

Chinese Constitutionalism as Socialist Modernization

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Remarks

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I was delighted for the invitation to participate in this session of 10th Asian Constitutional Law Forum. My thanks to the Management Committee—Cora Chan and Stefano Osella—and our esteemed chair, Albert Chen, as well as to the University of Hong Kong Faculty of Law, its Centre for Comparative and Public Law, and to the Association for Asian Constitutional Studies.

I was asked to consider an aspect of socialist constitutionalism in the People's Republic of China. Rather than focusing on the Chinese constitution from *within its text*, I will flip the analysis to very briefly rethink constitutional cognition beyond, or above, the constitutional text and its conventional "lifeworld." The hope is that the exercise may enrich our understanding of constitutional forms and practice within China (and elsewhere) as some sort of higher law.

The starting point is simple and well known to the philosophy of perception (text) and cognition (interpretation):

Semiotics and linguistics suggest that text is a meaningless object. Meaning occurs as text is recognized as the symbolic representation of principles. That meaning is then manifested in its performance. Text does not say what it means; it means what it does. The "what", the content or object, of both are made up of the formative beliefs materialized in core presumptions which, when aggregated, makes possible the ordered framing of a rationalized cognitive space, one invested with purpose; again all affirmed in text.

Approached this way, a constitution is fundamentally performative. What it performs are the fears, responses, and principles that drove it from a state of revolutionary organization to a collective in power. The principles and performance expectations are manifested as textual and operational *cages of regulation* around discretionary decision making. Revolutionary principles are internalized into the forms, functions, and structures of constitutional cages reduced to text. These cages, like the power they cage, are instruments to realize specific objectives that serve as the basis for political authority and legitimacy. Beyond that, rest is techno-bureaucracy, the management of the masses, and their education; these make meaning meaningful for the constitution of social relations, especially within the cognitive space we now call law.

Consequently, revolutionary normative framing points might be the germinal basis for constitutional cognition. A basic framing point for China might be this: in the modern era and certainly since the 1840s, Chinese constitutionalism, has been, is, and will remain, an aspect, a feature, a trait, of imperial, then socialist, and now Chinese style, modernization. Modernization represents the apex rationalization of political authority bent to a particular overall purpose and undertaken in a specific form.

Let me briefly try to unpack all of that.

FIRST, what are the foundational premises embedded in the word Socialist (or Chinese style) modernization? The outer rings of socialist modernization are well known, though it may be worth re-considering them as constitutional principle. Its current articulation described in June 2024 by the CPC's General Secretary: "Chinese-style modernization is socialist modernization led by the CPC. It has both the common characteristics of modernization in various countries and Chinese characteristics based on its own national conditions."

That general formulation includes key cognition-rationalizing premises which, in the conventional constitutional language of liberal democracy, produce system-mandatory premises of constitutional dimension:

One, it is shaped by national characteristics. These are dynamic characteristics, a function of the current stage of historical development. Today that includes the problems of a large and dispersed population; the challenges of the current general contradiction of common prosperity, and of aligning material and spiritual development as the twin engines of productive forces that must be developed; environmental sensitivity for current and future generations; and a contemporary version of the communist international.

Two, these Chinese characteristics are then embedded into six contemporary core premises of socialist modernization: (1) It is socialist; (2) that socialism is a path, not a goal, and the path is meant to lead the nation toward the establishment of a communist society; (3) the engine for that progress is the Communist Party; (4) the engine for movement along that path in the right direction is the development of all productive forces, physical, economic, social, and cultural (today in the form of high quality development); (5) leadership and guidance is a dialectical exercise, with the CPC at the center, built around the contemporary expression of the mass line in the form of whole process peoples democracy; and (6) this model is best protected by its transformation into a path than can be followed by other peoples.

SECOND: what are the ends of modernization? The goal of modernization is the establishment of a communist society in China and for the Chinese people, which then serves as a model for the world. That is, socialism embeds within its meaning the principle of the alignment between productive forces and State assets. These State assets, defined in an all-around way and including its government and the vanguard CPC itself, are the productive forces that must be developed in ways that move society toward its goal in accord with the fundamental principles of revolutionary political organization.

THIRD: how is the constitutional concept of modernization expressed in action institutionally? If the goal of Chinese-style socialist modernization is the establishment of a communist society, itself the bedrock principle of Chinese style constitutionalism, then its vehicle (all-around productive forces) must move along the socialist path in the "right" direction. It also requires a constitutionally legitimate driver; in this case the CPC, whose leadership authority represents the apex expression of productive forces and

also its guiding form. The Chinese people are both the fundamental object of modernization and the engine for its fulfillment. They must be soundly guided forward along the socialist path. That modernization of political social relations is expressed through the constitutional premise of people's democratic dictatorship and its patriotic campaigns. The constitutional dialectic between the CPC vanguard of social forces and the masses is then rationalized collectively through the mechanisms of whole process peoples democracy.

FOURTH: in what form are the means of modernization fundamentally realized? The means of institutional realization is founded on the premise of power in regulatory cages. Law and legal structures are thus productive forces that modernize and that must also be modernized. The bars of these cages are the principles and objectives of modernization. Within the cage of regulation constitutionally legitimate exercise of administrative discretion may be exercised. These regulatory cages represent the vessel of state power (鼎)— the ordering and supervision of which are left to the collective holder of political authority. Within these cages it is possible to speak of high or new quality production of the administrative apparatus of government and of the institutional apparatus of the vanguard party.

FIFTH: what are the constitutional forms of modernization thus understood? At last, and only here, does one come face to face with constitutional text. While in liberal democratic systems text might be understood as an organizational starting point for constitutional analysis and theory, where objectives are placed at the center of analysis text follows principles rather than serving as its driving or shaping form. Constitutional text is formed by and expresses modernization in its comprehensive forms, not the other way around. Constitutionalism can be understood as the study of a critical productive force in the structuring and institutionalization of order, and the means by which the normative imperatives of socialist modernization is realized.

SIXTH: what are the dialectics of socialist modernization as a constitutional imperative? The dialectics that follow occur at the level of politics and administration. They are framed around consultation and measured against the premises and contemporary expressions of development. The fundamental divination of that framing is left to the CPC within which self-revolution accountability measures mimic those in other spheres of organized life. This is what is written into and as the text of the constitution.

In summary, what does the constitution provide? It provides a common language and a common point of reference for the normative cages within which Chinese constitutionalism exists as stabilized structures within which the continuous revolutionary impulse may be utilized. Modernization contains within its meaning the core premises around which the rule of law, politics, and collective organization are rationalized. From this perspective, the Chinese constitutional system comes into better focus as a constitutional system organized not to govern but to transform its masses in quite clearly defined ways.

Thank you.

中国宪政作为社会主义现代化

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致辞

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我很高兴受邀参加第十届亚洲宪法论坛。感谢管理委员会成员 Cora Chan 和 Stefano Osella 以及我们尊敬的主席 Albert Chen，感谢香港大学法学院、比较法和公法中心以及亚洲宪法研究协会。

我被要求考虑中华人民共和国社会主义宪政的一个方面。我不会从文本内部关注中国宪法，而是将分析转向非常简短地重新思考宪法文本及其传统“生活世界”之外或之上的宪法认知。希望这一练习可以丰富我们对中国（及其他地方）宪法形式和实践的理解，将其视为某种更高层次的法律。

出发点很简单，在感知（文本）和认知（解释）的哲学中众所周知：

符号学和语言学认为文本是一个毫无意义的对象。当文本被视为原则的象征性代表时，意义就产生了。这种意义随后体现在其表现中。文本并没有说出它的意思；它意味着它所做的。两者的“什么”，内容或对象，都是由核心假设中形成的形成性信念构成的，当这些信念聚合在一起时，就可以有序地构建一个合理化的认知空间，一个有目的的空间；同样，所有这些都都在文本中得到肯定。

从这个角度来看，宪法从根本上来说是一种表演。它所表现的是恐惧、反应和原则，这些恐惧、反应和原则驱使它从一个革命组织的状态转变为一个集体掌权的状态。这些原则和绩效期望体现在围绕自由决策的文本和操作监管笼子中。革命原则被内化为宪法笼子的形式、功能和结构，这些笼子被简化为文本。这些笼子，就像它们所笼罩的权力一样，是实现特定目标的工具，是政治权威和合法性的基础。除此之外，其余的都是技术官僚主义、群众管理和教育；这些使社会关系的构成变得有意义，特别是在我们现在称之为法律的认知空间内。

因此，革命性的规范框架点可能是宪法认知的萌芽基础。中国的一个基本框架点可能是：在现代，当然自 19 世纪 40 年代以来，中国宪政一直是、现在是、将来仍将是帝国、当时的社会主义和现在的中国式现代化的一个方面、一个特征、一个特质。现代化代表了政治权力的最高合理化，这种合理化倾向于特定的总体目标并以特定形式进行。

让我简单解释一下。

首先，社会主义（或中国式）现代化这个词所蕴含的基本前提是什么？社会主义现代化的外层是众所周知的，尽管可能值得将其重新视为宪法原则。中共总书记在2024年6月描述了其目前的表述：“中国式现代化是中国共产党领导的社会主义现代化。它既有各国现代化的共同特点，也有基于自身国情的中国特色。”

这一一般表述包括关键的认知合理化前提，这些前提在自由民主的传统宪法语言中产生了宪法维度的制度强制性前提：

第一，它是由民族特征塑造的。这些是动态特征，是当前历史发展阶段的功能。今天，这包括人口众多且分散的问题；当前共同富裕的总矛盾的挑战，以及将物质和精神发展作为必须发展的生产力双引擎的挑战；当代和后代的环境敏感性；以及当代版本的共产国际。

其二，这些中国特色融入了社会主义现代化的六个当代核心前提：（1）社会主义；（2）社会主义是一条道路，而不是目标，这条道路旨在引领国家走向共产主义社会；（3）推动这一进步的引擎是共产党；（4）沿着这条道路向正确方向前进的引擎是发展一切生产力，包括物质、经济、社会和文化生产力（今天以高质量发展的形式出现）；（5）领导和指导是一种辩证法，以中国共产党为中心，以全过程人民民主的形式建立在群众路线的当代表达之上；（6）这种模式的最好保护方式是将其转变为其他民族可以遵循的道路。

第二，现代化的目的是什么？现代化的目标是在中国和中国人民建立共产主义社会，为世界树立榜样。也就是说，社会主义在其含义中蕴含着生产力与国家资产相适应的原则。这些国家资产是全面定义的，包括政府和先锋队中国共产党本身，是生产力，必须按照革命政治组织的基本原则，以推动社会向其目标发展。

第三，现代化的宪法概念在制度上如何体现？如果中国式社会主义现代化的目标是建立共产主义社会，这本身就是中国式宪政的基本原则，那么它的载体（全面生产力）必须沿着社会主义道路向“正确”的方向前进。它也需要一个宪法上合法的驱动力；在这种情况下，就是中国共产党，它的领导权威代表了生产力的最高表现，也是其指导形式。中国人民既是现代化的根本对象，也是实现现代化的引擎。必须正确引导他们沿着社会主义道路前进，政治社会关系的现代化体现在人民民主专政的宪法前提和爱国运动中，共产党作为社会力量先锋队与人民群众的宪法辩证关系则通过全过程人民民主的机制得到集体理性化。

第四，现代化的手段从根本上是以何种形式实现的？制度实现的手段建立在监管笼子中的权力前提之上。因此，法律和法律结构是实现现代化的生产力，也必须实现现代化。这些笼子的栅栏就是现代化的原则和目标。在监管笼子里，可以行使宪法上合法的行政自由裁量权。这些监管笼子代表着国家权力的鼎——其命令和监督留给了政治权力的集体持有者。在这些笼子里，可以谈论政府行政机构和先锋党的制度机构的高质量或新型产品。

第五, 如此理解的现代化的宪法形式是什么? 最后, 也只有在这里, 我们才能面对宪法文本。虽然在自由民主制度中, 文本可以被理解为宪法分析和理论的组织起点, 但在以目标为分析中心的情况下, 文本遵循原则, 而不是充当其驱动或塑造形式。宪法文本是由现代化的综合形式所形成并表达的, 而不是相反。宪政可以理解为对秩序结构化和制度化中关键生产力的研究, 以及对实现社会主义现代化规范要求的手段的研究。

第六, 作为宪法要求的社会主义现代化辩证法是什么? 以下辩证法发生在政治和行政层面。它们以协商为框架, 以发展前提和当代表现为衡量标准。这一框架的基本预测留给了中国共产党, 在中国共产党内, 自我革命问责措施模仿了其他有组织生活领域的措施。这就是写入宪法的内容和作为宪法文本的内容。

总之, 宪法提供了什么? 它为中国宪政存在的规范笼子提供了一种共同的语言和共同的参考点, 在这些规范笼子中, 中国宪政作为稳定的结构存在, 可以在其中利用持续的革命冲动。现代化的含义包括法治、政治和集体组织合理化的核心前提。从这个角度来看, 中国宪法制度更受关注, 因为它是一种不是为了统治而是为了以非常明确的方式改造群众的宪法制度。

谢谢。