

Rethinking “the Third Sphere”: The Dualistic Unity of State and Society in China, Past and Present

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Philip C. C. Huang^{1,2}

Abstract

This article reconsiders the author’s multiple pieces over the years about “the third sphere” between state and society in China, past and present, to explain more clearly its connection with the “centralized minimalism” tradition of Chinese governance, and to summarize multiple positive and negative empirical examples to make explicit how state and society have interacted, complemented, or mutually shaped one another in a dualistic whole. The article examines the logics and mechanisms in that changing third sphere from imperial to modern times, and from the collective era to the Reform era of China. The article includes also a discussion of and dialogue with Li-An Zhou’s theory of “administrative contracting.” The article further attempts to provide a prospective vision for a distinctively Chinese political-legal and political-economic system.

Keywords

centralized minimalism, county magistrates and clerks-runners, administrative internal subcontracting and external subcontracting, semiformal legal administration, degenerative phenomena in the third sphere

¹Law School, Renmin University of China, Beijing, China

²Emeritus, History Department, University of California, Los Angeles, CA, USA

Corresponding Author:

Philip C. C. Huang, 332 Grenola Street, Pacific Palisades, CA 90272, USA.

Email: huang@history.ucla.edu

The two major traditions of social science theory in the modern West have tended strongly toward viewing the state-society duality as a mutually exclusive binary opposite. Classical and neoclassical economic theory has long argued that the state must not “interfere with” the natural workings of the “invisible hand” of society’s market economy, clearly setting up state and market economy/society as opposed entities. Marxist theory has viewed social class relations as the “substructure,” and the state merely the “superstructure,” tending to virtually collapse the state into the social structure, even though at the same time, it has shown strong tendencies toward having the state almost swallow up all of society in the aftermath of socialist revolution. Yet, at the same time, it speaks of the eventual “withering away of the state.”¹ The unspoken logic of Marxist theory is thus also to posit an either/or opposition between state and society. What we need to question is such binary juxtapositions of state and society.

We need to see that state and society in fact interact with, mutually penetrate, and mutually shape one another. Because much of traditional Chinese thinking was predisposed toward viewing dualities in terms of interactive relationships and not as binary opposites, Chinese thinkers might in that respect actually grasp more readily the totality of the relationships between state and society than the two most influential modern Western social science theories. While the conceptual tendency to emphasize just one or another of the binary might very well have stemmed from an effort to simplify and clarify, more often than not it has led eventually, through the application of deductive logic, to produce a consistent theoretical model, to a one-sided formulation, often followed by the idealization of that formulation, and for some, even the equating of that idealization with actual reality.

In Max Weber’s theorizing, for example, we can see that, even though he the historian occasionally broke out of his own constructions as a theorist of simplified “ideal-types,” and even though he suggested that the Chinese legal tradition needs to be understood as something of a paradoxical “substantive rationality” made up of both the substantive and the rational ideal-types, he nevertheless in his narrative-analysis of the world’s major legal traditions came in the end to a simplified juxtaposition between the “formal rational” Western ideal-type and the “substantive irrational” ideal-type of all other civilizations, reducing his scheme to just a simple binary opposition favoring the “formal rational” ideal-type (Weber, 1978: chap. 8). Precisely for that reason, we can say that his thinking shows both a deep-seated idealism and a strong Western-centrism (Huang, 1996: chap. 9; Huang Zongzhi, 2014b: v. 1: General Preface).

We can see the same pattern at work in Weber with respect to the political system. Although he the historian put forward the paradoxical notion of “patrimonial bureaucracy” for conceptualizing China’s dualistic combination of a

patrimonial ruler with a (modern) bureaucracy, he the theorist still settled in the end for the simplified juxtaposition of the ideal-type of “patrimonialism” against that of modern Western “bureaucracy” to juxtapose China and the modern West, showing once more his disposition toward one-sidedness with respect to dualities as well as Western-centrism (Huang, 1996: chap. 9; Huang Zongzhi, 2014b: v. 1, General Preface).

Classical and neoclassical economics, of course, has shown the same conceptual tendencies as Weber to uphold the modern West as representing the truly ideal ideal-type, and the non-West as the opposite. Moreover, it has been further ideologized in recent decades by neoconservative political power.

Those conceptual tendencies should be seen today as major obstacles to the construction of theories that accord with reality, especially Chinese reality. This article proceeds from such a basic point of view, to sort out the actual relationships between the Chinese state and Chinese society, past and present, to differentiate among accurate and inaccurate conceptualizations, and to attempt to develop theoretical concepts that better fit Chinese realities. The emphasis is on the interactive relationships between state and society. The purpose is to conceptualize more accurately the changing relationship between state and society in imperial, modern, and contemporary China.

We need first to clarify some fundamental empirical facts in the relationships between state and society—facts that have been missed or misunderstood on account of the influence of major Western theories—in order to develop more accurate conceptualizations. The emphasis here is on the political-legal and political-economic systems, including the system of governance, written law in both its moralistic statutes and its more practical substatutes, the justice system in both formal codified law and informal community mediation and their mutually interactive relations, and, finally, the dualistic yet unified whole of the state and society/economy.

It was precisely the long-term interactions between state and society that have given rise to the third sphere that is the focus of this article, neither simply the state’s formal system nor simply society’s informal system, but rather their interactions and the distinctive patterns and logics therein. Those interactive relationships in the third sphere, it will be shown, have been the more pervasive because of the Chinese tradition of centralized minimalism—of highly concentrated central power combined with a vast small peasant economy, which resulted in strong tendencies toward minimalist governance both to guard against parcelization of centralized imperial power and to maintain governance at minimal cost to the state. This article will seek to demonstrate that easily overlooked basic reality and logic of the relationship between the Chinese state and Chinese society-economy-law; it will also point to an alternative direction for conceptualizing and studying the West itself.

The Third Sphere in Chinese History

The historical sources available for the late Qing and the Republic are very different from those for earlier periods: for example, for law, the sources for earlier periods are limited largely to those of “representation” (discourse or legal text), with an occasional recounted case example here and there, but not actual case records of the actual operation of the courts. Those sources can in turn be checked against twentieth-century sociological, anthropological, and economic field-investigation materials. We can thereby come to know about the actual operations of the legal system better and more precisely than for any earlier period. Aside from the case records, our best sources on the basic levels of society are the economic- and social-anthropology surveys carried out by the research offices of the Japanese South Manchurian Railway Company (Minami Manshū tetsudō kabushiki kaisha 南满洲铁道株式会社) in the late 1930s and early 1940s. They include systematic records on individual farm households of many villages using the (Marxist) categories of “productive forces” (land, farm implements, farm animals, fertilizer, technology, population, and so on) and “production relations” (landownership, rent and labor relations), in sixteen systematic tables. On that basis, we can see far more concretely the actual living conditions of the most basic levels of society. They include also detailed records on commodities and markets, and also on village governance, mediations of disputes, and numerous other types of village institutions. We can use those materials to form complete and reliable pictures of peasant households at the most basic level of society. What this author has focused on especially are those about farm economy and village governance, followed by systematic attention also to the workings of the state’s formal legal system and also of informal mediations of disputes among the people.

Moreover, this author obtained the opportunity in 1983, through the U.S. Committee on Scholarly Communication with the People’s Republic of China, to be a member of the first team of American scholars to undertake field research inside villages. In all, I visited Huayangqiao village, Songjiang county, a total of eight times over a period of thirteen years (in 1983, 1984, 1985, 1988, 1990, 1991, 1993, and 1995) for research stays of two to three weeks each time, using the same method as the best researches of the Mantetsu (systematic interviews on particular subjects, but always ready to pursue any unexpected discoveries, with several of the most knowledgeable villagers, usually from 08:00 to 11:30 in the morning and 02:00 to 05:00 in the afternoon, for a total of more than 200 sessions over the years). On that basis, I sought to link up the field investigations with the written materials, to check them and to try to grasp and understand the nature of the changes.

These formed the bases for the author's two matured monographs, *The Peasant Economy and Social Change in North China* (1985) and *The Peasant Family and Rural Development in the Yangzi Delta, 1350-1988* (1990), followed by the three volumes about the justice system from the Qing down to the present: *Civil Justice in China: Representation and Practice in the Qing* (1996), *Code, Custom, and Legal Practice in China: The Qing and the Republic Compared* (2001), and *Chinese Civil Justice, Past and Present* (2010). What follows is first a summary of the major findings pertaining to the subject at hand.

Village Self-Governance and Dispute Resolution

With respect to the actual practice of village governance and dispute resolution, what I learned is that, on the North China plain, almost all villages showed a substantial degree of self-governance. Almost every village had a group of people identified as association heads 会首 or leaders of affairs 首事, who led in community services and security, seasonal and holiday activities, religious ceremonies (and where there was a temple, also temple affairs), and when needed also attended to tax matters and self-defense (in the bandit-ridden countryside of the Republican period, some of the villages investigated even had Red Spears associations 红枪会). When disputes arose among villagers, one or several (in case of major disputes) of these leaders would handle the mediation among the disputants (Huang, 1985: 237–48). In the Yangzi delta's hamlets 埭, generally grouped around descent groups, several of which might together form a "natural" or "administrative" "village," there was not the same nomenclature for village leaders, and leadership in village affairs, including the mediation of disputes among villagers, was filled either by the heads of descent groups or the most respected member(s) of the community. On the whole, both North China and the Yangzi delta had highly developed village self-governance and a distinctively Chinese system of community mediation.

In addition, there existed also something of a third sphere that resulted from the interaction between basic-level society and the state. For example, on the North China plain there existed in the nineteenth century a pervasive system of *xiangbao* 乡保, who were unsalaried quasi-officials recommended by societal leaders and approved by the county government. In Baodi 宝坻 county (of Zhili province), for which we have archival case records documenting disputes involving the *xiangbao* or their appointment, we can see that each *xiangbao* oversaw an average of twenty villages, and was responsible for assisting the county government in tax collection, passing on county government orders, resolving disputes, and so on. They arose from the merging through

actual practice of the original government blueprint for three kinds of basic-level organizations, the *baojia* 保甲 system of decimal groupings of households for security purposes, the parallel *lijia* 里甲 system for tax collection, and the *xiangyue* 乡约 system for moral-ideological education (Hsiao, 1960), into a single quasi-official who served as the pivotal link between the county government and the villages. It was a highly minimalist system of administrative practice (Huang, 1986: 224–31). That is the basic evidence on which I based my concept of centralized minimalism, of a highly centralized system under the emperor and the official bureaucracy at the top, with a very minimalist basic-level governance at the bottom (more below).

After 1990, because of the opening of local archives to researchers, I switched into research mainly with county-level case records (dating from about 1800), in conjunction with field research, with the intent of deepening my knowledge and understanding of basic-level society and the governance and justice systems. In the twenty years after that, I completed the three volumes about law and legal practice noted above.

One important finding was that a large proportion (no less than a third) of lawsuits filed were resolved through interaction between the county government's *yamen* and the village community. Once a disputant filed a lawsuit at court, because the dispute had become more acute, the mediation system of the community would renew or redouble its efforts at mediation. As matters progressed, the initial reactions and rescripts of the magistrate on the documents filed successively in the lawsuit would be posted, conveyed through runners, or otherwise become known to the litigants and/or their mediators. Those would have considerable influence on the ongoing mediation process, often causing one or both sides to agree to compromise, thereby arriving at a resolution of the dispute. The litigants or the village leader(s) would then file a petition, saying that both sides "had met and tendered the proper apologies" 见面赔礼 and are now "both willing to settle the lawsuit" 俱愿息讼, or, either or both sides would simply cease to follow up on the lawsuit or submit urging petitions 催呈 to the court. Under those circumstances, the magistrate would almost always accept the petition or simply allow the case to just languish. The Qing government's fundamental posture toward the disputes was that such "minor matters" 细事 (the Qing legal term for civil disputes among the people) should as much as possible be resolved by society itself. Hence, in the face of petitions to withdraw and terminate a lawsuit, the *yamen* would almost without exception approve (unless the case involved offenses the court considered severe and criminal). Of the 628 cases I examined in detail, no fewer than a third ended this way. It was on the basis of that kind of evidence that I advanced the notion of a third sphere, to describe that intermediate space in the justice system where the state's formal system interacted with informal societal mediation to resolve disputes (Huang, 1996: see esp. chap. 5).

In addition, on the basis of 99 Baodi county case records involving the *xiangbao*, we can see that in the actual operation of basic-level governance, the county *yamen* would intervene in the work of a *xiangbao* only when disputes arose over the carrying out of his duties, or because of the need to change or replace the *xiangbao*. Otherwise, the county government pretty much left the *xiangbao* to carry out his duties as he saw fit. That too is evidence of the minimalist basic-level governance being discussed here (Huang, 1985: 224–31; see also Huang, 2008: 11–14).

“Centralized Minimalism”

On the basis of the realities summarized above, I constructed the theoretical generalization of “centralized minimalism” (Huang, 2008) to capture the nature of Chinese governance: there was, on the one hand, a highly centralized central government, and, on the other hand, a very minimalist basic-level governance. The state considered most village affairs, including the resolution of disputes, to be “minor matters.” The county government, except for extracting a set quota of taxes, tried as much as possible to stay out of village affairs. And, its tax extraction rate was relatively minimalist, amounting in the nineteenth and early twentieth centuries to just 2–4 percent of the total agricultural product, compared to the 10 percent or higher of European and Japanese feudal states (Wang, 1973a, 1973b). This was the baseline condition of China on the eve of entering into “modern state-making.” It was very different from what Michael Mann has conceptualized as “low despotic central power but high (basic-level penetration) infrastructural power” of the modern West, the opposite of imperial China’s “high despotic central power, but low infrastructural power” (Mann, 1984, 1986). Of course, it was also very different from Max Weber’s ideal-type of modern bureaucracy, with salaried, specialized officials subject to highly proceduralized and rule-based controls (more below).

The centralized and minimalist government system of imperial China was in fact closely tied to its unusually early development of a peasant economy, early maturation of that economy to support a high-density population, and the unusual persistence of that economy down to the present. It was that kind of economy that provided a strong basis for centralized imperial power (distinguished from decentralized feudalism), including the early development of mass armies of peasant infantry that could overpower aristocratic cavalry. That same densely populated peasant economy also led to the formation of village communities in which people clustered closely together, which in turn served as a basis for the development of China’s distinctive community mediation system. Centralization and minimalism were in fact interdependent; their joining together resulted in a state system

very different from that undergirded by the divided and yet more extractive and deeply penetrating feudal system of the West. Already in the Han, we can see the full formation of the “imperial Confucianism” ideology that expressed that very system of centralized minimalism.

That tradition of centralized minimalism, in turn, set the basic framework for the resort to a third-sphere type of semiformal governance: not fully formalized government by salaried bureaucrats, seen as burdensome and threatening to central power (more below), but rather unsalaried and lower-cost semi-officials who were drawn from society.

Changes in the Twentieth Century

Village Governance

Entering into the Republican period, we can see the beginnings of greater penetration of state power into villages: first came the establishment of wards 区 and ward governments 区公所 below the county level (there were, e.g., eight wards in Shunyi 顺义 county [Hebei province] in 1928, each overseeing about forty villages), each with a salaried ward head and staff, and an average of fourteen military guards and thirteen policemen per ward (Huang, 1985: 275–77). At the same time, semiformal village heads 村长 were set up, still unsalaried but authorized by the county government (some villages even had deputy village heads 村副). Along with those new administrative entities came the levies of new taxes (including especially “police funds to be borne by villages” 村摊警款 and “school funds to be borne by villages” 村摊学款). The total tax burden increased from the 2–4 percent of agricultural output in the 1900s to 3–6 percent of gross income of the peasant households by the 1930s (280–85). Such changes resembled those that had occurred in the “modern (nation) state-making” of the West (Tilly, 1975). With those changes, the three-tiered structure of the center, province, and county became a four-tiered one of center, province, county, and ward. At the same time, the earlier bottom-level very minimalist semiformal xiangbao system (each overseeing twenty villages) was replaced by the new system of semiformal village heads, thereby greatly increasing the penetrative power of the state. Even so, the village head system remained a third-sphere system—recommended by village notables and authorized by the state, and unsalaried (Huang, 1985: 237–44).

At the same time, we can see that alongside modern state-making and increased taxation came also negative, degenerative phenomena. A major one was the rise of “local tyrants and evil gentry” 土豪劣绅 or “evil bullies” 恶霸. As state levies increased, some village leaders refused to serve as village heads under those pressures. In some villages, ne'er-do-well bullies managed

to insinuate themselves into positions of power. Some managed even to obtain official recognition of their power, thus becoming rapacious semiformal powers preying on the villagers (Huang, 1985: 268, 289–91). These were the negative side of modern state-making, phenomena that emerged along with the massive disorders (warlord wars and Japanese aggression) of the Republican period. They stemmed from clashes between state polices and the interests of village communities. Such phenomena should be seen as the negative side of the third sphere. The bullies and tyrants would later become one of the major targets of the revolutionary land reform movement.

Commercial Associations 商会

In addition, with the growth of commerce and industry and the New Policies of the last years of the Qing came the development of new-style commercial associations 商会. China had seen since the Ming the rise of *Landsmannschaften* 会馆, which were associations of people of common geographic origins (He Bingdi, 1966). What came with the rise of commerce and industry in the twentieth century were larger new-style “commercial associations” (mainly in major cities such as Suzhou, Tianjin, Shanghai, Xiamen, Beijing, Hankou, and so on). They were not purely nonofficial associations of civil society but rather semiformal entities with official support and sponsorship, even founded under official initiative. They served to help resolve commercial disputes, sometimes by means of mediation among the parties to produce compromises by way of appeal to moral principles and ideals of harmony, sometimes by association rulings 公断、理断 based on new laws and regulations. When necessary, the associations called on the authority of formal government agencies to support their rulings, or even turned the matter over to the police bureau or the courts for resolution. These were third-sphere entities that emerged in the twentieth century along with the new social-economic developments and the new government policies toward commerce. They served also to help the government propagate new commercial regulations (Zhang Kaiyuan, Ma Min, and Zhu Ying, 2000; Ma Min and Zhu Ying, 1993; Zhao, 2018, 2019).

Where they resembled old-style rural mediatory entities is that they to a certain extent also relied upon personal relations to mediate, though based more on social relations among the semi-familiar 半熟人社会 rather than the familiar 熟人社会 as in rural villages; where they differed was that they operated with the participation of governmental authority—if their rulings were not accepted, they had the power to ask for direct intervention of governmental authority. They are a good example of the joining together of state and society in the third sphere.

Much research has been accumulated about these twentieth-century commercial associations in the past decades. A major tendency in that body of literature is to call upon Jürgen Habermas's idea of a "public sphere" (and the idea of "civil society" that gained so much currency in the 1990s and after) to think about these commercial associations (see Ma Min and Fu Haiyan, 2010). That is a subject to which we will return in the final part of this article.

Other Third-Sphere Organizations

In addition, we can see in the Qing and the Republican periods several other kinds of third-sphere phenomena. First is the founding of new-style schools with a modern curriculum in the late Qing and the Republic. On the one hand, the state established the new local Education Promotion Offices 劝学所 in 1906, comprising notables nominated by society and approved by the state, to oversee the development of new village schools. On the other hand, village communities raised funds, donated village or temple land, used existing or new structures to house the new schools, and employed new teachers to replace the old-style *sishu* 私塾 schools that taught mainly the Confucian classis. Liaoning province's Haicheng county holds sizable archival records (including cases involving disputes over village schools) that document in detail those impressive developments begun during the New Policy period of the late Qing. In that county alone, by 1908, 333 new-style schools had been created. These were fine examples of state-village collaboration, with targets set by the state, and active societal participation (VanderVen, 2003, 2005, 2013).

Furthermore, Bradly Reed, on the basis of the rich and detailed Qing Ba county 巴县 archives (he spent a year and a half at the archive), demonstrated that the great majority of the working personnel in the county government were semiformal "runners and clerks" who were not on the official registers and whose incomes came from customary fees for services rather than salaries. Among the ten offices of the yamen, the Office of Punishments 刑房 commanded the most revenue, mainly from fees charged for lawsuits, including a registration fee 挂号费, a summons fee 传票费 (出票费、唤案费), a fee for measuring disputed land boundaries 踏勘费, for closing a case 结案费, for settling the dispute 和息费, and so on (Reed, 2000: Appendix D; Ch'ü, 1962: 47–48). (The Office of Revenue, for tax collection, was the one with the largest number of personnel, with the Office of Punishment a close second.) Because of the earnings that came with the offices, the chief clerk 典史 of an office had to pay a hefty participation fee 参费 (of 100 to 1,000 taels) to take on the responsibility for an office. Each regular clerk of an office in turn had to pay that chief clerk a participation fee. Thus, the head clerk in effect subcontracted for the work of the office. When disputes arose within an

office, the magistrate's posture was to let the office settle the dispute itself and intervene only if the office could not solve the problem on its own. These facts are documented by archival records on the actual operations of the yamen—it was as minimalist as the way the magistrate dealt with the xiangbao. Overall, there can be no doubt that the clerks and runners operated in the gray area between officialdom and society, the great majority of its staff being nonofficial. Though they worked inside the yamen, they were most certainly not formal officials of the bureaucracy, and their status in society was of course also very different from that of the magistrate (Reed, 2000: see esp. chap. 2). Thus did Reed advance the understanding of Ch'ü T'ung-tsu's (Qu Tongzu 瞿同祖) earlier research, which had demonstrated that even the magistrate was not a "bureaucrat" (civil servant) in the Weberian sense of a modern bureaucracy, because he usually took on his appointment with a private informal staff of his own, most especially for the two key tasks of the *muyou* (private secretary) for law 刑名幕友 and for revenue 钱谷幕友, as well as other personal staff and servants. And his actual income was usually much more than his statutory compensation (Ch'ü, 1962). Therefore, even the county magistrate himself was not simply a bureaucrat in the Weberian sense, but also to some degree a figure of the third sphere (more below).

Changes after 1949 under the Planned Economy

The above picture changed considerably with the establishment of Communist Party rule and of a planned economy. First, the state set up formal township 乡镇 governments below the county level (rather like the Republican period's wards), to effect a much higher degree of infrastructural penetrative power than in imperial times. At the same time, through its new-style revolutionary party apparatus, party branch committees were set up in every village, thereby greatly extending the reach of the party-state. The nineteenth-century center, province, county three-level formal apparatus, plus the semiformal xiangbao apparatus, and the Republican center, province, county, and ward four-level formal apparatus plus the semiformal village head, were changed to become the center, province, county, commune (township), plus brigade (administrative village) system. The last, because of the establishment of a planned economy and also the collectivization of landownership, reached an unprecedentedly "totalistic" control of villages. Even so, the brigade heads and party secretaries of the village level were not salaried regular officials of the state (cadres who "eat state rice" 吃国家饭), but rather collective cadres (who "eat collective rice" 吃集体饭). They were almost all drawn from the villages themselves, and all to some degree identified with village interests, and continued to some degree the old tradition of an interactive third-sphere state-society relationship.

At the same time, the state of this period, through the planned economy, basically absorbed the commercial portion of the third sphere (including the commercial associations), bringing everything under the control of the state's Ministry of Commerce and Industry, and implemented "unified purchase and unified sale" of most basic commodities (grain, cotton, and so on), thereby largely terminating the preexisting market economy (excepting the rural periodic markets) and also the semiformal system of dispute resolution by the commercial associations.

Despite the many problems of the planned-economy era, especially in the overly tight control of society-economy by the state, there were nevertheless some major achievements that should be acknowledged. For example, in industrial output, China managed in the period 1952–1980 to attain an extraordinary growth rate of 11 percent a year (as demonstrated by the authoritative quantification work of Dwight Perkins, despite his critical attitudes toward communism—Perkins and Yusuf, 1984: chap. 2), setting the heavy industry base for development in the Reform period. At the same time, given the hostile "containment and isolation" foreign policy of the United States, China managed to develop in a short time the "two bombs [atomic and hydrogen] and one satellite" to ensure the nation's security. Furthermore, in the spheres of education and public health, by the use of mass mobilization, including the Cultural Revolution's program of a "barefoot doctor" in every village, China managed to overcome epidemic infectious diseases and attain an average life expectancy that was close to that of developed countries. And, under its "privately run and government subsidized" 民办官助 third-sphere program to establish "a grammar school in every village" and "a middle school in every commune," managed to attain a level of popular literacy that was also close to that of developed countries (Pepper, 1996—one of the most thoroughly documented American studies of China). These were precisely the two aspects specially highlighted by Nobel economist Amartya Sen and his coauthor in their comparative study of the Indian and Chinese economies (Drèze and Sen, 1995: chap. 4).

Changes in the Reform Period

Looking back from the present, that planned-economy period appears short-lived. First because of the return of agriculture back to a household-based responsibility system to replace ownership and management by the collective (excepting the private plots), now returning the use rights and management power back to the household, and practically eliminating the planned economy in agriculture. The scope of the earlier unified purchase and unified sale system was greatly reduced, such that with the exception of a portion of the

most basic commodities such as grain, cotton, and pork, the state came to allow most agricultural products to be sold freely on the market, thereby greatly reducing the state's control over the rural economy and gradually allowing the market to take over a larger and larger proportion of the rural economy. At the same time, even though the state implemented strict controls over fertility from 1980 on, and for a time also continued to extract relatively high taxes and fees from the village, those fees and taxes were abolished in 2006, and after 2015, also the "one-child policy" for families. Today, rural governance has changed into one in which there is more laissez faire than strict control (more below) (Huang Zongzhi, 2017).

In terms of the system of governance, perhaps the most important change in the reform period has been the adoption by the party Central of the "initiative coming from two sources" 两个积极性 (both central and local) as a major strategy for its pursuit of rapid economic development (quantified as rate of GDP growth). This was a concept first advanced by Mao Zedong already in 1956, but has been reemphasized over and over, as recently as the Nineteenth Party Congress in 2018 (Renminwang ping, 2018). On the one hand, the Center sets the overall design, the direction, the targets, the personnel (the selection of local officials and the evaluation of them according to the "targeted responsibility system" 目标责任制), and finance; on the other hand, the local governments enjoy considerable latitude and autonomy in decision-making, and also retain a significant share of their tax revenue (whether under the "subcontracting system" 包干 after 1980 or the "division of tax [revenues]" 分税 system favoring the center more after 1994), and the Center allows or closes one eye to creative schemes by the local governments to "draw in business and capital" 招商引资, including providing tax incentives, loosening environmental controls, and disregarding labor laws in the use of informal workers (Huang, 2011b).

Today's Administrative Contracting

This author has read in recent months several of Professor Li-An Zhou's key articles on China's "administrative contracting" and his 2017 book on *Local Government in the Transition Period: Governance and Incentives for Officials*, and appreciates deeply that he has provided a very fitting and insightful analysis of major parts of what I have characterized above as centralized minimalism in governance and a third sphere born therefrom. Zhou's administrative contracting and subcontracting theory is an important analysis of one of the key mechanisms used by China's centralized minimalism system of governance; his administrative "internal subcontracting" and "external subcontracting" is an illuminating distinction between subcontracting

within the administrative hierarchy and subcontracting by the state outside that hierarchy; his “bureaucratic market” cum “economic market” is a good way to incorporate the interactive, complementary, and mutually shaping relationship between the state and society-economy.

Zhou’s analysis highlights the most important empirical reality of Reform China’s governance system—i.e., the simultaneous resort to central and local government’s, and state and society-economy’s initiatives and incentives to drive economic development—while also providing a reconstruction of influential principal-agent theory to aid us in conceptualizing that pair of relationships (Zhou Li-An, 2018). Zhou’s theory takes into account China’s distinctive administrative practice as well as the issue of the interrelationships among the two pairs of dualities (central and local, and state and society-economy), including the problems of asymmetric information, different (or even opposed) interests, different incentives, and such that are major concerns of principal-agent theory. In recent years, principal-agent theory has been applied also to analyses of government administration, though still mainly in terms of market contracting logic. Zhou has taken the lead to move on to consider state and society-economy as an interactive and mutually shaping duality, thereby moving beyond that binary opposition mode of thinking about state versus market that has for so long dominated neoclassical economics.

Zhou’s theory is first of all about China’s distinctive administrative contracting system, under which the central government has contracted lower-level governance out to local officials, layer by layer (in which one key factor is that lower-level governments have more complete local information than the Center), in a (market-like) “promotion competition” (“banner competition,” as in “tournaments”) among them for GDP growth in order to advance up the administrative ladder. The local governments and their officials have been thus motivated to extend a “helping hand” to private enterprises (to be distinguished from the “do nothing hand” or the “rapacious hand” of some political-economic environments), which are coming to occupy a larger and larger proportion of the economy. The local governments have provided for them the necessary infrastructure, resources (especially land), tax incentives, and so on, with some providing even strategic visions and the critical steps needed to support those, thereby enhancing the development of commerce and industry in their jurisdictions.² At the same time, the private entrepreneurs of the society-economy, motivated of course by the pursuit of profit in a market economy, have drawn upon official support to maximize their gain, attaining even more than under typical market economies.

The two pairs of dualities have been mutually dependent as well as mutually shaping forces, together driving China’s stunning GDP development. This is a view that has captured well the fundamental characteristic of the

Chinese development experience, as well as provided illuminating theoretical concepts for centralized minimalism and its third sphere. Its contribution has exceeded that of typical principal-agent theories that tend to focus on horizontal contractual relations between individuals/firms of a market economy, by focusing instead on the vertical relationship within the government's administrative system, this even while it draws importantly on the useful central problematic of principal-agent theory, namely the interrelationship, asymmetric information, and different interests and incentives between the duality of principal and agent, not just one side or the other. It should be seen as a major contribution to our understanding of the distinctive mechanism driving the rapid development of China's Reform period.

Compared to Zhou's earlier "banner competition" analysis (Zhou Li-An, 2007; see also Zhou Feizhou, 2009), the new "bureaucratic market" (namely, market-like competition among local officials within the administrative system) cum "economic market" analysis has clearly turned its focus from just the administrative system to incorporate the interactive relationship between that and the market economy, to clarify not just the incentive system operating among the different levels of the bureaucracy, but even more so, its relationship with the society-economy, to spotlight the mutually reinforcing relationship between them, thereby attaining a higher-level analytical power. For example, the private enterprises rely heavily on local government support, while the local governments' actions are subject to the tests and constraints of the market.

Such an analysis is different from that of textbook neoclassical economics. As Li-An Zhou observes, one kind of theory (of Justin Lin and others) argues that the Reform-period Chinese government elected an economic strategy for which China was better suited, of drawing upon its (great abundance of labor) "comparative advantage" in resource endowment, shifting its emphasis from capital-intensive heavy industry to labor-intensive light industry, a better strategy for a more optimal allocation of resources that accords with the mechanism and logic of a free market, thereby driving China's economic development (Lin, Cai, and Li, 2003). Such an analysis, however, is in truth one that is merely based on the Western classical-liberal and neoclassical-liberal faith that the free market mechanism is the single most fundamental requirement for economic growth. At the same time, it amounts also to a singular emphasis on policy, one that is unable to capture the distinctive operative mechanisms of Chinese development. I myself would note further that China's bureaucratic market cum economic market mechanism is something that carries with it a definite degree of historical background and coincidence and is not a mere matter of an economic policy choice (Huang, 2015) (more below).

Another kind of theory (Zhang Weiyong et al.), as Li-An Zhou (2018) points out, attributes reform-period development entirely to the state's withdrawal from a planned economy to reliance on the invisible hand of the market (namely, the core classical and neoclassical economics point of view, and also the fundamental view of Anglo-American neoconservatism), and maintains further that such inadequacies that remain in Chinese development come from the fact that the state still interferes too much with the market. That theory too is unable to account for the reality that the administrative system and the private enterprises, the state and the market, have worked in tandem to drive economic development, not to speak of account for its distinctive form and logic. Moreover, in my view, it (like Justin Lin's analysis above) also has not taken into account at all the contributions made by the earlier planned economy in building a heavy industry base and also attaining a higher standard of education and health than other developing nations, which all provided crucial foundations for the later development, as Amartya Sen and his coauthor have spotlighted (Drèze and Sen, 1995).

Li-An Zhou's administrative contracting theory differs also from the corporatist state theory of Andrew Walder and Jean Oi. The latter based themselves on China's township enterprises of the 1980s to argue that those operated just like private corporations, because they were under hard budget constraints (if no profit, then bankruptcy), and because they enjoyed the flexibility and incentives of ownership combined with management authority, like a private enterprise. In other words, Chinese township governments had in fact become much like private corporations in a market economy. While Walder-Oi's intention was to expand the scope of neoclassical economics with its narrow focus on private enterprises and market mechanisms for economic development, they in the end also merely emphasized once more that core belief of neoclassical economics (Oi, 1992; Walder, 1995).

In actuality, in the later Reform period of the 1990s and after, the main content and dynamic in Chinese economic development was no longer the township government-owned and -operated enterprises ("rural industrialization") on which Oi-Walder based their theory, but rather had become the "draw in [foreign and domestic] business and capital" actions of the provincial (and directly administered municipal 直辖市) and county governments. The new economic conditions and mechanisms were very different from earlier, in that the key became the collaboration between government and enterprises that Li-An Zhou spotlights, no longer merely the logic of a market economy. For my own part, I would add also the consideration that those local governments employed semi-legal and even illegal methods to draw in outside capital—such as transferring land at prices lower than the cost for those governments, providing tax breaks, permitting the use of cheap labor

without regard to labor laws and regulations, and environmental protection laws, and so on—to propel China to become the highest return-to-capital destination in the world, thereby to draw in vast amounts of capital to propel its economic development (Huang, 2011b). Li-An Zhou does not discuss these latter dimensions much, and perhaps also does not attribute enough weight to them.

Like Walder-Oi, Qian Yingyi et al. have focused especially on why China's Reform-era economy has not suffered from the soft budget constraints (bailing out inefficient enterprises) problem of planned economies, so much highlighted by János Kornai. In Qian's formulation, it is a matter of "Chinese federalism," in which Chinese local governments, for reasons of their own tax revenues, have tended to impose hard budget constraints on enterprises in their jurisdictions. They have behaved in a "market protecting federalism" (or "preserving market incentives") manner, thereby contributing greatly to China's development (Montinola, Qian, and Weingast, 1995; Qian and Weingast, 1997).

There is in addition the developmental state theory of Chalmers Johnson (and Alice Amsden, Robert Wade, and others) (Johnson, 1982, 1999). They highlight especially the "East Asian" (i.e., Japan, South Korea, and Taiwan) development experiences in which the state played a major role. Their foil is mainstream classical and neoclassical economics which insist that the state should not interfere with the market. What they argue for is the positive role and contributions made by the East Asian governments toward market economy and development. On this point, they overlap considerably with Li-An Zhou. But they do not consider at all China's distinctive "bureaucratic market" (distinguished from "economic market") with its administrative contracting system, nor the distinctive composition of the Chinese economy (state-owned enterprises still account for nearly half of nonagricultural GDP—Huang Zongzhi, 2018: 160ff.) and the mutually supportive state-society relations in the third sphere.

At the same time, Li-An Zhou's theory helps us understand also the negative side of state-society relations in Reform China. Because the state has adopted a "GDP-above-all-else" "targeted responsibility system," it has, first of all, also caused local officials to pay much less attention to such areas as social justice, people's livelihood, public services, environmental control, and so on. Second, it has generated a strong tendency toward "localism" (what Zhou terms "jurisdiction area-ism"), with each locality paying attention only to its own jurisdictional area, to result in vast differences and segmentation among different areas (Zhou Li-An, 2017: see esp. chap. 10). The state's actions have also resulted in multiple negative phenomena when there is a poor fit between government actions and the local economy, such as

“showcase projects” 形象工程, unrealistic projects given local factor endowments, other failed experiments, as well as official–merchant collusion for self-gain and corruption.

The key therein is whether the central and the local governments (“administrative market”) and the state and society-economy (“economic market”) are well coordinated or not, operating together positively or not. That way, we can grasp both the reasons for China’s success and the negative consequences from its singular reliance on individual gain as the key incentive, to explain why, because of the promotion competition incentive mechanism employed, there has been relative neglect of social welfare, labor rights, environmental protections, and such. The determinative factor is whether the relationship between government and market, state and society-economy, is mutually supportive, or whether, because of opposition or imbalance between them, the relationship leads instead to negative consequences.

It should be clear from the above that Zhou’s concept of “administrative contracting,” “internal” and “external,” and of a “bureaucratic market” cum “economic market,” can also be understood in terms of centralized minimalism and the third sphere—administrative contracting has in fact long been a major mode of minimalist administration adopted by the highly centralized government, and the dualistic unity between state and society-economy has in fact long been the fundamental characteristic of China’s third sphere.

Perspectives from the Administrative Contracting System of Imperial China

Applied to imperial China, Li-An Zhou’s analyses contain both insights and shortcomings. He did not make the mistake of simply equating the Chinese bureaucratic system with Weber’s ideal-type of modern bureaucracy. Nor did he, in the manner of Xueguang Zhou (2016), simply split the Chinese administrative system into a binary of “officials” versus “clerks and runners” (“local staff”), equating the former with Weberian bureaucrats and only the latter with (Li-An Zhou’s) “administrative contracting.” As Li-An Zhou points out, in reality both officials and clerks and runners operated under the administrative contracting system, the former under internal contracting 内包 and the latter under external subcontracting 外包. The difference between the two is that the former worked within the incentives (of advancement), supervisions, and controls of the administrative system, while the latter worked without those, external to them. The former still worked under the subcontracting system: for example, officials, in addition to their statutory income, also received much larger sums (customary fees and such 陋规) as a matter of routine. They also enjoyed considerable autonomy, but they operated within

the system of advancement, supervision, and control of officialdom, and were therefore internal contracting personnel. By contrast, the clerks and runners operated outside that kind of promotion incentives and controls at the margins between state and society. As both Li-An Zhou and Xueguang Zhou point out, the former, due to the promotion opportunities, generally moved upward and from place to place during their official careers, while the latter did not, generally anchored within the place from which they came (Zhou Li-An, 2016, 2014).

Although Li-An Zhou did not explain explicitly and concretely, we need to see that the county magistrates of the Qing were not merely salaried bureaucrats in the Weberian sense. Generally speaking, the customary fees they received far exceeded their statutory income. Moreover, they generally brought to their office their own private secretaries 幕友, most especially the secretary of law 刑名幕友 and the secretary of taxation 钱谷幕友, and also personal servants 长随. They cannot be understood in the conventional terms of a modern bureaucracy (or civil servant). All this had been demonstrated by Ch'ü T'ung-tsu's monograph long ago (Ch'ü, 1962). Which is to say, county magistrates, while certainly a part of the official bureaucratic system in the Weberian sense, were at the same time also partly internal contractors of the administrative system.

As for clerks and runners, we also must not, like Xueguang Zhou (2016), see them simply as complete opposites to Weberian officials, but rather follow Li-An Zhou to distinguish between external and internal administrative contracting and subcontracting (see the debate between Xueguang Zhou, 2016, and Li-An Zhou, 2016). Unlike county magistrates, they were not party to and subject to the promotion incentives and controls of the internal contracting officials, but were rather people anchored in local society, who were either unsalaried or received just a very small salary (far lower than what they earned in the course of performing their duties). They should be seen as personnel (in today's terms) "outside the system" 体制外, anchored in society, operating in the third sphere between state and society.

Even so, outside of his insights, one possible weakness of Li-An Zhou's analysis is that, on the basis of rather weak evidence, he basically accepted in toto the standard Confucian discourse and judgments of county clerks and runners (Zhou, 2016: 51–54; see also the much shorter discussion in Zhou, 2017: chap. 2, section 3, which no longer made the same argument). In my own past works, I have documented in detail how the imperial Confucian moralistic official discourse constructed two diametrically opposed images: one the highly moral "father-mother official" county magistrate and the other the highly immoral clerks and runners, idealizing the former as exemplary of humane governance by moral suasion, and the latter as "yamen worms" 衙蠹 (or "talons and

teeth” 爪牙), in the same manner as it constructed the county magistrate as someone who would minimize litigation through moral suasion, and the “litigation mongers” 讼棍 and “litigation masters” 讼师 as evil instigators of lawsuits. Those constructed categories were not descriptions of reality but rather discursive habits and strategies, to attribute good governance entirely to highly moral magistrates who came through the examination system, and to cast all blame for poor governance on evil clerks-runners and litigation mongers outside the formal system. This is one aspect of my analysis of moralistic discourse as opposed to actual operation, and the “disjunction between representation and practice” (Huang, 1985: 156–63, 163–68, 185–87, 199–204).

Li-An Zhou’s acceptance of the official constructions might be due in part to a lack of critical reflection on official Confucian discourse, and perhaps also to the projection of a contemporary amoral society preoccupied with the pursuit of self-gain to imperial times. The logical extension of his administrative contracting theory is: in the absence of the incentive of the pursuit of promotions up the official ladder, as in external as opposed to internal administrative contracting, the result could only be the opportunistic pursuit of every possible gain by “yamen worms.” Here I wish to point out, as Bradley Reed’s monograph has demonstrated, even the clerks and runners of Ba County generally saw themselves as quasi-officials and identified with the moral ideals of officials. They generally charged for their services only what was customarily acceptable, very different from the official construction of them as yamen worms. Their behavior was constrained both by the traditional moral ideal of humane governance and by the social networks of local society in which they were embedded. To be sure, because the supervision of them was looser than that for internal contracting officials and because they enjoyed greater latitude, there were unavoidably more instances of abuse. Even so, on the whole, as Reed argued, they were in actuality a kind of dualistic combination of the formal and informal, to comprise a kind of paradoxical “illicit legitimacy,” or “illicit (yet Weberian) bureaucrats”; they can of course also be characterized as “semi-legitimate” personnel, to be distinguished from the modern bureaucrats/civil servants of Weberian theory. If the clerks and runners were truly as rapacious as the officially constructed “yamen worms,” the system could not have had the vitality to persist through several dynasties (Reed, 2000; see also Ch’ü, 1962: chaps. 3 and 4; Huang 2008; Zhou Baoming, 2009: esp. chap. 8). This is an aspect of Li-An Zhou’s theory that might need to be revised.

The Relationship between State and Village

As for relations between the state and the village today, since the abolition of state levies of taxes and fees in 2006, state power has withdrawn to some

degree from villages. For the township governments the termination of taxes and fees meant that villages were no longer a source of revenue, and village-level governance and public services became a burden without returns. Under the GDP-above-all-else system of (internal) administrative contracting and subcontracting, villages no longer matter much in terms of the banner competition among local officials. With neither tax income nor administrative achievement as reward incentives, the township governments have become largely what Zhou Feizhou terms “suspended in the air” 悬浮型 governments, no longer concerned with village governance or village public services, no longer the penetrating state of before (Zhou Feizhou, 2006). One result has been pervasive decline in village-level public services in those areas in which the central government’s programs (such as in health care and education) have had only minimal influence. (This is most true of the vast central and western regions of China; it is less true of such areas as southern Jiangsu, which has the most highly developed village collective resources, and of some areas of Shandong, where the village collectives have enjoyed considerable “discretionary land” 机动地, and so on—Huang Zongzhi, 2019).

There have been other negative phenomena. One is the rise of the phenomenon of “rich people rule the village” 富人治村—only the rich (either from business or from high compensations received through land-requisitioning) have the means and the ability to get things done for the village through the resources and contacts they can command. Among them, while there are certainly some who are motivated by the ideal of serving one’s home village, there are unavoidably also those who seek only personal gain from such service. Another type is the phenomenon reminiscent of the “evil tyrants” of the Republican period, of local bullies and gangs 混混 who have surfaced to control village power (Chen Baifeng, 2011): before the abolition of taxes and fees, it was partly a consequence of the heavy tax burdens on the villages; afterward, of the power vacuum in the villages.

Furthermore, we need to add to the list of negative third-sphere phenomena the rise of companies that take on the work of tearing down homes and removing villagers from land being requisitioned by the government, including drawing on local gangs to do the rough work of removing unwilling or “(tough as) nails households” 钉子户. They amount to subcontractors for tasks the local governments would rather not take on (Geng Yu, 2015). Another type is the rise of “dispatch work agencies” 劳务派遣公司, which similarly contract or subcontract with state-owned or private enterprises to hire for them workers (under the rubric of “temporary, auxiliary or substitute work”) with little protection by labor laws, or else to change the status of existing regular workers to dispatch workers 劳务派遣工. In those kinds of conflicting interests between the state and society, abusive and exploitative phenomena are unavoidable (Huang, 2017).

What Li-An Zhou conceptualizes as internal and external subcontracting in administrative contracting and subcontracting calls to mind also the responsibility system for rural land. To be sure, the latter is not a system born of the state's pursuit of rapid GDP development, but rather something employed in the transition from a planned economy to a marketized economy. But given that the state remains the ultimate landowner in its relationship with the farm households, it is also a contracting system. In the collective era, the relationship was tantamount to the state contracting out to the collective. With the reforms, the collective has in effect further subcontracted out the land to the peasant household, while the state remains the ultimate owner with the power to requisition the land when needed, and whose approval must be obtained before any land can be bought or sold. The original contracting village collective enjoyed only a very limited degree of autonomy, while the later subcontracting household enjoys considerable autonomy, largely free to decide what to produce, sell, and self-consume. That system has propelled the rise of capital and labor dual-intensifying high value-added new agriculture (of mainly [higher end] vegetables-fruits, meats-poultry-fish, and such), the profits from which have remained largely with the peasants. That is a system that resembles at once market contracting (between owner principal and peasant agent) and external state administrative subcontracting. This is a point that underscores just how pervasive the contracting relationship has been within the third sphere of state-society relations, including incomplete private property rights and sharp contrasts with Weberian bureaucracy.³

As for the contracting relationship between the central and local governments, that of course reminds us also of the relationship between the party Central and the other base areas in the War of Resistance period of the revolution. The latter had considerable independence, not only as a result of the deliberate choice of strategy but also because of the historical circumstances of the time (in which the party was faced with repeated encirclement campaigns from both the Guomindang and the Japanese, and necessarily limited communications—both in terms of opportunities and of technologies—between the Center and the other base areas). That revolutionary experience is of course the root of the tradition of “initiatives from two sources,” very different from what most principal-agent theories deal with. The Chinese administrative contracting system in use today perhaps needs also to be seen in light of that kind of background.

Finally, in the current “governance by project grants” 项目制治理 system, the central government either contracts internally with local governments, or contracts externally with societal entities, giving the contractor substantial autonomy. Though without the incentives and controls of administrative internal contracting, the external contractors are still subject to the control of

“evaluation of the final product” 验收. Even the contracting agents of project grants in the academic world operate under that kind of mechanism. Today, contracting out and contracting in (and all the different varieties of relationships involved therein) have truly become a major key to the operational mode and mechanism of China’s political-legal and political-economic systems. And, like internal administrative contracting, external contracting comes with both positive and negative experiences, both those that show good and mutually supportive principal-agent relationships and results, and those that result in phony actions for profit and gain, or appearances, and even outright deceit.

The key differentiating factors are, have the targets set and the incentive mechanisms used by the state really accorded with the purposes and needs of society and its individuals, and are not merely ideologically driven or formalistic policy choices divorced from actual reality? For the latter, a good example is the state’s efforts to compel peasants to subcontract to grow double-cropped rice (early rice + late rice + winter crop), when the reality is that two crops of rice actually yield a lower net income for the peasant households than a single crop (because of diminished returns from excessive labor intensification, the high cost of other inputs, and so on), leading thereby to dissatisfaction and deceptive behavior from the lower-level governments and the peasants (Huang, Gong, and Gao, 2014: 145–50). Another example is the Center’s decision to encourage through subsidies and tax benefits the development of agricultural cooperatives modeled on the American specialty co-ops that comprise mainly enterprises, completely divorced from the small peasant economy that is the main reality of Chinese agriculture (Huang Zongzhi, 2017). In the academic world, because of the reliance by education bureaucrats on formalistic and numericized targets, there has been widespread resort to formalistic appearances rather than substance, to the aping of official ideologies, to otherwise fashionable theories or quantifying methods, and even exploitation of the work of graduate students. The key is once more a matter of whether the targets, incentives, and supervision mechanisms are truly in accord with genuine scholarly values and substantive realities.

The Third Sphere of Judicial Administration and Governance

The Model-Type Third Sphere in the Political-Legal System

Within the entirety of China’s political-legal system, the justice system is the one that contains the clearest categorization and most complete numerical data on the third sphere, whereas the administrative system does not contain

Table 1. Total Numbers of Different Varieties of Mediation, 2005–2009 (1,000s).

	People's mediation		Administrative mediation	Court mediation		Total
	Villagers and town residents mediation committees	Basic-level government legal services	Consumers associations (Bureau of Industry and Commerce Administration)	Public Security Bureau	Civil courts (cases resolved on first judgments)	
Average annual nos. of cases handled	10,300	700 ^a	750	8,400	4,920	25,070
Resolved by mediation	5,300	630	670	2,470	1,680	10,750
% mediated	52	90	89	29	34	43

Source: Zhu Jingwen, 2011: table 4-2, pp. 303–94; table 4-4, pp. 334–35; table 4-13, pp. 372–73; table 4-15, p. 374; table 4-16, p. 376.

^aNo data for 2006.

similarly distinguishable categories and hence also not the data for them. Through the data on the different avenues for the resolution of disputes in the justice system we can grasp more clearly the total picture of the continuum from the informal to the semiformal to the formal, and distinguish more clearly what are societal and what are state entities, as well as those that occupy the intermediate space between the two. We can thereby come to a more complete picture of the third sphere, along with some sense of the quantitative scale of each avenue for dispute resolution.

Table 1 shows the average total numbers of disputes for the years 2005–2009 handled by different avenues of the justice system, out of a total (in rounded off numbers) of 25 million disputes each year. The table is arranged with the most informal avenues on the left, the village and town-urban community level “villagers and town-residents mediation committees,” which dealt with a total of 10 million disputes annually, to the most formalized court system on the right, which handled 5 million disputes each year. In between are semiformal avenues that handled another 10 million of all disputes, including the township governments’ “legal services offices” that handled 700,000 disputes, followed by the Consumers Association under the Ministry of Commerce and Industry, which handled another 750,000 cases, and then the Public Security Ministry, which handled 8.4 million cases.

To be sure, even the most informal people’s mediation by village people’s mediation committees have some measure of cadre participation (though no longer like the pre-Reform and early Reform period when village disputes were handled mainly by the two key cadres of the village, the party branch committee secretary and the brigade head; now they are handled mainly by the common village cadres and influential non-cadre members of the community—Huang

Zongzhi, 2014b, v. 3 [2009]: see esp. chap. 2, pp. 18–55). It is justifiably considered a mainly informal and only partly semiformal channel.

As for the most highly formalized avenue of the courts, the 5 million cases they handled still included 34 percent that were settled by mediation (which is more typical of the informal and semiformal spheres than of the formal sphere). We therefore need to grasp clearly the fact that the entire justice system comprises a continuum from the informal to the formal, and that within that continuum, the informal system on the left and semiformal systems in the middle, account for no less than 80 percent of all cases.

Compared to modern Western justice systems, the Chinese system has two distinctive characteristics: first is the high degree of reliance on informal people's mediation, whereas the modern Western systems basically do not mediate, with genuine mediation (nearly always conducted separately from the court system) accounting for only a very low proportion of all cases—under 2 percent in the United States, and not much more than that even in the Dutch system, which is considered exemplary; second is the enormity of the intermediate third sphere: informal and semiformal avenues of dispute resolution together account for more than 80 percent of all cases, and successfully mediated cases fully 10 million of the 25 million disputes recorded each year. In the West, by contrast, because it lacks an informal mediation system, there can only be very little in the way of a third-sphere system formed from the combinations and interactions between the informal and the formal. As we have explained in this article, unlike in the West, the Chinese justice system has historically always relied greatly on informal mediations among the people as well as an intermediate third sphere to resolve disputes. This is also the principal difference of East Asian countries from the West, especially Japan and Korea, which early in their histories adopted the Sinitic legal tradition (Huang, 2016a). On this basis, we can analyze the organization and governance logics contained therein.

We can see from the comparison of China and the West that the fundamental requirement for the formation of a third sphere is the informal mediations among the people that Confucian governance long relied upon, without which there can be no third sphere stemming from the interactions between the informal and the formal system of justice; precisely because it relied greatly on mediations among the people to resolve “civil” disputes could its formal legal system be one that dealt “mainly with punishments for crimes” 以刑为主; precisely because there was a gigantic informal dispute resolution system could there develop a semiformal system born of its interaction with formal justice. Then, under the process of modernization, because society changed from mainly a society of the familiar to a society of the semi-familiar (and even a society of strangers in large cities), dispute resolution could

no longer rely entirely on Confucian moral values to effect mediations through interpersonal relations (based on mediators drawn from the most respected people in the community to persuade both sides to act in the interest of harmony and mutual concessions to settle the dispute, and then mark those by the ritual of having both sides come together to tender apologies and observe the proper rituals, in order to maintain civility in the community), it became necessary to rely in part on governmental authority to resolve disputes, thereby resulting in an ever-expanding intermediate third sphere. Under the conditions of a “transitional” society in rapid change in which disputes are particularly frequent and acute, such a dispute resolution system became all the more necessary.

The Western experience has been very different. The alternative dispute resolution (ADR) system that emerged from the 1970s on came from a very different background and logic. It was born of a reaction against excessively high litigation costs that had become unaffordable for the common people, and a search for ways to lower costs, such as relying on retired judges, and conference rooms or classrooms instead of formal courtrooms, to conduct arbitrations, in which the substance has been really still clear-cut judgments as to winner and loser, with the loser having to bear the (still very) expensive arbitration costs. Or, to encourage out-of-court settlements, on the basis of litigants’ and their lawyers’ calculations of the probabilities of winning the case. Both of those processes are in fact very different from Chinese mediation, in which the main mechanism is compromise, and in which the regular court judge plays the crucial guiding role. As for genuine compromise-working mediation, the justice systems of Western countries have always insisted that they be entirely separated out from the court process and completely voluntary. The success rate of those mediations has as a result necessarily been very low (Huang, 2016a: see esp. 250–57).

The Chinese informal and semiformal justice and governance systems have emerged from the context of the long tradition of minimalist governance. It is, on the one hand, a major ideal of Confucianism—to allow society itself as much as possible to resolve its own disputes through Confucian moral values. On the other hand, it has also been a necessity born of (what Weber terms) “patrimonialism” and its highly centralized system of political power: what the patrimonial emperor fears the most is the re-division of the country into parcelized feudal states. What he depends on is the personal loyalty of officials to the throne and the dynasty. Under such a system, each layer of separation between the center and the locality means greater risk of loss of such loyalty. The ruler therefore must seek as much as possible to keep his administrative system minimalist, to minimize the number of layers that separate emperor and local official. This is a major reason why the formal

government stopped at the level of the county (which by the nineteenth century oversaw an average population of 250,000). That was part of the imperative for minimalism and for low infrastructural power. Centralism and minimalism were in fact interdependent factors that formed a dualistic whole (Huang, 2008; see also Huang, 1996: 229–34).

At the same time, the system was also tied to the low tax receipts of the state. We have seen above that the Chinese land tax amounted to a paltry 2–4 percent, while Western and Japanese feudal extractions were generally 10 percent or more (Wang, 1973a, 1973b). That kind of minimalist tax revenue was both a basic motivation for, and a reflection of, minimalist governance, the two forming a mutually dependent whole. Of course, agrarian states' tax receipts were much lower than those in industrial states. That too compelled China's governance system to be minimalist, pushing it toward the least costly systems of informal and semiformal governance.

Of course, all this is not to say that the third sphere has been entirely a positive phenomenon. We know, for example, that administrative and police mediations can easily become settlements by fiat, and mediations only in name. Mediation can also become an excuse for preventing the disputant from going to court to seek justice. In the massive disemployment of workers from middle- and small-scale state enterprises in the late 1990s, the government in fact simply ordered the courts not to accept lawsuits over workers' social benefits, requiring that all such disputes be handled and resolved by the enterprises themselves. The result was, in effect, to allow the enterprises to “dump their burdens” 甩包袱 of obligations to the workers, for the purpose of promoting economic development. While we might see such a measure as something forced by exigency, we need to acknowledge also that it came with unavoidable oppression. In the long-term perspective for the future, we might want to look toward interactions based on a better balance in power between state and society.

The Societalization of the State and the State-ification of Society

On the level of theory, Jürgen Habermas's book about the “bourgeois public sphere” that emerged with the bourgeoisie in the eighteenth century is also relevant to our main topic here. The content of that book is actually not merely the ideal/theory of the public sphere, but rather even more about the gradual disappearance of that public sphere after the eighteenth century because of the long-term historical processes of “societalization of the state” and “state-ification of society.” What the “public sphere” referred to is above all that sphere of public opinion independent of the state that emerged in

eighteenth-century England and France with the development of the bourgeoisie. It is about the opposition between a social group and the state. What followed in the book, however, was “the structural transformation of the public sphere,” as that main title of the book suggests—about the gradual disappearance of that opposition because of the long-term historical process of the interpenetration of the two. Habermas himself is particularly concerned with the rise of an irrational “mass society” joined with authoritarian government (German Nazism) (Habermas, 1989; Huang, 1993).

However, in the context of the 1990s, along with the collapse of the erstwhile Soviet and East European Communist parties, what many people took from Habermas was not the real historical content of his book, but rather his idealization of eighteenth-century (bourgeois) classical liberalism, equating that with the pursuit of liberal democracy. This aspect is particularly notable, for example, in studies of late-Qing and Republican commercial associations 商会 (Ma Min and Fu Haiyan, 2010), most of which largely neglect the twin concepts of societalization of the state and state-ification of society that are useful for grasping historical change of the nineteenth and twentieth centuries, not only in the West but also in China.

The third sphere discussed in this article can be understood to some degree in terms of, first, the societalization of the state: for example, the incorporation by state organs of the mediatory practices of society, under the legal services offices of the township governments, under the Consumers Association of the state Ministry of Industry and Commerce to mediate disputes between consumers and producers/sellers, and under the Ministry of Public Security and the courts. Those have been mainly about cost-saving. At the same time, we can also think in terms of the state-ification of society to grasp the assumption of state functions by semiformal societal organizations, including the commercial associations of the late Qing and Republic; of the transformation of the earlier basic-level *xiangbao* system into fully staffed township governments; of village-level informal leaders first into semiformal “village heads,” then semiformal brigade party branch secretaries and heads, and finally the semiformal party branch secretary and chairman of the “two committees” of villages today. The change from informal village community mediation into partly formalized village “mediation committees” with cadres’ participation might also be understood in the same terms.

However, we need to see also that the examples given above have their origins not in the premodern decentralized yet more penetrating feudal state, as in the West, but in China’s centralized minimalism under the imperial state. Nor did they emerge along with the rise in the eighteenth century of a classical-liberal bourgeois public sphere opposed to the state, as in the West, nor with the structural transformation of that bourgeois public sphere after

the eighteenth century. Even less did they emerge with the rise of a modern Weberian bureaucracy along with Western-style modern state-making. Rather, they arose within the framework of the traditional centralized minimalist rule and along with new phenomena that came with the rise of modern industry and commerce, including the commercial associations of the late Qing and Republic. Which is to say, we need to historicize Western theories, placing them into their historical contexts; only then can we select from them the useful parts or reconfigure them to grasp the real content of China's very different past and very different modernizing present. Only then can we develop theoretical conceptions that are anchored in Chinese realities.

Summary and Conclusion

Looking across the history of the formation and evolution of China's third sphere, we can see that it stemmed most certainly not from a tradition of parcelized feudalism as in the West, nor from the development of capitalism and the modern nation-state's (Weberian) bureaucracy, even less from a bourgeois public sphere, or its structural transformation and disappearance, but rather from the combination of a highly centralized imperial state with a peasant society-economy, and its changes in the modern and contemporary periods. What resulted is a distinctive third sphere made up of special characteristics that come from the political-economic and political-legal tradition born of the combining of a big centralized imperial state with a small peasant economy.

With the rise of industry and commerce and the expansion of state revenues, the West developed an administrative system with salaried, specialized civil servants that function according to strict rules and procedures, checked and limited at the top by the three-way division of power and yet possessing deeply penetrating infrastructural power—including the systematic delivery of public services—at the basic levels of society. China's course of change in its modern and contemporary periods has been a very different one: at the top, it has maintained a high degree of centralized power, but its administrative system, though with a significant measure of Weberian bureaucracy, and despite its deeply penetrating infrastructural power under the Communist party-state during the planned economy era, has since, along with the rise of private enterprises, pulled back considerably from basic-level society, especially after the abolition in 2006 of taxes and fees for agriculture. There has as a result been a near complete collapse of public services inside villages. The trend has been back in the direction toward more minimalist basic-level governance.

At the same time, with the rapid expansion of private enterprises (now accounting for more than half of the nonagricultural GDP), the state's control of society-economy has definitely loosened, accompanied by an expanding

third sphere in which the two cooperate and interact. Along with that has come even wider resort to the administrative contracting system of internal and external contracting and subcontracting. That approach, it turns out, has greatly invigorated the party tradition of “initiatives from two sources,” central and local, driving a stunning record of GDP development. It has also been broadly applied throughout society, including “governance by project grants” through both internal and external contracting, leading to even greater expansions of the third sphere.

However, because the collaboration between state and society has been mainly targeted at GDP development, it has also led to the relative neglect of public services, social equity, labor laws and regulations, environmental protection, and the like. And, because the incentive mechanism resorted to is mainly that of private gain-seeking on the part of individual officials and entrepreneurs, administrative contracting and subcontracting in actual operation has also resulted unavoidably in considerable officials-businesses collusion, corruption, and profiteering. There has also been the problem of a high degree of localism, resulting in segmentation of local jurisdictions and large differences among them in level of development. In addition, because the state has resorted widely to formalistic and numericized methods of management that often do not accord with reality, there have arisen many “showcase projects” and “demonstration areas” 示范区 that emphasize image more than substance. Similar phenomena have been widespread also in the academic world and in scholarship.

In the justice system, while informal justice (societal mediation) has persisted, semiformal mediation has expanded greatly and accomplished much in the way of relatively low-cost resolutions of disputes. On the other hand, we can also see negative phenomena, such as the resort to administrative fiat in the name of mediation, in which only the form of mediation exists but not its substance, sometimes even using ostensible mediation to prevent citizens from seeking justice through the courts.

In the West, one major content of modern state-making is the establishment of a modern (civil service) bureaucracy and governance by law, with powers and functions that penetrate society deeply. Contracting between principal and agent has occurred mainly horizontally in relationships among individuals and firms of the market economy, with relatively little in the way of vertical administrative contracting and subcontracting within the bureaucratic system, or between the state system and society, as is the case in the Chinese third sphere of administrative contracting, internal and external.

We need to observe, in addition, that precisely because so much of governance occurs in the interactive third sphere between state and society, and is not just a matter of the government adopting a particular kind of policy or system, major changes in either one or the other will impact directly that

relationship. Traditional society was one with close interpersonal relations and the (Confucian) morality based on those. Under those conditions, the actual workings of the administrative contracting system were very different from those in the present social environment. Today, the legitimacy of the pursuit of self-gain has permeated the entire society, replacing to a great degree the constraints imposed by Confucian moral values and by community and kin relationships. Therefore, there has been even more in the way of corrupt and selfish behavior in the administrative contracting third sphere. There is great need in the future for reestablishing moral values, based at once on tradition and on modern needs to fill in the moral vacuum that exists today.

To be sure, in modern and contemporary China there have also appeared to a considerable extent, state agencies that are similar to those of Weberian modern bureaucracy. In new-style and specialized realms, there is of course the need for and also development of such entities—for example, those for finance, environmental protection, food safety, pharmaceutical control, disease control, and the like. Even so, third-sphere entities are still expanding rapidly. Which is also to say, China's governance system cannot be understood simply in the terms of Weberian theories of modern bureaucracy.

What this article advocates is grasping and conceptualizing China's traditional and modern governance system in terms of the interrelationship between a changing society-economy and a changing state. Therein, the third-sphere mode of governance born of centralized minimalism, including its administrative contracting system, is a fundamental starting point and abiding characteristic, very different from the West's modern bureaucratic system with its low degree of centralized power but high degree of penetrative infrastructural power. We need to place Western theories into their historical background and context in order to analyze and dialogue with them, and reconstruct them into new theoretical formulations that are anchored in Chinese realities.

As for the future, perhaps we can imagine that, along with the continued growth of societal organizations and their economic power, and society's level of education and specialization, perhaps an even better and more balanced, mutually supportive and interactive relationship can be developed between state and society. The third sphere of imperial China was after all based on a grossly unequal power relationship between the ruler and the children-people 子民 (also between parent-child and husband-wife). Even today, it is still a relationship between big brother and kid brother, still prone to negative developments such as the state's misuse of power, setting up goals/policies that run counter to society's needs, relying excessively on the pursuit of gain as incentives, and resorting to formalistic management practices that are divorced from reality. Perhaps, one might envision a future China in

which, with the further development of societal entities and their power, the relative power of society and of the state can become better balanced, to result in even more constructive interactions in which society can check the state's misguided or oppressive policies and release still greater energies through state-society collaborations.

We can picture state-ified societal organizations from below that come with the state's approval and support—such as “East Asian” style co-ops anchored in the village communities but with state leadership and support, plus active participation from villagers, to provide much needed vertical integration for the processing and marketing of agricultural products (Huang Zongzhi, 2018, 2015), residential-compound organizations in the towns and cities, commercial associations, labor unions, and other societal organizations, including professional associations, and also state-society cooperative entities for public services, social security, labor protection, insurance, and the like. We might also imagine more societalized state entities—such as township legal services offices with greater societal participation, consumers' associations for mediation with societal representation, Public Security mediations with societal participation, and so on. As for the system of governance, there is of course the need for modern bureaucratic, civil-servant type entities in the more highly specialized new-style state agencies, but, on the other hand, there can also be multiple relatively low-cost third-sphere entities that carry on the tradition of state-society collaboration. A possible distant vision is to develop in the direction of a distinctive and modernized governance system, perhaps with a third sphere characterized by a medium degree of centralized power but a relatively high degree of infrastructural power (especially for rural public services) that might make up a distinctively Chinese political-legal and political-economic system. That is because history has already shown us that a good collaborative relationship between state and society in the third sphere can release immense energies.

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Notes

1. Such a view can of course be understood in terms of a dialectical (materialism) logic, of thesis to antithesis to synthesis but, even so, its point of departure is to first posit the binary opposition between the two, which is a very different view from the yin-yang 阴阳 and qian-kun 乾坤 view of dualistic relationships. The concrete illustration of the former is from capitalist society through socialist revolution to a new classless socialist mode of production, very different from the unendingly interactive view of the two, even as one might alternately loom larger than the other, in the Chinese conception.
2. An important concrete example is Chongqing city (see Huang, 2011a).
3. In this connection, we might point out also that, since the 1980s, even though the central government's policies have not given sufficient attention to the interests of the small peasants, favoring instead large agricultural enterprises, the small peasants have nevertheless, by virtue of the incentive of seeking self-gain in the market economy, propelled the rapid development of the new agriculture, whose output value has grown at an average rate of 6 percent a year (in comparable prices) between 1980 and 2010, far greater than previous agricultural revolutions in the world. By 2010, that new agriculture has come to account for 60 percent of total agricultural output value in China, compared to just 16 percent of output value for grains (which occupy 56 percent of the total cultivated acreage). This is an issue that requires separate and detailed discussion and will only be mentioned in passing here (see Huang, 2016b; Huang Zongzhi, 2014a, v. 3; Huang Zongzhi, 2017).

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Author Biography

Philip C. C. Huang has recently completed three new books, in Chinese. The first, *China’s Small Peasant Economy: Practice and Theory*, is the sequel (fourth volume) to his trilogy on the Chinese peasant economy since the Ming and Qing; the second, *China’s Justice System: Practice and Theory*, is the sequel to his trilogy on the Chinese justice system from the Qing; the third, *China’s Informal Economy: Practice and Theory* is his new study of “informal workers” (i.e., those with little or no protection and benefits from the law). All three should appear before the end of this year.