

Chinese Constitutionalism in Work Reports to the CCP Congress

Institutionalization of power within the Constitution of the CCP has witnessed a steady increase since 1992

The weight and importance China's new leadership will afford to the Party Constitution and State Constitution will set the broader policy background against which big data governance and social credit will evolve.

Signals of a fast evolution of social credit have been visible for some time. Xi Jinping's Work Report mentioned several of the elements which, together, constitute social credit. Regulatory development in this area has been extraordinarily fast.

At the same time, perceptions about a downshifting of the State Constitution have emerged, and were discussed during and after a Round Table on the 19th Congress held at Penn State. These perceptions imply the assumption that earlier Congresses of the CCP had placed a stronger emphasis on the State Constitution than the 19th Congress. This is a comparative assumption, which provokes the question of whether such a trend can be identified.

To answer this question, the entire developmental trajectory of the nexus between the Party Constitution and the State Constitution was traced, as this trajectory is reflected in work reports to the CCP Congress.

To perform a deeper examination of trends in Chinese constitutionalism, a data set of references to the political constitution and the administrative/operational constitution made by organs of the CCP is being developed for the period between 1949 and 2017. References are being coded according to the framework used in "Chinese Constitutionalism"¹:

- (a) References to the State Constitution' are textual references to the Constitution of the PRC;
- (b) 'References to the Party Constitution' are references to the Constitution of the CCP as an autonomous source of law;
- (c) 'Mixed references' are references describing the nature and function of the Party Constitution, the State Constitution, and the nexus between them.

This paper describes Chinese constitutionalism as it emerges from the Work Reports delivered between 1949 and 2012.

¹ Larry Catá Backer, "Chinese Constitutionalism in the New Era: The Emerging Idea and Practice of Constitution in the 19th CPC Congress Report," CPE Working Paper 11/1 (November 2017).

References to the Constitution of the CCP

From its foundation in 1921 until 1977, the CCP did not hold its Congress every five years. The first congress held after 1949 was the 8th Party Congress, which took place in September 1956.

In the report delivered by Liu Shaoqi, the Party Constitution appears as an autonomous document, meant to regulate the activities of Party members and organs of the Party, by attributing specific duties and rights to Party members and to Party organs:

“The new draft of the Constitution of the CCP proposed by the Party Central Committee gives complete attention to the problems of implementing the principle of collective leadership by the Party, and of democracy within the Party. (...) The Party Constitution has made new stipulations about the rights of Party members and the rights of lower-level Party organizations. The Draft stipulates that Party members have a right to fully promote innovation in their work, and where they do not agree with a resolution of the Party, aside from its unconditional implementation, they have a right to have their own opinion and to raise such an opinion before the leading organs of the Party. The draft stipulates that, all issues and needs concerning local areas are to be decided locally, and are to be handled by local organization, because this is beneficial to the use of methods according to local circumstances. It also stipulates that lower-level organizations - where they believe resolutions by higher level organizations to be unsuited to their area and to the actual circumstances – shall request higher level organizations to amend those resolutions. The Draft Party Constitution also stipulates that Party congresses above the county level are to become permanent, and to be convened once a year. All of this will enhance the enthusiasm of all organizations of the Party, and the entire body of Party members.”²

From 1949 to 1987, Work Reports to the Party Congress mentioned the Constitution only once

²“Political Work Report by Liu Shaoqi” (*Liu Shaoqi zuo zhengzhi baogao*), 16 September 1956.

If placed within a broader perspective, the Work Report by Xi Jinping does not signal that the importance of the State Constitution has diminished

In 1969, a greater emphasis on the role of the People is visible in discussions about the nature of the Party Constitution. The keynote political address delivered before the 9th Party Congress describes the Party Constitution as:

“(…) A product of the heroic leadership of the great leader Chairman Mao united with the broad masses, and which reflects the will of the whole Party, army, and the revolutionary masses of the whole nation. It is a lively product of the Party’s persistent upholding of democratic centralism and the mass line.”

At the same time, the constitutive role of the Party Constitution is not forgotten:

“The Party Centre believes that, following a discussion and approval by its delegates, our Party definitely can – according to provisions in the Party Constitution – construct itself into an even greater, more glorious and correct (Party).”³

The Zhou Enlai Leadership

Zhou Enlai’s 1973 Report to the 10th Party Congress describe the Party Constitution as a document embodying two core principles of classical Marxism, as they were understood and embraced by those who identified themselves as Chinese Marxists. These principles were the principle of independence of the proletarian movement, and benefitting the majority of the people.⁴

In 1977, the 11th Party Congress places a greater emphasis on different features of the Party Constitution. First, the CCP Constitution has the goal to govern the activities of Party members. It is a binding document, which allows to expel from the Party those who violate its provisions:

“The Third Plenary Session of the 11th Central Committee, according to the requests of the whole Party, the whole army and the peoples of all ethnicities, *according to provisions in the Party Constitution* unanimously decided to: forever expel Wang Hongwen, Zhang Chunqiao, Jiang Qing, Yao Wenyuan from the Party, remove them from all the posts held within and outside the Party, and thoroughly expose and criticize their

³ “Report to the 9th National Congress of the Communist Party of China” (*Zhongguo Gongchandang dijiuci quanguo daibiao dahui shangde baogao*), 14 April 1969.

⁴ “Zhou Enlai Report to the 10th National Congress of the Communist Party of China”, (*Zhou Enlai zai Zhongguo Gongchandang dishici quanguo daibiao dahui shangde baogao*), 28 August 1973.

crimes against Communism, against the People, against the Revolution.”⁵

Second, the CCP is an autonomous entity. It governs itself and its members according to its own set of principles, and rules.⁶

The Zhao Ziyang Leadership

An emphasis on the Party Constitution as a document posing duties and rights to Party members, is visible in Zhao Ziyang’s report to the 13th Congress. The Party Constitution is discussed in the Work Report’s section on ‘Strengthening Party Building in Reform and Opening Up’. This paragraph of the Work Report contains a list of measures meant to reform the Party’s internal system of governance.

The Party Constitution is understood as a document that creates duties and obligations for Party members. Its effects are limited to Party members, given how the Party Constitution “naturally cannot pose the same demands to the masses and to Party members.”⁷ At the same times duties are created, Party members also enjoy democratic rights protected by the Party Constitution.

Zhao observes how regulations to specify the duties of Party members, and protect their rights, are to be enacted as soon as possible.



Street scene, 1982

⁵Political Report to the 11th National Congress (*Shiyida shangde zhengzhi baogao*), 18 August 1977.

⁶Political Report to the 11th National Congress (*Shiyida shangde zhengzhi baogao*), 18 August 1977.

⁷“Zhao Ziyang zai Zhongguo Gongchandang dishisan ci quanguo daibiao dahuishangde baogo” (Report of Zhao Ziyang to the 13th National Congress of the Communist Party of China), 25 December 1987.

The Hu Yaobang Leadership

The Report delivered by Hu Yaobang on behalf of the Central Committee to the 13th Party Congress does not contain any direct textual reference to the Party Constitution. This circumstance might have been interpreted as signaling how the Party Constitution was perhaps becoming less important than in the past. This interpretation would have been proven wrong by the developments occurred in the years from 1987 to 1992, and during the leadership of Jiang Zemin.

The Jiang Zemin Leadership

In Jiang Zemin's Report to the 14th Congress, the Party Constitution figures in his discussion of the political principles of democratic centralism, and Party unity. As a figure representing the entire Party, Jiang Zemin attributes the following meaning to those principles:

“Speak sincere words in one's life in the Party, and do not lie, maintain coherence between words and action, uphold and guarantee Party members' right to expression their opinion according to stipulations in the Party Constitution”.⁸

The addition to the Party Constitution of socialism with Chinese characteristics as a theory and a basic line of the Party is, in Jiang's words, necessary to strengthen the construction of the Party, and improve its leadership.

During his second term as the General Secretary of the CCP, Jiang discusses the Party Constitution in the context of how its guiding ideology has evolved through the addition of Deng Xiaoping Theory. The Party Constitution is further mentioned in relation to the governance of the Party, and more specifically:

- a) the governance of grass-roots level Party organs, and their duty to abide by the Party Constitution;
- b) a tightening of Party governance by the Party, with the need to follow the Constitution in all governance processes;
- c) the existence of standards for membership to the CCP.⁹

A discussion of the Party Constitution is absent from Jiang Zemin's Report to the 16th Congress.

⁸“*Jiang Zemin zai Zhongguo Gongchandang dishisi ci quanguo daibiao dahuishangde baogao*” (Jiang Zemin Report to the 14th National Congress of the Communist Party of China), 12 October 1992.

⁹Liu Shaoqi, “*Liu Shaoqi zhengzhi gongzuo baogao*” (Liu Shaoqi Report on Political Work), 15 September 1956. Italicization mine.

The Hu Jintao Leadership

In delivering the Work Report to the 17th Party Congress, Hu Jintao discusses the Party Constitution as a follow-up to the Campaign to Maintain the Advanced Nature of the Party. As made clear by section 12 of the work report - 'Comprehensively pushing forward the new great project of Party building through the spirit of innovation and reform' - the campaign had the goal to improve internal Party governance. The Party Constitution played a paramount role, as a document to be studied and honored.

The role of the Party Constitution as a document aiding in Party building is emphasized again in the Work Report to the 18th Congress. This time, the emphasis in Party building is not so much on innovation, as on raising the scientific quality of Party building. Party building, and its scientific quality, are interpreted as involving a strict observance of Party discipline, and of the principle of Party unity. Thus, the Party Constitution is described as a document that is to be followed by Party organizations, and to be respected by all Party members, because it poses principles regulating the working of Party organs, and more generally speaking criteria (*zhunce*) on life in the Party.

Beijing, 2017



References to the Constitution of the PRC

From 1949 to 1987, work reports to the Party Congress mention the State Constitution only once. This one and only mention was made in 1956, by Liu Shaoqi. Its immediate referent was not the Constitution, but the ambiguity of the economic elites towards this document.

From 1949 to 1987, Work Reports to the CCP Congress mentioned the State Constitution only once.

The Constitution was discussed in 1956 by Liu Shaoqi, who observed how economic elites held ambivalent feelings towards this document.

“In Old China, the national capitalist class was in contradiction with imperialism, feudal forces, and bureaucratic capital. In the capitalist democratic revolution they had two sides. On the one side, they agreed to take part to the struggle against imperialism, against the Guomindang, and against reactionaries. On the other side, during the struggle they often swayed and compromised. After the foundation of the People’s Republic, they showed their support for the People’s democratic dictatorship, the General Program and the Constitution, and showed the will to continue the struggle against imperialism, and an appreciation of the agrarian reform. But, they also have a strong aspiration to develop capitalism.”¹⁰

The Zhao Ziyang Leadership

The long silence in CCP Work Reports on the State Constitution is interrupted only in 1987, by Zhao Ziyang’s Report. The Constitution is discussed in the context of ‘Reform of the Political System’, and almost always mentioned in the context of Party leadership. The only exception occurs in a paragraph where Zhao discusses institutional mechanisms meant to ‘perfect socialist democratic politics’. The State Constitution plays a role in the regularization of ‘grassroots-level democracy’. Raising the issue of existing violations of the rights of citizens, Zhao calls for the need to enact laws on the news industry, on assemblies, processions, demonstrations, and complaint mechanisms. These laws are evidently conceived as laws based on the Constitution, given how Zhao says:

“Therefore, laws (...) must be enacted to allow protection of the rights and freedoms of citizens stipulated in the Constitution, while at the same time

¹⁰ Liu Shaoqi, “*Liu Shaoqi zhengzhi gongzuo baogao*” (Liu Shaoqi Report on Political Work), 15 September 1956. Italicization mine.

putting a stop in accordance to the law to conducts which misuse rights and freedoms.”¹¹

The Jiang Zemin Leadership

The State Constitution is mentioned separate from the political constitution twice in the Report of Jiang Zemin to the 14th Congress. In the section on promoting reforms of the political system, developing socialist legality and the socialist legal system, Jiang Zemin calls for severely implementing the State Constitution and the law, strengthening supervision over law enforcement, and curbing such phenomena as ‘replacing the law with one’s word’, and privileging the use of imprisonment over pecuniary penalties, and guaranteeing independent adjudication and prosecution.

The second mention occurs in the context of Jiang Zemin’s discussion of China’s international relations, where Jiang remarks how the State Constitution guarantees the fundamental rights of citizens.

The Report to the 15th Congress calls for protecting the sanctity of the Constitution and the law, and adhering to the principle of equality before the law. In discussing improvements to democratic supervision, Jiang observes how it is necessary to strengthen supervision over the implementation of the State Constitution and the law. These are the two only points in his report where Jiang discusses the State Constitution without any direct and immediate invocation the Party’s political leadership. Observations about the State Constitution in the Report to the 16th Congress are very similar.¹²

The Hu Jintao Leadership

In the Report to the 16th Congress the State Constitution is mentioned 3 times, in the context of ‘developing a socialist democratic political system’. Within this context, the Constitution is fundamental to realizing the governance of the country according to the law. Hu Jintao calls for law-making processes which are scientific and democratic, and for improving the socialist legal system. The ways to achieve the goal of an improvement involve implementing the Constitution and the law, by guaranteeing the principles of equality of all citizens before the law, socialist justice, and preserving the unity, sanctity, and authority of the socialist legal system.

¹¹“Zhao Ziyang zai Zhongguo Gongchandang dishisan ci quanguo daibiao dahuishangde baogo” (Report of Zhao Ziyang to the 13th National Congress of the Communist Party of China), 25 December 1987.

¹²“Jiang Zemin zai Zhongguo Gongchandang dishiliu ci quanguo daibiao dahuishangde baogao” (Jiang Zemin Report to the 16th National Congress of the Communist Party of China), 8 November 2002.

Hu Jintao further mentions the specific ways in which the unity, sanctity and authority of the socialist legal system are to be maintained. First and foremost, he lists administration according to the law. Here, the organs that come into play are the judicial organs of the state, and more specifically the autonomous (*duli*) use of prosecutorial power by the Procuratorates, and of judicial power by the Courts.

Administration according to the law should not be confused with a license to use and abuse administrative powers, or with administrative discretion. Hu Jintao further explains how Party organizations and Party members should act within the Constitution, and play a vanguard role in protecting the authority of the Constitution and the law.

In his report to the 17th Congress, Hu Jintao maintains a strong continuity with his earlier address. Yet some changes are noticeable. To realize governance of the country in accordance with the law, it is necessary to focus on law-making in major fields and areas, to further regulate administrative power, as well as the reform of the judicial system. As described at the end of the following paragraph, these processes involve notions about the Party as the vanguard of the Chinese People.

References to the Party and to the State Constitution from 1949 to 2012 number 20 and 14 respectively.

References to the Party Constitution References to the State Constitution

8 th Congress	3	1
9 th Congress	6	-
10 th Congress	1	-
11 th Congress	2	-
12 th Congress	-	-
13 th Congress	1	4
14 th Congress	3	2
15 th Congress	3	2
16 th Congress	-	2
17 th Congress	1	3

'Hybrid' References

Hybrid references are direct textual references describing the relationship between the Constitution of the CCP, and of the PRC. They occur in nearly all Work Reports to the Congress of the CCP since 1987. Their constant feature is their describing the State Constitution as a document which:

- a) was produced by the Party and embodies political principles defined by the Party;
- b) Constitutes and regulates processes of administrative governance under the leadership of the CCP;
- c) poses duties and rights to citizens of the PRC, and ought to be respected by Party members.

The only political figure to describe this relationship before the late 1980s was Liu Shaoqi:

“The Party Central Committee, according to the concrete situation of our country, has regulated the general line of our Party during the period of transition, which is: gradually realize a socialist industrialization, and gradually complete the socialist reform of agriculture, the handicrafts, and capitalist industry and commerce within an adequate period. *This general line of the Party* was raised in 1952, at the end of the reconstruction of the national economy. In 1954, it was received by the National People’s Congress, as a general task of the nation during the period of transition, *and it was written down in the Constitution of the PRC.*”¹³

Here, the PRC Constitution appears as a document that exists to allow for the translation of broader political objectives defined by the CCP into policies to be implemented by the State, its organs, and by public administrators.

This pronouncement was followed by 31 a years silence on the role of the State Constitution. Between 1956 and 1977, the focus of constitutionalism shifted from an equilibrium between politics and administration to the absolute prominence of a political constitution, without its administrative and operational arm.

¹³Liu Shaoqi, “*Liu Shaoqi zhengzhi gongzuo baogao*” (Liu Shaoqi Report on Political Work), 15 September 1956. Italicization mine.

The Zhao Ziyang Leadership

Perhaps severed throughout the 1960s, the relationship between the Party Constitution and the State Constitution is reinstated in the 1987, in the opening section of Zhao Ziyang's Report - 'Historical successes and the tasks of this Congress'.

The State Constitution results from the political, ideological, cultural leadership of the Party. Among the other results made possible by Party leadership, Zhao Ziyang explains, there is the gradual progress of the construction of a socialist democracy and a socialist legal system. The Constitution figures as the basis of a socialist legal system which, according to Zhao Ziyang, in 1987 had reached its initial form.

The nature of the State Constitution as a document produced by the People under the Party's guidance, and the Party's obligation to act within the Constitution are reinstated in the section on 'Reform of the Political System', where Zhao discusses the separation between the Party and the State. Detaching administrative governance from political governance means attributing political governance to the Party, and devolving administrative governance to the State. To this end, it is necessary to reform the cadre and personnel management system, creating a class of public administrators.

The Constitution is, together with organizational laws, a device meant to manage public administrators, and ensure their supervision by the public: "State officials are divided in the two categories of administrative and professional officials. Administrative officials must be strictly managed according to the Constitution and organizational laws, a term system must be realized, and they shall receive public supervision from society".¹⁴

The Jiang Zemin Leadership

Five years later, as the separation between political governance and administrative governance has become a reality, Jiang Zemin directly invokes the principle of democratic centralism: "Our Constitution stipulates that state organizations of the People's Republic of China practice the principle of democratic centralism"¹⁵.

¹⁴ "Zhao Ziyang zai Zhongguo Gongchandang dishisan ci quangguo daibiao dahuishangde baogao" (Report of Zhao Ziyang to the 13th National Congress of the Communist Party of China), 25 December 1987.

¹⁵ "Jiang Zemin zai Zhongguo Gongchandang dishisi ci quangguo daibiao dahuishangde baogao" (Jiang Zemin Report to the 14th National Congress of the Communist Party of China), 12 October 1992.

At least in its classical, Leninist version, this principle is based on a set of four hierarchical subordinations, which are as follows:

- a) the individual is subordinated to the organization it belongs to;
- b) within an organization, the minority is subordinated to the majority;
- c) lower-level organizations are subordinated to higher-level organizations;
- d) all individuals and organizations are subordinated to the central organs of the Party.¹⁶

The enunciation of democratic centralism immediately follows Jiang's statement that China, in 1992, has set for itself the goal to construct a socialist political system with Chinese characteristics, and that the country can in no way practice a multiparty, parliamentary system.

Jiang, however, seems to develop the principle of democratic centralism in ways perhaps not originally envisaged by Lenin. According to Jiang, democratic centralism allows for governance mechanisms which are law-based, operated by a class of professional public administrators, administrative bodies as the State Council, and legislative bodies as the National People's Congress.

The 1992 Party Constitution discusses the State Constitution in paragraph 22 of its preamble in relation to legislative procedures. This paragraph of the Party Constitution elaborates on the nature of Party leadership. The Party "must act within the State Constitution and the law." At the same time, the Party is the entity that guarantees the regularity and autonomy of legislative processes.

Five years later, the State Constitution is conceived as a component of rule of law (*yifa zhiguo*). In the words of Jiang, rule of law is "the administration of affairs of the state by the broad masses of the People under the leadership of the Party, according to stipulations of the State Constitution and the law, through various channels (...)." ¹⁷ While the concept of rule of law articulated by Jiang involves the Party's respect of the State Constitution and the law, Jiang notices how "The Party leads the People in enacting the State Constitution and the law."¹⁸

In 2002, the direct derivation of the State Constitution from within the Party is reinstated, by observing how both this document and

¹⁶ See Michael Waller, *Democratic Centralism: An Historical Commentary*. Manchester: Manchester University Press, 1981.

¹⁷"Jiang Zemin zai Zhongguo Gongchandang dishiwu ci quanguo daibiao dahuishangde baogao" (Jiang Zemin Report to the 15th National Congress of the Communist Party of China), 12 September 1997.

¹⁸"Jiang Zemin zai Zhongguo Gongchandang dishiwu ci quanguo daibiao dahuishangde baogao" (Jiang Zemin Report to the 15th National Congress of the Communist Party of China), 12 September 1997.

the law embody assertions (*zhuzhang*) by the Party and the will of the People.

The Hu Jintao Leadership

The Hu Jintao leadership does not abandon the principle whereby the Party defines and leads all those political processes which are then concretely realized by organs of the State. If the emphasis on these processes is not directly and explicitly made in his 2007 Work Report, in 2012 Hu Jintao unequivocally states how “the Party leads the People in enacting the Constitution and the law”.

Five years later, in summarizing the development occurred during previous Party Congresses and in outlining the future trajectory of Chinese constitutionalism, the 2017 Work Report observes how:

“we [the CPC] will strengthen oversight to ensure compliance with the Constitution, advance constitutionality review, and safeguard the authority of the Constitution.”¹⁹

Summing Up the Trajectory of Chinese Constitutionalism

Statements about the Party Constitution and the State Constitution contained in earlier Work Reports to the CCP Congress allow to trace the developmental trajectory leading to the current equilibrium between the political constitution of the CCP, and the administrative constitution of the State. This trajectory can be roughly divided in an earlier period (1949 - 1987), when governance was conceived as based exclusively political documents and oral directives, and in a later period, when the Party acknowledged the importance of law-based forms of governance subordinate to a broad orchestration from the Party, and yet distinct from earlier methods of governance. The latter period began between 1987 and 1992, and it is still on-going.

The ideas articulated in the Work Report to the 19th Party Congress do not introduce gaps or breaks with the earlier tradition on constitutionalism. They inherit ideas introduced before the Congress of the CCP in 1956, and then revived almost a decade after the end of the Cultural Revolution. The weight, emphasis, and attention placed on the nexus between the political constitution and the administrative constitution are, however, unprecedented. Presenting these ideas before the Party Congress, and enshrining them in the Work Report signals how Chinese constitutionalism may once more be on the verge of change. The question worth asking concerns how the CCP will interpret relevant principles within its own ideological system.

¹⁹ Larry Catá Backer, “Chinese Constitutionalism in the New Era: The Emerging Idea and Practice of Constitution in the 19th CPC Congress Report,” CPE Working Paper 11/1 (November 2017)