totalitarian tendency.

From the above discussion, we conclude that there are three particularly difficult problems[86] attaching to the process of realizing human rights. (1) To protect human rights we need a just constitution and law, but we have neither a just constitution and law nor well-civilized people who support the rule of law in China. (2) To protect, develop and improve equal human rights some regulations and limitations on rights are necessary. But the ruling party suppresses human rights and imposes arbitrary limitations, while the oppositional organizations seldom address the problem of legal limitations; it is, therefore, difficult to arrive at a consensus of definite limitations on rights through institutional norms. (3) Tolerance is a virtue of freedom and is recognition of the autonomy of others. However, China lacks tolerance after the events of June 4, 1989. People are full of revenge. Hatred and revenge tend to suppress the freedom of others. The servile and intolerant spirit of the people is the "enemy" of freedom.

Conclusion

I have defended the idea of natural rights. This idea constitutes the source of all rights as a political principle and a moral basis for a democratic system which respects and is bound to honour the liberty of its members and recognizes the proper autonomy of citizens. To protect equal human rights is the goal of law and of democratic political institutions. The extent to

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[86]Jerome B. Grieder (1970, 345) discusses similar difficult problems. As he claims, liberalism failed because China was in chaos, and liberalism requires order. It failed because in China the common values which liberalism assumes to exist did not exist, and liberalism could provide no means to bring such values into being. It failed because the lives of the Chinese were shaped by force, while liberalism requires that men should live by reason. In short, liberalism failed in China, because Chinese life was steeped in violence and revolution, and Chinese liberalism offered no answers to the great problems of violence and revolution.

which human rights are achieved mirrors the degree of political civilization and rationalization achieved.

Wei's idea of equal natural rights implies that the workers' right to organize should be guaranteed by democratic institutions. This serves as a basis for a platform that combines civil liberties with workers' rights. Also, Wei's idea implies that the peasants' right to have input into the political process should be protected by democratic institutions, and that under-representation of the rural population in the National People's Congress should be discussed and altered.

Hu Ping's idea of the priority of right over truth implies that scientists do not have the final say in decision-making, and that even the rights of non-scientist citizens should be protected by democratic institutions. The value of equal liberties rather than truth and science in general constitutes a basis for democratic institutional design.

However, the above authors seem to overlook social obligations in relation to freedom; the aspect of compatibility between state power and individual rights; the principle for resolving conflicts between rights and finally the difficult problems of implementing democratic and liberal ideas in the process of democratisation and liberalisation.

CHAPTER 5

Evil and Redesigning Democratic Institutions[87]

Chinese liberal intellectuals such as Yan Jiaqi (1986c, 1989, 1991a), Hu Ping (1988, 1990b, 1991b) and Liao Xun (1987),[88] based on their respective experiences of the tragedies in China, have taken the idea of potential rather than actual evil as a starting-point for democratic institutional design, as I have mentioned in Chapter 3. Political discourse in China seems to be going back to the old topic of the evil side of human action, which has been discussed through centuries by such theorists as Augustine, Machiavelli, Hobbes, Hume, Han Fei and Xun Zi.

The central theme, as Yan Jiaqi argues, is that the idea that human beings are potentially evil is the starting-point for the rule of law and procedural systems (Yan, 1986c, 1988, 1991a, 54-8). Or in Liao Xun's (1987, 7) words, the principle of prevention of evil is a theoretical basis for democracy. This chapter attempts to describe, discuss and develop this theme and to provide a reliable theoretical foundation for the Chinese liberal arguments for democratic institutional design.

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[87]I should acknowledge that although political thought about institutional arrangements depends on certain suppositions about human action, institutional design in political life depends on culture, technology, economics and particular situations.

[88]Although I focus on the three writers, I will broadly refer to and discuss the ideas of a group of liberal writers such as Jin Guantao, Su Wei, Ding Xueliang and Ding Chu. Yan Jiaqi and Hu Ping are selected as representative of Chinese liberals' thinking on evil and democracy, because their works are relatively systematic and well-argued and have greatly influenced today's China. Liao Xun, a less well-known scholar, is selected because his article, published in 1987, specifically discusses the issue of evil and democracy and raises a lot of interesting points although the article has been published in a less well-known journal. The leading thinkers of democratic theory and practice in post-Mao China such as Wang Ruoshui, Su Shaozhi and Hu Jiwei are excluded because their commitment to, and discussion of, the Marxist theory of alienation presupposes an ideal of the goodness of human nature which results in them paying less attention to the problem of evil than the three writers I have selected. Also their understandings of democracy fall into the Marxist framework which has been declining; their influence on Chinese politics therefore will be much weaker than the above three writers. Furthermore, although these three writers share some views on evil, they make different arguments (which I will discuss later) and take different roles in their political positions (which I will not discuss because it would be beyond the scope of my goals here).

The chapter consists of five sections. Section 1 describes the emergence of the discourse of evil and institutional design, or a shift from the notion of goodness to the concept of evil as a starting-point in Chinese political thought on democracy. Section 2 discusses Chinese liberal views of evil and specifies the Chinese liberal minimal concept of evil in terms of violation of basic rights. Section 3 justifies an attempt to take the supposition of potential evil as a starting-point for liberal democratic institutional design and briefly discusses the limits and problems associated with that attempt. Section 4 criticizes neo-authoritarian institutional design which is based on the concept of the evil of the masses. Section 5 argues for democratic institutional design, including an institutional guarantee of rights, division of power and coercive and restrictive institutions to deal with the problem of evil.

1. The Emergence of the Discourse of Evil and Institutional Design[89]

I should say right at the beginning that the emergence of the discourse of evil in China does not imply that the idea of goodness disappears or no longer plays a role in political thinking. Furthermore, the observation that while the Maoist project is largely based on the idea of goodness or perfection of human nature, and Chinese liberals' institutional design largely on the idea of evil, does not imply that the Maoist project does not incorporate the idea of evil and that the liberal project does not incorporate the idea of goodness.

The revolutionary and romantic project, designed and guided by Maoism, which follows Rousseau and Marx's tradition of Enlightenment, can be seen as an attempt to design and create the best arrangements of economic, political and social institutions, and to transform the egoistic and self-interested human into "a new socialist man" in order to achieve the ideal of a Communist society.[90] There are, at least, six assumptions involved in this project.

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[89]More discussion of this shift, see Yan Jiaqi, 1991a, 54-8.
[90]More discussion, see Jin, 1990, 27-8, Ding Xueliang, *Democratic China*, No. 2, 1990, 42. Also see Sowell, 1987, 14, 25-6, Chaps. 3 and 4.

(1) The Maoist project assumes that humans, lacking innate defects, are thoroughly malleable and perfectible through a public ownership system and education. This assumption makes it possible for Maoism to favour a moral-educational remedy. The Maoist "moral approach" to politics stresses the exemplary virtues of uprightness and benevolence as the essential ethical bases of social and political order, and denigrates written laws, regulations and punishments as ineffective and even counterproductive.[91] As Yan Jiaqi (1986c) points out, the notion of the goodness of human nature was a starting-point for Mao Zedong in "choosing a perfect successor" and launching movements of "criticizing selfishness and fostering public spirit."

(2) The idea that people are "perfectible" unavoidably implies that they are currently imperfect. In this respect, Maoism, according to Hu Ping (1990b, 39-40, 1991b, 117-8), distrusts people and regards them as immature and unable to distinguish good from evil. Some Chinese communists inwardly believe that human nature is inferior and liable to be seduced by evil so as not to be interested in virtues. Also Walder correctly observes that Maoism saw hidden enemies and traitors within Chinese intellectual circles and within the Party. The proclaimed purpose of the Cultural Revolution was to unmask these hidden traitors, drag them out of their hiding places, and save socialism from domestic and international forces of subversion (Walder, 1991, 43-6).

(3) The Maoist project assumes that revolutionary elites have the capacity to master truth and science, to tell good from evil persons, and to know what is a right project and how to realise it. It is this assumption that makes the romantic revolutionary project feasible.

(4) Points 1 and 2 show two sides of the views of human nature held by Maoism. These views seem to be contradictory, but are self-consistent in terms of social relationships being determinants of human nature. A vulgar class analysis has defined the proletariat on the basis of blood lines, and the incorrigibility of evil as being due to membership of 'bad classes' in the

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[91]Here the sage-moral educational approach should be distinguished from the rule-following educational approach to politics, which is based on the idea that politics is about the proper procedure to deal with conflicts; and that rule-following is a necessary condition for the operation of democratic institutions.

early period of the Cultural Revolution. Further, it is thought that economic and educational environments determine whether human beings will be good or evil. It is private ownership that makes people selfish; and public ownership, if it is set up, can help human beings to be altruistic.

(5) For thousands of years, human beings have been the slaves of private ownership, and selfishness has taken root in the hearts of human beings. Consequently, when public ownership is established, selfish human nature will not be automatically eradicated. The solution to this problem is to carry out moral education which demands of the Chinese that they be moral sages, or achieve the highest ideal state. This requirement of sagehood denies the legitimacy of individual self-interest. To be a sage is to break totally with the fundamental instinct of self-interest.

(6) Economic institutional arrangements such as public ownership are important in the sense that these are conceived of as useful tools to mould human nature, and instruments to achieve the ideal of communist society. At the same time, the idea that state institutions can be used to perfect people unavoidably implies that the state is better than and should be above the people. Also, politically, institutional checks on top leaders are thought to be less important because it is assumed that the first generation of revolutionary leaders are intellectual masters and moral sages. This assumption requires only a partial check system and partial personal morality on the part of the leaders because the assumption implies, creates and supports the idea that revolutionary leaders such as Mao Zedong are so good that they do not need to be checked, or at least we can trust them generally without checking them. Thus as Liao Xun (1987, 8) argues, the principle of preventing evil through division of power is overlooked by the Chinese communists.

In the early 1930s, there were many writers who saw the danger of communism. For example, Niebuhr (1948, 61, 222 and in Kegley & Bretall, 1956, 15, 139, 302) codified the errors of the Communist project in the following: (1) The Communists found the Kingdom of God in history; and regarded humans as perfectible. (2) Communist economic reorganization gravely jeopardized the condition of freedom. Niebuhr also predicted that (1) the destruction of economic privilege could hardly be expected to alter

human nature to the degree that no one thereafter would desire to make selfish use of power; (2) The attempt to establish an economic equilibrium through social ownership might create a new disproportion of power; and finally   (3) the abuse of power was bound to grow as the pure revolutionary idealists were supplanted by those who consciously sought the possession of power.

Fifty years after Niebuhr's remarkable criticisms of communism, Chinese liberals have arrived at the same conclusions. The difference is that Chinese liberals' works are written not only by words but also by tears, suffering and even blood; that is, Chinese liberals witnessed and suffered from the failures of the Maoist project in practice, while Niebuhr successfully predicted them. The Great Leap Forward in 1958 which aimed at the establishment of a "People's Commune" resulted in the end in the deaths of millions from hunger. The Learning-From-Lei-Feng movement in the 1960s finally created a hypocritical Chinese nation. The Cultural Revolution in attempting to go against revisionism led to catastrophes for the Chinese people. These assertions are common comments among a majority of Chinese intellectuals. For example, Hu Ping argues that the catastrophe of the Cultural Revolution was worse than that of civil war because it created perverse lives.[92]

During the Cultural Revolution, they also witnessed the following representative forms of evil: pleasure at the bad fortune of others, whether deserved or not; enjoyment of being a free-rider who seeks advantages from the community while not doing his or her share for it; envy, with hostility, of the greater good of others and willingness to deprive them of their greater benefits. Further, those such as Lin Biao who strove for supreme power willingly did wrongs such as deception, hypocrisy, and even killing; evil-doers were happy to dehumanize their victims before destroying them, with or without even putting on a cloak of morality or pretending to act in the public interest.[93] It is the above intellectual background that leads Chinese liberals to take the problem of evil seriously.

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[92]See *China Spring*, July 1988, 50; Jin Guantao, 1990, Yan Jiaqi, 1986c, 1991a.
[93]This is what Milo (1984, ix) calls preferential wickedness where agents of wicked acts do not believe that what they do is right; but rather, do which they believe to be wrong because they prefer some other end (or self-interest, in general) to the avoidance of moral

Now I turn to the Chinese liberal redefinition of "human nature," their ideal of politics and their solution to Chinese political problems. First, liberal-minded Chinese intellectuals have rejected the Marxist belief that human nature can be moulded at will by exposing it to proper external conditioning, agreeing with Hobbes that humans contain ineradicable selfish instincts. They seem to arrive at the same conclusion as social scientists in the former Soviet Union in the 1960s that human nature cannot be changed (Davis, 1963, 1). To say that human nature cannot be changed is misleading as argued below; but what does matter here is the underlying effort of Chinese liberals to legitimize individual interests, and the recognition that political institutional design has to meet basic individual needs, physical and social. Moreover, the question concerning the wickedness of humans has led Yan Jiaqi to the other question of the design of institutions, the finest and most subtle inventions. Now Yan Jiaqi seeks for an external remedy, ie., to focus on how to change external conditions and how systematically to establish institutional constraints on evil. This is very close to Hume's idea that since it is impossible to change or correct anything material in our nature, the utmost we can do is to change our circumstance and situation, and render the observation of the laws of justice our nearest interest, and their violation our most remote interest (Hume, 1949b, 237).

Chinese liberals are also rethinking the role of economic institutions in moulding "human nature": these institutions are limited in the sense that institutions might influence human actions in various ways, but we cannot expect that sound institutions can actually extinguish selfish actions. Chinese liberals provide a further argument against the Chinese Marxist environmentalist view of human nature: it can lead to either autocratic or democratic political institutional design. This ambiguity in the environmentalist view of human nature does not allow for a solid intellectual foundation for democracy. However, although some liberals such as Jin Guantao reject the economic environmentalist view, they fall ironically into, to some degree, a cultural environmentalist view which suggests that traditional Chinese culture has determined Mao's effort to

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wrongdoing. Or it is what Kant calls moral evil which is the *corruption* of the human heart, that is the propensity of the will to maxims which neglect the incentives springing from the moral law in favour of others which are not moral (Kant, 1960, 25).

create a utopian society (see, Jin, 1990). Further, to reject Marxist economic determinism does not imply that the environmentalist view of human nature is totally wrong. In fact, institutional design does presuppose elements of the environmentalist view of "human nature" in that well-established institutions can change, or at least, influence human actions.

Second, given the pessimistic view of humans inspired by Hobbes, the ideal of complete perfection of a political system as well as a human being under full-scale constructivism is thought by Chinese liberals such as Jin Guantao, Yan Jiaqi, Hu Ping, and Su Wei to be both impossible and undesirable; and there can be no repose for humanity in a "good society" defined once and for all, nor transparency of society to itself.[94] Perfectionism, a teleological theory, presupposes that its proposal is unique and the best in the world, thus to maintain its superiority it denies the existence of other doctrines and the rights of others. Consequently, it has led unconsciously to totalitarianism and autocracy in China.[95] Contrary to the perfectionist view of politics, the object of politics now, in Jin Guantao's view, is not happiness, but liberty; and a perfect value is not a principle necessary for design of actual and rational society (Jin, 1990, 31). Human beings are not divine; therefore their actions cannot escape the stain of self-interest and evil. Political achievements of democratic institutions must in consequence always be limited, fragmentary and incomplete. Democratic institutional design is not a final and perfectionist solution to the problem of evil, but is better than the autocratic way of dealing with the problem of evil. Also, as Hu Ping argues, the democratic election system can not ensure that the best persons are elected; however, it can ensure that people are capable of casting out bad persons by their votes (Hu Ping, *China Spring*, July 1988, 50). Chinese liberal-minded intellectuals, therefore, look to the democratic system as a relatively better political system, or in Hu Ping's (1988, 178) terms, a "possibly good system" rather than "the best possibility",

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[94]Ding Xueliang, Feng Shengping and Su Wei have criticized Chinese perfectionism in political thought. See, *Democratic China*, No. 2, 1990, 42, 44, 48, also see Jin Guantao, 1990.
[95]Hu Ping, 1988, 174-8, Ding Xueliang, *Democratic China*, No. 2, 1990, 46; Jin Guantao, 1990, 31; Yan Jiaqi, *Democratic China*, No. 2, 1990, 31-2; and Zhang Hao, 1989, 231. In comparing Chinese moral perfectionism with German race perfectionism, I think that while the former provided a justification for the Party to deny the rights of those who were regarded as immoral; the latter provided a justification for the Nazis to fight to "liberate" mankind from the "rule of subhumans," and to eliminate forever certain "races" such as Jews from the surface of the earth.

to avoid the worst consequences associated with the evil of human behaviour.[96]

Third, Chinese liberals have opposed the Maoist "moral approach" to politics.[97] The reason they reject Mao's "moral approach" is their shared disappointment in the "social experiment" in which Mao Zedong attempted to mould "the new socialist man" by mobilizing and indoctrinating the masses. In reality, the so-called "new socialist man" turned out to be a hypocrite: an altruist in appearance, but inwardly still predominantly motivated by innate drives such as self-interest and self-protection. And after all, this "social experiment" proved so cruel that it was undertaken at the cost of millions of people's lives; it has totally ignored individuality, privacy and self-respect, and finally it has forced the Chinese to behave in ways defined by the instructions of Maoism and the Party.[98] In this respect, Jin carefully argues that the Learning-From-Lei-Feng Movement was a moral elitism that still allowed the masses to pursue selfish interests; it consequently set a limit on utopian perfectionism. The Red Guard Movement in the 1960s forced people to overcome selfishness and foster public spirit. It nevertheless failed in the end, and this has destroyed moral elitism and created a social catastrophe (Jin, 1990, 26-7).

Now Chinese liberals such as Yan Jiaqi view a power-check system and a divided social structure in a civil society, rather than broad ethical imperatives, as the most effective means of resolving the problem of evil and of maintaining political order (Yan Jiaqi, 1986c, 1991a, 54-8). They would no longer rely on human beings doing good of themselves, but restrict them in such a way that they could do minimal harm under well-established institutions. This change in Chinese intellectual mentality has been demonstrated in the strong criticisms by Chinese intellectuals of Li Xiangnan, a heroic, honest and upright cadre in the *Xinxin* TV series in 1984 and of the neo-authoritarianism in 1988 both of which carried too

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[96]Also See Su Wei, *Democratic China*, No. 2, 1990, 44.

[97]In traditional China, there were various ideas of hells which often show that Yarnluor, ruler and judge of the Chinese hell, can see one's sins from the terrace, sins are reflected in the mirror, and evil persons are in the cangue, etc (Elvin, 1991, 41-2, Eberhard, 1967, 24-59). Given that, if one assumes that humans are evil, one can still rely on religious persuasion. However, since the ideas of hells have been declining, the institutional remedy adopted by Chinese liberals is desirable and feasible.

[98]See Ding Xueliang , *Democratic China*, No. 2, 1990, 42, 44.

many messages in favour of the traditional idea of the rule of honest and upright officials.[99]

2. Liberal Views of Evil

I should first acknowledge the following points. (1) The concept of evil is controversial and it is difficult to agree on what evil is.[100] (2) There are difficulties with the slippery notion of evil when it is applied actually in a concrete situation. (3) It is impossible to formulate a concept of human nature which is able to constitute an intellectual basis for institutional design. (4) Chinese liberal-minded intellectuals also have no unified conception of evil; each usually has his or her own individual understanding of evil. In order to avoid the controversy about evil, what I would like to do here is to describe Chinese liberals' views of what is not evil and what is regarded as evil. Then I will formulate an implicit concept of evil in terms of the violation of rights.

The Maoist communists believed that self-interest is the source of evil and that moral destruction lies deep in the self of the individual as a sort of "original weakness".[101] Now, most Chinese liberal-minded intellectuals such as Yan Jiaqi, Hu Ping and Jin Guantao (and to some degree, even Deng Xiaoping, see Chapter 2) share the view that if self-interest does not take the form of first-person dictatorship -- everyone is to serve my interests -- it should not be regarded as evil but rather as an undifferentiated energy which might, therefore, be seen as neutral in the sense that it can become either a positive or negative force depending on the direction of the guidance of institutional arrangements (Yan, 1988, 98-9). Hence, Hu Ping believes that any revolutionary project which goes against individual interests will fail in the end. To seek to advance personal interests is not necessarily evil, rather those who block this are doing evil (Hu Ping, *China Spring*, April, 1988, 59, June, 1988, 52, and July, 1988, 4). Jin Guantao also

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[99]For a critique of neo-authoritarianism, see Liu Jun & Li Lin, 1989, Part 2.

[100]For example, Kant (1960, 24-5) distinguishes natural evil from moral evil; Milo (1984, ix) distinguishes perverse wickedness from preferential wickedness; Schmitt (1976, 96) regards evil not only as dangerous, corrupt, weak, cowardly and stupid, but as rude, instinctive, vital and irrational. Rawls (1971, 439) remarks, what moves evil humans is the love of injustice; they delight in the impotence and humiliation of those subject to them.

[101]Further, wine, anger, women, and money are seen as four "enchantments of self-destruction", see Elvin, 1991, 41.

argues that once rules, private interests and social differences are denied, some problems associated with self-interest might be overcome, but society itself will be destroyed. The social problems arising from concern with private interests can only be resolved through the establishment of new and fair institutions and of meta-rules which define how we change rules (Jin, 1990, 31). What is more important is that, while Maoism attempts to demolish private ownership on the ground that it creates and preserves private and individual motivations, Chinese liberals favour a privatisation programme on the ground that private interests are legitimately justified and are enormous energies for productivity.

Yan Jiaqi (1988, 92-8) defines evil as imperfection, corruption, weakness and being liable to make mistakes. He gives the following examples as evil: abuse of power, corruption and uncivilized service. Yan also cites Machiavelli's ideas that human nature is, generally speaking, evil; that people can be supposed to be often beset by folly and wickedness, ordinary depravity, and impulses of rage, resentment, jealousy, avarice, and of irregular and violent propensities; and that the Prince does not need to keep his word (Machiavelli, 1961). Yan further argues, that what Machiavelli did was to reveal the absence of regularity in political behavior. Today, Yan continues to argue, it has become increasingly possible, through the use of scientific methods, to study movements that are without regularity; and through procedures and the institutionalization of politics, to avoid large-scale, organized violence and war (Yan, 1988, Chap. 10). It is the awareness of the worst consequences of the combination of evil behaviour and unlimited power that led Yan to the idea of democratic institutions. Yan (1986c) quotes Madison but does not mention his name: if people were angels, no government would be necessary. If angels were to govern the ruled, neither external nor internal controls on government would be necessary (Madison, 1961, 322). Yan's view of evil stated above is universally characteristic in the sense that everyone can potentially be evil.

While Yan Jiaqi presupposes the idea of potentially universal evil, Liao Xun (1987) rejects this. Liao has argued that assuming that human beings are potentially evil does not mean that all people are actually evil, but that anyone who holds power will become evil if there are no inbuilt checks on that power. In Liao's understanding, evil applies narrowly to the power

holders rather than to the masses. This is of great significance for different types of institutional design (I will discuss this in Section 4).

Hu Ping emphasizes that evil ought to be distinguished as actual and potential. The Maoist communists failed to make a distinction between actual and potential evil so that they even punished those who were regarded as potentially evil. For Hu Ping, liberal institutional design should minimize potential evil at a psychological level, and prevent it from becoming a destructive force in political life. However, civil and criminal penalties are not imposed on <u>potentially</u> evil persons, nor are such people denied their rights in the name of controlling potential evil (Hu Ping, 1988). This feature of liberal institutional design differs from that of autocratic institutional design which attempts to suppress all potential evil by depriving individuals of civil and political rights.

Hu Ping also locates evil not only in human actions but in specific organization and ideology. Hu regards totalitarian institutional arrangements as evil because they favour a structure of over-centralized power and deny civil and political rights. The original purpose of autocracy, as Hu argues, was to do good, but it monopolized the power to do good, and prevented others from doing good. This led to the suppression of others who were willing to do good, and consequently created evils (Hu Ping, *China Spring*, May 1988, 33). Also, as Friedman (1989, 173) correctly observes, Maoism can be understood as an attempt to avoid certain evils perpetuated in Stalinism. Maoism, however, misidentified the source of those evils. Mao saw his "opponents" as willingly taking the "capitalist road" and looking for supreme power. Furthermore, Jin Guantao (1990, 29-30) points out, Mao even regarded political rules, regulations and bureaucratic organs as so called "bourgeois rights" and as sources of "revisionism"; consequently it led to the smashing of Party and governmental organizations during the early period of the Cultural Revolution.

The over-centralized power which, in the Maoist view, is needed to demolish all evil, is nothing more than an institutionalized evil, or evil

structure[102] in the sense that the rationalized party organization justified by ideology does have at its disposal the means to carry out any immoral act and to anaesthesise the moral sensitivities of those whom it makes its agents. In other words, the Party is capable of mobilizing respectable and rational actors in the service of an evil action. Worse still, people in positions of power and in public office do not feel guilty because even if they do wrong, they take the view that if they refuse to do it, others will not. Thus they continue to do what might be regarded as evil. As a result, the new and strongest centre of political power created new occasions for and temptations to injustice. This was also true of Nazi Germany; the holocaust, as Bauman comments, was a rational project of social engineering. Its evil lay not in irrational outbursts of racist feeling, but in the mobilization of bureaucracy and technology in the service of a totally evil and calculated purpose, the extinction of six million Jews (Bauman in Rex, 1991, 168).

Further, Hu Ping (1988) identifies the evil of the official Chinese ideology. Maoism holds an absolute idea of goodness associated with the ideal of a communist society. The pretension of scientific rationality in Maoism denies the validity of moral law and private ownership in terms of historical materialism, and prefers "substantive justice" to procedure, revolutionary cause to individual liberty and life. Consequently it denies the rights of others to have their own dissident views of goodness and evil. Thus the denial of the rights of others and even killing can be justified in terms of the revolutionary enterprise; similarly the failure to keep a promise can be justified in terms of substantive justice. For example, that Wang Shiwei, a liberal-mined intellectual, who attempted to maintain his own independent position, was killed was seen as justified because Wang did not obey the Party and he wanted "bourgeois freedom" in the Yanan Rectification Movement. Also, that the Red Army sold opium in Manchuria in the 1930-40s was again seen as justified by the need to raise money in support of the revolutionary enterprise.

We may claim that this is an ideological evil which is associated with the notion of salvation, and with the utopian ideal of the perfect human. It sought a perfect system but unfortunately did create evils. The Maoist

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[102]One of the wall-poster headings in the democratic movement in 1989 was "the evil of the Stalinist political system". See Gittings, 1990, 270.

doctrine of the "dictatorship of the proletariat" in reality led to an absolute monopoly of power. Communism is made more dangerous than Nazism in the sense that its utopian illusions provide a moral facade for the most unscrupulous political policies and for those who have evil motivations to do whatever they want (also see Hu Ping, *China Spring*, April 1988, 58). Even worse, those such as the Red Guards who beat their teachers to death in the Cultural Revolution, did not think what they did was evil, rather it was for the good of the whole society. They should have felt very guilty indeed, but felt nothing of the sort at that time.[103] What had facilitated, justified and even created this perverse consciousness was Mao's goal-based morality. As Madsen correctly argues, Maoism with its emphasis on absolute purity and selfishness in fact precluded any kind of moral order. In the interest of absolute morality, it led to absolute immorality (Madsen, 1984). The history of the Communist movement reveals that dissidents were tortured and killed in the name of defending the Marxist faith (Hu Ping, *China Spring*, May 1988, 33). And, a moral indoctrination movement has forced the Chinese to confess their "sin", that they have not yet rid themselves of their self-interests. It is this guilt mechanism that serves to control evil among the populace: it makes people feel guilty, therefore they always think that they are in error rather than that the Party makes mistakes.[104]

Drawing on the above idea of organizational and ideological evils, I would like to elaborate on the implicit idea of evil held by Chinese liberals; that is, any doctrine, organization and action which has the actual capacity to deny, violate and deprive others of basic civil and political rights except when a reasonable limitation on rights is needed[105] is regarded as evil. The reasons are:

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[103]A similar case is that of Eichmann who played a major role in the Final Solution of six million Jews. He was not a dirty bastard in the depths of his heart. He did not feel guilty before the law. Rather he declared with great emphasis that he had lived his whole life according to Kant's moral precepts, and especially according to a Kantian definition of duty. He though he was a law-abiding citizen. Arendt comments that Eichmann gives us a lesson of the fearsome, word-and-thought-defying banality of evil (Arendt, 1963, 18, 120, 231).

[104]See Orville Schell, *Human Rights Tribune*, Vol. 2, No. 3, June 1991, 30. This guilty mechanism reminds us of the practices of confession and penitence organized by the church in the Middle Ages. See Jean Delumeau, 1990.

[105]As for the issue of limitation on rights, see Chapter 4 and He Baogang, 1991c.

(1)   The nature of the evil of Communist organizations and ideology, and the first step towards evil in Communist China, was in fact to deny, violate and deprive others of their rights.

(2)   Most evil behaviours evidence, at least, minimally the feature of violation of rights by such means as arbitrary arrest and torture.

(3)   This idea of evil is formulated in order to struggle against the tyranny of Communist rule. That is the reason why the concept of evil in terms of violation of human rights is similar to Locke's concept of tyranny in which political power is said to be exercised in the absence of rights.[106] Also, this understanding of evil implies and favours the idea of a rights-based morality which I will discuss in Chapter 7.

(4)   This conception of evil does not approach the Christian idea of original sin, or the Marxist ontological view of evil as being opposite to goodness. It allows for moral pluralist views of evil; for example, the question of whether or not abortion is an evil is open to debate. Given the fact of pluralist societies, it is difficult to agree on one definition of evil. Nevertheless, a minimalist view of evil as denial of rights has to be accepted at a meta-theoretical level, because it itself defends the idea that human beings have the right to have even their own views of evil as long as they accept the trump of rights. If one denies the trump of rights, then he or she risks being deprived of the right to have his or her own view of evil; because the official Chinese Marxist ontological view of good and evil would not allow people to question the doctrine itself on the basis that the doctrine claims to be absolutely true and provides a correct answer for them. Here one of the the great intellectual virtues of the liberal conception of evil is that it is favourable to institutional protection of the rights of all and is not sympathetic to despotism when compared with the Chinese Marxist view of evil.

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[106]Locke states that tyranny is the exercise of power beyond right, which no body can have a right to. See, Locke, 1956, 100. Locke's concept of tyranny, see Hindess, 1994, Chapter 3.

3. Justification for Taking Evil as a Starting-Point[107]

Yan Jiaqi, Hu Ping and Liao Xun have rejected the assumption of the goodness and perfection of human nature which has facilitated Mao Zedong's attempts to seek a perfect utopian society, and which led ironically to evil consequences during the Cultural Revolution. This rejection is on the grounds of ineradicable selfish instincts, the utopian nature of perfectionism, the danger of a partial check system and the ineffectiveness of the moral approach which Section 1 has already discussed. The further question raised here is what is wrong with Mao's idea of goodness where it concerns institutional design. There are, at least, the following problems. First, if one thinks that goodness is the greatest and highest value, he or she would regard it as universal; in other words, those who think that they represent goodness would require it to be increasingly acceptable by members of the community. Obviously, for Chinese communists the ideal of a communist society is a great goodness for China. The CCP, therefore, has been imposing the value of a communist society on the Chinese both by propaganda and by force when faced with resistance. To force people to believe in this value and to make self-sacrifices for it is moved by the universalization of goodness and easily justified by such an apparently good intention.

Second, Mao's assumption of goodness has led to destruction of virtue in totalitarian institutional design. Let me examine the social logic of this assertion. Mao's assumption of goodness implies a notion of hierarchical moral order, by which I mean that virtuous and honest people are supreme over "dishonest" people (see Section 1). Hence moral persons have a legitimate duty to enlighten these "evil" persons and deserve to rule over them. According to these ideas, totalitarian institutions are designed in favour of so called moral persons who have political privileges to mobilize the masses and who have a justification for ignoring the rights of "immoral persons". That was exactly what the vulgar class determinism (which I have mentioned in Section 1) did in the early period of the Cultural Revolution; that is, it was the moral obligation of members of the good classes to remain segregated from members of the bad classes and continuously hold them

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[107]Also see Appendix.

suspect, even when their behaviour appeared correct. Members of the good classes may also humiliate and physically punish them at the slightest provocation (See, Dittmer and Chen, 1981, 112-3, 115). As a result, protection of the rights of "bad class" is ignore, and even overridden. Also, the so-called moral persons tend to be corrupt because of a lack of institutional checks. In the end, a moral crisis occurs: people no longer believe in a "revolutionary morality"; a moral vacuum emerges and virtue is destroyed. This is exactly what has happened in contemporary China.

Having learnt a lesson from the use of goodness as a starting points, Yan Jiaqi, Hu Ping and Liao Xun have supposed potential evil rather than goodness as a premise for democratic institutions and looked for a relatively better system rather than an ideally perfect political system.

However, the three writers have justified the idea of potential evil in different ways. Yan Jiaqi's justification is normatively oriented. For Yan Jiaqi (1986c), the supposition of potential evil is not a question of whether or not human beings are born evil or good; this in fact is a meaningless, old scholastic question. The supposition of evil is indeed more about finding a normative starting-point than probing the truth of human nature, because both the ideas that humans are evil and that humans are good have empirical evidence in everyday life; what does matter is the utility of assuming the existence of evil action as an intellectual premise (Yan Jiaqi, 1986c). Liao Xun provides the practical argument that the supposition of potential evil helps us question all, even national heroes, veteran revolutionaries of great distinction and "great people". It also compels us to design an institutional check system to control evil, and fair institutional arrangements to help transform evil into a positive force in political life (Liao Xun, 1987, 8-9). Hu Ping's justification of the idea of potential evil is very careful and takes a balanced position. Hu argues that the design of a cadre system should be based on the assumption that power-holders tend to be corrupt, rather than the ideal of "honest and upright officials". On the other hand, Hu argues that to select and appoint cadres one needs to look at whether or not persons are honest and upright (Hu Ping, *China Spring*, June, 1988, 53). Further Hu (1990b, 42-3) argues that democratic politics is not merely based on the assumption of evil, as I will discuss later.

The above justifications by the three writers are occasional and unsystematic. To reconstruct their ideas of justification, I would like to provide the following systematic, coherent and synthetic justification. Hegel (1967, 231) has argued that the Christian doctrine that humans are by nature evil is loftier than the other which takes them to be by nature good, because the doctrine of original sin holds that humans are free agents capable of not allowing themselves to be determined by natural impulse. However, Hegel (1967, 175) has rejected the attempt to take the merely negative as a starting-point and to exalt to the first place the volition of evil, because the evil-starting-point approach is hostile to his favouring of the unification of powers. I disagree with Hegel's rejection of the approach, but agree with his idea of the strength of the doctrine of evil. Nevertheless I hold different arguments for the supposition of potentially universal evil.

(1) Holmes (1990, 283-5) has investigated Hume's justification for the assumption of universal self-interest: that to say <u>all</u> individuals are motivated by self-interest is to universalize the status of the common human among other seventeenth-and eighteenth-century thinkers. To acknowledge the legitimacy of interests is to say that all citizens, no matter what their socially ascribed status, have concerns that are worthy of attention. This justification is relevant here. Institutional design requires formal justice of equal treatment, that is, people should be equally treated not only in the sense that people have the same rights and opportunities but also in the sense that <u>all</u> persons ought to be supposed to be evil. Political morality then would matter less with a presupposition of universal goodness, and more with a supposition of universal evil, because while the former favours a partial check system; the latter leads to the idea of complete check system.

(2) Human behaviour is fundamentally uncertain and contingent in different times and different contexts. However, there is a constitutional arrangement that aims to reduce the degree of uncertainty. In this respect, Chinese liberals have chosen democratic procedures and the protection of basic human rights so as to ensure a minimal degree of security and certainty in political life. Further, they have also adopted the worst case strategy in order to rule out the worst outcome from uncertainty. In relation to the problem of uncertainty, there are cognitive limits to knowing who is evil and good. As well we have the problem of defining a criterion for

distinguishing good from evil due to our disagreement about moral issues. Given the uncertainty of human behaviour, the limits of knowledge and disagreement about moral judgments, one strategy is to assume, as Hume did (1964, 117-9), that <u>everyone</u> ought to be supposed to be a knave. This strategy provides us with a <u>simple</u> model to address the serious and fundamental problem of evil involved in institutional arrangements, and to help us to focus on the issue of how political stability can be sustained in the worst situation. It highlights the worst possible consequences of evil such as civil war. This awareness of the above problem can force us to keep eternal vigilance over evil, because victory against evil is never final.

Take the example of security checks. All people who travel by airplane are required to pass through an X-ray door and to put their personal bags on a check machine. What does this mean? It implies that each person is assumed to be one who might carry a weapon. In fact, it is well known that only a very marginal percentage of people will risk doing so. But technically since we cannot tell those who carry weapons from those who do not carry weapons, everyone is assumed to be a potential weapon carrier so that all are subject to checks by a set of security arrangements.

(3) The supposition of potentially universal evil certainly is <u>exaggerated</u> in being applied to humans universally as part of the character of the race (see Kant, 1960, 24). Exaggerated or not the supposition has its value. As this claim assumes that even those who attempt to deal with the problem of evil could potentially be evil, there would be no excuse for attempting to deprive others of their rights under the guise of resolving the problem of evil.

(4) The supposition of potential evil strengthens our fundamental scepticism of any perfect political system, and finally helps us realize the limitations of politics. It also excludes Platonic and Confucian efforts to seek for perfection of politics, because the evil side of human action sets powerful limitations on moral and political perfectionism. Consequently, this supposition of evil leads Chinese liberals such as Ding Chu, to a belief that we would rather have two evil people who check each other than an

angel without check.[108] In short, the supposition of evil is reasonable and useful in democratic political thinking.

In placing quotation marks around the term "human nature," Yan Jiaqi indicates his reserve in using this term. Hu Ping is more explicit in arguing that the idea that human nature is evil is a necessary but not sufficient basis for democracy, although he still uses the term "human nature" in his writings. Here I would make the point clearly: the idea of potential evil does not assume the idea that human nature is evil Further, I would argue, the notion that the concept of human nature is of value for democratic thinking should be rejected on the following grounds:

(1) Any intellectual foundation for democracy in terms of human nature is misleading, because the assumption that humans have an essence is unproved; and there is no proof of a fixed human nature, or of a fixed correspondence between human nature and normative supposition. It is impossible for one to sum up one or two essences of human nature and to apply these in all places and all times.

(2) There is no need for theories of democracy to get "bogged" down in the hopeless morass of the question of the existence and character of human nature. To assume the potential for evil action rather than the evil of human nature is enough for us to argue for democratic institutions.

One charge that might be brought against the above supposition of potential evil is that this supposition is only an emotional reaction to Communist rule. This might be extended by the assertion that if the Chinese Communist rule were to end, the idea of evil might die away. Thus the Chinese liberals' search for a deep foundation for democratic theory would appear at best precipitate. An opponent might even draw support from the fact that the problem of evil is less discussed by current Western political theorists such as John Rawls than by classical political theorists such as Hobbes, Locke, Hume and the Federalists.

This charge is not convincing because the concept of potential evil employed by liberals such as Hu Ping is not only opposed to the Chinese

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[108]*China Spring*, No. 79, December 1989, 37.

Communist rule, but to the abuse of democratic powers among democrats overseas. The concept of potential evil is a useful tool with which to analyze the serious problems associated with the process of transition to democracy. However, the charge raises an interesting question: if contemporary Western political theorists are less interested in the problem of evil, does this constitute a reason to reject the use of the concept of evil held by Chinese liberals? Further, why has Hu Ping quoted the writings of Hobbes and Locke, and Yan Jiaqi cited Madison without appealing to the writings of contemporary political theorists such as those of John Rawls? In other words, why are Hu Ping and Yan Jiaqi more interested in classic than contemporary Western political theories?

Take the example of the limits to John Rawls's idea of the original position being applied in China. Rawls has discussed the evil man (1971, 439) envy (1971, 80-1, 530-41), the free-rider (1971, 267-70), egoism (1971, 124, 136, 354, 388, 570), the militant man and action (1971, 367), the intolerant's exploitation of allegiance to equal liberty (1971, 388) and deception and hypocrisy (1971, 570). However, all consideration of the evil side of human action is excluded in Rawls' idea of the original position because, in Rawls' theory of justice, the choice of a conception of justice should not be affected by accidental contingencies and certain psychological propensities (Rawls, 1971, 530). For example, the issue of envy is not discussed until the two principles of justice have been chosen (Rawls, 1971, 531). As a result, Rawls rejects the place of the notion of evil in his idea of the original position and presupposes that human beings have a potential sense of justice. This rejection sets limits on the applicability of Rawls' ideal of the person and of well-ordered society in China. If the feasibility of the ideal of the person, as Rawls argues (1980, 534), is limited by the capacities of human nature, I would argue that Rawls's conception of the original position is limited by his absence of the idea of evil. As Hu Ping has argued, if the psychological motive of being eager to excel in everything is introduced in to Rawls's idea of the original position, some people might choose to be wrong-doers rather than favour the two justice principles.[109] The fact that Rawls has not given enough attention to the conception of evil limits the application of his idea of the original position in the countries where the problem of evil is an

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[109]Hu made this point in my interview with him in New York on 10th January 1993.

exigent issue in political life. That is why Rawls has not been quoted by Chinese liberals such as Hu Ping in their consideration of the problem of evil.[110]

Conversely, on the issue of evil, classical political theories are more relevant to Chinese liberals than John Rawls's theory of justice because of the nature of the Chinese social context. There are obvious parallelisms in the argument against absolutism in the writings of John Locke and that against totalitarianism in the writings of Hu Ping, and in considering of the issues of how to prevent civil war and how to establish federal democracy in the writings of the Federalists and of Yan Jiaqi respectively.

It should be made clear that the above discussion of the justifications of the supposition of potentially universal evil does not reject the assumption of a portion of honest and virtuous people as meaningless; in fact this assumption can help to explain the feasibility of the institutions designed for potential evil.

Take the problem of the feasibility of an institutional check system. Possibly, evil people have an interest in obeying rules in a co-operative game, otherwise they will suffer or somehow lose. But we can not expect that evil persons will strictly comply with rules that they agree to set up in a non-cooperative game. And nothing in the nature of evil persons will inspire conformity to normative rules. Thus we design a coercive institution forcing evil persons to obey rules. Nevertheless, if coercers such as policemen and judges themselves are evil, how can we ensure that the coercive institution will work, and how can we ensure that institutionally protected rights will be respected?

Although this problem has no easy solution, it might be resolved, or at least reduced, as Yan Jiaqi argues, by the division of powers -- a method of counterpoise which is capable of the skilful counterbalancing of refractory and separately antagonistic evils. This is similar to Madison's (1961, 322)

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[110]It should be made clear that Hu's and my argument is not against Rawls's theory itself but against the use of Rawls's idea of the original position in China. It is unfair to charge Rawls with failing to take the problem of evil into account, because the issue of civil war and the danger of totalitarianism, which are major concerns for Chinese liberals, are not problems for him. Also, Rawls's general defence of the priority of equal liberties is relevant to Chinese debates over political values which I have often cited in my work.

argument that ambition must be made to counteract ambition; and the interests of humans must be connected with the constitutional rights. By increasing the price of doing harm as well as rewarding doing good, democratic mechanisms indeed help to reduce evil. They also contrive an artificial identification of private and public interest. This can make conflicting private interests subservient to the public interest (Yan, 1988, 97-9). Thus in framing a political constitution, we can construct a relatively good whole out of bad parts.

Hu Ping and Yan Jiaqi also employ the notion of goodness as a solution to the above problem. While recognizing that the establishment of democracy in China necessitates an analysis of evil human action, they believe that human beings are capable of goodness. They argue further that it is this goodness on which the possibility of democracy in China depends.[111] Hu Ping, who insists on a high place for noble values and goodness in democratic theory, argues that the fact that democratic institutions are devised to deal with the problem of evil does not imply that democratic politics is merely based on the supposition of evil. Hu continues to argue that the idea that democratic institutions are merely based on the assumption of evil is one-sided, incomplete and dangerous, and those who hold that idea misunderstand the Western liberal theory of democracy and the idea of original sin. Hu is aware that given that all people are evil, and that institutions are operated by evil persons, logically democratic institutions can not guarantee basic human rights, and the only choice is autocracy. Inspired by Madison, Hu favours the middle case[112] where all individuals are neither devils nor angels; it is this middle case that makes democratic institutions feasible and necessary (Hu Ping, 1990b, 42-3, 1991b, 118).[113] Thus Hu Ping's position is in line with Alexander Hamilton (1961, 458) who has pointed out, "the institution of delegated power implies that

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[111]See Hu Ping, 1988, 268; 1990b, 43; Yan Jiaqi, 1986c; 1987, 287-91. Also see *Democratic China*, No. 1, 1990, 6-7; *Zhongyang ribao*, Taiwan, 15 May 1990.

[112]The idea of the middle case fits well with the Chinese people's view that the majority of human beings are good and that only a minority are evil. For example, with the Chinese, a high proportion selects the Good orientation and a lower proportion the evil orientation. In a survey conducted in rural Taiwan in 1983, 49.5% of the responses of farmers characterized human nature as mostly good, 20.7% a mixture of good and evil, 14.9% all good, 11.0 % neutral, 4.0 % mostly evil, and 0.0% all evil. See, Jiang, 1987, 241.

[113]Hu also informs me of this in his letter to me.

there is a portion of virtue and honor among mankind, which may be a reasonable foundation of confidence".

Yan Jiaqi holds the same view as Hu Ping. Yan argues that the concept of "goodness" still serves as a starting-point for the advocacy of good public spirit, and awareness of this goodness is necessary for implementing good institutions and laws. Furthermore, only through public media rather than administrative power can a good public spirit occur (Yan Jiaqi, 1986c).

It should be made clear that the role of the notion of goodness employed by Chinese liberals is different from that of the Maoist one; it does not serve as a main starting-point as Maoism did for democratic institutional design. Also, as Yan Jiaqi (1986c) claims, the notion of goodness is discussed by him in the context of institutionalization rather in the context of moral education.

4. Evil and Neo-Authoritarian Institutional Design[114]

If the idea of evil is taken as a starting-point for institutional design, does this necessarily lead to democratic thinking? While Yan Jiaqi is silent on this question, Hu Ping (1991b, 118) realizes that there is no simple and single logical connection between the conception of evil and democratic institutional design. Also, there is a gap between ethical foundation and practical institutions. Further, Liao Xun clearly argues that if the concept of evil is to constitute a starting-point for institutional design, it should at least be remembered that it can lead to either autocratic or democratic institutions. As Liao (1987) observes, while autocratic institutional design aims to hinder the evil of the masses, democratic institutional design attempts to hinder the evil of the power-holders. Here it is interesting to mention that both dictatorship and anarchy, according to Schmitt, also appeal to the idea of evil. Donoso Cortés believes that in the face of radical evil the only solution is dictatorship; while with the aid of the axiom of the good human and corrupt government, an anarchist argues that all

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[114]Too many Chinese essays have argued for and against neo-authoritarianism. See Cheng Yishen 1989; Liu Jun and Li Lin 1989; Ma Shuyun 1990, Rosen, 1993 and Sautman, 1992. Here I limit my discussion of neo-authoritarian institutional design to how it concerns evil.

governments must be opposed for the reason that every government is a dictatorship (Schmitt, 1985a, 66).

Hobbes's absolute government, Machiavelli's (1961) powerful and skilful prince, Schmitt's (1985a) commissarial dictatorship and Han Fei's over-centralized government (He, 1990b), all share a common idea: given that human beings are basically evil and dangerous, a stable political order is possible only under a strong man (or a sovereign authority) sufficiently powerful to control the evil of human behaviour and to coerce free riders into doing their part so as to avoid the war of all against all. Today, Chinese neo-authoritanians such as Zhang Binjiu (1989) follow the above tradition. Zhang fears that democratic institutions may provide an open channel for civil strife. The alternative is, according to Zhang, a neo-authoritarian government characterized as a model of semi-centralized power so as to maintain social order in the transitional period.

Zhang's neo-authoritarian project assumes that the Chinese are selfish, aggressive, destructive, liars and tend to be free-riders; in short, they are not ready for democracy.[115] It also assumes that cadres are willing to seek supreme power at all costs; and that only a few enlightened leaders are good. The means to resolve the problem of evil, in the authoritarian view, is to centralize political power in the hands of a few enlightened leaders. The consequence of this could be to deprive the masses of civil and political rights, as is made clear in the above argument. Thus while neo-authoritarian institutional design attempts to deprive the masses of civil and political rights; it aims to grant and protect economic rights of the masses so as to ensure economic development.

This project of a neo-authoritarian government creates the following problems:

(1) The greatest weakness of an authoritarian institutional arrangement is that it invests individual power in one person or a few who are presupposed to be good people. As Hu Ping argues, it will certainly lead to autocracy and will not necessarily lead to enlightened rule. This in fact

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[115]This assumption is certainly wrong. I have examined the emergent democratic culture in China. See He, 1992b.

depends on personality and historical fortuitousness (Hu Ping, 1988, 176; 1990a, 151-63). And if leaders become evil, the people have no rights or institutional mechanisms to use against them, and the institutions will be so prone to corruption and inefficiency. The assumption of new enlightened leaders who are good is too optimistic about human nature. Imperfection, I argue, is inherent in human action. As Hume has already argued convincingly: "those whom we trust for rulers, do not immediately become of a superior nature to the rest of human beings. We may often expect, from the irregularity of human action, that they will neglect even the public interests in the execution of justice, and be transported by their passions into all the excesses of cruelty and ambition" (Hume, 1949b, 251).

(2) Authoritarian institutional arrangements would potentially create social and political disorder due to the lack of institutions and proper procedures to deal with the evil of leaders. There might be also the evil of a permanent succession crisis that continually threatens chaos or even civil war when a ruler dies in an authoritarian system.[116]

(3) While allowing limited freedom in economic life, the authoritarian institutional arrangement still attempts to maintain ideological control and to suppress the aggression of the masses. Thus there is still a lack of institutional channels to "release" the aggression; a rational management of aggression is still a serious problem. If chance allowed, as in the case of the death of Hu Yaobang and the subsequent popular demonstration in 1989, suppressed aggression would turn out to be a destructive force.[117] As Pye (1988, 128) points out, when disorder prevails, passion gets out of hand, aggression surfaces and panic is likely.

In short, as Yan Jiaqi (1992c, 313-7) argues, neo-authoritarianism is nothing but a modern version of an enlightened autocracy. The Beijing Massacre in 1989 proves its impracticality. What China needs is the

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[116] I acknowledge that although democracy is defined by Yan Jiaqi as fair procedures, with general rules that permit a peaceful succession, the problem of succession is far from being resolved at this stage of the process of democratization.

[117] Feng Shengbao points out the negative effects of the students' demonstration in 1989 and argues against the strategy of creating "a political earthquake", see Zhishi fenzi (Chinese Intellectuals), Vol. 6, No. 4, 1991, 56.

impersonal authority of the constitution and law which fully protects civil and political rights, rather than a personalized authority.

5. Arguments For Democratic Principles and Institutions

The fact that Communist ideology first attempted to resolve the problem of evil but in the end became a new source of evil raises the following question or requirement, that is, how does the liberal-democratic idea or principle overcome the problem of being abused by a despot while not constituting a new source of evil? Here, the principles of the priority of equal liberty and of fair procedures meet the above demand and serve us best as a guide to democratic institutional design.

Hu Ping (1988, 1991a), echoing Berlin, has argued that the Marxist idea of positive liberty is to be condemned not only because of what it entails but also because it has been used to provide a specious disguise and basic theoretical foundation for brutal tyranny (see Berlin, 1969, 131, and Hu Ping, 1991a, No. 4, 51). Of course, the ideas of equal liberty and fair procedures have sometimes been used in that way. But nevertheless these two ideas have their own capacity to resist being abused by trouble-making intellectuals and politicians to justify social evil and leave us significantly less vulnerable to such temptations. The reason is that the principle of the priority of rights over truth, as Hu Ping argues, is capable of defending the right to be wrong[118] (Hu, 1988, He, 1991b). Conversely, Chinese Marxist ideology, which is claimed to be a science of ideas, emphasizes the priority of truth over rights, thus it is potentially capable of depriving others of their rights, particularly those who hold dissident views in terms of truth, the explanatory power of which is manipulated by the Party. Chinese Marxist ideology, therefore, has the inherent fault of hierarchy and lacks an internal mechanism against being abused by a despot (also see Madsen, 1984).

While Hu Ping often argues for the idea of the priority of liberty, Yan Jiaqi always focuses on proceduralism. For Yan, the principle of fair procedure is capable of withstanding abuse and correcting mistakes because it contains a self-correcting procedure. Yan further argues that we need not

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[118]Wang Juntao has also defended the right to make counter-revolutionary statements, including those which are against the Party (Gittings, 1990, 154).

appeal to the direct or strategic use of brutal force, but rather to a set of prescribed procedures as a court of appeal that is free from coercion (Yan, 1986a, 1988, 1989). This idea of Yan's is the same as Habermas' idea that to settle disputed claims participants test a problematic validity claim with reasons, and only with reasons (Habermas, 1984, 25).

In short, the ideas of the priority of equal liberty and fair procedure are not compatible with any totalitarian claim to truth, in particular, with any despotism. Consequently these can help to reduce the number of cases of abuse although the use of theories depends on the user rather than the theories themselves.[119]

The record of Chinese communist institutional design to deal with the problem of evil raises the following questions or requirements: how does liberal democratic institutional design resolve the problem of evil, in particular the problem of institutional evil, while not constituting a new evil? Liberal democratic institutional design based on the minimalist conception of evil in terms of violation of rights meets the above demand in the following ways.

(i) *For an institutional guarantee of rights*: The democratic way to control evil is to provide an institutional guarantee of political liberties so as to restrict attempts to violate the liberty and lives of others. However, the difficult question is, if we know that evil persons might abuse rights in order to do evil things, do we have the right to deprive evil persons of civil and political rights? Should evil persons still enjoy rights granted by a liberal constitution? Here the assumption that some people are evil and others are good does not provide a moral justification for "the good person" to deprive "the evil person" of his or her rights, because such good people are also supposed to be potentially evil. The claim that all humans are potentially evil denies the right of the "good person" to deprive others of their rights. There is no legitimate reason for depriving evil persons of their rights in terms of potential evil; to do this is to risk depriving all of us of our rights.

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[119] I acknowledge that no matter how well theories are constructed, there is still the possibility of abusing the theories at a practical level. For example, Locke's notion of the autonomous and rational person in his theory of rights was abused to justify depriving colonized people of their rights.

Also if potentially evil persons are granted civil and political rights, and if an evil person attempts to do bad things to other evil persons, he or she will be resisted by these evil persons who have rights to fight back. It is the institutional protection of the rights of all (including potentially evil persons) that might counterbalance the refractory and separately antagonistic evils. The great security against evil consists in giving to good persons as well as to evil persons the basic political right to resist encroachments on their rights by other evil persons. As to the question of do we have the right to limit the rights of <u>actual</u> evil persons, the answer is yes, because evil persons violate the principle of equal rights and they do harm to others.[120]

(ii) *For a power-check system*: Evil people might manipulate law-makers to deprive others of their liberties. The state itself might be perhaps the greatest threat to the individual's liberty. Thus institutional devices to divide and separate powers are favoured by Chinese liberals such as Yan Jiaqi, to struggle against state excesses, as well as against the evil of elite manipulation. Montesquieu (1989, 155, 187) has argued that political liberty is present only when power is not abused; and that it is formed by a certain distribution of the three powers, so that one cannot abuse power. The converse of Montesquieu's thesis is true when applied to China. The CCP has united legislative power with executive power; thus there are no liberties although liberties are granted by the Constitution, because the Party that makes laws will execute them. Also, when the Party commands the legal power of the judge which is not separate from legislative power or executive power, the power of the Party over the lives and liberty of the citizens was and will continue to be arbitrary, for the judge is both the legislative and the executive, and is capable of the use of force. It was a lack of division of power and of democratic institutions within the Party that, as Wang Huning (1986) establishes, caused the Cultural Revolution. That is why Yan (1988, 1989) advocates the fourfold division of power in China as a major task of political reform: between the people and the State, between the Party and the

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[120]I will discuss the grounds and the rights of liberal governments to repress anti-constitutional parties in Chapter 6.

government, between the government and social organizations, and finally between the central and local governments. Yan Jiaqi (1989) and Hu Ping (1988) have also emphasized the importance of the freedom of the press and of civil society, which are seen as socially separated powers. Whether or not liberty will be preserved depends less upon the niceties of constitutional construction than upon the extent to which there are independent sources of power in civil society. As Yan (1988) realizes, Watergate has demonstrated that the press is capable of acting as the fourth branch of government, though it may be more effective as a means of checking power than as a contributor to viable government if freedom of the press is guaranteed. In conclusion, the principle of preventing evil, as Liao Xun (1987) argues, favours a power-check system and should be a guide for current political reforms.

(iii) *For restrictive and regulative institutions*: Democratic institutions which have been seen by Chinese liberal-minded intellectual such as Su Wei (*Democratic China*, No. 2, 1990, 44) as means to deal with or control evil can fall into two kinds. A restrictive institutional design attempts to control evil through the use of types of coercion such as civil and criminal penalties; a regulative institutional design attempts to have evil play a positive role and to nurture civil virtue which is seen to be law-abiding.

(1) Restrictive institutions: The effects of some rulers' innate drives, such as the pleasure of aggression and destruction, and the tendency to corruption, can be effectively checked by the construction of a set of political institutions, i.e., through constitutional checks and periodic elections, so as to prevent these drives from "getting out of hand", and hence, prevent or set a limit on, as Yan (1986c) argues, a combination of evil and power. Democracy reduces the ability of rulers to hide errors so as to continue in a a destructive direction and thereby to compound errors into disasters, as Mao did in 1959, manufacturing the most deadly famine in human history (Friedman, 1993b). Watergate and the resignation of Nixon have demonstrated that when evil people in high positions, even the president, abuse the public trust placed in them, the multiple checks in a government of divided powers can bring such people down.

(2) Regulative institutions or institutional guides: It is evident that we can not eradicate potentially evil instincts, but we are capable of controlling evil by an alteration of its direction[121]. Well-established institutions can compel evil people do good things. On the part of evil leaders, the politically open competition systems are so constituted that they can aggregate the self-interested rationality of non-virtuous politicians to nevertheless achieve virtuous ends in political life. Thus lust for power can be guided adroitly to serve the public in well-established institutions. Zhang Junhong (1989, 32), the general secretary of the Democratic Progress Party in Taiwan, argues for institutions which properly guide the fight for political achievements rather than the struggle for narrow interests. It might also be argued that although the problem of evil does pose difficulties for Chinese democratization, evil persons, under institutional constraints and historically fortuitous conditions, might well choose to play the democratic card and push for Chinese democratization.

However, liberal democratic institutional arrangements, I acknowledge, can not guarantee the functions discussed above because evil persons might find ways to get round the rules. Nevertheless, democratic institutions are able to provide a self-correcting mechanism against being abused if this occurs. Thus democratic institutions retain the internal potential to avoid the possibility of becoming a new evil, or to correct mistakes if needed. As Keane argues, "... democratic procedures provide citizens who are affected by certain decisions with the possibility of reconsidering their judgments about the quality and unintended consequences of these decisions. Democratic procedures sometimes allow the majority to decide things about which they are blissfully ignorant. But they also enable minorities to challenge blissfully or stubbornly ignorant majorities, to bring them to their senses" (Keane, 1992, 127).

Conclusion

Chinese liberals such as Hu Ping, Yan Jiaqi and Liao Xun have identified the serious problems of evil in Chinese political life, particularly Hu Ping who

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[121]For the idea an alteration, see, Hume, 1949b, 197.

has highlighted ideological and organizational evil in Chinese Communist society (Section 2). They implicitly hold a minimal conception of evil in terms of violation of rights. They have also justified the exaggerated supposition of potential evil, or the principle of preventing the evil of power-holders, as a "negative" foundation for Chinese democratic institutional design (Sections 3 & 5).

Hu Ping and Liao Xun have realized that there is no close or direct logical link between democratic institutional arrangements and the concept of evil (Sections 4 & 5). There are links between different conceptions of evil and different institutional designs. Based on the assumption of the evil of the Chinese, an authoritarian institutional arrangement is put in place but this remains unacceptable (Section 4). Nevertheless, drawing on the supposition that all humans are potentially evil, Chinese liberals such as Yan Jiaqi and Hu Ping have argued for the principle of the priority of equal rights and fair procedures as a solution to the problem of official ideological evil and for the guidance of democratic institutional design (Section 5). In taking account of the conception of organizational evil, they have argued for institutional protection of liberties through division of powers; they have further argued for regulative and restrictive institutions respectively (Section 5). They have also argued that not only are democratic institutions desirable, those institutions are feasible through counterpoise mechanisms and the assumption of goodness of human behaviour (Section 5).

Yan Jiaqi (1986c) has remarked on the significance of the awareness of evil in terms of breaking with the traditional moral approach to politics. This significance, however, should not be understood as a mere recognition of evil, because traditional Chinese legalists such as Han Fei have based their autocratic institutional design on the philosophical notion of evil (He, 1990b, Hu Ping, *China Spring*, June, 1988, 54); and because even Confucianism has acknowledged the evil side of human action although such acknowledgement is incomplete, secondary and inconsistent (Zhang Hao, 1989). The significance should be understood in these terms: Chinese liberals successfully link the minimalist conception of evil in terms of violation of rights to democratic institutional design, and this link which this chapter attempts to explore and develop represents a breakthrough in Chinese democratic thinking.

CHAPTER 6

Challenge of Exception to Procedural Democracy:
Constitutional Emergency Power

This chapter has three goals. (1) It defends the idea that procedure and the rule of law are a foundation for democracy by discussing and overcoming the challenging problem of the exception. (2) It aims to provide a theoretical basis for revising articles concerning emergency power in the 1982 Constitution. (3) It examines and criticizes the arguments in Schmitt's theory of the exception and formulates a basic liberal idea of the exception.

Exceptions introduce some degree of uncertainty into constitutional life. The effect of exceptions is the belief that political life rests upon an insecure foundation if the ultimate courts of appeal are rules allowing for exceptions. In other words, if an exception is allowed, which means that some laws are not followed by some people at some times and places, this weakens rules and undermines the coherence of proceduralism which requires that procedures and rules have to be followed by leaders and masses at all times and in all places.[122] The problems raised by exceptions are also serious in a transition to democracy; failure to deal with emergencies will lead to a failure of democracy and a restoration of a totalitarian regime.

In dealing with the above problems, there are at least three competing positions. One extreme position allows of no exception. This is the case of Yan Jiaqi's proceduralism which presupposes that a decision in the legal sense must be derived entirely from the content of a norm or procedure.[123]

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[122]The idea of proceduralism is assumed by constitutionalists such as Justice David Davis who states that "the Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, under all circumstances." See Murphy, 1986, 1192.

[123]Also the work of Brennan & Buchanan fails to pay attention to the problem of the exception. For example, they talk about generality of rules (1985, 29) and claim that constitutional analysis attempts to include all the relevant constraints (1985, 17). On the other hand, they defend constitutional proceduralism well at a methodological level. Their defence of constitutionalism or normativism can be summarized as follows. We require rules in society because without them, life would indeed be "solitary, poor, nasty, brutish and short", and all the world would surely fight. Rules would operate over a long sequence of plays in

As Yan Jiaqi asserts, "the idea of 'legal rule' is to establish the idea that laws are supreme; political parties, the government, enterprises, organizations, and individuals all have to obey the law <u>without exception</u>" (Yan, 1991a, 87, emphasis added). This position is understandable because there were too many exceptions to laws under Chinese communist rule, and because the emergency articles of the 1982 Constitution were abused to suppress the students' demonstration in 1989, and lacked restraining influence upon the party dictatorship. However, I reject the position primarily because it cannot deal with complex problems of the transition period. Sections 3 & 4 will justify this rejection. Another extreme position allows exception without specifying conditions and plays down the importance of rules. Schmitt's theory is a good example, which I will discuss in Section 3.[124] A middle, moderate liberal position allows some exceptions with specifications of conditions under which exceptions are justified, while defending the highest authority of constitution and rules. This position, as it applies in states of emergency, attempts to revise the articles concerning emergency power and to improve the system regulating states of emergency rather than abolish it. This position also sees the application of states of emergency as a devised instrument to defend democratic and legal order in a particular situation. The moderate liberal position will be discussed in Section 4.

This chapter adopts Keane's proceduralist definition of democracy: democracy comprises procedures for arriving at collective decisions in a way which secures the fullest possible and qualitatively best participation of interested parties and their representatives. Democratic procedures include equal and universal adult suffrage in constituencies of various size; majority rule and guarantees of minority rights; the rule of law; constitutional guarantees of freedom of assembly and expression and other liberties (Keane, 1992, 124). Exceptions to rules, in this chapter, refer to states of exception or states of emergency which may be used to justify actions to suspend civil liberties, legislative functions, regulations and common law,

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which the fortunes of each player would be somewhat uncertain (1985, 17). Processes according to certain rules are of independent value; adherence to certain values provides information about the normative status of outcomes (1985, 18).

[124]I choose Schmitt because Schmitt's theory of the exception is a sophisticated insight into the problem of exception in the transitional period; and his theory is a systematic and influential explication of the exception problem, and presents powerful arguments for the necessity of establishing a new strong authority.

as well as to suppress particular parties and movements. Further, the emergency power is, in Locke's (1956, 82) view, "prerogative", a power to act according to discretion for the public good, without the prescription of the law, and sometimes even against it.

The chapter is in four sections. Section 1 briefly introduces four cases of states of exception by describing emergency articles in the Constitutions of P.R. China, Republic of China, Germany and the US. This provides a basis for a theoretical discussion in the later sections. Section 2 examines the nature of the problem of the exception associated with the rules of the game in a transition to democracy. Section 3 reviews and discusses Schmitt's theory of the exception. Section 4 outlines liberal ideas of the exception and defends the coherence of proceduralism and constitutionalism. It initially discusses the hierarchic and conditional approaches to dealing with the problem of exceptions, then briefly examines competing concepts of justification for exceptions.

1. Cases of Exception

Here I first describe articles regulating emergency power in several constitutions, then turn to practices of the employment of states of exception. I will not discuss the historical backgrounds in detail because that is beyond the scopeof this chapter.

Case 1: Temporary Provisions in the Republic of China (1948)

In the history of Chinese constitutionalism, the 1946 Constitution contained well-designed provisions concerning the state of exception. Article 39 of the 1946 Constitution specified that "the President may, in accordance with law, declare martial law with the approval of, or subject to confirmation by, the Legislative Yuan. When the Legislative Yuan deems it necessary, it may by resolution request the President to terminate martial law." Further, Article 43 specified that:

> In case of a natural calamity, an epidemic, or a national financial or economic crisis that calls for emergency measures, the President, during the recess of the Legislative Yuan, may, by resolution of the Executive Yuan Council and in accordance with the Law on Emergency Orders, issue emergency orders,

proclaiming such measures as may be necessary to cope with the situation. Such orders shall, within one month after issuance, be presented to the Legislative Yuan for confirmation; in case the Legislative Yuan withholds confirmation, the said orders shall forthwith cease to be valid (Blaustein, 1992, 6).

However, the above articles and even the 1946 Constitution were unfortunately suspended by Chiang Kai-shek in 1948. As the First National Assembly convened, "Temporary Provisions Effective During the Period of Communist Rebellion" were enacted on May 29 1948. Although not in the form of a constitutional amendment, the Temporary Provisions radically altered the 1946 Constitution, and enhanced the powers of the President, Chiang Kai-shek. They made the office largely free of legislative control, and were later further amended to eliminate the limit of two presidential terms. See the following Articles of Temporary Provisions:

> Article 1: The President during the Period of Communist Rebellion may, by resolution of the Executive Yuan Council, take emergency measures to avert an imminent danger to the security of the State or of the people, or to cope with any serious financial or economic crisis, without being subject to the procedural restrictions prescribed in Article 39 or Article 43 of the 1946 Constitution.

> Article 3: During the Period of Communist Rebellion, the President and the vice President may be re-elected without being subject to the two-term restriction prescribed in Article 47 of the 1946 Constitution.

> Article 10: The termination of the Period of Communist Rebellion shall be declared by the President (Blaustein, 1992, 27-9).

The above provisions had a longer life than the 1946 Constitution itself. They remained in effect until December 25 1990, when President Lee

Teng-hui officially announced the revocation of the "Temporary Provisions" in Taiwan.[125]

Case 2: The Declaration of Martial Law in China (1989)

Emergency power was specified in Paragraph 16, 17 & 18 of Article 31 of the 1954 Constitution: that is, the standing committee of the NPC had power "(1) to decide, when the National People's Congress is not in session, on the proclamation of a state of war in the event of an armed attack on the country or in fulfilment of international treaty obligations concerning common defence against aggression (Paragraph 16); (2) to decide on general mobilization or partial mobilization (Paragraph 17); (3) to decide on the enforcement of martial law throughout the country or in particular provinces, autonomous regions or municipalities directly under the central government (Paragraph 18)".[126] This emergency power article was deleted in the 1975 Constitution.[127] Paragraph 12 of Article 25 of the 1978 Constitution, however, repeated Paragraph 16 of Article 31 of the 1954 Constitution, but did not adopt Paragraphs 17 & 18.[128] In the 1982 Constitution, Paragraphs 18, 19 & 20 of Article 67 re-adopted the three Paragraphs of Article 31 of the 1954 Constitution. What is more important is that Paragraph 16 of Article 89 of the 1982 Constitution grants for the first time to the State Council the power to declare martial law in <u>some areas</u> of provinces, autonomous regions or municipalities directly under the control of jurisdiction of the central government.[129]

On May 20th 1989, Paragraph 16 of Article 89 of the 1982 Constitution was invoked by Li Peng's government to declare martial law in some areas of Beijing. However, there is a question of whether the declaration was constitutionally justified. For students and intellectuals, the declaration of

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[125]On April 22, 1991, the National Assembly adopted a series of Constitutional Amendments, one of which is a provision for the exercise of emergency powers by the President in Taiwan.

[126]*Zhonghua renmin gongheguo xianfa 1954* (*The Constitution of People's Republic of China 1954*). Beijing: People's Press, 1954, 12.

[127]*Zhonghua renmin gongheguo xianfa 1975* (*The Constitution of People's Republic of China 1975*). Beijing: People's Press, 1975.

[128]*Zhonghua renmin gongheguo xianfa 1978* (*The Constitution of People's Republic of China 1978*). Beijing: People's Press, 1978, 18.

[129]*Zhonghua renmin gongheguo xianfa 1982* (*The Constitution of People's Republic of China 1982*). Hk: Shanlian shudian, 1982, 20-1, 26.

martial law was illegitimate because Article 67 of the 1982 Constitution specified that only the legislative power, the standing committee of the NPC, is able to decide on the enforcement of martial law throughout the country or in particular provinces, autonomous regions or municipalities directly under the central government. A further question is concerned with who is the overriding authority according to the 1982 Constitution. If Hu Jiwei, the former editor of *People's Daily* and a member of the Standing Committee of the National People's Congress, and others, had successfully convened an emergency sitting of the Standing Committee of the NPC and had had the order of the declaration of martial law withdrawn, the following question would occur. Who, the Standing Committee of NPC or the State Council, had the overriding authority to decide on martial law or to withdraw it? The 1982 Constitution does not specify this clearly.

Case 3: The State of Exception in Germany (1933)

Article 48 of the Weimar Constitution specified that:

> If a state does not fulfil the duties imposed by the Reich constitution or the laws of the Reich, the Reich president may enforce such duties with the aid of armed forces.

> In the event that public order and security are seriously disturbed or endangered, the Reich president may take the necessary measures in order to restore public security and order, intervening, if necessary, with the aid of armed forces. To achieve this goal, he may temporarily suspend entirely or in part, the stipulated basic rights in articles 114, 115, 117, 118, 123, 124, and 153.

> All measures undertaken in accordance with Sections 1 and 2 of this article must be immediately reported to the Reichstag by the Reich president. These measures are to be suspended if the Reichstag so demands" (Bendersky, 1983, 74-5).

It is argued that Hitler acquired power not through the use of Article 48, but because it was not used against him (Bendersky, 1983, 185). However, Hitler did use Article 48 to maintain and strengthen his power and to establish his dictatorship. The Nazis made effective use of the political premiums inherent in the legal possession of power to suppress their

opposition and to achieve their party goals. Along with the Nazi campaign of terror and intimidation, Hitler was abusing his control of the state apparatus, particularly the authority of Article 48, in a way that previous presidential chancellors would never have been allowed. Emergency decrees instituted during early February 1933, placing tight restraint on freedom of the press and public meetings, were followed by the decree of February 28, which virtually suspended all basic rights. By purging the communists and intimidating the other parties, the Nazis acquired a legal mandate in the March elections. And Hitler acquired the necessary two-thirds majority in the Reichstag under Article 76 to pass an Enabling Act on March 24, 1933. Under this act, which was to last for four years, laws could be passed not only by the Reichstag, but by the government itself, thus eliminating the separation of powers. Equally significant, laws decreed by the government could deviate from the constitution so long as they did not violate the rights of the Reichstag, Reichsrat, and the office of the president. On 31rd March 1933, Hitler's cabinet passed a law for the coordination of the states with the Reich, through which all state governments (except the already Nazified one in Prussia) were dissolved and reorganized without elections. These new Nazi-controlled governments could deviate from state constitutions and pass laws without the consent of their legislatures (Bendersky, 1983, 196-7, 199).

Case 4: Lincoln's Use of the Emergency power in the US

Section 9 of Article 1 of the American Constitution explicitly authorizes suspension of the privilege of the writ of habeas corpus in case of rebellion or invasion if public safety requires it. Moreover, the Amendment Documents provided for suspension of several safeguards for individual rights. For example, the Third Amendment allowed quartering of troops in civilian homes during wartime, "in a manner prescribed by law"; and the Fifth Amendment allowed suspending of the right to indictment by grand jury of members of the militia "when in actual service in time of war or public danger," and allowed the government to take, "with just compensation," private property for public use (Tucker, 1981, 905, 914; Murphy, 1986, 1176, 1232).

One example of the suspension of individual rights was the Merryman case. On May 25, 1861, John Merryman, a state legislator, who stayed at his

home, was arrested by union troops under control of the Commanding General, George Cadwalader. Cadwalader, who was authorized by President Lincoln, had power to suspend the privilege of the writ of habeas corpus in proper cases; or in other words, the power to arrests and detail, without resort to the ordinary processes and forms of law, such individuals as he might deem dangerous to the public safety. Chief Justice Roger Brooke Taney, however, argued that the location of emergency power in Article 1 meant that only Congress -- subject to the usual presidential veto -- could authorize suspension. He therefore ruled that the President had no authority to suspend the writ and thus could not authorize anyone else to do so. President Lincoln, nevertheless, defended himself in his message to Congress on July 4th, 1861, saying that the President could do so on his own to fulfil the obligations imposed on him by Article 2 to "take care that the laws be faithfully executed" and to "protect and defend the Constitution". In August 1861, Congress gave retrospective approval to Lincoln's suspension of habeas corpus but did not authorize future presidential suspensions. Lincoln again acted on his own in September, 1862. In March, 1863, Congress finally authorized the President to use his own judgment in suspending habeas corpus, but imposed certain restrictions when the President exercised this authority within states loyal to the Union (Murphy,1986, 1184-91).

The above cases can be illustrated in Table 1.

Table 1: The Emergency Power Articles and Their Effects in PRC, ROC, Germany and the US

	People's Republic of China	Republic of China	Germany	U. S
Articles	Articles 67 and 89 in the 1982 Constitution	Articles in Temporary Provisions (1948)	Article 48 in the Weimar Constitution	Section 9 of Article 1, the third & fifth Amendments
Who implements it?	NPC or the State Council	the President	the president	Congress or the President
Limits on use of emergency power	no statements	procedural restrictions of the 1946 Constitution were removed	immediately report-ed to the Reichstag by the president; measures are to be suspended if the Reichstag demands.	legislative approval, the Supreme Court's review, time & space limits
Rights suspended	part and all	part and all	part and all	a very few
Constitution suspended	unclear	yes	yes	no

In conclusion,

(1)   while both the Constitutions of P. R China (1982) and the US were ambiguous in specifying who implements emergencies, both the Constitutions of R. O. China and Weimar Germany grant the president power to implement emergencies.

(2)   The Temporary Provisions of P. O. China (1948) had only weak and nominal constraints such as "by resolution of the Executive Yuan Council," and the 1982 Constitution of P. R. China did not specify restrictions on the employment of emergency power; while there are limiting conditions such as legislative approval, the supreme court's review, and time and space limits in the Constitutions of Weimar Germany and the US.

(3)   In terms of effects of the implementation of emergency power, the American record is certainly better than that of the other nations. It has never suspended the Constitution in its entirety and only rarely invoked Section 9 of Article 1. More importantly, the use of emergency power in the US left general constitutional rights intact. Contrarily, during the emergencies, basic rights and even the constitutions of the Republic of China (1946) and Weimar Germany were almost suspended.

2. The Problems of Exceptions in a Transition to Democracy

The above four cases of exception occurred in different contexts of transition to democracy. In the case of the People's Republic of China, emergency power was used to suppress the 1989 democratic movement. In the cases of Nazi Germany and Chiang Kai-shek's China, emergency powers were used to close the door to democracy and to establish and maintain dictatorship. In the case of the US, the emergency power was used to maintain the unity of the US and the federal system in the Civil War. All of this highlights the importance of the exception in transitional periods, and requires us to analyze the nature of the problem of the exception in a transition.

A transition to democracy can be defined as a movement from a state of affairs in which constitutional rules are so discredited that nobody is committed to them, to one in which constitutional rules attract the commitment of a few members of the elite and are complied with by other members of the elite for their personal security and interests. In other words, a transition to democracy, by nature, is a shift from the gun to rules as the most appropriate way to resolve basic political conflicts. Thus these rules become able to regulate political life and the constitution becomes an overriding authority above executive authority. There are enormous difficulties for a new liberal government in establishing the rules of the game in the transition to democracy. Particularly, China will face the

following predicament. On the one hand, the frequency of exceptions will lead to the discrediting of the constitution and create enormous difficulties in establishing constitutionalism. On the other, if any exception is denied, it will be difficult for a liberal government to maintain social order and to realize constitutionalism. The following discussion will elaborate on this predicament.

During the transition to a liberal system, there is more open social and political conflict for supreme power than in the old totalitarian system where struggles for supreme power were more covert. Everyone is now able to anticipate being a supreme leader, and ambitious persons willingly seek that position through election and procedures. At the same time, these ambitious persons may abuse and violate rules blocking their road to power. Given that an institutional check system has not yet been established fully, in this critical situation, such persons may appeal to armed force as a final and decisive means to settle political disputes. Thus, the most universal phenomenon in a transition period is that states of emergency and martial law are often invoked to violate human rights (such as torture, disappearances and virtual abolition of procedural guarantees and lack of independence of the judiciary). This is done to try to perpetuate dictatorships, to suppress democracy and to attack fundamental freedom as shown in Section 1 about. Worse still, in Latin America, the states of exception in effect became the rule, acquiring permanent status, and becoming the essential judicial support of a "new order" so that judicial debates were excluded, legislative powers were reduced, and the police, administrative regulations and military tribunals became the principal mechanism of social control. And most states of exception were arbitrary and merely a pretext in the interest of the dominant regime. Thus, some Latin American jurists even advocate the total suppression of the rules authorizing states of emergency (Zovatto, 1990, Alvarez-Garcia, 1981).

The violation of rules might be justified by the so-called rapid and radical social changes of the transition, which make laws and regulations unstable and unreliable. People often seek solutions outside legal channels, and even sacrifice the requirement of proceedings so as to deal with the complex issues of the transition. For example, in China, the nature of the problem of breaking a promise in a contract lies not only in one party failing to keep the promise, but in the unfairness of the social conditions under

which the contract was made. When the social conditions changed, so did the content of the contract; and difficulties for maintenance of the contract occurred. Thus some Chinese people often use this situation as an excuse to withdraw from a legal proceeding, and seek a more flexible solution to deal with the conflict of interests regarding whether the contract should be kept. Thus rapid and radical social changes become a justification for not complying with rules.

There are negative effects of exceptions on constitutional rules. To admit any exception at all to a rule is to open up the possibility of an ever increasing proportion of exceptions, and open up the way to that rule's destruction. The occurrences of exceptions also increase the difficulty of making and checking judgments about whether exceptions are justifiable and this may lead more and more people to discredit rules. For example, Li Peng's government might have used constitutional and legal methods in dealing with the 1989 crisis, but it used instead arms and tanks to crack down on the students' demonstration. As a result, the 1982 Constitution was much more discredited than before, because in a critical situation, it was the gun rather than the Constitution that finally decided the outcome of the 1989 events.

On the other hand, there is a need to see the state of exception as a instrument devised to defend democratic and legal order in a transition period, as suggested by Case 4 of Section 1 above. The really difficult problem associated with the process of realizing the rule of law and procedural democracy is that the aim of procedural democracy is to replace the "rule of man" with the "rule of law", which implies a limitation on personal authority. Now, in the case of China, while legal-rational authority has not been established fully, paternalistic authority appears to have been eroded in the transition period. It follows that the positive elements[130] of

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[130]Pye has discussed some positive elements of paternalistic authority as such: (1) there is the possibility for great flexibility in policies. Leaders can change direction without fear of losing their constituents' support; (2) paternalistic authority can have the great advantage in that it avoids a basic dilemma of political development that appears under more legalistic forms of authority; (3) although paternalistic authority usually has a way of avoiding accountability, it can also heighten peoples' sensitivities concerning whom they should turn to if they want to get something done; (4) the autonomy of leadership in policy-making can also be translated into longer term perspectives in policy practices (Pye, 1985, 332-4).

paternalistic authority seem to have disappeared in the past ten years.[131] This may have created a situation in which there are new problems such as distortion of liberty, and burden and abuse of procedure, and in which there is a lack of a strong state to deal with the complex problems and to maintain social order. If that is the case, there is no hope for the establishment and maintenance of the highest authority of procedure. Further, even if the market becomes predominant in the Chinese economy and even if it takes a capitalist form, which is very probable, there is a continuing need for a new form of strong state to tackle fundamental economic and social problems. As the events of the late 1980s in China demonstrated vividly, the transition process was fraught with instability and tensions arising from the growing complexities of the policy process, conflicts between old and new interests, threads to economic security and growing social inequality (White, 1994). A strong state with strong personal and executive authority is thus needed to deal with complex difficult problems and to defend the authority of the constitution when it faces challenges in the transition period in order to manage the transition to democracy. This strong personal authority will require emergency power provided by the constitution on exceptional occasions. This is vital for the establishment and preservation of procedural democracy provided that a strong authority is limited and regulated by just institutional arrangements and that this authority complies with the principles of justice and procedures.

Yeltsin's appeal to "special presidential rule" is a good example of the demand for a strong authority which requires the emergency power of president so that the president can control and reduce social conflicts in the transition.[132] We leave open the question of whether Yeltsin's appeal is constitutionally justifiable, the point is that the emergency power is vital for a successful transition, because emergencies do occur, and a new liberal state has to live through periods of real and present danger that may threaten not merely the stability of a new liberal government or the normality of

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[131]For example, the former general secretary, Zhao Zhiyang concerned himself with short-term policy-making, rather than long-term policy-making; his concern was confined solely to his own term of office. My friend, Wang Xiaolu, a reformer, who has met Zhao Zhiyang, told me that he was impressed by Zhao's short term perspectives when Zhao replied to Wang's report.

[132]On Yeltsin's emergency power, see Michael Dobbs, "Green Light for Yeltsin Plan," *International Herald Tribune,* 1-2 Nov. 1992, p. 1.

constitutional life, but even the physical survival of the state and its population. The question, therefore, is now about the wise design of the articles regulating emergency power. It is well known that most constitutions have such articles. A computerized comparative study of 142 constitutions in the world before 1975 shows that, 31 constitutions contain provisions concerning suspension of (part of) the constitution, 47 deviation from (part of) the constitution, 17 both suspension and deviation, and 47 have no such provisions (Maarseveen, 1878, 83). Section 1 above shows that the constitutions of PRC, ROC, Germany and the US have some provisions for suspension, or relaxation of part of the constitution during emergencies. This is also true for the 1982 Spanish Constitution, European and Latin American constitutions and similar charters in Portugal and Brazil.

However, there are serious problems associated with the emergency power articles of the 1982 Constitution of PRC. First, the provisions concerning emergency power of the 1982 Constitution are ill-designed in the sense that these articles did not set limitations on the employment of emergency power and did not specify who has the overriding authority to implement it (Section 1). Second, if the collapse of the Chinese Communist Party occurred, which may imply the invalidity of the communist constitution, at least for anti-communists, there will be no such provisions available if there is not enough time to draft and pass a liberal constitution. This is evident in Russia where Yeltsin's justification of his decree of "special presidential rule" did not come from the former communist constitutions but from the claim that the Congress is dominated by conservative communists who fail to do their duty and even conspire to overthrow a democratic government.[133] On the other hand, Yeltsin's appeal to "presidential rule" was deemed by the Congress unconstitutional.[134] This raises the question of whether the former communist constitution can provide an overriding authority over how to resolve a crisis in the transition period. I will not discuss this question in detail here, because further discussion of this important question is beyond

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[133]See *Australian*, 22-5 March, 1993.

[134]Article 121 of the 1977 Constitution of the USSR specifies that the presidium of the Supreme Soviet of the USSR has power to proclaim, in the interests of the defence of the USSR, martial law in specific localities or for the whole country and general or partial mobilization. See, William B. Simons, 1988, 380.

the scope of this present enquiry. Here, I simply hold the conservative view that the former communist constitution should be revised and be maintained rather than abolished insofar as there is not enough time to draft and pass a liberal constitution. Given this assumption, my concern is now the question of redesign of articles regarding emergency power in the constitution. Here I should make clear that a well-designed article regulating emergency power cannot resolve the complex problems of the transition, but it provides a due procedure to resolve crises.

The above discussion raises the issue of justification of exception at a theoretical level. If a liberal government whose sole concern is equal political liberty is threatened by a former communist party movement which looks likely to attain power again, what should the liberty-concerned government do? Should it honour or respect the liberty of the communist movement to advance its cause within the existing law? Or should it be prepared to deny the liberty of the communist movement for the sake of preserving constitutional order and promoting liberty overall? It is well known that the former members of the Communist Party have questioned Boris Yeltsin's order that the activities of the Communist Party be banned in Russia claiming he violated the principle of equal political rights. Does the liberal government have a right to make an exception of the intolerant, and even repress those who are former communists and anti-constitutionalists in order to maintain social and political stability? If the answer is yes, does an exception really undermine constitutionalism? How does proceduralism constitute a solid foundation for democracy given the existence of exceptions? How do we defend constitutionalism when an exception is made? Can and how do we distinguish justifiable and unjustifiable exceptions in defending constitutionalism? Who decides that an emergency exists? Who imposes the exception? Who may implement it? Who may terminate it? What limits exist during the emergency on government authority? Do courts remain in session? What are the problems associated with the emergency power articles in the 1982 Constitution? And finally, how do we design and revise these articles? The following sections will address these questions.

3. A Critique of Schmitt's Theory of the Exception

Schmitt's political theory of the exception was conceived to justify banishing the extreme political movements of the Nazis and the Communist party which threatened the Weimar constitutional order from the political arena. Schmitt feared that existing electoral methods could be and would be exploited by revolutionaries of the left and right in their quest for power. He also believed that the Reich president, armed with constitutional emergency powers, could prevent a total collapse of political order or a seizure of power by extremists. The political outcome, however, was far from what Schmitt expected: the emergency powers were partially employed several times in the 1920s-30s, but they did not save the Weimar constitution after all. Ironically, Hitler invoked Article 48 to establish his dictatorship and finally destroyed the constitution. More ironically, Schmitt, who urged the employment of emergency power to prevent the Nazis from coming to power, turned to serve Hitler and became a prominent "crown theorist and jurist" of the third Reich in 1933. The questions raised from the above historical facts, are, can Schmitt's theory of the exception be attributed to his support for Hitler? What then is wrong with this theory?

The concept of the exception, in Schmitt's theory, should be regarded as a "universal concept central to political knowledge" (Slagstad, 1988, 116). An exception can, according to Schmitt, at best be characterized as a case of extreme peril, a danger to the existence of the state, or the like (Schmitt, 1985, 6). Thus the exception is seen as a dangerous situation or worst case that guides Schmitt to an unlimited authority. Further, Schmitt's type of exception can be described as statist, presidential and authoritarian; the president whose duty is to maintain the existence of the state, has the unlimited power to suspend the constitution but not to abrogate it in the case of an exception.

Schmitt's type of the exception is characteristically statist. In Schmitt's thought, the state has remained the crucial element. Only the state can guarantee the basic human and social requirements of order, peace and stability which are prerequisites for freedom. Under a constitutional system, according to Schmitt, the state must determine the enemies of the constitution and prevent their acquisition of power. The core of Schmitt's position is that maintaining the existence of the state in times of crisis has

priority over any legal norms. Anti-constitutional parties are to be controlled and if necessary suppressed primarily because they threaten the state which the constitution upholds.

Schmitt's type of the exception is also characteristically presidential. Schmitt perceived the president as the defender of the Weimar state and constitution. One political party, in Schmitt's view, cannot determine the legality or illegality of another; only a neutral force, the Reich president, can make such a decision (Bendersky, 1983, 161). He further interpreted powers of the Reich president as those of a "commissarial dictatorship" granted by Article 48 of the constitution. The President is the sovereign who decides on the exception" (Schmitt, 1985, 5) and can designate the domestic enemy. The force of law is not derived from the force of legal norms, but from decisions made by the President.

Further, Schmitt's type of the exception is characteristically authoritarian. It was argued by a majority of jurists in 1924 that the constitutional limitations on presidential emergency powers were clearly enumerated in paragraph two of Article 48, and that the president could suspend only the seven constitutional articles specifically listed in the paragraph. But for Schmitt, the emergency powers granted to the President by Article 48 were not limited. Schmitt's legal arguments rested on a significant ambiguity in the wording of Article 48 and on his interpretation of the basic intent of this provision. The first sentence of paragraph two stated that the president could take "necessary measures" to reestablish public order and security, whereas the next sentence listed seven articles he may suspend to achieve his goal. But as Schmitt pointed out, in times of crisis "necessary measures" might entail the suspension of other constitutional articles. Therefore, he concluded that the second sentence could not serve as a limitation on the first (Bendersky, 1983, 74-6). Thus Schmitt argued that the precondition as well as the content of jurisdictional competence in the case of the exception must necessarily be <u>unlimited</u> (Schmitt, 1985, 7). What characterizes an exception is principally unlimited authority, which means the suspension of the entire existing order (Schmitt, 1985, 12). Further, Schmitt argued, the sovereign authority can stand outside, transcend, and not need to base decisions on, the normally valid legal system although he (she) is bound by, and belongs to legal

norms. In such a situation it is clear that the state remains, whereas law recedes (Schmitt, 1985, 7, 12).

Schmitt provided the following arguments for his type of the exception. The argument of uncertainty or limits of information about emergencies holds that the exception, in Schmitt's view, cannot be circumscribed factually and made to conform to a preformed law (Schmitt, 1985, 6). The precise details of an emergency, it is argued, cannot be anticipated. Nor can one spell out what may take place in such a case, especially when it is truly a matter of an extreme emergency, or how it is to be eliminated (Schmitt, 1985, 6-7).

Further, Schmitt presented the argument of the priority of decision for the following three reasons.[135] First, rules do not sustain themselves, rather they depend on something such as force that is provided but not rule-grounded. Second, the legal order rests on a decision and not on a norm in an exceptional time (Schmitt, 1985, 10). Finally, normativism cannot be normative in the sense that a president and a jurist by his (or her) own free will makes value assessments (Schmitt, 1985, 20). Here, Schmitt's line of thought presupposes a kind of summary conception of rules, that is, decisions made on particular cases are logically prior to rules and a sovereign authority is, in principle, always entitled to reconsider the correctness of a rule and to question whether it is proper to follow it in a particular case.

Schmitt also presented the argument of the inadequacy of procedures. As Schmitt asked, how is it logically possible, that a norm is valid except for one concrete case that it cannot factually determine in any definitive manner? (Schmitt, 1985, 14). For Schmitt, the problem of the exception evidences the incoherence of proceduralism, challenges the validity of legal norms, shows the uncertainty of political behaviour, and finally points to legal contradictions in an exceptional time. The procedural enterprise

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[135]Schmitt himself realized the limits of decisionism and he said that, in his Preface to the Second Edition of *Political Theology* in 1933, the decisionists always run the risk of missing the stable content inherent in every political movement. The consideration of this risk leads Schmitt to the addition of institutional concepts such as institutional guarantees and pluralism to the other two types of juristic thinking - normativism and decisionism (Schmitt, 1985, 2-3).

proposed by liberal constitutionalists such as Hans Kelsen who attempted to banish the exception and regulate the exception as precisely as possible, according to Schmitt, is impractical and inadequate. For Schmitt, to comply with formal procedures always delays quick decisions on an exceptional occasion; while an emergency requires a quick decision and substantive correctness of existing rules, it, therefore, requires an unlimited authority. The procedural enterprise, or rationalist effort, in Schmitt's view, is seen as no match for any serious problem concerning the independent meaning of the decision. The conclusion drawn by Schmitt is thus:

> A philosophy of concrete life must not withdraw from the exception and the extreme case, but must be interested in it to the highest degree. The exception can be more important to it than the rule, not because of a romantic irony for the paradox, but because the seriousness of an insight goes deeper than the clear generalization inferred from what ordinarily repeats itself. The exception is more interesting than the rule. The rule proves nothing; the exception proves everything: It confirms not only the rule but also its existence, which derives only from the exception (Schmitt, 1985, 15).

Now I turn to the critiques of Schmitt's theory of the exception. Among other theoretical problems, there are two wrong assumptions in Schmitt's theory of the exception and his criticism of proceduralism: the exception is the antithesis of the norm; and decision is prior to norms. Schmitt is wrong to see exceptions to rules as a negation of rule-based governance. First, there are confusions and contradictions in Schmitt's idea of the exception, and these undermine the coherence of his arguments. According to Sartori (1989, 65, 69), Schmitt equivocates between the heuristic-logical understanding of the "exception" and a juristic-factual connotation (exceptional times met by exceptional powers). When Schmitt says that "the exception is more interesting then the rule," that "the rule proves nothing; the exception proves everything," he is doubtlessly referring to the heuristic meaning in which *Ausnahme* (exception) is the non-normal, the non-frequent, and thus *Ernstfall*, the extreme possibility. *Ausnahme* (exception) can also be applied to exceptional times, "exceptional circumstances," and by this route conceived juridically, in a constitutional frame of reference, as a state of exception. Here, the "exception" no longer

stands in contradiction to "normal," but to the "norm" (legal norms). But this, in a juristic sense, has little to do with the argument that "the exception is more interesting then the rule," that "the rule proves nothing; the exception proves everything" (Sartori, 1989, 68). More seriously, Schmitt's heuristic use of the exception is incompatible with his juristic use of the exception in the sense that the extreme possibility of the heuristic exception denies the whole set of rules; while a state of exception in a legal sense still maintains part of the rules. To put it another way, since, as Schmitt argues, the exception remains accessible to jurisprudence because both elements, the norm as well as the decision, remain within the framework of the juristic (Schmitt, 1985, 12), it is not reasonable for Schmitt to claim that the exception is more interesting than the rule, and that the rule proves nothing at an heuristic-logical level. Since, as Schmitt argues, the exception has a systematic, legal-logical foundation (Schmitt, 1985, 5-6), and the exception is different from anarchy and chaos, order in the juristic sense still prevails (Schmitt, 1985, 12); it is not reasonable for Schmitt to stress only that the exception is everything which leads him to deny the importance of the rules.

There are also confusions in Schmitt's idea of legal paradox. For when Schmitt claims that the sovereign authority has a right to stand outside, transcend, and does not need to base decisions on the normally valid legal system, Schmitt actually refers to particular rules. When Schmitt argues that the sovereign is bound by, and belongs to the legal system, Schmitt actually refers to the overall framework of the legal system which includes general meta-rules. There might be tensions between particular rules and meta-rules in an exceptional time, but there is no legal paradox at the bottom line; because then, to suspend one particular rule or legal regulation is to defend and maintain the whole legal system and meta-rules. When Schmitt talks about legal paradoxes, he simply adopts confused dialectics, and fails to distinguish particular rules from meta-rules; this leads him to produce "fictional" legal paradoxes.

Second, Schmitt's argument of uncertainty or a limit of information is not convincing. Schmitt's idea of an unlimited authority derives from his consideration of the limit to information about the precise details of an emergency. And this limit to information may also be seen by Locke as "the legislators not being able to foresee and provide by laws for all that may be

useful to the community" (1956, 81). Does this limit to information about the precise details of an emergency justify the idea of unlimited authority? For liberals, the answer is definitely no, because the limit to information about the precise details of an emergency leads liberals to the consideration of the uncertainty of the consequences of the use of the power to make an exception. It is the fear of abuse of procedure, in particular of the power to make an exception that leads liberals to argue for restrictions on the emergency power of the government so as to reduce the harm that the government might inflict on the people. As Locke agues that "when mistake or flattery prevailed with weak princes to make use of this power [prerogative or emergency power] for private ends of their own, and not for the public good, the people were fain by express laws to get prerogative [emergency power] determined" (1956, 83). Thus liberals would argue that although it is impossible to predict or to specify in advance what emergency might arise, what can and must be specified in advance is to preserve the ruleness of the rule. It is in the face of the limit to information that institutional devices such as rights protections and division of power are needed to overcome problems of the limits of reason (See, Hardin, 1988, 76, 115). Or in Rawls's terms, the assumption of the veil of ignorance (lack of information about how the various alternatives will affect rational persons' own particular cases so that they are obliged to evaluate principles solely on the basis of general considerations) leads rational persons in the original position to choose the two justice principles and well-designed institutions rather than unlimited authority (Rawls, 1971, 136-42).

Further, a serious problem associated with Schmitt's reasoning is that there is a contradiction in Schmitt' argument for a commissarial dictatorship in relation to the limits of reason. Schmitt argues that a sovereign dictatorship utilizes a crisis to abrogate the existing constitution in order to bring about a "condition whereby a constitution [that the sovereign dictator] considers to be a true constitution will become possible," whereas a commissarial dictatorship endeavours to restore order so that the existing constitution can be revived and allowed to function normally (Schmitt, 1985, xix). Here, Schmitt willingly presupposes that the commissarial dictatorship will restore the constitution. Since, as Schmitt says, in his discussion of the theory of the exception, we cannot anticipate the form of an exception, it is not reasonable to claim that we can anticipate that a commissarial dictatorship will maintain the constitution, and that a

sovereign dictatorship can correctly decide what is normal and abnormal.[136] As Sartori remarks, although Schmitt's presidential system is juridically circumscribed, his concept of sovereignty cannot be contained, as Schmitt maintains, within juristic limits. The monopoly of decision, in its linkage with the 'exception', inevitably paves the way to the limitless, absolute ruler (Sartori, 1989, 70).

Third, Schmitt makes a mistaken assumption about the priority of decision. To make an exception requires a quick decision but not the priority of decision. A quick decision does have relative autonomy, but is still limited by meta-rules at the bottom line. In fact, Schmitt does not altogether reject meta-rules, as he claims that the exception remains accessible to jurisprudence and the sovereign belongs to the normally valid legal system though he (she) stands outside it when he (she) makes an exception (Schmitt, 1985, 7, 12). Also although a quick decision made by a president without complying with certain rules is justifiable, as Case 4 of Section 1 shows, it needs to be consented to by the senates later. If decision is given priority, making a decision is more important than how a decision is made. As Schmitt says in quoting De Maistre, "It is definitely not in our interest that a question be decided in one way or another but that it be decided without delay and without appeal" (Schmitt, 1985, 56). Implications of the priority of decision are: first, to make a decision is to be free from meta-rules; second, when a wrong decision is made, the sovereign can avoid being accused of error because there is no higher authority to review the decision; and finally a wrong decision even can acquire legal validity according to the theory of the faulty act of state (Schmitt, 1985, 31). These three implications contain seeds for all forms of dictatorship and are the enemy of constitutionalism.

The dangers of Schmitt's idea of the priority of decision lead us to consider the liberal idea of the priority of rules, that is, rules are pictured as defining practices, and the rules of practices are logically prior to particular cases (Rawls, 1964, 24-7). This is so because there cannot be a particular case of an action falling under the rule of a practice unless there is the practice. To engage in a practice, to perform those actions specified by a practice,

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[136]As for criticism of the actions of a 'commissarial dictator' faced with the state of the exception, see Schwab, 1989, 125, Samples, 1987, 213.

means to follow the appropriate rules. The priority of rules or the trump of rules is also evidenced in the application of meta-rules in everyday political life. Although there have been different justifications and explanations of rules, they still play roles in everyday political life. The meta-rules, through a mechanism of reward and punishment, function as a kind of political education which reinforces the priority of rules.

To hold the idea of the priority of rules does not, as Rawls suggests, imply that there cannot be an exception to rules. Schmitt is right to argue that a particular situation can be an exception to particular rules. Rawls's statement that a particular case cannot be an exception to the rule of a practice is misleading in the sense that he suggests a solution of mere qualification or further specification of the rule (Rawls, 1964, 24-7) rather than a solution of suspension, adjustment and redesign of the rule.

I would like now to examine Schmitt's idea of the unlimited authoritarian type of exception. Schmitt presupposes the view that there must be somebody at the top of the power structure who is able to make a quick decision so as to avoid the worst consequences in an exceptional time. However, for liberals, the worst political crisis and a situation where we are uncertain about the exception do not provide a sufficient justification for the idea of an unlimited authority rather than lead us to argue for the ideas of division of power and of institutional checks. It is the authoritarian political institution that liberals fear, because the undivided and unlimited sovereign is nothing more than one of the causes of the worst consequences for human beings. Thus, liberals take the view that sovereign authority must be divided into legislative, executive and juristic powers. Who is allowed to have the power to make an exception is not determined by a particular situation but by meta-rules. Neither a president nor a judge has supreme power although the power balance may shift.

Further, there is a tension between Schmitt's idea of an unlimited condition under which an exception can be made, and his justification of the exception. According to Schmitt, the existence of the state is undoubted proof of its superiority over the validity of the legal norm. Schmitt claims that the state suspends the law in the exception on the basis of its right of self-preservation. The exception remains, nevertheless, accessible to jurisprudence because both elements, the norm as well as the decision,

remain within the framework of the juristic (Schmitt, 1985, 12). At the same time, in Schmitt's theory of the exception the precondition as well as the content of jurisdictional competence in such a case must necessarily be <u>unlimited</u> (Schmitt, 1985, 7). Thus in Schmitt's theory, a sovereign authority can determine what actually is an exception, and even decide what is normal or abnormal. Thus a contradiction arises: in Schmitt's justification of the exception, a sovereign authority is still limited by the framework of the juristic; while in Schmitt's assertion of the unlimited conditions under which an exception can be made, a sovereign authority is totally free to make a subjective and arbitrary exception. Also Schmitt's argument that an exception is characterised by the suspension of the <u>entire</u> existing order is incompatible with his justification that the exception <u>remains</u> accessible to jurisprudence.

Nevertheless, there are intellectual merits in Schmitt's theory of exception. First, Schmitt is right to argue that if the constitution itself is in danger or is revoked, there will be no proceduralism at all. Hence, to make an exception to some rules so as to maintain the constitutional order is necessary. Second, it is right for Schmitt to argue for a quick decision on an exceptional occasion. Third, Schmitt also is right in pointing out certain conditions (the normal situation) under which norms are valid; one of these conditions is the acceptance of the legitimacy of the constitution and hence adherence to what are commonly known as the rules of the game. Fourth, Schmitt's practical critique of normative constitutionalism does raise difficult problems such as the validity of legal norms for liberals who hope to implement the principle of proceduralism. But Schmitt cannot go so far as to claim that these problems are themselves a convincing reason to dismiss normative proceduralism. It is wrong to deny the normative approach, or to dismiss proceduralism by means of exaggeration of the role of the problems of procedure in political life. Schmitt should have chosen the road of redesigning rules when facing the challenge of the exception. Unfortunately, Schmitt suggested the wrong direction.

4. Liberal Views of the Exception

There are basically two approaches, namely, hierarchic and conditional, to deal with the problem of exception. Rules allowing for exceptions cannot function as ultimate courts of appeal primarily because they are sometimes

overruled. Consequently there must be rules which do not allow for exceptions and which perform the function of fundamental principles for resolving all clashes between rules. The hierarchical approach, therefore, holds that rules can be ranked in a hierarchic way so that meta-rules are distinguished from particular rules and that meta-rules take precedence over particular rules. While meta-rules do not admit of an exception, particular rules do. Thus, meta-rules function as the principle for guiding how to change rules or redesign rules if we face the challenge of the exception. As far as constitutional change is concerned, meta-rules can be exemplified as follows: both in Australia and in Switzerland, altering the Constitution requires not only the approval of the legislature but also of a majority of all the electors voting in a referendum and also a majority of electors in a majority of the States in the federation; and in the United States amending the Constitution requires the approval of a two-thirds majority in each house of Congress, and thereafter acceptance by a vote of the legislatures of three-quarters of the states.

The hierarchic approach further holds that to make an exception is to suspend, adjust or redesign particular rules, the practice of which has to comply with meta-rules. The bottom line is that the above meta-rules regulating constitutional changes should not be suspended. This is also true of the whole constitution; otherwise meta-rules are in danger. Thus, under truly extraordinary conditions, parts of the constitution might be suspended, but the whole constitution and its commitment to constitutionalism could not be legitimately suspended. In other words, a liberal government must observe such basic requirements as respect for the worth and dignity of each citizen, though it may, as a temporary measure, suspend some rights. Further, liberals would never make an exception to the principle of fair procedural justice. Equal political liberties, as Rawls asserts, cannot be denied to certain social groups on the grounds that their having these liberties may enable them to block policies needed for economic efficiency and growth. Nor could a discriminatory selective service act be justified (in time of war) to raise an army (Rawls, 1982, 8-9). In other words, the priority of liberty implies in practice that a basic liberty can be limited or denied solely for the sake of one or more other basic liberties, and never for reasons of public good or of perfectionist values (Rawls, 1982, 9).

Contrarily, if an exception to meta-rules or a suspension of the whole constitution is allowed, there is an incompatibility between this kind of exception and proceduralism. Schmitt's idea of suspension of the constitution in its entirety indeed contradicts proceduralism because the suspension of the whole constitution implies that meta-rules no longer exist so that the fundamental procedure regulating constitutional change is denied. However, this theoretical contradiction results from the denial of the idea of meta-rules. If meta-rules are distinguished from particular rules, the former do not admit of exception, while the latter admit of and imply exception. This is the way to defend the coherence of proceduralism. This is also the fundamental procedure for making exceptions; if the procedure is followed, the exception can be deemed consistent with proceduralism. An exception to certain particular rules does not contradict meta-rules, because according to these meta-rules, an exception is made. Thus the liberal argument about exceptions is in fact the argument about meta-rules themselves. This allows liberals to resist the idea that exceptions exist apart from rules. In this manner, the Schmittian contradiction can be resolved. Schmitt's theory of the exception, therefore, as it applies in a state of emergency or crisis, does not disprove the principle of procedure.

The above ideas can be concretely illustrated through discussion of the case of Lincoln's use of emergency power which did not contradict proceduralism and an equal chance before law. As President Lincoln argued, his exception, namely, the suspension of the writ of habeas corpus, was justified by Article 2 of the American Constitution, and was also approved later by Congress. Further, when the writ of habeas corpus was suspended on an exceptional occasion, meta-rules still played a major part in the sense that they provided a procedure to resolve political conflict between President Lincoln and Chief Justice Taney. Rules, therefore, ought not as Schmitt suggests to be lightly discarded; nor are they of little value. Even Schmitt himself acknowledges, the exception remains accessible to jurisprudence and the sovereign belongs to the normally valid legal system though he (she) stands outside it when he (she) makes an exception (Schmitt, 1985, 7, 12). It, therefore, is wrong for Schmitt to draw the simplistic conclusion that the norm is destroyed in the exception. In making an exception, the sovereign can still be defending and maintaining the importance of rules and the constitution as a whole.

Not only is there no incompatibility between exceptions and proceduralism, but exceptions are an essential element of proceduralism. Proceduralism, according to the hierarchy approach, leaves a space for an exception to particular rules. This space is open to new particular situations and brings these under the practice of meta-rules; this space, therefore, helps to increase the capacity of proceduralism to deal with unpredictable crises. Far from weakening rules, exceptions help preserve them; they are a device which enables us to resolve conflicts between rules. Thus the rules and their exceptions occupy the same plane, the relationship between the power to create exceptions and the basis for doing so becomes an essential element of the extent of rule-based constraint itself. The power to make exceptions does not undercut the primary force of the rule itself (Schauer, 1991, 893-9).

Because the applications of states of exception were abused to violate human rights and even destroy constitutions, as shown through cases 1, 2 and 3 in Section 1, it is now more important to examine the rules for states of exception than to focus on Schmitt's interpretation of the significance of the exception and on the question of compatibility between exceptions and proceduralism. This leads us to the conditional approach which holds that we can list the conditions under which the employment of exceptions are limited and justified; or we can formulate the rules for making exceptions; the exceptions failing to comply with these rules are regarded as unjustifiable. Here I am now opposed to Schmitt's idea of an unlimited exception which fails to examine the rules for exceptions. Constitutional regimes of exceptions are in fact constitutional rules for making exceptions in exceptional circumstances. The rules are thus: an emergency which is defined as a time of actual war or armed rebellion, or a danger to the security of the state and public life; legislative implementation of exceptions or delegation of authority to presidents along with other restrictions such as Congress's approval; the judicial review of an emergency decree after the event of emergency. Also, further conditions under which an exception can be made are as follows: permitting restrictions on an anti-constitutional party must be justified by the evidence of possible failure of the constitution and of the absence of reason of an anti-constitutional party; and it must be guided by the principles of justice. As Rawls claims:

> A more stringent condition is required: there must be some
> considerable risks to our own legitimate interests. Thus just

citizens should strive to preserve the constitution with all its equal liberties as long as liberty itself and their own freedoms are not in danger. They can properly force the intolerant to respect the liberty of others, since a person can be required to respect the rights established by principles that he [she] would acknowledge in the original position. But when the constitution itself is secure, there is no reason to deny freedom to the intolerant (Rawls, 1971, 218-9).

To apply the above rules and conditions in China, the problem associated with Articles 67 & 89 concerning emergency power in the 1982 Constitution is that the rules are not stated fully or clearly. The most serious problem is that these rules did not set limitations on government authority to employ emergency power. The remedy, which is open to further discussion, is to revise these articles or to draw up new articles concerning emergency power. In the near future, Chinese constitutionalists will probably adopt and modify Articles 39 and 43 of the 1946 Constitution in the following ways: to specify circumstances such as a time of actual war or armed rebellion, or a danger to the security of the state and public life that calls for emergency measures; emergency measures must be approved by, or be subject to confirmation by, the Congress; resolution of the executive must comply with constitutional rules; an emergency order shall, within one month after issuance, be presented to the Congress for confirmation; in case the Congress withholds confirmation, the emergency order shall forthwith cease to be valid.

If a dispute over an emergency order occurs, there is a question of who is to be given the power to explain and justify an exception for the sake of equal liberties. Schmitt answers that the president has such a power. As he says, rules do not implement themselves and procedure cannot tell you what will happen; and that the legal idea cannot translate itself independently is evident from the fact that it says nothing about who should apply it (Schmitt, 1985, 31).

Locke provides another answer. "Between an executive power in being, with such a prerogative, and a legislative that depends upon his will for their convening, there can be no judge on earth; as there can be none between the legislative and the people, when they have got the power in

their hands, design or go about to enslave or destroy them. The people have no other remedy in this, as in all other cases where they have no judge on earth, but to appeal to heaven" (1956, 85).

I am opposed to Schmitt's presidential power to explain and justify exceptions. There is a danger of that power being abused if the executive alone is awarded this power. Executive power should not be allowed to have power to explain and justify exceptions, rather it should only have a duty to follow the rules for states of exception in the constitution. This is a lesson from Mao Zedong's manipulation of procedures. Mao was astute enough to employ a "form" of democracy, procedures and "consensus" to serve as a tool for maintaining his political power. For example, Mao manipulated successfully the time, place and people for party conferences in which Mao could hopefully gain a majority of votes. One reason why Mao successfully manipulated procedure is that he had unlimited power, in particular, the power to make an exception and the power to explain it; this was also due to the weaknesses of institutionalization in the Chinese political structure.

I agree with Locke's answer that the people have a right to appeal to heaven. But, practically speaking, the power to explain and justify an exception for the sake of equal liberties should lie with the supreme court, but the successful operation of this power depends on a well-established power-check system such as a division of the three powers and the autonomy of the judicial system. These are institutional mechanisms and insuperable limitations to governmental abuses of emergency power.[137]

Now I would like to conclude this section by briefly commenting on competing conceptions of the justification of exceptions. Schmitt justifies the power to create exceptions in the name of social order and the existence of the state. Section 3 has already discussed the theoretical problem associated with Schmitt's justification. Here the practical problem is that there are risks in this kind of justification, because the exception-creating

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[137]I acknowledge that there are problems with court review. For example, in the Irish practice of exceptions, emergency resolutions cannot be reviewed by the courts, because they are not part of the Bill. An Emergency Bill, however, can be refereed to the Supreme Court under Article 26 procedure but the scope of the court's scrutiny will be limited. See J. Kelly, 1984, 162-8.

power is identical with the power to apply the purpose of social order and with the existence of the state rather than the constitution or rules, or takes these purposes as in fact being the rule. This kind of justification easily contributes to the abuse of states of exception because the subjective interpretation of what is the existence of the state has no objective criteria. The danger in this kind of justification is self-evident in Hitler's use of the justification for his dictatorship.

For liberals, when constitutional parties have the power to make exceptions, the primary objective is, in Rawls's view, to establish a just constitution with the liberties of equal citizenship. As Rawls states:

> It should be noted that even when the freedom of the intolerant is limited to safeguard a just constitution, this is not done in the name of maximizing liberty. The liberties of some are not suppressed simply to make possible a greater liberty for others. . . . . This is done for the sake of equal liberty under a just constitution the principles of which the intolerant themselves would acknowledge in the original position (Rawls, 1971, 220).

In other words, if an anti-constitutional party's complaint about being suppressed refers to an equal stance before the law, then an anti-constitutional party has no title to complain when it is denied equal liberty. It may have the right to complain not as a right to complain on behalf of the intolerant, but simply as a right to object whenever a principle of justice is violated.

In conclusion, there are three criteria to distinguish justifiable exceptions which imply limitation on rights, and unjustifiable exceptions which imply derogation of human rights: (1) for the sake of equal liberties or to make possible a greater liberty for others; (2) to comply with rules for exceptions, or to comply with meta-rules; finally (3) to maintain the constitution which should not be suspended entirely. Thus, any action by authorities that exceeds such limits would be unlawful. That would be the case if the exceptional measures last longer than the specified time limit, as suggested by case 1 of Section 1 above; if they are manifestly irrational, unnecessary or disproportionate. Although Hitler claimed that his abandonment of freedom of speech and press was justified by Article 48, in

the end, he destroyed the Weimar constitution. This is the case of an unjustifiable exception.

Conclusion

The problem of the exception is interesting, challenging and important, in particular, during a transition to democracy. Successful transition to constitutional democracy depends on, among other things, a wise design of a constitution which has provisions or rules not only for the protection of basic liberties but also for exceptions so that the constitution has a capacity to deal with uncertainty and crisis. It, therefore, is worthwhile for Chinese constitutionalists such as Yan Jiaqi to take the difficult problem of the exception into account, rather than denying it, in their political thinking. For example, Articles 67 & 89 regulating emergency power in the 1982 Constitution in China should be revised in a way that specifies the restrictions on employment of emergency power and the conditions under which the particular rules may rightfully be put aside.

Schmitt's heuristic-logical and juristic-factual understandings of the concept of the exception create confusions and theoretical contradictions. His authoritarian, presidential, unlimited type of exception is also dangerous and risky in constitutional life. Schmitt's argument that the exception is the antithesis of the norm fails because to make an exception is to suspend, adjust and redesign particular rules in accordance with meta-rules. His argument that decision is prior to norms also fails because to make an exception does not require the priority of decision but a quick decision which is still constrained by the priority and importance of meta-rules.

While the argument advanced in this chapter rejects Schmitt's theory of the exception, this is not to trivialise the problem of exception. In response to the challenge of the exception, liberal constitutionalists attempt to distinguish meta-rules from particular rules, and to adjust and redesign particular rules rather than to abandon the whole constitution and proceduralism. In this direction, we resolve the political problems of exceptions; and extend the field where procedure can apply and finally enhance the degree of political order and stability. Further, the liberal type of exception is conditional and limited with constitutional restrictions,

division of power and the independence of the judiciary; and the justification for making an exception is provided by the doctrine of equal liberty rather than the principle of Schmittian statism.

CHAPTER 7

Infusing a Rights-based Morality into Political Institutions

Chinese liberals such as Yan Jiaqi and Hu Ping have explored the social and political nature of rights-based morality, the political dimension to morality, rather than morality in general; that is, political institutional arrangements should be based on a morality which is characterized by urgent recognition of the following: equal liberties, institutional protection of rights and fair procedures for democratic institutional design. This is what might be called the project of infusing rights-based morality into political institutions in China.[138] The present study has analysed that project by showing how the liberal idea of rights provides a rights-based foundation for a moral critique of established political power in China (Chapters 1, 2 and 3) as well as for constructive guidance for political institutional arrangements (Chapters 4 , 5 and 6).

This chapter attempts to summarize and synthesize occasional and fragmentary discussions of moral issues presented in the previous chapters. It examines the moral foundation of liberal theory of democracy in China by discussing the idea that Chinese Marxist, goal-based morality and the traditional sage's conception of morality should be taken out of Chinese politics; while rights-based morality should be infused into political institutions in China. This chapter is not so much an historical account of the decline of Chinese Marxist, goal-based morality and the rise of rights-based morality as partly a sociological and largely a philosophical analysis of these. The aim of this chapter is to defend the necessity and the importance of that project in Chinese political life.

I should say right at the beginning that the project of infusion of morality into politics in my present work is not one that concerns the moralization of individuals,[139] rather it is a question of seeking moral principles that are to guide institutional design for a particular form of

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[138]The term, "Infusing morality into politics" is borrowed from Goodin, 1992, 168.
[139]Goodin has examined two ways - moral and political tracks - to motivate behaviour of individuals, see Goodin, 1992.

government.[140] The institution of politics is, first of all, the democratic institution of a civil state -- the use of passions against passions, power against power, threat against threat.

The chapter is in four sections. Section 1 presents a general picture of the infusion of the procedural conception of morality into politics and the removal of the sage's conception of morality from Chinese politics. Section 2 rejects the argument of the independence of politics from morality and argues for the moral principle of fairness. Section 3 dismisses the practical argument concerning the catastrophic consequences of infusing politics with moral principles by distinguishing between goal-based and right-based moralities. Section 4 rejects the cultural relativist argument and argues for a normatively minimal international morality.

1. Infusion and Removal of Moralities

In ancient and contemporary China, power was and is used to set an example of moral rectitude so that the conduct of all individuals should be exemplary. In this way, virtue was to be upheld and the consequence would be a peaceful, harmonious society rather than a society mobilized for mundane problem-solving. Politics was to be solely a matter of ethics, not the use of power to maximize values (Pye, 1985, 56). There is a long history of the admixture of Chinese morality and government; means and ends have become indistinguishable, and not only was and is ethical conduct the guide for government, but government was and is there to improve the ethical conduct of all (Pye, 1985, 63-4).

What is involved in this mix of politics and morality is the Chinese sage's conception of morality; this demands that human beings be altruists and sages who are the first to be concerned with the world's troubles and the last to rejoice in their own happiness. This kind of morality maximizes seeking for the highest ideal of the moral state.

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[140]Here my colleagues and myself are more interested in moral principles for institutional design than in those for individuals, see the introduction of our Chinese translation of John Rawls's *A Theory of Justice* (co-translators with He Huanhong & Liao Shengbai, published by Social Science Press, Beijing, 1988).

Liberal institutional design does not require the sage's concept of maximizing of virtue. There are at least three reasons for this. First, the very essence of rule by moral example is anti-politics; that is, it precludes the kinds of activities associated with using power competitively in support of different values. Instead, rule by moral example favours the ideal of a static, conformist social order. Everyone is expected to know what the moral standards are that have to be shared by the entire community in order to achieve the passive state essential for such a style of governance. Those who are safely included in the elite could engage in debates about alternative definitions of virtue, but for society as a whole there should be conformity and consensus. Yet, precisely because the norm of stylized rule allows no concessions to the realities of contention, the counternorms of officialdom have to allow scope for devious tactics, intrigue, subtle ploys, and ingenious dissimulation among those certified as the most virtuous. Thus the life of officialdom was and is built upon the foundation of hypocrisy (Pye, 1985, 42). Furthermore, the Chinese cultural belief that rule should be by virtuous persons and not by impersonal laws makes it difficult for the Chinese to institutionalize authority since they are reluctant to invest power in impersonal arrangements (Pye, 1985, 200).[141]

Second, institutional arrangements are less likely to be implementable the more they demand of people. Liberals, in adopting the assumption that humans should be assumed potentially evil or knavish, take a pessimistic view of the effectiveness of the sage-moral appeal. Probably, one who is seriously committed to the democratic enterprise would be willing to sacrifice his or her time, salary and even life. But we cannot really expect that moral rules of this kind will be followed, and cannot expect too much of the average person. Although the sage-moral approach may also admit of the assumption that most persons will not be sages, it assumes that all people are, by nature, potentially moral sages, and thus encourages people to make self-sacrifices.

Third, one of the purposes of democratic institutional design is to avoid the negative consequences of a totalitarian system, the great flaw of which is that its operation depends on personal morality. Thus correctly

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[141]Yan Jiaqi expressed a similar argument in my interview with him on December 18th, 1992 in Paris.

modelled constitutions such as liberal or republican institutional arrangements function independently of the manners of humans and the goodness or badness of rulers, making it in the interests of even a bad person to act for the public good (Hume, 1964, 99). The science of politics, therefore, is not concerned with manners and morals, but with the balancing of separate interests and the skilful division of power in order to best secure public interests (Forbes, 1975, 227). Institutional design should economize on virtue (see Brennan & Buchanan, 1985) in the following two senses: (1) The social contract from which it derives assumes an impersonal model unconcerned with the best virtues. (2) Fair procedures on which liberal institutional design are based aim to regulate how institutions (and rules of law) operate, rather than to regulate how individuals behave virtuously. Thus the sage's moral appeal constitutes neither a starting-point nor a guiding principle for democratic institutional design. Consequently, the institutions should not be seen as tools to produce ideal human beings as defined by one doctrine or one organization, but rather as an instrument of rational control in the management of evil.

The above project of liberal institutional design can be seen in the Chinese intellectuals' advocacy of the separation of politics from the official ideology. Just as the West separated politics from religion in the period of secularisation, China, it is argued, needs to separate politics from the official ideology and its morality; and this separation is a hallmark of political modernity. With this attempt to free politics from the official ideology, Marxism-Leninism and Mao Zedong Thought, initially there needs to be a radical desacralisation of the Chinese official ideology, followed by the search for a new relationship between ideas and politics as well as between morality and politics. An official ideology must carry respect for the autonomy of philosophy as an intellectual activity and, just as importantly, it must desist from relying on the power of the state in order to control opinion and thought (He Baogang, 1988, 41-2). At the same time, liberal institutional arrangements need to build on a rights-based morality, at least, on a procedural conception of morality.

Just as Hume sought for a new conception of virtues, as did the moral philosophers of the eighteenth and nineteenth centuries, Chinese liberals have sought for a procedural morality which constitutes a basis for proceduralism. The procedural conception of morality emphasizes rule-

following and fair procedures; as David Hume (1949a & b),[142] J. S. Mill[143] and Adam Smith[144] see it, the virtue of justice is nothing but a disposition to obey the rules of law. The procedural conception of the good person is also not seen as the Confucian good person, but, as Montesquieu (1989, xli) argues, the politically good person who loves the laws and procedure and who acts from love of the law and procedure. Thus the procedural conception of morality and the good person is less demanding than the sage's conception in the sense that it only requires a minimal criteria: people have to follow the rules of the game.

This minimal demand facilitates the feasibility of institutional design, because institutional arrangements are more likely to be implementable the less they demand of people. The possibility and operation of democratic institutions also depend on the procedural view of morality; otherwise democratic institutions cannot work. Liberal institutional design, therefore, presupposes the procedural conception of virtue, or institutionalized morality in the sense that it does not stress that people should behave virtuously but require people to follow rules through institutional devices such as the mechanism of reward and punishment. For example, Mill's morality is composed of "coercive rules", i.e. rules that indicate when coercion may be used to compel or punish (Gaus, 1980, 266).

Now it is time to examine a possible tension in Chinese liberals' thought. Although Hu Ping and Yan Jiaqi have advocated procedural morality, they have unconsciously retained vestiges of traditional moral idealism.[145] They share implicit assumptions about goodness: (1) The democratic enterprise should be guided by those who are concerned only with the interests of the people and less with personal interests; leaders of democratic movements, therefore, should be, and can be, moral sages. (2) It is the critical and creative intellectual, and not the political ruler, who represents, advocates and holds to truth and social justice. The power of

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[142]Also see Macintyre, 1982, 216.
[143]According to Mill, moral uses of "right" and "wrong" depend upon an act's conformity to, or violation of, fairly general moral rules (Gaus, 1980, 267).
[144]Smith argues that to be virtuous equates with rule-following. See Macintyre, 1982, 218.
[145]See Yan's conversation with Zhu Gaozheng, *Zhongyang ribao*, Taiwan, May 15, 1990; and Hu's conversation with Zhu Gaozheng , in Hu Ping, 1988, 238-66, also see, *China Spring*, August, 1990, 20-1.

Chinese intellectuals is based on, or comes from morality and 'cultural capital' rather than from class, property or political position. The role of intellectuals is to point out the right path of politics and this role has more status than that of political leaders (see, He, 1991a).

If these assumptions are taken as an intellectual basis for institutional design, then they undermine the claim in their argument for democratic institutions that human beings are self-interested, further undermine the principle of equal liberty at the institutional design level, and possibly deny the civil and political rights of peasants in the process of democratisation in terms of the superiority of intellectuals. This possible theoretical tension in the Chinese liberal theory of democracy comes from the absence of a distinction between morality as virtues (sages) and as rules (procedures). If this distinction is made, the sage's conception of morality is taken out of democratic institutional design, and the procedural conception of morality is adopted at the institutional design level. The contradiction is then resolved, because the procedural conception of morality recognizes the legitimacy of self-interests and social conflicts which are seen as a permanent feature of human life. The theoretical tension also stems from an absence of a distinction between institutional design and practical moral advocacy. The former does not require the sage's view of morality, but rather the procedural conception of morality. The moral advocacy calls for the moral sentiment to deal with practical problems such as factional fights among democrats. And it may be useful in reducing tensions among democrats and speeding up the process of democratisation if all the Chinese democrats were "sages". While the good intentions of Hu and Yan are highly laudable, the political results are likely to be dubious, and after all, this moral advocacy has to be rejected at the institutional design level in order to avoid or dissolve the inbuilt tension at a theoretical level.

2. Procedural Principle that Should be Fair

The project of infusing procedural morality into politics is evident in Yan Jiaqi's idea of procedural democracy. Yan's normative proceduralism presupposes a close association between constitutionalism and subjectivism or humanism in ethics; that is, constitutional democracy must be based on the basic humanist notion that individual human beings are the ultimate

ethical units (Yan, 1988, 63-4, 1991a, 144-5). Thus his procedural proposal presupposes a moral dimension of politics.

Those Chinese who hold a nihilistic attitude to morality, as revealed in the slogan of the "death of Lei Feng" which equates with the death of God in the West, might argue that there is no need to discuss morality in Chinese political life at all. This position might be supported by the argument of the independence of politics from morality. Drawing on Schmitt (1976), they might argue that the crucial political distinction is that between friend and foe. The political foe need not be morally evil or aesthetically ugly. The friend-foe antithesis is seen as independent of other antitheses, such as good and evil in morality. Politics is further seen as autonomous only in the sense that the validity of political categories is independent of morality. Politics is then a battle to conquer and retain political power, impatient of all normative bonds (see Schmitt, 1976, 25-37, also see Slagstad, 1988, 114-6, Hirst, 1987, 26-7). Thus proponents of this line of argument dismiss Yan's moral effort as naive and idealist. Moral idealism is perceived as failing to understand the essence of politics: moral principles do not guide and regulate political life, rather they are always manipulated by politicians in their own interests.[146]

No doubt, the nature of politics is the conflict between foe and friend and the struggle over competing values within or outside a political community. However, friend-foe politics does not exclude the moralistic and normative aspect of politics. Friend-foe politics can be incorporated in or subordinated to, a constitutional-democratic framework, because those who understand politics in friends-foe terms might well choose to respect rules and encourage others to respect rules in the hopes of minimizing their potential losses. Furthermore, a democratic constitution itself is devised to address and resolve the enduring problem of conflicts of interests. The key issue is how to deal with such conflicts. For a liberal, these conflicts can be resolved or controlled by commonly held norms and compromise within just institutional devices. No matter who is friend or

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[146]For example, new elites which are often composed of the children of Party veterans have adopted a Machiavellian immoral position in politics. See "Realistic Responses and Strategic Choices for China after the Soviet Coup", which is discussed by David Kelly, 1992, 5-6.

foe, he or she has to comply with an appropriate procedure to deal with basic conflicts in political life.

At this point, there is a challenge to proceduralism in the theoretical problem of the abuse of procedure; that is, the procedural principle exists independent of the decisions it will produce. A purely procedural principle would legitimate the adoption of a policy imposing any deprivation, such as deprivation of property, or of equal opportunity in politics, in employment or in education, provided only that it is supported by procedure specified by the decision rule. This is a theoretical defect of formalistic proceduralism (Fishkin, 1979, 214).

Yan's idea of proceduralism indeed fails to address the above question of the theoretical weakness of pure proceduralism. Here, Rawls's idea of normative constructivism is employed to overcome Yan's shortcoming, to defend the ideal of procedural democracy.

Turning to the question of the principle of procedure being abused in practice, I would argue that in order to protect everyone from such deprivations and to overcome the theoretical defect of proceduralism, a principle which is not merely procedural would be required. In this context, Rawls's deontological theory of the priority of rights and his idea of pure procedural justice is suitable for this task. To put it very simply, a principle should take rights as "trumps"; and procedure should be fair in terms of equal political opportunities or the principle of equal liberties.[147] This procedural fairness can help us to decide on adjudicative procedures when we have exhausted the arguments showing procedures to be more or less apt to yield reasonable determinations.[148] If a fair procedure is set up, the outcome is likely to be fair,[149] whatever it is, provided that the procedure has been properly followed. Thus pure procedural justice constitutes a normative basis for procedural democracy.

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[147]I acknowledge different understandings of fairness in the Western political theories, and tensions between fairness as mutual benefit and fairness as impartiality. For a utilitarian concept of fairness, see, Robert Goodin, 1976, Chapter 6. For a discussion of tension between theories of justice, see, Brian Barry, 1989. I adopt Rawls's conception of justice as fairness in my present study.
[148]More discussion, see Gaus, 1991.

Human beings need procedural fairness to regulate their actions. When procedural politics is not fair, then political force justified by so-called procedure becomes a mere brutal solution; thus procedure becomes a tool in the interests of a minority of politicians. It is important to stress again that the Chinese considerations of procedural fairness result from the tragedy of the Cultural Revolution, and from the historical lesson that theoretical justifications of the violation of human rights always depend on the denial of the principle of equal liberty (I have discussed this in Chapters 3, 4, 5 and 6). The fact that procedures have been abused through "autocratic rules of law" or "rules by law" certifies that it is necessary to implement the principle of pure procedural justice and a real rule of law (for a definition of the rule of law, see Rawls, 1989, 254) to protect and maintain liberty. To do so, the crucial thing is that procedure and law must themselves be just. That a constitution should be just, therefore, is the foundation of the rule of law. It is here that Rawls's liberalism appeals as a fundamental solution to procedural and legal problems in China; that is, by securing basic rights and liberties, and assigning them a due priority, the most divisive questions are taken off the political agenda (Rawls, 1989, 253, also see 1987, 21). Without this fundamental reconsideration and solution, China will repeat its old mode of rule by law. It is here that Rawls's liberal normativism indeed apprehends the fundamental problems pertaining to a moral foundation for sound politics and better political arrangements for society. Political liberalism wisely identifies the most urgent value, equal liberties: a fair procedure is set up, any principles agreed to will be just (Rawls, 1971, 136); and if the institutions of the basic structure are framed according to the value of equal liberties, intractable conflicts are unlikely to arise (Rawls, 1987, 16).

3. The Rights-based Political Morality

One might argue that the project of infusing politics with moral principles has led to catastrophic consequences in China: Mao Zedong's appeals to a moral movement so as to change the old face of China did result in tragedies during the Cultural Revolution. Such moralistic appeals actually

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[149]I acknowledge that institutional arrangements such as markets, legal regulations and decision rules of unanimity can not guarantee fair outcomes.

comforted and caused people to back Mao's dictatorship. If moral appeals could serve the mere task of providing solace to the supporters of Mao's dictatorship, that is more than enough to give us pause in our project of trying to infuse morality into politics.

One easy reply would be to distinguish, at this point, between the "true morality" which we hope to infuse into politics and the "pseudo-morality" on which Mao's rule relied. The counter-examples of Mao's pseudo-morality and the like should not necessarily give us pause, this argument would go, because Mao and his supporters were not really acting on moral principles -- on true moral principles -- at all. The objection, therefore, is not to the infusion of moral principles into politics but rather against the infusion of false moral principles.

However, this strategy of distinction between true and false moralities is intellectually unsatisfactory. It poses, in Goodin's (1992, 163-4) view, genuine problems on two levels. First, the distinction between true and false moralities appeals to practices so as to identify true morality and reject false morality. Since those employing this device will never be prepared to say what is a true moral principle until they see how it turns out in practice, they are never in a position to say in advance what morally we should do. The second relating to the first is an institutional design-problem posed by such an approach. If we do not know what the right principles are until we see how they turn out, we can never set things up in such a way as to guarantee that the right principles are put into practice in the first place. People trying to design the system so that the right principles are put into effect will simply be chasing their own tails, if this line were adopted. On that account, the whole project of infusing morality into politics would become a logical impossibility.

Given this lack of success in distinguishing true and false moralities, a distinction among the rights-based, duty-based and goal-based moralities is employed to avoid the question of true or false and to focus on the question of the most urgent value. This alternative strategy, I suggest, is useful in defending the project of infusing morality into political institutions.

Ronald Dworkin (1977, 171-2) has suggested a "tentative initial classification" of political theories into goal-based, rights-based, and duty-based theories. Such a theory might be goal-based, in which case it would

take as fundamental some goal, such as improving the general welfare (for example, utilitarianism); it might be <u>rights-based</u>, taking as fundamental such as some right, the right of all humans to the greatest possible overall liberty; or it might be <u>duty-based</u>, taking as fundamental some duty, such as the duty to obey God's will as set forth in the Ten Commandments.

In adopting Dworkin's classification, J. L. Mackie (1984, 168-81), has applied it to moral theories generally and claimed that morality should be rights-based. He also shows that the moral theories of Mill and Rawls are rights-based. In taking up this classification, I would like to claim that the official Chinese morality is goal-based morality in the sense that the establishment of communist society is taken as the primary goal.[150] Conversely, the new morality advocated by Chinese liberals is a rights-based morality.

The practical argument against the project of infusing morality into politics fails because it rejects and condemns <u>all</u> morality and ideology as providing a potential weapon for totalitarianism, and fails to recognize the fundamental fact that the Chinese liberals' ideas of rights are totally different from those expressed in Chinese Marxist morality. The goal-based Chinese Marxist morality shows concern for what is taken to be the interest of society as a whole such as national glory; however, it overlooks rights, and has even become a tool used to deprive people of their rights. The official goal-based morality demands that individuals should be sacrificed for the well-being of collective interests. What is more, this kind of morality even denies the right to complain about making such a sacrifice (see Chapter 4, also see Yang Guang, in Widor, 1981, 94). Conversely, Chinese liberals are rights-oriented in a way that defends natural rights and rejects any idea that denies civil and political rights (Chapters 4 and 5). Chinese liberals have chosen natural rights as a sound starting-point for political morality: rights should take priority over truth, goals and duties (Chapters 3, 4 and 5).

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[150]Rigby & Feher have discussed goal rational-legitimation in communist regimes. They argue that legitimacy in Soviet society reflects the goal-rational character of its social order. The validity of orders issued by the rulers is derived from the validity of the principal social goals that the authorities claim to represent and promote. See Rigby and Feher, 1982.

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There is much literature to support a right-based morality. As Gregory Vlastos (1984, 19, 41-77) argues, rights have priority over considerations such as utility or desert because they reflect the conditions under which it becomes possible for an agent to recognize and act on considerations such as these. Waldron also argues that rights have special importance, an importance which warrants overriding other values and ideas whenever they conflict with the protection of rights. A right is nothing but a particular interest: it is assigned a greater weight than ordinary interests and therefore counts for more in utilitarian or other welfarist calculation. Also, the interests protected by rights are given lexical priority over other interests (Waldron, 1984, 14-15). Again, as Mackie (1984, 171) argues, "rights have obvious advantages over duties as the basis and ground of morality. Rights are something that we may well want to have; duties are irksome. . . . Duty for duty's sake is absurd, but rights for their own sake are not".[151] In short, the principle of the priority of equal rights serves us best as a guide to democratic institutional design (Chapters 4, 5 and 6).

There are three points that must be clarified if rights are to be a starting-point for political morality.

(1) I have argued in Chapter 4 that the idea of equal natural rights constitutes the source of all rights; a multiplicity of rights derive from fundamental natural rights. As Hu Ping (1991a, No. 4, 51-2, 56-7) argues, civil and political rights are inviolable, universal and superior to economic and social rights which are historically determined and contingent upon concrete circumstances. When conflicts between rights occur, the principle of the priority of fundamental rights over economic and social rights should take effect.

(2) Theoretically, it is possible to derive both duties and rights from basic goals as is done in consequentialist arguments, and it is also possible to derive both goals and rights from duties as is done in Kant's categorical imperative. However, a rights-based morality begins with basic rights from which both goals and duties can be derived. It does not reject moral goals, but constitutes a premise from which we set up as a political goal that

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[151]For more discussion of the comparative merits of right-based, goal-based and duty-based theories, see Mackie, 1984.

institutional arrangements should respect and protect human rights and liberty and recognize the proper autonomy of citizens. Thus, if a rights-based political morality is infused into politics, it logically requires that democratic institutions should grant rights to good people as well as to potentially evil people so as to ensure a counterbalance mechanism that can effectively control and manage the problem of evil (Chapter 5). To protect equal human rights thus becomes the first and most important goal of democratic political institutions (Chapter 4). At the same time, one of the goals of the democratic state should be to dismiss utopian goals such as realizing a communist society.

(3) Rights-based political morality also does not ignore moral obligation, but constitutes a premise from which human beings have the duty to respect the rights of others. If A has the moral right to do X, then A has a duty to take responsibility for doing X. If A is also protected in doing X, it follows that others are morally required not to interfere or prevent him or her. I have emphasized that one who enjoys rights has a duty to respect the rights of others, and importantly has a duty to follow the rules of the game (Chapter 4). The complete fulfilment of the different kinds of rights involves the performance of multiple kinds of duties; for example, the right to physical security implies a duty not to eliminate a person's security, a duty to protect people against deprivation of security by other people and a duty to provide for the security of those unable to provide for their own (see Shue, 1980, 52-3). Also as seen above, the procedural conception of morality is distinguished from the sage's conception of morality; the former requires that procedure itself should be fair and that people have a duty to obey the rules.

Now let me make a comment on fears regarding the project of infusing politics with morality. As Goodin suggests, one might fear the general effects of "moralizing" politics, and the sorts of attitudes people may, as a result, take toward their political opinions. The fear is that people will come to regard most of their political opinions as if they were matters of high moral principle, whether or not they really are. The further fear is that people will, in consequence, become increasingly adamant, inflexible, and intolerant even in the smallest matters of politics. Most particularly, the fear is that people's treating political opinions as if they were sacred values in this way will, from time to time, lead them to support the egregious

excesses of a Hitler or a Stalin or a Mao or a Pol Pot. And even if matters stop well short of that, regarding political opinions as sacred values generates non-negotiable demands of a sort that ordinarily prove utterly intractable to ordinary political processes; what cannot be settled by bargaining is left to be resolved by other, more bloody means. Such are the fears of those who resist the proposal to infuse morality into politics (Goodin, 1992, 166-7).

These fears are reasonable if goal-based morality is infused into politics, which might produce the above negative effects that people fear. However, those who have these fears have no objection to a rights-based morality and democratic mechanisms that Chinese liberals have been advocating. Their objection is instead to the tendency toward inflexibility and intolerance that comes from introducing the unifying official Chinese goal-based moral principles into politics. Nevertheless, those who are committed to a rights-based morality argue in the opposite direction: For Rawls, the principle of utility presumably requires some sacrifices for the sake of others. But his two principles of justice have a definite advantage: rational persons run no chance of having to acquiesce in a loss of freedom over the course of their lives for the sake of a greater good enjoyed by others (Rawls, 1971, 176, 180).

Here I do not adhere to the view that political institutional design based on the rights-based moral principle is always to the good. Following Goodin (1992, 165), I support a weaker claim: political institutional design based on the rights-based moral principle in political life usually works out to the good. It usually does not lead to a Holocaust, or the Killing fields, or any such horror. This is an empirical claim, not an analytic one. Being a mere empirical claim, it can only be contingently (rather than necessarily) true, and that, in turn, means that it may well prove to be false -- certainly in particular instances, and perhaps in general. Just like Goodin, I hope and believe that is not the case, though. There seem to be many good grounds for supposing that the rights-based moral principles and democratic mechanisms (which I have described in Chapter 4 and 5) will help to prevent such tragedies as the Cultural Revolution, rather than causing them. Also, a rights-based political morality is capable of withstanding abuse because it contains an internal mechanism of self-corrective procedure and principle (Chapters 4 & 5), and because rights, in R. Dworkin's (1984) view, are "political trumps" held by individuals. In short, although the matter of

use of theories depends on the user rather than the theories themselves, Rawlsian rights-based morality and fair procedures can help to reduce the number of cases of abuse, while the official Chinese goal-based morality lacks an internal mechanism against abuse by a despot.

4. Against a Cultural Relativist Argument

A Chinese cultural relativist would not accept the project of infusing morality into politics because of his or her rejection of a universal doctrine of right-based political morality. Julia Tao claims that the Chinese way of thinking about the self and about moral agency is in stark contrast to the image of the self as a bearer of rights in the deontological conception. She further suggests the inadequacy of the moral individualism of a right-based morality and argues for an alternative view of morality which places importance on the intrinsic value of collective goods and on membership in a society (Tao, 1990). Thus, a Chinese culturalist would like to infuse Confucian duty-based morality into politics.

Drawing on Julia Tao's argument, a Chinese cultural relativist might argue that rights-based political morality is too alien to be applicable in China. Morality, in a cultural relativist's view, is something which is rooted in the particular practices of actual communities. So the idea of seeking to uncover abstract principles of morality by which to evaluate or re-design existing societies is, it is argued, an implausible one. There are, in a cultural relativist's view, no universal principles of morality or justice discoverable by reason. For a cultural relativist, to seek to apply rights-based political morality in China is to look for the wrong thing: universal principles to serve as solutions to universal (or at least generalizable) problems -- the problem of the nature of the best form of political association. The truth of the matter, it is argued, however, is that there is no such rights-based political morality except in the minds of liberal philosophers.

I disagree with the above idea, but I would like first to acknowledge the following: (1) Cultural relativism is true as an empirical description of the moral practices of diverse cultures around the world. Indeed there is a great deal of moral diversity in different cultures (see Renteln, 1989). (2) Cultural integrity and national identity, as cultural relativists always claim, should be maintained within a community. (3) Cultural relativism is also useful in

stressing differences, in encouraging creativity and in challenging the dominant Western thought.[152]

At a theoretical level, the cultural differences between China and the West is not the problem that Julia Tao has suggested. As Kukathas argues well, cultural diversity does not preclude the possibility of moral criticism or of developing universal moral standards. Nor does it make it impossible to compare moral values, or to acquire moral knowledge (Kukathas, 1994). Further, the fact of moral diversity across cultures by no means entails the sceptical conclusion that there are no rational grounds for favouring a minimal international morality. At least, we should acknowledge and support a substantive moral theory of human rights to provide minimal standards and protections that governments must provide for their citizens, as formulated, for example, in the United Nations Universal Declaration on Human Rights. For example, rights of personal security (freedom from arbitrary arrest, torture, or death) should be respected by different cultures. The minimal international morality is seen in Rawls's universal character of justice as fairness at least two ways. First, it extends to the international society and binds all its members, the nation-states; and second, insofar as certain of a society's domestic institutions and policies are likely to lead to war or to expansionist aims, or to render a people unreliable and untrustworthy as partners in a confederation of states or in a cooperative arrangement, those institutions and policies are open to censure and sanctions of varying degrees of severity by the principles of international justice. Here violations of what are recognized as human rights may be particularly serious (Rawls, 1989, 252, footnote No. 46). Without this minimal international morality, it would be hard to know how to begin to talk about rights at all.

At a practical level, the problem associated with cultural relativism, in the context of Chinese practice, is that such relativism has always been used as an excuse to abuse rights or to confuse the issues at hand.[153] Further,

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[152]See David D. Buck, 1991. For examples, Akos Ostor's (1984) challenge to the Western concept of the market.

[153]For example, the Chinese government uses the idea that human rights are circumscribed by historical, social, economic and cultural conditions to argue against international condemnation of the Beijing Massacre in 1989.

there are the following four types of evidence against the above cultural relativist argument. First, most Chinese liberal intellectuals, like liberals both in Poland and Yugoslavia (see Walicki, 1988, 22-3; Gligorov, 1991, 20-1), follow what Pogge (1986) calls the trend of "the new global liberals," favouring what he calls "the global institutional scheme"[154] and regarding liberalism as a universal doctrine. The Chinese, among other peoples, are culturally universalistic in their belief in human rights and democracy. There are common points between Western and Chinese conceptions of rights, such as the belief in the social usefulness of free speech.[155] Both liberals in the West and in China share a certain level of recognition of rights, a level of institutional guarantee of rights and a level of the substructure of philosophical assumption that a concept of social justice must take persons as the ultimate units of moral concern. For example, Yan has argued that humanism, democracy, human rights, freedom and so on, belong to an essentially universal culture (Yan, 1988, 59-66); Fang Lizhi also argues that the idea of human rights is a common treasure shared by the global community just as science is (Williams, 1991). This fundamental agreement constitutes a basis for us to agree on a minimal international morality.[156]

Second, importantly, the rights-based morality is also rooted in China in the sense that it is demanded by Chinese democratic practice. The Chinese demand for just principles lies not only in philosophy but also in Chinese politics. Chinese liberals' search for a better form of political association arises from within the Chinese political community, particularly after the tragedies of the Cultural Revolution. The Chinese liberal philosophers would follow Rawls in asking the same questions about possible abstract principles of morality by which to evaluate or design

[154]Also see Beitz's (1979) cosmopolitan conception of morality, Shue's (1980, 120) idea of universal subsistence rights.

[155]See Nathan in Edwards, 1986, 163.

[156]Here, I think, Daniel Kane's observation that Chinese intellectuals favour universalism while Western intellectuals favour relativism is misleading because it underestimates the universal attitude among Western intellectuals and the cultural relativist attitude among Chinese intellectuals. See, Daniel Kane, 1991, 68-72. Also Nathan (1991b) shows the difficulty of explaining why an originally western concept of human rights is valid for China. However, I think, the difficulty can be overcome in the context of the common position between Chinese liberals and Western liberals rather than in the context of different positions between the Chinese government and liberals.

democratic institutions and a sound governmental structure. Chinese liberals' acceptance of the universal truth of rights-based political morality is of relevance and of great significance to the Chinese political community.

Also the idea of infusing rights-based morality into political institutions also mirrors the development of the emergent economic civil society in China,[157] as fairness is required by the development of market economics in China. Under Mao's planned economics, the state often took what it wanted from enterprises without a return gain, through the so-called *yiping erdiao* (gratis transfer of materials). With the development of market economics in Deng's time, a rudimentary norm of fairness, that each of us must be prepared to give as well as to take, has gradually taken root in economic life and become guaranteed by legal regulations. For example, Article 5 of the Development of Contract Law was set up especially to guard against the practices of "absolute egalitarianism and gratis transfer of materials.[158] Also, the development of contract economics together with the legal regulation of contract in China requires a further ethical norm of fairness: people must be morally obliged to keep their agreements, even when all their gains are in the past and all their costs in the future.[159]

Third, there is an emerging international law of human rights which sets standards for all states, and the Chinese are moving toward acceptance of this international law. Furthermore, the current Chinese government does recognize the importance of human rights and appraises highly the Universal Declaration of Human Rights (Chapter 4, also see *Beijing Review*, Nov, 4-10, 1991).

Fourth, the idea of infusing the rights-based morality into politics is not arbitrary at all; nor is it purely speculative. Rather it in fact mirrors the development of the moral and ideological lives in China, that is, the crisis of the official morality and the growing demands, in the past decades, for

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[157]Wu Guoguang (1990) has examined China's ten-year reform, particularly rural reform, in terms of a liberalization process.

[158]"Economic Contracts must be made in the principle of equality and mutual benefit, agreement through consultation and compensation of equal value. Neither party is allowed to impose its will on the other, and no unit or individual is allowed to interfere illegally." See Youzhi Yu, 1986, 193-212, esp, 203.

[159]For the relationship between fairness and economics, see Goodin, 1992, 23-4.

protection of human rights in China. In other words, the rights-based morality seems to be an attractive and promising alternative to other forms of morality -- the official goal-based morality and traditional Chinese underground morality. The crisis of Chinese Marxism and its morality is well-known. Here I would like to stress two points. First, the old control mechanisms of the official goal-morality have lost their former effect. There was a revival of virtuocratic control mechanisms in the late 1980s, when the Party stressed moral education as one of the top priority issues before and after 1989, and stated that improving morality among youth was a decisive factor in creating China's future. However, the conflict between traditional socialization methods and the emerging democratic demands concerning socialization that we find in modern society, and the danger of technocratisation and even a form of industrialization of morality, have made official Chinese morality ineffective (Bakken, 1989). Second, the vacuum of faith among the Chinese which followed the death of Maoism was filled by traditional values such as *Hao han* (the good man),*Gemenr* (mateship), and *Yiqi* (the honour of the *Hao han* tradition) in the language of the Chinese underworld. However, these values, as Jenner (1992, 193-208) correctly points out, have always been too destructive to build something new. They glorify gangsterism and help to cement bonds among criminal or rebel gangs. Given the problems associated with the above two kinds of morality, Chinese liberals think that it is worthwhile for China to implement a rights-based morality in political life.

Conclusion

Democratic institutional design does not require a sage's conception of morality, or a Chinese Marxist, goal-based morality. But it would be wrong to take this further and argue that no form of morality constitutes a normative basis for democratic politics. Contrarily, I have argued for a right-based morality as being a solid moral foundation for Chinese liberal institutional design; and a procedural conception of morality as an actual basis for well-founded democratic institutions.

I have examined and rejected a number of arguments against the project of infusing politics with morality. The argument of the independence of politics from morality fails because the problem of the abuse of procedure intrinsically requires the moral remedy that procedure

should be fair. The practical argument concerning the catastrophic consequences of infusing politics with moral principles fails because it fails to distinguish between goal-based and rights-based moralities. The cultural relativist argument fails again because empirical moral diversity does not exclude a normatively minimal international morality and because a <u>universal</u> doctrine of rights-based morality is rooted in today's Chinese politics.

PART THREE

PRECONDITIONS FOR LIBERAL DEMOCRACY

CHAPTER 8

The Cultural Conditions: Dual Roles of Political Culture

One might argue that liberal democracy is impossible in China because of antidemocratic Chinese culture (for example, see Jenner, 1992). Thus the current Chinese political culture is seen as an obstacle to Chinese democratisation although it is occasionally seen as a resource favouring democratisation. But to adopt either view as a sole perspective is to initiate a simplistic analysis. Synthetic investigation of the negative and positive cultural elements and their dual roles in the process of realizing the Chinese liberal idea of democracy is the goal of this chapter.

Yan Jiaqi (1988, 1989) points out the basic cultural problems pertaining to democratisation: while China lacks the ideas of 'division of power' and "check of balances", she has a negative legacy of ethical politics that a good society under the "rule of man" is based on the idea of "perfection of leaders". Also Hu Ping argues that the necessary condition for democracy is a commitment to the idea of democracy. If we believe in democracy, in Hu's view, it will work in China, and if we do not believe in democracy, it will not work in China (1988, 188-95). Hu observes that there is a major difference between democracy and autocracy: politicians in democratic regimes believe in the basic rules, choosing their means in compliance with the given democratic rules; whereas in totalitarian regimes they are not committed to fair means and will stop at nothing in their struggle for political power (1988: 247-9). This chapter attempts to develop further the above ideas of Yan and Hu concerning cultural conditions for Chinese democracy.

I follow Pye's definition that political culture is the set of attitudes, beliefs, and sentiments that give order and meaning to a political process and that provide the underlying assumptions and rules that govern behaviour in a political system. A political culture is the product of both the collective history of a political system and the life histories of the members of that system, and thus it is rooted equally in public events and private experiences. A political culture is not fixed and transcendent but changeable

and entangled in reciprocal relationships with various social, economic and political institutions.[160]

This chapter comprises six sections. Section 1 briefly reviews theories of the cultural conditions for democracy as a basis for later discussion. Section 2 investigates new, positive cultural elements for democratisation in China. Section 3 examines the possibility of the conscious adoption of democratic rules. Section 4 discusses the Chinese political cultural limits to democracy. Section 5 examines the cultural problems or difficulties associated with Chinese democratisation. To further examine the cultural problems, Section 6 briefly investigates the case of the role of fear in Chinese democratisation.

1. The Relationship between Culture and Democracy

Democracy requires widespread acceptance of such values as dignity, autonomy, respect for persons, belief in individual rights and commitment to democratic procedures; it also requires virtues such as reasonableness and a sense of fairness, a spirit of compromise, a readiness to meet others halfway, mutual trust among members of the society, and a willingness to tolerate diversity and conflict among groups (Pennock 1979, 236–59; Rawls 1989, 17, 21; Huntington 1984, 209; Hu Ping 1988, 188–95, 247–9).[161]

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[160]For definitions of political culture, see Almond and Verba (1963, Chap. 1), and Pye, 1965, 7; 1966, 104–5; 1985, vii–viii, 19; 1988, 5–10. Pye's concept of political culture has two major problems: cultural determinism and psychological reductionism (see He, 1992c). However, Pye's cultural approach can still be defended in the context of the Chinese democratic enterprise. The fact that China has experienced a continuing cultural debates since 1984 highlights the importance of cultural factors. To dismiss the importance of political culture in Chinese studies is to be ignorant of the above fact and its meaning; and such ignorance will prohibit contact with the fundamental issues in modern and contemporary China. Pye offers three major reasons for the exceptionally dominant role of cultural factors in Chinese political life: (1) The strangely potent mixture of Confucianism and Leninism seems to agitate passions and arouse visions. (2) Confucian Leninism places supreme value not just on ideology, but on highly moralistic versions of ideology. (3) The study of political culture is important for understanding Chinese politics because of the unique relationship between the primary institutions that are so important in socializing the Chinese and the public institutions of national politics (Pye, 1985, 32). It follows, I think, that (1) personalistic and paternalistic politics in China has to be clearly analysed by psychological investigation. (2) The process of transformation of modern Chinese politics has to be analyzed through examination of different values and cognitions among different social groups. As a conclusion here, I quote Pye that any form of political analysis is inevitably premised upon fundamental notions about human nature and human society. Any attempt to analyze or discuss political life must involve psychological and sociological assumptions (Pye, 1988, 7). See He Baogang, 1992c.
[161]Here it does not imply that people, in particular politicians, are indeed committed to these values and beliefs, but they have to behave, due to cultural and institutional

Huntington (1984, 209) also sees that a culture that is more monistic and less tolerant of diversity and compromise, highly values hierarchical relationships and extreme deference to authority, greatly stresses the need to acquire power, and underemphasises the need to accommodate others, is more likely to have authoritarian rule and to be less conducive to democracy.

Here I would like to summarize the five important points in the body of literature on conditions for democracy, which I have taken as a base for my exploration of the relationship between Chinese political culture and democratisation.[162] First, it is a mistake to claim that if favourable cultural conditions for democracy are met, democracy will emerge. Favourable cultural conditions are not *sufficient* in themselves for democratic development.

Second, among favourable cultural elements for democracy, according to Rustow (1970, 362), only a conscious adoption of, and habituation to, democratic rules (or in Hu Ping's term (1988, 188–95), a commitment to the idea of democracy) is *indispensable* to the genesis of democracy (this may be called a hard condition for democracy). A small circle of political leaders skilled at negotiation and compromise is also required for the formulation of democracy.[163] The virtue of reasonableness and a sense of fairness, a spirit of compromise and a readiness to meet others halfway should be seen as a favourable cultural conditions for maintaining stable democracy, rather than as strict preconditions for the genesis of democracy (these favourable cultural conditions may be called soft conditions for democracy). However, the absence of one powerful favourable condition, or conversely, the presence of a powerful negative condition that overrides the presence of

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constraints, in a way that suggests they believe in them even if at a deeper level they remain sceptical. I thank Barry Hindess for this clarification.

[162]I acknowledge that there are differences among Western theories of preconditions for democracy. It would be beyond the scope of this chapter to consider what these differences matter and to critically examine their respective arguments.

[163]Rustow (1970, 362) also rejects what are sometimes proposed as preconditions of democracy, for example, high levels of economic and social development, or a prior consensus either on fundamentals or on the rules.

otherwise favourable conditions, may prevent democratic development (Huntington 1984, 214).

Third, democratic culture is not a given that comes before democracy. *Consensus* on fundamentals or on the rules is an implausible precondition, because the acceptance of these is logically a part of the transition process rather than its prerequisite. Rustow (1970, 362–3) quotes and agrees with Bernard Crick's idea that the moral consensus of a free state is not something mysteriously prior to or above politics; it is the activity (the civilising activity) of politics itself. In other words, favourable cultural conditions have to be, and can be met in the process of democratisation.

Fourth, political culture is not a transcendent force that affects and decides democratic politics but is affected by democratic politics. A democratic system that facilitates and encourages compromise breeds a tolerant culture while an unforgiving and repressive totalitarian system breeds a culture of intolerance and suspicion.[164] Further, democratic politics and political culture are also affected by a number of other factors: higher levels of economic well-being; the absence of extreme inequalities in wealth and income; greater social pluralism, including, in particular, a strong and autonomous bourgeoisie; a more market-oriented economy; and, greater influence vis-a-vis the society of existing democratic states. According to Huntington (1984, 214), some *combination* of some of these preconditions is required for a democratic regime to emerge, but the nature of that combination can vary greatly from one case to another.

Fifth, according to Nathan (1990b, 308), what is required in the realm of culture or ideology for democracy to flourish are not replicas of specific Western values, but values that perform similar functions in supporting democratic institutions. In this perspective, the question is not whether key Western values find exact equivalents in China, but whether the Chinese tradition contains values that can potentially serve as their functional equivalents in supporting democratic institutions. It is further argued that while the Chinese tradition does not necessarily contain functional

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[164]I have discussed elsewhere three models of interplay between cultural and institutional causal factors. See He, 1992c.

equivalents of all the values needed for democracy, it contains strong versions of some of them (Nathan 1990b, 309).

2. The Cultural Basis of Chinese Democracy

Before identifying new cultural elements for Chinese democratisation, I simply presuppose basic features of the current Chinese political culture as follows. First, it is difficult to identify Chinese political culture as Confucianism, communism or something else. Chinese culture is a mixture of different value systems, such as Confucianism, legalism, communism, nationalism, liberalism, and so on. Second, Chinese political culture is as heterogeneous as the European. It has split, and continues to split, into segmented parts. Third, traditional Confucian and contemporary communist cultures have been declining, although some intellectuals attempt to reconstruct them. Anti-traditional and anti-communist attitudes are so popular with the younger generation as to suggest a possible discontinuity of Chinese political culture, although the patterns of China's past, as Pye (1988, 25) observes, will continue to serve in shaping the course of China's modernisation. Fourth, there are cultural clashes in China between Marxism and liberalism. The major cleavage in Chinese political culture today may not be between the advanced intellectuals and the backward masses, but between a people ready for more freedom and political leaders afraid to grant it (Nathan 1990a, 191). Fifth, the pattern of cultural change in China is in the fragmentation of old cultures and the proliferation of new values, attitudes and attendant behaviour. This is leading Chinese intellectuals to redefine the normative dimension of politics and democracy.

One might argue that Chinese culture does not meet the above cultural requirements for democracy in that it contains too few democratic ideas, and too many "feudal elements" to suit democratic institutions. Drawing on this, one might argue further that it is impossible to produce democracy in China because favourable cultural conditions do not exist. This claim is misleading, for:

(1)   It is highly culturally determinist (Hu Ping, 1991a, No. 4, 50).

(2)   It fails to distinguish between hard and soft cultural conditions for democracy as discussed in Section 1.

(3)   It ignores the fact that culture is generated by human activity, and as such it is constantly being regenerated (Dittmer 1983, 23); it presupposes the view that it is impossible for Chinese people to overcome weaknesses of a cultural-psychological nature; it also ignores the fact that China's culture is changing.

(4)   The assumption that China's culture does not meet the cultural conditions suited to democracy is wrong, because there were democratic institutions in modern China and there is indeed an emerging democratic culture in contemporary China.

Mark Elvin's (1969) study of the first formally democratic political institution of the gentry, the City Council (1905–1914) in Shanghai, as well as Fincher's (1968, 1989) studies of representative institutions from 1909 to 1913 at the local, provincial and national levels in China, reveal that the traditional Chinese social order had a considerable adaptive capacity to meet the demands of the modern world (Elvin 1969, 60).[165] There were several positive ideologies at that time which supported democratic institutions, such as the idea of leaders who would come from, and represent, the local community, the principle of complying with rules, and the idea of local self-government. However there were also negative cultural elements which blocked the development of democratic institutions, such as factionalism and intolerance of open and public competition for power. These factual records of the working gentry democratic institution and representative institutions prove that there was a possibility for Chinese culture to create and support democratic institutions, and that Chinese culture had the adaptive capacity to meet the demands of democratic institutions. These also disprove the thesis that there is no hope for China to establish a democratic system because of the antidemocratic nature of its culture. But the records do not confirm that Chinese culture, without adaptation and transformation, can maintain and support democratic institutions.

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[165]The revolution of 1911, according to Elvin, was indirectly the beginning of the end for the Shanghai Council (Elvin 1969, 58), though Fincher (1968, 1989) sees the 1911 Republican revolution as a precedent for progress. Elvin (1983, 158) and others (eg Nathan 1976) have argued that the revolution ultimately wiped out for several generations China's peaceful and organic progress towards a modern and democratic future.

Since the May Fourth movement, there has been a new cultural emphasis on democracy and science. This emphasis is such that it has been constituting a new tradition and resource in which the Chinese democratic movement has its base.[166] In the 1930s, the *Journal of the Independent Forum*, contributed to by Hu Shi, Tao Xisheng and Hu Taowei, advocated a democratic constitution while rejecting the "new autocratic proposal" put forward by Ding Wenjiang and Jiang Yanfu (Cheng Yishen 1989, 87-117). Also in the 1950s, there was the *Journal of Free China* insisting on the establishment of an oppositional party against the ruling party dictatorship in Taiwan. Recently, *the New May Fourth Manifesto* issued by the Beijing Students' Federation in 1989 declared that democracy would bring to bear the collective wisdom of the people for modernisation while allowing the full development of each individual's abilities and the protection of each individual's interests (Nathan 1991a, 33). For a hundred years, Chinese intellectuals have been seeking to reconstruct the Chinese cultural structure. This has been achieved in so far as ideas of the rule of law, human rights and parliamentary democracy have acquired a general acceptance among intellectuals (Lin 1988, 58, 291-2). The new Chinese intellectual tradition contains many of the building blocks of a more liberal, pluralistic theory of rights, and the new opening to the West has made many of the resources of foreign intellectual traditions available for fresh consideration (Nathan in Edwards 1986, 164).

If the central purpose of the Cultural Revolution was to transform China's political culture by replacing the traditional man with a new socialist man (Dittmer 1977, 67; see also Gray 1979), then this was not fulfilled. The failure of the Cultural Revolution (1966-1976) has revealed the weaknesses and shortcomings of the Chinese communist system, and discredited Mao Zedong's ideal of "proletarian democracy". This has led to the rise of the radical and liberal views on democracy and freedom (Chapters 1 and 3). Among those with liberal views are Wei Jingsheng, Hu Ping and Yan Jiaqi, whose ideas I have discussed in Chapter 3. The views of Wei Jingsheng (1981) represent an individualistic vision of democracy; those of Hu Ping (1988) support the idea of democracy characterised by the

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[166]In the new democratic tradition, liberal democracy should be distinguished from populist democracy, or in Talmon's (1970) term, totalitarian democracy, which ironically led to communist totalitarianism in China.

priority of liberty over other political values; while those of Yan Jiaqi (1988, 1989) encompass an institutional and procedural notion of democracy characterised by parliamentarianism, and the paramount importance of procedures and constitutionalism (He Baogang 1991b).

In the early 1980s, a number of respected Chinese Marxist theorists began to advance humanist revisions of orthodox Marxism and to engage civil society discourse so as to explore democratic implications in Marxism, although Marxism in China today is officially used only to support the non-pluralist concept of socialist democracy. In their wake, Shen Yue (1990, 44–51), a mainland scholar, has recently shown that Marx's distinction between "bourgeois" and "civil society" was obliterated in the process of translation, resulting in general suppression of the second. Shen Yue's effort represents a rather isolated Chinese Marxist rediscovery of the value of the citizen and of civil society. Liu Zhiguang and Wang Shuli (1988) have also argued that the notion of civil society leads to the idea of equal rights, and the idea that the citizen has rights independent of the state. Wang Juntao, a major intellectual figure in the events of 1989, also emphasises the constitutive role of human rights in his recent work, *On Citizenship*.[167]

Jin Guantao, a theoretical historian and philosopher; Yan Jiaqi, a political scientist; and Fang Lizhi, a physicist, have established what was in China a new role for science as a basis for "civil discourse". Civil discourse signifies an arena in which, despite the existence of an ideological authority, politics and social norms are treated not as givens but as objects of inquiry, dispute and even rejection (Buckley 1989).[168] As well as science, a parallel discourse on "culture" -- re-evaluating tradition and modernity, East and West -- emerged as an arena in which positions could be taken in apparent independence of political constraint. In the summer of 1988, the television documentary series *He Shang* (*Premature Death of the Yellow River*, or *River Elegy*) was shown in prime time and caused a sensation. *River Elegy* exploited the fact that science and culture had become topics of civil discourse. It called for "a democracy based on the middle class", and claimed that the intellectual stratum could gain autonomy by allying itself with the

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[167]For further information on Wang Juntao see Macartney (1990). See also Min Qi (1989), whose book is dedicated to Wang and others.
[168]Buckley derives his line of thought from Thomas F. Glick (1988, xi).

emerging management professionals, the small entrepreneurs and the media (Kelly 1990a, 1990b, 1991a, 1991b).

In 1989, Chinese intellectuals and students mounted a struggle for freedom of speech and a realm of free social and cultural space between people and government. Li Oufan (1989, 64) has interpreted the consequences of the student movement in 1989 as an emergent "public space" (suggested by Habermas), at least at the psychological level. The Beijing demonstrations of 1989 placed many positive attributes of democracy on display. They showed a capacity for public spiritedness, spontaneous public order, and tolerance, although there were some aspects of authoritarianism and intolerance, and there was a lack of flexible compromise by the intellectuals and the students (Nathan 1990a, 197).

A national sample survey in 1987 also confirmed that many attributes of democratic culture already existed.[169] In the survey, 73 per cent of the people believed that serious defects in the Chinese political system were the principal reason for the under-development of China and 75 per cent expressed hope that the Chinese people would have freedom and democracy (Min Qi 1989, 81, 179; see also Tables 2 and 3).[170] The survey suggests strong political consciousness and appreciation of the importance of political participation. In a somewhat differently phrased question "are you willing to talk about political problems and why?", about 57 per cent replied "willing" and specified their reasons as "talking about politics is a form of participating in political affairs", "is my right", "because of my interest", "politics is so important" and "because of necessity for my work" (Min Qi 1989, 233). The survey also shows that out of 1,720 respondents 57 per cent agreed that politicians should believe in the basic rules, choosing the appropriate rules and complying with those rules; whereas 43 per cent

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[169]In July and August 1987, the Beijing Institute of Socioeconomic Studies carried out a massive survey of Chinese political cultural beliefs. About 500 university students were employed and trained to collect data on Chinese people's political attitudes and beliefs in twenty-two provinces and cities. More than 3,200 survey samples were obtained resulting in more than 7,400,000 pieces of survey data (see Min Qi 1989). The survey is informative and should be used, but is not reliable. A study of survey research, see Rosen, 1991.

[170]The survey reveals a sort of "Chinese democracy complex" which contains ideas somewhat contradictory to the Western view, but represents a viable Chinese synthesis favouring democracy of a certain sort.

agreed that politicians should not be committed to fair rules (Min Qi 1989, 188).

Table 2: Chinese People's Opinions of Current Chinese Democracy

		Per cent agree
1.	China is deficient in democracy and freedom at present, which are the necessary conditions for modernisation.	17
2.	China has, to some degree, democracy at present but this should be improved upon.	58
3.	China doesn't need democracy yet, the most important thing we should do now is develop the economy.	8
4.	China has established a socialist democracy at a high level already, it is unreasonable to demand further democracy and freedom.	4
5.	The people who advocate democracy and freedom have ulterior motives, because the Four Modernisations and Deng's reform require harmony between the people and the Communist Party.	7
6.	Others	6

Source: *Beijing Ribao (Peking Daily)*, 12 February 1988 (n = 3,200); also Min Qi 1989, 181.

Table 3: Chinese People's Cognition of What Democracy Is

		Per cent agree				
		Average	W	IEW	I	C	P
1.	Under the guidance of a centralised leadership.	25	20	12	21	40	25
2.	To widen the avenue for consulting people's opinions.	19	24	27	16	18	18
3.	The People are the masters of the country.	12	16	10	7	7	19
4.	The minority should submit to the majority.	5	0	3	4	4	9
5.	Elites make decisions for the people.	11	16	18	10	6	9
6.	People can elect their leaders.	7	10	5	8	6	2
7.	People can effectively participate in controlling the social arrangement.	11	2	7	20	12	7
8.	To separate and limit the political powers.	3	1	2	6	4	1
9.	Others	1	1	2	1	1	1
10.	No idea about that.	6	7	13	4	2	9

Source: *Beijing Ribao (Peking Daily)*, 12 February 1988 (n = 3,200).

W represents workers; IEW, individual enterprise workers; I, intellectuals; C, cadres (a general classification, cadres (ganbu) might be considered as the whole membership of the organisation and bureaucratic administration); P, peasants.

Despite the failures of Chinese democracy in the 1920s and Yan Jiaqi's effort to establish proceduralism in 1989, the idea of constitutionalism persisted after 1924 and persists today as is suggested by the vast literature on constitutionalism and democracy. Constitutionalism was, and still is, the dominant set of assumptions to which the defence of political action has to be referred. That some may have appealed to constitutionalism half-heartedly or cynically does not alter the fact that it has made and makes sufficient sense to enough people to serve as the touchstone of political discussion (see Nathan 1976, 19). Thus the category "basis of legitimacy" has to be filled with the concepts "democracy" and "constitutionalism".

3. The Conscious Adoption of Democratic Rules

As to the necessary precondition of a conscious adoption of democratic rules, it seems that the current CCP does not mean to adopt what are commonly known as the "rules of the game". However, there is a possibility of playing the democratic card by some factions within the CCP.

The process of democratisation in China, I believe, entails moving away from a denial of the democratic principle to recognition of it as a modus vivendi. If we follow Rawls's (1987, 18) suggestion, we might suppose that at a certain time, as a result of various historical events and contingencies, the rules of the game have come to be accepted as a mere modus vivendi.[171] This acceptance has come about, we may assume, in much the same way as the acceptance of the principle of toleration as a modus vivendi came about following the Reformation, at first reluctantly, but nevertheless as providing the only alternative to endless and destructive civil strife. The above supposition was proved in Taiwan by the ruling party and Jiang Jingguo who did play the card of democratic rule as a modus vivendi in their own interests. It is also likely to prove true of mainland China in the near future. It is probable that some groups within the regime in China will see sponsoring change in the direction of

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[171]Hayek, Gutman, Larmore and Rawls also have different views of the liberal order as modus vivendi (see Kukathas 1989, 225–7).

democracy as a way of improving their power position against other factions (Nathan 1990a, 207).[172] I will discuss this in detail in Chapter 10.

4. The Cultural Limits to Democracy

Stated summarily, on the one hand, Chinese hierarchical, authoritarian, and elite, personalised political culture is inhospitable to democracy, and has been conducive to authoritarian rule; on the other hand, traditionally based Chinese values, such as the morally autonomous individual, the absolutely just ruler, the responsibility of the government for the people's welfare, and the ordinary person's responsibility for the fate of the nation, have served as the main justification for the growth of a pressure movement demanding democratisation in a Schumpeterian direction (Nathan 1990b, 308–11, 384; also see Hu Ping, 1991a, No. 2, 35). The following discussions focus only on the cultural limits.

In Confucian culture the government had to proceed on the basis of harmony rather than conflict (which leads to suppression of dissidents and renders compromise morally repugnant);[173] the interests of the collective must not be challenged by lesser groups and individuals (which is less favourable to the action of individual citizens); and, finally, rights have to be treated as something granted by the state, not inhering in the person (which is less favourable to the institutional protection of individual rights) (Price 1990, 252–3; Cotton 1990, 8). Confucian culture was also consummatory in character. That is, intermediate and ultimate ends were closely connected, and conceived of as a total entity, no part of which could be changed without threatening the whole. Thus Confucian culture was more resistant to change, and when change came in one significant area of the culture, the entire culture was thrown into question or was displaced

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[172]As to the conditions under which the leaders in power smay be willing to devolve their power to a democratic system, see Przeworski (1988). The political elite's willingness to negotiate compromises on their most basic disagreements is necessary for democratization, see Higley & Gunther, 1992

[173]One may argue that the need for harmony makes compromise a necessity in Japan. This might be true. However, in the Chinese case, because there is no institutional arrangement for political opposition, the search for harmony leads to suppressing dissidents so as to maintain a voice which unifies the whole nation. If there is legitimate institutional arrangement for political opposition and recognition of, and respect for, different voices, the need for harmony may favour a compromise strategy dealing with conflicts of competing interests.

and destroyed (Huntington 1984, 208).[174] Confucian influences are apparent in authoritarian attitudes and practices in China today.

The most serious problem lies in people's, in particular leaders', subjective understanding of the nature of power and legitimacy, and in their expectations of authority. If a political culture in a society makes power rather than equal liberties the primary virtue of social institutions and of everyday life it is very difficult to establish and maintain democratic institutions. In this respect Pye's scholarship makes a great contribution to the analysis of China's cultural problems associated with its own dimensions of power, authority and legitimacy, which constitute the refractory blocks with which democracy has had to be built. Pye (1985, 183) argues that most Chinese started with the ideal that all power should emanate from above, from the centre, from a single supreme power. Most Chinese leaders believe that diversity and a pluralistic power structure lead to social disorder and do not foster more creativity or ensure faster modernisation (Pye 1985, 189). Any surfacing of autonomous power groupings has been taken as a sign of dangerous centrifugal forces (Pye 1985, 189). The conception of legitimacy held by some Chinese is favourable to unchecked authority, and unfavourable to the competitive political structure. Legitimate power is believed to be omnipotent and omnicompetent. Rulers should be paternalistic. Some Chinese prefer a system in which they can confidently depend on a paternalistic authority (Pye 1985, 197–8). Both in the past and under communism there have been no codifications of the rules concerning how informal types of power operate. The dilemma of power in China stems from the initial belief that rule should be by (virtuous) men and not by (impersonal) law -- a cultural belief which makes it difficult for the Chinese to institutionalise authority since they are reluctant to invest power in impersonal arrangements (Pye 1985, 200). Chinese ideology constitutes an obstacle to the rational use of power. Power in the Chinese political system remains a crude, blunt instrument, generally inappropriate for a government striving to solve the complex problems of modernisation (Pye 1985, 208). It has always been easy

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[174]There are positive elements in Confucian culture. As de Bary (1983) remarks, individualist and liberal elements exist in the Confucian tradition. And there is also, in Lin Yusheng's (1988) view, the possibility of combining the Confucian idea of 'jen', through creative transformation, with Western liberalism.

for the Chinese to establish bureaucratic hierarchies because they have an instinct for recognising fine status differences (Pye 1985, 209). However, Pye's work may be limited in the sense that he does not pay enough attention to the changes in intellectuals' views of power, authority and legitimacy (see Yan Jiaqi 1988, 1989; He Baogang 1991a).

In order to further highlight cultural limits to democracy I turn to a cultural explanation for the failure of democracy[175] in modern China, by drawing on relevant arguments in the works of Pye (1985, 186–8), Price (1990, 251–5), and Nathan (1976, 224). The failure of Chinese democratic institutions in modern China can certainly be due to the lack of support from democratic ideas and values. There have been cultural problems with democrats themselves. Values and habits of thought and action deeply rooted in a distinctively Chinese cultural tradition have precluded a genuine commitment to democracy and its prerequisites. The advocates of democracy have themselves, therefore, neither fully understood nor implemented the necessary kinds of political pluralism, individual freedom, and limits on the powers of leaders and the state (Price, 1990, 224). The pro-democratic writings of revolutionaries and constitutionalists have sometimes had an antidemocratic potential (Price 1990, 251; Gray 1979, 207). These writers have been preoccupied with the problem of avoiding the divisive dangers of democracy as they have sought to escape the trammels of autocracy (Price 1990, 251). Thus they have doubted the liberal solution and turned to a totalitarian solution. As Pye (1985, 188) observes, Chinese culture has favoured a centralised form of legitimate power, which has caused the failure of the democratic movement in modern China.

The above cultural problems have negatively influenced democratic activities in modern China. The early republicans had hoped to avoid conflict by gathering consensus around a constitutional process. But the institutionalised parliament just provided an open channel for conflicts among factions; the process mandated by any republican constitution was precisely a process of conflict among the Zhili clique, the Duan Qirui faction,

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[175]Here I limit my consideration only to cultural factors. I acknowledge that many factors, such as a sullen, desperate peasantry and a fragmented military scattered over a vast, poorly integrated national landscape, the unfavourable terms on which China entered the world market, and the Japanese invasion, caused the failure of democracy.

the Anfu club and the Communications clique. The factional kaleidoscope turned in the end to civil war in the 1920s and resulted in the decisive alienation of most Chinese, including politicians, from the constitutionalist faith. Not unnaturally, practising politicians resorted to the tools at hand -- their subordinates, colleagues, schoolmates, and others tied to them by the hierarchical and personalistic values of their political culture. They formed factions, and consequently found themselves trapped in a frustrating and self-defeating political process (Nathan 1976, 1-3, 221-4). Suspicions and animosities between constitutionalists and revolutionaries certainly weakened the cause of democratic government. While these two camps could agree in theory on the value of a responsible cabinet system, they failed to unite in insisting on the implementation of key elements of that system (Price 1990, 252). An inherited propensity to factionalism constituted an immense obstacle to the establishment of constitutional government, and persuasive evidence of this has been offered for the immediate post-Yuan Shikai period in particular.

5. The Cultural Obstacles to Realising Democracy

Today Chinese political culture poses a set of problems not only for Chinese leaders hoping to maintain the communist system, but also for Chinese liberals struggling for democracy. Here I limit my consideration to the latter only.[176]

Generally speaking, the current cultural problems associated with democratisation in China can be called "wenhua shifan" (a cultural dislocation, or anomie). Wang Yihua (1989, 35-9) argues that in China an established value system has been discredited by its association with a hated political regime, but no new value system has emerged to take its place. Wang also identifies three chief problems: (1) opposition, particularly by those inculcated in the proletarian dictatorship, to the culture of social

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[176]It is obvious that the political thinking of leaders is limited by Chinese culture. This has been researched by some scholars such as Lucian Pye. However, the negative impact of Chinese political culture on current Chinese liberals needs to be studied, therefore I focus on liberals rather than leaders. Also cultural, institutional and sociological approaches certainly present different views of what the problems associated with democratisation in China are. Here the cultural approach attempts to identify a set of cultural problems. I will explore institutional and sociological problems in a separate study.

rationality emanating from the West. The latter includes democratic politics, popular participation, etc.; (2) demoralisation of the younger Chinese generation by Western hedonism, leading to self-hatred and hopelessness, and escapism, through drink, gambling and discos; (3) the devaluation of instrumental-rational culture which supports the development of science and technology. Few see any prospect in pursuing technical skills and careers. In line with Wang's analysis, I consider the cultural problems in two categories.

The first category of problems relates to the question of democratic goals and values. There has been widespread scepticism about democracy in China.[177] The advocacy of democracy in China has been associated with debates over authoritarianism in the past as well as today (Cheng Yishen 1989; Liu Jun and Li Lin 1989; Ma Shuyun 1990). In the democratic movements overseas, neo-authoritarianism is advocated as a feasible solution to the current political problems in China (*Democratic China* 1990, nos. 4, 5). Today Chinese intellectuals repeat the old questions about the validity and applicability of democracy in China and on China's capacity to achieve democratic goals. More seriously, antidemocratic proposals easily attract strong support from traditional Chinese political culture in various forms of arguments and doctrines, while democratic proposals may gain the support of new Chinese cultural elements, but the support is very weak. Thus, Chinese political culture has narrowed and facilitated certain options and the forms of solutions to the current crises in China: the democratic option is not seen as a strong one, or the best, while the authoritarian option appeals as an ideal.

Among Chinese democrats there is a tension between their conscious commitment to the values of democracy and liberty and their unconscious authoritarian personalities. In other words, while they demand democracy at the conscious level they also seek for a new authoritarianism as a

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[177]I have met and talked with many Chinese democrats overseas. Some of them remark openly that China needs a form of neo-authoritarian system rather than an elective one. It seems to me that few are really committed to democratic values. One thing that has struck me is that a reason why some have joined democratic organisations overseas was to have justifiable evidence to apply for permanent residence in Western countries. In this respect I feel the democratic movements overseas, to some degree, are surreptitious "migration movements".

solution to the problems of Chinese politics.[178] In particular, there are authoritarian attitudes inculcated in the very process of socialisation (Pye 1968, 1985; Price 1990, 224). In this respect, Mao Zedong's autocratic personality has greatly and negatively influenced the democrats overseas. Although Chinese intellectuals reflect on and criticise Mao's thought as internalised in every Chinese mind, it is difficult to get rid of the authoritarian personality. The crucial problem is that unconscious authoritarian personalities, due to a lack of cultural and institutional constraints on these personalities, will lead democrats towards a neo-authoritarian system when they face a set of problems stemming from the process of Chinese democratisation. Contrarily, although there are also authoritarian attitudes in Western democratic countries, these attitudes are so constrained by the existing democratic institutions that it is less likely that authoritarian personalities would play a decisive role in creating a neo-authoritarian state if similar problems should occur.

The second category of problems lies in the process of democratisation and relates to the operation of democratic institutions in China. Democratic institutions must work within the cultural environment, and democratic institutions will function only if people comply with their rules. In this respect there are the following cultural difficulties for the establishment of democracy in China:

(1) Tolerance is a virtue of freedom and is a recognition of the autonomy of others. However, China lacks tolerance of institutionalised opposition and dissent. There is also a lack of democratic consensus, in particular, of believing in and complying with democratic rules, and widespread scepticism about democratic rules being applicable to China. As Yuan Zhiming remarks in quoting Bo Yang: four Chinese gathering together cannot cooperate unless there is an autocrat (see *Democratic China* 1990, 5:21). The most serious problem is that there is a tension between democratic consensus and the principle of freedom in the Chinese context,

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[178]For example, Yuan Zhiming, my friend and the former chief editor of *Democratic China*, moved from the vague liberalism of *River Elegy* to explicit support for 'new authoritarianism' in the year following his exile after the crackdown (see *Democratic China* 1990, 4:49, 5:19–23). For further discussion of the authoritarian Chinese personality, see Min Qi 1989, 166–77.

that is, use of political liberties tends to undermine consensus if liberties are not constrained. Although, indeed, there are factional compromises in Chinese political life, Chinese politics is very weak in arriving at institutional compromise. Democracy, in Przeworski's view, cannot be a result of a substantive compromise, but it can be a result of an institutional compromise: substantive outcomes are shaped by institutions and the guarantees can only be institutional (Przeworski 1988, 64, 71).

(2) The cultural problems of consensus and compromise can be traced to deeper psychological predispositions. As Pye (1990a, 162) argues, the management of aggression is a basic problem in Chinese political culture in which there is an inability to compromise publicly; so any conflict arouses hate, and it becomes almost impossible to disagree politically without becoming disagreeable. Pye (1990b, 58) further argues that a persuasive sense of overpowering obligation has meant that there can be no compromises in Chinese cultural attitudes towards power and authority. Also, shaming in Chinese culture is a potent weapon for both authorities and the weak. But there is no way of compromising in a battle of shaming; the struggle can only intensify (Pye 1990a, 172-4).

(3) Chinese envy also undermines social cooperation. "Oriental envy", in Chinese terms, tends to pull down those who have a large index of primary social goods. The Chinese communist view of egalitarianism has been internalised in the psyche of the people. This legacy of psychological egalitarianism is an obstruction to the implementation of liberal democratic policies.[179] Such policies, if they do not take equality into account, are likely to fail in practice, and may create unequal distribution of social welfare. This may, in turn, constitute a source of social unrest and of revival of neo-authoritarianism. Ideally, a social welfare system should be introduced into China, but unfortunately it is difficult to implement this because of the heavy financial cost.

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[179]Egalitarianism does not necessarily lead to authoritarianism. Nevertheless Mao has carried out egalitarian policies to maintain a totalitarian system. The legacy of egalitarianism has dual roles: besides the negative one discussed in the text, there might be a positive role if egalitarianism is modified to support social welfare reform so as to maintain social stability.

(4) Radical polarisation of Chinese Leninist-Confucianism and Western liberalism, along with the desperate destruction of traditional and communist Chinese culture, make it difficult for liberal virtues to develop. Most young intellectuals have aimed at eliminating traditional and communist cultures. Such action is rooted in the unbearableness of individual powerlessness and isolation. The destruction of the communist culture is the last, almost desperate attempt to save themselves from being crushed by the Chinese political system.

(5) Finally, force rather than reason is often seen as a final solution to political conflicts in traditional and communist political cultures (for example, Mao's slogan that political power grows out of the barrel of a gun); this poses the most difficulty for democratic proceduralism which presupposes reason as a final authority.

6. The Roles of Fear in the Transitional Period

While the Chinese have other psychological problems, here I will focus on the role of fear in Chinese democratisation because of its centrality. In a transitional period, social conflicts are common and normal. These conflicts, in the liberal view, are believed to be a necessary condition of politics, and are supposed to proceed, and to be resolved, within the democratic institutions which are able to integrate overlapping conflicting interests. However, most Chinese are not used to these normal social conflicts, and often regard them as abnormal and destructive. The psychological fear of social disorder easily leads to a new authoritarianism.[180]

In his comparative study of the post-authoritarian system, Pye (1990c, 13–14) calls for an investigation of the association of fear with political repression, and of likely reactions to the lifting of terror. In Taiwan and Korea, as Pye suggests, the receding of fear of state power seems to ignite hope, which in turn creates increased enthusiasm and activism; in Russia

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[180]One of my colleagues, Rong Jian, the author of *Minzhu lun*, who strongly opposed neo-authoritarianism before the June 4th 1989 events, and was active in *the Beijing Association of Intellectuals*, told me in April, in Beijing, that China needed an authoritarian system because he felt during the popular movement in 1989 that China would succumb to social unrest if it lacked a strong authority.

fear may be followed by cynicism at the core of which lies passivity; in mainland China, fear has taken on the role of threat. This interesting topic of fear raised by Pye needs to be studied further in the context of the Tiananmen incident in 1989.

Su Xiaokang (1990, 15–21) has elaborated on the complex role of fear in the process of Chinese democratisation. First, the Chinese intellectuals' fear of the CCP's terror made them less inclined to participate in the protest movement at the early stage and more worried about negative consequences of the protest movement. Su himself attempted to avoid joining in the protest movement before April 1989. Second, rationality can stem from fear as tolerance came from mutual fear in the history of the West. In Su's view, the reason that the students adopted a reasonable and moderate strategy is that they feared the danger. It was fear that produced their political wisdom. The non-violent strategy adopted by the students was not due to the students' innocence, but rather to their clear judgment of the strength of the Communist Party. Unfortunately, when the government made a concession to dialogue with the students, this small success led to the collapse of reason among the students. Fear became "obtuse" and political wisdom thus clouded. The idea that fear helps to produce reasonableness may, in Su's view, also apply to the leadership. No matter how strong it is, the current regime which overrode the constitution is likely to experience fear. Such fear may bring the leaders to a more rational stance. Third, according to Su, fear has a double effect: while it leads you to reason, it also causes you to lose your moral courage. The most tragic thing in the Chinese communist system is the fact that Chinese intellectuals have lost their moral courage due to their fear of repression by the CCP. In Su's view, Chinese intellectuals were unable to persuade people to believe in the importance of compromise; more seriously, they no longer felt fear in Deng's "velvet prison", and did not alert the people to the need for fear until the Tiananmen incident. This is the greatest weakness of Chinese intellectuals -- the incompetence of their rationality.

Conclusion

The nature of the political culture itself is often seen by commentators as the cause of democracy failing to take root in China; the antidemocratic elements of that culture being overemphasised while the democratic

elements are underemphasised. This chapter has shown the new emergent democratic culture in China, and examined the application of the ideas of democratic culture in China to the current state of play, including the possibility of the democratic card being played by factions within the Chinese Communist Party (CCP). The chapter has also examined the cultural problems associated with Chinese democratisation such as cultural anomie, unconscious authoritarian personalities, the legacy of egalitarianism, the radical polarisation of Chinese culture, difficulties of institutional compromise and the irrational control of aggression and fear.

There are clearly many hopeful signs of positive cultural elements, but there are also many negative ones. Evaluation of the relative strength of these conflicting tendencies is difficult to make at the level of an empirical study. However my impressionistic evidence reveals that while the antidemocratic culture is stronger at present than the democratic culture, the new Chinese democratic culture is likely to gather strength in the future. If we ask what could be done to strengthen the one and impede the other, the solutions to the above cultural problems, as Yan emphasises, lie not only in cultural reconstruction, but also in institutional reconstruction of Chinese political structures and organisations (Yan 1988, 1989).

CHAPTER 9

Social Conditions: Dual Roles of Semi-Civil Society

A pluralist and self-organizing civil society independent of the state is often assumed to be an indispensable condition for democracy. It is also assumed that successful transformation to democratic politics depends upon the development of a civil society. If there is no strong civil society, there will be no emancipation and no democracy in the modern world (John Keane, 1988, 31-62; Gouldner, 1980, 371). As the Philippines experience illustrates, civil society makes the democratic transition much more irreversible, and reduces the prospect that authoritarian forces (old or new) may overthrow or somehow capture the new democracy (Diamond, etc., 1987, 43). Thus the assumption of the <u>positive</u> influence of civil society on democracy is made. However, the danger from a violent and overpoliticised civil society has been addressed by some writers (Chung-Si Ahn, 1991; Cohen and Arato, 1992, 57), which suggests a <u>negative</u> effect of civil society on democracy in the process of democratisation. Thus, the question of the dual roles of civil society in a transition to democracy needs to be synthetically studied.

In the studies of Chinese politics, a growing body of literature recognizes the emergence of civil society in Deng's China as fact (Ostergaard, 1989, Nathan, 1989 & 1990a, White, 1989, 1990 and 1993; Gold, 1989a, 1990, Strand, 1990, McCormick, 1992, He & Kelly, 1992a) albeit some writers deny that (see Solinger, 1992). Some writers even suggest that civil society has already developed into a factor in Chinese politics and will essentially dictate a new dimension of Chinese political development (Nathan, 1989, McCormick, 1992) as is evidenced in Taiwan, in which civil society has provided ample resources for generating democratic forces (Chen Tunjen, 1989, 1990). The prospect of Chinese democratic politics is thus seen in terms of whether China is able further to develop and strengthen the existing civil society. Yet, the question of how a civil society impacts on Chinese democratisation remains to be answered.

This chapter attempts to examine the actual and potential positive and negative roles of civil society in the context of Chinese democratisation. It has three goals. The first discusses the actual positive impact of civil society

on Chinese democratisation by revisiting the 1989 Democratic Movement from the perspective of civil society. The second explores the potentially positive and negative roles of civil society in the process of democratisation. The third discusses potential roles of civil society discourse and the public sphere in Chinese democracy.

The chapter adopts a conventional definition of civil society as *de facto* autonomous organizations that are independent of direct political control by the state and the Party. It further follows McCormick's (1992) definition of it as autonomous organization, entrepreneurial activity, or an autonomous public sphere. Three areas of civil society -- economic civil society referring to autonomous organizations and entrepreneurial activities, political civil society referring to an opposition organization and movement, and cultural civil society referring to the discourse of civil society and its relative public sphere -- are distinguished for the purpose of discussion of roles of civil society.

I have rejected both a social structural determinism and a simple link between the new civil society and social behaviour in discussing the role of civil society in the process of democratisation.[181] It is misleading to adopt a monolithic conception of the positive role of civil society for democratisation. The roles of civil society vary in the different stages, such as initiation, consolidation and completion of democratisation (see Cohen & Arato, 1992, 50). Since Chinese politics is still under the control of a neo-authoritarian state, this chapter focuses only on the roles of civil society in the initial process of transition to democratic politics.

This chapter is in four sections. Section 1 investigates how an emergent civil society influenced Chinese democratisation before and after the June 4th events of 1989. Sections 2, 3 & 4 respectively examine the possible positive and negative roles of civil society in the process of Chinese democratisation from the points of view of autonomous organization,

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[181] I owe this idea to Barry Hindess' critique of social structural analysis. Hindess (1989, 13-17) argues that social structure does not operate outside of, and above, actors, but rather through the decisions of actors. Actors normally have a variety of forms of assessment of their situation available to them. The variety of forms of assessment of their situation also depends on a variety of practices and conditions. There are, therefore, complex interconnections between social structure and actions.

entrepreneurial activity, and civil society discourse as well as an autonomous public sphere.

1. Positive Effects of Civil Society on the 1989 Democratic Movement

I should say at the beginning that factors such as the split in the leadership, economic problems, corruption, new cultural enlightenment and the weakness of political institutions as well as international support played major roles in the 1989 Democratic Movement. Here I examine only the role of civil society in Chinese democracy. On the whole, the influences of civil society were much weaker than other factors in the 1989 Democratic Movement. However, civil society was a new and important factor which needs to be weighted significantly.

In the past decade, the authority of the CCP has been declining and the Party has been forced to carry out reforms and "open door" policies for its survival. These have created an opportunity for the revival of Chinese civil society (White, 1989 & 1993, Whyte, 1992, McCormick, 1992). There were emergent autonomous organizations before the June 4th events in 1989. These included specialized academic associations and clubs, such as the Young Economists' Association, the Beijing Stone Group and its Institute for Social Development, the Beijing Social and Economic Research Institute, the Academy of Chinese Culture, the Capital Steel Research Institute, and the Happiness Bookstore. They also included the Shanghai *World Economic Herald*, and new academic journals such as *New Enlightenment*, which in 1988 evaded the party's control system for periodicals by registering itself as a book series. It should be noted that these autonomous organizations by that time had attained the status of 'legal persons' with the protection of statutory rights. Also, the essence of civil society lies in the growth of new social structures such as those seen in the private sector and autonomous social and cultural organizations.

These new institutionalized civil structures had a self-contained reality with forces and purposes of their own as soon as they were established. In terms of institutional need, the new structures demanded more free space and further liberalization in the interests of those who were within the new structures. For example, Wan Runnan, a former director of the Stone company, was an active advocate of privatisation, and vigorously defended the

Stone enterprise as having been from the start a vehicle for political action.[182] Those within the new structures also demanded influence over decision-making; they no longer willingly accepted conditions under which they had no voice. For example, Cao Siyuan who was trained in the Chinese Academy of Social Science, specializing in political science and law, pushed bankruptcy legislation before the National People's Congress in 1984. He left government employment to head the Beijing Social and Economic Research Institute (SSDRI) in 1988, where he called for far-reaching political reforms.

Although the term 'civil society' was not widely used as a self-referent by the students, intellectuals and workers, what the urban populace of China in 1989 was demanding, in short, was no less and no more than 'civil society', a political 'space' that would not be controlled by the authorities, and that would provide people with a bit of leverage vis à vis the authorities (Unger, 1991b, 5). This was an attempt to institutionalize the political opposition movement. As Ostergaard (1989, 40) asserts, "the sudden, massive spread of civil society must have been regarded as a severe threat to the Party's monopoly." It was precisely these demands, harmless though they might appear, that seem to have frightened the old leaders such as Deng Xiaoping. From the beginning to the end, they felt they needed steadfastly to refuse to give that recognition. Thus the 1989 Chinese Democracy Movement is best understood as the expression of fundamental conflict between a state with totalitarian intentions and an emerging civil society (McCormick, 1992).

The point of view of civil society indicates that the agent or the subject of the transformation must be an independent, or a self-organizing society aiming at structural reform. This suggests a new type of social actor. There are signs that the idea of civil society has transformed the behaviour of writers, such as Wang Juntao and Rong Jian, who took part in the 1989 Democratic Movement claiming that they wanted to be free and independent rather than official scholars.

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[182]See a series of discussions on "the economic efficacy of the Stone" in *Jingji ribao*, Aug 15, 30, Sep 3, 1988; "Wan Runnan dui waijie piping de huida" (Wan Runnan replies to his critics), *Jiefang zazhi*, no. 2 (February 1990), 82-4; interview with Shi Zhenrong in *Lianhe bao* (Taibei).

More importantly, new social structures were 'social actors' playing an important role in Chinese democratisation. To put it another way, the democratic movement in 1989 gained wide and strong support from various autonomous social, economic and cultural organizations, including even the official Trade Union Federation which donated 100, 000 yuan to the Tiananmen demonstrators; the Democracy Wall movement of 1978-9 lacked this type of support. It was more difficult for the Party to suppress a civil society than a movement without deep organizational roots. This was one reason why the Party had to use the army to close down the 1989 Democratic Movement while it only arrested Wei Jingsheng and a few others so as to end the 1978-9 Democratic Wall Movement. The existence of various autonomous organizations made this difference. The following autonomous organizations were important in 1989: the Beijing Federation of Autonomous Student Unions comprising representatives of autonomous organizations established on many Beijing campuses, the Beijing Association of Intellectuals established by Yan Jiaqi, Bao Zunxin and others, and the autonomous associations of workers which formed throughout China (Gold, 1990, 196-211).

To elaborate on the above point, I would briefly discuss the role of the Stone group and the activity of the Stone Social Development Research Institute (SSDRI) under Cao Siyuan. Cao was the leading force in a meeting of Beijing intellectuals which tried to warn the government about impending chaos in April. Following the declaration of martial law in May, Cao and Hu Jiwei, the former editor of Peoples Daily and a member of the Standing Committee of the National People's Congress, tried to convene an emergency sitting of the NPC to have the order withdrawn. Cao's arrest just prior to the massacre, on June 3, was at the behest of Li Peng and Yang Shangkun, who regarded the right to convene the NPC as the prerogative of the Politburo. It has been argued that the Stone company simply provided the SSDRI under Cao with a budget and left him to carry out his own programs (Liu Ruishao, 1989, 249-51). While it is difficult to establish this, his actions supported the aims of the intellectual movement as a whole, rather than Stone as a private corporation, in attempting to force the regime to live up to its pretensions and allow wider freedoms.

The Beijing Social and Economic Research Institute (SERI) was a similar case. SERI was the organizational base of Wang Juntao and Chen

Ziming. Shao Qun describes SERI as an "independent kingdom" under the nose of the Communist Party, and as not receiving a cent of state funding (Shao, 1990, 10-13). Wang and Chen, its leaders, have been described by close observers as "professional revolutionaries." During the democratic movement, they organized secret meetings to help and guide student leaders. They were the behind-the-scenes 'ringleaders' who received sentences of thirteen years in February 1991.

After the June 4th events of 1989, economic civil society has placed constraints on the will of leaders and has certainly narrowed options available to leaders to resolve current crises. In East Europe, as Rose rejoicingly argues, even if military coups occurred all across the region tomorrow, the new rulers would find it impossible to resurrect the apparatus of totalitarianism. A Stalinist system is not built easily; to destroy a civil society would require the use of brutal force for a long period of time (Rose, 1992, 13). This is also true of China. It was difficult for Li Peng's government to go back to Mao's centralised planned economy, although it wanted to do so in the latter half of 1989. Since the events of June 4th, the reason why the CCP still carries out economic reforms is that if it fails to do so, there will be an economic decline. For the Party, to destroy economic civil society costs too much, while to allow its existence and development will improve the economy, whereby the CCP may gain performance legitimacy. In other words, for leaders, to protect and develop autonomous economic organizations is one way to improve the economy, because the private sector has played an active role in promoting production and increasing both employment and state revenue. Thus, for China, a more effective check against the troublesomeness of the state is to strengthen an existing economically based civil society. However, it must be noted that although the return to Mao's totalitarian control is impossible, this does not imply that China will necessarily go towards democratic politics. In reality, China has been developing towards a neo-authoritarian state where economic autonomous organizations are allowed to exist, but political opposition is prohibited.

Also autonomous private and joint enterprises provided democrats with a relative safeguard after the June 4th events. Those who came out of

jail, after being jailed for their participation in the democratic movement in 1989, could easily find jobs in private or joint enterprises.[183] To have been in jail for taking part in the democratic struggle has in fact become a much better certification than academic qualifications, because people in private and joint enterprises are sympathetic to those who have been in jail and respect them as heroes in the anti-communist shadow of Chinese culture.

Significantly, many young intellectuals are giving up their academic careers and are joining private enterprise, as are those currently released from jail after being imprisoned for their involvement in the democratic movement in 1989. Those whom I have met told me in Beijing in April 1991 that their objective is: "to become rich and influential in the economic area first, then go back to the political battle". Some even thought that to further develop an economically based civil society was a swift way to achieve democracy in China. Here, there is an interesting parallel with the former Soviet Union where the "neo-liberal" youth chose not political opposition, but business. As Rumiantsev observes:

> characteristically, many of the Soviet informal activists subsequently chose to engage in enterprises in the co-operative or mixed sectors. Farsighted organizers of co-operative enterprises have close ties to the democratic movements. New entrepreneurs are joining ranks with those politicians who uphold ideas in favour of privatizing parts of the economy and organizing a genuine pluralism of forms of ownership (Rumiantsev, 1991, 117).

2. The question of Autonomous Organizations

The development of civil society is a necessary but not a sufficient condition for democratic politics. Although emergent civil society provides us with an opportunity to proceed towards democratisation, it will not necessarily lead

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[183]I was impressed by this in Beijing in February in 1991. My friend, Rong Jian who took active part in the Beijing Association of Intellectuals, happily showed me an official notice on which it says that Rong was dismissed from the membership of the Party. To be dismissed from membership of the Party is regarded as a good thing in the anti-communist shadow culture. Rong's experience in the student movement in 1989 and this punishment helped him find a wonderful job in the *tequ shibao* in Hainan.

to democracy. What is at stake is the nature or salient features of civil society. If the characteristics of civil society are sharp inequality, internal conflicts and violent tendencies, these will hinder the development of democracy. We, therefore, need thoughtful wishing (Lowenthal, 1986) rather than wishful thinking which should give way to a rational recognition of the problems associated with the autonomy of civil society, the ambiguous role of entrepreneurs and the problems associated with the discourse of civil society and the public sphere in the process of Chinese democratisation. These matters will be discussed in following sections.

The distinctive and enduring pattern of relations between the state and society in the history of China, in Fincher's view, can be described as vertically parallel structures with horizontal intersections (Fincher, 1989, 89). The state 'above' is seen as operating 'at bottom' through its effect on the personality structure of individuals; while 'societal' forms extended to the highest levels -- the Manchu rulers were in fact an imperial clan of between seven and eight hundred people (Pye, 1985, 58-9). Given that, the development of civil society in Chinese history was characteristic of what Zhu and I call the model of combination of officials and merchants, that is, civil society was entangled with the state in a way so that its development depended on the power of the state (Zhu Ying, 1990, 37-44). If there was a lack of support from high officials, civil society was unlikely to develop under the constraints of this model.

This is also true in contemporary China. The sons and daughters of officials have made use of the chance given by reforms and rushed to establish various companies (gongsi). Their strong relationship (guanxi) with high officials has helped them to develop their businesses quickly and easily. Most business people have actively sought out this kind of close involvement with influential people to make doing business easier and more secure. This has led inevitably to a distinctive feature of Chinese civil society, namely, an overlapping or entangling with the state, in various forms and in different degrees. According to one report, 60 percent of private entrepreneurs in rural areas were originally management or supply-and-marketing staff in state or collective enterprises, or cadres in production teams or brigades. Officials and personnel in key units such as the state supply bureau are often involved, less directly, in positions as consultants,

or directors, or they have relatives employed in such enterprises (Young, 1991, 119-20, Solinger, 1992).

Take the common characterization of the Stone Group as part of civil society. Institutions such as the Stone, as Nathan (1989, 21, 1990a, 181-2) sees, have had a somewhat ambiguous relationship to the CCP. Most of them have been nominally attached to some part of the CCP organizational network, but they have operated independently. In fact, the state and these institutions are so overlapping that they cannot be separated into two distinctive areas. The Stone has been under the jurisdiction of the former Shijiqing (Evergreen) people's commune (now an administrative district). The Jing Hai company has been a unit under the Institute of Computer Science of the Academy of Science. Such organizations can be properly described as *semi-official* institutions. Their autonomy was and remains compromised by their reliance on political interests backing them, interests clearly within the state. The Stone had connections to the sons and daughters of the political élite of the CCP, who enabled it to obtain soft loans, or goods produced in the state-owned manufacturing sector below market prices. It also had close ties to Zhao Ziyang, which was demonstrated in the movement in 1989. However, the nature of the ownership of the Stone group is blurred. Some view it as a kind of combination of public ownership and private management. Some regard it as a private enterprise.

There indeed exists a rough distinction between the state and civil society in China; the former is official, the latter is *minban* and has its own power and right to run its businesses. Qin Benli, who was once chief editor of the World *Economic Herald*, argued that the newspaper was not created and run by the party and the government, but rather by the World Economic Association of China and the Institute of World Economics, the Academy of Social Science of Shanghai; and importantly, he noted that the finance of the newspaper was self-raised with independent accountants assuming sole responsibility for its profits and losses. On the other hand, as Liu Jie, a deputy-director of the Department of Propaganda in Shanghai, argued, *World Economic Herald* was official, because the publication of the World *Economic Herald* was permitted by the Department of Propaganda in Shanghai in 1980; and appointment and removal of Qin Benli, being a high official, could be decided by the Communist Party in Shanghai (*China Spring*, No. 97, 1991, 51). On the whole, there are two sides of the World

Economic Herald : relative autonomy and relative dependency. It is this feature of overlapping and partial autonomy that deems Chinese civil society a semi or quasi-civil society.

The nature of Chinese quasi-civil society can also be seen in the perceived role and nature of the legal system. The legal system is seen as an instrument of the party, so that its autonomy remains problematic. If there is less space for the autonomy of law, it is less likely that there will be a normatively regulated civil society independent of the state. If the development of the private sector affects the predominance of public ownership in the national economy, the Chinese leadership is likely to adopt tight measures to restrain its development. The party can change legal regulations so as to suppress the development of civil society. In this respect, legal protection for private enterprises is fragile. As Susan Young remarks: "A Constitution which was altered so easily to include private business can just as easily be altered to take it out again. In any case, legal guarantees are of only limited relevance to daily life in China" (Young, 1991, 130). The notable thing is that private enterprises have only an inferior legal status; the private sector merely supplements the public economy. The division between legal and illegal business also is a fine one, largely dependent on the politics of the time. There is evidence that the number of private businesses decreased in some places from late 1985 to mid-1986, a period that coincided with a crack-down on economic crime (Wang Zhonghui, 1990, 93). Also, between 1989-April 1990, about 8.600 private businesses were suspended, 4.500 had licences revoked, and many others were penalized (Beijing Review, April 15-21, 1991, 6). The crack-down on illegal businesses and tax evasion in 1989 was felt as even more of an attack on legal private business than previous attacks had been (Young, 1991, 7).

Obviously, the overlapping structure discussed above has a negative effect on democratisation. If my impression is not wrong, it seems that most business people, particularly those involved in foreign trade, are quite happy with the current loosening policies of Li Peng's government; they recognize the existing situation as being favourable to business. The overlapping of private enterprise with the power of the state is at issue here because those who get support from high officials will lose their business contacts if the CCP loses power. There is a potential danger of corporatism in which some business people and the state make deals without thinking of

the interests of other groups. The new entrepreneur class, in particular the sons and daughters of high officials connected with the power of the state, will transform political power into private property through privatisation programmes although they might eventually demand more freedom. This potential development may hinder the development of civil society and Chinese democratisation.

It is misleading, however, to see this overlapping structure, or relative autonomy, as a serious limit to democratic politics while ignoring possible positive effects. Here I would follow the idea of Montesquieu and Tocqueville that independent associations for non-political purposes form the basis for the fragmentation and diversity of power <u>within</u> the political system (see, Taylor, 1990, 115, 117). Thus, it is crucial to see how civil society plays its role within such an overlapping structure. There are some advantages of this mixed structure. One advantage was to provide associations with much greater political resources which can then be used to push for democratisation. This was the case with the Stone and the official trade-union. Another example was the Hunan and Sichuan People's Presses which published many books introducing Western ideas of democracy. Also, the relatively autonomous associations <u>within</u> an overlapping structure may play a much bigger role than those outside the government in checking political power and influencing decision-making. For civil society, a way to influence politics and to check the Party is to play its role within the overlapping structure, because there is a trade-off between autonomy and influence. This trade-off is evidenced when leaders of social organizations, as White observes, often feel that the best way to increase their influence is to get closer to and become meshed with state and Party organs, compromising their autonomy in the process (White, 1993). Although society, as Nathan observes, is beginning to infiltrate the Party" (Nathan, 1990a, 5-6), actors and leaders of autonomous organizations seem to learn by their failure that they cannot achieve their own goals without recourse to the Party and the state.

In short, the overlapping structure of the state and semi-civil society may hinder radical transition to democracy, but may also provide pressures and checks on the state if civil society plays a proper role within many levels of the polity.

3. The Ambiguous Role of Entrepreneurs

Historically, the anti-imperialist Chinese bourgeoisie did not play the role that the bourgeoisie played in opposition to the government in European history. The emergence of what Marie-Claire Bergère terms "the nearest thing to an autonomous society" between 1911 and 1927 was an urban society dominated by an united front of business circles, well structured and inspired by a modernist and pro-Western intelligentsia (Bergère, 1986, 240). For them, the State was indispensable to the constitution of society, and it thus was necessary to restore governmental authority. Despite the fact that this meant giving up the autonomy they had acquired thanks to economic expansion and the decline of the bureaucratic apparatus over the preceding years, they worked towards that end (Bergère, 1986, 226).

In today's China, the role of the entrepreneur in Chinese political life is ambivalent. On the one hand, the Stone group did support the democratic movement in 1989. At the moment, private operators are at a disadvantage in that they have no legitimate access to subsidized commodities and lack the influence and prestige of a state unit when seeking supplies. They are also fearful of being classed as capitalists if the political wind shifts (also see Gold, 1989b). Also, private enterprises are encouraged by the government only as part of a reform program. The fortunes of private businesses are therefore tied to those of the reform program as a whole. In this respect they wish China to push for further privatisation and democratisation which will enhance their legal, economic and political status, as evidenced in the case of the Stone Group, SERI and similar bodies in the 1989 democratic movement. Thus the motive of the entrepreneur's propensity for democracy lies in, as O'Donnel (1973) argues, an instrumental calculation aimed towards gaining power via changing the rules of the political game and thereby displacing vested power holders.

On the other hand, for the time being, Chinese entrepreneurial activities seem to be compatible with a neo-authoritarian state under the current soft policy of the Party. An atomised and commercialised civil society is less interested in democratic politics than in a neo-authoriantarian regime, because the former brings about uncertainty while the latter creates favourable conditions for business. For them, this is a lesson from East Europe where radical transition to democracy led to disorder and economic

chaos. In the case of private business people in Wenzhou, they seemed to welcome the democratic political movement less. They did not support the student demonstrations in Wenzhou, rather they demanded political stability within which they could make their profits.[184] Remarkably, some business people in Beijing rethought their support for the student movement in 1989 after the events of June 4th, and arrived at the conclusion that they should not have supported the students because the student movements had destroyed a healthy economic environment for business growth.

There is also the ambivalent attitude of private business people towards the state. On the one hand, they hope that the Chinese government will have a powerful position in international relations, and therefore support a strong state authority; they also wish the state to provide them with resources and funds as much as possible. On the other hand, they demand a policy of deregulation: less taxation, and further economic flexibility and privatisation. Also those who are supposed themselves to be members of civil society have ambivalent attitudes towards civil society (He & Kelly, 1992a). They tend more towards cooperation with the state rather than defence of the autonomy of the civil society to which they belong when their position changes from being that of the suppressed to that of the superior.

This is also true in Taiwan. Cheng's study shows that the democratic political opposition was supported and led by professional intellectuals and entrepreneurs. Small and medium enterprises provided these oppositionists with both funds and fallback positions. However, after the ruling regime committed itself to political liberalization and embarked on an accelerated democratic transition, more political entrepreneurs chose the route of the reformed ruling party. Their financial and electoral support for the Democratic Progressive Party began to wane as that party increasingly resorted to social mobilization and exploited social conflicts to elicit the support of workers. Finally, entrepreneurs have begun to underscore the importance of political authority as private interests challenged state power (Cheng, 1989, 1990, 7-9, also see Wang Zhenhuan, 1991, 62).

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[184]See "Guanyu Wenzhou wenti de diaocha baogao", *Guowuyuan yanjiushi songyuejian*, No. 49, December 2nd, 1989.

In conclusion, it is difficult for us and even for business people themselves to define the political role of the entrepreneur class in the process of democratisation because their decisions and actions depend on concrete social conditions and on their various judgments of situations.

4. The Problems Associated with Civil Society Discourse and the Public Sphere

Around 1987-1989, the liberal idea of civil society was popular in Chinese intellectual circles. While Liu Zhiguan and Wang Suli (1988) used "gongmin shehui" in 1988 and Shen Yue (1990) "shimin shehui" in 1987 and 1990, the other writers such as Wu Jiaxiang, Fang Gang and Rong Jian did not use such terms to discuss civil society, but employed other terms such as "profession society," "grey market" and "a centred-society." These express basic ingredients of the liberal notion of civil society such as individual rights, individual autonomy, voluntary associations, the public sphere and free enterprise. This was also true of the writers Shen Yue, Liu Zhiguan and Wang Suli who used the works of Marx and Rousseau respectively. In short, this was a conceptual shift from the idea of totalitarian society to the liberal idea of civil society. Also, this conceptual transformation was achieved through the following processes and mechanisms: discovery of the value of civil society; exposure of the negative consequences of "mass society;" and criticism of the apparent incoherencies of the dominant official ideology (I have discussed Chinese liberal ideas of civil society in detail elsewhere, see He Baogang, 1993e).

After the events of June 4th 1989, some Chinese intellectuals overseas attempted to link democratic movements overseas into a version of Timothy Garton Ash's Type B[185] as happened in Poland where the institutionalisation of civil society was the democratic opposition's strategy in the second half of the 1970s (Rumiantsev, 1991, 117). They adopted and

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[185]For Ash (1989, 246), civil society describes two different things: (A) the entire range of social associations, ties and activities independent of the state, from glee clubs to Charter 77, from *samizdat* to breviaries, and from private farmers to homosexuals; (B) more narrowly, and more politically, the products of that strategy of 'social self-organization' that was, broadly speaking, adopted by the democratic oppositions in Poland, Hungary and Czechoslovakia in the mid- to late 1970's. For them, the reconstitution of 'civil society' was both an end in itself and a means to political change, including, change in the nature of the state.

highlighted the Gramscian model of civil society which is seen as an opposition movement, a democratic strategy and an antagonism between the state and society. The autonomous organizations overseas also established direct connections with various international human rights associations to create what might be seen as "a transnational-civil society".

The significance of the discourse of civil society is this: to talk about civil society is to enquire into a new political theory of the state and to articulate a normative project for liberalization and democratisation. For liberal intellectuals, a society independent of the state should be developed so that the power of the state would be limited. They believe, under civil society, the dispersion of economic power means that political and legal power cannot be monopolised, and that checks and safeguards against the abuse of power are able to operate. These ideas certainly will acquire influence to alter the nature and workings of existing institutions because the idea of civil society has already been taken up by opposition organizations overseas and can potentially be taken up by the reformer faction within the Party as discussed in Section 5 of Chapter 10.

However, there are at least two problems associated with the discourse of civil society concerning its potential role in Chinese democracy (I have discussed this in detail elsewhere, see He Baogang, 1993e). The first is the idealized notion of civil society which assumes that once civil society is established, a harmonious and democratic society will occur. This notion should be discarded. Any civil society has the inherent potential for disruptive conflicts among competing interests and traditions of behaviour. The idea, therefore, is not a useful tool for dealing with practical problems and even makes people doubt the value of civil society and democracy.

The second is the Gramscian model of civil society, which has evidenced theoretical and practical problems (for a detailed discussion, see He Baogang, 1993b). Let us first look at a theoretical problem associated with the Gramscian model of civil society in Eastern Europe. Civil society first was used as an anti-politics strategy. The Solidarity movement was interpreted as a struggle of society against the state (Arato, 1981, 23-4). When the members of Solidarity came to power in 1989, a new problem arose: those who were the members of civil society now became officers of the

state. This leads to the disappearance of the demarcation between the state and civil society. As Piccone put it:

> Upon taking power, civil society ideologists quickly adjusted to the corporatist politics dictated by the communist power structure (in Poland). Then, after it became obvious that there were no Soviet tanks propping up the various local communist regimes, they rediscovered the virtues of politics-as-usual, while attempting, like the careless sorcerer's apprentice, to control the demonic forces they had unwittingly released. The major components of the long-projected reconstitution of an autonomous civil society, the working classes, are now increasingly joining forces with the remnants of the old bureaucratic apparatus to contain the detrimental consequences of these economic reforms necessary for dismantling the system of central planning (1990, 15, also see Cohen & Arato, 1992).

The second practical problem is that the violent tendency of some political and social movements threatened the transformation from a neo-authoritarian state to democracy. Here I would like to emphasize that the Gramscian model of civil society favours and supports the violence strategy for democratisation. Violence arising from civil society is a danger to democracy. The case of the 1989 Democratic Movement demonstrates that the Chinese students and populace were civilian and peaceful. But there was also a call for violent revolution from the Beijing Workers Autonomous Federation. Whether Chinese civil society moves towards non-violence or violence is uncertain and contingent in the future.

As the discourse of civil society emerged, so did a space for public sphere activities in 1989 (also see Section 2 of Chapter 8). Tiananmen Square in 1989 can be seen as an arena of the public sphere where political issues could be expressed, discussed and criticised, and public opinion turned into a political force (Calhoun, 1989, Li Oufan, 1989). People in the Square removed politics from the exclusive domain of the Party into the realm of the public. Newspapers and television stations were also important arenas of the public sphere. Although genuine freedom of the press lasted only three days, while journalists were able to tell the truth, their power of mobilization of the populace was so great that they raised popular

awareness of the student demonstration and strengthened the resistance against Martial law.

This brings about a problem of mobilization. If a civil society does not mobilize, it cannot play a major role in the process of democratisation. On the other hand, there is always a high level of mobilization in Chinese politics. A highly mobilized civil society may produce popular, radical and romantic politics rather than democratic politics. Romantic and polarized politics may also intensify the political struggle and make political concessions and negotiations more difficult. In the case of the 1989 Democratic Movement, the failure of the autonomous student organizations to make concessions has heightened both the propensity and the legitimacy of military-bureaucratic intervention, to the point where these elites have come to see it not only as their right but their duty to guard and guide the political process out of chaos. Now Chinese democrats have learnt the lesson that political negotiation is necessary for the transition to democratic politics. If the Cultural Revolution created tolerance, the June 4th events may create consensus for negotiation.

Conclusion

Civil institution building beyond the vigilant eye of the Party and the secret police is well under way albeit in its infancy. A semi-civil society has developed into a real basis for political pluralism, and has contributed to political changes during and after the democratic movement of 1989. However, the major problem is that the supremacy of the state over civil society has been a source of difficulty for democracy. On the whole, nascent, weak, ineffective, emergent civil society constitutes a very weak check on the abuse of state power. It is still unable to resist military-bureaucratic cooperation and repression. At the moment, Chinese society is not able to combine all social forces to make itself a powerful counter-balance against the state. Only when social associations and organizations at the grass roots level penetrate the whole Chinese nation, can a civil society be a powerful check on the power of the state. Up to now, civil society has not added up to enough to enforce the transition to democratic politics. Nevertheless, it will develop in the next decade and become a major factor influencing the direction of Chinese politics.

The positive influence of an emergent civil society on Chinese democratisation can be summarized in the following ways: structural demands for democratisation, civil society as a political goal and as social actors supporting and pushing the 1989 Democratic Movement, institutional constraints on the will of the leadership, and a safeguard for democrats. However, the roles of Chinese semi-civil society in Chinese democratisation are twofold: it is a force for democracy and a safe refuge for democrats; while it can also be a conservative force which demands stability rather than transition to democracy. In short, the roles of civil society in Chinese democracy are ambiguous and contingent. Consequently, the actual political roles of the Stone Group, SERI or similar bodies in the process of Chinese democratisation, remain vague in the future. Whether or not they will support neo-authoritarianism is an open question.

CHAPTER 10

Conditions of Leadership: Legitimacy and Democracy

This chapter investigates the search for new foundations of legitimacy by Deng's leadership and examines changes in legitimating techniques in relation to the move towards democratization in China after 1978, and particularly since 1989. The central objective is to investigate the relationship between legitimacy (old and new forms of legitimation) and democracy in contemporary China. The purposes of this Chapter are (1) to identify changes in the conceptions of legitimacy, particularly new adjustments of the legitimating techniques; (2) to assess the impact of these changes on the direction of political development by examining the possibility of playing the democratic card by reformer factions within the CCP; and finally (3) to discuss the limits and the problems associated with the Party's search for new legitimacy.

Lucian Pye (1968, 1985, 1988) has already studied in detail the development of Chinese concepts of legitimacy and the changes they have gone through. David Goodman (1987), Womack (1990, 20), Friedman (1991, 162-3) and Bill Brugger (1989) have also worked on the Party's search for legitimacy in China from 1978 to the middle 1980s. These works are creative and useful in providing a basis for exploring the legitimacy issue. However, their relevance is confined to a certain period; thus much work still needs to be done on tracing new developments in legitimacy since 1989. Also since Jan Pakulski (1993) and I (He Baogang 1991a) have already examined theoretical frameworks whereby to analyze the legitimacy issue, this chapter focuses more narrowly on practical issues of legitimacy, in particular on the subject of legitimacy in the eyes of leaders, and on the object of legitimacy, the question of good regime and leaders.

Legitimacy in this chapter refers to the foundation of governmental power as it is exercised both with a consciousness on the government's part that it has a right to govern and with some recognition by the governed of that right. Legitimation refers to the process, mechanisms and techniques which secure the validity of the authority of governmental power.

This chapter is in six sections. Section 1 examines the crises of the official orthodox Marxism and Maoism and of the legitimacy of the system. This serves as a basis for the discussions which follow. Section 2 briefly examines Deng's various modes of legitimation. Section 3 discusses new trends of legal-rational legitimation and problems associated with that legitimation. Section 4 investigates the Party's effort to seek a new ideology and a new model of legitimation by studying the case of the official discourse of human rights. It also examines the political significance, and the limits, of the official recognition of human rights as a political goal. Section 5 examines Deng's political use of the economic aspect of civil society as a new art of rule and a new legitimating source. Section 6 further explores a possible step by which reformer factions within the Party would legally recognize political opposition movements in order to gain a form of legitimacy in post-Deng China.

1. The Crises of the Official Ideology and Legitimacy

Communist ideological commitments can be summarized as follows.

(1) The economic strategy of development is socialism, requiring nationalization and collectivization of the economy.

(2) The political vehicle of development is "proletarian dictatorship", requiring a virtual monopolization of state power by the ruling Communist party.

(3) The ultimate objective of development is a classless Communist society, requiring the creation of a new "socialist man" through continued class struggle and repeated efforts to establish a uniform collectivist consciousness in place of competing individual or group interests.

(4) The world context of development is seen as an unremitting struggle between capitalist and socialist systems, requiring constant preparation for, and participation in, opposition to capitalism (Townsend, 1974, Schurmann, 1988).

These ideological commitments were successful in legitimizing Mao's authority, and were dominant and widespread during the Cultural

Revolution. But, the degree to which people believed in those ideological commitments is still open to debate.

Through the official ideology, Mao Zedong and his ideological colleagues seemed to have hit upon a belief system that struck a positive chord in the psyche of the Chinese people and were thereby able to inspire them to extraordinary sacrifices. Two aspects of Mao's essential message sprang from a common psychological source. At one level he spoke to a belief in the inherent goodness and greatness of the Chinese people; on another level he justified hatred and depicted enemies against whom uninhibited aggression could be channelled (Pye, 1985, 323).

However, theoretically, Maoism as the means for ideological legitimation of society has limitations: as a ritualized dogmatic quasi-religion, Maoism is too impoverished; and, as a rational ideology, it is constantly endangered by the reality to which it is increasingly irrelevant. Further, the official ideology may serve as a source of both justification and critique of the system or regime. For example, the concept of "people as master" has been and will still be used to justify the CCP, but it also can be used to support and justify demands for Western democracy.

In reality, the first crisis in Mao's authority was caused by an economic crisis, the failure of the Great Leap Forward, which was so severe as to shake the faith of the peasantry in the Party and in Mao himself. Even more disillusioning were the consequences of the Cultural Revolution which led the masses, intellectuals, ordinary Party members and bureaucrats to doubt the official ideology and the final goal, and to become more pragmatic and individualistic. Post-Mao China has been marked by open disbelief in the superiority of socialism, widespread contempt for those wishing to join the Party, a view of officials as a self-seeking exploitative class, and pervasive political indifference. In the 1980s, what Chinese officials called crises of faith, confidence, and trust reflected not only the lingering disillusionment of the Maoist era but also problems generated by the emerging post-1976 policies.

Since 1978, in order to ensure the legitimacy of the CCP, particularly of Deng's leadership, and to permit himself greater latitude for pragmatic

experimentation, Deng has conducted serious theoretical debates about the criterion of truth,[186] which have led to a movement towards intellectual emancipation and consequently undermined Maoist ideology. Official Marxism and Maoism have also been eroded and challenged by Chinese intellectuals. In the early challenge, roughly between 1977-1982, social values embodied in the ideological commitments, such as the people being masters of their country, truth, and respect for human dignity, gradually ceased to serve as the official legitimizers in goal-rational legitimation. But these values were also used by dissidents to question and criticize the legitimacy of the system and the regime. For example, Li Yizhe's group and liberals such as Wei Jingsheng and Hu Ping used Marxist terms and theoretical framework in their political discussion (Chapters 1 and 3). Between 1984-1989, some Chinese intellectuals attempted to move beyond Marxism and introduced liberal-democratic ideas, advocating privatization of the economy, a limitation on central power by means of a programme of decentralization, the abandonment of the traditional personality and the creation of a type of modern, open and aggressive man, and finally the merging of the West and the East. This movement demonstrates the communist failure to inculcate Marxism into a popular **Weltanschauung**, and yet this failure, if anything, seems to have increased the Chinese communists' reliance on Marxist ideological-doctrine, as has also been the case with Eastern European communists (See, Pakulski, 1987, 139).

When old tenets have lost all credibility, a revamping of the prevailing ideology is urgent. In China, in order to resolve the ideological crisis, the humanist Marxists, such as Wang Ruoshui (1985), Gao Ertai and Xie Dezhen reinterpreted, between 1982-1984, the Marxist concept of alienation, and in their search for renewal turned to the young Marx and the philosophy of human emancipation to undermine the prevailing orthodoxy. Nevertheless, they have still retained many of the old socialist dogmas and refused to make a total break with the communist system. At the same time, the conservative Chinese leaders repressed the Humanist School in 1982-1984. As a result, the goal of reconstruction of Marxism eventually failed and the humanist Marxists were criticized by both orthodox Marxists, like

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[186]Brugger has outlined changes in official ideology since the Third Plenum of late 1978, see Brugger, 1989, 2-12, 18-26.

Deng Liqun, and rejected by the young radical intellectuals. The result was the loss of the Chinese leaders' first chance to save or reconstruct Marxism, and the emergence of a dissident counterculture rejecting the system entirely,[187] which led to a deepening of the crisis in orthodox ideology.

An alternative strategy to resolve the ideological crisis was to carry out ideological reform. In 1987 several young scholars in the Institute for Political Reform organized a number of papers which discussed ideological reforms in East Europe, the Chinese traditional ideological control system, and, more importantly, the possibility of establishing a flexible arrangement for ideological control. A separation of ideology and administrative politics was also proposed as one of the necessary elements of political reform (He Baogang, 1988). In 1989 some Chinese intellectuals insisted that ideological reform should be carried out thoroughly, and that private newspapers should be allowed to exist.[188] Further, some intellectuals argued that China needed a transformation from "religious ideology" (based on faith, power and myth) toward " academic ideology" (based on reason and reality) and a structure of open and alternative ideologies (Xie Xianjun, 1989).

However, again, this second chance to carry out ideological reforms was lost, as the regime cracked down on the student movement with tanks in 1989 (also see Pan Mingxiao (Michel Bonnin), 1990). The ferocity with which Deng's regime dealt with the students' movement showed that the political authority was manifestly incapable of coping with the problems and demands of modernization. Legitimacy always needs competence; nothing so shatters the mystique of authority as helplessness (Pye, 1968, 6).

Since the June 4 Incident of 1989, the CCP has made an effort to strengthen ideological control over universities, press, and the mass media. A number of conferences were held between 1989-1990 to carry out ideological control. Many articles appearing in *Guangming Daily* stressed that more attention should be paid to ideological work, and ideological work should be strengthened (August 4, 1989); powerful and professional political thought education teams should be established in universities (July

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[187]Vladimir Tismaneanu describes the same phenomena in Eastern Europe, see Tismaneanu, 1988.

[188]See *Shijian jingji daobao* (*World Economic Herald*), May 8, 1989.

21, 1989); and the major focus for political thought education should be the Four Principles (July 23, 1989). Also, a number of articles emphasized ideological themes: the privatization of the economy as counter-revolutionary (July 28, 1989); class struggle as it exists in the primary stage of socialism (July 22, 1989, by Zhao Guangwu and July 24, 1989, by He Xianping); the clear distinction which needed to be made between capitalism and socialism, and the need for China to stick to the socialist road (August 7, 1989). These developments have led Dittmer (1989, 15) to conclude that the CCP after 1989 has translated very serious and complex problems into the moral and ideological terms with which its members are more familiar.

On the other hand, since the June 4 Incident in 1989, the Party has still proclaimed reformism and the principle of human rights (discussed in Section 3). This is a kind of new ideology created and insisted on by Deng to re-build Chinese communist legitimacy and to avoid the coming revolution in China.[189] It seems that there will be a third chance for the Party to undertake an ideological renewal, which is already under way, and that this will be continued in the near future, particularly in post-Deng politics (discussed in Section 6).

2. Various Modes of Legitimation under Deng

Deng's regime has faced many more crises of legitimacy than that of Mao's. First, the Communists under Mao were not content to base their claim to legitimacy upon their ideological message. They sought further to justify their power by responding to the profound cravings for dependency on the part of the Chinese masses. Their goal was to promise a secure existence, based upon job security, the "iron rice bowl," and most of the necessities of life at below-cost prices (Pye, 1985, 197, also see, Townsend, 1967, 195). And Mao did succeed. In the early years of Chinese communist rule, the satisfaction of personal needs, the guarantee of the individual's physical and cultural reproduction led large masses of people to accept the legitimacy of the CCP as they enjoyed certain beneficial aspects of political obedience in a

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[189]In fact, reformism provides a very limited political justification. As Friedman (1985, 44) argues, "one matter that weigh against the reformers is that their wisdom seems heresy in the Leninist tradition. Therefore the reformers cannot readily legitimate their policies."

tangible way. Contrarily, Deng's reform policies, which attempt to break with the "iron rice bowl", have created new problems, such as inflation and unstable security. These problems have destroyed the social eudaemonic legitimation on which the Party's claim to legitimacy was based. Second, Mao's regime did not evidence much corruption, while there has been widespread and serious corruption in Deng's regime. This led some people to assert in the 1989 student movement that they would rather have Mao's dictatorship without corruption than Deng's reforms with widespread corruption. According to the Chinese idea that moral order is the basis of legitimacy (that is, rulers or cadres should be more virtuous than anyone else and therefore deserve to rule), Deng's leadership has completely lost its legitimacy in the eyes of the masses. Third, while Mao's legitimacy had charismatic roots, and Mao obtained a significant degree of charismatic authority; Deng's regime lacks such charismatic legitimacy.

In summary, Deng has faced difficulties in employing such old modes of legitimation as the charismatic, goal-rational or teleological and eudaemonic. In order to overcome these difficulties, Deng has taken various measures as deliberate strategies for legitimising both the Party organization and the exercise of state power. The most noticeable is legal-rational legitimation, a new mode of legitimation, which is increasingly becoming the dominant mode of legitimation in China (discussed in next section). And official ideology still plays a part in the effort to regain the legitimacy of the Party, but is increasingly losing its primary centrality in what is becoming a mix of modes of legitimation.

Deng has drawn on the following alternative sources of legitimation. First, maintenance of political stability was and is used as a tool by the Party for its claim to the legitimacy of its rule. The rationale is that "those who restore social order have absolute right to control;" this rationale is often seen in the current mass media in China. Post-communist crisis and social chaos in eastern Europe has been also used by the current Chinese regime to support and strengthen its claims to legitimacy. This may work at a social psychological level; that is, the masses' fear of "primitive power" or "social disorder" can concentrate the collective mind and make legitimate authority appear preferable even when that authority is considerably less than ideal (Pye, 1985, 33).

Second, Deng's regime has issued substitute claims to legitimacy, such as reference to the current economic achievements, the social representativeness of the CCP and the NPC, the desirability of certain policies such as the open door policy, the moral and intellectual qualifications of new leaders, the public interest , nationalism, welfare measures, consumerism, and the rising standard of living. Here, the current economic crisis in Russia has often been contrasted with the successful economic achievements under Deng's leadership. For Deng, legitimacy depends on the efficiency of the government. Nevertheless, economic efficiency and the satisfaction of material needs do not necessarily give rise to consent to the regime by the masses, as those who have become better off in the past decades still complain and criticize the government. Further, performance legitimation is unstable, for if economic performance gets worse, the degree to which legitimacy is gained will decrease.

Third, Deng's regime has also gained mass compliance by obtaining compulsive compliance based on fear, expediency, fatalism (lack of alternative) and sheer discipline. This included the employment of the army and police to crack down on the students' demonstration in 1989 and coercive measures of repression and punishment of those who took part in the demonstration after June 4th. As Dittmer argues, according to Deng Xiaoping's conceptualization -- namely, that legitimacy is based on the credibility of the threat to use violence -- the crackdown of the demonstration in 1989 should have bolstered legitimacy (Dittmer, 1989, 15). Further, Deng's paternalistic conception of democracy is not one that requires legitimation through such procedures as general election; and his conception of democracy is also one that can endow the use of coercion against popular opposition with its legitimating justification (see Chapter 2). However, the role of coercion is very limited in achieving effective legitimacy. It may produce unintended consequences: decreasing legitimacy rather than increasing it, obtaining a very limited surface compliance rather than winning free support from the masses. It further runs counter to the establishment of popular legitimacy and undermines any claim to popular support.

The various legitimating techniques which Deng has used do not make a cohesive basis for legitimation. Deng's pragmatism constitutes a new basis of legitimacy according to which performance has become a powerful

legitimising weapon. This contradicts Deng's emphasis on sticking to both the Four Principles and reformism as the guiding principles for ideological work. Due to the lack of a coherent basis for legitimation, and the two mutually contradictory sources of legitimation (ideology and pragmatism) associated with the following contradictory principles -- one accepting the role of the center and the other allowing for a spontaneous market mechanism -- the system is in a state of permanent legitimation crisis.

This contradiction can be seen in the following dilemma faced by Deng's regime. On the one hand, if reforms are reduced or canceled there will be more challenges to Communist legitimacy and a greater possibility of revolution. On the other hand, if there is less ideological control, there will be further decentralization of the central Party's power and more development of civil society. In other words, reformers attempt to avoid the coming revolution, but reform actually accelerates what it aims to avoid and makes the coming revolution much more dangerous for the system than it would otherwise be. This is why Deng and other Chinese leaders vacillate between ideology and pragmatism. On the one hand, Deng and other Chinese leaders have a great need for ideology. Ideology has been important, not only as a guide for action but also as a way of legitimating the moral claims associated with leadership. More importantly, it can be used to protect the discussion of politics from the very threatening possibility that explicit talk could lead to the chaos associated with factional strife (Pye, 1985, 204). On the other hand, in practice the leaders seem to ignore the content of ideology; they do what advances their self-interest without amending the substance of their ideology (Pye, 1985, 206).

3. A Move towards Legal-Rational Legitimation

There is a dynamism to legal-rational legitimation. When a goal-rational legitimation -- the validity of orders issued by the rulers is derived from the validity of the principal social goals that the authorities claim to represent and promote -- decreases, the leaders are increasingly interested in emphasising the legal-rational mode of legitimation (see Holmes, 1992). Deng's China has been undergoing legal and institutional construction since 1978. A highly institutionalized legal system has been built up which functions as the basis of "socialist legality". There has also been a legal awakening in which both the Party leadership and the masses have seen

that the "rule of law" is a sound alternative to the former disastrous "rule of persons". During Deng Xiaoping's leadership, law has advanced beyond the instrumental functions of Marxist political rule. Law has increasingly been seen as a channel for economic modernization and as the legitimate means of resolving conflicts and regulating social order (Lo, 1989, 413).

The Chinese leaders have made vigorous efforts to revitalize and strengthen China's legal system since 1978 (Baum, 1986, Yu Youzhi, 1986). They introduced the terms of office in China, in an effort to limit the tenure of leading officials. They have regularized the CCP meetings, separated party and state, implemented electoral procedures, and recognized the legitimacy of conflicting interests in society. Also, the various formal Party norms, rules and constitutions, such as minority rights and collective leadership, have been taken seriously by the elite as an indication of how the system and leader should operate. There has been an observable trend in the legal-rational mode of legitimation from arbitrariness towards regularization and "norms" in the communist states. There is also growing the legal professionalism, which enhances the legal competence of judicial organs, and an improvement in legal consciousness among the general public.

What is more important is the change of the legal system from suppression of civil society to protection of it, albeit in a limited form. Over the course of a cyclical, stop-start process of liberalization and repression, the party retained its supremacy in determining the outcomes of legal disputes in which it had a direct interest. But there was a discernible retreat from day-to-day interference in a broad category of cases which had recourse to newly promulgated civil law (Lo, 1990). This apparent move towards formal legality and rationality is evidenced in the recognition of private ownership and the enforceability of a capitalist commercial relationship. Formal legalism was adopted as a necessary mechanism to support the introduction of contract to a centralized economy (Findlay & Chiu, 1991, 81). Private enterprises are buttressed by a new system of institutionalized legal safeguards. The Constitution was altered in 1982 to confirm the role of individual businesses, and in 1988 to cater for large private enterprises as well. The government also made a new legal regulation in which it states that the private economy is a supplement to the socialist collective economy. The state protects the legitimating rights and interests of private enterprises (Article 3). Private enterprises are allowed to establish their own

associations (Article 5). In Articles 20 and 21, private enterprises are entitled to enjoy the following rights: the right to inherit properties, the right to decide on their internal organs and institutions, the right to employ and dismiss employees, the right to decide on salaries and use of profits, and the right to decide on the price of goods and criteria of charges in accordance with state price regulations (Shangyebu bangongting, 1989, 302-5). A private entrepreneur whose rights are infringed on also has the legal institutional safeguard of appeal to the courts. The law of Civil Procedures which was promulgated in 1982 opened for the first time the possibility of bringing lawsuits against administrative organizations. The law of Administrative Procedures, coming into effect as of October 1, 1990, invests Chinese citizens with the legal right to bring lawsuits against government officials and bring administrative organizations under legal scrutiny (Beijing Review, Apr 29-May 5, 1991, 14).

Further, law is now seen generally as a legitimate channel by which to redress grievance (Lo, 1989, preface). The Chinese government now recognizes that rallies and demonstrations can be effective alternatives in resisting bureaucracy and corruption, in helping the government to reduce mistakes in decision-making and in maintaining a healthy work-style. They may function as "safety valves" of society, letting out resentment and preventing negative moods from accumulating and exploding (Findlay & Chiu, 1991, 71). The new public demonstration law in China expresses a subtle shift in discourse and emphasis. The "maintenance of order and social stability" is replaced by the protection of citizens "in exercising their rights" as the principal purpose of the law in revised Article 1. In Article 2, reference to opposition against the "Chinese Communist Party and the socialist system" (referred to in the draft) has been removed (Findlay & Chiu, 1991, 74).

However, the personalisation of politics is still dominant in the Chinese communist state, and the goal of legal-rational legitimation has not been reached. Also, Teiwes claims that the Chinese regime is not based on legal-rational authority and the position of leader has not been strongly defined in legal-rational terms. Deng's move toward legal rationality is impressive but uncertain and ultimately flawed (see, Teiwes, 1984, 55-58). Deng still remains above the institutional arrangements and the rule of law and there is no institutional guarantee to prevent him from violating the

Party rules. Power in Deng's time is still residing in the person of high officials and not in their offices or in institutions. The degree to which power is still personalized and not institutionalized in constitutionally defined offices can be seen in the fact that the former general secretaries of the central party community, Hu Yaobang and Zhao Ziyang, were ousted from their office by Deng and other conservative leaders, such as Chen Yue and Yang Shangkun.

4. The Rights Legitimation

Chapter 4 has already discussed three new elements associated with the official Chinese position in the *White Paper* on human rights: the acknowledgement of the protection of human rights as a major goal of the government, the acknowledgement of the Universal Declaration of Human Rights as an international or universal enterprise, and the silence on Marxist class and economic analyses of human rights. What is important is that the Chinese government has made concessions on the issue of human rights since the 1989 Democratic Movement in China. Practically, the human rights issue in China is now open to discussion and to investigation by foreign countries; for example, Australian, Swedish and French human rights delegations have been invited in by China. Also, Fang Lizhi and wives of dissidents such as Su Xiaokang and Yuan Zhiming have been allowed to go overseas. Importantly, the so-called internal affair of human rights has in fact been <u>internationalized</u>; and international pressures do have a positive impact on improving the human rights situation in China. For example, where international pressure identifies an individual, the person is protected (Woodman, 1992, 16-7). These facts indicate a fundamental change in governmental rule or method of rule in the sense that the Chinese Government is now learning how to play the card of human rights. As a western diplomat suggests, China has become more sophisticated in handling its critics.[190]

Now it is easy for us to recall Deng's early denial of "western human rights" as "bourgeois". Why has the discourse of human rights now acquired a legitimate status in the *White Paper* , and undergone a shift in

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[190]Yvonne Preston, "China takes initiative on human rights criticism", *Age*, 18th September, 1991.

status from a domestic issue to a diplomatic or international issue? A simple answer, according to an official source, is that to open the discussion of human rights is useful in fighting challenges from the West, in carrying out patriotic and socialist education, in developing studies of the Marxist theory of human rights, and finally in promoting democratic and legal construction in China (*Renmin ribao*, 27th January, 1992). Another explanation is that the Government is responding to the *US Human Rights Report* by the US State Department on February 1, 1991, in order to gain economically from the West and to improve the image of the CCP in international communities.[191] Here, I would like to argue that to protect human rights is in the interest of the membership of the Party in terms of their personal security if a political event like the collapse of the communist rule in the former Soviet Union should occur in China. Also, I would like to stress that the discourse of human rights has now become a new legitimating tool. This is because the old legitimating weapons such as official ideology, nationalism (see Friedman, 1993a) and neo-traditionalism (that is, the present political order is legitimated by identifying it with an earlier phase of the same order) have become less effective.

The *White Paper* on human rights shows changes in its conception of legitimacy, particularly in its new adjustment to legitimating techniques. It is an effort to re-establish, after 1989, a theoretical basis of legitimacy: a move from the utopian goal of communist society to the rhetorical goal of protection and improvement of human rights. This new weapon, what I would like to call rights legitimation is a mix of ingredients: a new ideology, performance factors, nationalism and the international discourse of human rights. It can be characterized by the following four features.

(1)   Rights legitimation takes the form of Chinese nationalism rather than the form of individualism. Rights to life, liberty and the security of a person are first understood as the right to subsistence which is closely associated with Chinese nationalism. According to the *White paper*, it was imperialist powers such as Britain, France, Japan, the US and Russia that waged wars on

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[191]There have been various responses to the *White Paper*. Western critics and Chinese dissidents overseas are very sceptical. For example, Yan Jiaqi has criticized the *White Paper*, see, 1992, 49; Yi Ding's criticism, see *Minzhu zhongguo* (*Democratic China Monthly*), 1992, No. 2, 21.

varying scales against China, causing immeasurable loss of life and property damage and destruction during the 110 years from 1840 to 1949 (*Beijing Review*, Nov. 4-10th, 1991, 21). And the discourse of human rights, in the official Chinese view, serves as a new legitimising tool for imperialism to use to interfere in the internal affairs of other countries. Conversely, the official Chinese rights legitimation emphasizes that the preservation of national independence and state sovereignty and the freedom from imperialist subjugation are the most fundamental conditions for survival and development of the Chinese people (*Beijing Review*, Nov. 4-10th, 1991, 12). In this understanding, Chinese nationalism is interpreted as a version of the urgent right to subsistence. This nationalism associated with the right to subsistence might prove powerful given the Chinese people's memory of, and hatred towards, imperialist subjugation in modern Chinese history.

(2) Rights legitimation is also a new ideological renewal in terms of the new phrase, "the right to development". The right to development is a collective right which has priority over individual rights. According to this, if the Chinese government pushes for economic development, a neo-authoritarian government and its suppression of civil and political rights would be justifiable (*Renmin ribao*, Jan 27, 1992). In line with this view, Hua Sheng, an economist, criticizes Hu Ping, the former president of *the Chinese Alliance for Democracy*: if Hu were more concerned with living conditions in which ordinary people live than with individual rights such as freedom of speech, which only intellectuals enjoy, he would give up his search for a liberal government in China (*China Spring*, No. 3, 1992, 80-7).

This ideological renewal reflects changes in ideological legitimation. The old elements of ideological legitimation are reasons connected with the existence of a revolutionary state; the sociological formula that the Party is the best representative of the interests of workers and peasants, and the dialectical assertion that only the Party is able to know how to solve conflicts. These elements are now declining, gradually giving way to the discourses of human rights and reformism.[192]

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[192]Current Chinese leaders are very utilitarian. In the past 10 years, instrumental rationality, with the idea of catching up with neighboring countries in economic performance, has acquired greater appeal for the ruling elite. Substantial ideology has been decreased in the economic and diplomatic areas although it is still being maintained in the

(3)   Rights legitimation is a version of performance legitimation in terms of its claim that the Chinese government and people have spared no effort to safeguard human rights and steadily improve their human rights situation, and have achieved remarkable results (*Beijing Review*, Nov. 4-10th, 1991, 8). Not surprisingly, the *White Paper* does not mention any violation of human rights under Chinese communist rule, in particular during the Cultural Revolution. Instead, the *White Paper* claims that the Chinese people have gained extensive political, economic and social rights, that China's judicial work has guaranteed human rights, and that citizens have enjoyed freedom of religious belief. This performance legitimating claim will fail at the practical level because those who have suffered abuse of human rights in China will not believe such propaganda.

(4)   Rights legitimation seems to draw support from the international discourse on human rights. When the Chinese regime faces crises of legitimacy, it looks to external or international resources to gain its legitimacy. To say that the Chinese regime's actions and policies meet international standards is one way to legitimize the regime. This is a hidden motive for the Chinese government to appraise highly the Universal Declaration of Human Rights as a universal enterprise. This development is also influenced by the fact that the Chinese economy is becoming more and more internationalized, and so are Chinese politics. The official acknowledgement of international discourse of human rights has two-sided implications. On the one hand, it provides a theoretical weapon for Chinese leaders to fight off challenges from Western countries. According to the *White Paper*, the ideas of the right to subsistence and of the right to development enrich the concept of human rights; and because of this enrichment, China makes its contributions (*Beijing Review*, Nov. 4-10th, 1991, 43). And the current official Chinese views are seen as representative of third world views in general. China, India, Malaysia and other developing countries share the idea that the right to subsistence and the right to development are most urgent, while the idea of civil and political

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political area. For example, in the 1970s, Jiang Qing, Mao's wife, opposed certain trade policies in terms of Mao's ideology; in the 1980s, the impact of Mao's ideology on economic policies has decreased. Also, after the events of June 4th 1989, people could put up a large amount of money as bail for those who had been put in jail.

rights merely mirrors the developed world, and is therefore, narrow and limited in the way it can be applied to the undeveloped world (*Renmin ribao*, June 5, 1992). Further, the Chinese government certainly can justify its suppression of dissidents in terms of the idea that state sovereignty is a basis of human rights.[193] On the other hand, the official acknowledgement of international discourse of human rights constitutes a basis for international dialogue and cooperation between Chinese and Western governments, on which a positive interplay between the Chinese and other countries may be hopefully expected, as suggested by the fact that China has accepted the universal enterprise of human rights, and that China is now welcoming investigation into its own human rights situation by foreign countries.

The effects of Chinese official rights legitimation remain open to further empirical investigation. However, I would like briefly to analyze some problems associated with the official Chinese rights legitimation.

There are at least three serious problems associated with the official Chinese views of human rights; and these problems might make this new legitimising tool ineffective. First, there are tensions between universal (international) and particular (internal) aspects of human rights in the *White Paper*. Either their commitment to the international aspect of human rights undermines their argument for the idea that the human rights issue is mainly an internal affair; or their argument for human rights as an internal affair indicates that their commitment to the international aspect of human rights is only rhetorical and a useful card to play. Furthermore, there is the fact that the official Chinese commitment to international cooperation on human rights implies that there are rational grounds for favouring a minimal international morality; that is, at least, we should acknowledge and support minimal standards and protection that governments must provide for their citizens, as formulated, for example, in the United Nations Universal Declaration on Human Rights. For example, rights of personal security (freedom from arbitrary arrest, torture, and death) should be respected by different cultures and regimes. The Chinese government, as it claims, is opposed to torture and strictly forbids extorting

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[193]See the speech of Jin Yongjiang, ambassador to UN, *Renmin ribao*, Nove 24, 1991.

confession by torture or corporal punishment. China has signed and later ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*Beijing Review*, Jan 28-Feb, 1991, 16). The acceptance of this minimal international morality by the Chinese government undermines their claim that the human rights issue is mainly an internal affair.

The second problem is that the Chinese government holds double-standards on human rights: one criteria to deal with international pressure, and another criteria to deal with internal pressure from Chinese dissidents. For example, the Chinese government has, so far, not internally publicized foreign visits to investigate human rights issue in China. Also, in dealing with its dissidents, the Chinese government holds double standards: for example, those who have an international reputation, such as Fang Lizhi, are relatively better treated than ordinary dissidents. These practices contradict the rhetorical claim made by the Chinese government that the Chinese people enjoy equal rights before the law, and further lead the masses to doubt the Party's commitment to the principle of human rights.

The third problem is that so called "collective rights" is a tool for the Party to suppress internal dissidents and to wage an ideological war against external international pressures. To regard the "collective rights" as primary is to affirm the existing structures and to overlook individual rights. Further, to apply the idea of "collective rights" of China as a whole to its internal minorities, raises a new problem: the rights of minorities are overlooked and even sacrificed. Here, the following argument by Kukathas from a different intellectual background is perfectly applicable to China: cultural rights, a form of collective rights, may not favour minorities. "Minorities within a cultural community which might over time form quite different coalitions with other interests may find that their interests are to a significant degree subject to control by the large rights-bearing community" (Kukathas, 1992, 114). The above practical functions of the idea of "collective rights" in China lead ordinary people to doubt the integrity of the Party's commitment to the principle of human rights. In conclusion, the incoherence of official views of human rights set self-limitations on the likely effectiveness of this new legitimising weapon in practice; and the new human rights legitimising weapon also lacks a solid foundation in theory.

5. Civil Society and the Arts of Rule

There are signs that Deng's regime has already used the state-civil society schema as a new legitimating source and the basis of a new art of rule, although the Party has limited the scope of civil society to the economic area and has not used the term " civil society" as yet. This requires us to investigate the logic of political use of the economic aspect of civil society in contemporary China for (the definition of civil society and the distinction between economic and political civil society, see Chapter 9). Here, it is necessary to see legitimacy as the arts of rule rather than to discuss whether the CCP is or is not legitimate. This is because while the latter is only a moral condemnation in most cases, the former allows us to explore the potential political development towards democratic politics. The key issue is that to recognize autonomous political opposition and to carry out genuine elections are important in institutionalizing the legitimacy of the regime. This is also a critical break-through point in the current deadlock of the Chinese process of democratization. The question then is why the political aspect of civil society has not been recognized by Deng's regime.

Communist hegemony over mainland China radically reinforced the age-old tradition of unitary, non-competitive politics, and created a highly centralized, highly dependent society. The Maoist state was active in shaping the institutional social structures; while Chinese society was peculiarly passive toward its government. This kind of relationship between the state and society, however, could not prevent the tragedies of the Cultural Revolution, from which Deng Xiaoping has learnt that it is ineffective to run the country through the penetration of the power of state into all aspects of social life. As Deng said:

> It is not good to have an over-concentration of power. It hinders the practice of socialist democracy and of the Party"s democratic centralism, impedes the progress of socialist construction and prevents us from taking full advantage of collective wisdom. Over-concentration of power is liable to give rise to arbitrary rule by individuals at the expense of collective leadership, and it is an important cause of bureaucracy under the present circumstances (Deng, 1983, 303).

Thus although Deng has been afraid of loosening controls, total control is no longer his dream; Deng has consciously rejected totalitarian temptations as unrealistic, as feeding the spirit of resistance, and at the same time, as creating dangerous illusions. Instead, for Deng, to withdraw the power of the state and to allow social space is not only easier but a much better way to rule China. There are at least three rationales for that. First, if individuals and local units are granted some degree of autonomy, they have incentives to produce, thus this can promote productivity. As Deng claims, the various localities, enterprises and production teams should be given greater powers of decision regarding both operation and management so as to encourage initiative and creativity (Deng, 1983, 157). This is a way to increase performance legitimacy.

Second, totalitarianism has entailed for the rulers the dreadful consequence of being responsible for absolutely everything. In other words, under Mao"s totalitarian control, any mistakes are due to the Party, because the Party controls everything. Also as Deng identifies, there has been the problem that in theory, there is collective responsibility; in fact, this means that no one is responsible (Deng, 1983, 162). But, if one allows a certain degree of autonomy, individuals and local units are at least partly responsible for whatever they have done. Thus Deng says that we must extend the authority of managerial personnel. Whoever is given responsibility should be given authority as well (Deng, 1983, 163). This is also a way to get around the problem of the legitimacy crisis.

Third, relatively autonomous social organizations can, as White argues, be seen as a new form of intermediary linkage between state and society whereby the state may attempt indirectly to control society to a varying degree. As Xue Muquiao has argued, intermediate organizations could become part of a new system of "indirect" economic regulation. Such organizations, in Xue"s view, are valuable because they help to prevent the potential anarchy of the market and serve as a bridge between the state and the enterprises (White, 1993). In this respect, relatively autonomous organizations constitute an indirect control mechanism from the point of view of the state.

These reasons have led Deng's China to economic reform which has resulted in a weak civil society, and to the allowance by the Party of a

limited social space for relatively independent organization and expression in civil society in the economic area. For Deng, this is a wise form of exercise of political power. The political use of a limited degree of social autonomy or "civil society" plays a central role in determining a new way of *how* to govern: that is, of finding the appropriate *techniques* for Communist rule. Deng's use of the strategy of social space is a key to understanding why civil society in the economic area was and is still allowed to exist and develop and why the Party has shifted from total control of society to a loosening of that control (for legal aspects of this, see Section 3).

However, in the past ten years, autonomous activities in the political area have partially depended on the tolerance of former reformers such as Hu Yaobang and Zhao Ziyang. Although political rights, to some degree in a limited form, are granted and protected by the 1982 Constitution and new legal regulations, the current existing legal system makes no provision for legitimising open opposition movements.

This restriction on the political aspect of civil society can be partially explained by Deng's conception of legitimacy. As Pye argues, Chinese leaders believe that diversity and a pluralistic power structure lead to social disorder and do not foster more creativity or ensure faster modernization (Pye, 1985, 189). Any surfacing of autonomous power groupings has been taken as a sign of dangerous centrifugal forces (Pye, 1985, 189). Thus this Chinese leaders' conception of legitimacy is favorable to a neo-authoritarian system, and unfavorable to a competitive political structure. Further, there are practical considerations in Deng's political thinking. For Deng, politically autonomous organizations mean social disorder; this is a lesson that Deng has learnt from the experience of the Cultural Revolution. And to legitimise political opposition means to commit political suicide, a lesson he has learnt from the experience of the events of Eastern Europe in 1989.

The above argument can be concretely illustrated by discussing the case of the political dialogue, an implicit "social contract" between the government and the students in 1989. On the part of the students, the dialogue meant that the government, to some degree, recognized the legitimacy of the students' demonstration; and the students hoped to institutionalize this legitimacy through the dialogue. On the part of the government, the dialogue gave it a chance to adopt a kind of social

legitimation -- a legitimsation, based on a fundamental distinction between state and civil society, which is a particular property of the system, and which is "handed over" to those in power by society (see Palma, 1991). However, in the end, the dialogue was unsuccessful. There are, among other things, at least two reasons concerning the leaders' concept of legitimacy for this failure.

(1) Ideological factors (e.g. the myth that those in power represent social interests) may act as an obstacle to an essential precondition of political dialogue.

(2) There was an anxiety that social and political stability would be destroyed, and the efficiency of the economy in particular would decline were political opposition to be legitimized. At the root of these doubts lay the conviction that social harmony and congruence of interests are a precondition for stability and efficiency in complex organizational systems. Now the question is whether the next generation of leadership will change the concept of legitimacy and accept the above social legitimation.

6. Basic Issues of Legitimacy in Post-Deng Politics

Deng's efforts to regain legitimacy will leave complex legacies for successors to Deng. On the one hand, the developments of legal-rational legitimation, the ideological renewal of the human rights issue and the political use of the economic aspect of civil society are positive sources of legitimation on which successors to Deng can draw. On the other hand, there are inconsistent and self-contradictory modes of legitimation, such as a tension between ideology and pragmatism, which will undermine successors' efforts to gain legitimacy. In particular, the following challenging problems are posed for successors.

(1) The June 4th incident, combined with the growing serious problem of corruption, has led to the most serious mass legitimacy crisis in Chinese communist history. Thus the successors to Deng will be confronted with a more troublesome crisis of legitimacy than that which confronted the successor to Mao. The successors to Deng will have on their hands an even more eroded ideology and a population with far more individualistic, and hence conflicting, ambitions (Pye, 1988, 164).

(2)   There will be succession crises in post-Deng politics. The passing of Deng Xiaoping will certainly bring significant changes in politics in general and in legitimating techniques in particular as happened with the passing of Mao. Here is a link between the legitimacy issue the succession problem. Just as the main legitimacy problem at the time of succession after Mao was the question of ideology, the problem for Deng's successions will be what to do about substantive politics. Compared to Deng, successors to Deng have neither revolutionary achievements nor personal authority over the army. They will have to seek alternative effective measures to gain legitimacy for their leadership.

(3)   The contradiction between the political use of the economic aspect of civil society and the political restriction of the political aspect of civil society undermines the self-legitimation of the Party. Further, it is always insufficient for the Party to claim its own legitimacy. A political system can never create the foundation for itself, it has to receive it from society. To resolve this contradiction is to follow the logic of the open policy; that is, to further open political channels and to allow an opposition party to exist. This is a task for the next generation of leaders within the Party.

There is a prospect that the reformer faction within the Party, including Li Ruihuan and Zhu Rongji, may see political civil society and election as a new source for their legitimacy in a post-Deng era (also see He, 1991a & 1992b). The current power arrangement may be favorable to this possibility. Since the 14th Party Conference and the Eighth National People's Congress, all five political bureau members occupy major positions in the Party, government and military. For example, Li Ruihuan is the chairperson of the Chinese People's Political Consultative Conference (CPPCC), the national top advisory body; Qiao Shi is the chairperson of the NPC Standing Committee. It is argued that this kind of power arrangement returns to the old pattern of the Party's control and moves away from the original proposal of the separation of the Party and government; this, to some degree, is true. But, equally, it can also be argued that this arrangement makes the NPC and the CPPCC more important than before. It might be expected that Li and Qiao will strengthen and use these two bodies in order to gain their own legitimacy just as Peng Zhen did before. There are four further reasons for the above possibility.

(1) *The trump card of the Beijing incident.* It is difficult for those such as Deng Xiaoping and Li Peng, who were individual members of the apparatus of the repression, to recognize their mistakes and to adopt democratic rules. There also seems an implicit rule that those who were involved in the Massacre in 1989 are unlikely to be successful successors to Deng. Further, the June 4th incident has re-legitimised Zhao Ziyang, provided an alternative government within the party, and opened a political opportunity for those who want to be the new rulers. It would be beneficial for those, such as Jiang Zemin, Li Ruihuan and Zhu Rongji, who did not participate in the brutal repression of the students, to play the trump card of the Beijing incident, say, to revalue the students' movement in 1989 so as to oppose their rivals and to achieve supreme power for themselves.

(2) *Party History.* To play the card of democracy has been a tradition in Party history. During his power struggle with Liu Shaoqi, Mao advocated the idea of the Paris model of democracy in order to mobilize mass support for himself. Deng also did the same thing when he was struggling with Hua Guofeng over supreme power. These facts allow us to envisage that the more astute successors to Deng will lay claim to mass legitimacy, and play the democratic card as a possible tactic, seeking to improve their power bases (He Baogang 1991a, 36–7, 40). It can be further argued that the chances of success will be greatest if it is a dominant faction which uses democratisation to try to solidify its power against weaker rivals (Nathan 1990a, 207).

However, both Mao and Deng withdrew their cards of democracy and suppressed democrats after they succeeded in strengthening their power. The metaphor of playing the card of democracy implies that the leaders are not seriously committed to the principle of democracy. This suggests a possibility of abusing and even destroying democratization. This question will be open to future political development.

(3) *The Cost-Benefit Analysis.* It is likely the reformer faction within the Party will use the cost of a conflict with civil society as a deterrent to hard-liners, just as Zhao Ziyang attempted but failed to do in 1989. To use the election system is one way to legitimise the reformer faction within the Party. This may be used to get rid of hard-liners as has been successfully done several times, channel politics away from the ebullience of civil

society, win international support, and perhaps even to win elections by dividing the opposition and being rewarded by the electorate. Much more importantly, political opposition is not seen as a political nuisance, but as a systemic necessity; and the collapse of communism in Eastern Europe is not seen as a function of too much opposition, but of not enough.

Of course, there is a potential risk: an opposition might be able to mobilise the masses so that the Party will lose power. And other potential costs are that pressures from the opposition will be so great that the Party finds it difficult to make decisions; the previous benefits which the Party has enjoyed might be lost. However, if the benefits of the legal recognition of an opposition party are much bigger than the costs of the denial, this will increase the chance for the reformer faction within the Party to take the political initiative. After the events of June 4th in 1989, the leaders could learn a lesson from the brutal repression of the students' movement; that is, that such repression has a high cost. According to Dahl's (1971, 15) axioms -- the likelihood that a government will tolerate an opposition increases as the expected costs of suppression increase; the more the costs of suppression exceed the costs of toleration, the greater the chance for a competitive regime -- some reform groups within the regime might make concessions when they face oppositional protest.

Here the key is that the successors to Deng might take the above costs and benefits into account. Equally, it is also crucial for the next generation of leaders to adopt the new conception of the basis of legitimacy in the interplay of political forces among competing interests under pressure from the shift in the macro-political balance of power between center and localities. The rise of coastal regions' power is well known; and individual and local interests have also gained legitimate status in the political bargaining process. These developments suggest that there emerges a new mode of legitimation -- establishing political legitimacy is based on the interplay of political forces among competing interests. This process is now under way. It will continue in post-Deng politics. Thus, we may expect to see that China will undergo a legitimacy shift, from being based on a moral order to being based on the political process, or the interplay of political forces among competing interests.

(4) *Taiwan's Successful Lesson.* This is the experience of Taiwan where although the DDP has won around 30% the votes, the ruling party still maintains its rule. Although the situations are different in Taiwan and China, this experience might play an exemplary role for the reformer faction within the Party in China. In particular, if further economic achievements in the 1990s increase the confidence of the reformer faction within the Party, the possibility of the recognition of an opposition party will increase.

Conclusion

Deng's legitimacy has moved decisively away from goal-rational and charismatic bases toward a mix of legal-rationality, performance, coercion, official nationalism, and international standards. The move toward legal rationality is progressive and impressive but ultimately flawed. The case of the official discourse of human rights certifies an ideological renewal and a move towards the international enterprise of human rights, but the incoherence of the official Chinese views of human rights set self-limitations on the likely effectiveness of this new legitimating weapon in practice. Deng has already used the state-civil society schema as a new legitimating source and the basis of a new art of rule, but this applies only to the economic area and not to the political area.

Astute successors to Deng might see the legal recognition of political opposition and political use of election and civil society as a legitimator for a new form of social control in the new leaders' political interests. They will be more confident in their competence and authority if they are elected. They will be cleverer and make less mistakes than before if they draw on the criticisms of the opposition. The system, the state and their leadership will be more stable than before if the established democratic institutions release the ebullience of the masses. They may find that society is more easily controlled than before if procedures and laws are established and followed. They will feel secure even when they are removed by election if institutional protection of human rights provides them with minimal personal security. In short, if there is a shift from the concept of moral order as a foundation of legitimacy to the institutionalized concept of legitimacy by such means as referenda and election, and particularly if some leaders are committed to the rules of the game and democracy as an institutionalised

source of legitimacy, we may see a democratic break-through in the near future in China.

CONCLUSION

This conclusion not only recapitulates earlier conclusions but also expands on those conclusions. It will raise further questions to be studied, and acknowledge the limits of my thesis. It is in two sections. Section 1 reflects on the issue of Chinese liberal theory of democracy. It initially summarizes the major theoretical problems associated with the Chinese liberal ideas of democracy and suggests proposals by which to revise and modify liberal ideas of democracy. Then it focuses on the intellectual foundation of the Chinese liberal theory of democracy, and finally discusses the liberal idea of limitation on liberties. Section 2 reflects on the issue of Chinese democratization. It initially discusses political implications of the three models of democracy for future political developments in China, then addresses the issue of the feasibility of liberal democracy, and finally summarizes what I see as the major practical considerations for the implementation of the liberal ideal of democracy.

1. Reflections on Chinese Liberal Theory of Democracy

I. Problems with Chinese Liberal Ideas of Democracy

Throughout this study, I have discussed theoretical problems associated with Chinese liberal ideas of democracy. For example, Wei's idealized and over-simplified view of democracy does not provide any clues to how liberal democracy can be achieved in practice in China (Chapter 3). And there are tensions between the democratic ideal and elitism, as well as between the principle of equal rights and the scientific positivism in the work of Yan Jiaqi (Chapter 3). Here I would like to point out the following theoretical problems which may hinder the rethinking of institutional design and development of democratic strategy in China.

The first of the major problems is a rebellious conception of negative liberty which only emphasizes "being let alone" and "non-interference". This rebellious libertarian view of negative liberty proves unsatisfactory in discussing how to protect the rights of those who might be accused of being the "enemy" of democracy and freedom; how to keep a balance between individual rights and social obligations; how to deal with the conflicts between rights; and how to justify the priority of rights and limits on rights

at the same time (Chapters 4 & 6). It seems that this rebellious concept of negative liberty is more useful in struggling against totalitarianism than as a guiding principle in managing state affairs.

The second serious problem is that both Hu Ping and Yan Jiaqi have unconsciously retained vestiges of traditional moral idealism such as the sage's conception of morality. If this kind of moral idealism is taken as an intellectual basis for institutional design, then it undermines the claim in their argument for democratic institutions that human beings are self-interested, further undermines the principle of equal liberty at the institutional design level, and possibly denies the civil and political rights of peasants in the process of democratisation because of the implied superiority of intellectuals (Chapter 7).

The third problem associated with Yan's proceduralism is that it seems to ignore the exception problem and fails to address a theoretical defect of formalistic proceduralism (Chapter 6). Thus Yan's idea of democracy would fail to defend the idea of procedural democracy if it were put into practice.

The fourth problem is that liberal thinkers such as Hu Ping seem to overlook the issue of the participatory dimension of democracy and the issue of a new class. Given the current dynamic economic development in China, there emerge new problems brought about by capitalism, such as social-economic exploitation, unequal distribution of welfare and resources and widening social gaps. However, some Chinese liberals seem to overlook the consequences of economic liberalism, and particularly those concerned with the operation of the right to property. To protect the right to property in Chinese economic life means, at times, that political privilege turns into economic privilege given the corruption of power and the absence of fair rules. Thus economic privilege leads to unequal competition and injustice. On this matter, it is worthwhile for Chinese liberals to learn from the radical view of populist democracy. Populists have raised the idea that the rights of workers and peasants to participate in political affairs should be institutionalized. They have also highlighted the problem of the new class and the social gap between "a privileged class" and ordinary people.

To overcome the above theoretical problems, Chinese liberals, I suggest, need to take the issue of an intellectual foundation as well as the liberal doctrine of the limitation of liberties into account, as will be

discussed later. They also need to shift from wishful thinking about democracy and rebellious feelings towards the political system to a substantial analysis of the problems and of possible solutions to them. Here, I would like to stress that Chinese liberals need to complement liberal ideas with modified values of socialism, rather than to throw out the social baby with the socialist bathwater. White (1994) has observed that liberal minded intellectuals such as Su Shaozhi have already sought a form of social democracy which steers a middle course between the Scylla of Marxist-Leninist state socialism and the Charybids of untamed capitalism. White also argues:

> The most likely scenario is a form of state capitalism along East Asian lines with a competitive political institution that might still be dominated by a hegemonic political institution, a capitalist economy with a high degree of state involvement and a society permeated throughout by clientelist networks. However, while such a combination promises to be economically dynamic, it also carries the potential of the kinds of social-economic exploitation and inequalities characteristic of such societies. While some elements of Chinese state socialism -- such as basic welfare services, job security and relatively egalitarian income distribution -- might have reflected the actions of a quasi-patriarchal Party-state and posed problems from the point of view of economic efficiency, they are also valued attributes of a humane society (White, 1994).

II. Intellectual Foundation

Chapter 3 has concluded that the conceptions of natural rights, evil and proceduralism constitute intellectual and moral foundations for Chinese liberal democracy. However, the central challenge to liberal intellectual inventions is that these concepts of human rights, evil and proceduralism lack a solid foundation. One might argue that Chinese liberal ideas of human rights are so premature that they cannot serve as a foundation; that the supposition of universal evil faces the difficulty of rendering democratic institutions inoperable because every one is evil; and that constitutional life rests upon an insecure foundation if the ultimate courts of appeal are rules allowing for exceptions.

The thesis has argued against the above challenges and defended the liberal intellectual constructs, and, in particular provided arguments that a secure foundation exists for a liberal theory of democracy. Chapter 4 has pointed out two inconsistent arguments of Chinese liberals. First, Wei Jingsheng's argument that human rights are inherent is incompatible with his argument that human rights are contingent on social conditions. As Wei argues, basic political rights, such as freedoms of speech, assembly, association, the press, religion, movement, and the right to strike should be unrestricted within their various spheres. At the same time, Wei contradicts this by arguing that human rights only exist in relation to other things and relate, directly or indirectly, to their environment. Thus, it is argued that human rights are limited and relative rather than unlimited and absolute. To overcome this contradiction, as Yan Jiaqi recommends, there is a need to distinguish between basic natural rights such as civil and political rights and secondary rights such as economic and social rights; and that natural rights should have priority over economic and social rights, and do not depend on political, social and cultural conditions and can be realized right now (Yan Jiaqi, 1992a, 50). Yan's argument implies that secondary rights can be limited in certain circumstances.

Second, there is a problem with Hu Ping's view of natural rights. Hu emphasizes the priority of rights and freedom over truth, but his understanding of the priority of rights and freedom over truth is not based on the idea of natural rights. Due to his lack of an idea of natural rights, Hu justifies freedom in terms of social utility.[194] Hu's utilitarian argument is insufficient to justify rights and may be incompatible with the liberal arguments if social utility is used to argue for deprivation of rights.

To defend the value of freedom and rights, a philosophical idea of natural rights is needed; and the idea that liberty is the source of all rights should be emphasized. The idea of contract also is needed to justify rights as a "trump" card overriding the purposes of government and other public agencies. Here, according to Heller, the law of natural right (according to

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[194]In Hu's letter to me, he explains that since the ideas of natural rights and of natural law were too alien to be acceptable among the populace in the 1970s, he decided to use more utilitarian arguments for freedom of speech. This implies that Hu himself favours the idea of natural rights.

which all humans are born free and are equally endowed with reason) is the axiom, the self-evident starting point of the whole enterprise of human rights, and is the source of all rights.[195] Heller further argues that rights stand in a hierarchical relation to each other; there are basic ones and inferred ones and only the highest have an absolute moral claim (Chapter 4).

Chapter 5 has discussed Hu Ping's argument concerning the problem of evil. Hu Ping is aware that if all people <u>are</u> evil, and all institutions are operated by evil persons, logically democratic institutions can not guarantee basic human rights, and the only choice is autocracy. Inspired by Madison, Hu favours the middle case where all individuals are seen as neither devils nor angels; it is this middle case that makes democratic institutions feasible and necessary (Hu Ping, 1990b, 42-3, 1991b, 118; also see Appendix). Thus Hu Ping's position is in line with Alexander Hamilton's (1961, 458) who has pointed out: "the institution of delegated power implies that there is a portion of virtue and honor among mankind, which may be a reasonable foundation of confidence". Also, Hu Ping is explicit in arguing that the idea that human nature is evil is a necessary but not sufficient basis for democracy. In order to avoid some theoretical problems, I have argued that the idea of potential evil does not assume the idea that human nature is evil. Further, I have argued that the notion that the concept of human nature has value in democratic thinking should be rejected on the following grounds:

(1)   Any intellectual foundation for democracy in terms of human nature is misleading, because the assumption that humans have an essence is unproved; and there is no proof of a fixed human nature, or of a fixed correspondence between human nature and normative supposition. It is impossible for one to sum up one or two essences of human nature and to apply these in all places and all times.

(2)   There is no need for theories of democracy to get "bogged" down in the hopeless morass of the question of the existence and character of human nature. To assume the potential for evil action rather than evil human nature is enough for us to argue for democratic institutions (see Appendix).

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[195]Whether or not the law of natural right is self-evident is a debatable issue.

Chapter 6 has outlined two approaches, namely, hierarchical and conditional, to deal with the problem of the exception. Rules allowing for exceptions cannot function as ultimate courts of appeal primarily because they are sometimes overruled. Consequently, there must be rules which do not allow for exceptions and which function as a fundamental principle for resolving all clashes between rules. The hierarchical approach, therefore, holds that rules can be ranked in a hierarchical way so that meta-rules are distinguished from particular rules and meta-rules take precedence over particular rules. While meta-rules do not admit of an exception, particular rules do. Thus, meta-rules function as the principle for guiding how to change rules or redesign rules if we face the challenge of an exception. If meta-rules are distinguished from particular rules, the former do not admit of an exception, while the latter admit of and imply an exception. This is the way to defend the coherence of proceduralism. This is also the fundamental procedure for making exceptions; if the procedure is followed, the exception can be deemed consistent with proceduralism. An exception to certain particular rules does not contradict meta-rules, because according to meta-rules, an exception is allowed.

The conditional approach holds that we can list the conditions under which the employment of exceptions is limited and justified; or we can formulate the rules for making exceptions; the exceptions failing to comply with these rules are regarded as unjustifiable. Constitutional regimes of exceptions are in fact constitutional rules for making exceptions in exceptional circumstances. The rules are thus: an emergency which is defined as a time of actual war or armed rebellion, or a danger to security of the state and public life; legislative implementation of exceptions or delegation of authority to presidents along with other restrictions such as Congress's approval; the judicial review of an emergency decree after the event of an emergency. Also, further conditions under which an exception can be made are as follows: permitting restrictions on an anti-constitutional party must be justified by the evidence of possible failure of the constitution and of the absence of reason of an anti-constitutional party; and it must be guided by the principles of justice.

III. Liberal Doctrine of Limitation on Rights

To protect, develop and improve equal human rights some regulations and limitations on some rights are necessary. But the ruling party suppresses human rights and imposes arbitrary limitations, while the opposition organizations seldom address the problem of legal limitations. It is, therefore, difficult to arrive at a consensus of definite limitations on rights through institutional norms. In order to resolve the above problem, liberals have to engage with the difficult questions of why and how and under what conditions some liberties have to be limited in order to achieve equal liberties in the process of democratisation. Now I summarize the arguments about limited liberties discussed in the thesis.

In Chapter 2, I have criticized the Chinese paternalist limitation on liberties.

(1)   The starting point and purpose of the paternalistic limitations on liberty are, theoretically, for the sake of the collective's interests, security and equality; but in practice, they may be used only in the interests of the power elites.

(2)   The conditions under which paternalist authority encroaches on liberties are loose, unexplicit and unlimited; and are subject to the paternalistic subjective will which plays a significant role in limitations on liberty.

(3)   There is a tension between limitations on individual freedom and "socialist democracy". And there are more tensions between non-liberty and equality than between liberty and equality. Without personal freedom, there can be no equal rights and opportunities or even an equal distribution of welfare and resources. The people's lack of liberty inevitably invites and maintains paternalistic political privileges and political inequality in the whole society, which in turn inevitably enlarges or deepens the unequal distribution of welfare and resources; there is, therefore, no guarantee of equality and justice.

In Chapter 4, I have also criticized the Chinese liberals' silence on, or slight attention to, the issue of limitation on liberties. I have argued that at the individual level, individuals enjoy personal freedom and the right to

privacy, and that state interference is unnecessary provided the right to privacy does not lead to self-harm or harm of others. This sphere of the individual life sets a strict limit on the power of the state. Nevertheless, the proper scope of power of the state is in public life where conflicts between rights occur. Freedom demands constraints on the rich to prevent corrupt government and to prevent the poor being interfered with by the rich. A restriction of liberty comes from the demand for just social arrangements and distribution of rights as well as the reduction of injustice which already exists (Rawls, 1971, 244-5). For example, we place a restriction on the liberty of the rich to buy and manipulate public media. Only through this limitation can the ideal of equal human rights be realized. The key resides in democratic institutional limitations on rights. That is, if the state substitutes ordered and reasonable interference for arbitrary interference with individuals, it increases freedom. The extent to which state interference increases and promotes rights will depend on democratic institutions, procedures and the extent of wisdom displayed in the interference; and procedures and wisdom cannot be determined beforehand by rulers. There is, therefore, a vital connection between rights and liberty on the one hand and democratic government and procedures on the other, inasmuch as democracy is an effort to ensure that government shall only be exercised subject to popular control and criticism.

Chapter 5 has argued for restrictive institutional design allowing for the control of evil through the use of coercion such as civil and criminal penalties. This also implies that limitation on some liberties is needed to deal with the problem of evil. In Chapter 6, I have argued that a liberal-government has the right to suppress anti-constitutional parties; this suppression does not contradict proceduralism and equality before the law. The reason for the repression of anti-constitutional parties is that anti-constitutional parties deny basic liberties and constitute a threat against a just constitution. If the constitution itself is in danger, there will be no proceduralism at all. Hence, to make an exception so as to maintain the constitutional order is compatible with proceduralism which presupposes the authority of the constitution. Also permitting restrictions against an anti-constitutional party must be justified by evidence of possible failure of the constitution and of the absence of reason of the anti-constitutional party; and it must be guided by the principles of justice. Also such restriction is a legal limitation. Specification of conditions may help to avoid abuse of the

right to make an exception, and can ensure that to make an exception will lead to maintenance of proceduralism.

To sum up, in Rawls's view, "the limitations on the extent of liberty are for the sake of liberty itself and result in a lesser but still equal freedom" (Rawls, 1971, 247). The conditions for permitting such restrictions on liberties are clear, concrete and necessary, that is: "paternalistic intervention must be justified by the evident failure and absence of reason and will; and it must be guided by the principles of justice and what is known about the subject's more permanent aims and preferences, or by the account of primary goods (Rawls, 1971, 250)". Furthermore, by nature, such restriction is a legal limitation, as Rawls stresses the connection of the rule of the law with liberty. "Liberty. . . . is a complex of rights and duties defined by institutions (Rawls, 1971, 329)." Further, "if the bases of claims (the rule of law) are unsure, so are the boundaries of men's liberties" (Rawls, 1971, 235).

Drawing on the above conclusions, I have argued against a rebellious conception of negative liberty because this conception only emphasizes 'being let alone' and 'non-interference'; and it fails to deal with difficult problems in the process of realizing the ideal of human rights (Chapter 4). Instead, I strongly recommend Rawls' conception of liberty being applied in China; and I also suggest that Philip Pettit's (1990) republican conception of negative liberty might be an alternative intellectual basis for Chinese democratic institutional design (Chapter 4). In short, I hope that the above liberal idea of limitation on some rights can provide a theoretical basis for the consideration of stabilising policy in the process of democratization.

2. Reflections on Chinese Democratisation

I. Implications of the Three Models

Part One of the thesis has recounted the three competing models of democracy. The radical model of populist democracy proposed by Yang Xiguang, Li Yizhe's group and Chen Erjin is characterised of a call for violent revolution; a particular form of government (the Paris Commune); the importance of the working class (workers' self-government) with reference to the issue of new class; and social ownership as a basis of democracy (Chapter 1). The official paternalistic model of "people's democracy" advocated by Deng Xiaoping is characterized by collectivism,

limitations on political freedom, and the mixture of formalistic democracy and paternalistic authority (Chapter 2). The liberal model of democracy by proposed Wei Jingsheng, Hu Ping, and Yan Jiaqi contains three common ideas: a predominant concern for human rights and freedom; the conviction that the principle of preventing evil is a theoretical basis for institutional constraints on power; and an emphasis on procedure, the rule of law and the rules of games (Chapter 3).

Part One has also shown that populists such as Yang Xiguang and Li Zhengtian, through self-criticism in later years, have themselves rejected the ideas of violence, the new class issue and direct control of state affairs by the working class, and have shifted their ideological commitment from the radical idea of populist democracy to the liberal one (Chapter 1). It has also argued that the paternalistic model of democracy is unsatisfactory both in theory and in practice (Chapter 2). It has concluded that the political liberty should be defended as the primary value in China; what is needed in China is liberal democracy -- democracy based on respect for human rights and equal liberties.

The existence of the three models of democracy implies that the totalitarian control of ideology has failed and that there has emerged an ideological "market" where different models of democracy are able to attract different "customers". If these models of democracy are connected to propitious circumstances, structural forces and existing institutions, they will be decisive in shaping political developments and develop sufficient influence to alter the nature and workings of the system in China. Now, I would like to discuss the political implications of each model of democracy discussed above.

Although there is less likely to be a revival of the radical model of populist democracy in the near future, the model is able to attract groups socially disadvantaged by the reforms, and provide some radicals with a theoretical basis for the populist and revolutionary strategy for democratization. Insofar as the populists pose challenges and speak more directly to the issues of the new class and mass participation than liberals do, the radical idea of populist democracy will remain one of the major ideologies in the field of political thought in China in future. Particularly, if the current economic development intensifies social gaps and highlights

the serious problem of unequal distribution of welfare, and if the regime fails to deal with the above problems, then further development of the idea of populist democracy and even a populist upsurge early in the next century is possible.

It is very likely that reformer factions within the Party will legally recognize political opposition movements and use elections as a form of legitimacy in post-Deng China. If this happens, the official paternalistic model of democracy will play a major part. It is able to attract leaders at both central and local levels and to offer a scenario that the Party will still retain its hegemony while political opposition is allowed (see Womack, 1990, White, 1994). This official model might also be attractive to some Chinese intellectuals, insofar as it, as a democratic strategy, attempts to utilize the existing institutions and habits and at the same time open them up to redirection and modification. Womack (1990, 29) even concludes that the party-state democracy presents a real possibility for a modern democratic base for Chinese politics. He further argues that "the competitive, multi-party democracy of the West cannot be imported like a turkey factory. It requires a pluralism of societal forces and a stability of political expectations that simply do not exist in mainland China at the present time" (Womack, 1990, 29). Womack's conclusion of the possibility of party-state democracy might be partially true, but his exclusion of the possibility of liberal democracy is misleading (I will discuss the reasons for that later).

The liberal model of democracy will have an important role in defining the future of China. The model appeals to the young generation of leaders seeking political legitimacy, to intellectuals looking for space in which they can safely explore and speak about the world around them, to peasants and others who simply want to pursue a livelihood without arbitrary state intervention (See McCormick and Kelly, 1993a). The bearers of liberal democracy have often been students, intellectuals and workers. But in the 1989 democracy movement, the new entrepreneurial or business strata also expressed their support for liberal democracy.

More importantly, the liberal model of democracy sets the terms of debates, acts as the explicit standards of comparison for political rationality and legitimacy, and provides an answer to the existing political problems. Further, if it becomes instrumental in shaping the ideal route for political

development, it will influence the direction of political development in China.

However, political liberalism faces challenges from neo-authoritarianism. The question of whether liberal democracy or paternalist democracy (in Womack's term, party-state democracy), political liberalism or neo-authoritarianism, will win out in post-Deng politics remains open. Further, the following questions need to be investigated empirically. In the forthcoming democratisation, how exactly will the above models impact on Chinese political life? Is there a possibility of an emergent new democratic ideology that will attempt to combine elements of the radical, official and liberal ideas of democracy? Or is there likely to be a mix of practices of liberal and paternalist democracy?

II. The Desirability and Feasibility of Liberal Democracy

There are three arguments for the undesirability of liberal democracy which the thesis has rejected. The first argument is that political liberalization would lead to social disorder, as it releases aggression and social evil emerges (Chapters 2 and 5). This argument fails, because equal liberties, which are protected and guaranteed by the legal system, help to produce both order and constructive conduct (Chapter 2). Further, the next generation of leaders might recognize that liberal democracy is both a form of legitimacy and a new way of social control (Chapter 10).

The second argument for the undesirability of liberal democracy is that procedural democracy is inadequate as it cannot handle the problem of the exception, particularly during a transition period (Chapter 6). This argument is also unconvincing. I have argued that a quick decision on an exceptional occasion is needed. But the problem of the exception is not a just-reason to dismiss normative proceduralism. It is wrong to deny the normative approach, or to dismiss proceduralism by exaggeration of the role of the problems of procedure in political life. To make an exception requires a quick decision but not the absolute priority of this decision. A quick decision does have relative autonomy, but is still limited by meta-rules at the bottom line (Chapter 6).

The third argument for the undesirability of liberal democracy is that individual democracy corrodes public morality, as it favours individualism

and destroys collectivism and the harmony of community. Again, this argument fails. I have distinguished between the official Chinese morality and a rights-based morality. The former is a goal-based morality in the sense that the establishment of communist society is taken as a primary goal, while the latter is the new morality advocated by Chinese liberals. Individual democracy as advocated by Wei Jingsheng will indeed destroy the official goal-based morality. But it offers and promotes a rights-based morality which seems to be an attractive and promising alternative to the official goal-based morality (Chapter 7). As the development of market and contract economics based on individualism in China requires and helps to develop an ethical norm of fairness: people must be morally obliged to keep their agreements, even when all their gains are in the past and all their costs in the future.

There are also three arguments for the impossibility of liberal democracy in China which the thesis has rejected. The first argument is that Chinese culture is incapable of democracy. This argument fails because it is highly culturally determinist; it fails to distinguish between hard and soft cultural conditions for democracy as discussed in Chapter 8; it ignores that culture is generated by human activity, and as such it is constantly being regenerated; it presupposes that it is impossible for Chinese people to overcome weaknesses of a cultural-psychological nature; and finally, it also ignores that China's culture is changing. Chapter 8 has demonstrated that there emerges the new Chinese democratic culture which is likely to gather strength in the future. The whole thesis has also demonstrated that political liberalism is an integral part of current political culture in China, and that democratic culture is becoming an increasingly important factor in Chinese politics. However, the question of the percentage of the Chinese populace and of Chinese intellectuals who are committed to liberal values needs to be studied empirically. Also I have to admit that so far, in sociological terms, the commitment must be treated as conditional and partial only.

The second argument for the impossibility of liberal democracy is that China lacks a pluralist and self-organizing civil society independent of the state, which is often assumed to be an indispensable condition for democracy. This argument also fails as Chapter 9 has demonstrated that civil society has emerged in Deng's China; and that civil society did have an actual positive impact on the 1989 Democratic Movement. Also this newly

emergent civil society provides a fertile bed in which political liberalism can thrive. However, I admit, a nascent, weak, and ineffective emergent civil society constitutes a very weak check on the abuse of state power; it is still unable to resist military-bureaucratic cooperation and repression.

The third argument for the impossibility of liberal democracy, which is often assumed in totalitarian theory, is that the Chinese totalitarian state is a self-enforcing power structure that cannot be reformed or transformed into something fundamentally better, or cannot democratize itself from within (Friedman, 1989, 171). Again this argument is misleading as it omits that there has been an inherent potential for democratization within the Party. Chapter 10 has shown that it is very likely that the next generation of leaders will play the card of democracy so as to gain legitimacy. There is also the possibility that the leaders will use existing democratic institutions and organs such as the NPC and the Chinese People's Political Consultative Conference (CPPCC) in the process of democratization rather than dismantling the whole old power apparatus (Chapter 10, also see White, 1994).

In conclusion, in China there are already democratic culture, civil society and reform factions within the Party who will play the democratic card (Chapters 8, 9 & 10). All this demonstrates that preconditions for democracy exist in China.[196] The question is how these factors can interact at a favourable time so as to break the current deadlock of Chinese democratization.

III. Problems with Chinese Democratization

Under the guidance of the above principle of methodological complementarity, this thesis has not only examined the existing positive and negative conditions for Chinese democracy, but also discussed the practical problems associated with Chinese democratization. Now I would like to summarize the practical problems associated with Chinese democratisation in two categories.

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[196]There is already a body of literature which has argued well that preconditions for Chinese democracy exist (Nathan, 1990a & b, Friedman, 1991, White, 1993). My thesis only supplements their arguments.

The first category of problems relates to the process of democratization itself. There are problems such as the validity of law and the constitution, distorted forms of liberty, conflicts between rights and the burden of rights. The question of the validity of law and the constitution is crucial here. To protect human rights China needs a just constitution and law, but China has neither a just constitution and law nor well-civilized people who support the rule of law in China (Chapter 4). Here, China will face the following predicament. On the one hand, the frequency of exceptions to some rules will lead to the discrediting of the constitution and create enormous difficulties in establishing constitutionalism. On the other, if any exception is denied, it will be difficult for a liberal government to maintain social order and to realize constitutionalism. This is the difficult problem of the exception: whether or not a supposed liberal government has the right to make exceptions to rules and to suppress the political rights of anti-constitutional parties (Chapter 6).

Further, Chinese democratisation faces cultural problems such as cultural anomie, democrats with authoritarian personalities, the legacy of egalitarianism, the radical polarisation of Chinese culture, difficulties of institutional compromise and irrational control of aggression and fear (Chapter 8). Here, the most serious problem is that China lacks the tolerance and willingness to reach political compromise which are virtues of freedom. Now, after the events of June 4, 1989, Chinese democrats have learnt the lesson that political negotiation is necessary for the transition to democratic politics. Just as the Cultural Revolution may have indirectly created tolerance, the June 4th events may create consensus for negotiation (Chapter 9). Further, there has emerged a limited convergence on the human rights issue between the Chinese government and Chinese dissidents. This seems to constitute a minimal consensus for political dialogue between the Government and dissidents. However, to seek common ground while reserving differences is only rhetorical for both sides. It is difficult for the Chinese government and Chinese liberal intellectuals to reach an agreement about issues such as the order of priority of rights, institutional arrangements and philosophical assumptions because of their different political positions, different backgrounds and the different major problems concerned. These difficulties may undermine the possible basis for political dialogue (Chapter 4).

The second category of problems concerns how the existing cultural, social and political conditions negatively affect Chinese democratization. Here, unconscious authoritarian personalities, due to a lack of institutional constraints on these personalities, will lead democrats towards a neo-authoritarian system when they face a set of problems stemming from the process of Chinese democratisation. Contrarily, although there are also authoritarian attitudes in Western democratic countries, these attitudes are so constrained by the existing democratic institutions that it is less likely that authoritarian personalities would play a decisive role in creating a neo-authoritarian state if these problems should occur (Chapter 8).

Further, the overlapping structure of the state and semi-civil society may hinder a transition to democracy. But, this overlapping structure, I have argued, may also provide pressures and checks on the state if civil society plays a proper role within many levels of the polity. Furthermore, the roles of civil society in Chinese democracy are ambiguous, contingent and twofold. It is a force for democracy and a safe refuge for democrats; while it can also be a conservative power which demands maintaining the status quo rather than transition to democracy (Chapter 9).

There are problems with the Party's search for legitimacy. The move toward legal rationality is progressive and impressive but ultimately flawed. The case of the official discourse of human rights certifies an ideological renewal and a move towards the international enterprise of human rights, but the incoherence of the official Chinese views of human rights set self-limitations on the likely effectiveness of this new legitimising weapon in practice. Deng has already used the state-civil society schema as a new legitimising source and the basis of a new art of rule, but this is confined to the economic area and not to the political area. Even if the next generation of leaders play the democratic card, there is a possibility that they will withdraw the cards of democracy and suppress democrats (Chapter 10).

There are other important issues such as the issue of discontinuity and disintegration, the relationship between stability and democracy, the relationship between size of polity and democratic institutions, roles of social actors and political strategies such as timing and piece-meal evolution. Here, I think, the process of democratization needs to be managed through a stabilising policy in order to cope successfully with the

complex problems. A radical overnight democratization will intensify social conflicts, create a situation in which the system will return to the old one, and destroy the chance to establish liberal democracy. Therefore, I fully support White's argument that any rapid move towards comprehensive democratization as advocated in the "big bang" argument would be highly problematic (see White, 1994).

However, I have not discussed the above issues in detail. This is partially because of the fact that Chinese democratization is in an early stage, or more precisely, in a deadlock at the moment; and partially due to the scope of my thesis. I hope that I will discuss them in a separate study.

In conclusion, one thing is certain that China will undertake a democratic breakthrough in the future. It is not clear what model of democracy, liberal, paternalistic or popular, will be implemented in practice. However, we can be sure that no matter what kind of the "Chinese characters" of democratisation, it will involve general election and some degree of proceduralism.

Appendix: An Analytical Investigation of Hume's Supposition of Knavery in Institutional Design

Hitler once said that a big lie is much more effective and persuasive than a small one, because it is more easily accepted as true. Lin Biao has said that one who attempts to do big things has to lie in political life. These views imply that to be a politician is to be a knave; and politics by its nature requires practices of cheating and lying. These justifications of deliberate knaves (one may compare this with sensible knaves discussed by Hume, see Section 3) highlight the serious problem of knavery in political life. Thus the wider topic of knavery and politics becomes urgent.

To design a check system so as to overcome the problem of knavery, first, one needs to assume knavish motivation in institutional design. In this respect, Hume, in line with other political writers such as Mandeville, has proposed a maxim that:

> in contriving any system of government, and fixing the several checks and controls of the constitution, every man ought to be supposed a **Knave**, and to have no other end, in all his actions, than private interest. By this interest we must govern him, and by means of it, make him, notwithstanding his insatiable avarice and ambition, co-operate to public good....It is, therefore, a just **political maxim, that every man must be supposed a knave:** Though at the same time, it appears somewhat strange, that a maxim should be true in **politics,** but is false in **fact.** But to satisfy us on this head, we may consider, that men are generally more honest in their private than in their public capacity, and will go greater lengths to serve a party, than when their own private interest is alone concerned (David Hume, 1964a, 117-9).

This is Hume's famous thesis, to which a body of literature refers (Brennan and Buchanan 1985, 59; Weale, 1989, 45; Ayres and Braithwaite, 1992a, 1992b; Goodin, 1982, 113; and Moore, 1977, 820); and which, unfortunately, has not yet clearly analyzed. The tasks of this paper are (1) to provide a clear definition of knavery, (2) to undertake an analytical investigation of the rationales and the problems of Hume's supposition,

and finally (3) to analyze different uses and evaluations of Hume's thesis with reference to political institutional design.

In the paper, Hume's supposition will be understood as referring to the premise that every one ought to be supposed to be a knave. Also, Hume's project or thesis is seen as referring to the idea that rational institutional arrangements should be devised in such a way that opportunities for knavery are reduced, and that ideally knavish impulses can not only be prevented from producing ill effects but can be controlled and altered in direction to produce good, so that public interests will be respected and peaceful order can be maintained.

There is a distinction between the issues in Hume's own theory of knavery, and those in the evaluations and interpretations of Hume's supposition and thesis. Taking account of this distinction, the paper will initially deal with Hume's own theory of knavery, then turn to others' uses of it. The paper is in six sections. Section 1 reviews Hume's general views of human nature and politics, and gives a general intellectual background for Hume's supposition of knavery. Section 2 discusses Hume's definition of knavery. Section 3 initially examines Hume's own justifications in the context of his essay "Independency of Parliament", shows the insufficient nature of these justifications, then presents three alternative reasons for Hume's supposition of universal knavery. Section 4 addresses the paradox of Hume's thesis and examines theoretical problems associated with the supposition of universal knavery and Hume's own solution -- the introduction of the assumption of virtues and honesty. Section 5 formulates the Humean middle case as an alternative intellectual position for institutional design. Section 6 examines the impact of Hume's thesis on institutional design and the different interpretations, evaluations and uses of Hume's supposition of knavery in Australian academic life.

1. A Preliminary Review

Hume's articulation of the supposition of knavery can be traced to Mandeville who has argued that the best constitution provides against the worst contingencies and knavery (1969, 332). Hume expresses a similar view in his famous thesis of knavery. Elsewhere, Hume also argues that a constitution is good insofar as it provides a remedy against mal-administration (Hume, 1964b, 108). Further, the assumption of knavery is

administration (Hume, 1964b, 108). Further, the assumption of knavery is also employed by the Federalists to argue for a set of institutional devices such as bicameralism, judicial review, election, provision for salary of the President, term of office and veto power.[197]

We need to place Hume's supposition of knavery in the context of Hume's general view of human nature and politics. Hume (1949a, 5) thinks that, in order to march directly to the capital or centre of the sciences (logic, morals, criticism and politics) we need to march human nature itself. Thus, from his *Treatise of Human Nature* (published in 1739), we see that Hume has studied broadly a stock list of human motivations; among which, there are two important motivations: selfishness and limited generosity (1960, 494). "It is only from the selfishness and confined generosity of men, alone with the scanty provision nature has made for his wants, that justice derives its origin"(Hume, 1960, 495). Hume (1960, 499-500) sums up as follows: "Self-interest is the original Motive to the Establishment of Justice: but a Sympathy with the public Interest is the Source of the moral Approbation, which attends that Virtue". Further, Hume explains the origins of the government in terms of these basic motivations. Hume (1960, 537) argues that:

> It is impossible to change or correct any thing material in our nature, the utmost we can do is to change our circumstances and situation, and render the observance of the laws of justice our nearest interest, and their violation our most remote. But this being impracticable with respect to all mankind, it can only take place with respect to a few, whom we thus immediately interest in the execution of justice. ... Here then is the origin of civil government and society.

Later, in *Essays: Moral, Political and Literary* (published in 1742), Hume further explains how members of the British constitution were confined within the proper limits, and how this was consistent with our experience of human nature. Hume answers:

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[197]I acknowledge that Machiavelli also influenced Hume on this matter. However, to discuss how Machiavelli and Mandeville influenced Hume, how Hume revised their ideas, and how Hume influenced the Federalists, is go beyond the scope of this paper.

that the interest of the body is here restrained by that of the individuals, and that the house of commons stretches not its power, because such as usurpation would be contrary to the interest of the majority of its members. The crown has so many offices at its disposal, that, when assisted by the honest and disinterested part of the house, it will always command the resolutions of the whole so far, at least, as to preserve the ancient constitution from danger (Hume, 1964a, 120).

Not only does Hume explain the working of the British constitution, but he also attempts to discuss the questions of institutional design, such as the proper degree of court-influence and parliamentary dependence (1964a, 121), and whether it was desirable for the British constitution to terminate in a popular government, or in absolute monarchy (1964a, 126). As he says, "most of these essays were intended to comprehend the designs both of the spectators and craftsmen "(1964a, 41, emphasis added). Thus this task of institutional design makes Hume face the problem of what motivation institutional design should assume. As we know from his famous thesis, Hume takes knavish and self-interested motivations for institutional design. Thus, a better discussion of what the need to be beware of knavery implies for specific checks in the system of government would help us to understand the Humean design of check systems in particular, and to investigate the issues of institutional design in general.

2. The Definition of Knavery

"Knavery" is often seen as being equivalent to private interest (Brennan and Buchanan, 1985, Pettit, 1993). This understanding is partly true, as Hume directly talks about "this interest" (private interest) following his introduction to the supposition of knavery. Also, the validity of this understanding depends on the interpretation of a key word, "and". As Hume's thesis states, "every man ought to be supposed a Knave, and to have no other end, in all his actions, than private interest". Here, there is a question of the linguistic structure of the sentence: whether we can infer the equivalence of "knavery" and "private interest", or whether "and" can be viewed as a connective linking two independent clauses expressing independent but compatible ideas. Those who see knavery as private interest, regard "and" as having the function to explain what knavery is.

However, "and" may also be interpreted as a connective which links two independent assumptions. This being so, Hume's thesis has two assumptions: knavery and private interest.

Leaving different linguistic interpretations aside, there are a few problems posed for those who see "knavery" merely as private-interest. First, this makes very hard to understand why Hume talks about honesty as a contrast to knavery. Hume's discussion of knavery and honesty does not make sense unless we think that Hume refers to knavery as being dishonour or cheating rather than merely private-interest. Second, Hume's institutional design has two different mechanisms. One is what is generally called "public use of private interest". The other might be called "public control of knavery". If "knavery" is seen as being merely equivalent to self-interest, this can justify "public use of private interest", but can not sufficiently justify "public control of knavery" in the Humean check system. To study the rationales of public control of knavery, the concept of knavery should be understood as deceit rather than merely self-interest. Third, if knavery is merely understood as self-interest, it is difficult to understand the rationale behind Hume's worst case strategy for institutional design.

"Knavery" has a specific sense. There are two ways in which "knavery" is used in Hume's writings. First, "knavery" is opposed to "honesty". There are two examples for this. (1) After Hume discusses the false assumption of knavery in private life, he immediately says that "men are generally more honest in their private than in their public capacity (Hume, 1964a, 118-9). (2) After Hume talks about a sensible knave, he immediately discusses the idea that honesty is the best policy (Hume, 1964b, 257; 1975, 282). Another supporting fact is that William Minto, in his article on Mandeville, suggests that *The Fable of the Bees*, should be called *The Grumbling Hive, or Knaves Turn'd Honest* (See Monro, 1975, 21). This classical use of knavery as a contrast to honesty clearly supports the above argument.

Second, "knavery" is identified with iniquity, infidelity, treachery, roguery and cheating. As Hume says, a sensible knave does an act of iniquity or infidelity (Hume, 1964b, 257; 1975, 282). Hume also claims that a knave purpose is to cheat with moderation and secrecy (Hume, 1975, 283). Thus, we may define knavery in two ways. Narrowly, knavery refers to intentions and acts of dishonour or deceit. Broadly, it refers to wicked

intentions and acts of roguery or iniquity. Thus, knavery can be defined as a desire or action between preference and context of rationality. Given the conflict of interest between an agent A and an agent B, if agent A attempts to make agent B miserable or to worsen the situation of agent B by cheating, and even harming agent B in order to gain, maintain and maximize his (or her) interest (whatever it is), then agent A is regarded as a knave.

The above definition of knavery can be further supported by the same use of "knavery" by political writers such as Mandeville, to whom Hume refers in his famous thesis. As Mandeville states:

> That is the best constitution which provides against the worst contingencies, that is armed against knavery, treachery, deceit, and all the wicked wiles of human cunning, and preserves itself firm, and remains unshaken, though most men should prove knaves (Mandeville, 1969, 331-2).

Since there is a body of literature discussing Hume's concept of self-interest and the idea of public use of private interests,[198] this paper focuses narrowly on the problem of knavery and public control of knavery in political life. Also, I will not discuss, in detail, the question of the relationship between selfish and knavish motivations. I simply assume that the multitude of knaveries relates to selfishness. One complex link is, as Hume suggests, that one is willing to be a sensible knave in order to gain personal interest.

3. Justifications for the Supposition of Universal Knavery

Before discussing justifications of Hume's supposition, I would like to emphasise that Hume is far from justifying knavish motivations and encouraging people to be knavish, but rather he concentrates on a remedy to cure the problem of knavery and prevent politicians from being knavish. In other words, Hume's supposition of knavery is not in favour of vice. As Hume argues: "I am far from thinking that all those, who have depreciated our species, have been enemies to virtue, and have exposed the frailties of their fellow creatures with any bad intention (David Hume, 1964a, 151).

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[198]For example, see Hirschman (1977) and Holmes (1990).

Also, "to put knavery first" does not assume that knavery is above virtue. As Hume argues:

> Treating vice with the greatest candour, and making it all possible concessions, we must acknowledge, that there is not, in any instance, the smallest pretext for giving it the preference above virtue... (Hume, 1964b, 256).

Contextual justifications: This is a kind of justification provided in the context of Hume's essay, "Independency of Parliament". After Hume introduces the supposition of knavery in "On the Independency of Parliament," he begins his justification with the argument that political actors tend to be more dishonest in political life than in private life (1964a, 119). Thus, it is further argued that, "honor", which is commonly regarded as a great "check" upon mankind, is limited.[199] As Hume says:

> Where a considerable body of men act together, this check is, in a great measure, removed; since a man is sure to be approved of by his own party, for what promotes the common interest; and he soon learns to despise the clamor of adversaries (Hume, 1964a, 119).

Elsewhere, Hume argues, "when men act in a faction, they are apt, without shame or remorse, to neglect all the ties of honour and morality, in order to serve their party" (1964a, 110). Thus, factional interests, rather than private interests, are a more likely basis for certain kinds of excuses or pretexts underpining knavish behaviour.

As honor as a great check is suspected, Hume argues for a skilful division of power. As Hume argues, "by the skilful division of power, this interest (private interest) must necessarily, in its operation, concur with public, we may pronounce that government to be wise and happy. If, on the contrary, separate interest be not checked, and be not directed to the public, we ought to look for nothing but factions, disorder, tyranny from such a government" (Hume, 1964a, 119). Elsewhere, Hume argues that there

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[199]This Hume's argument can be further supported by the argument that people are moved by a love of honour does not mean that they are not knaves. On the contrary, to be moved by the love of honour is not to be moved just by a love of the good and the right.

would be a civil war, and we shall suffer all the tyranny of a faction, subdivided into new factions (1964a, 119, 126).

Hume continues to argue, the power of the crown is always lodged in a single person, and the power, which is too great in one hand, may become too little in another in a monarchy (1964, 119-22). Further, it is reasonable to imagine that the King may himself be a knave who is not attending to his duty but abusing his power. Thus Hume admits that "a limited monarchy admits not of any such stability [of a republican system]; nor is it possible to assign to the crown such a determinate degree of power, as will, in every hand, form a proper counterbalance to the other parts of the constitution" (Hume, 1964a, 122). Thus, Hume seeks and favours a republican control of knavery, a system where the authority is distributed among several assemblies or senates. As Hume claims:

> All absolute government must very much depend on the administration; and this is one of the great inconveniences attending that form of government. But a republican and free government would be an obvious absurdity, if the particular checks and controls, provided by the constitution, had really no influence, and made it not the interest, even of bad man, to act for the public good. Such is the intention of these forms of government, and such is their real effects, where they are wisely constituted (1964a, 99).

There is no problem with Hume's justification for the argument concerning the necessity of a republican check system.[200] The problem associated with Hume's above argument lies in his insufficient and weak justification for the initial supposition of universal knavery. There are two reasons for this. First, to reject the idea of honor as a great check does not prove the necessity of the introduction of the supposition of universal knavery. Second, to assume a portion of knaves is sufficient to argue for the necessity of a check system and to support the principle of preventing evil. As we know that there are some knaves who create the political problem of knavery in political life, why does Hume introduce the <u>universal</u>

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[200]The idea of check in Hume's works can be classified into three parts: the principles of the countervailing passion (Hirschman, 1977, 20-31), of the countervailing political forces and of the countervailing institutions. Here, I discusses the third kind of check system.

supposition that every one ought to be supposed to be a knave? Why does Hume exaggerate this supposition by applying it to humans universally?

This question leads us to look at Hume's justifications of the supposition of knavery in his other writings. I consider other Humean justifications in three categories: moral, sociological and methodological.

Moral Justification: This appeals to the principle of formal justice. Holmes (1990, 283-5) has investigated Hume's justification for the assumption of universal self-interests, arguing that to say <u>all</u> individuals are motivated by self-interest is to universalize the status of the common human among other seventeenth-and eighteenth-century thinkers. To acknowledge the legitimacy of interests is to say that all citizens, no matter what their socially ascribed status, have concerns that are worthy of attention. This justification is relevant here. Institutional design requires formal justice of equal treatment, that is, people should be equally treated not only in the sense that people have the same rights and opportunities but also in the sense that <u>all</u> persons ought to be supposed to be a knave. Conversely, the moderate assumption that some people are good and others are knaves undermines the requirement of equality. If this is taken as the basis of a political system, it implies a notion of hierarchical moral order that virtuous and honest people are supreme over "dishonest" people.

Sociological justification: This is concerned with different effects of the supposition of knavery and of the above moderate assumption, particularly with their implications for institutional design.[201] The assumption that some people are good and others are knaves is dangerous as a basis for institutional design, albeit acceptable in private life.[202] The reasons for this are as follows:

(1)　It can imply, create and support the idea that some persons are so good that they do not need to be checked, or at least we can trust them sometimes

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[201]Hume has taken the issue of practical effects of moral theories into account. As He argues, "a man has but a bad grace, who delivers a theory, however true, which, he must confess, leads to a practice dangerous and pernicious" (Hume, 1964b, 253-4). Further, Hume argues, "if any austere pretenders approach her (a moral theory), enemies to joy and pleasure, she either rejects them as hypocrites and deceivers (Hume, 1964b, 254).

[202]I limit my rejection of this moderate assumption only to the institutional design level. At the explanatory level, this moderate assumption is useful, I will discuss this in Sections 4 and 5.

without checking them. Thus, the moderate assumption seems to require only a partial check system and partial personal morality, and to require that politics should first seek for moral persons to be rulers.

(2) If one puts the assumption of virtue first, one may as well choose a benevolent despot or an intellectual sage who is assumed to hold a highest sense of morality. It is this partial check system and partial personal morality that has potential danger and that has often been used to justify despotic systems.

The assumption of virtue might even lead to destruction of virtue in totalitarian institutional design. Let me examine the social logic of this assertion.[203] As argued above, the assumption that most people are virtuous and only a few are knaves implies a notion of hierarchical moral order that virtuous and honest people are supreme over "dishonest" people. Hence moral persons have a legitimating duty to enlighten these "evil" persons and deserve to rule over them. According to these ideas, totalitarian institutions are designed in favour so called moral persons who have political privileges to mobilize the masses and who have a justification for ignoring the rights of "immoral persons." As a result, the moralist notion of legitimacy is strong while the institutionalized notion of legitimacy is weak; and the protection of rights of everyone is ignored and even overridden. Also the so-called moral persons tend to be corrupt because of a lack of an institutional check. In the end, a moral crisis occurs: people no longer believe in a "revolutionary morality"; a moral vacuum occurs and virtue is destroyed. This is exactly what has happened in contemporary China.

Conversely, Hume's supposition that every one is supposed to be a knave doubts and excludes the neo-authoritarian solution to political problems such as corruption, because Hume's supposition is that no body should be trusted. Thus, Hume's worst case requires a complete check system, a well-constructed political machinery. Further, Hume's supposition of universal knavery is useful to warn against abuse of

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[203]The fact that my argument appeals to the Chinese experience may be irrelevant to the Western doctrines of institutional design, such as Ayres's and Braithwaite's responsive regulation; but it may be useful in examining the question of how we can avoid a system which starts with the assumption of goodness but ironically in the end leads to destruction of virtues as in the case of the Marxist institutional design in communist countries.

democratic power and the potential danger of the power of institutional designers. It also helps us to question all those national heroes of great distinction and even institutional designers.

Methodological justification: This is concerned with Hume's deliberate adoption of limited and selective assumptions about human nature and of the worst case strategy for institutional design. For Hume, assuming universal knavery constitutes an intellectual premise that is a methodological necessity.[204] Hume's supposition is indeed more about the need to find a normative starting-point than to provide a basis for probing the truth of human nature. As Hume uses the words such as "every one ought to be assumed" and "the maxim should be true"; these words indicate that Hume does not discuss an empirical question but instead adopts an intellectual position.[205] Further, Hume says that "the maxim should be true in *politics*, but is false in *fact*;" that is to say, the universal supposition as a descriptive model is wrong, while the universal supposition as an analytical model is justifiable. Thus Hume's supposition should be understood as an intellectual construction which aims to establish an analytic model, rather than a descriptive model. This intellectual construct is open to theoretical justifications or philosophical reasonings rather than to empirical testing.

As a methodological necessity, Hume adopts limited and selective assumptions about human nature in political life. As he says, "men acting in groups or political parties consider only the interests of the party; every senate or court is determined by the majority and the majority of men are self interested; so that the psychology of the political person is relatively simple and uniform" (Hume, 1964a, 39-43, emphasis added). This simple and uniform motivation of political persons is assumed in order to set up a premise from which politics may be reduced to a science, and political consequences can be predicted. For Hume, a deliberate simplification enables us to construct mathematically tractable models of human behaviour. As Hume is confident in saying:

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[204]For a methodological rather than an empirical defence of this kind of institutional design principle, see Brennan and Buchanan, 1985, 51.

[205]Surely, Hume does not adopt the concept of the state of nature, as he rejects it as being a mere fiction, an idle fiction (Hume, 1960, 493).

So great is the force of laws, and of particular forms of government, and so little dependence have they on the humors and tempers of men, that consequences almost as general and certain may sometimes be deduced from them, as any which the mathematic science afford us (Hume, 1964a, 99, emphasis added).

This is why Hume simplifies human motivations in terms of self-interest and knavery. These assumptions, however, do not suggest that Hume denies various and changing motivations, and Hume acknowledges that different societies and individuals exhibit different mixtures. Hume is cautious about the uniform character of the "self-interest" postulate;[206] and he also presupposes the assumption of virtue and honesty (which I will discuss later).[207]

Importantly, there are cognitive limits of knowing who is evil and good. As well, we have a problem of defining a criterion for distinguishing good from evil due to our disagreement about moral issues. Given the uncertainty of human behaviour, the limits of knowledge and disagreement about moral judgments, how do we design institutions? Hume adopts the worst case strategy: "to put knavery first!" or in Judith's term, "to put cruelty first" (Judith 1984). Hume's worst case can be seen as a possible world where every one ought to be supposed to be a knave and self-interested; thus if knavery is not controlled, separate interest is not checked, and is not directed to the public good, we may look for factions, disorder, tyranny and a civil war, and we shall suffer all the tyranny of a faction, subdivided into new factions (1964a, 119, 126).[208]

Take the example of security checks. All the people who travel by airplane are required to pass through an X-ray door and to put their

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[206]As for a discussion of Hume's argument against simplicity of human nature, see Stephen Holmes, 1990, 269-275.

[207]A discussion of Hume ideas of motivations, see Michael Smith, "The Humean Theory of Motivation", *Mind*, Vol. XCVI, No. 381, January, 1987, 36-61. As for Hume's acquaintance with Newton, see James Noxon, *Hume's Philosophical Development: A Study of his Methods*, Oxford: the Clarendon Press, 1973.

[208]On this matter, Hume influenced the Federalists thinking on the worst case where people are often supposed to be beset by "folly and wickedness," "ordinary depravity," and "impulses of rage, resentment, jealousy, avarice, and of irregular and violent propensities." Given this worst case, America, if not unified by constitutional arrangements, would be gradually entangled in wars (Hamilton, 1961, 65).

personal bags on a check machine. What does this mean? It implies that each person is assumed to be one who might carry a weapon. In fact, it is well known that only a very marginal percentage of people will risk doing so. But since we cannot tell those who carry weapons from those who do not carry weapons, everyone is assumed to be a potential weapon carrier so that all are subject to checks by a set of security arrangements.

Hume employs the theoretical "worst case" for institutional design to combat the 'best case' scenario where people are supposed to be "angels".[209] Hume's scepticism about the best case of human nature is well known. For example, as to the view which exalts the human species, seeing its members as human demigods, Hume comments that "a delicate sense of morals, especially when attended with a splenetic temper, is apt to give a man a disgust of the world, and to make him consider the common course of human affairs with too much indignation" (Hume, 1964a, 151). He also comments that "the virtue and good intentions of Cato and Brutus are highly laudable; but, to what purpose did their zeal serve? Only to hasten the fatal period of the Roman government, and render its convulsions and dying agonies more violent and painful" (Hume, 1964a, 109). In relation to institutional design, if all people are honest, and do their duty, all governments would be good (Mandeville, 1969, 331-2). Or in Madison's words, if people were angels, no government would be necessary. If angels were to govern the ruled, neither external nor internal controls on government would be necessary (Madison, 1961, 322).

There are the following reasons for Hume's worst case strategy. First, according to Hume's imperfectionist view of human affairs, knavery appears to be a major problem in political life. As Hume asserts, although honesty being the best policy may be a good general rule, it is liable to many exceptions. For Hume, it is difficult to provide satisfactory and convincing arguments for honesty being the best policy (Hume, 1975, 283). On the other hand, a 'sensible knave' "may think that an act of iniquity or infidelity will

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[209] Although Hume is opposed to the best case, he acknowledges social benefits of it. As He says: "I must, however, be of opinion, that the sentiments of those, who are inclined to think favourably of mankind, are more advantageous to virtue, than the contrary principles, which give us a mean opinion of our nature. When a man is prepossessed with a high notion of his rank and character in the creation, he will naturally endeavour to act up to it, and will scorn to do a base or vicious action, which might sink him below that figure which he makes in his own imagination" (David Hume, 1964a, 151).

make a considerable addition to his fortune, without causing any considerable breach in the social union or confederacy" (Hume, 1975, 282), Thus, for Hume, the actual existence of sensible knaves shows that the problem of knavery is expected to appear from time to time in political life. The introduction of the supposition of knavery, therefore, is necessary and justifiable at an institutional design level.

Second, Hume is concerned with fundamental limits of a particular politics where vices dominate and politicians can only cure one vice with another vice. As Hume claims:

> Whatever may be the consequence of such a miraculous transformation of mankind as would endow them with every species of virtue, and free them from every species of vice, this concerns not the magistrate who aims only at possibilities. Very often he can only cure one vice by another; and in that case, he ought to prefer what is least pernicious to society (Hume, 1970, 31-2, emphasis added).

Third, for Hume, institutional design cannot eradicate the motivation of evil, or overcome sinful nature, but can control its effects. As Hume says, it is evident that we cannot change human nature but we are able to control evil by altering its direction (for the idea of an alteration, see, Hume, 1949b, 197) in such a way as to transform bad motives into good results.

Thus, Hume's supposition of knavery is invented to justify a guiding principle of preventing evil for institutional design; according to this principle, a best form of a constitution should have the primary capacity to handle the worst case of evil behaviour.

It should be pointed out that the whole point of the above discussion of the justifications of universal knavery is to say that the assumption of a portion of honest and virtuous people can not be a basis for institutional design on its own; but this does not means that the assumption is meaningless (which I will discuss in Sections 4 and 5).

4. The paradox and Limits of Hume's thesis

Hume himself acknowledges that the supposition of universal knavery is somewhat strange because that maxim should be true in *politics*, but is <u>false</u> in *fact*. Nevertheless, Hume regards it as a just *political* maxim. The issue that arises here is: why does Hume employ this seeming paradox as a premise for institutional design? Does this paradox undermine Hume's supposition of knavery and his famous thesis?

My answer is No. The reasons are as follow. First, Hume distinguishes "ought" and "is".[210] Hume's claim that every one <u>ought</u> to be supposed to be a knave is different from the claim that every one is a knave. Hume's idea of universal knavery is a supposition rather than a fact. It images a possible world where every one would be knavish. It does not describe a real world where everyone is a knave. According to this distinction, we should emphasise that Hume does not say that every one is a knave in real private life. Elsewhere, Hume clearly argues against the vulgar view of the actual existence of universal knavery:

> The vulgar are apt to carry all *national characters* to extremes; and having once established it as a principle, that any people <u>are</u> knavish, or cowardly, or ignorant, they will admit of no exception, but comprehend every individual under the same censure (Hume, 1964a, 244, emphasis added).

Second, there is a fundamental difference between everyday private life and political life which Hume has distinguished. In private life, people may sometimes be honest, and may lie occasionally and be potentially dishonest when faced with personal losses or gains. However, Hume acknowledges that people are generally more honest in their private than in their public capacity (Hume, 1964a, 119). Further, the fact that the supposition of universal knavery is necessary in political life does not assume that everyone is a knave in private life. Also, the fact that politicians are assumed to be knavish in political life need not disturb

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[210]Moore fails to make this distinction in his reading of Hume's thesis. As he says: the belief that constitutional government might be based on the assumption that politicians are capable of virtue is the most fundamental kind of error. In contriving and maintaining the constitutional arrangements of a government one should assume instead that, in politics, <u>all men are</u> vicious or corrupt (Moore, 1977, 820).

people, for as Hume claims, "it is hard to tell, whether you hurt a man's character most by calling him a knave or a coward" (Hume, 1964b, 281). Here I would claim that people are less unhappy regarding the supposition of knavery in political life than in everyday life, because such a supposition is far removed from everyday private life, and importantly the supposition of knavery deals with political life. That is why Hume says that the supposition of knavery is a *political* maxim.

These two distinctions matter a lot. If one sticks to an extreme position that every one <u>is</u> a knave so that it is assumed that there are no honest people, he or she will face the following problem. Although very well-designed institutions may reduce opportunities for being a knave, it is reasonable to imagine that Presidents, senators, justices or police whose jobs are supposedly to serve as part of the system of checks, are themselves knaves. In such a situation, it is impossible for him or her to retain confidence in the functions of institutions designed for the universal knavery. There is an obvious tension here between the confidence in the functions of institutions and the claim of the actual existence of universal knavery; because the latter would destroy the former in the sense that the sound operation of institutions depends on a certain portion of esteem and confidence in human nature.

Here, Hume's acknowledgement that the supposition of universal knavery is false in fact can be brought in to overcome the above problem. Further, Hume offers his answer: a well-designed republican system and a portion of honest and virtuous people. As he states:

> In pure republics, where the authority is distributed among several assemblies or senates, the checks and controls are more regular in their operation; because the members of such numerous assemblies may be presumed to be always nearly equal in capacity and <u>virtue</u>; and it is only their number, riches or authority, which enter into consideration" (Hume, 1964a, 122, emphasis added).

Thus, Hume begins his supposition of knavery for designing check systems of government in his famous essay, "Independence of Parliament," but ends with the assumption of virtue of members of assemblies in order

to explain the feasibility of a republican check system. This shows Hume's awareness that the premise of universal knavery is sufficient to argue for the necessity of institutional checks, but is insufficient to explain the feasibility of institutional checks. As Hume notices:

> They [the forms of free and republic government] are the source of all disorder, and of the blackest crimes, where either skill or <u>honesty</u> has been wanting in their original frame and institution (1964a, 99, emphasis added).

Thus, for Hume, the possibility of a check system requires that particular identifiable people are known to be honest. As a result, the supposition of universal knavery is supplemented by the assumption that some people are honest and virtuous. This is done in Hume's famous thesis. This supplementary premise is able to sufficiently explain the feasibility of a republican check system designed for knavery. That is the logic for why Hume introduces, at the end of "Independence of Parliament", the assumption of virtue necessary for the operation of republican government.

There is no inconsistency between the supposition of universal knavery and the positive assumption of virtues and honesty, because the claim that every one ought to be supposed to be a knave carries with it the assumption that not all humans are knaves and that some are honest. To provide empirical evidence that people are honest does not constitute a reason to reject the intellectual supposition of knavery as discussed in Section 3. Furthermore, the supposition of universal knavery is an intellectual statement which serves as a normative principle justifying the necessity of republican check systems; the positive assumption of honesty and virtues is an empirical statement which serves as a tool to explain the feasibility of check systems. However, this positive assumption of honesty and virtues can not be used as a sole principle for institutional design as has already been demonstrated in Section 3.

So far, I have taken Hume's supposition seriously and justified and defended it as a principle for institutional design. Now I would argue that we cannot take it as central in Hume's political theory. There are the following limits to Hume's supposition of knavery.

First, as argued above, the supposition of knavery is a kind of principle of preventing evil in institutional design. This supposition is not itself intended to promote the principle of virtues although it does not deny promoting the principle of virtues. Further, the preventing evil principle is only one principle of government. Other primary principles are public interest, right to power, and right to property. As Hume asserts, "upon these three opinions, therefore, of public *interest,* of *right to power,* and of *right to property,* are all governments founded, and all authority of the few over the many" (Hume, 1964a, 111). There are also secondary principles such as self-interest, fear and affection, which add force to the above primary principles, and determine, limit, or alter their operation (Hume, 1964a, 111). In short, Hume's thesis does not set up principles for all political institutional designs. Hume's supposition of knavery is concerned with only check and control systems. Further, if we suppose that political actors are silly, mediocre or malicious, different institutional designs would be required.

Second, there are, at least, two theoretical problems which challenge Hume's supposition or thesis. The fact that Hume fails to address these two problems evidences the absence of the capacity of Hume's supposition of universal knavery to explain the feasibility of an institutional check system.

(1) The first problem posed for the feasibility of institutions designed for knavery arises from the outside world. Although institutional arrangements are well able to handle many internal events, they cannot always control the effects of external events on internal politics; in particular, they cannot control and check knaves outside a particular political community. The viability of internal institutional arrangements that might be affected by relations with the rest of the world are always and inescapably under threat (Hindess, 1991, 184-5).

(2) There is a problem of institutional deceit raised by the question of knavish institutional designers. Hume's supposition logically implies that institutional designers ought to be supposed to be knaves too and they

might manipulate the information about institutions they have devised.[211] This leads to a consideration of the aspect of deceit in institutional arrangements. This aspect of deceit in institutional arrangements requires us to be cautious of the power of institutional designers. This also leads us to be concerned with the preconditions that would prevent such deceit from occurring. There are at least two necessary conditions: one is that designers themselves should be constrained by the institutions they have devised just as the American founding fathers were. Thus the enterprise of institutional design should adopt the divide and choice solution; institutions should be chosen by those who do not design institutions so as to ensure "a fair share of the cake". The other precondition is that protection of institutional arrangements works only insofar as retaliation is a serious threat. Everyone who has the vote can, through the threat of reciprocal retaliation, use it to make reasonably certain that others will not exploit them -- politically, at least -- too badly (Goodin, 1992, 99). If the above conditions are not satisfied, the supposition of knavery is not compatible with the idea of the rational planning of sound political practices, because possible institutional deceit makes political checks on knaves impossible. Absence of discussion of the above preconditions certifies that there is something missing in Hume's reasoning about the logical link between the premise of knave and the operation of the principle of check.

5. The Middle Case for Institutional Design

So far, I have discussed Hume's initial supposition of knavery, his later introduction of the assumption of honesty and virtues, and the limits of Hume's thesis. All this leads us to a dynamic understanding of Hume's famous thesis: it was a bold conjecture which political writers including Hume himself have advanced, which appears to have some degree of empirical support, and which can be used to help explain the working of the British constitution. Now the supposition of knavery is not final truth, it has its own limits, and it needs to be supplemented with the idea of virtues and honesty in order to explain the feasibility of Humean institutional design, as Hume himself recognizes.

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[211]It is not clear whether or not Hume's supposition of universal knavery excludes Hume himself and institutional designers. If so, this exclusion is certainly arbitrary and is contradictory to the supposition that everyone ought to be supposed to be a knave.

Drawing on Hume's initial supposition of knavery, his later introduction of the assumption of honesty and virtues, and his idea that self-interest may produce both justice and knavery, and a limited generosity may produce virtues, we may reconstruct the Humean middle case as an intellectual position for institutional design.[212] There is, I suggest, the middle case which lies between two extremes, the worst case where every one is a knave, and the best case where every one is an angel. The middle case also refers to an intellectually moderate attitude towards human motivations -- neither flattering virtues nor exaggerating vices. It recognizes that there is a portion of knaves and a portion of angels within a political community although the percentage of knavish and honest persons vary in different circumstances. Further, the middle case constitutes the starting-point for Humean and Federalists' institutional design or the complex strategies that require both institutional and honor checks to deal with the abuse of power. The middle case attempts to create a world where we put some reliance on both: nurturing virtues through shaming and social honor, and reducing evil through law and markets.

Because people cannot be assumed to be generally angels, institutional checks are necessary. Also, because there are a portion of honest and honourable persons, honor and virtues are needed to help the working of a republican system although Hume distrusts honor checks. Thus we need to check all individual behaviors, and at the same time to encourage moral activities. This is well expressed by Madison:

> As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature which justify a certain portion of esteem and confidence. Republican government presupposed the

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[212]Hume himself has discussed the middle station of life. As Hume claims, "the great are too much immersed in pleasure; and the poor too much occupied in providing for the necessities of life (Hume, 1964b, 376). The middle station, as Hume defines, is " a man, placed in it, can with the greatest leisure, consider his own happiness, and reap a new enjoyment, from comparing his situation with that of persons above or below him" (Hume, 1964b, 376). Hume continues to argue that the middle station is able to "afford the fullest security for virtue and gives opportunity for the most ample exercise of it" (Hume, 1964b, 377). Further, Hume argues, "the middle station should be the most favourable to improving our natural abilities, since there is really more capacity requisite to perform the duties of that station, than is requisite to act in the higher spheres of life" (Hume, 1964b, 378). The above Hume's idea implies a middle intellectual position which can be used to support the idea of the middle case for institutional design.

existence of these (latter) qualities in a higher degree than any other form (Madison, 1961, 346).

However, this middle case does not assume and accept that some persons are so good that they do not need to be checked, or at least we can trust them sometimes without checking them. The reasons for that are given in Section 3.

There are intellectual advantages of the middle case and its institutional design. The first one lies in the ability to explain constitutional institutions both necessary and possible (Also see Hart, 1961, 191-2). Using the assumption of the bright side of human nature such as honesty, sympathy and generosity, Hume is confident in the function of the institutions he has devised. He sees acknowledgement of the bright side of human nature as a way of overcoming the difficulties posed for the feasibility of institutional design, which are raised by the supposition of knavery. There is greater feasibility in the sense that honest people, together with the proper structure of governmental machinery, ensure compliance with rules of laws and secure extensive and arduous enterprises for the public benefit. This is well expressed by Alexander Hamilton (1961, 458):

> This supposition of universal venality in human nature is little less an error in political reasoning, than the supposition of universal rectitude. The institution of delegated power implies that there is a portion of virtue and honour among mankind, which may be a reasonable foundation of confidence.

A further possible explanation provided by the middle case might be to suppose that, in an initial situation, half the people are good and half are bad so that there are interactions between moral and immoral persons. If a well-designed filter mechanism is established, moral persons are encouraged and bad persons are punished, so that good people flourish and bad people do not flourish in this kind of institutional setting. In this way, a well-designed institution improves the initial situation, that is, more people become virtuous and less people become evil. Thus the intellectual advantage of the middle case is that it can provide an evolutionary account of the feasibility of institutional design, while Hume's initial supposition of universal knavery lacks this kind of capacity and excludes the possibility of

an evolutionary model for explaining the feasibility of an institutional check system.

The second intellectual advantage of the middle case is its principle of promoting public virtue (rather than private virtue) for institutional design. There is a misunderstanding of Humean institutional design, namely, that Humean institutional design excludes the moral approach (Ayres and Braithwaite, 1992a&b, Pettit, 1993). Here, I would argue that the Humean middle case contains the principle of promoting public virtue.

We should emphasize Hume's distinction between private and public virtues. Public virtue does not depend on private virtue, and on the manners and morals of a nation, but on well-conceived and well constructed political machinery (Forbes, 1975, 227). Hume's institutional design does not exclude a moral remedy, but goes beyond the traditional moralizing-individual approach. It is true that the Humean project is less interested in a moralizing-individual approach to politics than in a public virtue approach in political life.[213] Hume justifies this with a discussion of the advantage of Humean institutional design; that is, it secures our liberties irrespective of the good-will of rulers (1964, 118). A good government could be, as Hume believes, achieved quite irrespective of the moral qualities and characters of the politicians who conduct the government. If the constitutional arrangements were judiciously ordered, then people in society could be assured that they would not be abused by their politicians (Moore, 1970, 821). For Hume, a constitution is not designed to end corruption, or to provide for a life of virtue. Accordingly there is no call for extraordinary virtue and certainly none for violence in the activity of fabricating a constitution. It is assumed, rather, that corruption is an ineradicable feature of political life, and is not to be removed by a return to first principles or by a new beginning. Instead it is the constant duty of legislators, Hume insists, to amend and adapt the rules

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[213]This does not means that Hume takes no interest in private virtues. For Hume's theory of knavery also aims to persuade people to be honest according to his moral theory. As for the problem of sensible knavery, Hume offers two answers. One is that the best things in life are free: the "natural pleasures" are incomparably preferable to the feverish, empty amusements of luxury and expense. "They (knaves) themselves are, in the end, the greatest dupes, have sacrificed the invaluable enjoyment of a character with themselves at least, for the acquisition of worthless toys and gewgaws" (Hume, 1964b, 257). Another argument is that there is always the risk of overreaching oneself and being found out. "They (knaves) can never extricate themselves, without

and conventions of public life in a manner that would provide increasingly effective restraints on the corrupt behaviour of politicians (Moore, 1970, 819). Thus, the essence of Humean institutional design is to seek for well constructed political machinery under which "private vices" can turn into "public virtues" and private virtues can be developed and improved.

In short, Hume's institutional design has two aspects. On the one hand, the design of a political system should be based on the assumption that power-holders tend to be knavish and corrupt. On the other hand, Hume also argues, a great deal of virtue, justice and humanity are requisite in statesman (Hume, 1964b, 378). Thus, to select and appoint statesmen one needs to look at whether or not persons are honest and upright. Madison expresses a similar view although his emphasis which puts virtue first is different from Hume's:[214]

> The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust (Hamilton, etc., 1961, 350).

Thus the middle case requires that two principles -- preventing and controlling knavery and promoting virtues -- should guide institutional design. Ayres and Braithwaite certainly follow this tradition with the suggestion that we need a complex model of institutional design which should be designed to protect us against knaves while leaving space for the nurturing of civic virtues (Ayres and Braithwaite, 1992a, 53, 1992b). To apply these two principles to constitutional design, a portion of the articles of the constitution is required to deal with possible deceit associated with political actors and institutional designers. At the same time, a portion of the articles needs to be devised to promote public virtues. Also, a complete

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a total loss of reputation, and the forfeiture of all future trust and confidence with mankind" (Hume, 1964b, 257).

[214]There is a difference between Hume who puts knavery first and virtue second, and Hamilton who puts virtue first and knavery second in designing political constitutions.

immigration law should be devised to prevent against knavery, to promote national interests and to take humanitarian principles into account.

However, here, we would face the following new issue. Theoretically it is possible to combine the principles of preventing evil and of promoting virtue, but practically, these two might conflict in designing one particular institution such as an open or secret vote system. For example, if we assume that people are knaves we will build checks into the electoral arrangements to prevent knavery (prohibiting certain sorts of self-serving speech, or blocking certain sorts of interest groups from organizing). That, in turn, would block a purely ideal vision from being realized. As to the question of how a lexical order is decided regarding these two principles, Hume would argue that preventing evil is a priority, while Ayres and Braithwaite would argue for a contextual remedy: if evil is minimal, to promote virtue is a priority; and if the risk of evil is great, to prevent evil is the priority in institutional design.

6. Hume's Effects and Uses of the Supposition of Knavery

There have been different uses and evaluations of Hume's supposition of knavery. Here, I narrowly focus on Australian political scientists (as well their colleagues in the U.S.) who have used Hume's supposition of knavery in different ways for *Australian Institutional Design Programmes*.

Goodin's Interpretation

Goodin argues that Hume's thesis should be understood as that most people are fine, only a few are knaves. Goodin draws our attention to the fact that the key words "ought to be supposed" should not be understood as

"is".[215] The claim that every one ought to be supposed to be a knave carries with it the assumption that all humans are not knaves just as the claim that humans ought to be equal carries with it the assumption that humans are in fact not equal. Goodin's interpretation plays down the universal aspect of Hume's supposition. This moderate intellectual position explicated by Goodin fits well with Hume's idea that _moderate_ selfishness is the second circumstance of justice. The virtue of justice can arise only if the extremes are absent: "if men pursu'd the publick interest naturally, and with a hearty affection, they wou'd never have dream'd of restraining each other by these rules (of justice); and if they pursu'd their own interest, without any precaution, they wou'd run head-long into every kind of injustice and violence"(Hume, 1960, 496-7).

Furthermore, Goodin claims that Hume's institutional design does not deny the existence or reliability of benevolent impulses but takes such impulses for granted (Goodin, 1982, 113). Thus, Goodin (1982, 113-4) interprets Hume's thesis as such: we ought to design institutions for knaves on the grounds that good people will be good regardless; it is only the behaviour of knaves we need worry about in shaping our institutional designs. We can therefore say that for those who would be good anyway, those institutions designed for knaves do no harm; for those who would be bad (even occasionally), those institutions serve as important checks. It is a win/win or, more precisely, a 'no-lose/win' situation.

Goodin is right to argue that Hume's supposition of knavery presupposes the existence or reliability of benevolent impulses; I have shown the reason for this in Section 4. However, I disagree with Goodin's denial of the aspect of universal knavery in Hume's supposition. There are two problems with Goodin's above interpretations of Hume's thesis. First, Hume's thesis is itself a refutation of Goodin's interpretation that most people are fine, only a few are viewed as knaves for the purpose of institutional design, because for Goodin's interpretation to remain correct, Hume need not have said that _every one_ ought to be supposed a knave. In fact, Hume does say that _every one_ ought to be supposed to be a knave. We cannot deny that Hume makes this _universal_ supposition at a normative level. Second, although Hume takes benevolent impulses for granted,

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[215]Goodin formulated this interpretation in discussion with me.

Hume's approach does not, as Goodin (1982, 114) suggests, presuppose that good people *will* be good regardless -- that benevolent motives *will* continue to operate undiminished by the addition of extrinsic incentives. According to Hume's supposition of universal knavery, benevolent people could also be knavish in certain circumstances. Thus, Goodin's assumption that good people will be good regardless is obviously false.

Brennan and Buchanan's Homo Economicus Model

Brennan and Buchanan have used Hume's supposition of knavery to justify *Homo economicus*, a model for comparative institutional analysis and for institutional design.[216] As they assert:

> Using the *Homo economicus* behavior model in constitutional analysis, and justifying this use on analytic rather than empirical grounds, is a procedure we have borrowed from the classical political economist-philosophers in their analysis of political institutions. And we can, perhaps, do no better in this connection than appeal to David Hume ... [his supposition of knavery] (1985, 59).

Albert Weale nevertheless challenges this use of Hume's thesis, arguing that Hume's thesis cannot form a sound principle of constitutional design (Weale, 1989, 45). In this matter, I am in line with Albert Weale's challenge to the use of Hume's thesis by Brennan and Buchanan, who fail to distinguish knavery from self-interest, and ignore the problems associated with Hume's famous thesis. But, I disagree with Weale's argument against the worst case strategy.

Weale (1989, 45) argues that Hume's supposition rests upon a particular attitude to risk, requiring that we weigh the worst case option, against the best case, in our deliberations. It is further argued that since harm-avoidance is not a generalizable interest, the Humean supposition of knavery cannot form a sound principle of constitutional design. Here, Weale's rejection of the worst case strategy is not sufficient, as I have shown the reasons why Hume adopts this strategy in section 3 above. Also

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[216]For Brennan's self-criticism of *Homo economicus*, see Geoffrey Brennan and Loren Lomasky, 1985, 189-211.

Brennan and Buchanan have already argued well for the worst case strategy in the following two arguments. The first argument is that "an appropriate behavioral model will have to reckon with the fact that the harm inflicted by those who behave 'worse' than the national average will be proportionately greater than the 'good' done by those who behave 'better' than the average. Accordingly, a bias toward the worst-case end of the behavioral spectrum is entirely justified" (Brennan and Buchanan, 1985, 59). The second argument comes from Gresham's law in politics that in social interactions bad behaviour drives out good and that all persons will be led themselves by the presence of even a few self-seekers to adopt self-interested behaviour (Brennan and Buchanan, 1985, 60).

Pettit's Knave and Managing Strategies

Pettit has discussed the principle, or the sort of strategy which ought to guide rational choice theorists for institutional design. He sees Hume's supposition of knavery as the motivating strategy, or the knave strategy, which aims to deal with the knave, that is, with the most explicitly self-interested. He acknowledges that any system of sanctioning that is worthy of consideration must be able to reduce the potential damage that knaves can do and it must be able to reassure non-knaves that their efforts are not undermined, exploited or derided by those of a different cast. Further, Pettit points out the following two problems associated with the knave strategy.

(1) If we are to put in place the extreme penalties or rewards that may be required to motivate the knaves, then we shall need to rely on a centralised system of sanctions. But if we have to do this, then we are likely to create more problems than we solve.

(2) Implementing the motivating strategy would be likely to switch many agents from a non-egocentric mode of self-management to a (fully or partially) egocentric mode. Pettit, therefore, concludes that the Humean knave strategy is unattractive. Thus Pettit advocates the managing strategy, which aims to deal with a more ordinary sort of individual: someone who deliberates in most contexts in a non-egocentric way and who is self-interested only in the manner associated with the virtual presence of self-interest. The managing strategy consists of three ingredients: possibilities of screening should be explored prior to considering the options for

sanctioning; the sanctioning devices should be, so far as possible, supportive of non-egocentric deliberation; and the sanctioning devices should also be motivationally effective.

I fully agree with Pettit's managing strategy for institutional design, but disagree with his interpretation of or use of Hume's supposition of knavery and his two arguments against the knave strategy. First, Pettit regards knavery as self-interest, and understands Hume's knavery strategy merely as the public use of private interests. These interpretations lead him to conceptualise Hume's supposition as a motivating strategy, to motivate private interest in order to serve public goods. But this narrow understanding ignores two important aspects of Hume's supposition of knavery and his thesis: knavery as dishonour and deceit, and the political control of knavery (Section 2). The problem associated with Pettit's conceptualisation of Hume's thesis as a motivation strategy is that it ignores and confuses the two aspects above.

Second, Pettit argues that Hume's knave strategy will lead to a centralised system of sanctions. This, I argue, is not a problem for Hume at all. For the knave strategy requires a division of power and power balance, rather than a centralised system of sanctioning in the original context of Hume's idea of knavery as discussed in Section 3. Also Pettit's second challenge that the knave strategy would lead to a (fully or partially) egocentric mode, is not convincing, which I will discuss later.

Ayres and Braithwaite's Destroy-Virtue Argument

Ayres and Braithwaite disagree with the Humean principle of institutional design. They argue that the supposition that actors are self-interested, rational non-virtuous and knavish is static, one-sided and incomplete.[217] Ayres and Braithwaite continue to argue that a flaw with Humean institutional design is that the worst case where actors are non-virtuous excludes the other case where actors do behave virtuously. Institutional design of a Humean kind, therefore, fails to address multi-motivations of political actors; and consequently it excludes a moral remedy to cure the

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[217]Braithwaite's empirical work on corporate offending has led him to posit some alternative motivational accounts. Corporate actors are not just value maximizers – of profits or reputation.

political problems (Ayres and Braithwaite, 1992b). Further, Ayres and Braithwaite argue, the institutions designed for knavery might make people knavish by treating them as such. And this kind of institutional design based on the supposition of knavery discourages, reduces and even destroys virtues (Ayres and Braithwaite, 1992b).[218] The claim that institutions devised for self-interest and knavery destroy virtues is supported by Braithwaite's (1992a) empirical research on business regulations and by Titmuss' work which shows the extent to which commercialization of and profit in blood has been driving out the voluntary donor (Titmuss, 1971, 198, 225).

The lesson is, according to Titmuss, that the ways in which society organizes and structures its social institutions -- and particularly its health and welfare systems -- can encourage or discourage the altruistic in humans. Such systems can foster integration or alienation; they can allow the 'theme of the gift' -- of generosity towards strangers -- to spread among and between social groups and generations (Titmuss, 1971, 225).

Ayres's and Braithwaite's destroying-virtue argument is partially true and correct. However, it makes two mistaken assumptions. One is to suppose that the Humean project excludes a moral remedy. The other assumption is that given the exclusion of a moral remedy in the Humean project, institutions designed for knavery make people knavish by treating them as such.

As for the first assumption of Ayres's and Braithwaite's, I have argued in Section 5 that the Humean project does not exclude a moral remedy in terms of promoting public virtues. Here, I should emphasise Hume's distinction between the origins of the institutions of morality, and the origins of the individual's obligation to adhere to them. The role of socialization and social sanctions is pre-eminent in the latter, but this can not explain the origins of the first. What explains the origins of political

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They are also often concerned to do what is right, to be faithful to their identity as law abiding citizens, and to sustain a self-concept of social responsibility (Ayres and Braithwaite, 1992, 22).

[218]Or in Goodin's (1982, 114-5) words, the good works which were formerly produced out of the goodness of people's hearts must now be compelled through more expensive and inefficient external mechanisms of social control; and morally serious people are forced either to downgrade their principles or, at the very least, to withdraw them in the present circumstances.

institutions, and what distinguishes political virtues from natural, is self-interest. In this sense, self-interest is indeed endemic to the realm of the political. Yet the proximate political motives, for the well socialized individual, can indeed be love of the public good. Further, Hume is only concerned with control of effects[219] rather than with evaluating people's motivations, because no matter what different judgments of these motivations there are, the results, through well-designed institutions, are the same. As Hume argues, <u>whether the passion of self-interest be esteemed vicious or virtuous, it is all a case</u>. If it is regarded as virtuous, men become social by their virtue; if vicious, their vice has the same effect (Hume, 1960, 492).

Thus, I would like to argue that to promote public interests or virtues and to maintain peace and order is the task of Humean institutional design. The Humean project begins with the supposition of knavery and passes from well-designed and established institutions to promotion of virtues; it does not exclude a principle of promoting virtue.[220] The difference between Hume and Ayres and Braithwaite is that the latter's institutional design begins with the assumption of civil virtues as <u>the first appeal</u> to promote virtues in their model of dynamic institutions, while the former's aims to promote virtue as a <u>last or final result</u>.

As for the second assumption of Ayres's and Braithwaite's, I first acknowledge that Humean institutional design does not aim to promote private virtue. However, Hume's approach does not necessarily destroy virtue. There are two reasons for that.

First, there is a psychological fact that if somebody assumes that you are dishonest, you would certainly be unhappy in everyday life. But the fact that politicians are assumed to be knavish in political life does not disturb people, because there is a fundamental difference between everyday private life and political life as discused in Section 4. Second, the institutional arrangement based on the supposition of knavery may destroy virtues such

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[219]As to a further justification for this, see the famous No. 10 of *The Federalists Papers*, Hamilton, 1971, 77-84.

[220]Goodin (1982, 114) implicitly acknowledges this in claiming that, among morally serious people, Hume's strategy is bound to backfire. What was meant merely to back up mature benevolence ends by undercutting it instead.

as altruism; nevertheless it nurtures the procedural concept of virtue[221] through well-established check and punishment systems.

Conclusion

I would like to conclude with two parts, the first part is about Hume's supposition and his thesis, the second part is about uses and evaluations of Hume's thesis.

Part One: Hume has suggested that institutional design should be based on the supposition that every one ought to be supposed a knave. He justifies his supposition of knavery in terms of the weakness of honor as a great check, the permanent problem of knavery in political life and the principle of preventing evil. These are sufficient to argue for the necessity of institutional checks, but are insufficient to justify his supposition of universal knavery. Alternative Humean justifications, I suggest, appeal to the principle of formal justice and the worst case strategy. A further justification appeals to a comparative examination of practical effects of the supposition of knavery and the assumption of virtue.

However, Hume's supposition of universal knavery on its own lacks the capacity to explain the feasibility of institutional design. In order to explain the feasibility, Hume introduces the assumption of virtue. That is the logic for why Hume introduces the assumption of virtue necessary for the operation of republican government in the end of "Independence of Parliament".

Drawing on Hume's initial supposition of knavery, and his later assumption of the honest and virtuous, the paper reconstructs the Humean middle case for institutional design. This allows for recognition of the necessity of democratic institutional check systems and for explanation of their feasibility. The middle case also attempts to combine the principles of preventing evil and promoting virtues in institutional design. It not only

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[221]The procedural conception of morality emphasizes rule-following and fair procedures; as David Hume, J. S. Mill and Adam Smith see it the virtue of justice is nothing but a disposition to obey the rules of justice (Macintyre, 1982, 216, 218 and Gaus, 1980, 267). The procedural conception of the good man is also not seen as the Confucian good man, but, as Montesquieu (1989, xli) argues, the political good man who loves the laws and procedure and who acts from love of the law and procedure.

"stands the test of reasoning and enquiry, but contributes to the amendment of human's lives, and the improvement in morality and social virtue" (Hume, 1946b, 253). It, therefore, seems to be an attractive and convincing intellectual basis for institutional design.

Part Two: The use of Hume's thesis by Brennan and Buchanan in order to defend a worst case for institutional design is justifiable. On this matter, however, Weale's challenges to Brennan and Buchanan miss the point in the sense that his empirical criticism of the Humean project fails to consider a Humean methodological intellectual position. Further, the use of Hume's thesis by Pettit, Brennan and Buchanan fails to distinguish knavery from self-interest, and ignores the aspect of political control of knavery although they contribute to an analytical discussion of the problems associated with Hume's famous thesis, particularly with Hume's idea of public use of private interests.

Goodin is right to argue that Hume's supposition of knavery presupposes the existence or reliability of benevolent impulses. And Goodin's interpretation that Hume's thesis should be understood as saying that most people are fine and only a few are viewed as knaves, plays down the universal aspect of Hume's supposition. However, Goodin's denial of the aspect of universal knavery in Hume's supposition is wrong. First, for Goodin's interpretation to remain correct, Hume need not have said that every one ought to be supposed a knave. Second, although Hume takes benevolent impulses for granted, Hume's approach does not, as Goodin (1982, 114) suggests, presuppose that good people will be good regardless.

Ayres and Braithwaite as well as Pettit have criticized Humean institutional design: (1) the Humean worst case excludes the other case where actors do behave virtuously; (2) Humean institutional design would destroy virtues. These criticisms are understanble, but seem off the point. In fact, Hume deliberately avoids a personal moral approach to politics; and Hume takes no interest in moralizing-individuals-approach as a remedy to the political problem of knavery. On the other hand, the Humean project does not exclude a moral remedy in terms of public virtue. The Humean project begins with the supposition of knavery and passes from well-designed and established institutions to promotion of virtues as a last or final result. Furthermore, Hume's supposition does not necessarily destroy

virtues. It may diminsh the value of a virtue such as altruism. But at the same time, it nurtures the procedural concept of virtue.

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