

Constitutional Discourses in East Asia Today: China vs. Korea

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Abstract

The East Asian states such as China, Korea, Japan, and Vietnam have taken radically different trajectories of state-making in modern history. Korea and Japan today are rated as full democracies whereas China and Vietnam are the single-party authoritarian political systems. Despite their fundamental differences, scholars have noted the authoritarian developmental state of 1960-70s Korea and the authoritarian single-party dictatorship of the People's Republic of China (PRC) since 1978. Will the economic development of China eventually follow the Korean model of democratization? Will the economic liberalization of China call for political liberalization? Such questions have been underlying in constitutional discourses (*xianzheng luntan* 憲政論壇) in China today. These constitutional discourses arose in the early 2010s among a diverse group of public intellectuals including legal scholars, philosophers, political theorists, historians, Confucian classicists, etc. In 2013, the Chinese Communist Party (CCP) decided rather abruptly to suppress those who promoted “constitutional democracy,” and supported the proponents of Confucian constitutionalism. In this article, I will argue that constitutional discourses in China today have revealed the irreconcilable tension between the Leninist state of the PRC and its market economy, and that China will be forced by domestic problems as well as global forces to take the Korean mode of political liberalization. Furthermore, I will argue that Confucian constitutionalism is possible and meaningful in China today only in so far as the spirit of Confucianism is used to constrain the powers of the CCP and protect and expand the rights of the individuals. Otherwise, Confucian constitutionalism will deteriorate soon into another pretext giving a new lease of life to the CCP's one-party dictatorship.

Keywords: Constitutional discourses, Communism, China, Confucianism, Korea

1. From Class Conflict to Nationalism: The Wavering Constitutional Identities of the PRC

In his recent speech given in the Tiananmen Square in commemoration of the 100th anniversary of the Chinese Communist Party (CCP) on July 1st, 2021, Chairman Xi Jinping (1953-) called on the 95-odd million members of the CCP to not forget the initial dream of its founders: “the great restoration of the Chinese nation.” With this statement, Xi Jinping has craftily shifted the ultimate purpose of the CCP from the construction of a community utopia to the making of the great Chinese nation. This is a remarkable statement: nationalism has officially come to substitute communism at the CCP’s anniversary. On what grounds does Xi Jinping define the initial dream of the CCP as the great restoration of the Chinese nation? In the same speech, Xi Jinping points to five major events in modern Chinese history that preceded the founding of the CCP:

To save the nation from peril, the Chinese people put up a courageous fight. As noble-minded patriots sought to pull the nation together, the Taiping Heavenly Kingdom Movement [a.k.a., the Taiping Rebellion], the Reform Movement of 1898 [the Hundred Days Reform], the Yihetuan Movement [the Boxer Rebellion], and the Revolution of 1911 [the Republication revolution] rose one after the other, and a variety of plans were devised to ensure national survival, but all of these ended in failure. China was in urgent need of new ideas to lead the movement to save the nation and a new organization to rally revolutionary forces. With the salvoes of Russia’s October Revolution in 1917, Marxism-Leninism was brought to China. Then in 1921, as the Chinese people and the Chinese nation were undergoing a great awakening and Marxism-Leninism was becoming closely integrated with the Chinese workers’ movement, the Communist Party of China was born. (Xi, Emphasis added)

By defining these four historical major events as a series of nationalist movements led by “noble-minded patriots,” Xi Jinping makes a grand claim: The Chinese Communist movement was also a nationalist movement. Was the great restoration of the Chinese nation really the initial dream of the CCP?

At the first national congress of the CCP which took place on July 23rd-29th, 1921, thirteen delegates adopted the initial declaration in Russian under the supervision of two Comintern advisors from Moscow. The first article of the declaration defines the purposes of the CCP in the following manner:

1. The Revolutionary Army shall overturn the party of the bourgeoisie class, support the proletariat, and be dissolved with the abolition of all social classes.
2. The CCP shall terminate class struggle and endorse the proletarian dictatorship until the disappearance of all social classes.
3. The CCP shall abolish the private ownership of the bourgeoisie class, and collectivize machines, lands, factories, and other not fully manufactured resources.
4. The CCP shall unite with the Third Communist International (Comintern).

The initial dream of the CCP founding members in 1921 had no explicit mention of the Chinese nation at all. It seems obvious that Xi Jinping has redefined the fundamental goal of the CCP is to make China great again. Having defined the history of the CCP as a nationalist movement, Xi Jiping creates two serious conceptual problems:

The first conceptual problem lies in the relation between communism and nationalism. By explaining how Western imperialist states sustained themselves by exploiting colonies overseas in *Imperialism, the Highest Stage of Capitalism*, Lenin did indeed inspire a large number of young “patriotic” Chinese intellectuals of the May Fourth Era (1910s-1920s); however, the founders of communism, including Marx, Engels, and Lenin, were all opposed to the nationalism of the Bourgeois states. They promoted the internationalism of all the laborers and socialist activists in the world. By defining the initial dream of the CCP as the great restoration of the Chinese nation, Xi Jinping has virtually remade the CCP into a nationalist party.

Second, the very concept of the Chinese nation is also highly problematic. According to the preamble to the Constitution of the PRC, “the People’s Republic of China is a unitary multi-national State created jointly by the people of all its nationalities.” The CCP government officially recognized fifty-six nationalities, including the Han, which constitutes more than 94% of the population. Despite the recognition of multiple nationalities, Xi employs the term the Chinese nation to refer to all the citizens of China regardless of their national backgrounds and ethnic identities. For example, the Uighurs of Xinjiang Province are also considered members of the Chinese nation. Although not explicitly mentioned, Xi Jinping’s use of the term can be traced back to Liang Qichao (梁啓超, 1872-1929) who coined the term, “the Chinese nation (*zhonghua minzu*, 中華民族)” out of necessity for building the one unified nation-state in a woefully divided and chaotic China during the 1910-20s. Liang Qichao’s logic was quite straightforward: if all nations

of diverse backgrounds in China continue to live together on polity for thousands of years to come, they would eventually become “the Chinese nation.” Liang’s argument is a political claim against the Wilsonian doctrine of national self-determination, according to which China at the time might well be divided into multiple nation-states.

In order to bypass the problems of the CCP promoting the nationalist agenda of restoring the Chinese nation, Xi Jinping seems to have been ideologically burdened since the early phase of his tenure as the general secretary of the CCP. For such reasons, Xi Jinping has continuously promoted Confucianism as a cultural antidote for the lures of Western-style liberal democracy.

Since his inauguration in 2012 as the General Secretary of the Chinese Communist Party (CCP), Xi Jinping has continuously emphasized the importance of restoring the Confucian values for China today. At a forum in 2014 marking 2,564 years since Confucius’ birth, Xi Jinping declared that ancient traditions “can offer beneficial insights for governance and wise rule” (Buckley). To the keen eyes of China observers outside of China, it is a bit puzzling how and why the CCP tries to reconcile the traditional Confucian values and the official state ideology of socialism.

Undoubtedly, the PRC today is a socialist state whose *raison d’état* is to create a communist utopia. The “Preamble” to the PRC constitution declares to uphold the guidance of Marxism, Leninism, and Mao Zedong Thought as the three ideological pillars of the state. The Article 1 of the “General Principles” in the PRC constitution states: “The People’s Republic of China is a socialist state under the people’s democratic dictatorship led by the working class and based on the alliance of workers and peasants.” Article 24 states that the state “conducts education among the people in patriotism and collectivism, in internationalism and communism and in dialectical and historical materialism, to combat capitalist, feudal and other decadent ideas” (*Constitution*). The values officially promoted here by the PRC government are “collectivism, communism, dialectical and historical materialism.” The values officially denounced by the PRC constitution are “capitalist, feudal, and other decadent ideas.”

2. Communism and Confucianism: An Uncomfortable Marriage of Convenience

Of all feudal ideas, the CCP has historically denounced Confucianism as its fundamental roots. Most dramatically, during the Great Proletarian Cultural Revolution (1966-1976), a group of Beijing Red Guards rampaged the Confucian Temple in Qufu, Shandong, and exhumed Confucius's tomb in search of his skeleton. In the early 1970s, after the death of Lin Biao (林彪, 1907-1971), "Criticize Lin and criticize Confucius (*pilin pikong* 批林批孔)" was the motto of the nation-wide campaign led by the Gang of Four. Then how could the CCP make such a theatrical 180 about-face to restore the values of Confucianism? Why does the CCP want to do so?

The inconvenient marriage of convenience between Communism and Confucianism has, therefore, begun in a rough and ready manner from the start. Because Confucius is the cultural icon of the Chinese civilization, the CCP has recalled him from the burial ground of the Cultural revolution. Has Xi Jinping's attempt to restore the Confucian values been successful? To answer this question, we should review what the Chinese intellectuals call the constitutional discourses of the 2010s.

Since the summer of 2013, I have developed a keen interest in contemporary constitutional discourses in China. At the time, I was teaching at the Hangzhou Normal University as a visiting scholar. One afternoon, in the streets near the university campus in of Xiasha, Hangzhou, I came upon a writing on the wall of two Chinese characters, *chuang-zheng* 創政, which can be translated into English quietly literally as "create politics," or more figuratively as "start a new government." I asked Mr. Ma, a Ph.D. in Chinese literature at the University, as to what those two characters should mean in the context of Chinese politics at the time. Mr. Ma guessed that it seemed to be closely related to then ongoing constitutional discourses in China. At the time, a number of scholars in and out of China were actively engaged in constitutional debates in public websites such as *Gongshiwang* (共识网, gongshiwang.com) and *Ai Sixiang* (爱思想, aisixiang.com).

Those who participated in these constitutional discourses were from diverse fields of scholarship: history, philosophy, jurisprudence, and the social sciences. Their debates were mainly concerned with the legitimate constitution of a future China. Just by participating in such constitutional discourses, one many assume that they had already expressed their disenchantment of, as well as discontent with, the constitution of the PRC. Otherwise, how can we explain the enthusiasm with which they expressed their plans for the constitutional reshaping

of a future China? In the PRC ruled by the CCP as the sole legitimate party, they discussed the wide range of constitutional agendas such as separation of powers in government, the expansion of individual rights and liberties, the establishment of democracy, rule of law, and the fundamental human rights such as freedom of expression, press, association, thought, etc.¹

In the constitutional discourses, three camps of scholars were most conspicuous: the New Left, the Liberal, and the New Confucians. The following table shows in a nutshell the different positions taken by the three camps of scholars:

Table 1: The 2013 Constitutional Discourses in China

	Problems of Chinese Society	Solutions for Problems
The New Left	Capitalism The reform and opening-up Globalization	Revitalization of the state-led economy Restoration of equality Centralized administration
The Liberals	The power holders of the CCP Government intervention The break-down of the market economy Lack of fairness and rule of law	Reform of the political system Normalization of the market economy Individual freedom Human rights Checks and balances in government
The New Confucians	The collapse of traditional culture The lack of the fundamental spirit of the Chinese civilization	Restoration of traditional Chinese political thought Rebuilding of the Chinese-style constitution

Amongst those who actively participated in the constitutional debates were a group of senior scholars. Born in the 1920-30s, they grew up in the turbulent period of the Warlord Era (1914-1926), the Northern Expedition (1926-28), the Sino-Japanese War (1937-1945), and the Civil War (1946-1949). Those who remained in mainland China had to suffer during the Anti-Rightist Campaign (1957-1959). Scholars of this generation were suspected, questioned, harassed, and purged by the CCP. Mao Zedong thought it was necessary to interrogate the minds of this generation and pull out the “snakes from the caves.” Mao Zedong suspected them because they had been exposed to diverse trends of thought, ideas, and political theories before the CCP takeover. Those who left

1 Not many studies have been done on this issue in the English-speaking world. For a few scholarly reviews of the recent constitutional discourses in China today, see Albert H.Y. Chen, “The Discourse of Political Constitutionalism in Contemporary China: Gao Quanxi’s Studies on China’s Political Constitutionalism” and Zhang Yongle, “Evaluation on the Development of Chinese Constitutional Law Scholarship (2012-2013).”

China and studied in North America or Europe could observe China by relying on the Western news media. Most importantly, they had reached adulthood when the CCP launched the massive campaigns “to rectify the thought of the people,” each of which is a laden concept in class-conflict theory.

3. Du Guang’s Critique of the PRC Constitution

Du Guang (杜光, 1928, originally, Lin Daowu 林道茂) hailed from Wenzhou, Zhejiang. He worked as a party theoretician, the director of the Scientific Research Institute, and the head librarian at the Central Party School. He served as the director at the Institute of Reforming the Chinese Political System as well as the editor of the bimonthly journal, *Reforming the Chinese Political System* (中国政治體制改革). Since the mid-1990s, Du Guang began to express his political visions. In the 2000s, he published a number of articles on Chinese politics, and actively participated in constitutional discourses. Through his writings, Du Guang has addressed sensitive issues such as civil society, freedom of the press, the legal system, liberalization, etc., most of which are now banned by the CCP.

In *Returning to Democracy*, published in 2012 with a Hong Kong publisher, Du Guang developed a systematic critique of the logical contradictions and theoretical flaws of the PRC constitution (Du Guang 2012a). By invoking the history of modern Western constitutionalism, Du Guang argues that the PRC constitution is fraught with logical inconsistencies and theoretical flaws. In his own words:

The PRC constitution today is full of contradictions. Its specific contents contain antinomies. The principles of democracy and dictatorship coexist in the same sentence; however, it is obvious that dictatorship overrides democracy. It is why the rights of the people prescribed in the constitution are not secured, and why political power is not constrained and routinely overused. It is the fundamental reason why the constitution cannot realize itself.

The democratic contents of the current PRC constitution mainly express the following points: (1) Chapter II “The General Principles” states that all powers belong to the people, which embodies the spirit of popular sovereignty; (2) Chapter III “The Structure of the State” states that “[Article 57] The National People’s Congress of the People’s Republic of China is the highest organ of state power. Its permanent body is the Standing Committee of the National People’s Congress.” It also states that “[Article 58] The National People’s Congress and its Standing Committee exercise the legislative power of the State.” It is also stated that the National

People's Congress has the power [Article 62] "to amend the Constitution, and to supervise the enforcement of the Constitution." Moreover, it has the power to supervise the activities of the State Council, the Central Military Commission, the Supreme People's Court and the Supreme People's Procuratorate...

Chapter II "The Fundamental Rights and Duties of Citizens" states that "[Article 34] All citizens of the People's Republic of China who have reached the age of 18 have the right to vote and stand for election," and [Article 35] Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration. [Article 36] Citizens of the People's Republic of China enjoy freedom of religious belief. [Article 37] Freedom of the person of citizens of the People's Republic of China is inviolable... By exercising these articles in the constitution, our country can follow the broad and wide path of constitutional democracy. However, the dictatorial contents in the constitution block the realization of such prescriptions. (Du Guang, 2012b)

Du Guang points out the two most serious theoretical flaws in the PRC constitution. The first is "its lengthy preamble." By describing how the CCP achieved the New Democracy Revolution and the Socialist reform, and how the CCP has overseen the construction of socialism, class conflict, the united front, the unity of nations, the basic problems of international relations, etc., the PRC constitution endorses the legitimacy of the CCP's one-party dictatorship (Du Guang 2012a). Then the Preamble states:

Under the leadership of the Communist Party of China and the guidance of **Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory** and the important thought of **Three Represents**,² the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship and the socialist road, persevere in reform and opening to the outside world, steadily improve socialist institutions, develop the socialist market economy, develop socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernize the country's industry, agriculture, national defense and science and technology step by step and promote the coordinated development of the material, political and spiritual civilizations, to turn China into a

2 "The Three Represents," credited to Jiang Zemin, was ratified by the CCP at the Sixteenth Party Congress in 2002: the idea that the CCP "represents the development trend of China's advanced productive forces; represents the orientation of China's advanced culture; and represents the fundamental interests of the overwhelming majority of the Chinese people."

socialist country that is prosperous, powerful, democratic and culturally advanced. (Du Guang 2012b)

By forcing “the Four Principles” upon “the Chinese people of all nationalities,” argues Du Guang, the constitution has undermined the very foundation of democracy. Particularly, Du thinks that the inclusion of “the Three Represents” in the Preamble as the guiding idea of the Chinese people destroys the majesty and sacredness of the constitution. Moreover, it smothers the rights of the people to think, choose, pursue their own individual values. In his words:

To use such substandard, both theoretically and logically unsophisticated, ‘three phrases’ as the guiding thought of the Chinese people of all nationalities is not only an insult to the intelligence of the Chinese citizens but a travesty to people all over the world. To include them in the constitution is not only to decorate the single-party dictatorship in a self-serving manner and undermine the rights of the citizens, but also to destroy the majesty and sacred of the constitution itself. (Ibid.)

Du Guang takes a step further to question the People’s Democratic Dictatorship, the guiding principle of the PRC constitution, itself. Article 1 of “the General Principles” of the PRC constitution states: “The People’s Republic of China is a socialist state under the people’s democratic dictatorship led by the working class and based on the alliance of workers and peasants.” Article 2 states: “All power in the People’s Republic of China belongs to the people.” Du thinks that these two most important statements in “the General Principles” are mutually contradictory. If all power of the PRC belongs to the people, how can it justify the People’s Democratic Dictatorship led by the working class? Because the leadership of the working class should mean, in reality, the leadership of the CCP, it follows that all power should belong not to the people but to the CCP. As the contemporary history of the PRC shows, Mao Zedong invoked the People’s democratic dictatorship to suppress dissenting voices and justify violence against “the enemies of the people.” Du Guang writes: “constitution is the highest authority of rule of law; however, the People’s Democratic Dictatorship is the principle of violence that undermines rule of law and hinders the realization of rule of law” (Du Guang, 2012b). In short, Du Guang believes that the People’s Democratic Dictatorship is nothing other than the CCP’s dictatorship in the name of the people’s democracy. It is not a democratic principle, but the legal basis of the single-party dictatorship. Therefore, democracy has long since been dead in China today. In his own words:

“To solidly maintain the leadership of the party” is, in fact, to maintain the single-party dictatorship of the CCP. As a result of the single-party dictatorship, the power of the CCP has exceeded both the state and society. Without any constraint or surveillance, the CCP has become the source of all social evils and problems. In the recent past, as economic bipolarization aggravated social divisions, the contradictions and conflicts between the rich and powerful elite and a majority of the people have become more and more intense. As the CCP leaders have been more and more in service of the rich and powerful elite, in the conflict and contradiction between reform and anti-reform as well as democracy and dictatorship, political leaders often serve the interests of the anti-reformist and anti-democratic groups.” (Du Guang 2012a: 11-12)

First of all, could the PRC constitution be invoked to establish the basic institutions of the state? The answer is in the negative for our country. The socialist institutions of our country were created in the 1950s when Mao Zedong dogmatically ruled China, transformed it into a socialist system, and exploited the properties of peasants, manufacturers, and traders. By using the strategies of “open conspiracy,” he launched the anti-rightist campaign. In the battlefield of political thought during the socialist revolution, [the purge of the intellectuals] was justified. The PRC constitution could only endorse and certify those institutions; far from being able to establish social institutions. Second, can the PRC constitution now be used precisely and faultlessly to endorse the basic institutions of our country? The answer is again in the negative. Why? I wrote two years ago in “One Hundred Years of Constitutional Democracy in China”: “the PRC constitution today is fraught with self-contradictions and antinomies. Democracy and dictatorship coexist in the same sentence, which leads to the dominance of dictatorship over democracy. This is the political phenomenon that has been determined by the special historical contexts of the past one hundred years.” (Du Guang 2012a: 24-26)

4. Yu Ying-shih’s Critique of the Single-Party Dictatorship

Yu Ying-shih (余英時, 1930-2021), a renowned sinologist and Professor Emeritus at Princeton University, was one of the most enthusiastic participants in constitutional discourses in the 2010s. Since the 1990s, Yu Ying-shih had had an enormous presence in political debates in China, Taiwan, and Hong Kong.

The root of Yu Ying-shi’s scholarship can be traced to the remarkable

scholars of the May Fourth Era (1910s-20s), such as Hu Shi, Qian Mu, Chen Yinge, and Gu Jiegang. From the on-line columns, interviews, and political comments he wrote since the 1990s, we can see that Yu Ying-shi took it upon himself to rekindle the spirit of the May Fourth Movement in continental China. After retiring from Princeton University, he was based at the Academia Sinica in Taiwan where he purposefully produced a proliferation of political essays that directly influenced public discourses in continental China. In the 2010s, Yu Ying-shih actively participated in the then rising constitutional discourses by publishing on-line columns and political commentaries on current issues of Chinese politics.

Yu Ying-shih's writings inspired a broad audience of Chinese scholars since the early 2000s. In 2004, for example, Yu Ying-shi's column entitled "Between Democracy and Nationalism" was published on-line. In it, he points to the inherent tension between nationalism and democracy in Sun Yat-sen's (1866-1925) Three People's Principles. Yu Ying-shih argued that the making of the modern nation-states in Western European countries such as Great Britain, France, and the US has contributed greatly to the realization of democracy; however, nationalism in China undermines the foundation of democracy. The combination of nationalism with one-party dictatorship, according to Yu, follows the pattern of the totalitarian Third Reich in 1930-40s Germany (Yu 2004). Xi Jinping's recent emphasis on the Chinese nation speaks to Yu Ying-shih's prescience.

Yu Ying-shih continued to inspire a large audience of Chinese intellectuals in the 2010s. He contributed a series of columns under the title "Democratic China (*minzhu zhongguo* 民主中國)," in which he developed a systematic critique of the PRC constitution. In a nutshell, Yu Ying-shih argued that the CCP's history represented the most extreme, dehumanizing path of modern nation-building from a variety of intellectual trends experimented with during the May Four era. By using the broad knowledge of modern Chinese history, Yu Ying-shih deconstructed the myth of the CCP. Yu Ying-shih argued that during the fourteen years of anti-Japanese struggle from 1931 to 1945, it was the GMD (Nationalist Party), not the CCP, who fought the war with Japan (Yu 2015). In this view, the GMD, not the CCP, represented the orthodox line of modern nation-making. Moreover, modern Chinese intellectuals of the early 20th century strove to learn from and emulate the West with open-mindedness toward science and democracy. Sadly, nationalism in China today has deteriorated into a closed mindset of anti-Westernism.

Yu Ying-shih's books generated heated debates in China. Concerned with the negative influences of Yu Ying-shih's on Chinese intellectuals, in 2014, the CCP banned his books that were considered subversive.

5. **Qibujiang (七不講): The Seven Unmentionables**

In 2013, the CCP's ideologues criticized the proponents of constitutional democracy by invoking the old ideas of Marxism and Leninism. In a critique of leading intellectuals in constitutional debates, the theoreticians of the CCP responded with the harsh language of Sino-centric nationalism. They argued that Western-style constitutionalism is the dominant ideology of the bourgeoisie class. Falling back on the classic arguments developed by Mao Zedong in the 1940s, they argued that Western-style liberal democracy is at best a small democracy compared to the People's Democratic Dictatorship.

They further argued that any attempt at introducing Western-style democracy to Chinese politics at the time should be considered sabotage activities against the socialist line, and, therefore, be condemned and resisted as being anti-revolutionary. In the perspective of the Chinese nation, they further accused leading promoters of Western style constitutionalism as the boneless followers of the West. Citing the literary icon of the May Fourth Era, Lu Xun's 魯迅 (1881-1936) term "*nalaiism*," literally meaning in English "bring-it-home-ism," is a tongue-in-cheek take on the spineless copiers of Western things. CCP theoreticians criticized such universal values as freedom, human rights, rule of law, and separation of powers as the ideological bombs of the West's conspiracy to destroy China. Rather than develop a systematic critique of constitutionalism, they simply relied on the chauvinistic zeal of the CCP. As a result, they could not but demonstrate the limits of socialism with Chinese characteristics.

In May 2013, right after party ideologues criticized constitutional discourses, the CCP government required journalists and university professors to avoid discussing "the seven unmentionable topics": namely, universal values, freedom of the press, civil society, citizens' rights, the party's historical aberrations, the "privileged capitalistic class," and the independence of the judiciary.

Since the PRC joined the UN on Oct. 25th, 1971, it has been one of the five permanent members of the UN security council; by imposing the seven taboos on public intellectuals, the CCP denies the UN constitution, especially the universal declaration of human rights. Moreover, it also contradicts the PRC constitution which publicly promotes the values of freedom, democracy, human rights, and rule of law. Since 2012, Xi Jinping has emphasized the Twelve Core Values of Socialism which includes freedom, democracy, and rule of law. The PRC constitution promotes the universal values of freedom, human rights, and rule of law; contrarily, the CCP government prohibits journalists and professors from discussing "universal values," thereby committing an

undeniable self-contradiction. Seemingly the CCP has demonstrated remarkable success in terms of silencing dissident voices in China. However, it would be incorrect to think that Chinese intellectuals remained unanimously silent.

Despite the CCP's efforts to make it confidential, in May 2013, Zhang Xuezhong (張雪忠, 1976-), professor of law at the East China University of Political Science and Law, publicized the CCP's specific directives on banning the Seven Unmentionables. It was right at the time when a number of Chinese intellectuals actively participated in constitutional discourses. Zhang Xuezhong was soon dismissed from the East China University of Political Science and Law. In 2019, he lost his lawyer license.

Surprisingly, Zhang Xuezhong carries on his legal and political struggle against the CCP. In May 2020, he sent a public letter entitled "the first draft of the Unified Republic of China" to the National People's Congress. In this draft, Zhang openly criticizes the CCP's single-party dictatorship, and proposes to base the new constitution of "the Unified Republic of China" upon the universal values of humanity such as freedom, equality, human rights, and rule of law.

Zhang Xuezhong is not alone. Among the public intellectuals of China, Zhang Qianfan (張千帆, 1964-), professor of law at the Beijing University, and Xu Zhangrun (許章潤, 1962-), professor of law at the Qinghua University, have actively generated heated debates on constitutional democracy with a view to applying its principles to China's constitutional reforms. In 2019, the CCP banned Zhang Qianfan's book *The Introduction to Constitutional Law*.

In 2018, Xu Zhangrun launched a poignant critique of Chairman Xi Jinping's long-term dictatorship. Xu Zhangrun has developed his own theory of constitutionalism by combining modern Western theories and the traditions of Chinese political thought. Since 2019, the CCP has put a travel ban on Xu Zhangrun. Unflinchingly, Xu published another article holding the CCP government responsible for the outbreak of the pandemic. Since July 6th, 2020, he has been under house arrest. He has also been dismissed from Qinghua University.

The CCP's suppression of those who promote constitutional democracy shows that the CCP's own confidence in socialism with Chinese characteristics has already been eroded to a great extent. To counteract the loss of confidence in its own system, the CCP has supported those traditionalists who try to rekindle the spirit of Confucianism to develop constitutionalism with Chinese characteristics: so-called Confucian constitutionalism.

6. Confucian Constitutionalism and Chinese Communism

Since the early 1990s, the Chinese government has continuously emphasized as its national goal the achievement of the Society of “Lesser Peace (*xiaokang* 小康),” meaning “a relatively comfortable life” or in the CCP’s expression, a “moderately prosperous society.” Instead of striving toward the long-term utopian goal of “Grand Unity,” which was the late 19th century slogan of reform-minded Confucian intellectuals, the Chinese government has set the moderate goal of achieving a “relatively comfortable life” in terms of income, food consumption, housing, and human resource development. Both “Grand Unity” and “Lesser Peace” are derived from the Liji 禮記, one of the Five Confucian Classics. Whereas the former symbolizes the utopian order of high antiquity, the latter refers to ‘the governance of modest stability’ achieved by the legendary law-giver, the Duke of Zhou (ca. 11th century BC).

In the 1950s-1960s, Mao Zedong’s (1893-1976) utopian dream of building a communist state brought about the catastrophic consequences of the Great Leap Forward and the Great Proletarian Cultural Revolution. To shuck off the ideological straitjacket of Maoism, Deng Xiaoping (1904-1997) used the Confucian term “*xiaokang*” to initiate the “Reform and Opening-up” designed to ameliorate the actual standards of living for the Chinese people. In China today, however, this ideology is used by the Chinese government to suppress calls for political freedoms, human rights, and democracy. The idea is rather simple: “not now, but later.” China today has not yet reached the stage in which people can pursue those values as it still strives to achieve a relatively comfortable life.

By setting the “moderate” goals of Lesser Peace, the Chinese government can require the people to lay down part of their rights. Remembering how the dystopian dreams of the recent past resulted in collective sufferings, the Chinese people are easily persuaded not to indulge in the luxuries of modern Western liberal democratic dreams. In fact, the idea of “Lesser Peace” is a convenient ideology for the Chinese government to limit the basic human rights and political freedoms of the Chinese people.

Maybe for this reason, the Chinese government continues to promote Confucianism as a justification for its gradualist and pragmatic approaches to basic human rights and political freedoms. At a forum marking 2,564 years since Confucius’ birth, China’s leader Xi Jinping declared that ancient traditions “can offer beneficial insights for governance and wise rule” (Buckley). Stressing the importance of restoring Confucianism, Xi Jinping noted specifically that “Lesser Peace” is a Confucian value. Xi calls on the Chinese people to create something

new, something fundamentally “Chinese” from the Chinese tradition rather than emulate the Western style of democracy. Highlighting the subversive nature of liberalism and democracy, Xi takes a step further to cite the Legalist philosopher Han Feizi (ca. 280-233 BC) as well: “to ward off the temptations of corruption and Western ideas of democracy” (ibid.). In short, the Chinese government invokes the long-standing traditions of Chinese history, mainly Confucianism, to rein in popular calls for political liberties and democracy.

In tandem with the Chinese government’s promotion of Confucianism, a group of Chinese political thinkers and legal theorists have actively engaged in the constitutional discourses on the Chinese political system. In their discourses, some theoreticians have argued that the political doctrine of Confucianism can be re-invented as a constitutional alternative for the future of China. Pointing to the shortcomings of “Western-style democracy,” they have spelled out their visions of Confucian “meritocracy.”³

7. Conclusion

For the past decade, the CCP government has suppressed the proponents of constitutional democracy in China. By hoisting the banner of socialism with Chinese characteristics, the CCP has continuously argued that constitutional democracy is not suitable for China. It prohibits the public intellectuals of China from mentioning the universal values enshrined in the charter of the UN and the Universal Declaration of Human Rights. The CCP’s argument is rather simple: because it is a Western idea, constitutionalism or constitutional democracy cannot work in China today.

For such reasons, the CCP has propped up the proponents of Confucian Constitutionalism. However, the very concept of Confucian constitutionalism would be oxymoronic unless the spirit of Confucianism they have revived is not specifically used to constrain the single-party dictatorship of the CCP. As Du Guang aptly points out, the central idea of constitutionalism is to constrain state power and to protect the fundamental rights of individuals. Therefore, it behooves us to assess the discourse of Confucian constitutionalism with a keen eye on its far-reaching implications.

Confucian constitutionalism is not impossible: as I have shown

3 The section, “Confucian Constitutionalism and Chinese Communism” is based on one of my earlier articles and has been revised to fit in this context. See Jaeyoon Song, “Debunking the Myth of Confucian Meritocracy.”

in other articles, traditional Chinese political thinkers developed the idea of the separation of powers in their commentaries on the Confucian Classics.⁴ If we can rekindle the forgotten tradition of critical Confucianism to constrain state power as well as protect the basic rights of the individuals, Confucian constitution may work in reality. It would be a form of constitutionalism articulated in the traditional language of Confucianism.

The CCP government's draconian suppression of constitutional discourses in China today shows that "socialism with Chinese characteristics" or "socialist market economy" is highly unstable and calls for change. The proponents of constitutional democracy in China today have envisioned the political evolution of the PRC into a more liberal, more democratic, more open, and more constitutional state: although implicit, it would be hard to deny that they had in mind the South Korean model of democratization which resulted from the two decades of economic liberalization.

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