

CONSTITUTIONAL POLITICS:
THE ROAD TO PERMANENT PEACE AND STABILITY
ON HOW THE COMMUNIST PARTY OF CHINA CAN ESCAPE
FROM THE HISTORICAL CYCLE*

WANG Zhenmin**

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** Professor of Law, Tsinghua Law School.

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Abstract:

Implementing constitutional governance (constitutionalism) results from China's more than sixty years of hard exploration and bitter lessons. Only through practicing the rule of law and effectively establishing constitutionalism can the Communist Party of China ("CPC") escape from the historical cycle of sliding into decline after achieving success and fully solve the institutional problems affecting its long-term governance and China's long-term stability and prosperity. It is extremely erroneous to place implementing constitutionalism in opposition to the leadership of the Party. Failing to govern the country in line with the Constitution will not only undermine the rule of law but violate the Party's fundamental line and policies. We need to study constitutionalism, and more importantly, develop constitutionalism and build a Chinese-style socialist constitutionalism that is superior to its capitalist counterpart.

I. QUESTION: HOW TO ESCAPE THE HISTORICAL CYCLE?

In the long history of human development, every government, regardless of whether it is an imperial, bourgeois or a socialist regime, wants to rule for as long as possible, even forever. The Goldbach conjecture in the field of law and political science asks: is it even possible to create a stable form of government of eternal existence?

This same question lay before the CPC before the founding of the People's Republic of China. In the famous dialogue about the historical cycle between Huang Yanpei and Mao Zedong in Yan'an in 1945, Huang said:

During my sixty years of life, I have witnessed, not to mention heard, many people, families, organizations and countries, which ended up under the control of the historical cycle. People are careful and hard-working at first, for bold measures are the only possible ways to break through difficult conditions. But when things gradually get better, people begin slacking off: laziness may spread through a long history and is impossible to be corrected when it becomes a common practice. Gradually expanded territory requires corresponding increases in talent, but when the latter is insufficient, the central control will become weak. In a word, no one can escape the 'vicious cycle' of dynastic rise and collapse. I understand

that you, the Chinese Communists are trying to find a new path to escape this cycle.

Huang was curious about how the CPC would confront and solve this problem. Mao declared unequivocally:

We have found a new path. We can break free of the cycle. The path is called democracy. As long as the people have oversight of the government then the government will not slacken in its efforts. When everyone takes responsibility there will be no danger that things will return to how they were even if the leader has gone.¹

From that time, the CPC and every generation of its leadership have been pondering and exploring this question: how to form a government that can break free of the historical cycle to achieve long-term governance and stability?

In 2004, the Fourth Plenum of the 16th CPC Central Committee noted:

The proletarian party took arduous efforts to capture the ruling position and is expected to stand more hardship to keep the position. The ruling position of the Party is not inherent. Nor is it established once and forever. We have to be alert to the challenges which lie ahead and mindful of the potential danger, learn from the experience of other parties in the world, strengthen the administrative competence of the Party and govern the country for our people.²

Strengthening administrative competence may solve some problems for the time being, but to escape the cycle, it is essential to start from systems and mechanisms.

At the end of December 2012, the new General Secretary of the CPC Central Committee, Xi Jinping, visited the central committees of the eight democratic parties and the All-China Federation of Industry and Commerce. He mentioned the dialogue about the historical cycle between Huang Yanpei and Mao Zedong in 1945,

¹ Jin Chongji (金冲及), *Mao Zedong Zhuan Xia* (毛泽东传下) [Biography of Mao Zedong 2] 719–20 (1996).

² *Zhonggong Zhongyang guanyu Jiaqiang Dang de Zhizheng Nengli Jianshede Jueding* (中共中央关于加强党的执政能力建设的决定) [Decision of the Central Committee of the Communist Party of China on Strengthening the Building of the Party's Governing Capacity], GOV.CN (Sept. 19, 2004), available at http://www.gov.cn/test/2008-08/20/content_1075279.htm.

which he believes remains a warning to the Party even today.³ The General Secretary talked about the historical cycle again to remind the Party of the rises and falls in history, to find systems and mechanisms which can escape the cycle, and to ensure long-term governance and stability of the Party and the country. In July 2013 when he visited the village Xi Bai Po in Hebei province, Xi Jinping gave reminders about this same question again.⁴

This question has been raised again and again from past to present and from 1945 until today. But what is the correct answer? If we look at the historical experience across the globe and study this question from political, economic and many other perspectives, we may come to a conclusion: only when we practice the rule of law and constitutionalism will we be able to break free of the historical cycle and find the systems and mechanisms necessary for long-term governance and stability.

II. CONSTITUTIONALISM AND THE RULE OF LAW ARE MORE FUNDAMENTAL THAN DEMOCRACY

Constitutionalism is politics on the basis of the Constitution.⁵ The author has described the three important concerns of constitutionalism in his article *Pondering the Relationship between Democracy and Constitutionalism* published in 2009.⁶ First, any government and any leadership, whether it is democratically elected or not and no matter how it is generated,⁷ is subject to the constraints and supervision of the Constitution and laws without abusing its power or practicing corruption, i.e. adopting the rule of law and locking power into the cage of laws. This also applies to

³ See Xi Jinping Chongti "Lishi Zhouqilü" Yin Guanzhu (习近平重提“历史周期律”引关注) [Xi Jinping Raises the Historical Cycle Again Attracting Attention], XINHUA NET (Dec. 30, 2012), http://news.xinhuanet.com/world/2012-12/30/c_124166877.htm; See also Xi Jinping Weihe Chongti Mao Zhuxi de Lishi Zhouqilü Tanhua? (习近平为何重提毛主席的历史周期律谈话?) [Why Did Xi Jinping Raise Chairman Mao's Discussion of the Historical Cycle Again?], PEOPLE (Dec. 27, 2012), <http://www.people.com.cn/n/2012/1227/c33232-20037015.html>.

⁴ Dang Mianlin de "Gankao" Yuan Wei Jieshu—Xi Jinping Zai Fang Xibai Po Ceji (党面临的“赶考”远未结束——习近平再访西柏坡侧记) [The Exam the Party Faces Is Far from Ending—Report of Xi Jinping's Revisit to Xibai Po], XINHUA NET (July 13, 2013), http://news.xinhuanet.com/2013-07/13/c_116524927.htm.

⁵ Constitutionalism and politics on the basis of the Constitution are both used in this essay and express the same meaning.

⁶ See Wang Zhenmin (王振民), *Guanyu Minzhu yu Xianzheng Guanxi de Zai Sikao* (关于民主与宪政关系的再思考) [Rethinking the Relationship of Democracy and Constitutionalism], 5 ZHONGGUO FAXUE (中国法学) [CHINA LEGAL SCIENCE] 150, 152–53 (2009) (discussing the three key points of constitutionalism).

⁷ How the government is generated and whose interests the government represents are state system questions. Constitutionalism is mainly about the form of government.

democratically elected governments, to which people often give too much trust, leading to unlimited authority and no supervision. Therefore, it is the first concern of constitutionalism to monitor any government to prevent corruption and abuse of power and to avoid a government with unlimited power beyond the constraints of the Constitution.

Second, besides limiting government powers, constitutionalism also requires scientific and effective allocation of state powers. How to allocate various types of powers, how to set up state organs and what the relationship should be between the organs—these are all scientific questions. There must be one specific political system best suited to each country. The history, people, geography and economic status of a country, and its natural conditions must all be considered. It is the task of constitutional scholars to find this most suitable system. Governance of a country is a science, and politics should become a science.⁸ Similarly, constitutionalism is also a science.⁹ Constitutionalism requires both the rule of law and scientific ruling.

Third, although people are not necessarily directly involved in the generation of the government, the state must guarantee basic human rights and grant people a certain level of freedom and basic rights.

The modern constitutionalism originated in the United Kingdom (“UK”). In 1215, the UK issued The Great Charter (Magna Carta), considered by many scholars to be the origin of constitutionalism of the UK and the Western world.¹⁰ The purpose of The Great Charter was not for democracy but to limit the powers of the king and its government. It is obvious that constitutionalism comes before democracy. Strictly speaking, one can say that the UK has still not achieved complete democracy. The head of the country is not democratically elected. Nor is the head of the government directly elected by all voters. However, constitutionalism has been adopted, the government is clearly ruled by law, and human rights are respected and guaranteed.

Historically speaking, it is easy for autocratic governments to abuse power, but it is not impossible for democratic governments to do the same. Democratic governments and their leadership may overvalue themselves and look down on laws. Their reasoning is that

⁸ Although political affairs are always not scientific, the spirit of the pursuit of science should not be abandoned. Possibly this is why we call the research of politics “political science,” which expresses human beings’ great expectation towards scientific and rational politics.

⁹ Mao Zedong (毛泽东), *Guanyu Zhonghua Renmin Gongheguo Xianfa Cao'an* (关于中华人民共和国宪法草案) [*On the Draft Constitution of the People's Republic of China*] in *Zhongguo Xianfa Wenxian Tongbian* (中国宪法文献通编) [Collected Writings on the Chinese Constitution] 253 (Wang Peiying (王培英) eds., 2007).

¹⁰ Strictly speaking, the British constitutional system is a constitutional monarchy established after the Glorious Revolution (1688-1689). This will also be discussed later in the essay.

laws are created by representatives of the people, while my government is directly elected by the people. Surely the leadership directly elected by the people should have more authority than the laws indirectly made by representatives of the people. Therefore, democratic government and their leadership may ignore laws, moving their countries towards corruption and dictatorship in the absence of strong legal regulation. In this respect, constitutionalism focuses on democracy, places more attention on the supervision of democratic government and emphasizes restricting democratic government and the leadership by rule of law.

This is the philosophical foundation and basic logic of constitutionalism. It is true that the quality of a political system is related to the quality and ability of the operator taking charge of the system. However, constitutionalism pays more attention to whether political power is under necessary supervision and whether the design of the political system is scientific. Regardless of how advanced an electoral system is, it cannot guarantee that the person elected is the best and most appropriate. But when there is constitutionalism, no leadership can exceed the limited power set out by the constitution and the nation's laws. Constitutionalism applies universally. No matter who is on the throne or whether he is democratically elected, he will be supervised and bound so that he cannot always have his own way.

The ideal government is one with both constitutionalism and democracy, which will be most stable against unrest. Less perfect is one with constitutionalism and the rule of law but less democracy. Even less perfect is one with only democracy but neither constitutionalism nor the rule of law. Worst of all is one with neither democracy nor constitutionalism nor rule of law. A country may have a democracy deficit, but it cannot go without constitutionalism and rule of law. A constitutional and rule of law deficit can lead to much worse consequences than imperfect democracy.

Constitutionalism and constitutional science concerns democracy and the pursuit of democracy, but we should not confuse the concepts of the constitution, constitutionalism and democracy. Constitutional science studies whether a power is granted by God, king or people, and the origin of democracy, but its major mission is to study the methods of supervising powers, the scientific configuration of powers and the protection of human rights. Political science and constitutional science should complement each other, with one studying democracy and the other studying how to supervise power and standardize democracy.

Democracy is a necessary road towards the stability of a country, but it is not the only or a sufficient condition. The road towards

long-term governance and stability must combine democracy, rule of law and constitutionalism. There are four reasons for this combination. First, constitutional laws restrict powers and set out clear rules for the operation of powers so as to avoid a loss of control which may lead to the collapse of political power. Second, people will be able to change the government in the ways set out by the constitution without resorting to violence. The highest authority can thus be changed in a systematic and legal manner. Therefore, the political power can always improve itself to maintain its vigor and vitality.¹¹ Third, constitutionalism guarantees basic human rights. The country respects human rights and people have sufficient rights and freedoms. People and the government thus form a healthy and harmonious relationship. Fourth, constitutionalism provides a legal way to solve all disputes and thus avoid violence and self-saving. Historically speaking, the main reason for the collapse of a political regime is civil war. Civil wars break out for the reason that fair and reasonable solutions are not available for long-term conflicts and disputes. Possible reasons for this unavailability are that there is no law in the country, there are only unfair laws, or there is no effective implementation of fair laws. People are thus forced to save themselves by resorting to violence. Whenever law ends, tyranny begins. Therefore, a set of fair and reasonable legal and constitutional mechanisms are a must to solve all conflicts including political conflicts within a country. This is how long-term governance and stability can be achieved.

III. "ONE COUNTRY, ONE CONSTITUTION, ONE DESTINY"

Past federal authorities have clearly not been able to solve the problem of the historical cycle. No matter how good a king was, how competent he or his descendants were, how hard and honestly his government worked, the authority would finally fall victim to the historical cycle. Consider Chinese history as an example. Most dynasties only have life spans of a few dozen years to a century. There are only five dynasties that have ever existed for over 200 years: Han (426 years, including West Han and East Han), Song (319 years, including North Song and South Song), Tang (289 years, including 21 years by Empress Wu Zetian), Ming (276 years) and Qing (268 years). Each of these dynasties was in its final stage when celebrating its 200th year anniversary. The historical cycle starts to

¹¹ Hu Jintao summed up achievements in political reform during the past three decades in his speech celebrating the 90th anniversary of the Communist Party of China on July 1, 2011, noting that we have abolished the *de facto* life-long tenures of leading cadres to ensure an orderly handover of power and leadership. Britain completed this historic task after the promulgation of the Act of Settlement in 1701. So did the United States when its Constitution came into force in 1789.

take effect and the dynasty wanes and collapses and is replaced by the next dynasty.

A brutal fact is that a rich country is not necessarily strong. Two thousand years of world economic history indicates that China's GDP ranked amongst the top for a long period of time,¹² but we were not able to turn richness into competence. The reason is not economic but political. In the fifty years of the last three emperors of the Qing Dynasty, China's GDP was among the best in the world. Qing governments implemented the "Westernization Movement" after the Second Opium War in 1860, which strengthened the power of the nation over thirty years. However, China still lost to Japan in the Sino-Japanese War of 1894, despite having a much higher GDP than Japan.

The economy is a country's flesh and blood, without which the country is unable to live. Constitutionalism and the rule of law are a country's bones and nerves, without which the country is a pile of disordered flesh, without the support of ideals and values, and with no order in politics, the economy and the entire society. Richness without the support of a strong legal system may be a disaster to the country, because such richness is achieved by sacrificing order and fairness. In addition, the richer the country is, the more contradictions and disputes it may have. If the contradictions and disputes cannot be solved by laws, people will resort to violence or even war. It has been repeatedly proven in history that no matter how good the first emperor is, how stable the palaces are, how rich the country is, how high the GDP is (even top in the world), no dynasty can escape the control of the historical cycle. Chinese federal authorities have failed to combine monarchy with democracy and have been doomed to collapse.

At the end of Qing Dynasty, the ruler tried to set up a constitutional government but failed. It was offered many opportunities in history, but the royal family and the government kept delaying reform and were apathetic and passive. When they finally realized that constitutionalism was the last hope of the Qing Dynasty, it was too late. If the royal family and the government were

¹² According to research by economists, China's GDP has historically ranked first in the world since the 5th Century BCE. The Chinese economy was not exceeded by Europe and the United States until the late 19th century. According to data provided by Maddison, the U.S. surpassed China in economic size in 1892, Great Britain in 1917, Germany in 1948, Japan in 1961, and France in 1962. See Xiao Guoliang (萧国亮), *Cong Shijie Jingjishi de Shiyu Kan Zhongguo de Changyuan Fazhan Jiqi Diwei Bianqian* (从世界经济史的视域看中国的长远发展及其地位变迁) [*From the Perspective of the History of the World Economy: China's Long-Term Development and Status Changes*], 8 *ZHONGGUO JINGJI* (中国经济) [CHINESE ECONOMY] (2010), available at <http://www.p5w.net/news/gncj/201009/t3186330.htm>.

more active and implemented constitutionalism from top down—instead of being forced by the people—there would have been a very high chance that successful constitutional reform could have been achieved. If the royal family and the government were more decisive and led the process of constitutional reform, the country would not have been invaded and lost its state sovereignty. Historically, Japan had always learned from China, but it was able to rise rapidly facing invasion by Western countries in the mid-19th Century because it was the first country in Asia to adopt constitution and to set up a constitutional government.

The world's oldest constitutional system is the constitutional monarchy of the UK established after the Glorious Revolution in 1689. Since then, the UK has not experienced any major civil wars, and has achieved long-term peace and development of the whole society. It is a political miracle that a political system can operate for over 300 years without any serious civil instability. There are two main reasons for this stability. First, constitutionalism provides clear legal procedures for the political system. Second, any contradictions or disputes can be solved fairly and properly according to the rule of law.

After the UK achieved peace in its own territory, it soon embarked on the path of aggression, occupying various overseas colonies. Despite being a small country with a territory of only 240 thousand square kilometers, it eventually controlled one quarter of the world's entire population, occupied one quarter of the earth's land, or 33.5 million square kilometers, and nearly all ocean passages.

The United States of America ("US") was the second country to adopt constitutionalism. In 1787, more than 50 representatives from 13 independent states of the North American continent drafted the Constitution of the US and set up a constitutionalism system suitable to the situation of the US.¹³ This constitutionalism system has run smoothly for 224 years with only 27 amendments to the constitution since 1789. In only two centuries, the US has expanded to control vast stretches of territory, grown to a large population, brought together the world's most talented individuals, obtained a variety of the world's most advanced technologies, become the world's largest economy, and controls the most powerful army ever, with troops or a military presence in over 70 countries. In addition, the US has had

¹³ The word "state" in the American situation has been mistranslated in Chinese. It actually refers to "country". If we translate "United States of America" directly, it would be "United Community of Nations in America." This indicates that the U.S., as a united community of nations, is composed of a number of countries. These "countries" which used to have independent sovereignty, still enjoy great autonomy today.

only one civil war during its 224 years of history, although it has experienced more than 170 foreign wars in only the last 60 years. The fact that the US has the spare power for foreign wars indicates that the country is able to maintain internal security through the establishment of the American constitutionalism. “One Country, One Constitution, One Destiny.” From the prospective of Americans, the Constitution has brought good fortune to their country.¹⁴

The reason that countries like the UK and the US can achieve long-term governance and peace is that constitutionalism provides a legal and standardized system to regulate politics.¹⁵ Any problem, including a political problem, can be solved by the constitution and the rule of law. Therefore, such problems will not result in unrest or civil war. For example, consider the disputed 2000 US presidential election. There was no violence or military involvement despite a fierce fight during 36 days of the dispute. Instead, lawyers and judges fought a battle of words in the courts. On the night of December 12, the Supreme Court ended the recount of disputed votes, which might have resulted in long-term strife or even civil war in other countries. It is impossible for countries such as the UK and the US to have civil wars, not to mention strife such as the Cultural Revolution in China. Their political system has guaranteed hundreds of years of peaceful life, stable power and rapid development, putting many traditional large regimes to shame. Meanwhile, many of these traditional large powers have experienced an unstable political environment and suffered from civil strife and war. As a result, these traditional powers have been constantly invaded and have lost national sovereignty, aggravating internal unrest.

China has suffered 3,791 wars in the 4,500 years of history between the 26th Century BCE and the end of Qing Dynasty in 1911.¹⁶ Since 1912, China has also witnessed many wars, especially

¹⁴ Daniel Webster, a famous 19th Century American politician, once praised the U.S. Constitution as “one country, one constitution, one destiny”. Daniel Webster’s speech in New York on March 15, 1837, see DANIEL WEBSTER & EDWIN PERCY WHIPPLE, *GREAT SPEECHES AND ORATIONS OF DANIEL WEBSTER: WITH AN ESSAY ON DANIEL WEBSTER AS A MASTER OF ENGLISH STYLE*, 426 (1993).

¹⁵ Although capitalist countries carry out the multi-party system, their parties are all political parties for the bourgeoisie no matter what their names may be, whether the Republican Party or the Democratic Party. Only the names of parties are changed. They are all political parties who protect the interests of the bourgeoisie only. Those working-class parties who completely represent the interests of the workers and peasants will never win the election.

¹⁶ See *Zhongguo Junshishi Bianxiezu* (中国军事史编写组) [Compilation Group of Chinese Military History], *Zhongguo Lidai Zhanzheng Nianbiao* (中国历代战争年表) [Chronology of Chinese War] (2003). It is estimated that there were 6,539 wars over the past 5,000 years of Chinese history, most of which were civil wars, see *Ming Liangjing Shisanshi Zhanli Fenbubiao* (明两京十三司战例分布表) [Table of Wars in the Thirteen Provinces of the Ming Dynasty]; *Zhongguo 5000 Nian Zhanzheng Nianbiao (Jian)* (中国5000年战争年表(简)) [The Chronology of Chinese War over 5000 Years];

civil strife which should have been avoided, most notably the Cultural Revolution. One of the major reasons for this is that there has been no effective constitutional system or legal order in China. On the other hand, as China has begun the reform and opening up policy, it has been free of civil and foreign wars. This is because the rule of law is developing, enabling disputes to be solved according to law in a relatively fair and proper way.

We must admit that socialist countries have not been able to solve the problem of the historical cycle. The Soviet Union collapsed at merely the 69th anniversary of its establishment (1922–1991) because it did not adapt socialist constitutionalism. As Deng Xiaoping pointed out:

If we do not improve socialism, people will ask “why can’t socialism solve problems already solved by capitalism?” It may not be completely accurate to compare the two systems in this way, but it requires our attention. Mao Zedong once said that things like Stalin’s destruction of the socialist legal system would never happen in Western countries like the UK, France or the US. He had an understanding of the event, but since problems rooted in the leadership system were not solved, he failed to prevent the ten years of Cultural Revolution—the lessons of which are unforgettable.¹⁷

We cannot say for certain that the UK and the US have found a solution to escape the historical cycle. The 324 years and 224 years of constitutionalism in the UK and the US are only an instant in human history. The two countries may face reform of the political system in the future, but are nonetheless stable under the current system for the foreseeable future. If the problem can be solved by capitalism, it can be solved even more effectively by socialism.

IV. THE CPC’S PRACTICE OF CONSTITUTIONAL POLITICS

Regarding the problem of the historical cycle, the first generation of Chinese leadership represented by Mao Zedong suggested adopting democracy. Yet history has proven that democracy is a necessary but not sufficient condition for the long-term peace and stability of a country. China tried to adopt democracy after the establishment of the country in 1949, but failed. Instead China went

Henan de Zhongguoshi Ditu (河南的中国史地图) [Map of Chinese History in Henan Province], *Zhongguo Guojia Dili* (中国国家地理) [Chinese National Geography], Jul. 2008.

¹⁷ Deng Xiaoping (邓小平), *Dang he Guojia Lingdao Zhidu de Gaige* (党和国家领导制度的改革) [Reform of the System of CPC and State Leadership] in *Deng Xiaoping Wenxuan* (Di Er Juan) (邓小平文选 (第二卷)) [Collected Works of Deng Xiaoping II] 333 (1994).

to the opposite direction of democracy in the “Cultural Revolution” which gave a blow to the national economy. The great achievements of the first generation of leadership in achieving national independence and setting up a relatively complete national economy system are undoubted. However, we need to admit that it failed to find out a system which can maintain the Party’s long-term governance and China’s long-term stability and prosperity.

After the ten years of the Cultural Revolution, the second generation of leadership represented by Deng Xiaoping carefully investigated the root causes of the tragedy and set up different organizations and systems for effective long-term governance. In addition to Mao’s “democracy” the second generation also proposed a “legal system.” Deng Xiaoping realized that tragedies such as the Cultural Revolution are caused by problems in organizations and systems. He said:

It is true that errors we made in the past were partly attributable to the way of thinking and style of work of some leader. But they were even more attributable to the problems in our organizational and working systems. If these systems are sound, they can place restraints on the actions of bad people. If they are not, they may hamper the efforts of good people or indeed, in certain cases, may push them in the wrong direction ... I do not mean that the individuals concerned should not bear their share of responsibility, but rather that the problems in the leadership and organizational systems are more fundamental, widespread and long-lasting, and that they have a greater effect on the overall interests of our country. This is a question that has a close bearing on whether our Party and state will change political color and should therefore command the attention of the entire Party.¹⁸

He also pointed out:

It is not healthy for a party or a nation to depend on one or two individuals. If there is a change to such individuals, the nation will become unstable. I think it is dangerous to exaggerate the role of any individual. There will be problems if the stability of

¹⁸ *Id.*

a nation or a party is on the basis of the authority of any individual.¹⁹

Therefore, we must implement a socialist democracy and legal system. Democracy must be institutionalized and written into law, so as to ensure that institutions and laws do not change whenever the leadership changes, or whenever the leaders change their views or shift the focus of their attention.

It represents great progress that the second generation of collective leaders tried to use democracy and the legal system to solve the historical cycle question. The essence of a legal system is to set up rules and regulations. Any long-standing organization, whether it is a government, corporation or community, must have robust internal rules and regulations so that it can run independently without relying on external forces. An organization that suffers from confusion or adopts the “law of the jungle” to resolve internal disputes will not be able to break free of the historical cycle.

The Party’s third generation of collective leadership, at the core of which is Jiang Zemin and the CPC Central Committee with Hu Jintao as the General Secretary, continues to advance China’s socialist democracy and legal system.

The basic ruling strategy of “ruling the country according to law and constructing a socialist rule-of-law state” was confirmed during the Fifteenth CPC National Congress and written into the Constitution in 1999, completing the transformation from “legal systems” to rule of law. In addition to means and tools, the rule of law is more about strategic objectives and the important direction of China’s development. The focus of the rule of law is now also on the government and leadership rather than just on the people and society. Laws are used to identify the extent of power and standardize the use of power.

In January 1999, Jiang Zemin conducted meetings to solicit the opinion of non-Party members regarding amendments of portions of the Constitution. He pointed out that the Constitution is the basic law of the country and has a very important role in national life. The Constitution is the core and foundation of the legal system, and is the fundamental basis for the rule of law. To rule the country by law and build a socialist country ruled by law is to govern and build the

¹⁹ Deng Xiaoping (邓小平), *Zongjie Lishi Shi Weile Kaipi Weilai* (总结历史是为了开辟未来) [A Summary of History to Open up the Future] in Deng Xiaoping Wenxuan (Di San Juan) (邓小平文选(第三卷)) [Collected Works of Deng Xiaoping III] 272–73 (1993); *Women You Xinxin Ba Zhongguo de Shiqing Zuode Genghao* (我们有信心把中国的事情做得更好) [We Are Confident We Will Deal Better with China's Affairs] in Deng Xiaoping Wenxuan (Di San Juan) (邓小平文选(第三卷)) [Collected Works of Deng Xiaoping III] 325 (1993).

country based on the Constitution. He stressed that it is extremely important to protect the dignity of the Constitution and to ensure the enforcement of the Constitution. This requires the establishment and perfection of a vigorous supervision mechanism to guarantee implementation of the principal regulations of the Constitution. He also said that China's socialist democracy and legal system are developing continuously. We have made significant legislative achievements and witnessed great progress in the implementation of laws. A social environment for the rule of law is gradually taking shape. Things like the flagrant violation of the Constitution during the Cultural Revolution will no longer happen. But we must be aware that the authority of the Constitution is not fully respected and that there are still problems in its enforcement.²⁰

On September 15, 2004, Hu Jintao gave a speech at a grand rally to mark the 50th anniversary of the National People's Congress (NPC). He formally brought up the concept of governance according to the Constitution and emphasized that governing the country by law means governing according to the Constitution.²¹

The 18th CPC National Congress in 2012 stressed again that the rule of law is the basic way for the CPC to govern the country. It is essential to pay more attention to and promote the role of the rule of law in state governance and social management, and accelerate the construction of a socialist country ruled by law.²² To achieve this objective, we must fully implement the Constitution.

On December 4, 2012, CPC General Secretary Xi Jinping gave a speech at a rally marking the 30th anniversary of the Constitution and highlighted a new constitutional concept of collective leadership. He said:

To fully implement the Constitution is the primary task and the basic work in building a socialist nation ruled by law. The

²⁰ On January 31, 1999, the Central Committee of the Communist Party of China held a symposium of non-party organizations, asking the head of the Democratic Party Central Committee, the National Federation of Industry and Commerce and non-party representatives' advice on amending the Constitution. Jiang Zemin delivered an important speech.

²¹ *Hu Jintao: Zai Shoudu Gejie Jinian Quanguo Renmin Daibiao Dahui Chengli 50 Zhounian Dahui Shang de Jianghua* (胡锦涛: 在首都各界纪念全国人民代表大会成立50周年大会上的讲话) [*Hu Jintao: Speech on the 50th Anniversary of the National People's Congress*], XINHUA NET (Sept. 15, 2004), http://news.xinhuanet.com/zhengfu/2004-09/16/content_1987867.htm.

²² *Hu Jintao: Jianding Buyi Yanzhe Zhongguo Tese Shehui Zhuyi Daolu Qianjin Wei Quanmian Jiancheng Xiaokang Shehui er Fendou* (胡锦涛: 坚定不移沿着中国特色社会主义道路前进为全面建成小康社会而奋斗) [*Hu Jintao: Firmly March on the Path of Socialism with Chinese Characteristics and Strive to Complete the Building of a Moderately Prosperous Society in all Respects*], PEOPLE (Nov. 8, 2012), <http://cpc.people.com.cn/18/n/2012/1109/c350821-19529916-5.html>.

Constitution is the country's basic law and the general rule in managing state affairs. The Constitution is of supreme legal status, authority and efficacy, and it is fundamental, stable, lasting and concerns the overall situation. The people of all nationalities, all state organs, the armed forces, all political parties and public organizations, and all enterprises and institutions in the country must take the Constitution as the basic standard of conduct and bear the duty to uphold the dignity of the Constitution and ensure its implementation. No organization or individual may have the privilege of being above the Constitution and the law. All acts in violation of the Constitution or laws must be legally pursued.²³

The first generation of collective leaders represented by Mao Zedong raised the question of how to escape from the historical cycle and proposed democracy as half of the solution. But democracy was not actually practiced at that time. The second generation of collective leaders represented by Deng Xiaoping proposed a legal system as the other half of the solution. This group contributed to the strengthening of democracy by setting up a legal system with the aim that socialism would one day solve the problems already solved by capitalism. The third generation of collective leadership with Jiang Zemin at its helm and Hu Jintao as the General Secretary of the CPC Central Committee, further proposed the rule of law and setting up a socialist country ruled by law. It brought up the concept of governance according to the Constitution and emphasized that to govern the country by law, it is essential to govern according to the Constitution.

The CPC Central Committee with Xi Jinping as the General Secretary has once more raised the problem of the historical cycle to remind the Party and the nation to study the resolution to this problem. The leadership said that the Constitution is closely related to the country's future and the people's fate, and that fully implementing the Constitution is the primary task and basic work in building a socialist nation ruled by law. After difficult exploration of several generations of collective leadership, the CPC has come to a clear conclusion as to how to achieve the Party's long-term governance and China's long-term stability and prosperity: governance according to the Constitution and effective construction of socialist constitutionalism. The questions are how to construct

²³ Xi Jinping: Zai Shoudu Gejie Jinian Xianxing Xianfa Gongbu Shixing 30 Zhoumian Dahui Shang de Jianghua (习近平: 在首都各界纪念现行宪法公布施行30周年大会上的讲话) [Xi Jinping: Speech on the 30th Anniversary of the Constitution], XINHUA NET (Dec. 4, 2012), http://news.xinhuanet.com/politics/2012-12/04/c_113907206.htm [hereinafter Xi's Speech].

socialist constitutionalism and whether the CPC has the willpower and perseverance to develop constitutionalism as it did when developing an economy.

V. FIVE PROBLEMS WHICH CALL FOR IMMEDIATE SOLUTION

Based on related speeches of General Secretary Xi Jinping and Hu Jintao's final report to the 18th National Party Congress, there are five problems which require immediate resolution to construct socialist constitutionalism.

A. Integration of the Party Leadership and the Rule of Law

The first challenge is ensuring the integration of the rule of the Party (the Party's leadership), the rule of the people (people's democracy) and the rule of law. Achieving the unity of the Party's leadership and a socialist democracy requires upholding the Party's leadership while fully supporting the concept that all powers in the country belong to the people. As many people as possible should be mobilized and organized to exercise state power through all levels of the people's congresses, manage state and social affairs, and manage economic and cultural undertakings. In so doing, the people will become the true masters of their country, their society and their own destiny on the basis of the constitution and legal provisions. Achieving the unity of the leadership of the Party and a socialist country under the rule of law is to improve the Party's internal governance. The Party must be strict in Party discipline in accordance with the Party Constitution and govern the country on the basis of the Constitution. For the Party to lead the people in developing and implementing the Constitution and laws, the Party must first abide by the Constitution and laws.

Specifically, major problems when developing constitutionalism include:

i) Using legal procedures to turn the Party's propositions into the will of the state.

ii) Ensuring candidates recommended by the Party become leading cadres of the organs of state power, and supporting responsible and coordinated works of the state organs, administrative organs, judicial organs and procuratorial organs in accordance with the Constitution and laws.

iii) Ensuring Party organizations and leading cadres at all levels take the lead in enforcing the rule of law, improving their abilities to exercise state power according to the law, and promoting the standardized and legal exercise of governing activities. The Party should ensure that leading officials are guided by law in their efforts

to deepen reform, promote development, solve problems, and maintain stability. We should also promote a good legal environment in which the people act according to laws, which requires submitting to laws when problems arise and relying on laws to resolve conflicts.

iv) Improving the legal accountability mechanism for conducting checks and oversight over the exercise of power to ensure that the powers granted by the people to the Party are used for the benefits of the people.

v) Promoting governance and administration in accordance with the law in building a nation, a government and a society ruled by law. If we can solve these problems, we will be able to break free of the historical cycle and achieve long-term governance and peace.

B. Improving the Supervisory Mechanisms of the Constitution

The second problem is how to improve supervising mechanisms for the implementation of the Constitution. As General Secretary Xi Jinping pointed out, “the supervising mechanisms [in China] and systems ensuring the Constitution’s implementation have not been perfect ... great importance should be attached to these problems and effective measures should be adopted to resolve them.” He also said that the life and authority of the Constitution lie in the implementation of these mechanisms. We must make a sustained effort to realize the full implementation of the Constitution. In this effort, the NPC, Standing Committee and relevant national supervisory authorities must take responsibility to oversee the implementation of the Constitution and laws, improve the supervision mechanisms and procedures, and resolutely rectify violations of the Constitution. Local people’s congresses and their standing committees at all levels must also ensure the execution of the Constitution and laws within their respective areas.

Hu Jintao, when giving a speech at a rally marking the 20th anniversary of the promulgation and implementation of the Constitution, also pointed out:

To implement the Constitution in an all-round way, it is necessary to consolidate the guarantee system to make sure that the cardinal law is carried out. It is necessary to study and consolidate the mechanisms supervising the implementation of the Constitution and further clarify the supervision procedures for its implementation, so that every violation of the Constitution can be timely redressed. The National People’s Congress and its standing committee should shoulder the duty to supervise the implementation of the cardinal law, and firmly redress any act that violates the Constitution. They are

expected to earnestly perform the function to interpret the cardinal law and give necessary explanations and interpretations on questions that occur during its implementation, so that the stipulations in the Constitution can be carried out more effectively.²⁴

Jiang Zemin also pointed out in 1999 that we must further establish the authority of the Constitution, and establish and improve strong oversight mechanisms to guarantee implementation of the Constitution. Any state organ or any of its functionaries should carry out their activities in accordance with the Constitution and laws without abusing their powers. State organs, organizations and individuals do not have the privilege of being above the Constitution and laws. Violation of the Constitution is the most serious violation of all laws. All violations of the Constitution and laws must be investigated. In this regard, we should take more effective measures to strengthen the implementation of the Constitution, such as carrying out regular checks on the implementation of the Constitution and correcting violations of the Constitution in a timely manner.

We can see the extreme importance of establishing and improving mechanisms for supervising the implementation of the Constitution from the fact that three generations of CPC General Secretaries and collective leadership have been urging the establishment of such mechanisms for over two decades. Regrettably, there has been no substantial progress. It is indeed the time to act on this issue.²⁵

C. Adjustment of Political Powers and Functions

The third problem concerns the adjustment of political powers and functions. We should scientifically allocate state power, including the allocation of horizontal powers of the NPC, State Council, Supreme People's Court and Supreme People's Procuratorate, and the division of longitudinal powers of central and local authorities. As General Secretary Xi Jinping pointed out:

²⁴ See Hu Jintao zai Shoudu Gejie Jinian Zhonghua Renmin Gongheguo Xianfa Gongbu Shixing Ershi Zhounian Dahui Shang de Jianghua (胡锦涛在首都各界纪念中华人民共和国宪法公布施行二十周年大会上的讲话) [*Hu Jintao's Speech at the Rally Marking the 20th Anniversary of the Promulgation and Implementation of the Constitution*], XINHUA NET (Dec. 4, 2002), http://news.xinhuanet.com/newscenter/2002-12/04/content_649591.htm.

²⁵ See Wang Zhenmin (王振民), Zhongguo Weixian Shencha Zhidu (中国违宪审查制度) [China's Constitutional Review System] (2004) (discussing this issue in detail).

We must follow the principle of democratic centralism, state power systems and guidelines for activities set out in the Constitution, ensure that the NPC exercises state power, establish allocated and balanced mechanisms for decision-making power, executing power and supervising power, and ensure that state authorities exercise their powers and perform their duties in accordance with statutory authority and procedures. We must balance the relationship between the central and local authorities, between different ethnic groups and between various interests on the basis of the systems and principles set out in the Constitution, and bring all positive factors into full play to develop a political environment characterized by democracy, solidarity, liveliness, stability and harmony.²⁶

D. Guaranteeing Human Rights and Improving the Judicial System

The fourth problem is two-fold. It is about reinforcing the guarantee of human rights and improving the judiciary. General Secretary Xi Jinping pointed out:

We must guarantee that all citizens enjoy extensive rights. We must prevent violations of citizens' personal rights, property rights, basic political rights and other rights, ensure the implementation of citizens' rights in economic, cultural, social and other aspects, protect the fundamental interests of the majority of the people, and guarantee a better life for the people. We must handle the people's demands in a fair and legal way, make the people feel fairly treated in each judicial case, and avoid damage to feelings and interests of the people by unfair judgment.²⁷

To guarantee human rights and maintain a stable society, we must reform the judicial system and ensure that judicial authority exercises its duties independently. The judicial system should solve disputes and problems, instead of becoming a part of the problem itself. The current judicial system of China is obviously not sufficient to guarantee human rights and develop constitutional democracy.

E. "One Country, Two Systems" and National Reunification

The fifth problem relates to establishing and improving the constitutional framework and politics for the implementation of the

²⁶ See Xi's Speech, *supra* note 23.

²⁷ *Id.*

“One Country, Two Systems” system and reunification of the country. The development of constitutional politics and democracy will enhance confidence in and support for the country by people in Hong Kong, Macao and Taiwan. Failing to improve constitutional democracy will dampen the patriotic enthusiasm of these people, which will make it difficult to achieve reunification of the country. In addition to political issues of mainland China, including ethnic regional autonomy and grassroots autonomy, our constitutional framework must have the ability to accommodate Hong Kong, Macao and Taiwan after reunification of the country.

We are facing many novel constitutional questions after the establishment of the Hong Kong and Macao Special Administrative Regions. These questions include determining the exact relationship between the NPC Standing Committee’s power to interpret laws and the power of final adjudication in Special Administrative Regions, the development of democracy in Special Administrative Regions, the constitutional status of Special Administrative Regions in China, and the rights of Chinese citizens of Special Administrative Regions in the management of affairs of the state. We need to improve the current constitutional system to solve these problems. We must find a way to handle the Republic of China and its constitution to achieve peaceful reunification between the two sides. Our current constitutional system and framework are obviously not sufficient for the reunification between the two sides. It will be a difficult task for the Party to engage in public discourse to develop a new set of constitutional structures and concepts for the final reunification of the country.²⁸

VI. CONSTITUTIONAL POLITICS AND THE PARTY’S LEADERSHIP SHOULD NEVER OPPOSE EACH OTHER

Constitutional politics is the answer to the question which we have explored for over 60 years. Constitutional politics is the way to escape the historical cycle, achieve the Party’s long-term governance and China’s long-term stability and peace. Constitutional politics can guarantee the final reunification of the country and the prosperity of Chinese nation, and can provide a system to ensure the long-term governance of the Party.

²⁸ See Wang Zhenmin (王振民), *Zhongyang yu Tebie Xingzhengqu Guanxi—Yizhong Fazhi Jiegou de Jiexi* (中央与特别行政区关系——一种法治结构的解析) [The Relationship between the Central People’s Government and the Special Administrative Regions—Analysis of One Kind of Legal Structure] 378 (2002) (supporting national unification by the rule of law and politics on the basis of the Constitution instead of relying on quasi-blood relationships).

It is extremely wrong to contradict constitutional politics and the Party's leadership. The Constitution of China was developed under the leadership of the Party, and each revision of the Constitution was proposed by the central committee of CPC. Therefore, one may say that the Constitution fully represents the Party's principles and policies. To strictly conform to the Constitution is to stick to the Party's leadership. In other words, violation of the Constitution is the most serious violation in that such action breaches the essential policies and guidelines of the Party. We can see from historical experience that the Party can only consolidate its leadership and achieve the unity between its leadership and governance through the Constitution. To do so, it must actively initiate the development of constitutional politics and play a leading role in the establishment of a country under the rule of law.

It must be noted that our constitutional politics is Chinese-style constitutional politics. We should avoid complete adoption of Western constitutionalism because it is both unfeasible and irresponsible for the development of constitutionalism in China. We must find our own constitutional politics on the basis of Chinese history and conditions. Whether or not a system can solve the specific problems of a specific country should be the main criterion in judging whether such a system is good or not.

We must also take notice of the constitutions of Western capitalism and bourgeois democracy. Their understanding of the people, which means the capitalist class, is different from ours. Sound as it is, the democracy of Western capitalism is not for all people. On the contrary, our democracy is for the majority of the people, which includes workers, peasants and other working people. Therefore, we should continue to develop our democracy, establish our legal system and guarantee human rights for the reason that capitalist countries also have functioning democracy legal systems, and guarantees of human rights. We should find better solutions to prove the superiority of socialist democracy, legal systems and human rights. We should not stop using these terms just because capitalist countries are also using them.

Constitutional politics or constitutionalism is not unique to capitalist countries. Our constitutionalism will be very different and will inevitably have Chinese and socialist characteristics. We will develop a constitutionalism of Chinese characteristic socialism that is better than its capitalist counterparts. The essential question is how we can supervise and restrain abuse of power, fundamentally prevent corruption, protect human rights, and achieve reunification of the country. If we can solve these problems, it does not matter whether the solution is called constitutionalism or not.

The CPC was founded 92 years ago and has governed the country for 64 years. It is time that the Party seriously reconsiders and solves its essential problems. As Deng Xiaoping pointed out in 1980, “if we do not improve socialism, people would ask ‘why can’t socialism solve problems already solved by capitalism?’” It is quite natural that we promote political system reform and develop constitutionalism of Chinese characteristic socialism today. We should take constitutionalism development as a scientific problem and ensure organizational planning and top-down design. We must complete this difficult task within the shortest time possible according to a settled timetable and procedures, and incorporate it in the Constitution. We have carried out reforms for over thirty years, but we cannot afford to wait for another thirty years. It is difficult to maintain a peaceful society with an unstable political system and constitution.

It is true that the UK developed constitutional democracy step by step, but it also took the opportunity to set up today’s system in one stroke. UK set up constitutional monarchy within two years’ time (1688-1689). The US took four months (May to September, 1787) to develop the constitution and set up constitutionalism, and less than three years for the thirteen states to pass the draft constitution. Once a constitution is passed, the authoring country can enjoy hundreds of years of stable politics. We are not going to learn only from the contents of constitutions of the UK and the US, but we can follow their decisiveness in setting up constitutionalism.

It is fortunate that the people and history of China has provided the government with a new opportunity for constitutional reform. Our new generation of CPC members should have the courage, determination and the spirit to be responsible to our people and history, boldly promote political structural reform, build a socialist political constitution, improve our constitutional system, and lead the Chinese people and the Chinese nation to break free of the repeating historical cycle of political decay. As long as the Party has the determination and well-organized plan to move forward, it will surely achieve the great task of socialist constitutionalism for the Chinese nation.