

Debating Constitutional Government

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Rather than pull public opinion together, Xi Jinping's (习近平) call for realizing the "China Dream" seems to have revealed the depth of cleavage among China's intellectuals. The newspaper *Southern Weekend* set off a drama when it responded by writing a New Year's editorial calling the China Dream the dream of constitutional government, only to have provincial propaganda authorities rewrite it beyond recognition before publication. Subsequently, Xi Jinping authorized a sharp attack on "Western values," including constitutionalism. This internal talk, written into the now infamous "Document no. 9," prompted several publications to run articles against constitutionalism, provoking liberal intellectuals to defend the idea. This deep divide suggests there is increasingly little middle ground left among China's intellectuals, while the backing of different views by different officials reflects a politicization of seemingly intellectual debates. These debates are ultimately about the legitimacy of the government and thus reflect a fragility in the political system.

On May 22, Yang Xiaoqing (杨晓青), a professor of law at Renmin University in Beijing, published an article on constitutionalism in which she said that "some people" believe that "the China Dream is the dream of constitutional government" (中国梦即宪政梦). Yang quickly raised the heat on this issue by saying it was not just a "simple academic subject" but rather a "practical political issue." In Yang's opinion, "constitutional government" was an issue used by Western-oriented liberals to undermine China's socialist system. In refutation, she used Deng Xiaoping's well-known quotation: "Our system is a people's representative system, a people's democratic system under the leadership of the Chinese Communist Party [CCP]. We can't engage in Western stuff" (西方那一套). In fact, she claimed, "Constitutional government does not fit our national conditions."¹

Yang Xiaoqing is not a very prominent legal scholar and the publication that ran her article—*Red Flag Drafts* (红旗文稿)—is not read very widely. Nevertheless, the article touched off a widespread debate, in part because her use of the phrase "the China Dream is the dream of constitutional government" was a reference to the original title of the New Year's editorial that was intended to run in the *Southern Weekend* (南方周末) before being rewritten by censors (see below) and in part because the issue of China's development direction has reached a critical point. In addition, Yang's article came exactly one month after the General Office of the CCP issued a document, "Concerning the Situation in the Ideological Sphere" (关于当前意识形态领域情况的通报), that warned against "seven serious problems" in Western values, including "judicial independence" and "civil society."²

In some ways, Yang Xiaoqing's argument—that China is not a constitutional system—seems to put her at odds with much of what China has been trying to do over the past 30

years. After all, in 1982, as the Chinese government emerged from the Cultural Revolution and worked to bring “order out of chaos,” it promulgated a new constitution in 1982, one that continues, with amendments, to be operative. The preamble to that constitution states that “the peoples of all nationalities, all state organs, the armed forces, all political parties and public organizations and all enterprises and undertakings in the country must take the constitution as the basic norm of conduct, and they have the duty to uphold the dignity of the constitution and ensure its implementation.” An editorial in *People’s Daily* was even more explicit: “[O]ur party is the party in power, and occupies the position of leadership in the political life of the state, but before the constitution and laws, our party, like all other parties, groups, and organizations, must conduct its activities within the limits permitted by the constitution and the laws.”³

Similarly, in 1997 the 15th Party Congress committed itself to “rule of law,” changing the previous formulation of 法制, a term that suggests using the legal system to control society and is often translated “rule by law,” to 法治, which suggests a commitment to law that would bind both the government and the society and is usually translated “rule of law” (unfortunately, both of these expressions are read “*fazhi*” making the distinction difficult in speech).⁴

Moreover, when Hu Jintao took over in 2002, his first public comments were on the occasion of the 20th anniversary of the promulgation of the 1982 constitution. He declared, “no organization or individual can be permitted the special privilege of going outside the constitution and law” and that “all Party organizations at various levels and all Party members must act as models in upholding the constitution, strictly manage affairs in accordance with the constitution, and conscientiously operate within the scope of the constitution and law.”⁵

Similarly, shortly after being named general secretary, Xi Jinping, like Jiang Zemin and Hu Jintao before him, gave a major speech on the 30th anniversary of the promulgation of the constitution, declaring that “protecting the authority of the constitution means protecting the authority of the common will of the party and the people.” He went on to assert: “To manage state affairs according to law, first we must run the country in accordance with the Constitution. The key to holding power in accordance with the law is to first rule in accordance with the Constitution. The party leadership formulates the Constitution and the law, and the party itself must act within the scope of the Constitution and the law to truly achieve the party leadership’s establishment of the law, ensuring the enforcement of the law, and taking the lead in abiding by the law.”⁶

Xi’s strong comments seem to have led liberal-minded reformers to push ahead, either believing that Xi was inclined to support them or that circumstances would convince the new party chief that he should support them. In December, 70 scholars signed a petition calling for political reform, particularly constitutional government.⁷ As noted above, the Guangzhou-based paper *Southern Weekend*, picking up on Xi’s theme of a “China dream,” wrote a New Year’s editorial for the paper—“China’s Dream is the Dream of Constitutional Government”—that was rewritten by Guangdong provincial propaganda chief Tuo Zhen as a paean to the party. Journalists at *Southern Weekend* objected and

petitioned provincial authorities; soon they went on strike, only to have the editor removed. The *Global Times* then ran an article, republished throughout China, saying with unusual bluntness that “anyone with common sense knows that in China there is no room for a ‘free press,’ and that the media should not harbor the unrealistic hope of becoming a ‘political special zone’.”⁸

The Rights Protection Movement and the Decline of Constitutionalism

Xi’s comments and the *Southern Weekend* incident brought to a head tensions that had been simmering throughout the Hu-Wen era. On the one hand, there was the “rights protection movement” (维权运动, usually abbreviated 维权) that has sought to relieve social tensions through legal means. The movement is usually dated from 2003 when a college graduate by the name of Sun Zhigang (孙志刚) was detained by police in Guangzhou. He was not carrying his identification card, and police, who thought he was a migrant worker, beat him to death. Sun’s death prompted three young doctorates in law—Yu Jiang 俞江, Teng Biao 滕彪, and Xu Zhiyong 许志永 (the same Xu Zhiyong who was put under house arrest in Beijing on April 12 and then detained on July 16 of this year)—to write an open letter to the National People’s Congress (NPC) saying that the custody and repatriation system was in violation of the constitution. When the custody and repatriation system was subsequently revoked, it provided hope that China’s political system could be gradually reformed and abuses of power reduced by enforcing laws already on the books—a moderate approach to reform.⁹

On the other hand, even as the rights protection movement developed, the Chinese government was making new efforts to “maintain stability” (维稳). Although the PRC has always placed an emphasis on social control, the adoption of reforms and the loosening of restrictions on everyday life opened up new space both for criminal activity and for protest. Following the spring 1989 protests in Beijing, Deng Xiaoping adopted a tough attitude, declaring in December 1990 that “stability overrides everything” (稳定压倒一切).¹⁰ The term *weiwēn*—maintain stability—was apparently first used at the 20th National Public Security Work Conference in late 2003. Susan Trevaskes has argued that this conference marked a transition from the “strike hard” (严打) campaigns, which had been aimed primarily at crime, to managing protest and civil dissent, as reflected in the rising number of “mass incidents” (群体事件) and, of course, the emerging *weiquan*—rights protection—movement.¹¹ Emphasis on building a coercive apparatus was reflected in rapidly increasing expenditures. Central government spending on domestic security increased from 135 billion yuan in 2002 to over 450 billion yuan in 2009.¹² By 2013 the public security budget had risen to 769 billion yuan (\$123.5 billion, exceeding China’s announced defense budget of 720 billion yuan.)¹³

These growing expenditures suggested that efforts to maintain social stability through coercion (*weiwēn*) were on a collision course with efforts to protect peoples’ rights through law (*weiquan*). The Chinese government saw the emerging NGO sector and the *weiquan*—rights protection—movements as potential threats, particularly following the “color revolutions” of 2003–2004. In 2007, Hu Jintao put forth his “three supremes” (三

个至上), which called for the supremacy of the CCP, the supremacy of the interests of the people, and the supremacy of the constitution and the law. Despite the supposed supremacy of the constitution and law, new regulations required lawyers to swear an oath of allegiance to the CCP, making clear which of the supremes was really supreme.¹⁴

At the same time, the CCP began to move away from deciding cases according to law, which was deemed too contentious, in favor of a process of mediation, which the CCP called “grand mediation” [大调解] in a mostly unsuccessful effort to distinguish its new initiative from mediation, which had always been a part of PRC dispute resolution, and from which efforts to institute legal decision making had been an effort to move away.¹⁵ As a result, China, in Minzner’s words, had “turned against law.”¹⁶ This movement away from legal mechanisms reflected the very different approach the government had toward maintaining social stability than did the lawyers and others involved in the *weiquan* movement.

The China Model

In the 1980s, intellectual debate in China largely revolved around “conservative” and “reformist” poles; China’s intellectuals were largely “establishment intellectuals” who either had close ties with officialdom, if they were not officials themselves, or worked on policy issues that were important to policy-makers. Although there was some tendency for intellectual debates to spill out into the popular domain, especially with book series like *Culture: China and the World* (文化: 中国与世界) and the development of cultural fever in the latter part of the decade, populism had not yet hit China and debates tended to be “within the system” (体制内).

Chinese intellectuals emerged from their stunned silence following the Tiananmen crackdown prompted by two major events: the failed coup d’état and the subsequent breakup of the Soviet Union on the one hand and Deng Xiaoping’s trip to the south on the other. The cumulative impact of the Tiananmen crackdown and these later events was that the old “conservative-reformer” dynamic began to be replaced by an emergent “New Left–Liberal” (新左派–自由派) division. There was obviously division and increasing tension between conservatives and reformers in the 1980s—that tension was one of the factors that led to the political meltdown in 1989—but no one on either side of that division was a “dissident” of any sort. The New Left, however, was a critique of reform as it had been practiced since 1978, suggesting that reform was leading domestically to the emergence of bureaucratic capitalism and (contradictorily) neoliberalism and weakening the nation internationally. Emerging at first as a narrow intellectual critique, the New Left soon grew wings as it merged with supporters of neo-statism and popular nationalism, as reflected in books like *China Can Say No*. In that sense, even though there was a strong neo-statist element in neoconservatism, the New Left movement as a whole rejected the policies of the Deng Xiaoping era, and it was largely “outside the system” (体制外).

Similarly, liberals began to move beyond advocating reform of the system, pushing for better-defined property rights, an independent judiciary, and rule of law. Particularly in

the post-Tiananmen atmosphere, liberals were “outside the system.” They lacked the populist base that the New Left began to cultivate, but they could count on the support, however tacitly, of a broad range of intellectual and economic actors, including the growing private sector and burgeoning international trade.

Chongqing

These debates roiled the pages of China’s intellectual journals throughout the 1990s, but faded as both sides exhausted themselves reiterating increasingly tired arguments. The debates, and especially the New Left, were re-energized when Bo Xilai (薄熙来) went to Chongqing in 2007 and began to look around for a program that would distinguish him from other potential candidates for the Politburo Standing Committee (PBSC). He started with a campaign against mafia-like secret societies, followed with the singing of “red songs” (from the Maoist era), building a personality cult of his own, and allying with New Left intellectuals. One by one, leading New Left intellectuals—Cui Zhiyuan (催之元), Li Xiguang (李希光), Wang Shaoguang (王绍光), and many others—went to Chongqing and returned singing its praises.¹⁷

Pretty soon extensive discussions about the “China model” began appearing in the Chinese press and social media. Advocates of the China model, reacting in part to the American financial crisis and building off the Chongqing experience, began to argue that China had developed a better model of development than had the West, and that China could only develop if it adhered to Chinese values and rejected those of the West.¹⁸

What the Chongqing model did was give the New Left intellectuals a real place, which they could viably claim was putting their ideas into practice. Li Xiguang, the well-known professor of journalism at Tsinghua University (and also co-author of *Behind the Demonization of China* 妖魔中国的背后), even wrote an internal report called “The Chongqing Dream and the China Model” (重庆梦与中国模式).¹⁹ For the first time since Tiananmen one could say that political ideas found resonance with grassroots populism, giving New Left intellectuals a political weight they otherwise would not have had while at the same time giving Bo Xilai a social and political heft he would not have had without the support of the New Left. It is this merging of the New Left and a local political movement in a challenge to mainstream, but intellectually vapid, reform that makes the Bo Xilai case so different from those of Chen Xitong (陈希同) and Chen Liangyu (陈良宇).

The arrest of Bo Xilai deflated the Chongqing model and cost the New Left much of the intellectual momentum that it had built up in the previous five years. Just as liberals pinned their hopes on Xi supporting their agenda, the New Left saw an opportunity when Xi’s rhetoric veered to the left and adopted Maoist overtones. The controversy that Yang Xiaoqing stirred up with her article on constitutionalism cannot be understood apart from the frustrations of liberals as hopes for rights protection (and many other forms of reform) faded, the tarnished dreams of the New Left, and the general drift of the political system, which can no longer explain itself in either reformist or Marxist (old or New) terms.

Yang’s article was rapidly followed by others of a similar nature. *Liberation Army Daily* (解放军报) published “Wherein Lies Our Confidence for the China Dream?”,²⁰ *Party*

Building (党建), which is published by the Propaganda Department, ran “One must not take Constitutional Government as China’s Basic Political Concept;”²¹ *Global Times* (环球时报), a subsidiary of *People’s Daily* (人民日报), published an editorial, “The Trap of ‘Constitutional government’ Negates China’s Developmental Path,”²² while *People’s Daily* itself published “Western Theory Cannot Reflect the Basic Interests of the Chinese People.”²³ On June 1, *Seeking Truth*, the party’s theoretical journal, published “If Thought is Westernized, the Party and State Will Take a Wrong Turn.”²⁴ Together, these and other commentaries made it clear that the campaign to oppose constitutionalism had official backing.

The Response

It did not take long for liberals to respond to Yang Xiaoqing. Within a week Cai Xia (蔡霞) of the Central Party School declared that Yang’s “thinking in opposition to constitutional government was startling.” She went on to say that “the progress of mankind’s political civilization is toward democratic politics, and the legal protection of democratic politics lies in constitutional government. This is the manifestation and basic demand of the objective laws of political life; this has already become a basic common sense.” So saying, she reposted an article that she had written in 2011 that laid out the rationale for the CCP, as a revolutionary party, to support constitutional government.²⁵ She also gave a talk at Peking University that laid out her case plainly and logically. “What is the most basic implication of constitutional government?” she asked. “It is to protect human rights.”²⁶

Cai was soon joined by many others. For instance, Peking University law professor Zhang Qianfan (张千帆) argued that a healthy country needed economic, intellectual, and political markets, and that without constitutional government these markets, particularly intellectual and political markets, could not function. “That’s why vested interests oppose constitutional government,” he declared.²⁷ From overseas, Feng Chongyi (冯崇义) and Yang Hengjun (杨恒均) mocked the “three flags” of their conservative opponents—Marxism, socialism, and patriotism—saying they really only need to raise the one flag of ignorance (蒙昧).²⁸

Hu Angang Extends the Argument

Picking up on another of the “seven things that should not be spoken of,” well-known Tsinghua University economist Hu An’gang (胡鞍钢) published an article titled “People’s Society Is Superior to Civil Society” in the Overseas edition of *People’s Daily*. The Overseas edition of *People’s Daily* does not convey the authoritativeness of the domestic edition of *People’s Daily*, but it has been used in interesting ways in the current debate to reflect conservative views. Hu juxtaposed “Western” notions of “civil Society” (公民社会) with his notion of “people’s society” (人民社会), which follows the “mass line” (群众路线). (It should be pointed out that the Chinese government launched a campaign to study the “mass line” in May.) In contrast to Western notions of civil society being in opposition to the state, Hu argued that Chinese “people’s society” accepted the Chinese Communist

Party as its leader and that “in a people’s society, the government and the masses are unified.”²⁹

Before long, Hu’s old friend and collaborator Wang Shaoguang wrote an essay in support. Wang ran through a number of definitional issues regarding civil society that have run through the literature and then concluded that China should reject such notions in favor of a society that brings together a political community of workers and masses, namely a “people’s society.” A people’s society, Wang says, would be composed of the broad masses of workers and people (广大劳动群众), and at the same time include “all those who support socialism and all those patriots who support the unified motherland.”³⁰ Thus, Wang, intentionally or unintentionally, continued the Maoist distinction between the “people” and the “enemies of the people” by excluding those who did not, presumably by the party’s definition, support socialism.

Implications

Although the debate over constitutional government was triggered by a law professor and continued primarily in official publications, the extension of this argument into the area of “civil society” marks the first time since the arrest of Bo Xilai that the New Left has engaged in open polemics and suggests that they feel that there is governmental support for their position. In many ways the debate over constitutional government is an extension of the previous debate over the China model. Just as the New Left lined up to support the China model, they now oppose constitutional government. Conversely while liberals talked in terms of universal values (普世价值) and denied the uniqueness of the China model, they now support constitutional government.

A decade ago, both the New Left and the liberals were intellectual voices in the wilderness; today, both have their supporters within the Chinese government. This migration of intellectual debate from the societal level to the governmental level reflects the inability of official Marxism to rally support (much less belief), suggesting the deepening of a crisis of legitimacy. What is worse, as societal arguments have been absorbed into governing circles (the Bo Xilai case being the most obvious), those in governing circles seem more inclined to use ideological arguments to rally supporters and, more to the point, pressure their opponents.

Moreover, although the New Left and liberals have engaged in heated polemics for a decade, their observation of and involvement in policy issues over that time appear not to have made them more measured and practical but rather more ideological. They denounce each other in uncompromising, personal terms. Not for the first time in modern Chinese history, the moderate middle seems to be squeezed out.³¹

Notes

¹ Yang Xiaoqing 杨晓青, “Comparative study of constitutional government and the people’s democratic system” (宪政与人民民主制度之比较研究), available at

<http://www.politicalchina.org/printnews.asp?newsid=228690>. Many of her statements reprise similar arguments made in a well-known 2004 essay by Wang Yicheng 王一程 and Chen Hongtai 陈红太, “Our views and reasons why the formulation ‘constitutional government’ cannot be adopted” (关于不可采用‘宪政’提法的意见和理由), available at <http://www.ccwlawyer.com/ShowArticle.asp?ArticleID=2703>.

² Chris Buckley, “China Warns Officials Against ‘Dangerous’ Western Values,” *New York Times*, May 14, 2013. See also the Chinese Wikipedia entry on the 七个不讲 (Seven things not to be spoken of), available at <https://zh.wikipedia.org/wiki/七不讲>. Hong Kong’s *Mirror Monthly* (明镜月刊) published Document No. 9 in its August 19 edition. The author has compared this to a version circulating privately, and they are identical.

³ Cited in Tang Tsou, “Reflections on the Formation and Foundations of the Communist Party-State,” in Tang Tsou, *The Cultural Revolution and Post-Mao Reforms: A Historical Perspective* (Chicago: University of Chicago Press, 1986), p. 313.

⁴ Joseph Fewsmith, *China since Tiananmen*, 2nd edition (Cambridge: Cambridge University Press, 2008), p. 201.

⁵ *Ibid.*, pp. 242–243.

⁶ 人民日报 (*People’s Daily*), December 5, 2012.

⁷ Zhang Qianfang, “Proposal for Consensus on Reform,” *Caijing Online*, December 26, 2012.

⁸ Ching Cheong, “Xi Faces the Test of His Reform Image,” *Straits Times Online*, January 11, 2013; David Bandurski, “Inside the Southern Weekly Incident,” *China Media Project*, January 8, 2013.

⁹ On the *weiquan* movement, see Hualing Fu and Richard Cullen, “Lawyering in an Authoritarian State: Building a Culture of Public-Interest Lawyering,” *China Journal*, no. 59 (January 2008): 111–127; and David Kelly, “Citizen Movements and China’s Public Intellectuals in the Hu-Wen Era,” *Pacific Affairs*, vol. 79, no. 2 (Summer 2006): 183–204. See also Xu Zhiyong, “The Last Ten Years,” *China Change*, available at <http://chinachange.org/2013/06/05/the-last-ten-years>.

¹⁰ Although Deng may have first used this phrase in December 1990, he had told visiting U.S. president George Bush in February 1989 that “In China, what overrides everything else is the need for stability.” See <http://baike.baidu.com/view/67093.htm>.

¹¹ Susan Trevasques, “Rationalizing Stability Preservation through Mao’s Not So Invisible Hand,” *Journal of Current Chinese Affairs*, vol. 42, no. 2 (2013), pp. 51–77.

¹² Xie Yue, “Rising Central Spending on Public Security and the Dilemma Facing Grassroots Officials in China,” *Journal of Current Chinese Affairs*, v. 42, no. 2 (2013): 87–89.

¹³ Andrew Jacobs and Chris Buckley, “China’s Wen Warns of Inequality and Vows to Continue Military Buildup,” *New York Times*, March 5, 2013.

¹⁴ Jerome Cohen, “Body Blow for the Judiciary,” *South China Morning Post*, October 18, 2008.

¹⁵ Xie Yue 谢岳, *The political logic of stability maintenance* (维稳的政治逻辑, Hong Kong: Tsinghua Bookstore Co., 2013), pp. 109–137.

¹⁶ Carl Minzner, “China’s Turn against the Law,” *American Journal of Comparative Law*, v. 59, no. 4 (Fall 2011): 935–984.

¹⁷ Rong Jian 荣剑 “The intellectuals who ran to Chongqing” (奔向重庆的学者们), available at <http://www.21ccom.net/articles/zgyj/gqmq/2012/0428/58663.html>.

¹⁸ See “Debating ‘the China model,’” *China Leadership Monitor*, no. 35 (Summer 2011).

¹⁹ This article has since circulated on the internet. See Li Xiguang 李希光 and Gu Xiaochen 顾小琛, “The Chongqing dream and the China model” (重庆梦与中国模式), available at <http://www.21bcr.com/a/shiye/zaiminjian/2010/0930/1729.html>.

²⁰ Sun Linping 孙临平, “Wherein Lies Our Confidence for the China Dream?” (中国梦的自信在哪里), *Liberation Army Daily* (解放军报), May 22, 2013. Available at http://www.chinamil.com.cn/jfjbmap/content/2013-05/22/content_36307.htm. This article has also been published under the title 我们信仰的主义乃是宇宙的真理 (“The ism in which we believe remains the universal truth”).

²¹ 不能把宪政作为我国基本政治概念 (One must not take constitutional government as a basic political concept for China), available at <http://news.sina.com.cn/c/2013-05-30/165527268617.shtml>.

²² Editorial, “‘宪政’是兜圈子否定中国发展之路” (“Constitutional government’ is an indirect way of negating China’s development path”), available at <http://opinion.huanqiu.com/editorial/2013-05/3957200.html>.

²³ “西方 那套 理论不反映中华民族根本利益” (Western theory cannot reflect the basic interests of the Chinese people), *People's Daily*, May 31, 2013.

²⁴ “思想西化， 党和国家就会走上邪路” (If thought is Westernized, the party and state will take a wrong turn), 求实, June 1, 2013.

²⁵ Cai Xia 蔡霞, “推进宪政民主应是中国共产党的执政使命,” available at www.21comm.net/articles/zgyj/xzmj/article_2011110648239.html.

²⁶ http://blog.sina.com.cn/s/blog_4bce17b70102ecsg.html.

²⁷ Zhang Qianfan, “Without constitutional government, reform is only empty talk” (没有宪政， 改革就是扯谈), available at <http://zhangqianfan.blog.21ccom.net/?p=92>.

²⁸ Feng Chongyi and Yang Hengjun, “To refuse constitutional government is to cut off China’s future” (拒绝宪政是断绝中国的前途), available at www.politicalchina/printnews.asp?newsid=228767

²⁹ Hu An’gang, “People’s society is superior to civil society” (人民社会优于公民社会), *People's Daily*, Overseas edition, July 20, 2013. Available at http://www.caogen.com/blog/Infor_detail/51036.html.

³⁰ Wang Shaoguang, “‘Civil Society’: The crude myth created by the neo-liberals” (“公民社会”: 新自由主义变造的 粗糙神话), available at www.21ccom.net/articles/sxwh/shsc/article_2013073188841.html.

³¹ See Zheng Yongnian 郑永年, “What does China’s debate over ‘constitutional government’ mean?” (中国“宪政” 之争说明什么), available at

www.xzhilv.com/blog_content.jsp?blog_id=d8686813f957f04ac8be51f16de3ff34. See also Xiao Gongqin 萧功秦, *Beyond Left and Right Radicalism* (超越左右激进主义; Hangzhou: Zhejiang University Press, 2012).