

# **Reforming Authoritarianism in Contemporary China. Reflections on Pan Wei's Consultative Rule of Law Regime**

Gunter Schubert

## **Summary**

Rampant corruption and declining regime legitimacy force the Communist Party to reform the political and legal system of the PRC. There are different opinions on how far these reforms have affected Chinese authoritarianism so far. While some observers have identified a higher degree of regime legitimacy achieved by gradual political liberalization in recent years, others have stated a reconsolidation of non-democratic one-party rule providing only temporary stability for the political system at best. The PRC leadership, for its part, has repeatedly claimed to work towards 'socialist democracy' by separating the Party from the government and subjecting the system to the rule of law. The institutional foundations of 'socialist democracy' may have been spelled out by Beijing scholar Pan Wei by his idea of 'consultative rule of law' modelled along the Hong Kong and Singaporean examples. This paper reconstructs Pan Wei's basic argument for such a system and discusses both its conceptual consistency and political practicability. It is suggested in this article that reforming Chinese authoritarianism by implementing legal reforms, a modern civil service structure and more mechanisms of political consultation might work for some time. It is argued, however, that 'consultative rule of law' cannot sustain one-party rule in the long run.

## **I Introduction: Assessing Political System Reform in the PRC**

As the PRC is heading towards more world market integration and internal economic restructuring after its entry into the World Trade Organisation (WTO) in late 2001, rampant corruption and deepening social and political cleavages force the Communist leadership to engage in new initiatives to stabilize one-party rule and consolidate overall regime legitimacy. At the welfare front, this has led to efforts to build a nation-wide social security network,<sup>1</sup> to ameliorate the living conditions of

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<sup>1</sup> Catherine Jones Finer (ed.), *Social Policy Reform in China: Views From Home and Abroad*, Aldershot (Ashgate) 2003; Zhang Junhua, "The Construction of a Social Security System in the PRC – A Critical Account" (in German), in: *China aktuell*, Vol. 32, No. 7, July 2003, pp. 866-975 (part I) and Vol. 32, No. 8, pp. 986-997 (part II); Zhu Yukun, "Recent Developments in China's Social Security Reforms", in: *International Social Security Review* (Oxford), Vol. 55, No. 2, 2002, pp. 39-54; Sarah Cook, *After the Iron Rice Bowl: extending the safety net in China* (Brighton: Institute of Development Studies) 2000.

migrant workers<sup>2</sup> and to alleviate the tax burden of the peasants.<sup>3</sup> Apart from these new policies, political reforms are officially deemed necessary to enhance accountability at all levels of the system. As a matter of fact, they have been regarded as critical for the eventual success of Chinese socialism since the early reform era.<sup>4</sup> Besides separating the Party from the state by giving more political autonomy to government organs<sup>5</sup> and bestowing more independent decision-making authority to the management of state owned enterprises (SOEs),<sup>6</sup> the Communist leadership has embarked on a policy of introducing direct village elections in the late 1980s,<sup>7</sup> new methods of candidate nomination for the elections of the PRC's National, Provincial and Local People's Congresses along with reform efforts to strengthen their supervisory functions in the 1990s,<sup>8</sup> and – more recently –

<sup>2</sup> For a general account of the situation of urban migrant workers see Dorothy Solinger, *Contesting Citizenship in Urban China: Peasant Migrants, the State, and the Logic of the Market*, Berkeley/Cal. (University of California Press) 1999.

<sup>3</sup> See the 'turning fees into taxes' programme introduced by the central government in 1999, first applied in Anhui province and extended to 20 more provinces on an experimental basis in 2002. See Thomas P. Bernstein, *Can the Peasant Burden Problem Finally be Resolved? A Preliminary Assessment of Recent Policy Innovations*, draft paper delivered at the 40<sup>th</sup> Anniversary Reunion Conference of the Universities Service Center for Chinese Studies on "The State of Contemporary China", January 5-7, 2004, Chinese University of Hong Kong (quote permitted by the author); see also Thomas P. Bernstein/Lü Xiaobo, "Taxation without Representation: Peasants, the Central and the Local States in Reform China", in: *China Quarterly*, No. 143, 2000, pp. 742-763.

<sup>4</sup> In a well-known speech made in August 1980, Deng Xiaoping demanded an end to the over-concentration of power for avoiding arbitrary rule, a separation of party and government responsibilities, and a new system of leadership succession based on meritocracy. See "On the Reform of the System of Party and State Leadership", in: *Selected Works of Deng Xiaoping, Volume II (1975-1982)*, Beijing (Foreign Languages Press) 1995, pp. 319-342 (320).

<sup>5</sup> Hsiao Pen, "Separating the Party from the Government", in: Carol Lee Hamrin/Zhao Suisheng (eds.), *Decision Making in Deng's China*, Armonk/N.Y. (M. E. Sharpe) 1995, pp. 153-168; see also former CP General Secretary Zhao Ziyang's report on "Striving along the Road of Socialism with Chinese Characteristics", delivered at the 13<sup>th</sup> CP Party Congress in October 1987, reprinted in *A Selection of Important Documents since the CCP's 13<sup>th</sup> National Congress*, Beijing (Renmin chubanshe) 1991, pp. 4-61.

<sup>6</sup> For a critical account of the success of SOE management reform see Guo Sujian, *Post-Mao China. From Totalitarianism to Authoritarianism*, Westport/Conn. (Praeger) 2000, chapt. 6 (Economic Reforms)

<sup>7</sup> Kevin O'Brien, "Implementing Political Reform in China's Villages", in: *Australian Journal of Chinese Affairs*, No. 32, July 1994, pp. 33-59; X. Drew Liu, "A Harbinger of Democracy: Grassroots Elections in Rural China", in: *China Strategic Review*, Vol. 2, No. 3, May-June 1997, pp. 50-75; Daniel Kelliher, "The Chinese Debate over Village Self-Government", in: *China Quarterly*, No. 137, January 1997, pp. 63-86; Kevin O'Brien/Li Lianjiang, "Accomodating 'Democracy' in a One-Party State: Introducing Village Elections in China", in: *China Quarterly*, No. 162, June 2000, pp. 465-489; Gunter Schubert, *Village Elections in the PRC: A Trojan Horse of Democracy?*, Project Discussion Paper No. 19/2002, Institute of East Asian Studies, University Duisburg-Essen; Zhong Yang, *Local Government and Politics in China. Challenges from below*, Armonk/N.Y. (M. E. Sharpe) 2003.

<sup>8</sup> Murray Scott Tanner, "The National People's Congress", in: Merle Goldman, Roderick Macfarquhar, *The Paradox of China's Post-Mao Reforms*, Cambridge (Harvard University Press), 1999, pp. 100-128; Li Jinshan, "The NPC System and Its Evolution: From Nomenklatura to Selectorate", in: *Issues & Studies*, Vol. 34, No. 3, March 1998, pp. 1-22; Ming Xia, "Political Contestation and the

experimenting with new modes of internal competition to install party secretaries and other leading cadres at the local level.<sup>9</sup> As for China's leaders, most important since long concerning political system reform is the professionalization of the cadre management system which aims at upgrading the civil and party bureaucracy's efficiency and impartiality;<sup>10</sup> and the gradual institutionalization of a rule of law system to which all political and legal decision-making power should be subjected.<sup>11</sup>

For many observers, these reforms are profoundly flawed, because they are not embedded in a concept of political change that does away with one-party rule. To this logic, any effort to achieve democratic accountability without institutionalising political participation (up to the national level) and multi-party competition – albeit temporarily successful – is eventually doomed to failure. However, many scholars now focus on the possibility that such a verdict carries the danger of ignoring the different degrees of accountability and regime legitimacy that may have been gener-

Emergence of the Provincial People's Congresses as Power Players in Chinese Politics: A Network Explanation", in: *Journal of Contemporary China*, Vol. 9, No. 24, 2000, pp. 185-214; Cho Young Nam, "From 'Rubber Stamps' to 'Iron Stamps'. The Emergence of Chinese Local People's Congresses as Supervisory Powerhouses", in: *China Quarterly*, No. 171, September 2002, pp. 724-740; Melanie Manion, "Chinese Democratization in Perspective: Electorates and Selectorates at the Township Level", in: *China Quarterly*, No. 163, September 2000, pp. 764-782; James Derleth/Daniel R. Koldyke, "The District People's Congresses and Political Reform in China", in: *Problems of Communism*, No. 2, March-April 2002, pp. 15-22. Interesting Chinese sources are Cai Dingjian (ed.), *Zhongguo xuanju zhuangkuang de baogao (Report on the State of China's Elections)*, Beijing (Falü chubanshe), 2002; Shi Weimin/Liu Zhi (eds.), *Guifan xuanju: 2001-2002 nian xiangji renmin daibiao dahui xuanju yanjiu* [Standardizing Elections: A Study on the 2001-2002 Township People's Congress Deputy Elections], Beijing (Zhongguo shehui kexue chubanshe) 2003.

<sup>9</sup> Li Lianjiang, "The Two-Ballot System in Shanxi Province: Subjecting Village Party Secretaries to a Popular Vote", in: *China Journal*, No. 42, July 1999, pp. 103-118; for a more comprehensive account and critical assessment of recent institutional innovations to establish more intra-party democracy see Gang Lin, "Leadership Transition, Intra-Party Democracy, and Institution Building in China", in: *Asian Survey*, Vol. 44, Nr. 2, March-April 2004, pp. 255-275.

<sup>10</sup> For details on the reform of the cadre management system partly undertaken in the 1980s already see Lam Tao-chiu/Chan Hon S., "Reforming China's Cadre Management System: Two Views of a Civil Service", in: *Asian Survey*, Vol. 36, No. 8, August 1996, pp. 772-786; Joseph Fewsmith, "Elite Politics", in: Merle Goldman/Roderick Macfarquhar, *The Paradox of China's Post-Mao Reforms*, Cambridge (Harvard University Press) 1999, pp. 47-75; Zhao Suisheng, "Political Liberalization without Democratization: Pan Wei's proposal for political reform", in: *Journal of Contemporary China*, Vol. 12, No. 35, 2003, pp. 333-355 (345-348); for recent developments see Edin, Maria, "Remaking the Communist State. The Cadre Responsibility System at the Local Level in China", in: *China. An International Journal* (Singapore), No. 1, March 2003, pp. 1-15.

<sup>11</sup> The establishment of a socialist rule of law system was written into the state constitution in early 1999. For critical accounts of the Communist leadership's efforts to create a 'socialist rule of law system' see C. Stephen Hsu (ed.), *Understanding China's legal system: Essays in Honor of Jerome A. Cohen*, New York (New York University) 2003; Randall Peerenboom, *Chinas Long March towards Rule of Law*, Cambridge (Cambridge University Press) 2002; Pittman B. Potter, *The Chinese Legal System: Globalization and Local Legal Culture*, London (Routledge) 2002; Eduard B. Vermeir, *China's Legal Reforms and Their Political Limits*, Richmond (Curzon) 2002; Larry Diamond, "The Rule of Law as Transition to Democracy in China", in: *Journal of Contemporary China*, Vol. 12, No. 35, 2003, pp. 319-331; Guo Sijian, "Post-Mao China: The Rule of Law?", in: *Issues & Studies*, Vol. 35, No. 6, November/December 1999, pp. 80-118.

ated by political system reform in the PRC in the recent past, probably permitting the Communist leadership to preserve one-party rule and authoritarianism much longer than usually predicted.<sup>12</sup> Consequently, they have dealt more cautiously with China's political and legal reforms, measuring them in terms of relative gains and losses concerning regime legitimacy and stability before turning to their "democratic (non-)potential" *à la longue*.<sup>13</sup> The criteria for assessing those reforms usually focus on their success in reigning in corruption and bureaucratic malfeasance; enhancing elite professionalism; and establishing a sound rule of law system, i.e. giving the people genuine power to sue for their rights and to bring corrupt cadres to justice. Most scholars, as it seems, concede that the reforms initiated by the CP regime in the post-Tiananmen era have instilled new practices of contestation into the system and have made it more accountable by administrative streamlining, cadre professionalization, the cooptation of new (non-party) social and economic elites, and the growing "legal bind" of political and bureaucratic decision-making.<sup>14</sup> However, quite a number of experts contradict to such an analysis by contending that the political reforms have actually failed their objectives and that the CP regime has indeed become more instable and authoritarian in recent years.<sup>15</sup> To put it differently: On the one hand, there seems to be a major consensus among most observers

<sup>12</sup> These divergent viewpoints have been nicely juxtaposed in a recent edition of the *Journal of Democracy* on "China's Changing of the Guard", Vol. 14, No. 1, January 2003, pp. 5-81, containing contributions by Andrew J. Nathan, Bruce Gilley, Bruce J. Dickson, Wang Shaoguang, Yang Dali, Chen An, Xiao Gongqin, He Qinglian and a concluding article by Pei Minxin.

<sup>13</sup> See e.g. Frederick C. Teiwes, "The Problematic Quest for Stability: Reflections on Succession, Institutionalization, Governability, and Legitimacy in Post-Deng China", in: Tien Hung-mao/Chu Yun-han (eds.), *China under Jiang Zemin*, London (Lynne Rienner) 2000, pp. 71-95; Richard Baum/Alexei Shevchenko, "The 'State of the 'State'", in: Merle Goldman/Roderick Macfarquhar (eds.), *The Paradox of China's Post-Mao Reforms*, Cambridge (Harvard University Press) 1999, pp. 333-360; Jean-Pierre Cabestan, "The 10<sup>th</sup> National People's Congress and After. Moving towards a New Authoritarianism, Both Elitist and Consultative?", in: *China Perspectives*, No. 47, May-June 2003, pp. 4-20.

<sup>14</sup> Andrew J. Nathan, "Authoritarian Resilience", in: *Journal of Democracy*, Vol. 14, No. 1, January 2003, pp. 6-17; Yang Dali, "State Capacity on the Rebound", in: *Journal of Democracy* (same edition), pp. 43-50; Xiao Gongqin, "The Rise of Technocrats", in: *Journal of Democracy* (same edition), pp. 60-65. An earlier and often quoted article pointing at the positive effects of institutional change and reform in the PRC in terms of more democratic accountability is Pei Minxin, "'Creeping Democratization' in China", in: *Journal of Democracy*, Vol. 6, No. 4, October 1995, pp. 65-79. However, see his far more pessimistic account published recently in Pei Minxin, "China's Governance Crisis", in: *Foreign Affairs*, Vol. 81, No. 5, September-October 2002, pp. 96-109.

<sup>15</sup> Bruce Gilley, "The Limits of Authoritarian Resilience", in: *Journal of Democracy*, Vol. 14, No. 1, January 2003, pp. 18-26; Bruce J. Dickson, "Threats to Party Supremacy", in: *Journal of Democracy* (same edition), pp. 27-35; Wang Shaoguang, "The Problem of State Weakness", in: *Journal of Democracy* (same edition), pp. 36-42; He Qinglian, "A Volcanic Stability", in: *Journal of Democracy* (same edition), pp. 66-72. Bruce Gilley has been even more outspoken in another recent contribution, in which he states a diminution of formal and informal contestation and the rise of "cryptopolitics" in China's political system; see "The 'End of Politics' in Beijing", in: *China Journal*, No. 51, January 2004, pp. 115-135; see also Jeremy Paltiel, "Jiang Talks Politics – Who Listens? Institutionalization and its Limits in Market Leninism", in: *China Journal*, No. 45, January 2001, pp. 113-121, who is coming to similar results as Gilley.

that political system reform *actually takes place* in the PRC and that it affects the internal dynamics, accountability and legitimacy of the CP regime. On the other hand, there is also a consensus that the net effects of these reforms are not sufficient to provide for long term stability and legitimacy of the system, as they do not touch upon one-party rule. At the same time, there are different opinions on the degrees of stability and accountability that have been generated by the reforms up to the present. Many scholars – perhaps the majority – claim that the CP regime has gained new legitimacy (and 'state capacity'). However, there is also a substantial number of experts who think that the reforms have actually deepened the current regime crisis by strengthening the Party's autonomy from the people, resulting in an insufficient response to the participation crisis that plagues the Chinese polity.

Turning to the Chinese domestic debate on political system reform among both intellectuals and party officials, much effort has been spent in recent years on the attempt to reconcile non-negotiable one-party rule with more (democratic) accountability of the regime and a controlled decentralization of political power.<sup>16</sup> Because the Western model of liberal democracy or any democratic system based on multi-party competition is a non-option for obvious political (or normative) reasons, China's reformers must come to terms with the concept of 'socialist democracy',<sup>17</sup> pursued by the Communist leadership – at least rhetorically – since the 1980s. 'Socialist democracy', for its part, has been linked to a reform agenda which broadly contains the following objectives: rejuvenating cooperation with the other "democ-

<sup>16</sup> At the same time, the political debate between so-called liberals and their opponents – neoauthoritarians in the late 1980s and neoconservatives in the years after the Tian'anmen incident – has vanished from scene in the late 1990s. Given the political constraints imposed by Chinese authoritarianism, especially after the crackdown on the illegal Chinese Democratic Party in late 1998 and thereafter, most liberals have now acquiesced in discussing democracy and political system reform within the parameters of one-party Communist rule. They focus on intra-party democratization as a forerunner to more elite-driven political reform (extending to the wider society) and abstain from openly demanding institutional change targeting Communist supremacy. For more comprehensive accounts of intellectual discourses on democracy and political reform in post-Tiananmen China see Merle Goldman, "Politically Engaged Intellectuals in the Deng-Jiang Era: A Changing Relationship with the Party State", in: *China Quarterly*, No. 145, March 1996, pp. 35-52; Thomas Heberer, *The Dilemma of Political Reforms in China* (in German), Project Discussion Paper No. 21/2002, University of Duisburg-Essen, pp. 17-21; Thomas Heberer/Nora Sausmikat, "Political Discourses, Intellectuals and Political Change. Discourse Change in post 1998 China and its Implications" (in German), in: *ASIEN*, Nr. 82, January 2002, pp. 35-60; Ding Yijiang, "The Conceptual Evolution of Democracy in Intellectual Circles Rethinking of State and Society", in: Zhao Suisheng, *China and Democracy. The Prospect for a Democratic China*, New York, London (Routledge) 2000, pp. 111-140; for a thought-provoking critique of contemporary Chinese intellectuals' depoliticization only covered by their flawed conceptualization of 'enlightenment' and modernity, see Ben Xu, "Postmodern-Postcolonial Criticism and Pro-Democracy Enlightenment", in: *Modern China*, Vol. 27, No.1. January 2001, pp. 117-147.

<sup>17</sup> The objective of "building a socialist democracy with Chinese characteristics" was written into the 1982 state constitution. For an account of the Chinese discourse on the concept of 'socialist democracy', linking it to the system of People's Congresses (as done most often), see Du Lun, *Perfection of the 'Socialist Democracy with Chinese Characteristics'* (in German), Project Discussion Paper No. 8/2001, Institute of East Asian Studies, University of Duisburg-Essen.

parties", rationalizing the division of labour among government agencies, developing a modern cadre management system, establishing new inspection mechanisms to oversee cadre performance, introducing grassroots self-government, and developing a modern legal system.<sup>18</sup> In this context, Zhao Suisheng has noted that

the direction of political reform taken and discussed inside China is rather different from the democratization that has been pushed by outside pro-democracy activists, including Chinese dissidents. In fact, when Chinese government officials and some Chinese scholars and think-tank analysts talk about political reform, they are not proposing to democratize the polity but to make the single party rule of the Chinese Communist Party (CCP) more efficient or to provide it with a more solid legal base. They do not believe that the Western style of democracy is a feasible or, for that matter, desirable option for China, at least in the foreseeable future. Instead, they have looked upon political liberalization without democratization as an alternative solution to many of China's problems related to the extant authoritarian system.<sup>19</sup>

Partaking in this seemingly more pragmatic political thinking, Pan Wei's proposal of implementing a 'consultative rule of law regime' is of special concern.<sup>20</sup> This author, who has been branded a 'neoconservative thinker' by Western China scholars, gained both domestic and international attention in recent years for his outspoken and

<sup>18</sup> Victor N. Shaw, "Mainland China's Political Development: Is the CCP's Version of Democracy Relevant?", in: *Issues & Studies*, Vol. 32, No. 7, July 1996, pp. 59-82 (79-81). Most visibly, the reform agenda resulted in a dual structure of party leadership materializing in the post-1989 era: The Communist Party relinquished its role as a mobilizing force in economic and social institutions at the local level and restricted its power to retaining ultimate control over all government bodies. See Zhao Suisheng, "Political Reform and Changing One-party Rule in Deng's China", in: *Problems of Communism*, Vol. 44, No. 5, September-October 1997, pp. 12-21. The necessity of continuing political reform was once again emphasized by Jiang Zemin in his farewell report to the 16<sup>th</sup> CP National Congress in November 2002, when he stressed, among other issues, the extension of grassroots democracy, the improvement of the socialist legal system, deepening administrative restructuring and the reform of the cadre and personnel management systems. See <http://www.china.org.cn/english/features/49007.htm> (accessed on June 7, 2004). Although there was much speculation that Jiang's successor Hu Jintao might embark on new and more courageous reform policies going beyond the current limits of 'socialist democracy', this has not happened so far.

<sup>19</sup> Zhao Suisheng, Political Liberalization without Democratization, p. 334. As has been said before, not all intellectuals necessarily share these views. Uncompromising liberals, in spite of being marginalized (if not harrassed or exiled), stick to their demands of more political participation by institutionalized (multi-party) competition. On the other hand, non-technocratic social democrats, a relatively new brand of intellectual trendsetters, give "an ideological justification to China's emerging economic and political reform programme". See Hans Hendrischke, "The Chinese Discourse on Social Democracy", in: *China Review 1996* (Hongkong), pp. 95-124 (96).

<sup>20</sup> Pan Wei, "Toward a Consultative Rule of Law Regime in China", in: *Journal of Contemporary China*, Vol. 12, No. 34, 2003, pp. 3-43. I will mainly refer to this article for making my argument more comprehensible to those who do not read Chinese. For Pan Wei's Chinese articles on the topic discussed see "Fazhi yu weilai Zhongguo zhengti (Rule by/of law and the future of China's political system)", in: *Zhanlue yu guanli*, No. 5, 1999, pp. 30-36; "Minzhu yu zhengzhi: xiangfu er xiangcheng (Democracy and Politics: complementing each other)", in: *Zhanlue yu guanli*, No. 2, 2001, pp. 116-120. The Chinese version of the English article quoted here has recently been republished as the first chapter of an essay collection carrying the same title: *Fazhi yu "minzhu mixin"* (Rule by/of law and the "Democracy Superstition"), Hongkong (Hong Kong Press for Social Sciences Ltd.) 2003. Pan Wei maintains a website containing a complete collection of his articles both published and unpublished which can be accessed via <http://www.sis.pku.edu.cn/panwei/>.

provocative views on the inadequacy of liberal democracy for present-day China and the future of political reform in the PRC. A U.S.-trained political scientist with a Ph.D. from the University of California in Berkely gained in 1996, he has become alienated from much Western thinking on China<sup>21</sup> and finally returned to his country to take up a position as professor at Beijing University's prestigious School of International Studies.

Pan Wei's reform approach does not speak of 'socialist democracy' at all nor does it unspecifically claim the necessity of political reforms along the official line. Much more, he provides us with a democratic theory translated into a concept of one-party rule that combines elements of the Western liberal tradition with – as he says – the Chinese tradition of meritocracy. His vision of erecting an institutional framework which is based on limited participation and the absolute authority of the law is indeed noteworthy. It transcends to some extent the official understanding of 'socialist democracy' by theorising on one of its most prominent aspects, i.e. the implementation of a sound legal system. At first sight, this seems to be the essence of what the Communist leadership promises nowadays in terms of reforming Chinese authoritarianism and establishing a socialist rule of law regime. Pan Wei's ideas therefore deserve more attention than usually accredited to reform proposals by academics who do not straightforwardly question one-party rule and, hence, are quickly discredited as political opportunists in the West.<sup>22</sup>

This article reconstructs the basic line of Pan Wei's argument, scrutinizes the theoretical underpinnings of his approach to democracy and the rule of law, and – behind this background – examines the conceptual consistency of his 'consultative rule of law regime'. A critique of his negative political comments and judgements on democracy and democratization in other countries (such as Russia, India, and Taiwan) are of minor importance here.<sup>23</sup> It is held that Pan Wei's proposal might work given certain preconditions which, taken as a whole, are probably too much to have for securing Communist one-party rule *in the long run*. However, there is considerable space for the CP regime to gain new legitimacy for quite some time if only some elements of Pan Wei's concept are rigorously implemented. Most importantly, these are the introduction of new modes of direct political participation and the further development of the legal system to contain the power of the cadre bureaucracy. Pan Wei's consultative rule of law regime might indeed be the most realistic variant of democracy in China that one can hope for in the nearer future.

<sup>21</sup> Personal communication, August 2004.

<sup>22</sup> As a matter of fact, Pan Wei is highly critical of present-day Communist rule, even if he rejects the Western concept of liberal democracy for China. He demands a thorough rejuvenation of the Party and the institutionalization of a free press and independent consultative bodies to keep the Party in check. Consequently, he is as much criticized by Western and Chinese liberals as by many party officials who are utmostly suspicious of any external control over the CP.

<sup>23</sup> For such a critique see Edward Friedman, "A Comparative Politics of Democratization in China", in: *Journal of Contemporary China*, Vol. 12, No. 34, 2003, pp. 103-123.

## II The Argument

The current pressure of political reform is again being strongly felt inside China. Unlike 1989, the current pressure is not derived from an eagerness to speed up marketization, but from strong resentment against widespread corruption. [...] The rampant corruption stems from the contradiction between China's newly installed market system and the party's unchecked power. [...] As the average Chinese people know little about polity options, what they mainly care about is an effective cure of corruption, so as to guarantee fair competition of markets.<sup>24</sup>

This blunt statement is Pan Wei's point of departure from which he develops his concept of 'consultative rule of law', set against the unspecific official terminology of 'communist leadership', 'democracy' and 'rule of law' in order to explain what political reform in today's China precisely is and *should* be about. Pan Wei starts by separating democracy from the rule of law. Democracy is understood by him in accordance with the Schumpeterian definition of the term as "a polity featuring *periodic elections of top leaders by electorates*".<sup>25</sup> He concedes that this is a narrow definition that excludes many "good things", i.e. additional normative elements as the rule of law, the respect for human rights, the freedom of speech etc. However, Pan Wei is certainly not the only one to see sense in a focus on the core characteristic of democracy that makes it distinguishable from autocracy, i.e. regular elections. For him, only then will the concept of democracy be rescued from becoming an ideology and remain analytically "manageable". Most importantly, the author claims that all the "good things" of democracy can be obtained without the elections of top leaders".<sup>26</sup>

The 'rule of law', therefore, must be distinguished from the 'rule of the people', as "one could exist without the other".<sup>27</sup> The ensuing enumeration of differences between democracy (as defined by Pan Wei) and the rule of law is most telling concerning the second of five points mentioned: While "democracy is to authorize a few elected with the power to rule", the rule of law regulates a government and operates through the institutionalization of checks and balances within the political system that "reduce the leader's accountability to electorates and increase their accountability to the Law".<sup>28</sup> Clearly, the subjection of the government to the Law is more important to the author than the election of a few to govern. Also, as he adds, democracy is about majority while the rule of law is about meritocracy:

While partisan interests dominate the former game, the impartial loyalty to the Law dominates the latter. Professional civil service and judges are not living in a vacuum, they cannot be impartial, but they are much more impartial than openly partisan

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<sup>24</sup> Pan Wei, *Toward a Consultative Rule of Law Regime in China*, pp. 3-4.

<sup>25</sup> Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 7.

<sup>26</sup> Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 8.

<sup>27</sup> Ibid.

<sup>28</sup> Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 9.

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representatives due to how they come to power and what they are held accountable to.<sup>29</sup>

This implies another important distinction: Whereas democracy is based on elected law-making bodies, rule of law is grounded on "non-elected law enforcement offices, mainly civil service and the judiciary".<sup>30</sup> Most of the ensuing arguments that the author presents in favour of the rule of law are centered on his observation that all essentials of so-called liberal democracy – freedom of election, speech, press, assembly, and association – are ultimately based on the correct application of the Law which depends on an impartial civil service and an independent judiciary. In that sense, those rights can be protected "even without periodic elections of leaders":

The key lies in checks and balances, in how independent the power of the non-elected law enforcement agencies is, in how they are made accountable to the concerned laws instead of the elected leaders, elected offices, or influential/powerful 'civil societies'.<sup>31</sup>

According to Pan Wei, only the rule of law can solve the core problem of China's political system, i.e. corruption. Institutionalizing the necessary checks and balances within the government structure, recruiting officials with "higher moral standards", and restraining public officials from misusing their authority for private gains does not require *electoral* democracy.<sup>32</sup> However, it certainly requires *liberal* democracy, with liberty "obtained through the supreme authority of the Basic Law, not through imposing the will of the 'majority' on the minority".<sup>33</sup> Consequently, the rule of law stands as the core ingredient of liberal democracy which, for its part, is a "mixed regime" combining the rule of law and elections of the many. Such a regime "could be a parliamentary democracy supplemented by rule of law, or a rule of law supplemented by parliamentary democracy".<sup>34</sup> For Pan Wei, it is the second option already installed in Hong Kong and Singapore that should also be implemented in China. To

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<sup>29</sup> Ibid. In a later sequence, Pan Wei's theory culminates in contending – analytically correct, given his former definition of democracy – that "democracy produces the government, but is unable to force the government to be law-abiding everyday. Rule of law does not aim at governing the people; it aims at governing the government. [...] Only power can effectively control power; and only government power can effectively control government power" (p. 10).

<sup>30</sup> Ibid.

<sup>31</sup> Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 11. Even more outspoken is the following quotation: "Without being checked and balanced by independent judiciary and law enforcement, even elected representatives could become merely money and/or power suckers. Among many new democracies today, elected leaders often hold the kind of power that is nearly 'absolute' during their tenure, laying a heavy hand on judiciary and civil service. It is not uncommon to believe that winning a greater electoral majority means people's endorsement of the leader's greater power" (pp. 11-12).

<sup>32</sup> Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 13.

<sup>33</sup> Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 14.

<sup>34</sup> Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 15.

put it differently: "The rule of law could be created with little democracy" (though this would still be a liberal democracy).<sup>35</sup>

As the author claims, such an arrangement corresponds to the Chinese social and cultural context (closely linked to Chinese history which the author sketches skillfully to make his point) in which conflict and a concept of justice, derived from the institutionalized counterbalancing of powerful groups within society, are not valued the same way as in the West. In China "non-elected officials tend to enjoy more respect than the elected ones, as long as they govern according to the principle of justice".<sup>36</sup> And "for the average people, fair law enforcement by a neutral civil service, or *gong zhenglian ming* in Chinese, is all that justice means".<sup>37</sup> It is important to note here that Pan Wei in an earlier section explicitly – and rather offensively – criticizes the Chinese government's ideology of centralizing power which is legitimized by the notion of democracy in a 'pure' sense (socialist democracy), i.e. a democracy that does not provide for the rule of law via an *institutionalized* separation of power.<sup>38</sup> To the contrary, "the government power must be separated, so as to build an effective mechanism of checks and balances, and make the Law above anyone or any one party in power".<sup>39</sup> Although elections may take place in Pan Wei's rule of law system, they would be

no more legitimate than examinations and independent evaluations. People and people's representatives should be intensively consulted, but the regime would not be the rule of people's representatives, it would be rule of law supplemented by representative democracy. The proposed regime is made accountable to the people's demands by effective and impartial law enforcement by the representatives' right to approve laws, by extensive social consultation arrangements, and by the freedoms of speech, press, assembly and association.<sup>40</sup>

With his theory explained, Pan Wei then turns to the institutional set-up of his rule of law-cum-democracy approach which he calls 'consultative rule of law'. Such a regime should be based on six pillars:

- *a neutral civil service system* grounded on the principles of examination, performance evaluation, seniority, and life employment

<sup>35</sup> Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 21. At the same time, the author warns against a 'pure' rule of law regime that has "fatal shortcomings". Such would be "either a stagnant regime, allowing little change, or it could become the government of judges/civil servants". See Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 17.

<sup>36</sup> Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 18.

<sup>37</sup> Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 31.

<sup>38</sup> "When all the power belongs to the people's representatives, China could legally maintain the one-party rule as long as the Party enjoys a dominant majority in the parliament. Many fascists came to power through fair elections; and the most important signal of their rise was to disable some key constitutional rights of individual liberty, in the name of 'majority people's desire'. The real enemy of autocracy, therefore, is not democracy, but rule of law." See Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 20.

<sup>39</sup> Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 33.

<sup>40</sup> Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 34.

- *an autonomous judicial system* which checks the civil service, but is also subjected to public evaluation and "an internal mechanism of checks and balances" to avoid abuse of judicial power
- *extensive social consultation institutions*, especially the People's Congresses at the national and provincial levels, "supplemented by a wider system of social consultation"<sup>41</sup> with the objective to approve or disapprove laws proposed by the civil service (and reviewed by a Supreme Court)
- *an independent anti-corruption system* modelled along the lines of Hong Kong's and Singapore's anti-corruption agencies
- *an independent auditing system* to control the civil service and
- *the freedoms of speech, press, assembly, and association* which "do not constitute government institutions, but [...] constitute a standard and critical principle that all government branches must observe".<sup>42</sup>

For Pan Wei, a rule of law regime based on these pillars combines most fruitfully both Chinese and Western elements, as it

receives from China the tradition of a civil-service-based structure with the consultative co-governance with gentries, while discarding the emperor's absolute power on the very top, as well as the tradition of abstract moral principles. It also receives from the Western tradition legalism, but reduces the current Western emphasis on the legitimacy of power competition among social classes and groups. It is innovative because it is a rule of law regime supplemented by democracy instead of a democracy supplemented by rule of law.<sup>43</sup>

The author advises to implement his regime in five consecutive steps: (1) A campaign to mobilise more discussion on the rule of law, followed by (2) an official announcement that the Party's 'central work' has shifted from 'economic construction' to 'building rule of law'; (3) rigorously separating the Party from the government, before (4) building the institutions of checks and balances; and (5) obliging all public officials to observe and respect the four freedoms of speech, press, assembly, and association.<sup>44</sup> According to Pan Wei, such an arrangement ensures for the first time that the Party "would no longer control and administrate the personnel affairs inside the government, and would not interfere in the government's routine work of law enforcement".<sup>45</sup>

<sup>41</sup> The author mentions Hong Kong's social consultation committees (SCC) as a possible blueprint of such mechanisms. The SCCs are integrated in each governmental department and consist of retired civil servants, citizen representatives and concerned professionals. See Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 36.

<sup>42</sup> Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 37.

<sup>43</sup> Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 38.

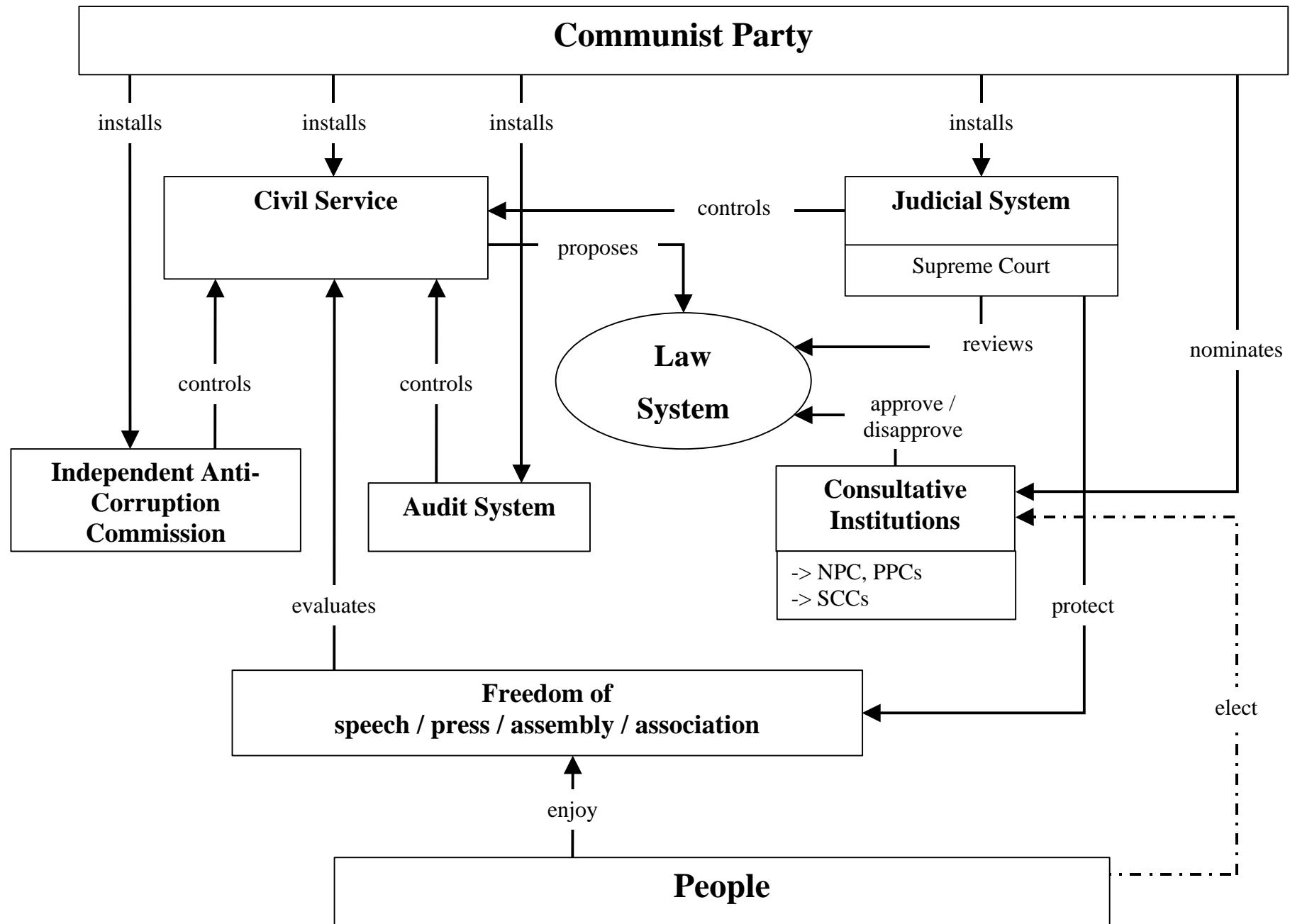
<sup>44</sup> Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 38-39. In one of his Chinese articles, the author has suggested a time frame of 30 years until his institutional set up and the rule of law should fully operate China's political system.

<sup>45</sup> Ibid.

**Figure 1: Pan Wei's 'consultative rule of law regime'**

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It would "only nominally 'lead' via its members inside a neutral, honest, and law-abiding civil service", as is (allegedly) the case of Singapore's People's Action Party.<sup>46</sup> The fact that one-party rule is not abolished but just reduced in scope and intensity is one of the main reasons given by Pan Wei why he deems his 'consultative rule of law regime' feasible in present-day China. The Party would be "the right instrument" to build the rule of law, although Pan Wei admits that he is not sure that it will be going down this way. However, as the people demand effective corruption control and a modern polity, political system reform will be necessary. While "real democratic reform" (terminating one-party rule) is impossible – and because the socio-economic circumstances are receptive – the author sees "quite a number of chances" that the Party will eventually engage in establishing what he calls a consultative rule of law regime.<sup>47</sup>

### **III Problems of Consistency and Practicability**

The backbone of Pan Wei's concept is his law-abiding and impartial civil service. The Party is assigned the important task of installing highly qualified civil servants dedicated to the uninterested application (and ongoing development) of the Law, to install professional auditors and an efficient anti-corruption system to check the civil service, and to establish independent courts which control the cadre bureaucracy and review all laws. The Party provides and guarantees, therefore, all institutions necessary to maintain a transparent and rule-bound system of mutual linkages. Laws are approved (or disapproved) by the People's Congresses at their respective levels, while it is the civil service which proposes these laws. The people come into play by evaluating the performance of the civil service via constitutionally guaranteed rights of free speech, assembly and association. They may elect a set of consultative institutions – most importantly the NPC and the PPCs – which approve or disapprove laws (but do not initiate them). However, Pan Wei makes it very clear that contrary to the PRC constitution, which claims that the NPC has 'supreme power' within the political system, "legislative power is actually in the hands of the Communist Party, and the People's Congress is at best a consultation institution".<sup>48</sup> This implies that the Communist Party dominates the election process of those institutions, especially by controlling or "supervising" the nomination of candidates. As a matter of fact, this interference guarantees the consultation functions of the People's Congress which otherwise would make an unwanted "revolutionary change to democracy".<sup>49</sup>

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<sup>46</sup> Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 39.

<sup>47</sup> Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 43.

<sup>48</sup> Pan Wei, *Toward a Consultative Rule of Law Regime in China*, p. 36. The consultation function of the People's Congresses makes sure that the regime becomes "accountable to various social demands", though it would not "surrender to those demands" (*ibid.*).

<sup>49</sup> *Ibid.*

How sustainable is such a system, as much in theoretical as in practical terms? Compared to Western liberal democracy, it is first of all striking that in Pan Wei's system the *demos* is subjected to the Party which – after the latest ideological twist spelled out in the 'Three Represents' (*sange daibiao*) – now *de facto* represents the whole Chinese nation.<sup>50</sup> In fact, there is not theoretical inconsistency in giving the Party such a prominent role if it just executes the people's will while the people can still give input by substantial consultation. Certainly, though, this is a quite paternalistic and idealistic approach to modern politics which takes for granted that the Party knows what is "good" for the people. It also (intentionally) ignores much historical evidence of the failure of one-party states to keep the people's interest in pace with the party line. It sounds strange to Western concepts of government that Pan Wei believes in the impartiality of a civil service installed by a government in a one-party state. This seems to reflect a deep but empirically ungrounded belief in technocratic expertise as politically "de-contextualized". No administrative decision, however, is taken impartially in the sense that it can be set free from the necessity to decide on resource allocation and specific policies in very normative terms, thereby automatically touching upon divergent interests in society which have to be mediated. Divergence of interests, for its part, is not generated by democracy in the first place, as Pan Wei underlines in various passages of his text, but by socio-economic modernisation that is strongly affecting China's political system.

Pan Wei seems to have factured in these objections by bestowing the right of evaluation to the people who are free to express their views and (maybe) even to launch protests against civil servants failing in their jobs. Moreover, the people can turn to the judiciary which controls the civil service by subjecting it to the Law. This could work as long as the civil service then reformulates the laws to make them more "representative" and acceptable. But what happens if not? The system might still work if the Party resolutely replaces "bad cadres" by new ones and does not exempt any civil servant from punishment because of "superior political considerations". It is obvious that only then could it prove that it represents the people's interest and that it does everything to fill in the gaps of regime legitimacy that might occur in the process of making laws and governing the country. But once again, what happens if the Party does not act upon the results of consultation with the people?

Most thrilling in Pan Wei's thinking is the analytical distinction between the rule of law and democracy by introducing a narrow definition of democracy and a very positivist rule of law theory. Law is assigned the highest authority. By way of definition, it must be enforced impartially and according to fixed procedures, "with the

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<sup>50</sup> According to the 'Three Represents' officially announced by Jiang Zemin on July 1<sup>st</sup> 2001 (and written into the Party Charter during the 16<sup>th</sup> CP National Congress in late 2002) the Communist Party represents the development of the advanced productive forces, China's advanced culture, and the fundamental interests of the overwhelming majority of the people.

gap between the law on books and law in practice narrow".<sup>51</sup> It remains doubtful, however, if law enforcement can deliver justice in Pan Wei's system. In Western liberalism, this is achieved – at least at the theoretical level – by the democratic accountability of those institutions which are exclusively accredited the authority to make laws: the parliament or legislative assembly. For Pan Wei, however, justice is delivered by an independent civil service drafting and submitting laws to be "fine-tuned" by the consultation process in the NPC which must approve (and can disapprove) those laws. While the *demos*, consequently, cannot make laws itself, it still participates in the process of making "good laws" introduced by the civil service. If everything goes fine, this might work out quite well. But the circumvention of the *demos* as the originator of the law can (and often enough did) come down as a heavy burden on the whole system which fully depends on the quality of its civil service, its judges, and on the foresight of the Communist Party to choose just among the best of cadres to assume government responsibility – while dismissing those who are not up to their jobs. It is against the logic of (Western) democracy and ignorant of much historical experience if those making the laws are not structurally restrained by the people and their representative institutions. Pan Wei's consultation regime may be able to avoid "bad laws", but it lacks the teeth to do so as compared to those systems in which the powerful face the people in regular elections.

At this point, it should be clear that Pan Wei's consultative rule of law regime can be called both theoretically consistent or flawed, depending on the perspective that one takes regarding the paternalist role of the Communist Party. If one subscribes to the idea that the Party eventually "knows best" and, hence, trusts in the mode of self-correction within a system of one-party rule, there is no reason to doubt at the practicability of Pan Wei's consultative rule of law regime. However, the Party then assumes exclusive responsibility for providing all pillars of such a system and at the same time must guarantee the functionability of those mutual checks and balances which make the system operate. Moreover, the Party must continuously generate a big pool of professional, highly qualified cadres and ensure the organizational and financial independence of China's judges. The current degree of corruption which is rampant throughout all cadre ranks and the continuing dependence of the courts on

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<sup>51</sup> Randall Peerenboom, "A Government of Laws: democracy, rule of law and administrative law reform in the PRC", in: *Journal of Contemporary China*, Vol. 12, No. 34, 2003, pp. 45-67 (51). Peerenboom distinguishes between thin and thick theories of rule of law. A thin theory "emphasizes the formal or instrumental aspects of rule of law – those features that any legal system allegedly must possess to function effectively as a system of laws, regardless of whether the legal system is part of a democratic or non-democratic, capitalist or socialist, liberal or theocratic society. [...] In contrast to thin theories, thick theories incorporate into rule of law elements of political morality such as particular economic arrangements (free-market capitalism, central planning), forms of government (democratic, single-party socialism) or conceptions of human rights (liberal, communitarian, 'Asian Values'). Thick theories of rule of law can be further subdivided according to the particular substantive elements that are favored" (pp. 51-52). Peerenboom criticizes Pan Wei of having presented a concept which is underdeveloped and theoretically flawed even compared to thin theories of rule of law (*ibid.*).

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the governments at their respective administrative levels (concerning the nomination of judges, their salaries and social benefits, and their job security) do not allow to be overly optimistic that the Party can manage all this.<sup>52</sup> Besides this, the fact that "bad cadres" can only be removed by the Party's will must be mistrusted as an adequate means to bring about good laws and good government.

The same is true with respect to necessary "quality controls" of the anti-corruption agency and the auditing system proposed by Pan Wei. As the officials working in these institutions are Party members, will they be able (or willing) to confront their fellow Party members in the civil service in case of conflict? This all comes down to the most challenging question to Pan Wei's ideas: Can his checks and balances work properly, if the corresponding institutions are "stocked" with cadres who must be interested in the minimisation of frictions within the political system, because only then the authority of the Party is not questioned and they can maintain their privileged positions?

It becomes clear that Pan Wei's understanding of the rule of law is rather simplistic and certainly instrumental. Law does *not* rule if those who govern are not subjected to meaningful constraints. As Pan Wei's civil service enjoys far-reaching autonomy from the *demos*, it is still the Party which dominates the system and guarantees its functionality. Certainly enough, the Party's official terminology to promote a concept of *yifa zhiguo* – to govern the country *by* law – has never permitted any doubt where the ultimate authority of political (and legal) power is and should be situated in the PRC. Pan Wei does not and cannot challenge this premise. Therefore, it may be of limited relevance to point at the theoretical inconsistencies of his consultative rule of law regime – albeit it is quite necessary to correct his sometimes weird understanding of democracy at work in Russia, India or Taiwan. Most importantly, drawing on the Hong Kong and Singapore cases as the two most prominent and telling examples to prove that the rule of law – as understood by Pan Wei – is possible without democracy, ignores the very particular circumstances of those two entities. It is certainly challenging to point at Hong Kong's and Singapore's civil services which still enjoy an international reputation for high efficiency and impartiality. But politicians in each of these entities are aware that the public acquiescence with the lack of democracy not only depends on the requirement that civil servants perform well but also that Hong Kong and Singapore manage to maintain their prosperity in an ever more volatile international economy. It remains debatable if Hong Kong can do without more electoral democracy in the future, given the obvious dissatisfaction of the public with the post-colonial government's handling of the economy; and if Singapore's Peoples' Action Party will be able to preserve its elitist approach to

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<sup>52</sup> As Peerenboom has noted, "even if assuming Pan's five-pronged reform agenda is implemented, by itself it will not be sufficient. A wide range of other administrative and legal reforms are required, and legal reforms must be complemented by changes in the political, social and economic realms." See Randall Peerenboom, *A Government of Laws*, p. 58.

government once the socioeconomic divide in the city state confirmed occasionally by observers becomes more salient.<sup>53</sup> Finally, it is at least courageous to suggest that China, a country with continental dimensions, could be administered in the same way as two urban metropolises. The phenomenon of corruption and bureaucratic intransparency plaguing the PRC has much to do with administrative complexity which is certainly easier to tackle in a city state environment.

#### IV Outlook: Rule of Law vs. Democracy

How do we make sense of Pan Wei's consultative rule of law regime? Is it only an apologetic effort to legitimize one-party rule in a modern world where democracy still enjoys discursive supremacy when political reform is at stake? Does it grasp and conceptualize political change in the PRC that is actually taking place and might one day evolve into liberal-democratic rule along the Western model? Do we face a concept of government here that is sustainable, at least in the Chinese context? And how do we qualify the current degree of legal reform in the PRC in terms of establishing the rule of law as postulated by the Communist leadership? Concerning this last point, Guo Sujian – along with others – has refuted the idea that Chinese legal and political reform has approached the rule of law so far:

The government has relaxed its leash to a certain degree on the legal profession and practices in civil and business laws with an increased number of law offices, legal advisors, and legal practices. Post-Mao legislative reform has rationalized the people's congress in many regards and has brought about some organizational changes, including the expanded role of the people's congress, the strengthened NPC Standing Committee and its expanded scope of action, increased specialization, more procedural regularity, full-time staff, and improved internal organization. However, all these changes or adjustments of action means are functional – they maintain the hard core of the communist totalitarian regime and serve the purpose of policy change defined by the party line.<sup>54</sup>

Although the Chinese political system can hardly be called totalitarian without devaluating totalitarianism's analytical usefulness, Guo Sujian's uncompromising verdict may also be valid for the rule of law regime promoted by Pan Wei. However, even critical analysts like Randall Peerenboom can come to a different conclusion

<sup>53</sup> Government legitimacy in Hong Kong has become extremely precarious in 2003 after the July 1<sup>st</sup> mass demonstrations against new security laws drafted in accordance with Article 23 of the Basic Law. However, a series of administrative failures amidst a protracted economic crisis had undermined the people's confidence in the SAR leadership long before. See e.g. Ming K. Chan, "Introduction: The Hong Kong SAR in Flux", in: Ming K. Chan/Alvin S. So (eds.), *Crisis and Transformation in China's Hong Kong*, Armonk/N.Y. (M.E. Sharpe) 2002, pp. 3-20. Singapore's People's Action Party has likewise felt challenged by (very modestly) falling approval rates in national elections at various times in the 1980s and 1990s, and is regularly criticized from outside for its authoritarian regime in the city state. However, since the economy has remained quite sound even during the Asian financial crisis, the PAP's performance-oriented legitimacy has not yet suffered too much, as it seems.

<sup>54</sup> Guo Sujian, Post-Mao China: The Rule of Law?, p. 116.

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when the significance of China's legal reforms for long term political development and the rise of genuine rule of law in the PRC are under consideration:

[...] rule of law is a function of institution building and the creation of a culture of legality. Progress has been made and continues to be made on both fronts. Now that the genie is out of the bottle, legal reformers will continue to push for more independent and authoritative courts, as will members of the judiciary, if for no other reason than path-dependent institutional self-interest. Political and legal reforms tend to take on a life of their own, with institutions bursting out of the cages in which they were meant to be confined.<sup>55</sup>

Hence, Chinese legal reforms, as we see them today, contribute to a gradual and meaningful change of political awareness and behaviour within the cadre elite and the broader population. If these reforms are judged against the background of other modifications of the Chinese political system initiated by the Party – i.e. strengthening the supervisory functions of People's Congresses, implementing direct elections at the village and (maybe) township levels, introducing new mechanisms of intra-Party participation to enhance transparency and cadre accountability – there is much reason not to be too pessimistic on the perspective of more "voice" and even democratization in the PRC. As becomes very clear by Pan Wei's ambitious endeavour to conceptualize a politico-legal system that allegedly suits China better than the Western model of liberal democracy, this process still empowers the people and will inevitably lead to the bordergate of one-party rule some day. It is hardly imaginable that the development of a legal system can be sustained without the concurrent rise of interest groups which address the rule of law to fight for their political emancipation.<sup>56</sup> The Communist Party will then be confronted with the question of who knows best what is good for the people – the Party or the people themselves. Arranging for a legal system and more political consultation as is suggested by Pan Wei's proposal might indeed give more legitimacy to Communist one-party rule for some time. In that sense, 'consultative rule of law' is feasible. However, this is borrowed time which should be well used to learn how to make the *demos* the ultimate source and authoriser of the Law – instead of being forced to such acknowledgement by the people one day.

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<sup>55</sup> Randall Peerenboom, *A Government of Laws*, p. 61.

<sup>56</sup> As a matter of fact, Kevin O'Brien and Li Lianjiang's notion of 'rightful resistance' observed in the Chinese countryside does capture well the rise of a rights awareness among peasants who seem to be more and more inclined to pursue their interests by means of collective action. See Kevin O'Brien, "Rightful Resistance", in: *World Politics*, Vol. 49, No. 1, 1996, pp. 31-55; Li Lianjiang, "Elections and Popular Resistance in Rural China", in: *China Information*, Vol. 15, No. 2, 2001, pp. 19.