

## The Chinese Debate on Constitutionalism: Texts and Analyses (Part I)

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Over the past few weeks, a debate about political reform, centred on the Constitution, has erupted in China. This debate evolved in the wake of the 18<sup>th</sup> Party Congress, and the hopes that Xi Jinping and the new Standing Committee would turn out to be more receptive to the idea of political reform than the Hu leadership. These hopes have, so far, not materialized. In December, the website of the intellectual magazine Yanhuang Chunqiu was [closed down](#) after it had published an article arguing for a better implementation of the Constitution. A few days later, protests broke out in Guangzhou, after it transpired that the New Year's editorial of the well-known newspaper [Southern Weekend](#), "The Chinese Dream is the Dream of Constitutionalism", was removed and replaced by provincial censors. Throughout the first half of 2013, efforts to control debate and news dissemination, particularly on the Internet, further increased.

In the last two weeks, the Party has made its position in this debate clear. In an article in the theoretical journal *Seeking Truth*, called "[A Comparative Study of Constitutional Governance and the People's Democratic Regime](#)", Yang Xiaoqing, a professor at the Renmin University Faculty of Law, takes aim at those calling for "constitutional governance" (*xianzheng* 宪政) in China. The complete article is translated and analysed hereunder. The Global Times indicated that [constitutionalism is tantamount to a denial of the Chinese development path](#). On the 29<sup>th</sup>, a piece entitled "Clearly Understanding the Essence of 'Constitutional Governance'", written by a certain "Zheng Zhixue" (郑志学 - a homophone for the Chinese word for political science) was published in the People's Daily offshoot Red Flag Manuscripts. This piece argued that the concept of constitutional governance is only suitable for bourgeois capitalism, is a covert call for the end of Party leadership and the overthrow of Socialism, and a "discourse trap" that must be avoided at all costs. This article will be translated and analyzed in a later part of this feature. Evidently, the leadership – or at least, the Propaganda Department - seems to be very worried. But about what exactly? What does Yang Xiaoqing's piece tell us about how the Party Centre looks at political reform?

### Yang's argument

Yang's article is based on distinguishing two political institutional structures: constitutional governance as practiced in Western democracies and the People's Democratic system that is implemented in China. She contrasts them on a structural basis. According to Yang, constitutional governance is based on a market economy and private property. It has a parliamentary system in which different interest groups are represented through parties, which govern in turn. However, access is limited to only those with deep pockets. There is a separation of powers, in order to prevent the excess of government power. Also, there is an independent judiciary, although this is easily seduced to majoritarian dictatorship, and does not take account for the rights

of the minority. These courts wield considerable political power through judicial review and cases such as *Gore v. Bush*. In constitutional states, the armed forces are politically neutral, and controlled through a civilian bureaucracy.

In the people's democratic system, on the other hand, the economy with public ownership at the core supports "the basic interests of the broadest number of people". As all power belongs to the people, there are no parties and factions, to ensure that all People's Congress members implement their duties under the leadership of the CCP and serve the people. The CCP's legitimacy comes from the victory in the Revolution, and is enshrined as such in the Constitution. The unified People's Congress system, which combines legislative and executive power, and the close links to the procuratorates and the courts obviate the necessity for separation of power. The Socialist rule of law concept does not require independent judges, but judicial supervision by People's Congresses. This is another manifestation of the notion of unified State power, which is claimed to be effective in practice. The armed forces fall under the leadership of the Party, because it they seized power and established the New China under CCP leadership.

In Yang's view, these are crucial and insurmountable differences between constitutional governments and the Chinese structure. There are, however, a number of other, non-crucial institutions present in constitutional governments, including a market economy, equality before the law, the supremacy of human and civil rights, freedom of the press, a federal system, religious freedom, parliamentary control over budgets, human rights universalism, interference in the affairs of other countries, etc. Some of these could be applicable in Socialist structures as well.

After having compared both systems, Yang proceeds to evaluate why the concept of constitutional governance is politically mighty, has hegemonic power over discourse and is fraudulent in nature. First, she claims that the notion of constitutional governance has been created through the domination of wealth and assets of the bourgeoisie, referring to a number of quotes by Marx and Engels. It has become a hegemonic concept because the bourgeoisie requires certain economic structures for the realization of its own interests. Therefore, the bourgeoisie requires a small government that cannot stand up for the broad interest of the people, but that is useful in keeping the proletariat in check. To this end, it controls the media to preach liberty, democracy and universal values, but in reality, this consolidates economic, political, ideological and discourse domination. This is the root of the fraudulence of constitutional governance: the bourgeoisie remains the dominant, oppressive force in society. Furthermore, the separation of powers denies the notion of popular sovereignty, as they fragment sovereignty beyond recognition, and create a system where the power of elected legislative or executive officials may be overruled by unelected judges. These are, in turn, beholden to political interests. The term, "constitutional governance", should, in Yang's view, not be considered applicable to China in any manner. Eastern Europe and the Soviet Union are held as warnings for what happens when Socialist countries become bogged down in constitutional notions.

Next, Yang rebuts the notion that Mao himself had indicated that constitutional governance should be a political objective for China, indicating that Mao only used the term to refer to systems in other countries, and indicated that China must not use politics that are past their sell-by date or not suitable for China's national circumstances.

Her main point is that the people's democratic system cannot be called "Socialist constitutional governance". As analyzed earlier, Socialism and constitutional governance are mutually exclusive and fundamentally different. Socialism, under the people's democratic dictatorship is a scientific way of ruling a country, as it ensures that the people exercise power themselves. A move towards constitutional governance, in that respect, would be a historical retreat. This is the mistake that was made by social-democratic parties elsewhere in the world. While it may be possible to bring non-essential characteristics of constitutional governance structures into Socialism, this should only happen on the basis of China's national conditions. For example, China does not contain different interest groups of the bourgeoisie, and therefore, separation of power and multi-party governance are not necessary. Lastly, the mistake of confusing having a Constitution and constitutional governance should not be made. In Yang's view, China's successive Constitutions affirmed the fundamental structures of the Socialist system, but also for "citizens to enjoy all basic rights and freedoms". The current Constitution is the result of exploration and experience during the CCP's rule, and ensures that reform and development must progress along the Socialist path. There must be vigilance against the interference of Western capitalist constitutional governance theories and Western influence in Chinese legal thinking. Practice demonstrates that the Socialist rule of law path is correct, and must be recognized as the path to "stability, continuity and authority". As such, *"We may certainly not only talk about 'the supremacy of the constitution and the laws'. Because of the fact that the supremacy of the Party's undertaking, the supremacy of the people's interest and the supremacy of the Constitution are one whole that cannot be separated, the Constitution and the laws may be changed under the leadership of the Party, and for the sake of the people's interest, and through statutory procedure. Only talking about 'the supremacy of the Constitution and the laws' will easily sink into the snare of 'constitutional governance' discourse, this is the limit of the slogan 'the supremacy of the Constitution and the law'.*

Yang's argument seems to reflect the dominant view within the Party Centre at this moment, and as such, it can be considered to be a clear statement of the direction in which the Party wants (or rather, doesn't want) to go. China should hold fast to its own system and its own theory, and should not be tempted by attractive sounding, foreign concepts that are not only unsuited to China's conditions, but are a barely veiled attempt to destabilize society and bring ruin. There are, however, a number of comments to be made with regards to this article and the thinking it represents. First, the article reflects the epistemology on which Party theory is built, which fails to take into account a number of crucial properties of social thought. Second, it takes an overly restrictive view of the political structures of countries identified as constitutional governments. Third, its automatic link-up of abstract, high-level insti-

tutions and everyday outcomes is too facile. Fourth, it creates a straw man, which may misrepresent the views of many of those it targets.

### **How does the leadership think?**

The Central Propaganda Department, which publishes the flagship theory journal in which this article appeared, is in charge of defining the correct theory for China's continuous development. It is held that without correct theory, it is impossible for China to develop. This focus on theory and the claim that Socialism with Chinese undertakings is scientific in nature reflects a continued desire in Chinese politics, ever since the reform movements of the 19<sup>th</sup> century, to find a better way to organise Chinese society than the imperial Confucianism that had been dominant since the Han dynasty. Influenced by Social Darwinist thought that had been introduced by intellectuals such as Yan Fu, China embarked on a search for means to avoid continued national humiliation at the hands of foreign imperial powers and reassert itself as a dominant power in the East. Marxism gained traction after the May Fourth movement, and, in its Leninist form, became the basis for Mao's theoretical framework. This historical picture groups three central characteristics of the thinking revealed in Yang's article: an insistence on "scientific" theoretical orthodoxy, a strong distrust towards foreign powers, and a blind faith in the ability of voluntarism to bring about the utopian future promised by Marxism-Leninism.

This conception of society is, what I call, scientifically monist. It starts from the assumption that there is one set of scientific laws, akin to the laws of nature, which underpin social reality and make the world understandable, predictable, and thus controllable. It is, however, important to understand that this notion has been informed, to a large extent, by positivist thinkers such as Auguste Comte, whose influence was introduced to China through the works of Marx, and who was equally concerned with the creation of a new scientific, secular ideology with a strongly historicist bent. This particular notion of science and the role of knowledge in shaping a society has been instrumental in engendering a Chinese political culture in which the spectre of the "death of the nation" (*wangguo* 亡国) was combated by scientific and intellectual efforts to "save the nation" (*jiuguo* 救国) and bring it back to greatness and glory. In other words, a utopian future is promised, and realizing this requires a scientific approach. Politics consists of two main activities. First, they search for the single correct answer to every political question, rather than search for compromise in which different social groups or interests take part. Second, they need to ensure that this scientific truth is defended against both those who don't understand it (and therefore need to be taught) and those who are inimical to it (and therefore need to be fought).

This has important repercussions for matters such as political participation and free expression. The Party needs correct information from the grass-roots on policy implementation, as well as useful experiences that might further refine policy. But that information cannot directly contravene earlier programmes, as these were built on the same, correct foundations, and represent a continuous line of economic, social and political progress. But the monist conception goes further. Not only is society underpinned by one set of rules, but also by one value system and one common in-

terest. In other words, the leadership believes in diversity without pluralism. It claims that, in society, people might have individual taste in clothing, and might have different needs based on their age, sex, socio-economic origin or profession, but that in essence, everyone shares the same moral code, political beliefs and material interests.

But as with many social theories, the devil is in the assumptions, which in Chinese politics very often take the nature of axioms and commandments. It is an article of faith that “the Party represents the broadest interests of the broadest masses”. Also, this essentially is a restatement of the utilitarian creed of “the greatest happiness for the greatest number”. In both cases, we are left wondering about what to do that greatest happiness could only be realized by treating a small number horrendously. In official Chinese political thinking, however, we are rarely given an answer. The Party’s “scientific” theoretical framework fails a number of other tests as well. One example of this is the accusation of bourgeois oppression from a technical-philosophical point of view, which is that the argument “the bourgeois oppresses the proletariat, and the proletariat isn’t even aware of it” in all its iterations is, to a large extent, unfalsifiable. Any refutation of the first assertion is countered by the second. This does not automatically mean that the statement is not true, but it does mean that we cannot know whether or not it is true. This assertion is, however, a significant part of the basis for CCP leadership. Consequently, the assertion of oppression becomes, ironically, oppressive itself. Lastly, as China’s economy grows more complex, it seems untenable to claim that there are no conflicts of interests among different interest groups. Of course, these exist, and denying them makes informed and intelligent debate about them impossible.

### **Different brands of constitutional governance**

A second category of issues in Yang’s article concerns her categorization of constitutional government systems abroad. It seems as though nearly her entire categorization of constitutional governance structures is based on a somewhat caricatured analysis of the United States. This might be influenced by the fact that the United States is seen as the predominant “foreign hostile power” which tries to “Westernize and divide China”, or by the fact that US political figures, such as ambassador Locke and president Obama are used as criticism of Chinese officials, but it also constitutes an analytical mistake. There are different brands of constitutional governance, from the presidential systems in the United States and France, over federal structures such as Germany, Switzerland and Austria, to constitutional monarchy. Many of the criticisms leveled at “constitutional governance” in the broad sense, such as the power of the Supreme Court and the Bush v. Gore case, actually refer to domestic issues within the United States. In fact, many non-Americans across the industrialized world have looked on evolutions in the US political landscape with bewilderment.

### **Structures and outcomes**

A third property of Yang’s argument (and of a lot of mainstream Chinese legal thinkers) is that it tends to lay a direct link to structures and outcomes. In other words, outcomes directly depend on “getting the structures right”. Little attention is paid, in

this conception, to intervening variables and unintended consequences. There are important consequences for the conception of the legal system. As outcomes in Socialist thinking are, to a great extent, pre-determined, and the leadership derives its legitimacy from leading the masses towards those outcomes, relatively little attention is paid to processes. The measure of validity of processes is not their inherent value in creating predictable and fair procedures respecting the conflicting rights and interests of individuals, but that they bring about the desired outcome. If an outcome is not (yet) reached, it means, therefore, that change in laws and regulations is necessary. Perhaps Deng Xiaoping's dictum about crossing the river by feeling the stones reflects this: the destination is known, but the path there isn't. Hence, it is legitimate to find take any path, as long as it leads to the destination. By contrast, rights-based systems tend to lay more stress on process, accepting that outcomes are undetermined.

Nonetheless, it would be mistaken to take a two essentialized vision of rights-based versus outcomes-based structures. In fact, both types of structures generate similar outcomes, albeit through different ways. In this article, Yang seems to confuse the fact that inequality and interest group politics exist in constitutional governance structures with the fact that those phenomena are (exclusively, necessarily and essentially) caused by constitutional governance structures. It is true that inequality in industrialized countries has risen worryingly over the past three decades. It is also true that the power of lobby organizations in Washington, London, Brussels, Geneva and other global centres of policymaking severely challenges basic notions of representative democracy. But what would we (or Yang) make, then, of the fact that China's GINI coefficient has been a State secret for the past few years, as it approached the level where – theoretically – social unrest would arise? How do we account for the special position that central-level SOEs enjoy within the Party-State, resulting in tremendous amounts of rent-seeking, corruption and other economic abuses. How do we deal with the cover-ups of food safety problems by officials protecting their local interests, or for the sake of maintaining a positive image for the Party?

It would be more intellectually honest (but of less service to the CCP), to recognize that it is inherent to bureaucratic societies that there are tremendous spaces for the collusion of interests and the creation of private gains at the expense of the public interest. The financial crisis has shown this clearly. The dispiriting conclusion perhaps is that institutional corrosion reflects human nature more than the particularities of particular political orders. The crucial question is how severe the damage of this corrosion can become, and who are the immediate victims of it. In China, corruption manifests itself very often through shoddy quality in many permutations, from inferior-grade concrete in building projects to food security issues. In industrialized nations, creative fiscal accounting deprives the collective from the necessary means to maintain public services. The latter, however, less visibly affects ordinary individuals, and is therefore less politically salient.

#### **A straw man**

Lastly, the question is against whom this article is written. In this article, Yang seems to imply that those calling for the implementation of constitutional governance in

China misrepresent the history of the CCP, misunderstand the nature of the Chinese political structure, underestimate the danger of the relationship between constitutionalism, markets and capitalism, and are bent on leading the country into chaos. The question is to what extent this is true. For the sake of simplicity, let us assume that there are four levels of political criticism. The first level is that of policy implementation and the performance of individual officials. The second level concerns whether or not the policies are conducive to the constitutional objectives and consistent with the constitutional structure of the state. The third level relates to those constitutional objectives and constitutional structures themselves, and the fourth level comprises the fundamental political-philosophical ideas informing these objectives and structures.

The complexity of the debate and the opacity of the Chinese political and social landscape make it difficult to estimate on which levels those arguing for constitutional governments seek change. In many instances, however, it seems that calls for constitutionalism are predominantly related by complaints about the privileges that CCP members and officials enjoy, and the abuses stemming from them. As such, it seems that constitutional government is most often invoked in relation to implementing the *existing* constitution, and not to argue for full-blown regime change. In contrast, Yang's article predominantly seems to play at the third and fourth levels: it defends the Socialist people's democratic system and the thinking that shapes it, but says nothing about the manifold issues are present within and as a result of the structuring of the system. As such, it does not even dignify many of the – legitimate – criticisms and concerns towards the current political situation with an answer.

So what is the takeaway from this article? First, and perhaps worryingly, it seems that the voices inside China applying Marxist theory to economics are strengthening their position. While the CCP never gave up its allegiance to Marx, Lenin and Mao, words such as 'bourgeois' and 'oppression' were rarely seen during the Jiang and Hu eras. This might be something to keep an eye on. Second, it seems that deep political reform is off the cards. Some observers opine that this might be due to the necessity for unity and support for an ambitious economic reform agenda, time will tell. Third, while the CCP seems to be aware of the recriminations concerning its leadership, including corruption, abuse and inequality, it does not perceive these as political structural issues, but individual, moral issues. It remains therefore to be seen whether it will take the institutional measures necessary to combat endemic graft, which must go far beyond "[four dishes and a soup](#)". Lastly, the leadership remains deeply wary of any foreign attempts towards intervention, as it perceives these to be inimical "peaceful evolution" efforts aimed at engendering regime change. It follows that it will remain difficult for foreign governments and politics-related actors to deeply engage with their Chinese counterparts on issues that the leadership considers to be core interests.

The original article ([source](#)):

## **A Comparative Study of Constitutional Governance and People's Democratic Systems**

*Yang Xiaoqing*

Since some time, the cry of "constitutional governance" has gained ground in society and academic circles. Some people believe that Western constitutional governance is the basic institutional structure for modern politics; some people use the time of commemorating the 30th anniversary of reform and opening up, to flaunt the banner of "reform is dead, constitutional governance must be established", putting forward that that China implements the basic concepts and basic viewpoints of Western constitutional governments, and believe that "The Chinese Dream is the dream of constitutionalism"; there are also people who have expounded the concept of "Socialist constitutional governance". It can be seen that the theme of constitutional governance is not a purely scholarly topic, but is a real political question that must be answered. Comrade Deng Xiaoping clearly put forward that: "Democracy as interpreted in capitalist societies is the democracy of the bourgeoisie, in reality, it is a monopolized democracy, and is nothing more than multi-party competitive elections, a tripartite separation of powers and a bicameral system. Our system is the system of the People's Congresses, it is the people's democracy system under the leadership of the Communist Party, we cannot do those Western ways" ("Selected Works of Deng Xiaoping", volume 3, People's Publishing House, 1993 edition, p. 240.) The thoughts of comrade Deng Xiaoping still have an extremely real acuity today.

### **I, A comparison of two sorts of basic institutional structures**

As the basic institutional structure of modern Western politics, the key systemic elements and concepts in constitutional governance only belong to capitalism and the dictatorship of the bourgeoisie, and they do not belong to the Socialist people's democratic system. This can be seen by comparing the two sorts of basic institutional structures.

1. Constitutional governance has the market economy with a private ownership system at the basis. "Private property is sacred and inviolable" are the resounding slogans of the bourgeoisie during the liberal revolutionary period in the 17th and 18th centuries, after the revolutionary victories, constitutional governances have established this basic principle using constitutions and laws. Although this principle was criticized during the end of the 19th Century and the beginning of the 20th, the mainstream viewpoint believes that governments may confiscate, commandeer or restrict private property for the public good, under the precondition of providing reasonable compensation, but the fundamental basis of Western societies has not been shaken.

The people's democratic system has an economic basis with public ownership economy at the core, jointly coexisting with many kinds of ownership. Developing an economy with many kinds of ownership under the condition that the public ownership system is at the core, has both persisted in the Socialist system, and has adapted to the requirements of developing productive forces, it can realize the basic

interests of the broadest number of people, marches the path of common prosperity and safeguards the Socialist system.

2. Constitutional governance implements parliamentary democratic politics. Constitutional governance advocates that sovereignty lies in the people, its path for realization is that groups with different political views and different interests compose different political parties, and represent their own party to come to power and govern through "free" elections, those out of office become the opposition. Multi-party competitive elections, rotational government and parliaments are the arenas in which the various parties conduct political struggle. On the surface, it seems as if all parties can participate in competitive elections, but huge amounts of election expense payments have decided that only the political parties of bourgeois interest groups representing financial wealth can be victorious in elections and govern. In constitutional governance concepts, those not coming to power and governing through this sort of multi-party competitive elections do not have "legitimacy".

In the people's democratic system, all power belongs to the people, the People's Congress system is implemented, which integrates elective democracy with multi-party political consultative democracy, and truly realized the principle of "popular sovereignty". In the People's Congresses, there are no parliamentary parties and fractions, seats are not allocated on the basis of parties, in elections, State finances guarantee that the people exercise their right to elect and be elected. All political parties bear the trust of the people, all implement their duties according to the law and under the leadership of the Communist Party, and serve the people. The leading position of the Chinese Communist Party has not come through competitive elections, but is the fruit of victory in the Chinese democratic revolution. Persisting in the basic principle that the leadership of the Chinese Communist Party is determined in the constitution, and on the basis of this principle in the Constitution, the fact that Chinese Communist Party has not come to power and government through competitive elections has unquestionable legitimacy. But taking constitutional governance concepts as standard, without multi-party competitive elections, there is no constitutional governance, and there is certainly no leading position of the Chinese Communist Party.

3. Constitutional governance implements a state regime system with a tripartite separation of powers with mutual checks and balances. Constitutional governance countries' constitutions provide that the legislative power, executive power and judicial power respectively are exercised by legislative organs, executive organs and judicial organs, the "three powers" are independent from each other, and check and balance each other. The basic function of constitutional governance lies in preventing the excess of government power, and safeguarding citizens' universal liberty and rights. "To prevent abuse of power, we must use power to restrain power" ([French] Montesquieu: "On the Spirit of Law", translated by Zhang Yanchen, Commercial Press, 1961 edition, p. 154). The United States has clearly provided in its Constitution that the legislative power, executive power and judicial power are exercised by Congress, the President and the higher Courts. Congress legislation must be approved by the President before it takes effect, Higher Court judges nominated by the President

must be approved by Congress before they can be appointed, Congress and the Higher Courts have the power to impeach the President, and the Supreme Court may examine whether Congress legislation and the executive acts of executive organs violate the Constitution, thereby realizing checks and balances between the "three powers".

The state regime structure under the people's democratic system implements the People's Congress system, a "combination of legislative and executive powers", where all levels People's Congresses exercise unified State power, "one government and two courts" [the People's Courts and the People's Procuratorates" are generated by the People's Congresses, are responsible to the People's Congresses, and are supervised by the People's Congresses. The People's Congress system is the best form to reflect our country's national essence. But taking constitutional governance concepts as standard, not implementing a tripartite separation of powers is having a Constitution but not constitutional governance, and certainly not constitutional rule.

4. Constitutional governance implements "judicial independence" and judicial organs exercise the power to investigate infringements of the constitution. Among the three powers, the legislative, the executive and the judiciary, judicial organs most easily fall under the control of the will of the majority, and may possibly use their "majority decision" mechanism to formulate laws that violate and strip away the rights of the minority, thereby shaping a so-called "dictatorship of the majority". In order to restrain the formation of such a "will of the majority", and thereby to respect and protect "the rights of the minority", in Western constitutional governance countries, judicial organs or independent constitutional courts have usually been endowed with the power to conduct constitutional review of the legislature of parliaments and the executive acts of the executive. For example, the United States Federal Supreme Court has the power to examine whether federal legislation and the constitutions and legislations of all states conform to the federal Constitution or not, through concrete cases. The United States are a country with legal precedent, their judicial examination system has not been provided clearly in the text of the Constitution itself or in later amendments, it has been created first when the American Supreme Court heard a case in 1803, by Chief Justice Marshall, the judgment in this case became precedent (law).

Western constitutional countries usually also pursue the principle of final judicial decisions, making judicial organs into "the last line of defence for social justice". At key times in the internal political struggle of capitalist societies, supreme judicial organs' votes decide victory or defeat. For example, in 2000, the final result between Bush the Younger and Gore in the presidential election was decided by a vote in which 5 votes against 4 in the Supreme Court awarded the victory to Bush.

In the people's democratic system, the National People's Congress and its Standing Committee are responsible for supervising the implementation of the Constitution. Judicial organs are engendered by the People's Congresses, exercise their powers independently according to the law, are not subject to interference by administrative organs, social groups and individual citizens, and are supervised and recalled by

the People's Congresses. Accordingly, our country's judicial organs , both trial organs and procuratorial organs, shall implement their powers independently according to the provisions of the law, but in terms of politics, ideology and organization, they must be under the leadership of the Chinese Communist Party. The Socialist rule of law concept is persisting in "governing the country according to the law, a judiciary for the people, fairness and justice, serving the bigger picture, and the leadership of the Party." This sort of implementation, application and supervision system of the Constitution and the laws, put forward by the Chinese Communist Party, reflects the institutional design that the People's Congresses are the highest organs of State Power, which represent the people in exercising unified State Power, this is effective in practice and conforms to our country's national circumstances. "Judicial independence" is a principle in constitutional governance structures, judicial organs independently exercising their powers according to the law is a principle in the people's democratic dictatorship system.

5. Constitutional governance implements the "neutralization and nationalization" of the army. According to constitutional governance concepts, the army or all armed forces should be the property of the State and should not follow orders from a certain political party. In order to guarantee that the army maintains neutrality in constitutional governance systems, and avoid that the army intervenes in politics, in Western constitutional governance countries, it is generally provided that the highest power to control the army should be held by civilian organs or civilian officials, thereby implementing "civilian control" over the army. For example, on the basis of the "Defence Reorganization Act" in the United States, the Secretary of Defense and the three subordinate ministers under his leadership governing the Army, Navy and Air Force must be civilians. The Chiefs of Staff of all armed services are military personnel who are the military advisors of civilian officials. The Joint Chiefs of Staff work under the leadership of the Secretary of Defense, in multi-party elections and rotational governments, the army is not to interfere.

But in the people's democratic system, the People's Army is under the absolute leadership of the Communist Party. The Chinese People's Liberation Army is established by the Communist Party during the Revolutionary war, and has passed through a life-or-death battle with the Guomindang army under the leadership of the Communist Party, it overturned Guomindang rule, seized political power, and established the New China ruled by the Communist Party. Such an army cannot be a "neutral and nationalized army", the Communist Party cannot abandon its absolute leadership power over the People's Army. But such a regime cannot be a constitutional governance regime.

The above are the key institutional elements and concepts of constitutional governance. Constitutional governance also has some non-crucial institutional elements and concepts, including: implementing a market economy; equality before the law; the supremacy of human rights and civil rights; freedom of the press, a federal system; religious freedom with Christianity at the core; parliamentary control of financial expenses; human rights without national borders; it being permitted to militarily interfere in the domestic affairs of other countries; etc. These crucial institutional

elements and concepts of constitutional governance, and non-crucial institutional concepts and elements jointly constitute a complete systemic framework for constitutional governance. Western constitutional governance and democratic rule of law are already progressive institutions and concepts in history, and they have been incessantly developed and perfected in centuries of practice, they basically conform to and are suited to the political, social, military, cultural, foreign policy and other needs of Western capitalist countries, some non-crucial institutional elements and factors contain some reasonable content that has been absorbed and implemented in the Constitutions of Socialist Countries. But making constitutional governance into a complete institutional framework lacks general applicability, its key institutional elements and concept are not suited to Socialist countries, the fundamental difference between both can be seen through the above comparison.

## **II, The political might of constitutional governance, discourse hegemony and its fraudulent nature**

Some people believe that Western constitutional governance is a good word, which is applied universally in Western countries and has been accepted by many Third World countries. Our country has come into broad contact with the institutional culture of Western countries through the process of reform and opening up, and has been able to accept institutional elements and factors of constitutional governance, we may add the adjective Socialist to constitutional governance, on the one hand, this does not change our country's national system, political system and basic institutions, and on the other had, it can reflect Chinese characteristics, enabling its content to be differentiated from Western constitutional governance, it is the same thing as our adding the adjective Socialist in front of market economy, and successfully differentiated it from capitalist market economies. As the Socialist market economy could be brought into the "Constitution", why could "socialist constitutional governance" not be brought into the Constitution? Furthermore, "Socialist constitutional governance" may also be welcomed and confirmed by mainstream countries worldwide, and be a Chinese contribution to the "human constitutional governance undertaking".

First and foremost, advocating the insertion of "Socialist constitutional governance" in the Constitution objectively panders to the political might and discourse hegemony of constitutional governance. The reason that constitutional governance has such a political might and discourse hegemony is because constitutional governance is backed by the asset domination of the bourgeoisie. Engels already pointed out "Who then actually rules in England? Property rules. Property enables the aristocracy to control the election of deputies for rural areas and small towns; property enables the merchants and manufacturers to choose the members for the large and to some extent also for the small towns; property enables both to increase their influence by bribery. The rule of property is explicitly recognised in the Reform Bill by the property qualification incorporated in it. And to the extent that property and the influence conferred by property constitute the essence of the middle class, to the extent therefore that the aristocracy brings its property to bear in the elections and thus does not act as an aristocracy but puts itself on a level with the middle class, to the extent that the influence of the actual middle class is on the whole much greater

than that of the aristocracy, to that extent the middle class does indeed rule." (Engels: "The Condition of England - The Constitution of England", "Complete Works of Marks and Engels", Volume 1, People's Publishing House, 1956 edition, pp. 687-688). Lenin also pointed out that "the limitless power of 'wealth' is reliable under a democratic republican system, because it does not rely on some flaws in political organs and does not rely on the bad political shell of capitalism. The democratic republican system is the best political casing that capitalism can use, and therefore, once capital grasps this best shell (through the stream of Paltchinski, Chernov and Chkheidze", it will be able to fully consolidate, fully and reliably consolidate their own power, with the result that, in a capitalist democratic republic, any change in either people, organs or political parties, cannot waver this power." ( "Complete works of Lenin", Volume 31, People's Publishing House, 1985 edition, p. 12)

Second, the bourgeoisie really needs the political and discourse hegemony of constitutional governance. Engels pointed out when analysing the relationship between the bourgeoisie and the State regime that the bourgeoisie uses its own power (property), to snatch away political power from the aristocracy one day at a time, and outside of wealth and privilege, it does not accept any privilege. Where it is concerned, "Free competition will suffer no limitation, no State supervision; the whole State is but a burden to it. It would reach its highest perfection in a wholly ungoverned anarchic society, where each might exploit the other to his hearts content. [...] However, the bourgeoisie cannot dispense with government, but must have it to hold the equally indispensable proletariat in check, it turns the power of government against the proletariat and keeps out of its way as far as possible. (Engels: "Conditions of the Working Class in England", "Complete Works of Marx and Engels", Volume 2, People's Publishing House, 1957 edition, p. 566). The fundamental function of constitutional governance is to prevent the excess of political power and to safeguard citizens' general liberty and rights. because of this, the bourgeoisies requires a small government and a big society, the smaller the government is, the better, as long as it is able to serve itself, it will do, government may not intervene in the free competition of the market overly much. The bourgeoisie also controls all sorts of media to propagate the liberty and democracy of constitutional governance as well as its "universal values" on a global level, and uses the standards for "legitimacy" of constitutional governance and "universal values" to evaluate the regimes of all countries worldwide, quell dissidents and support allies, in order to consolidate their economic domination, political domination, ideological domination and discourse domination worldwide.

The fraudulent nature of Western constitutional governance, lies in the fact that superficial liberty and democracy of and for the whole people conceals that in essence, it only is liberty and democracy for the bourgeoisie, and only is the dictatorship of the bourgeoisie. For example, constitutional governance asserts that power lies in the people, and implements a parliamentary democratic political system. But the real operation of parliamentary democracies is completely grasped in the hands of the bourgeoisie. All parliament members or officials that participate in elections must gain the support of major interest groups before they can be elected. Engels pointed out that: "We see there two major cliques of political speculators, they wield

political power in turn, and use the most filthy methods to achieve the most filthy objectives, thereby, citizens are powerless to respond to these two political groups, these people seem, on the surface, to serve the people, but in reality, they dominate and plunder citizens". ("Complete Works of Marx and Engels", Volume 3, People's Publishing House, 1995 edition, p. 12). Marx said, when he analysed the essence of bourgeois parliamentary democracy, that: This permits the oppressed to decide once every few years on which persons from the oppressive class will be represented in parliament to oppress them!", (quoted in "Complete Works of Lenin", Volume 31, People's Publishing House, 1985 edition, p. 84). Lenin pointed out that: "Please look at any country with a parliamentary system, from the United States to Switzerland, from France to England and Norway, etc., there, the true work of the 'State' happens behind the scenes, and is conducted by all ministries, government offices and headquarters. Parliaments engage in empty talk for the express purpose of deceiving the 'common people" (Id., p. 44). Therefore, Marx pointed out that the dictatorship of the proletariat should eliminate the old bourgeois parliamentary system. "Communes shall not have a parliamentary form, and shall be organs combining executive and legislative work at the same time." (Marx: "On the Civil War in France", "Complete Works of Marx and Engels", Volume 17, People's Publishing House, 1963 edition, p. 358). The actual method of the communes is that the people's representatives must not only formulate laws, but must also be responsible themselves for the implementation of these laws. The members of commune committees "naturally will consist of workers for the most part, or of representatives generally acknowledged as representing the working class" (Id., p. 358).

Third, constitutional governance flaunts a tripartite separation of power, with mutual checks and balances, but in reality, the tripartite separation of power is not real. In the United States, for example, the executive powers of the President tend to expand, and one power is singly large; the Courts hold the judicial power on the one hand, and on the other hand, they enjoy legislative power through formulating and applying judicial precedent, they also enjoy the power of constitutional review over legislative and executive acts; Congress has the power to impeach and try the President and exercises certain judicial powers over the federal Supreme Court justices; the Department of Justice is an administrative organ, and enjoys the powers to investigate and file lawsuits in all kinds of cases, and also exercises certain judicial powers; the federal Supreme Court justices have life-long tenure, and the state court judges are selected through election by state legislatures or appointed, they often have concurrent positions and are replaced every year, their independence is very small ([U.S.] Hamilton, etc., "The Federalist Papers", Commercial Press, 2004 edition, pp. 407, 408"). Although bourgeois scholars play up that the legislative power in constitutional governance is a reflection of sovereign authority, in structures with tripartite separation of power, the legislative power must be checked and balanced by executive power and judicial power, and what legislative organs have is only a sort of incomplete and fragmentary sovereignty, they cannot even find sovereign authority in the entire country. Therefore, political systems with a tripartite separation of power directly deny the principle of "popular sovereignty" put forward by the bourgeoisie, and may override the legislative power and executive power that have been produced through popular elections by constitutional review by a judicial pow-

er of courts that have not been produced through democratic elections, directly violating the principle of democracy. The essence of tripartite separation of power in constitutional governance is that the bourgeoisie does not permit any single interest group to singly grasp the complete power of the State. The tripartite separation of power and the system of mutual checks and balances truly conforms to the requirement that all interest groups that are about equally matched in power share the power of the State, and conform to the overall interest of the bourgeoisie, even if it often creates incessant internal struggle and influences productivity, it is not changed. Therefore, the tripartite separation of power and the system of mutual checks and balances are a deformed democratic system internal to the bourgeoisie, and it totally unrelated to countries with participation by the popular masses.

As for "judicial independence", Marx especially exposed that: "judges have lost their superficial independence, this sort of independence only is a false front that they use to conceal their own contemptible flattery with all previous governments, they take repeated oaths of loyalty to these governments, and afterwards, repeatedly betray these." (Marx:, "On the Civil War in France", "Complete Works of Marx and Engels", Volume 17, People's Publishing House, 1963 edition, p. 359). All judges in Western countries must obtain the support of large interest groups to be appointed or elected, and must unrelentingly serve the large interest groups. Those who voluntarily sign up to become unpaid concurrent judges, are always the bourgeois themselves, they self-evidently serve interest groups, from where does "judicial independence" come then? Look at courts in Taiwan, which does constitutional governance, and how they displayed themselves in relation to the Chen Shuibian corruption case when Chen Shuibian was in office and after he left office, this is sufficient to confirm the correctness of Marx' judgement.

The reason that "Socialist constitutional governance" theory is undesirable is that it conceals the crucial institutional elements and concepts of constitutional governance with non-crucial institutional elements and concepts. Some of these non-crucial institutional and elements have been written into the constitutions of Socialist countries, for example, equality before the law, the federal system (practiced in the Soviet Union, but defeated); some have been adapted and accepted in Socialist countries, such as the market economy, respect for and protection of human rights, freedom of religious belief, parliamentary deliberation and approval of financial expenditure, etc.; some are still exclusive to Western countries, such as press freedom and the fact that human rights have no borders. The private ownership system, multi-party competitive elections and rotational government, the tripartite separation of power, judicial independence and the nationalization and neutrality of the army are the core necessary institutions for constitutional governance, and they are the political systemic objectives that liberalists truly long for. But "Socialist constitutional governance" theory would, however, neglect these crucial institutional elements and factors of constitutional governance, and neglect the overall structural framework of constitutional governance, it would only stress non-crucial institutional elements and concepts of constitutional governance, it would seem as if accession to international human rights, providing for the protection of human rights, equality before the law and freedom of religious belief into the Constitution would suffice for having consti-

tutional governance, and adding the word Socialist in front would mean there would be "Socialist constitutional governance". Objectively speaking, this will enmesh the people's democratic system with the fetters of constitutional governance, and guide people's democratic countries to progressively march the path of true Western constitutional governance - The Soviet Union and Eastern European countries have marched along this path.

### **III, Mao Zedong did not believe that the people's democratic system could be called constitutional governance.**

People advocating "Socialist constitutional governance" say that Mao Zedong wrote a special essay called "Constitutional governance", and they say that "constitutional governance is democratic politics". This refers to an address that Mao Zedong made in February 1940 to the foundation conference of the All-Society Constitutional Governance Promotion Association in Yan'an, of which the title was "The Constitutional Governance of the New Democracy". In the text, Mao Zedong certainly pointed out: "What, then, is constitutional governance? It is democratic politics." But the thesis cannot be quoted out of context, Mao Zedong said immediately afterwards that: "The democratic politics that we want now, what kind of democratic politics are they? They are new democratic politics, they are the new democratic constitutional governance. They are not old or past they sell-by date, they are not European or American in form, or the so-called democratic politics of the bourgeoisie, at the same time, they also are not the democratic politics that are of the Soviet Union form, of the bourgeois dictatorship." ("Complete Works of Mao Zedong, Volume 2, People's Publishing House, 1991 edition, p. 732)

In the text, Mao Zedong clearly divided democratic politics into three varieties: the first one are so-called democratic politics that are old, past their sell-by date, European or American in form, and are the dictatorship of the bourgeoisie. Mao Zedong said: "that sort of old democracy has been practiced abroad, now, it has become obsolete, and has changed into a reactionary thing. We must absolutely not have this sort of reactionary thing. The constitutional governance that China's die-hards talk about, is the democratic politics of the old-style bourgeoisie. With their mouths, they talk about the fact that they want this sort of constitutional governance, but they do not truly want this sort constitutional governance, but do so to chat the people. [...] China's national bourgeoisie, in fact, wants this sort of constitutional governance, and wants to implement a bourgeois dictatorship in China, but they will not get it. Because everyone among the Chinese people does not want this sort of thing, the Chinese people will not welcome the bourgeois class to the dictatorship." (Id., p. 732). The second kind is the Soviet kind, the democratic politics of the dictatorship of the proletariat. Marx said that: "What is then Socialist democracy? It is naturally very good, the entire world will, in the future, implement Socialist democracy. But this sort of democracy, in the China of the present, won't get anywhere, and therefore, we do not want it yet for the time being. Only when, in the future, certain conditions are met, we will be able to implement Socialist democracy. (Id., pp. 732-733). The third kind is the democratic politics of the New Democracy. "Our China requires a democratic system, which is not old-style democracy on the one hand, and also is not Socialist democracy on the other hand, but one that conforms

to the New Democracy of China's national circumstances. At present, the constitutional governance that we prepare to implement should be the New Democratic constitutional governance." "What is the New Democratic constitutional governance? It is the uniting of different revolutionary classes in dictatorship over traitors to the motherland and the reactionary clique. (Id., p. 733). At that time, the War of Resistance against Japan was taking place, on the one hand, China's nation was not independent, and there was also no democracy in fact. Within the Chinese Communist Party, there were some comrades who were misled by the deceptive propaganda about Chiang Kai-shek's so-called implementation of constitutional governance, and who believed that the Guomindang would truly implement constitutional governance. Mao Zedong exposed this sort of deception of Chiang Kai-shek in this speech, and stimulated the New Democratic constitutional governance to become a weapon to enlighten the people's consciousness and demand democracy and freedom from Chiang Kai-shek.

As for the fact that Mao Zedong also said in this text that "hitherto, constitutional governance systems all around the world, in England, France, the United States and the Soviet Union, promulgated a basic great law after the fact of successful revolution and gaining democracy, and recognized that this was a Constitution." (Id., p. 735). Here, Mao Zedong listed the Soviet Union with England, France and the United States into "constitutional governance systems all around the world", which was to talk from the angle of the commonality in the rules that engender constitutions, and did not indicate that the Soviet Union was a constitutional democracy in the English, French or American manner. Furthermore, this text only listed it here, other discussions differentiated the Soviet Union from European and American countries extremely clearly. Mao Zedong not only did not confuse constitutional governance democracy with Socialist democracy when using the concepts, he especially differentiated the concept of new democratic constitutional governance, and differentiated the Constitution that the Chinese Communist Party prepared to implement during the period War of Resistance against Japan from Western constitutional governance as in England, France and America.

Mao Zedong in later texts also never used this concept of constitutional governance ever again, and he certainly did not approve of Western constitutional governance. In the documents of the Chinese Communist Party, the concept of constitutional governance also was not used. Because in 1940, Mao Zedong believed that European and American-style constitutional governance democracy was old, past its sell-by date, a backward and reactionary thing, the entire world would carry out Socialism in the future, and the democratic politics of the proletarian dictatorship. When the New China was established in 1949, "after some conditions became present", Mao Zedong again wrote an essay "On the People's Democratic Dictatorship", which directly stated that the democratic politics of the New China would be the "people's democratic dictatorship", and differentiated "new democratic constitutional governance". The Chinese people, under the leadership of the Chinese Communist Party have obtained huge advances in Chinese democratic politics, why would they want to return to old and out-of-date constitutional governance? The China with the peo-

ple's democratic system has no need to contribute to the capitalist "constitutional governance undertaking".

#### **IV, The people's democratic system can absolutely not be called "Socialist constitutional governance"**

The people's democratic system can absolutely not be called "Socialist constitutional governance", the reasons for that are as follows:

First and foremost, the people's democratic system and constitutional governance are two sorts of political systems that are essentially different. As the essential differences between both sorts of basic systemic frameworks can be seen from the comparison between them, both should be clearly distinguished when applying the concepts in practice.

The people's democratic dictatorship nominated by Mao Zedong in integration with China's national conditions, which essentially is the dictatorship of the proletariat, is a scientific concept and is the essence of Marxism-Leninism. "Only people recognizing the proletariat, and at the same time recognizing the proletarian dictatorship, are Marxists" ("Complete Works of Lenin", Volume 13, People's Publishing House, 1985 edition, p. 32). The Paris Commune was the earliest proletarian dictatorship regime. Marx summarized it by saying that "The true secret of the Commune was that: it essentially was a government of the working class, it was the result of the producing class' struggle with the possessing class, it happened at last, and may ensure that workers gain a political situation of liberation in economic terms." (Marx, "On the Civil War in France", "Complete Works of Marx and Engels", Volume 17, People's Publishing House, 1363 edition, p. 361). Engels pointed out that the Commune revolution was the "demolition of the old State power that was replaced by a new and truly democratic State power". ("Complete Works of Marx and Engels", Volume 22, People's Publishing House, 1964 edition, p. 228). Here, a "new and true democracy" means that the people are master of their own affairs, the people exercise power and the people manage the country. This is the most essential characteristic of the democratic system under the dictatorship of the proletariat. As Marx, Engels, Lenin and Mao Zedong have named the regime led by the working class to be the proletarian dictatorship or the people's democratic dictatorship, to differentiate it from constitutional governance, we have no need to return and call the people's democratic system "Socialist constitutional governance".

The earliest ancestor of social-democratic parties were based on a specially written book "The Dictatorship of the Proletariat" (Beijing, Sanlian Bookstore, 1958 edition), in which the proletariat dictatorship was played down as "some word" used occasionally by Marx. He led social-democratic parties in all countries of Europe to march the path of social democracy, being empty prattle about class struggle, but not stirring up the capitalist system, not using the proletarian dictatorship to replace the bourgeois dictatorship. Furthermore, they accepted existing bourgeois constitutions within the capitalist constitutional governance framework, participated in multi-party competitive parliamentary elections, strove for the majority of votes, and in the end, gained the recognition and support of the majority of the bourgeoisie, and

were able to participate in rotational governance. Because of this, social-democratic parties also essentially changed the essence of parties of the working class.

That we can add the word Socialism in front of the term market economy, is because the market and the plan are both methods for economic constructions, and cannot decide the essence of a country. Equality before the law, the Socialist market economy, respecting and guaranteeing human rights and the freedom of religious belief, governing the country according to the law, building a Socialist rule of law country, these principles can be included into the constitution, because a constitution must reflect and affirm the achievements that our country obtained in economical and political reform, these reform achievements have, from different aspects, perfected the economic basis and the political system for the people's democratic system, but they have not changed the essence and basic system of our country. Our country's signing of United Nations human rights treaties, for example, our country has, on the basis of its own value system and principles, made reservations concerning certain articles in the conventions, ensuring that our country's accession to the United Nations human rights treaties cannot change the essence and basic system of our country. The different interest groups of the bourgeoisie do not exist in country's society, and the people's democratic dictatorship does not permit sharing of State power, hence, we will not do a tripartite separation of powers. If "Socialist constitutional governance" would be put in front of our country's people's democratic system, it would inevitably march the path of social democracy, because constitutional governance is the orientation for changing the country's essence and the framework of the political system, as well as social development, it is not only about changing a few non-central principles and institutions.

Constitutional governance does not conform to our country's national circumstances; the Party and State lead the people to remind the entire Party of this time and time again. "The people often link up democracy with the United States, believing that the U.S. system is the most ideal democratic system. We cannot do what you do. [...] If china copies your multi-party elections and tripartite separation of powers, it will certainly lead to a situation of chaos." ("Selected Works of Deng Xiaoping", Volume 3, People's Publishing House, 1993 edition, p. 244). "Some people in Western Countries always want to impose their democratic systems onto us, and always want us to implement Western-style democracy. On this question, we have always conducted fierce struggle with Western countries. Western hostile forces play a so-called "democracy" card, but essentially, they want to realize their political scheme of 'Westernizing' and 'dividing' China. We absolutely cannot be fooled by this. Our country has more than 1.2 billion people, doing tripartite separation of powers and multi-party competitive elections like in the west, certainly will bring great chaos to all under heaven. On this question, our leading cadres at all levels and especially high-level cadres must have sober minds." ("Jiang Zemin on Socialism with Chinese Characteristics (Special Extracts)", People's Documentary Publishing House, p. 302)

Second, governing the country according to the constitution does not mean implementing constitutional governance, the basic system of Socialist countries confirmed by the Constitution of the people's democratic system and the core system of consti-

tutional governance are incompatible. When it is said that constitutional governance must have a constitution that is implemented, opposing constitutional governance means not wanting a Constitution and Socialist rule of law. This is confusing the relationship between a constitution and constitutional governance. Looking back at history, it is very clear that Constitution and the democratic system do not have a necessary relationship with constitutional governance. Democratic countries may not be constitutional governance countries (for example, ancient Greece and ancient Rome were democratic countries with a slavery system and a feudal system), those having a Constitution don't necessarily have constitutional governance (for example, the Imperial Constitution of the late Qing), constitutional governance countries also aren't necessarily democratic countries (for example the England of the Magna Charta era). Although Socialist countries and capitalist countries both have constitutions, the content of those constitutions and the basis national systems that they confirm are fundamentally different.

Since the foundation of the New China and the Chinese Communist Party gaining power, we have incessantly deepened our understanding of implementing the Socialist democratic rule of law, and formulated and passed three Constitutions, in 1954, 1975 and 1978. Those three Constitutions all affirmed that our country's national system is the people's democratic dictatorship; they affirmed that the People's Congress system was our country's political system, they provided that the State power in our country belongs to the people, and that the organs through which the people exercise State power are the People's Congresses at all levels; they provided for all basic structures for the political consultative conferences, economic, military, cultural and educational structures, the unitary state and the ethnic autonomous regions, foreign relations and State organs, etc.; they provided for citizens to enjoy all basic rights and freedoms. The three Constitutions had an important guaranteeing function for consolidating the people's democratic system, recovering and developing the national economy, and safeguarding the independence and sovereignty of the country. Even though since the Chinese Communist Party came to power, a tortuous path has been marches in constructing a Socialist democratic rule of law, we can absolutely not deny the exploration of the Chinese Communist Party concerning Socialist governance rules and the magnificent practice in the area of constructing the Socialist democratic rule of law system.

Since reform and opening up, the Constitution of 1982 and its amendments are the current Constitution of our country. The current constitution is the successor and development of the three previous Constitutions, and has derived from the same origin the main content in areas such as the national system of the State, the political system and the political consultative system, economics, military affairs, culture and education, the unitary system and the ethnic autonomous regions, foreign relations, State organs and other basic institutions, as well as all basic rights and freedoms that the people enjoy. The current Constitution has confirmed new experiences gained in our country's reform and opening up in the primary phase of Socialism through the form of amendments, and has guaranteed that the general direction of reform and opening up cannot deviate from the Socialist path. Even though since reform and opening up, the governance of the Chinese Communist Party has been

subject from all sorts of subversive powers and incessant challenges, from inside and outside of the country, and inside and outside of the Party, and our country has also been subject to huge influence and interference of Western capitalist constitutional governance theory in the process of the legislation, implementation and judicialization of concrete laws, as well as legal education, because the Chinese Communist Party has incessantly explored the rules of Socialist governance and because of its magnificent practice of constructing Socialist democratic rule of law, all its basic institutions have been affirmed by every Constitution of the New China, and has been implemented as one unity pervading all things. This has provided a strong legal basis for the governance of the Chinese Communist Party. The consolidation of the people's democratic system under the leadership of the Chinese Communist Party has guaranteed that the Chinese Communist Party's governance according to the Constitution and governing the country according to the Constitution will incessantly be perfected and develop vigorously along the Socialist path.

In Western mainstream countries, it isn't recognized that Socialist China under the leadership of the Communist Party is a democratic, rule of law country, and it certainly will not be recognized that Socialist China implementing the people's democratic constitution is constitutional governance. They do not consider whether Socialism is put in front of constitutional governance, and do not consider whether or not the Communist Party governs according to the constitution, they will never acknowledge that Socialist China is constitutionally governed.

The 16th Party Congress pointed out that the most basic matters in developing Socialist democratic politics are that we must organically integrate persisting in the leadership of the Party, the people being master of their own affairs and governing the country according to the law, and incessantly stimulate the coordinated development of Socialist material civilization, political civilization and spiritual civilization. The 17th Party Congress stressed that we must govern the country according to the law, and build a Socialist rule of law country. The 18th Party Congress required that we must completely move forward ruling the country according to the law and realize the creation of rule of law in all matters of State work. The Socialist constitution is the basic great law of the country, and is the reflection of the common ideals of the Chinese Communist Party and the broad people it leads. Ruling the country according to the law and ruling the country according to the Constitution will ensure that the people's democracy is institutionalized and legalized, making sure that this sort of democratic rule of law gains stability, continuity and authority. This is necessary for perfecting and developing the Socialist people's democratic system, it has started from the basic interest of the absolute majority of the Chinese people, and not to go and do constitutional governance because we want to "protect the minority". Here, we must pay special attention to the fact that we may certainly not only talk about "the supremacy of the constitution and the laws". Because of the fact that the supremacy of the Party's undertaking, the supremacy of the people's interest and the supremacy of the Constitution are one whole that cannot be separated, the Constitution and the laws may be changed under the leadership of the Party, and for the sake of the people's interest, and through statutory procedure. Only talking about "the supremacy of the Constitution and the laws" will easily sink into the snare

of "constitutional governance" discourse, this is the limit of the slogan "the supremacy of the Constitution and the law".

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宪政与人民民主制度之比较研究

一段时间以来，社会上和学界有关“宪政”的呼声抬头。有人认为，西方宪政是现代政治的基本制度架构；有人借纪念改革开放 30 周年之时，打出“改革已死，宪政当立”的旗号，提出在中国实行西方宪政的基本理念和基本主张，认为“中国梦即宪政梦”；还有人论述了“社会主义宪政”的概念。可见，宪政话题已不是一个单纯的学术论题，而是必须回答的现实的现实的政治问题。邓小平同志鲜明地指出：“资本主义社会讲的民主是资产阶级的民主，实际上是垄断资本的民主，无非是多党竞选、三权鼎立、两院制。我们的制度是人民代表大会制度，共产党领导下的人民民主制度，不能搞西方那一套。”（《邓小平文选》第 3 卷，人民出版社 1993 年版，第 240 页）邓小平同志的思想，在今天仍然极具现实针对性。

### 一、对两种基本制度架构的比较

作为西方现代政治基本的制度架构，宪政的关键性制度元素和理念只属于资本主义和资产阶级专政，而不属于社会主义人民民主制度。这从对两种基本制度架构的比较即可看出。

1. 宪政以私有制的市场经济为基础。“私有财产神圣不可侵犯”是 17、18 世纪资产阶级在自由主义革命时期响亮的口号，革命胜利之后的政府都以宪法和法律的形式确立了这一基本原则。该原则虽然在 19 世纪末 20 世纪初受到批判，主流观点认为政府为了公共利益在进行合理补偿的前提下可以对私有财产进行征收、征用和限制，但其作为西方社会的根本基础并没有被动摇。

而人民民主制度以公有制经济为主体，多种所有制并存为经济基础。在公有制为主体的条件下发展多种所有制经济，既坚持了社会主义制度，又适应了发展生产力的要求，能实现最广大人民的根本利益，走共同富裕的道路，维护社会主义制度。

2. 宪政实行议会民主政治。宪政主张主权在民，其实现的途径是由不同政见不同利益集团的人组成不同的政党，代表本党通过“自由”竞选上台执政，在野的则为反对党。多党竞选，轮流执政，议会是各党派进行政治斗争的场所。表面上似乎各党都可以参加竞选，但巨额竞选经费开支决定了只有代表财力雄厚的资产阶级利益集团的政党才有可能胜选执政。宪政理念中不经过这种多党竞选而上台执政则没有“合法性”。

而人民民主制度下，一切权力属于人民，实行人民代表大会制，是选举的民主和多党政治协商的民主相结合，真正实现了“人民主权”原则。人民代表大会中，没有议会党团，不按照党派分配席位，选举由国家财政保障人民行使选举权和被选举权。各政党都肩负着人民的重托，都在共产党的领导下依法履行

职责，为人民服务。中国共产党的领导地位不是竞选得来的，而是中国民主革命胜利的成果。坚持中国共产党的领导是宪法确定的基本原则，根据宪法的这一原则，中国共产党没有经过多党竞选而上台执政有不容置疑的合法性。但以宪政理念为标准，没有多党竞选就无宪政，更无共产党的领导地位。

3. 宪政实行三权分立、互相制衡的国家政权体制。宪政国家的宪法规定立法权、行政权和司法权分别由立法机关、行政机关、司法机关行使，“三权”相互独立并相互制衡。宪政的根本作用在于防止政府权力的滥用，维护公民普遍的自由和权利。“要防止滥用权力，就必须以权力约束权力。”（[法]孟德斯鸠：《论法的精神》，张雁琛译，商务印书馆 1961 年版，第 154 页）美国在宪法中明确规定立法权、行政权和司法权分别由国会、总统、法院行使。国会的立法要由总统批准才能生效，总统提名的大法官要由国会批准才能上任，国会和大法官有权弹劾总统，最高法院可以对国会的立法和行政机关的行政行为进行违宪审查，以达到“三权”互相制衡。

人民民主制度下的国家政权体制实行人民代表大会制，“议行合一”，由各级人大统一行使国家权力，“一府两院”由人大产生，对人大负责，受人大监督。人民代表大会制度是体现我国国家性质的最好形式。但以宪政体制为标准，不实行三权分立，就是有宪法而无宪政，更无宪治。

4. 宪政实行“司法独立”及司法机关行使违宪审查权。在立法、行政和司法三权中，立法机关最易受多数意志的左右，有可能利用其“多数决”的机制制定侵犯和剥夺少数人权利的法律，从而形成所谓“多数人的暴政”。为了对这种“多数人的意志”形成约束，从而尊重和保护“少数人的权利”，在西方宪政国家，一般赋予司法机关或独立的宪法法院行使对国会的立法和行政机关的行政行为进行违宪审查的权力。例如，美国联邦最高法院有权通过审理具体案件审查联邦立法或各州宪法和立法是否符合联邦宪法。美国是判例法国家，其司法审查制度在宪法本文及其后来的修正案中并无明文规定，它是通过 1803 年美国最高法院审理一个案件时由首席大法官马歇尔首创的，该案的判决成为判例（法律）。

西方宪政国家一般还奉行司法最终解决原则，将司法机关设计成为“社会正义的最后防线”。在资产阶级内部政治斗争的关键时刻，由最高司法机关的投票决定胜负。例如，2000 年小布什与科尔竞选总统的最终结果，是由最高法院 9 名大法官以 5 票比 4 票决定小布什胜选。

而人民民主制度下全国人民代表大会及其常委会负责监督宪法的实施。司法机关由人民代表大会产生，依法独立行使职权，不受行政机关、社会团体和公民个人的干涉，受人民代表大会的监督和罢免。据此，我国司法机关即审判机关和检察机关应依照法律规定独立行使职权，但在政治上、思想上和组织上必须接受中国共产党的领导。社会主义法治理念是坚持“依法治国、司法为民、公平正义、服务大局、党的领导”。中国共产党提出的这种宪法和法律实施、适用、监督的制度体现了全国人民代表大会是最高国家权力机关、代表人民统一行使国家权力的制度设计，行之有效，符合我国国情。“司法独立”是宪政体制中的原则，司法机关依法独立行使职权是人民民主专政体制中的原则。

5. 宪政实行军队“中立化、国家化”。依据宪政理念，军队或一切武装力量均应为国家所有而不能听命于某一政党。为保证军队在宪政体制中保持中立，避免军人干政，在西方宪政国家一般规定军队的最高控制权应由文职机关或文职官员掌握，即对军队实行“文职控制”。如根据美国《国防改组法》，国防部长及其领导下的陆海空三军部长均由文官担任。由军职人员担任的各军种参谋长仅作为文职官员的军事顾问。参谋长联席会议也在国防部长领导下工作。多党竞选，轮流执政，军队不予干涉。

而人民民主制度下的人民军队接受共产党的绝对领导。中国人民解放军由共产党在革命战争中建立，在共产党的领导下经过与国民党军队的殊死战争，推翻国民党的统治，夺取政权，建立共产党执政的新中国。这样的军队不可能是“中立化、国家化”的军队，共产党不可能放弃对人民军队的绝对领导权。但这样的政权也就不可能是宪政的政权。

以上是宪政的关键性制度元素和理念。宪政还有一些非关键性的制度元素和理念，包括：实行市场经济；法律面前人人平等；人权与公民权利至上；新闻自由；联邦制；以基督教为主的宗教自由；议会控制财政拨款；人权无国界；可以武力干涉别国内政；等等。宪政的这些关键性制度元素与理念和非关键性的制度元素及理念共同构成宪政的完整制度架构。西方宪政民主法治在历史上曾经是进步的制度和理念，在几百年的实行中不断发展和完善，基本符合和适应西方资本主义国家政治、经济、军事、文化及外交等需要，某些非关键性的制度元素和理念中的部分合理内容已被社会主义国家的宪法所吸收和实行。但宪政作为完整的制度架构并没有普适性，其关键性制度元素和理念并不适合社会主义国家，通过以上比较就可以看出二者的本质区别。

## 二、宪政的政治强权和话语霸权及其欺骗性

有人认为，西方的宪政是个好词，为西方国家普遍使用和许多第三世界国家所接受。我国在改革开放过程中大量接触西方国家的制度文化，对宪政的制度元素和理念也已经能够接受了，我们可以在宪政前面加上社会主义的定语，既不改变我国的国体、政体和基本制度，又能体现出中国特色，使其内容与西方的宪政区别开来，如同我们在市场经济的前面加上社会主义的定语，成功地与资本主义市场经济相区别一样。既然社会主义市场经济可以入宪，为什么“社会主义宪政”不可以入宪？而且，“社会主义宪政”还可以得到世界主流国家的欢迎和肯定，是中国对“人类宪政事业”的贡献。

首先，主张将“社会主义宪政”入宪客观上迎合了宪政的政治强权和话语霸权。宪政之所以有这种政治强权和话语霸权，是因为宪政的背后有资产阶级的财产统治。恩格斯早已指出：“现在的问题是：实质上究竟是谁统治着英国呢？是财产。财产使贵族能左右农业区和小城市的代表选举；财产使商人和厂主能影响大城市及部分小城市的代表选举；财产使二者能通过行贿来加强自己的势力。财产的统治已经由改革法案通过财产资格的规定所确认了。既然财产和通过财产而取得的势力构成资产阶级的本质，既然贵族在选举中利用自己财产的势力，因之他不是以贵族的身分出现而是和资产阶级站在同等的地位，可见实际上整个资产阶级的势力要比贵族的势力强大得多，可见真正进行统治的是资

产阶级。”（恩格斯：《英国状况 英国宪法》，《马克思恩格斯全集》第 1 卷，人民出版社 1956 年版，第 687—688 页）列宁也早已指出：“‘财富’的无限权力在民主共和制下更可靠，是因为它不依赖政治机构的某些缺陷，不依赖资本主义的不好的政治外壳。民主共和制是资本主义所能采用的最好的政治外壳，所以资本一掌握(通过帕尔钦斯基、切尔诺夫、策列铁里之流)这个最好的外壳，就能十分巩固十分可靠地确立自己的权力，以致在资产阶级民主共和国中，无论人员、无论机构、无论政党的任何更换，都不会使这个权力动摇。”（《列宁全集》第 31 卷，人民出版社 1985 年版，第 12 页）

其次，资产阶级确实需要宪政的统治和话语霸权。恩格斯在分析资产阶级和国家政权的关系时指出，资产阶级利用自己的权利（财产），一天天地把政权从贵族手中夺走，除了金钱特权他不承认任何特权。对它来说“自由竞争不能忍受任何限制，不能忍受任何国家监督，整个国家对自由竞争是一种累赘，对它来说，最好是没有任何国家制度存在，使每个人都可以随心所欲地剥削他人，……但是，资产阶级为了使自己必不可少的无产者就范，就不能不要国家，所以他们利用国家来对付无产者，同时尽量使国家离自己远些。”（恩格斯：《英国工人阶级状况》，《马克思恩格斯全集》第 2 卷，人民出版社 1957 年版，第 566 页）宪政的根本作用在于防止政府权力的滥用，维护公民普遍的自由和权利。为此，资产阶级要求小政府大社会，政府越小越好，只要能够为自己服务即可，政府不可过多干预市场的自由竞争。资产阶级还操控各种媒体在世界范围宣传宪政的自由民主及其“普世价值”，用宪政的“合法性”标准和“普世价值”来衡量世界各国的政权，打压异己、支持盟友，以巩固自己在全球的经济统治、政治统治、思想统治和话语霸权。

西方宪政的欺骗性在于，以表面上全民的自由民主掩盖其实质上只是资产阶级的自由民主，只是资产阶级的专政。例如，宪政宣称主权在民，实行议会民主政治。但议会民主的实际运转完全掌控在资产阶级的手里。所有参加选举的议员或官员必须得到大利益集团的支持才能当选。恩格斯指出：“我们在那里却看到两大帮政治投机家，他们轮流执掌政权，以最肮脏的手段用之于最肮脏的目的，而国民却无力对付这两大政客集团，这些人表面上是替国民服务，实际上却是对国民进行统治和掠夺”。（《马克思恩格斯选集》第 3 卷，人民出版社 1995 年版，第 12 页）马克思在分析资产阶级议会民主的实质时说：“这就是容许被压迫者每隔几年决定一次究竟由压迫阶级中的什么人在议会里代表和镇压他们！”（转引自《列宁全集》第 31 卷，人民出版社 1985 年版，第 84 页）列宁指出：“请看一看任何一个议会制的国家，从美国到瑞士，从法国到英国和挪威等等，那里真正的‘国家’工作是在幕后做的，是由各部、官厅和司令部进行的。议会专门为了愚弄‘老百姓’而从事空谈。”（同上书，第 44 页）所以，马克思指出，无产阶级专政应废除旧的资产阶级议会制。“公社不应当是议会式的，而应当是同时兼管行政和立法的工作机关。”（马克思：《法兰西内战》，《马克思恩格斯全集》第 17 卷，人民出版社 1963 年版，第 358 页）公社的实际做法是，人民代表不仅要制定法律，而且也对这些法律的实施亲自负责。公社委员会的成员，“其中大多数自然都是工人，或者是公认的工人阶级的代表”。（同上书，第 358 页）

再如，宪政标榜三权分立，互相制衡。但现实中，三权分立并不是真实的。以美国为例，总统的行政权趋于膨胀，一权独大；法院既有司法权，又通过制作和适用判例享有立法权，还享有对立法和行政行为的违宪审查权；国会有权弹劾和审判总统及联邦最高法院法官，行使一定的司法权；司法部作为行政机关，享有对各种案件的调查、起诉权，行使一定的司法权；联邦最高法院法官是终身制，而州法院的法官由州议会选举或任命产生，常为兼职，年年更换，独立性甚小。（[美]汉密尔顿等：《联邦党人文集》，商务印书馆 2004 年版，第 407、408 页）虽然资产阶级学者鼓吹宪政的立法权是主权权威的体现，但在三权分立体制中，立法权必须受行政权和司法权的制衡，立法机关拥有的只能是一种残缺不全的主权，甚至在整个国家中找不到主权权威。所以，三权分立政治制度直接否定了资产阶级提出的“人民主权”原则，而不经民主选举产生的法院司法权通过违宪审查可以凌驾于经过民主选举产生的立法权和行政权之上，直接违反民主原则。宪政三权分立的本质是资产阶级不允许任何一个利益集团独掌全部国家权力。而三权分立、互相制衡制度正符合力量不相上下的各利益集团分享国家权力的要求，符合资产阶级的整体利益，即使常常造成内斗不断而影响效率也在所不改。因此，三权分立、互相制衡制度是资产阶级内部的畸形民主制，与人民大众参与国家管理毫不相干。

对“司法独立”，马克思特别揭露：“法官已失去其表面的独立性，这种独立性只是他们用来掩盖自己向历届政府卑鄙谄媚的假面具，而他们对于这些政府是依次宣誓尽忠，然后又依次背叛的。”（马克思：《法兰西内战》，《马克思恩格斯全集》第 17 卷，人民出版社 1963 年版，第 359 页）西方国家所有法官的推选任命必须得到大利益集团的支持，要不折不扣地为大利益集团服务。那些自愿报名担任无报酬兼职法官的，全部是资产者本人，他们为利益集团服务是不言自明的，何来“司法独立”？看看搞宪政的台湾法院对陈水扁贪腐案在陈水扁执政时和下台后的审判表现，足以印证马克思论断的正确性。

“社会主义宪政”论之所以不可取还在于，以非关键性的制度元素和理念掩盖了宪政的关键性制度元素和理念。这些非关键性的制度元素和理念有的已经写入社会主义国家宪法，如法律面前人人平等、联邦制（苏联实行过，但已失败）；有的被社会主义国家变通性接受，如市场经济、尊重和保障人权、宗教信仰自由、议会审议和批准财政计划等；有的仍为西方国家所特有，如新闻自由、人权无国界。而私有制、多党竞选轮流执政、三权分立、司法独立和军队国家化、中立化是宪政的核心必有制度，也是自由主义者所真正憧憬的政治体制目标。但“社会主义宪政”论却忽略了这些宪政的关键性制度元素和理念，忽略了宪政的整体制度架构，只强调宪政的非关键性制度元素和理念，似乎加入了人权国际公约，在宪法中规定了保障人权、法律面前人人平等、宗教信仰自由就算有宪政了，前面再冠以社会主义就可以是“社会主义宪政”了。客观上这会给人民民主制度套上宪政的枷锁，引导人民民主的国家逐步走上真正西方宪政的道路——苏联东欧国家就是沿着这条道路一路走来的。

### 三、毛泽东并不认为人民民主制度可以称为宪政

主张“社会主义宪政”的人说毛泽东专门撰文论述过“宪政”，并说“宪政就是民主的政治”。这是指毛泽东 1940 年 2 月在延安各界宪政促进会成立大会上的演说，题目是《新民主主义的宪政》。在文中毛泽东确实提出“宪政是什么呢？就是民主的政治。”但引论不能断章取义，毛泽东紧接着说：“我们现在要的民主政治，是什么民主政治呢？是新民主主义的政治，是新民主主义的宪政。它不是旧的、过了时的、欧美式的、资产阶级专政的所谓民主政治；同时，也还不是苏联式的、无产阶级专政的民主政治。”（《毛泽东选集》第 2 卷，人民出版社 1991 年版，第 732 页）

在文中毛泽东明确将民主政治分为三种：第一种是旧的、过了时的、欧美式的、资产阶级专政的所谓民主政治。毛泽东说：“那种旧式的民主，在外国行过，现在已经没落，变成反动的东西了。这种反动的东西，我们万万不能要。中国的顽固派所说的宪政，就是外国的旧式的资产阶级的民主政治。他们口里说要这种宪政，并不是真正要这种宪政，而是借此欺骗人民。……中国的民族资产阶级则确实想要这种宪政，想要在中国实行资产阶级的专政，但是他们是要不来的。因为中国人民大家不要这种东西，中国人民不欢迎资产阶级一个阶级来专政。”（同上书，第 732 页）第二种是苏联式的、无产阶级专政的民主政治。毛泽东说：“社会主义的民主怎么样呢？这自然是很好的，全世界将来都要实行社会主义的民主。但是这种民主，在现在的中国，还行不通，因此我们也只得暂时不要它。到了将来，有了一定的条件之后，才能实行社会主义的民主。”（同上书，第 732—733 页）第三种是新民主主义的民主政治。“我们中国需要的民主政治，既非旧式的民主，又还非社会主义的民主，而是合乎现在中国国情的新民主主义。目前准备实行的宪政，应该是新民主主义的宪政。”“什么是新民主主义的宪政呢？就是几个革命阶级联合起来对于汉奸反动派的专政。”（同上书，第 733 页）当时是抗日战争期间，中国既无民族独立，也无民主事实。中国共产党内有一些同志被蒋介石的所谓实行宪政的欺骗宣传所迷惑，以为国民党真会实行宪政。毛泽东在这篇演说里揭露了蒋介石的这种欺骗，将促进新民主主义的宪政变为启发人民觉悟，向蒋介石要求民主自由的一个武器。

至于毛泽东在文中还说“世界上历来的宪政，不论是英国、法国、美国，或者是苏联，都是在革命成功有了民主事实之后，颁布一个根本大法，去承认它，这就是宪法。”（同上书，第 735 页）这里，毛泽东将苏联与英国、法国、美国并列为“世界上历来的宪政”，是从宪法的产生规律有共性这个角度而言的，并非是指苏联也是英国、法国、美国式的宪政民主。而且该文仅此一处并列，其他论述则将苏联和欧美国国家划分得十分清楚。毛泽东在使用概念时不但未将宪政民主与社会主义民主混淆，还特别从中分出新民主主义宪政的概念，将中国共产党在抗日战争时期准备实行的宪政与英国、法国、美国的西方宪政区别开来。

毛泽东在以后的文章中再也没有使用过宪政这个概念，更没有肯定过西方的宪政民主。中国共产党的文件中也没有使用过宪政的概念。因为在 1940 年毛泽东就认为欧美式的宪政民主是旧的、过了时的、没落的、反动的东西，全世界将来都要实行社会主义的、无产阶级专政的民主政治。1949 年新中国即将建立，“有了一定的条件之后”，毛泽东再次著文《论人民民主专政》，直接称新

中国的民主政治为“人民民主专政”，以区别“新民主主义宪政”。中国人民在中国共产党的领导下已经取得了中国民主政治的巨大进步，为什么还要倒退回去搞旧的、过了时的宪政？人民民主制度的中国更没有必要去为资产阶级的“宪政事业”做贡献。

#### 四、人民民主制度绝不可以称为“社会主义宪政”

人民民主制度绝不可以称为“社会主义宪政”，其理由如下：

首先，人民民主制度与宪政是两种本质不同的政治制度。既然从两种基本制度架构的比较中已经可以看出二者的本质区别，在使用概念时就应明确将二者区别开来。

毛泽东结合中国国情命名的人民民主专政即实质上的无产阶级专政，是一个科学的概念，是马列主义的精髓。“只有承认阶级斗争、同时也承认无产阶级专政的人，才是马克思主义者。”（《列宁全集》第 31 卷，人民出版社 1985 年版，第 32 页）巴黎公社是最早的无产阶级专政的政权。马克思总结说：“公社的真正秘密就在于：它实质上是工人阶级的政府，是生产者阶级同占有者阶级斗争的结果，是终于发现的、可以使劳动在经济上获得解放的政治形式。”（马克思：《法兰西内战》，《马克思恩格斯全集》第 17 卷，人民出版社 1963 年版，第 361 页）恩格斯指出，公社革命就是“炸毁旧的国家权力并以新的真正民主的国家权力来代替”。（《马克思恩格斯全集》第 22 卷，人民出版社 1965 年版，第 228 页）这里，“新的真正民主”，就是人民当家作主，人民行使权力，人民管理国家。这正是无产阶级专政的民主制最本质的特征。既然马克思、恩格斯、列宁、毛泽东已经将工人阶级领导的政权命名为无产阶级专政或人民民主专政，以区别于宪政，我们就没有必要再倒退回去将人民民主制度称为“社会主义宪政”。

社会民主党的鼻祖考茨基在他专门写的一本小册子《无产阶级专政》（北京，三联书店 1958 年版）中，将无产阶级专政贬低为马克思偶尔说出的“一个词儿”。他引导欧洲各国社会民主党走民主社会主义道路，即空谈阶级斗争，但不触动资本主义制度，不用无产阶级专政代替资产阶级专政，而是在资本主义宪政架构内接受资产阶级现行宪法，参加议会多党竞选，争取多数选票，最终得到大资产阶级的承认与支持，能够参与轮流执政。因此，社会民主党也根本改变了工人阶级政党的性质。

我们在市场经济的前面可以加社会主义，是因为市场和计划都是经济建设的手段，并不能决定国家的性质。法律面前人人平等、社会主义市场经济、尊重和保障人权、宗教信仰自由、依法治国、建设社会主义法治国家，这些原则可以入宪，是因为宪法要反映和确认我国经济、政治改革所取得的成果，这些改革成果从不同方面完善了人民民主制度的经济基础和政治体制，但并没有改变我国的性质和基本制度。以我国签署联合国人权公约为例，我国根据自己的价值观和原则对公约的相应条款做了保留，使我国加入联合国人权公约也不会改变我国的性质和基本制度。我国社会并不存在大资产阶级的不同利益集团，人民民主专政也不允许分享国家权力，不会搞三权分立。如果我国的人民民主

制度被冠以“社会主义宪政”，就必然走上社会民主主义的道路，因为宪政是整体改变国家的性质、政权制度架构和社会发展的方向，而不是仅仅改变几个非核心的原则和制度。

宪政不符合我国的国情，党和国家领导人对此一再提醒全党。“人们往往把民主同美国联系起来，认为美国的制度是最理想的民主制度。我们不能搬你们的。……中国如果照搬你们的多党竞选、三权鼎立那一套，肯定是动乱局面。”（《邓小平文选》第3卷，人民出版社1993年版，第244页）“西方国家的一些人，总想把他们那套民主制度强加给我们，总想让我们实行西方式的民主。在这个问题上，我们同西方国家一直在进行尖锐的斗争。西方敌对势力打所谓的‘民主’牌，实质就是要实现他们‘西化’、‘分化’中国的政治图谋。我们千万不能上这个当。我国有十二亿多人口，搞西方的那一套三权鼎立、多党竞选，肯定会天下大乱。在这个问题上，我们的各级领导干部特别是高级干部头脑一定要清醒。”（《江泽民论有中国特色社会主义（专题摘编）》，中央文献出版社2002年版，第302页）

其次，依宪治国不是实行宪政，人民民主制度的宪法确认的社会主义国家基本制度和宪政的核心制度与理念从根本上是不相符的。说宪政就是有宪法并得到实施，反对宪政就是不要宪法和社会主义法治。这是混淆了宪法和宪政的关系。回顾历史就很清楚，宪法与民主制和宪政没有必然的联系。民主国家未必是宪政国家（例如古希腊、古罗马是奴隶制、封建制民主国家），有宪法未必有宪政（例如清朝末年的钦定宪法），宪政国家也未必是民主国家（例如大宪章时代的英国）。虽然社会主义国家和资本主义国家都有宪法，但宪法的内容和确认的国家基本制度是根本不一样的。

新中国成立和中国共产党执政以来，我们对实行社会主义民主法治重要性的认识不断加深，制定和通过了1954年、1975年、1978年三部宪法。三部宪法均确认我国国体为人民民主专政的国家；确认人民代表大会制度为我国的政体，规定我国的国家权力属于人民，人民行使国家权力的机关为各级人民代表大会；规定中国共产党执政所实行的政治协商、经济、军事、文化教育、单一制和民族区域自治、外交、国家机构等各项基本制度；规定公民享有的各项基本权利和自由。三部宪法对于巩固人民民主制度，恢复和发展国民经济，维护国家的独立主权，起了重要的保障作用。尽管中国共产党执政以来，在社会主义民主法治建设方面走过弯路，但是，决不能因此否定中国共产党对社会主义执政规律的探索和在社会主主义民主法治制度建设方面的伟大实践。

改革开放以来的1982年宪法及其修正案是我国的现行宪法。现行宪法是对前三部宪法的继承和发展，在国家的国体、政体和政治协商、经济、军事、文化教育、单一制和民族区域自治、外交、国家机构等各项基本制度及公民享有的各项基本权利和自由的主要内容上是一脉相承的。现行宪法通过宪法修正案的形式将我国在社会主义初级阶段改革开放取得的新经验加以确认，保障了改革开放的发展大方向不能偏离社会主义道路。尽管改革开放以来中国共产党的执政受到来自国内国际、党内党外各种颠覆势力的不断挑战，我国在具体法律的立法、执法、司法和法学教育过程中，也受到西方资本主义宪政理论的巨大

影响和干扰，但是，由于中国共产党对社会主义执政规律的不断探索和在社会  
主义民主法治制度建设方面的伟大实践，其各项基本制度被新中国的每一部宪  
法所确认，并一以贯之地得到实施，这为中国共产党的执政提供了坚强的法律  
保障。中国共产党领导的人民民主制度的巩固，保证了中国共产党的依宪执政、  
依宪治国始终沿着社会主义道路不断完善，蓬勃发展。

但西方主流国家并不承认共产党领导的社会主义中国是民主法治的国家，  
更不可能承认实施人民民主宪法的社会主义中国是宪政。不管是不是在宪政前  
面冠上社会主义，也不管共产党是不是依宪执政，他们都不会承认社会主义中  
国是宪政。

党的十六大提出，发展社会主义民主政治，最根本的是要把坚持党的领导、  
人民当家作主和依法治国有机统一起来，不断促进社会主义物质文明、政治文  
明和精神文明的协调发展。党的十七大强调，要依法治国，建设社会主义法治  
国家。党的十八大要求，要全面推进依法治国，实现国家各项工作法治化。社  
会主义宪法是国家的根本大法，是共产党领导的广大人民共同意志的反映。依  
法治国，依宪治国，使人民民主制度化、法律化，使这种民主法治具有稳定性、  
连续性和权威性，这是完善和发展社会主义人民民主制度的需要，是从大多数  
中国人民的根本利益出发的，而不是为了要“保护少数”去搞宪政。这里，须特  
别注意，切不可单独提“宪法和法律至上”。因为党的事业至上、人民利益至上  
和宪法至上是不可分离的整体，在党的领导下，为了人民的利益，通过法定程  
序，宪法和法律都是可以修改的。单独提“宪法和法律至上”，容易掉入“宪政”  
的话语圈套，这也是“宪法和法律至上”口号的局限性。

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