State Control and Governance of Residential Communities

The case to be examined: community mediation in Shanghai

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Édition électronique

URL : <http://journals.openedition.org/chinaperspectives/1114>

DOI : 10.4000/chinaperspectives.1114

ISSN : 1996-4617

Éditeur

Centre d'étude français sur la Chine contemporaine

Édition imprimée

Date de publication : 15 février 2005

ISSN : 2070-3449

Référence électronique

Peng Bo, « State Control and Governance of Residential Communities », *China Perspectives* [En ligne], 57 | january - february 2005, mis en ligne le 20 mars 2008, consulté le 10 décembre 2020. URL : <http://journals.openedition.org/chinaperspectives/1114> ; DOI : <https://doi.org/10.4000/chinaperspectives.1114>

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- 1 Before applying the concept of governance (*zhili*) to Chinese questions, we must first see how it emerged in the context of Western societies. To do this we propose to review the history of the formation of the state in China and in the West, before exploring the question of decentralisation of administrative procedures.

Back to the origins of governance: a historical and comparative perspective

- 2 Modern nation-states were preceded by forms of traditional states; the feudal system in the West, or the oriental “empire with its hereditary bureaucratic system”², also described as “historical bureaucratic empire”³. All were segmentary in form, and the administrative authority exercised by the state authorities was extremely limited⁴. Amazingly perhaps, pre-modern forms of the state in both the West and the East share the same characteristic, namely, a gap between political projects at the top and effective management of society at the bottom, the principal cause being inadequate resources and techniques. Eastern and Western states adapted very differently to this situation. To put it simply, Western medieval societies developed a feudal system of territories and titles. In China, the feudal system was quickly replaced by a bureaucratic empire. In this system, although central government exercised in theory absolute control over society, it was always obliged in practice to rely on self-management at the base of society to compensate for the inadequacy of central administrative power. In Chinese villages where “the mountain is high and the emperor is far away”, (*shan gao, huangdi yuan*), educated civil servants stood in for the central authorities in the direction of local affairs.
- 3 Western countries progressed from traditional power to the modern nation-state by way of absolute government. Relying on the resources and technical conditions provided by capitalism and industrialisation, modern nation-states progressively established a powerful control over the whole of society⁵.

- 4 Since the end of the Qing dynasty, particularly because of the challenges posed by outside forces⁶, and because of the internal logic of evolution⁷, the structure of the Chinese state also underwent a process of gradual transition. By strengthening its local control and increasing its fiscal resources, central government progressively destroyed the traditional local model of self-administration⁸. Local leaders had been deceiving those above as well as those below them, embezzling the state's tax revenues and oppressing the people⁹: their institutionalisation was the main political cause for the destruction of the countryside.
- 5 In the period following 1949, the new socialist state pursued modernisation as well as the historical process of extending the power of the central administration. By creating people's communes in the countryside and work units in the cities, entities that were both economic and administrative¹⁰, the state was able to extend its central administrative apparatus despite its meagre resources. The launching of the reforms, the breakdown of the collective rural economy and the declining influence of work units in the cities have endangered this balance.
- 6 In Western societies, the building of a modern, democratic nation-state has been accompanied by a concentration of power and by the specialisation of the bureaucratic apparatus¹¹. Even though a bureaucratic system has many faults, it is considered that democracy helps to guarantee the defence of the common good. Citizens exert indirect control over the bureaucracy through their elected political leaders and the civil service mandarins. In the United States, the age of Franklin D. Roosevelt represented a golden age of public confidence in the central bureaucracy, by virtue of its efficiency¹².
- 7 During the second half of the twentieth century, as administrations' tasks became more complex, numbers of those who questioned the bureaucratic state increased. This reappraisal also arose from other factors: the challenge posed to bureaucratic systems was not only related to their inefficiency and corruption, but resulted from ideological changes, and from the renewed vigour of individualism and neo-liberalism.
- 8 The problems of inefficiency and corruption in bureaucratic states, the cost of welfare states became increasingly intolerable. For economists this was reflected in the renewal of the Austrian School and by the transition from scientific heterodoxy to fashionable science¹³. In political theory¹⁴, this led to the conservative reforms brought in by President Reagan in the United States and by the Thatcher government in the United Kingdom. In the 1980s, public administration systems in New Zealand and Australia were reformed. This wind of change, later to be labelled as "the New Public Management", blew across Europe and then influenced the US and Asia¹⁵. Numerous researchers have showed that these reforms were aimed not so much at changing methods of public management as at satisfying electorates greedy for change, thus emphasising the ideological dimension¹⁶.
- 9 Amid growing mistrust of bureaucratic administration, the management of public affairs has been placed in new hands: non-governmental organisations, social mediation structures and private organisations. This new model is put together according to governance theory redefining the relations between state and society. Central administrative organisations and public ministries are no longer the only levers for promoting the common interest. Voluntary organisations and private bodies may also serve the public welfare, and do so more efficiently. As voluntary and private bodies are brought into the management of public affairs, the distinction between public and private becomes blurred. Lastly, whereas according to traditional

democratic theory the struggle between political parties assures the pursuit of the public good, the advocates of governance say that a network linking the different elements of society may provide a structural base for their collective management; they hold that communities other than the strictly geographic may also acquire democratic autonomy¹⁷.

Mediation in the perspective of governance

- 10 International scientific research distinguishes three types of mediation (tiaojie) in China's history: a traditional period preceding modernisation; the Maoist period; and the age of openness and reforms. By comparing the mediation phenomena associated with these different historical moments, we are able to identify why they were needed, their function within the political society as a whole and their operating mechanism.
- 11 Two kinds of theory account for the appearance of mediation in socialist China. In a culturalist perspective, Jerome Cohen considers that the characteristic conciliation systems of communist China and traditional China, despite divergences between Maoist thinking and Confucian ideology, arise out of dislike for any legal proceedings¹⁸. Thus, in China, people attach great importance to "criticism-education", to self-criticism and voluntary good behaviour. On this point, the Chinese and Russian legal systems are miles apart: the organisation of the Chinese legal system and the practice of mediation show that Chinese socialism is far from merely imitating practices in other socialist countries. Other writers take a functionalist approach. For Stanley Lubman¹⁹, there is no question of considering mediation in socialist China merely as an extension of traditional culture; it has an important functional significance in the political practice of Chinese communism. Mediation procedures in the new China derive from the needs of governance and perform a real function.
- 12 According to some writers, mediation in traditional China expresses the reluctance to take legal action, the main purpose of mediation being to remove most disputes from the official legal context. Settling an argument outside the courts is quicker and less expensive than suing someone. Mediation is a substitute for a court action and draws its strength from the tendency, within the Chinese political tradition, to leave people to sort out their own problems.
- 13 In Lubman's view, socialist China has invested mediation with a new political function: it contributes to the state's overall objective of restructuring society²⁰. Through mediation, the state fulfils its political objective of mobilising the masses. As part of this process, the state's purposes are effectively and completely applied to the lowest level of society.
- 14 In socialist China, mediation is at the same time a technique for political control and a mechanism that complements the law, two aims that can sometimes turn out to be in conflict. The launch of the reforms undoubtedly exposed internal contradictions in mediation. New disagreements arose, imposing considerable pressure on the legal system. So may we assert that the political function of the practice of mediation has given place to its social function? Putting the question another way, what changes has the political function of mediation undergone since 1978?

The situation with community mediation

- 15 Community mediation (shequ tiaojie) is applied to civil offences and minor criminal offences. It intervenes between civilians, and concerns marital and family disputes, or quarrels between neighbours, colleagues, fellow-residents, individual entrepreneurs (getihu), contracted entrepreneurs or associates. Such disputes are mainly about rights

to and interest in money, or about other matters—emotional or conjugal, for example. Disputes between individual entrepreneurs or production managers, on the one hand, and private individuals or residential communities involved in economic activity on the other, are also extremely common. By the usual definition, mediation means that a third party undertakes conciliation between two other parties, appealing to the laws and state rules and regulations, so as to persuade them voluntarily to agree a fair compromise and to drop any further proceedings²¹.

- 16 Mediation has several essential characteristics. First of all, the third party must come from outside the field of conflict and be able to take an impartial position in proceeding to conciliation; secondly, he or she must base their counsel and guidance on laws, rules and regulations; and thirdly, the recourse to mediation presupposes that the two disputing parties are participating voluntarily, any eventual accord being based on reciprocal forgiveness and accepted of their own free will.
- 17 The job of People's Mediation (renmin tiaojie) is, in its narrow sense, that carried out by a People's Mediation Committee (renmin tiaojie weiyuanhui); in its wider sense it has three aspects: (1) gathering the necessary information and producing it at the right moment; (2) anticipating all sorts of disagreements and quarrels that can crop up in various communities while finding a compromise between the parties; and (3) bringing the settlement to the community's attention²².
- 18 Chinese traditional society is "not litigious" (wusong). In this context, People's Mediation plays an important role in calming industrial strife and fills the space left vacant by the ineffectual application of legal and administrative services²³. Ever since socialist China was founded, the system of People's Mediation has attracted much attention. It was given legal status in 1954 when the "Directive on the Temporary Organisation of People's Mediation Committees" was promulgated. In 1980, the Standing Committee of the National People's Congress ratified the new "General Law on the Temporary Organisation of People's Mediation Committees". In 1982, the Chinese Constitution and the Law on Civil Procedures confirmed the system.

Stratification of the People's Mediation System in Shanghai

Levels	Management bodies and agents	Mediation bodies
District (qu)	People's government of the district (legal office of the district)	Management committee for People's Mediation
Street (jiedao)	Street Bureau (legal section, legal assistants)	Community People's Mediation Committee
Residential community (juminqu)	Residents' Committee	People's Mediation Committee
Residents' section (juminkuai)	Section head	Small mediation group
Group of apartment blocks (louzu)	Head of apartment blocks group	Mediation agent (informant)

- 19 According to the 1982 Constitution, the People's Mediation Committees and the Public Security and Hygiene Committees form Committees of Urban and Rural Residents (jumin weiyuanhui, cunmin weiyuanhui) which in practical terms manage the mediation of civil disputes. On June 17th 1989, the "Directive on the Organisation of People's Mediation Committees" was promulgated. It stipulates that the Committees should work under the direction of the People's Government and of the People's Legal Bureau and that the daily work carried out by this government and its delegated organs in the People's Mediation Committees is assumed by legal assistants. In urban areas, the

Residents' Committees set up the People's Mediation Committees; it is the Residents' Committees that, with the help of the legal assistants of the local office, direct the work of the People's Mediation Committees at the level of the residential communities (see table).

- 20 Taking as an example District A of Shanghai, the hierarchical structure of the system of civil mediation is as follows: at district level (qu), the leadership committee of the work of civil mediation is in charge of overall management and public order. Its main function is to harmonise the work of different departments of governmental bodies and to take the lead in applying important political measures. The responsibility for some practical daily tasks of administrative management is assigned to the three members of the district legal office. The office chief is supported by two young agents, newly qualified, one in law and the other in administrative management. Together, the three are responsible for controlling legal practice in different "Streets" (jiedao).
- 21 The appropriate administrative body at the street level is the legal section. The "Directive on the Organisation of People's Mediation Committees" stipulates that the government and its delegated bodies have responsibility for guiding the Mediation Committees of the Residents' Committees; the mediation agreements must be kept in conformity with the law and those who transgress them disciplined. Not only does the legal section of the Street direct and supervise the work but the legal assistants of the Street must also take part directly in settling disputes unresolved at the lower levels.
- 22 In District A, ten Streets have set up a legal section. The law stipulates that a legal section must have a head of section and two assistants. Because of organisational constraints, the legal section and the office of general administrative management have been merged into one body. With the exception of one Street that has not yet created the post of head of the legal section, the heads of the other sections all exercise a double function. All the Streets have created legal assistant posts. Between 2000 and 2002, the legal sections in the Streets have taken direct part in settling 282 disputes and have intervened in that of 185 others²⁴.
- 23 The Law on the Organisation of Residents' Committees requires the creation of a People's Mediation Committee subordinate to the Residents' Committee. Each of the 194 residential areas (juminqu) of District A has a People's Mediation Committee and a post of head of mediation. These committees have 1,527 members. The Mediation Committee is usually composed of five to ten people, generally including the leader of the Residents' Committee, the Party Secretary of the residential community, the members of the Residents' Committee responsible for culture and education, the heads of organisations and police officers. The head of mediation is in general an employee member of the Residents' Committee, whose other tasks include the maintenance of security, civil administration and health control. In two years, District A's Mediation Committees settled 8,265 disputes, prevented eight disputes involving 13 people from becoming criminal prosecutions, and averted one unlawful killing.
- 24 At the level of apartment block groups (louzu)²⁵, this district has in all 7,180 mediation agents, of whom 2,379 are full-time employees (the others have additional jobs). These mediators head the administration of groups of apartment blocks. The disputes they are called upon to settle mostly have to do with quarrels between neighbours on which we have no quantitative information.

The socialisation of state control
Working for People's Mediation in the context of state control

- 25 For legal staff and administration officials, the status and the image of mediation work are complex. On the one hand, People's Mediation comes up in every aspect of society, and between all sorts of individuals; affairs dealt with are frequently emotional and highly complex; thus mediation work is both difficult and yet commonplace. On the other hand, mediation, just like the Civil Affairs Bureau, is the "front line" of preserving the stability and unity of urban society.
- 26 Present demands, in terms of social stability, are extremely high. In the system for appraising civil servants, the economic and social development of their own area is a determining criterion. The degree of stability among the local people is another. The public have become aware of the possibility of appealing to higher authority or of taking to the streets. One of our informants suggests: "People today know what they [the civil servants] are worried about. They're afraid people will take a complaint about something trivial right to the top, or even attack the 'Kang bureau' and occupy Yinbin Street²⁶."
- 27 From the state's point of view, mediation helps to preserve social stability and acts as an effective wheel in the machine of state control. Civil differences, if they can be resolved at the level of the group of apartment blocks or of the Street, do not in general require the intervention of the municipal administration. However, if one of the parties engaged in the difference calls an emergency number (110, for example), the alarm is raised and, however large or small the problem, the municipal police are automatically obliged to pass the information on to the legal bureau of the district where the difference came up, and then to the Street and the residential community committees²⁷.
- 28 For example, on December 6th 2002, at 08:26, an emergency 110 call was made about a family dispute. The police intervened at once, passing on the information to the district legal bureau. The legal assistant for the location of the dispute made contact with the residents' committee; the mediation official of this committee went straight away to visit the family. Very swiftly the origins and the consequences of the dispute were reported to the legal office, as follows: "L is a provincial woman, formerly married to S. Six months ago, after the divorce came through, S agreed that L should again come to live with him. L spent a significant amount of money belonging to S. Once all his savings had disappeared, S wanted L to leave, but she refused. A dispute broke out. L attacked S with a knife and the emergency call was made. In response to advice from police officers and from the residents' committee, calm was restored; and the committee demanded that the problems arising from this post-divorce cohabitation should be clearly sorted out." On December 6th at 13:55, a report on the situation and the outcome of mediation were passed on to the municipal police²⁸.
- At the outer limits of state control
- 29 Shanghai is China's shop window for the world. The city is at the sharp end of economic development and represents the front line in the revitalisation of the system. The need for social stability is all the more an imperative. From this point of view, rank and file mediation agents appear to be working at the outer limits of the state's control over society. One interviewee said, "In our district, there are ten Streets each with its own legal assistants and several receptionists, 194 residents' committees and the same number of mediation heads who we are in the process of training (. . .) At a lower level, we also have 1,500 mediation agents, with whom in general we have no direct contact."²⁹

- 30 In practical terms, among the mediators of district A, within the network on three levels (Streets, residents' committees and small groups of residents), only the legal assistants at Street level belong to the civil service. The receptionists are paid by the Street. Most of the mediation officials of the residents' committees are paid about 500 yuan a month, by the Street; and most of the 1,500 mediation agents are volunteers. So the state, while socialising the extremities of its control over society, is transferring the cost to society. This system, arising from a lack of resources, is moreover a highly flexible and reactive one.
- 31 It is generally considered that developing the economy is the authorities' first priority and that the officials in charge of economic questions and production ought consequently to be at the top of the administrative hierarchy. That was not the opinion of one official we interviewed. "Economic matters, anyone can take care of them," he said. And he thought that the top jobs should be given to officials of the legal departments who deal with complaints and manage the work of mediation³⁰. Thus, the selection of mediation heads and mediators is of critical importance, because these workers cannot place full reliance on the administrative power of higher authorities, or on the law, or on support from the police. In most cases, they must call upon their own social resources, and count on their personal standing for settling disputes.
- 32 In quite a number of cases, it is impossible to fall back on the law or on political measures to put pressure upon the parties in dispute; they in turn respond to the mediator's image. Thus, an interviewee can say, "These days, the job of mediation usually comes down to the mediator's image, his moral standing; of course, the mediator also needs to understand the law, as well as a little psychology. It's a job for an expert now. Really! 'Use one word and people laugh; use another and they jump' "³¹. A tricky problem for the community's administrators
- 33 Leaving society to take charge of itself has undeniably lowered the state's control expenditure, at the very least, while maintaining the appearance of great efficiency. Mediation is provided neither by the municipality nor by the district, but by the Street and the residents' committee. Particularly, it is the Street, the lowest level of the administrative hierarchy, which is in the front line, assuming the heaviest responsibility and paying the greatest price. In Street B, the state is responsible for paying only 80 officials and agents, though staffing needs are far higher than that. Police services alone account for more than a hundred posts. On top of that, the monthly 500 yuan must be found for each of the mediators of the residents' committees. While the state has transferred the costs of its control to society itself, it has in fact concentrated pressure on the last link in the administrative system: the Street. And the Street faces two sometimes contradictory imperatives: developing the economy and preserving social stability.
- 34 For example, legal assistant Q was confronted by the following problem: the air ducts of a restaurant just about to open were a source of pollution and were harmful to the quality of life of those living nearby. As assistant Q put it, "We are speaking of a very large restaurant on two floors, still under construction – although the staff were already in training. The two air ducts that the restaurant has installed do present, it's true, some risk to the local people's quality of life, but up to now we haven't made any official report. This is partly because we don't know how the restaurant will turn out and partly because we're going to ask the planning and environmental protection departments to carry out a scientific appraisal."³² There is a good reason why the local

office is handling this difference so circumspectly. It is obvious that the restaurant construction is harmful to the people living nearby; but the legal assistant has not immediately taken the residents' side because he knows that the restaurant will be good for the local economy. Furthermore, without knowing precisely the financial resources of the restaurant, an over-hasty demand for higher authorities or other bodies to step in could condemn the mediation process to failure. Even if one sincerely believes that the locals must be protected, it is best to go down the "scientific" road, that is to say, to mobilise the authority of other administrative bodies.

People's mediation under pressure

- 35 At the present time, the management of public affairs in China conforms to the model of a sieve. All sorts of measures are taken, but affairs circulate like water in the sieve and drain away down to the last drop at the very bottom. There at the bottom of the sieve lies the Street office; all the spending requirements, poured in from higher up, end up there. But when it comes to resources, the circulation goes the other way, on the model of the extractor hood. In these conditions, the Street office lying at the base of the system undergoes the greatest administrative pressure, and suffers the least advantageous conditions in terms of resources. To carry out its workload of administrative tasks, the Street has to find unaided the economic resources needed for taking on extra agents. Of course, to defend its interests, the public can appeal to higher authority or organise a demonstration. Yet, this kind of defiant behaviour is effective only in extreme cases and in precise circumstances (appeals to higher authorities or demonstrations achieve the best results on the eve of public holidays or important events). Most minor arguments follow the normal administrative process.
- 36 Affairs arising in the area of People's Mediation lie well outside the attention of administrative bodies and can be resolved in a relatively satisfactory way only if they have a direct or indirect link with overall stability. Minor affairs that have little impact on social cohesion are always put aside for the time being and coolly dealt with later on. The socialisation of state control requires that the government should play an important guiding role in People's Mediation, and that administrative bodies should be involved in the process, which clearly weakens the popular character of the mediation. The bureaucratisation of community mediationThe social resources of the mediation officials
- 37 The Law on the Organisation of Residents' Committees stipulates that they should set up People's Mediation Committees, which are organisations for the masses specially charged with settling people's differences. In Shanghai, the most striking phenomenon is the way that the state administrators intervene in the mediation process; the more serious the dispute, the more directive is their role. In fact, the Regulation on the Organisation of People's Mediation stipulates that the People's Mediation Committee should work under the direction of the People's Government and the People's Courts; the daily work of the former, guiding the People's Mediation Committee, is the responsibility of the legal assistants.
- 38 In People's Mediation, it is the collective disputes that have the greatest influence over people's lives, that is, disputes in which one party may include five or more households. In such differences, citizens may insist on a collective action that would harm social stability. The most common collective differences include those arising from the construction of new apartment blocks, when people are forced out of their homes, or from problems caused by enterprise work units. During the settlement process of these

disputes, the residents' committees have no power, and those affected very often seek help from the legal offices of the Street. Thus, the differences that are hardest to resolve are sent up to the legal office of the district and then to the complaints department.

- 39 Yet, we should stress that, while becoming bureaucratised, People's Mediation does not result directly in an administrative act (administrative conciliation) or in a legal process (judicial mediation) at the Street level. The Regulation on the Organisation of People's Mediation stipulates that the work of the People's Mediation Committee of the Residents' Committee must be done under the direction of legal assistants. Behind this "direction", one can see the administrative intervention of the Streets in the mediation process.
- 40 A legal assistant explains: "Our work requires great care. Legal assistants have to be extremely experienced. What we say is in general very measured, and it's difficult for anyone to tell what side we are on. If we make declarations at any moment, people might believe that it was the Streets that wanted it – and that would make it difficult to make our official complaint at the right time. Within the Streets there are now a lot of government officials; and, if a difference arises, they exert pressure and make our work extremely taxing.³³"
- 41 In most cases, the Street Bureau legal assistants base their authority on the trust that the public have in them, but this resource is fragile. To build up their authority, the legal assistants have developed two kinds of strategy. On the one hand, they collaborate with the government's administrative bodies, which have formal administrative and legal powers: this helps the assistants to increase the speed and effectiveness of their mediation and gives greater force to the application of the draft agreement. That also helps in the rationalisation of decisions. The second strategy of the legal assistants is to rely on their image and their influence among the people.

Vertical control

- 42 Yet, the bureaucratisation of People's Mediation has obvious limits, because mediation needs the agreement of both parties: this is the radical difference between the two types of mediation, administrative and legal. Furthermore, although the connections between the district legal office and the Street legal section or the legal assistants are links between different hierarchical levels, these connections are not based on authority; they are based on collaborative work. In fact, the district legal bureau lacks the means of controlling the employees' organisation in the Street Bureau legal section; and most of the expenditure by legal agents is born by the Street and not by the district. Thus, the system of vertical control is partially broken. If one asks how the district legal bureau controls or guides the activities of the legal section of the Street, this is the reply that is given: "We direct professional action at the level of the Street, but we can also enforce our leadership through other means, such as the comparative evaluation of the work, which enables us to normalise the mediation work at the level of the Street and of the residents' committee.³⁴" In district A of Shanghai, the People's Mediation activities represent about a quarter of the legal work carried out under the Streets' jurisdiction.
- 43 At the level of the Street legal section, comparative evaluation is of primary importance. If this evaluation is positive, it helps to enhance the influence of the legal section within the Street administration. Evaluating the Street's mediation work enables the legal authorities to maintain their control over the Streets. However, there

being no relationship based on direct authority, this type of control is complex and delicate, and also unstable.

Horizontal network

- 44 In Shanghai at the present time, the various bodies employed in People's Mediation work in a network. In the case of district A, at the level of each Street, a centre has been set up for settling community disputes, under the responsibility of senior figures in the Streets, among them the head of the legal section and the deputy police chief. Offices have been made available offering various administrative and legal services, and People's Mediation services. Celebrities have been invited, on a voluntary basis, to take top posts in People's Mediation. The courts play their part in, for example, the "Reception for Party Secretaries of the Streets on Thursdays", in the "110" emergency phone network, and in the "12348" special line system for the legal service³⁵.
- 45 Unlike the vertical network described above—linking districts, Streets, small groups of residents and the general public—this is a horizontal network. This type of network contributes more than vertical control towards forming a civic culture. Yet, the elements that make up this network, horizontal though it is, are fundamentally organs of the state. Even the legal aid centres have the characteristics of a quasi-administrative organisation. This horizontal network must be considered as complementing the vertical administrative network.
- 46 Thus, although the administration favours the bureaucratisation of People's Mediation, it is still limited. That derives from an intrinsic characteristic, namely, the absence of administrative or legal coercion. Because mediation draws no authority from any administrative body, the two parties in dispute may withhold their consent from conciliation. Being non-coercive and free of the prescriptive character of a legal judgment, the people involved in the difference can abort the application of any decisions reached. What is more, because the draft agreement has no prescriptive force, the recourse to justice has little effect. So the state is taking a different path from bureaucratisation to strengthen the application of People's Mediation.
- The legalisation of People's Mediation First steps towards systematic legal enforcement
- 47 Regulations published on September 16th 2002³⁶ lay down that, after the two parties have signed an agreement reached by a People's Mediation Committee, "the persons concerned must fulfil their duty as negotiated, and are not authorised to assume the right to modify or cancel the mediation accord"³⁷.
- 48 Before this text was published, because of the informal nature of the agreements reached through People's Mediation, they could often be ignored once the differences came to court. Also the two parties involved could choose whether or not to respect the agreement, which sharply limited the authority of the mediation. Since the new regulations took effect, if one of the parties does not apply the agreement after mediation, he or she risks prosecution. Rank and file legal agents have warmly welcomed this decision: "Of course, we're very favourable to the decision by the High Court, which gives greater weight to our mediation agreements. People won't be able to take them lightly as they did before."³⁸
- 49 In reality, few cases of People's Mediation lead to a formal agreement. In district A, according to our interviews, of 8,000 People's Mediation processes, only 5% led to a formal agreement. However, the symbolic importance of the new ruling is significant.

The work of People's Mediation has taken on greater prestige, creating an environment more favourable to its development.

50 Furthermore, considering the mediation agreement as a civil contract means that greater care must be taken in reaching the settlement and putting it in writing. Not only must it conform to legal requirements, and be more standardised, but the whole process of mediation must also conform to standards.

51 Lastly, the enhanced familiarity with the law among Shanghai's inhabitants, and their growing capacity for making use of it are also forcing mediation work into the legal path: "We have the impression now that in terms of legal knowledge we're not keeping up with the general public. When the High Court regulations had only just appeared, people immediately started asking whether mediation agreements allowed them to go to law. Although the High Court clearly specified that only agreements reached after November 2002 would have the force of a civil contract and that the law would not apply retrospectively, the public's rising awareness of the law puts us under a lot of pressure. We're bracing ourselves to co-operate with the courts, to designate a number of successful mediation agreements as models and to publicise what they will mean in future.³⁹"

52 The tendency for mediation agreements to have legal weight, while raising the authoritative status of People's Mediation, demands specialisation and standardisation in working practice. To that end, district A has put in place a reform that constitutes an innovative precedent for the whole country.

"Symbolic" legalisation procedures

53 As legal consolidation of People's Mediation is in its early stages, its long-term effects are difficult to determine. However, we can already identify a series of problems. Firstly, the widespread recourse to People's Mediation makes it almost impossible to legalise the entire operation. Mediation is a response to the need for taking pressure off the legal apparatus. In district A, the courts handle in one year only about 3,000 cases, whereas over 8,000 disputes are recorded. Attempting to resolve all of these civil differences by a legal process is unrealistic. Secondly, the professional qualifications of those presently running the residents' mediation committees are still far from adequate to legal requirements. Finally, while legalisation may help to standardise the work of People's Mediation and increase the rights and legal responsibilities of the general public, people today lack the means to oppose the state bodies; and this runs counter to the initial intention behind the reforms.

Local governance: what are the prospects?

54 Among China's borrowings from the West since the nineteenth century, there are many that find an echo in traditional society. This is true of modern bureaucratic systems, of the practice of regional autonomy, of democracy and of governance. China has a long tradition of drawing on social forces to manage public affairs. This procedure is still used today, but with changes in form and environment. A notable difference between China and the West is that, in the West, what came first were the democratisation of political life and the specialisation of governmental bodies: governance came afterwards. Can China skip those preliminary stages, democracy and specialisation, and move directly to governance? That is a difficult question.

The gaps in governance

55 The concept of governance in Western societies is not only a challenge to the bureaucratic system but also negates the value of democracy. However, this model of

administrative management is in line with a democratic constitutional system. Without democracy, there are gaps in this system. It is very visible in China: in the absence of democracy, citizens have no way of setting limits to the systematic functioning of public service; and it is very difficult for rank and file officials, while ordering the community's affairs, to put the public's real interests first. Citizens may appeal to higher authority, and even go outside the system by demonstrating, to exert pressure on the decision-makers; but this process cannot become part of an official system, and has only an extremely limited influence on important decisions, especially on current decisions. Consequently, in the absence of democracy, the model of governance could have an even more harmful effect than a bureaucratic system, from the point of view of justice and the defence of individual interests.

Mechanistic state and organic state

- 56 Referring to the disappearance of traditional public space in modern societies, Jürgen Habermas mentioned the problems of socialising the state and imposing state control over society⁴⁰. Community mediation in China is an example of the socialising of state control and of the bureaucratisation of an organised process within society. Western states have adopted a governance model of the co-operative type, the product of a post-bureaucratic period. It is not that governmental bodies lack any fundamental capacity for control, but the procedures for traditional bureaucratic control are now ineffective and the electorate is protesting against increases in public expenditure. In China, co-operation between civil servants and the public is due to the fact that the state does not at present have available the resources for its programme. Its "co-operation" with society is a product, not so much of the search for efficiency, as of the inability to rely exclusively on administrative bodies.
- 57 According to Giddens, modern states in the West have a "reflexive" characteristic, the condition necessary for exercising control over the centralising of power. Michael Mann uses the term "organic states" to describe modern states⁴¹. In the case of states like China, the overall volume of resources that society provides to the state is constantly increasing; and the state itself endeavours to create all sorts of control networks. Yet, state control still has something mechanical about it. In this system, it is difficult to create mutual stimulation between state and society; and the state is not in a position to conform to the trend of society's thinking, so as to put in place flexible controls. So it is obliged to rely largely on networks dependant on administrative bodies. Because the administrative system has limited resources, pressure is redirected towards society's networks. In the context of Western governance, in addition to co-operation between public and private, network building is at the heart of the new model for state control, which is both flexible and reactive. In China, the big question posed by the transition from mechanistic state to organic state is the blurring of the line between state and society.
- 58 The relationships between networks and organisations are at the heart of theories about governance. Comparing northern Italy with southern Italy, Robert Putnam considers that the differences are due to the degree of development of horizontal networks in society, which is proportionate to that of local democracy. He holds that horizontal networks help democracy to mature, while vertical networks are of no benefit in developing a civic society⁴². In Shanghai, the vertical networks are of ramshackle construction and the horizontal networks are greatly dependant on the state. The constituent parts of the transversal networks are mostly organs of the

central administration, even though non governmental organisations play their part. These networks, vertical and horizontal, can only provide a framework that is part of the structure of governance. In this system, social participation lacks any independent status.

59 Translation from French by Philip Liddell

NOTES

1. An early version of this paper was delivered at the Conference on “Transformation de l’Etat et restructuration de la société chinoise”, organised by the Ceri and the Cefc in Paris in April 2004.
2. Max Weber, *Rujiao yu daojiao* (Confucianism and Taoism), translation by Hong Tianfu, Jiangsu renmin chubanshe, 1995. Max Weber, *Jingji yu shehui* (Economy and Society), Shangwu yinshuguan, 1997.
3. Shmuel N. Eisenstadt, *Diguo de zhengzhitixi* (The Political Systems of Empires), Guizhou renmin chubanshe, 1992.
4. Anthony Giddens, *Minzu-guojia yu baoli* (The Nation-State and Violence), Sanlian shudian, 1998. Studies on the traditional Chinese state reach a similar conclusion, such as the study called “structural project” (Huang Renyu, *Zhongguo da lishi* [Great History of China], Peking, Sanlian shudian, 1997), or the theory of “ineffectual power” (Karl Wittfogel, *Dongfang zhuanzhi zhuyi* [Oriental Despotism], Zhongguo shehui kexue chubanshe, 1989).
5. Anthony Giddens, *op. cit.*
6. See the theory of “stimulation-response” in John King Fairbank, *Meiguo yu Zhongguo* (The United States and China), Shangwu yinshuguan, 1987.
7. Paul A. Cohen, *Zai Zhongguo faxian lishi - Zhongguo zhongxinguan zai Meiguo de xingqi* (Let’s discover history in China—American historical writing on China’s past), Zhonghua shuju, 1989.
8. Wang Guobin, *Zhuanbian de Zhongguo - lishi bianqian yu Ouzhou jingyan de juxian* (China in transition – historical evolution and the limits of the European experience), Jiangsu renmin chubanshe, 1998.
9. Prasunjit Duara, *Wenhua, quanli yu guojia - 1900-1942 nian de huabei nongcun* (Culture, Power and State – the Rural World in Northern China 1900-1942), Jiangsu renmin chubanshe, 1995.
10. Huang Zongzhi, *Changjiang sanjiaozhou xiaonong jiating yu xiangcun fazhan* (Small Farmers’ Families in the Yangtse Delta and the Development of the Countryside), Zhonghua shuju, 1992.
11. Max Weber, *Jingji yu shehui*, *op. cit.*
12. David Osborne, Ted Gaebler, *Gaige zhengfu: qiye jingshen ruhe gaigezhe gongying bumen* (Reforming the Government: how the spirit of enterprise is reforming public departments), Shanghai yiwu chubanshe, 1996.
13. Friedrich Hayek, *Ziyou zhixu yuanli* (The Constitution of Liberty), Sanlian shudian, 1997.

14. James M. Buchanan, *Ziyou, shichang he guojia* (Liberty, Market and State), Beijing jingji xueyuan chubanshe, 1988.
15. Ferlie Ewan, *The New Public Management in Action*, Oxford, Oxford University Press, 1996.
16. Christopher Hood, *The Art of State: Culture, Rhetoric, and Public Management*, Clarendon, Oxford University Press, 1998. Tom Christensen *et al.* (ed.), *New Public Management, The Transformation of Ideas and Practice*, England, Ashgate, 2002.
17. R.A.W. Rhodes, *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability*, Open University Press, 1997. Yu Keping, *Zhili yu shanzhi* (Management and Benevolent Government), Shehui kexue wenxian chubanshe, 2000.
18. Jerome A. Cohen, "Chinese Mediation on the Eve of Modernization", *California Law Review*, Vol. 54, 1966, quoted in Qiang Shigong (ed.), *Tiaojie, fazhi yu xiandaixing: Zhongguo tiaojie zhidu yanjiu* (Mediation, Legislation and Modernity: Research on the Chinese Mediation System), Zhongguo fazhi chubanshe, September 2001.
19. Stanley B. Lubman, "Mao and Mediation: Politics and Dispute Resolution in Communist China", *California Law Review*, Vol. 55, No. 5, 1967, quoted by Qiang Shigong (ed.), *Tiaojie, fazhi yu xiandaixing: Zhongguo tiaojie zhidu yanjiu*, *op. cit.*
20. Stanley B. Lubman, *op. cit.*
21. "Renmin tiaojie gongzuo ying zhi ying hui" (Indispensable Knowledge and Skills for People's Mediation), publication by the Shanghai Justice Bureau, 2000, p. 1.
22. *Ibid.*
23. Huang Zongzhi, *Minjian shenpan yu minjian tiaojie: Qingdai de biaoda yu shijian* (People's Law and Civil Mediation: Expression and Practice under the Qing Dynasty), Zhongguo shehui kexue chubanshe, 1998.
24. Internal Report: "Strengthening Quotas, Optimising the Use of Resources, Endeavouring to Extend the Application of People's Mediation".
25. In the Wuliqiao Street of the district of Luwan in Shanghai, between the levels of residential community and apartment blocks group is a supplementary level: the residents' section (WWW, juminkuai); it has its own small mediation group whose head is also a member of the People's Mediation Committee of the Residents' Committee. See Gu Jun, *Shequ tiaojie yu shehui wending: Shanghai Luwan qu Wuliqiao jiedao yanjiu baogao* (Community Mediation and Social Stability: Report of Research in the Street of Wuliqiao, district of Luwan, Shanghai), Shanghai daxue chubanshe, 2001, pp. 38-39.
26. Interview with the legal assistant Q of X Street in district A of the city of Shanghai, November 25th 2002. The "Kang Bureau" refers to the management office in Kangping Street, placed there by the Shanghai administration.
27. Shanghai has set up an emergency phone number for the police, 110, and another for legal information, 12348. All information coming in on the 110 and 12348 lines that involves People's Mediation, is sent by fax, pager and other means, to the district legal office and to the legal assistants of the Street where the incident takes place; the legal assistants must contact mediation chiefs in the residents' committees, and send on information about the mediation to the district legal office, which in turn must make a report to the municipal legal office and to the police HQ.
28. Table of the results of mediation of differences in combined action with the Shanghai police hotline 110, n° D022002120682357.
29. Interview with the head of section Z of the legal office of district A of the city of Shanghai, December 11th 2002.

30. Interview with the head of section Z of the committee organisation of district L of the city of Shanghai, November 15th 2002.
 31. Interview with the head of section Z of the legal office of district A of the city of Shanghai, December 11th 2002.
 32. Interview with legal assistant Q of Street X in district A of the city of Shanghai, November 27th 2002.
 33. *Ibid.*
 34. Interview with the head of section Z of the legal office of district A of the city of Shanghai, December 11th 2002.
 35. Internal Report: “Strengthening Quotas, Optimising the Use of Resources, Endeavouring to Extend the Application of People’s Mediation”.
 36. “Regulations of the High Court of Justice concerning civil cases dealt with in the courts involving a civil mediation agreement.”
 37. *Fazhi ribao* (Legal Daily), September 19th 2002.
 38. Interview with the head of section Z of the legal office of district A of the city of Shanghai, December 11th 2002.
 39. *Ibid.*
 40. Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. by Thomas Burger, Cambridge, MA, MIT Press, 1991, 328 pp.
 41. Michael Mann, *Shehui quanli de lai yuan* (The Sources of Social Power), Vol. I, Shanghai renmin chubanshe, 2002, p. 618.
 42. Robert D. Putnam, *Shi minzhu yunzhuang qilai* (Making Democracy Work: Civic Traditions in Modern Italy), translation by Lai Hairong, Jiangxi renmin chubanshe, 2001.
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RÉSUMÉS

In recent years, governance has been the focus of growing attention among Chinese researchers. Along with “authoritarianism” and “urban society”, “governance” is the new theoretical framework for many university studies. Despite a change in terminology, the problems remain identical: the debate centres on the mechanism by which relations are carried on between the state and society in a developing nation such as China. We consider that the term “governance” helps in forming a new understanding of how Chinese public services work. In that pursuit we must not confine ourselves within normative experience but combine field study with theory. Thus, this article is based upon the case study of mediation within the urban communities of Shanghai. Our research in this field is only just beginning; and preliminary conclusions must be considered together as a still unconfirmed hypothesis¹.