Constitutional socialism has become a theory in China in recent years and has rallied support from influential scholars in political, legal, economic, and philosophical fields, such as Jiang Ping, Cai Dingjian, Wang Changjinag, Guo Daohui, Li Weiguang, and Hua Bingxiao. These scholars believe that Chinese socialism needs both market economy and constitutional politics. Convinced by China’s success as a socialist country with a thriving market economy, they insist that public ownership of productive means and wealth should be preserved; they propose to adapt constitutionalism into China’s political system to guarantee her further political, economic, cultural, and social developments. Scholars argue that constitutional socialism originates in civil society and is guided by public opinion; it enables citizens to claim their public power and to exercise their freedom and equality through orderly participation in constitutional politics. The scholars’ main concern is how to restrict the power of the ruling CCP and the state in order to guarantee citizens’ human rights. They argue that a good constitution respects people’s sovereignty, attends to public opinion, restricts the power of the government, and protects human rights and liberty. A good constitution in full practice can legitimize the CCP, check and balance the power of the government branches, and protect the people’s rights. They promote the supremacy of the constitution, the division of power, a democratic political life, the protection of people’s rights, and the inspection of unconstitutional activities.

This chapter situates constitutional socialism in the context of China’s economic reform and the global crisis of communism since 1980. It will trace the evolution of the theory and its main proposals for China’s political reform, such as to democratize the CCP, to reform the National People’s Congress, to practice intraparty or interparty pluralism, to combine people’s sovereignty with the CCP leadership, to promote civil society and social power, and to constitutionalize taxation. The last section explores the implications of the theory for other Asian socialist countries—Vietnam, Laos, and North Korea.

The background
Constitutional socialism has been developed in the context of China’s economic reform, the breakup of the Soviet Union, and the global failure of doctrinaire communism. Since China concentrated on economic construction in 1978 and successfully transformed the
country into a market economy in the late 1990s, her stunning economic achievements have come together with appalling problems—the polarization of the rich and the poor, the skyrocketing price of housing, the inadequate education and public health facilities, pervasive environmental issues, deteriorating morale, and increasing social tensions. If the CCP could enjoy a performance-based legitimacy in the eyes of most Chinese citizens during the two decades of fast economic growth, then the slowdown of its economic growth since the global economic crisis in 2008 has only intensified its need for political reform. Chinese people can see clearly that the root of all problems lies in the corruption of party-state officials who run its backward political system.

As early as 1980, Deng Xiaoping identified China’s political problems as bureaucracy, power overcentralization, patriarchy, and life tenure of leadership. He criticized the highly centralized and authoritarian management in many working units—the top leaders monopolized all the power and acted as authoritarian dictators. Both wrong thinking and a flawed political system caused such problems. In the first decade of political reform (1979–89), according to a leading scholar of constitutionalism, Cai, the state upheld the spirit of democracy and the rule of law, with a focus on eliminating dictatorship. Intellectuals in humanity championed conceptual changes and demanded more freedom, democracy, and election, but the state leaders preferred to keep the current political system while introducing democracy. The lively political atmosphere from 1978–82 was a response to the end of the Great Cultural Revolution—the CCP learned the lesson from its previous mistakes and revised its constitution to bring about such changes: (1) adopt multi-candidate elections; (2) improve the National People’s Congress (NPC) and make its Standing Committee a major legislative institution; (3) increase the autonomy of local governments by establishing local Standing Committees; and (4) abolish the life tenure of the party-state leaders. In 1986, Deng proposed to separate the party from the state, reduce the size of the government, and give more central power to the local governments. He believed that China needed democracy but not the Western model of checks and balances (Cai 2011). In other words, the authority of the CCP should not be challenged.

When the Soviet Union dismembered and the doctrinaire Marxism/Leninism failed, most communist states had to adopt political and economic reforms to ensure the survival of their regimes. The Communist Party of the Soviet Union had monopolized all political, economic, and ideological powers under Stalinist authoritarianism, which overemphasized developing the productive force yet neglected democracy and citizens’ rights. The Soviet state had ruled out civil society and individuals’ liberty. Through centralizing power, the Soviet Union formed a totalitarian state to compete with Western countries as a superpower; yet her people had a hard time identifying themselves with the state.

The success of China’s economic reform and the flaws in her repressive political structure have stimulated Chinese scholars to construct creatively plural socialist theories to accommodate its reality and search for solutions to its political problems. These scholars realize that contemporary socialism does not need to overthrow capitalism and that the people have the ultimate right to determine whether a social system works. Jiang, the former president of the Chinese University of Political Science and Law, directs the party-state’s attention to the needs of the Chinese people—they want more freedom, dignity, justice, and democracy; they make decisions based not on ideology but on how many rights and benefits, and how much happiness a political system can bring them (Jiang 2011a).

The market economy in China has generated social demands for political reform. Since its previous economic achievement was based on the exhaustion of resources, labor, and land, and could not reproduce itself in the long run, further economic reform will have to depend on the transformation of her political and legal system. Only when the state has a democratic...
system and protects human rights can economic prosperity last long. The earlier economic
development has led to the collapse of social values, rampant corruption, and violation of
law. To create the most favorable investment environment, money has married power in
many local governments. Economists have replaced intellectuals in championing political
reform. Although the government’s function has transformed, its power has increased in the
process of competing for interests with the society.

Although the National Congress of the CCP has in recent years brought the issue of
political reform to its agenda, constitutionalism scholar Cai finds that much has been talked
about on reforming the party’s leadership and changing its administration, but little change
has been made. Discussions on how to diversify the forms and broaden the channels of
democracy; how to democratize the party’s election, decision-making, management, and
supervision; and how to protect people’s rights to know, to participate, to express them-
selves, and to supervise the party are all up in the air. But the CCP is still in charge of every-
thing and coordinates every interest—it prescribes the norms for the party committee, the
NPC, the government, the National People’s Political Consultative Conference (NPPCC),
and the people’s organizations. The party’s will is turned into the state’s will through legal
procedures, and the party-recommended candidates become leaders of the government. A
positive change is that civil society has been more active, and the internet has provided
citizens greater freedom to express themselves, monitor state policies, and supervise govern-
ment officials. To make the government more open and responsible to the people, the then-
premier Wen Jiabao in 2004 spoke of establishing a democratic system of decision-making,
working under the rule of law, and bringing the party under the supervision of the NPC,
the NPPCC, social media, and public opinion. Citizens increasing right-defense (weiquan)
movements have pushed the political reform forward (Cai 2011).

Revisiting socialism and constitutionalism

Theorists in China have developed new understandings of socialism in the context of
China’s political reform. Jiang suggests that “new socialism” at the economic level means
“rich people, strong nation”—only when the people accumulate more material wealth will
the state be financially strong; at the social level, this means fair distribution of public wealth,
which leads to a harmonious society; at the political level, it means constitutionalism—the
supremacy of the constitution, the checks and balances of power, the people’s rights to elect
leaders, the protection of citizens’ rights, and the establishment of an inspection board to
check on unconstitutional activities (Jiang 2011a). Jiang believes in a good balance of power
among the state, the society, and the individuals, and supports the societal power in promot-
ing public affairs and interests (Jiang 2012).

Opposing the old socialism, which emphasized the power and supremacy of the state,
famous legal scholar Guo proposes that new socialism should focus on the society—the rights
and power of citizens and their social organizations (Guo 2012, 675). A well-known Xi’an-
based scholar of Chinese constitutionalism, Hua defines contemporary socialism as a consti-
tutional society in which universal equality, liberty, democracy, justice, and happiness should
all be realized. He maintains that the civil society is the base for constitutional socialism,
and multiple forces should jointly govern the state (Hua 2011, 140). Zhou Shuzhi at Sha’anxi
Provincial Social Science Academy revisits the Scientific Socialism of Marxism, which is
based on developing a productive force, respecting private property in the civil society, and
matching material rewards to a person’s labor. Zhou argues that the ultimate goal of Scientific
Socialism is democracy and proletarian rule under constitutionalism (Zhou 2012, 760).
Advocates of constitutional socialism criticize Stalinism as fake Marxism because the communist party leaders and privileged bureaucrats, rather than citizens, controlled the social wealth. They disapprove of the authoritarianism of Mao Zedong and Deng Xiaoping in merging the party with the state, practicing personal worship, and neglecting the rule by law. These scholars suspect the utility of neo-Confucianism, despite its pragmatism and emphasis on people, and question liberal socialism in Northern Europe, which is centered on private ownership, despite its practice of constitutionalism, mixed private ownership, market economy, and social welfare. In these scholars’ opinions, neoliberalism in China trusts the American values of free market and democracy too much, neglecting the money politics in American presidential elections and the discordance of American liberalism at home yet hegemony abroad. The scholars also disagree with Nativists, who claim to be grassroots elite and are against intellectuals, and find their proposal of equalizing wealth and elevating morality unpractical (Zhou 2012).

Additionally, advocates of constitutional socialism find that the main weakness of China’s reform is the lack of a constitution-based general strategy to address all problems of the country. Top CCP leaders have realized the necessity of the checks and balances of power because the corruption has challenged the legitimacy of the party. In 2004, the then-premier Wen told an American journalist that the constitution must be the fundamental criterion for all government activities, and no party, organization, or individual was above the constitution and the law.

Constitutionalism has been developed within the capitalist economy through the victories of bourgeois revolution against authoritarian monarchs in different countries. It borrowed ideas from ancient Greek democracy and Roman Republicanism. Gao Fang, a theorist of constitutionalism, summarizes the fact that global constitutionalism has evolved into four distinctive models: In Britain, it has been a compromise between the parliamentary and the constitutional monarchy; in the United States, the absence of an authoritarian monarch and the bourgeois’ victory in the war of independence has turned the country into a presidential republic; the turbulent French Revolution has finally settled into a semi-presidential constitutional republic; in Japan, Meiji constitutionalism had to accommodate the institution of a Shinto emperor (Gao 2011).

Constitutionalism has its foundation in democracy, and it operates by following the people’s will. A Wuhan-based professor of political science, Yu Chongsheng argues that constitutionalism is the foundation of modern politics, and its basic principle of checks and balances of power is key to all modern polities (Yu 2011a). Although several constitutions were issued in modern China, Chinese experiments with constitutionalism have largely failed because of her long tradition of an absolute monarchy, her slower development of commercial economy, and the presence of imperialist powers. Late Qing reformers attempted a constitutional monarchy, but it did not work. The early Republic of China experimented with a Presidential Republic, which did not shape the course of modern China. The Provisional Constitution of Republic of China, issued on March 11, 1912, declares people’s sovereignty and the division of power among five branches of the government: the legislative, the executive, the judicial, the examination, and the censor. But the Nationalist Party ruled in an authoritarian way and eventually lost mainland China to the CCP in 1949. The Constitution of the People’s Republic of China was issued on September 20, 1954, and declared that the new China is founded on the principles of socialism and democracy. But the CCP leaders ruled China with no regard for the constitution.

Constitutional socialism contains traditional Confucian wisdom of benevolence and kingly ways, and borrows positive values from bourgeois constitutionalism—constitutional politics, democracy, the rule of law, human rights, and the checks and balances of power. Its advocates propose using the social power of citizens and their civil society to supervise and restrict the state power without challenging the authority of the state. Legal scholar Guo insists that civil society should be the basic engine in constructing constitutional socialism. He finds there
were different civil societies and states based on different economic bases; in the civil society of socialist China, the productive means and the produced wealth should belong to all citizens. Marxist civil society refers to the economic base of the modern state’s superstructure. Since citizens’ social and economic lives are the foundation for their political lives, the state should not interfere with citizens’ private lives, individual rights, and thinking (Guo 2012, 680).

Constitutional socialism proposes applying the universal constitutional values (people’s sovereignty and citizens’ human rights) to define, restrict, and develop socialism as well as to defend socialist democracy. At the First National Symposium on Socialism in 2006, constitutional economic professor Hu Xingdou brought up the concept of constitutional socialism. His usage won general approval and then was circulated by the socialist theorist Jiang (Hu 2011, 85). Constitutionalism contains three elements—democracy, human rights, and the rule by law. It is superior to liberal democracy because it is controllable—its process is orderly and transparent, and its result is partially predictable, thus it can avoid violence. Currently, socialist China has a market economy. Without constitutionalism and the checks and balances of power, it runs the danger of becoming the market economy of the privileged, which leads to rampant corruption, injustice, and polarization. Hu hopes that constitutional socialism can check the power of officials, restrict the capital operations, and improve people’s livelihood (Hu 2012, 683).

In 2011, Xi’an scholar Hua published his monograph Overcoming Liberalism: On Constitutional Socialism, the first comprehensive work exploring the relations between constitutional socialism and the political reform in China. Hua’s theory has no intention of challenging the dominant position of the CCP, and it aims at socializing the state from a structure above the society into one that obeys the society. He argues that constitutional socialism brings democracy under the rule of the constitution and strives for the common interests of the community of free individuals; the theory upholds the priority and the supremacy of the constitution, respects citizens’ freedom and rights, and recognizes the importance of civil society. Hua disapproves bourgeois liberal constitutionalism as a class-based democracy, which defends the private ownership of the capitalist and his exploitation of the workers (Hua 2012). He argues that constitutional socialism is people’s democracy, which has a scientific structure and public ownership of the economy, guaranteeing justice, and social harmony. Hua declares that only constitutional socialism can lead to a harmonious socialist society that guarantees individuals’ complete development and (Hua 2012, 690).

Bringing the communist party under the constitution

In the first half of the twentieth century, constitutional protection of citizens’ freedom of association had led to the founding of authoritarian parties that conducted unconstitutional activities. To avoid that situation, twenty-two countries’ current constitutions include specific regulations on how to normalize the political parties. The CCP as the ruling party in China has not followed the constitution. How should the constitution be employed to discipline the activities of the CCP and balance its liberty and publicity? Some scholars argue that the CCP has to reform itself into a constitutional party, which is more legitimate in people’s eyes, and the elections and decision-making process within the CCP should be democratic. Wang, from the Party School of the CCP, which trains top leaders of China, emphasizes that the CCP is not above the constitution and all of its activities must observe the regulations of the constitution. The CCP should provide a pool of candidates for its members to choose from, adopt competitive election within the party, and separate the party from the government (Wang 2011a, 54).
Legal scholar Ye Haibo elevates constitution above all parties and argues that the constitution guarantees the freedom and equality of all parties, and promise subsidies to all parties. He proposes that each party should practice intraparty democracy, manage its own finance, and prohibit unconstitutional activities (Ye 2011). The interparty equality can prevent the strong party appropriating state apparatus for its own advantage and suppressing the weak ones. Any party violating the constitution should be deprived of political participation, and the judiciary (especially the constitution protection board) should have the exclusive right to dissolve unconstitutional parties. Since a party does not have other funding except membership fee and citizens’ donation, it has to rely on the state’s support. The state should provide subsidies to all parties to support their public and democratic functions and release their financial burdens. This helps avoid the collusion between the party and unclean money, prevents interest groups corrupting the party and manipulating the political environment, and protects citizens’ equal political participation.

Ye differentiates the external freedom and the internal freedom of the party: The former means that the state cannot interfere in the citizens’ freedom of association nor in the party’s decision on its organization, membership regulation, and participation in politics. Citizens and parties have the right to appeal for the state’s noninterference. The latter refers to a party member’s freedom to participate in the party’s activities and influence the political will of the party. A party should encourage its members’ broad participation, guarantee their free will, and avoid being controlled by a minority of members. The state can make democratic principle mandatory for a party to guarantee its members’ freedom within the party.

Legal scholar Shi Wenlong in Shanghai explores how to institutionalize the CCP leadership and establish a stable and universally accepted model for such leadership. He proposes to make the CCP leadership in national and social lives specific and detailed, and argues that the CCP should follow the law in transforming its political leadership into administration, a process that helps legalize the administration of the CCP. It is necessary to construct legal theory on the party’s administrative power and activities. He proposes that The Law on the Relation between the Party and State Institutions be made to normalize and legalize the party’s administrative power (Shi 2011).

Political scholar Zhao Shoufei investigates how to re-allocate the power of the party and the state, and transform the governance model from the dualism between the state and the society into the model with tri-players—the state, the party, and the society (Zhao 2012, 728). He notices that Western parties come from the society, but the CCP was established before the founding of the PRC; so, the CCP is not a party from the society nor a constitutional party. The CCP has ruled the state not by the constitution and the law but by its own administrative policies. He argues that such policy-based governance should be replaced by the rule of law.

**Improving the NPC**

On October 19, 2005, the white book On Constructing Democratic Politics in China defines the democratic practices in China as follows: the election at the NPC, the negotiation between the CCP-led multiparty cooperation and the NPPCC, the autonomous rule of minority region, local elections, protection of human rights, and the democracy of the government and the judiciary.

Zhou Shuzhi proposes to establish an Inspection Committee within the NPC to check and discipline unconstitutional activities by any individual or organization, and convert the military police into constitutional police (xiangbingdui) to defend the constitution and constitutionalism (Zhou 2012, 607). Hu Xingdou aims at making the CCP an inside player of the Congress rather than an outside leader. He suggests that the Chinese president should be the chair of the
Congress, and all members of the Political Bureau of the Central Party Committee be made members of the Standing Committee of the NPC, and noncommunist representatives should be protected. He proposes to choose people’s representatives through competitive elections so that the elected can truly represent the people, as well as to make all representatives salaried professionals so that they can devote themselves to people’s needs and will (Hu 2012).

Having realized that authoritarianism is not socialism, Hua envisions that constitutional socialism nurtures civil society and permits the participation of multiple interests and the competition of two teams for better policies within the NPC (Hua 2011a, 458). Without challenging the CCP dominance in current socialist model, he proposes that the constitution should restrict the activities of all agents of public power and the state should practice checks and balances of power. His solution is to transform the NPC into a “complex (fuhe) parliament, with one house representing the rational and critical public opinion (gongyi), and the other house representing the irrational mass opinion (zhongyi). Through democratic negotiation, people’s will, originating in private interests, can be molded closer to the consensus of the public opinion. The Standing Committee of the NPC can be reformed into the House of public opinion, and NPPCC can be integrated into the Congress and made into the House of mass opinion. Thus, the NPC can be divided into four branches. The House of public opinion, as a professional organization, has the legislative power; the House of mass opinion, as nonprofessional organization representing people, has the examination and approval power; and the State Council has the executive power and the judiciary (Hua 2011b, 171).

**Pluralism: intraparty or interparty?**

To democratize the ruling CCP, some scholars suggest that the party should tolerate differences and form multiple factions, like the LDP in Japan. In negotiating constitutionalism and China’s single-party system, political scholar Chu Jianguo at Wuhan University argues that single-party constitutionalism is a mixed polity, which combines the CCP leadership, people’s sovereignty, and constitutionalism. He recognizes the importance of civil society—which is organized and managed by a written constitution representing citizens’ basic rights and duties—and the necessity that the government should be responsible to people and their representatives. The key to single-party constitutionalism is to balance the elected NPC and the nonelective ruling CCP. The power of the CCP should be restricted to the executive power, leaving the legislative and judicial powers to the NPC. The power of the NPC should be strengthened so that it can restrict the behaviors of elected leaders, make specific laws, and supervise the government functions. Chu proposes to transform the NPC into a competitive institution and make people’s representatives salaried professionals. Although that will increase the government expense, it can reduce corruption and make politics more transparent. Since county-level representatives are directly elected, a third of the candidates should be recommended by the party, a third by the people, and a third nominated jointly by the party and the people. Chu argues for the independent finance and personnel of the judiciary to guarantee its independent functions. All judges are to be supervised by the NPC (Chu 2011, 116).

Other scholars argue that constitutional socialism requires the ruling CCP to be a constitutional party, which guarantees constitutionalism and multiparty cooperation. Political scholar Xiao Gongqin proposes a new authoritarianism, which is favored by the party to certain degree. He suggests that the CCP should nominate two executive teams to compete for organizing the cabinet within the NPC, which helps transform the interparty competitions into intraparty contest for better policies. Citizens’ freedom of speech, assembly, and association should be protected, and people’s representatives at the NPC should be
Constitutional socialism

The new political system will have the CCP representing the public consensus, two teams competing for the cabinet, and multiple parties participating in decision-making (Xiao 2012, 657).

Wang from the Party School of the CCP argues that the key to political reform is to keep the political communication among all players open and dynamic; one party or multiple parties is only the matter of the form rather than the essence of democracy. Developing democracy within the ruling CCP goes with the trend of political communication since democracy involves the interaction between the mass and the public power. Public power originates from the mass and relies on their authorization to operate. The mass can criticize and inspect the operation of the public power, making its result approvable. By receiving feedback from public criticism, the public power can adjust its deviation and improve its legitimacy. The volume of political communication is determined by the level of the developments of market economy, civil society, and mass media. The smaller the difference between the amount of political negotiation (goutong) and that of political communication is, the more stable the political system. Wang finds the carrier of political communication has extended from parties to civil organizations and highly developed media. Sales associations often have better strategies and channels in defending group interests in the market economy, and internet and cell phones spread news fast and more accurately. The political reform should nurture, support, and direct the development of civil organizations. The CCP can expand its influence by using civil organizations to attract people and new media for better outreach. Unfortunately, the CCP has not thought of how to translate new practices into mechanism, procedures, and rules to follow (Wang 2011a, 54).

**Developing civil society and social power**

Constitutional socialism seeks to restrict the power of the state and balance the power and authority of the government with citizens’ rights and freedom. For political reformers, the goal of China’s reform is to reduce the state power and increase the power of the society. To correct the socialist state’s interference in culture, economy, sports, and family lives, the reforms have tried to liberate the society from the state and give some state power to the local government. Jiang, former president of the Chinese University of Political Science and Law, finds that social power begins with civil society and is the merger of public law and private law, public rights and private rights. Central to private rights is freedom, the core of social rights is autonomy, and the key to state power is coercion. Private right becomes social right if common interests become involved—e.g., environmental issues as well as educational and consumer rights. Social rights include education, scientific research, public health, as well as culture among other things, and are the properties of the nongovernment organization (NGO). Social organizations fill up where the state power is deficient and are the lubricant between the government and private rights. To build a harmonious society, private rights should be fully respected and protected. State power, social power, and private power should be reasonably allocated, and all play active roles (Jiang 2011b).

Constitution scholar Li Haiping at Jilin University explores how people’s basic rights have changed with the rise of social organizations. A social organization is self-organized, self-managed, self-serving, and self-developing for the common interests of its members; its self-rule means its broad participation in public affairs (Li 2011a, 311). No organization and individual can interfere with its activities as long as it abides by law. A social organization’s self-rule defends human dignity and reflects the constitutional principle of people’s sovereignty. The purpose of such self-rule is to develop the freedom of the organization to participate in political life from being interfered with by the state. Social organizations’ self-rule means self-determination, self-discipline, self-govern, and the right to noninterference.
Yu Keping from Peking University proposes the party-state nurtures and supports the social organizations, bring them under the rule of law, and adopt a joint governance of the state and society. Government at all levels should attract social organizations to participate broadly in the policy-making, encourage them to be involved in creative social management and public service. Since the economic reform, civil society has emerged and citizens’ awareness and quality has improved. Social organizations have not only increased in number dramatically but also played important roles in economic, political, and cultural lives. Such organizations promote economic cooperation and development, create job opportunities, make possible citizens’ participation, and build the mutual trust between citizens and the local government. They have helped relieve poverty, promote social welfare, shape the civil norms, maintain social unity, and enrich people’s cultural lives. Yu assesses that the activism of social organizations has pushed the government’s policy-making to be more scientific and democratic (Yu 2011b, 2).

Legal scholar Guo argues that civil society (including nonruling parties) has the right and the ability to participate in state and public affairs. As the voluntary organizations of different interest groups, civil society acts on behalf of the public. Through civil society, scattered citizens come together to centralize their social will and turn their private interests into public ones. On the one hand, civil society organizes and educates citizens, speaks for their interests, and defends their freedom and rights. On the other hand, civil society interacts with the government, supporting, supervising, and restricting the power of the government. Guo maintains that a robust civil society is the condition for the democratization of the state and society (Gao 2011).

Political scholar Li Yang in Xi’an argues that public opinion originated in civil society can criticize the government and comment on policies as long as it abides by law; and the constitution should protect the political speeches on citizens’ public interests. Only when citizens can discuss politics in the public sphere in a democratic way and formulate public opinion can those isolated and scattered citizens form the public (gongzong). Having a rational, autonomous, and deliberative public is the necessary condition for the civil society. Public opinion is formed in the civil society through citizens’ participation, reaching consensus, and building mutual trust. Public opinion does not need to be unanimous, and is authentic only when the discussion is free and differences are tolerated. Even when the state has to restrain the freedom of speech to protect certain interest, it can only exercise subsequent punishment instead of prior restraint. To keep public opinion alive, citizens should have access to information on the government and public affairs, and mass media is the most important channel for them to gather such information. Li Yang finds civil society in China is limited and inconsistent because China lacks the stable sociability for a democratic public (Li 2011c, 240.

**Taxation based on constitution**

People’s complaints about taxation and corruption have directed political scholars’ attention to the legislative problems of taxation. Li Weiguang, a specialist on taxation argues that the constitution should be the foundation for the Tax Law, and it should regulate every link of the taxation process. The government must follow the constitution and Tax Law in collecting taxes and raising financial income, and the public must pay taxes in order to enjoy the public facilities and services provided by the state. Only when taxpayers pay their taxes can they enjoy their constitutional rights, and can the state have the resources to provide satisfying public services. Li defines taxpayers’ rights in taxation as such: They can reject any surcharge beyond the stipulations of the constitution and the Tax Law, participate in the entire process of tax collection, and require the government to provide public facilities and
services according to their needs. Li also emphasizes that taxpayers can supervise government’s financial activities through their elected representatives at the NPC, and all taxation by the government has to be approved by the NPC.

Li first introduces the characteristics of constitutional taxation: (1) Citizens follow the Tax Law and turn in certain amount of their property to the State Taxation Administration, thus enabling the government to perform public services. (2) Taxation is a legislative issue and only the representatives at the NPC can make laws on all taxes and budgets by following legal procedures. (3) If the Legislature authorizes the government or other institutions to take charge of a specific tax issue, it should be constitutional and specific on the range and the duration of such authorization. (4) The Constitution and the Tax Law should clearly define the basic tax system and policy, supervise the government’s tax collection and distribution, and guarantee citizens’ minimum living cost so that after taxation they still have enough to maintain themselves and improve their lives and production. Whether this principle is followed or not distinguishes a legitimate government from an authoritarian one. (5) Citizens have the right to decide on the types, the quantity, the quality and the price of public services provided by the government, to demand the entire process of tax collection and distribution open and transparent, and to keep the government administration under their supervision and control. If a tax secret needs be kept, its nature and duration should be clearly defined through the legal procedure. (6) The Constitution and the Tax Law should treat every citizen equally. Taxpayers with the same taxability should be taxed based on their income levels; taxpayers with different taxability by how much public benefits they have received from the government. (7) Citizens’ tax duties are defined by the Tax Law and change as the Tax Law revises, but their property rights should never be violated. If the government or the tax institution violates the law and causes citizens property loss, compensation should be made to the victims, and the government personnel responsible should be legally punished. (8) When a new Tax Law takes effect, all taxation belonging to an earlier period should be processed according to the old Tax Law.

With an ideal model of constitutional taxation in mind, Li finds many deficiencies in China’s constitution that lead to her current tax problems. Above all, the constitution does not clarify that the NPC monopolizes the legislative power to taxation. More than eighty percent of China’s current Tax Laws are temporary regulations and acts issued by the State Council with the authorization of the NPC. In principle, the government should be excluded from making the Tax Law because it benefits from taxation and provides public services, such exclusion helps prevent the government from abusing tax power and reducing its public services. Yet the executive power of the state has not only trespassed the legislative power but also deprived the tax legislative power of the local governments. Second, the constitution does not restrict the authorization of legislative power over taxation. The NPC can only authorize legislative power on a specific tax rather than give out legislative power over general and undefined taxes. In reality, many administrative institutions in China have very broad tax legislative power. Third, the constitution does not require the government to abide by law in its tax collection. Last, the constitution only emphasizes citizens’ tax duty without mentioning their tax rights.

Li prescribes these principles to be added into the constitution: (1) Taxation should follow the principles of justice, righteousness, and protection of human rights. Tax collection and abolition must abide by law. (2) The NPC should clearly define the basic tax system, taxpayers, tax types, tax rate, tax deduction, and exemptions. (3) The NPC monopolizes the tax legislative power. It can authorize a specific tax power to the government or other institutions but not unlimited and undefined legislative power over taxation. (4) Taxpayers have the
rights to participate in tax legislation, approve tax collection, supervise the use of tax money, keep minimum living expense nontaxable, pay taxes following the proper procedure, receive judicial welfare, and be informed on finance and taxation. (5) The Supreme People’s Court, the Constitution court, or the Board of Constitution Protection should supervise the administration of Tax Law for any unconstitutional acts. (6) Citizens only need to pay taxes approved by the NPC and have no obligation to pay taxation from other state institutions.

In addition, Li proposes to revise the Legislative Law. The Tax Law should differentiate the basic tax system from a nonbasic system and restrict the arbiter liberty of taxation institution. Clear regulations should be made on the government’s power in collecting and using taxes and the grace period for tax correction, as well as specifying the penalty amount. The legislative or judicial interpretations are needed if legal ambiguity and tax administration problems occur. The entire taxation process should be transparent, including tax legislation, tax origin, tax system, tax collection, tax usages and expenditures, tax policy adjustment, and all related legal procedures. Financial and taxation institutions should provide accurate and detailed plans and accounts to society.

Li proposes that the Tax Law should draw a clear demarcation between government’s right to collect tax and citizens’ ownership to their property—taxpayers are the owners and rulers of national financial resources and the state is only the manager. The state collects taxes based on taxpayers’ collective needs, provides social security and good public services, and guarantees the financial activities of the government meet the public interests. All new taxes or increased tax rates are only legitimate after they are approved by the NPC. Taxpayers can decide on what kind of government they want, demand the government to be thrifty, and resist government overexpansion. Financial legislation should follow the principle of protecting taxpayers’ legislative and supervising rights. Only when taxpayers participate in making financial decisions can their relationship with the state be smooth.

Li maintains under constitutionalism, taxation is legitimate and just—approved by legal procedure and used for improving citizens’ welfare. It is checked by moral principle—for improving people’s welfare, and social discipline—everyone has to pay and there is no exemption for the privileged. Those with same tax liability and income should enjoy the same welfare after paying the taxes, those with different tax liability should have different tax burdens. A good tax correction system allows people to make timely correction. The government should defend social security, eliminate terror, benefit the entire society, and defend citizens’ freedom, rather than rob, enslave, and oppress them (Li 2011b)

Constitutional socialism for other Asian countries?

Constitutional socialism commits to the rule of law, human rights protection, and effective and accountable governance. It has the potential to provide long-term political stability and sustainable development. It can be related to other single-party socialist states like Vietnam and Laos—both have moved away from centralized economic planning and emphasis on markets since the mid of 1980s. Vietnam has adopted socialist-oriented market economy and utilized state-owned corporate management models. The government encourages private ownership, economic deregulation, and foreign investment while maintaining control over strategic industries. Vietnamese economy has achieved impressive growth in agricultural and industrial production, construction, exports, and foreign investment, but the reforms of the Communist Party of Vietnam (CPV) have caused income inequality and gender disparities.
Constitutional socialism

The CPV is the only legal party in Vietnam and its ruling position is consolidated in the constitution. The political reform in Vietnam since 1986 has focused on readjusting the operation of the CPV—separating the party from the state, the government, the military, and the law; establishing institutionalized system for political participation; strengthening the supervision and balance of power; and improving the CPV administration to match the developing market economy. The political reform is moving the country away from “party-rule” or “rule by man” toward rule of law. To correct the authoritarianism and life-long leadership in the period of 1957–85, the CPV revised its regulations in 1986, limiting the party secretary to no more than two terms, and institutionalizing the age requirements for party leaders to keep leaders young. The CPV has adopted the collective leadership of Central Secretary Office and strengthened the supervision of the Central Committee. Elections for important leadership have practiced multi-candidate competitions, and candidates’ information are open for party members and citizens’ examination.

Since 2001, the drafts of political reports have been publicized before each National Congress of the CPV to ensure the CPV can absorb wisdoms within and without broadly. In 2002, the CPV introduced the inquiry system, granting every member of the Central Committee the right to raise questions and get satisfactory answers from all other members, the Central Political Bureau, the Central Secretary Office, and the Central Inspection Committee. In 2006, the party secretary was elected through competitions between two candidates. In May 2010, provincial party elections also adopted multi-candidate competitions, and twenty percent of counties under each province practiced direct election for party secretary and vice secretary. At the eleventh National Congress of the CPV in 2011, the election for members and supplementary members of the Central Party Committee also adopted multi-candidate competitions. However, the CPV firmly rejected multiparty system and the idea of checks and balances of power.

The achievement of political reform in Vietnam testifies that the vitality of single-party system lies in its institutionalized competition and democracy within the party. Even under single-party system there is still room for expanding democratic politics. The key is whether the ruling party dare face competition, whether it has the confidence to turn itself to people’s appraisal and choice, whether the party can listen to people’s will, win their hearts, and absorb them to participate in political reform in an orderly way (Wu and Zhang 2012).

Constitutional socialism gives citizens more power in electing their representatives and influencing the decisions that affect their lives. Its proposal of party reform and emphasis on civil society, government transparency, and people’s access to information is in the same spirit with Vietnamese political reform. The Vietnamese constitution of 2014 stipulates the power of authorities to override human rights if they deem it necessary. Vietnam has an impressive level of internet penetration, but her citizens’ freedom of speech, assembly, and association in the cyberspace are not guaranteed. Many journalists and online activists continue to suffer harassment or remain in prison for expressing their views. Only when a good constitution can restrict the power of the party-state and protect human rights will Vietnamese political reform be more successful.

Lao People’s Revolutionary Party (LPRP, the communist party of Laos) had an intimate relationship with the VCP because of their shared revolutionary struggle. The Vietnamese had numerous channels to convey their influence—party, military, and economic. Thus, Lao People’s Democratic Republic closely followed Vietnam’s policy line until the late 1980s. Laos has achieved sustained growth since her reforms, averaging six percent a year since 1988. But the subsistence agriculture still accounts for half of GDP and provides eighty percent of total employment. LPRP monopolizes political power but leaves the operation of the economy to
market forces. It does not interfere in the daily lives of the Lao people, provided they do not challenge its rule. Attempts to police the religious, cultural, economic, and sexual activities of the people have been largely abandoned, although Christian evangelism is officially discouraged. The state controls media but most Lao have free access to Thai radio and television, and can travel fairly free to Thailand. Modestly censored internet access is available in most towns, but those who challenge the communist regime receive harsh treatment. Constitutional socialism emphasizes the constitutional rule of the ruling party and thus points to a direction for the political reform in Laos. If the LPRP brings itself under the constitution, democratizes the party, and tolerates civil society, its political reform can be more dynamic.

North Korea is a product of its all-pervasive propaganda, which penetrates in every aspect of daily life. Challenging the assumption that North Korea’s ideology was Juche, Stalinism, Confucianism, or some combination of them, Brian Reynolds Myers argues that the Democratic People’s Republic of Korea (DPRK) is an ethnocentric nationalist state led by its “beloved” leaders Kim Il-Sung and Kim Jong-Il, who can protect North Koreans to oppose the South, where American influence has defiled the Korean culture and blood. Its latest constitution of 2009 omits mention of communism (Myers 2011). North Korea is reluctant to liberalize along the Chinese model because any step away from its ideology of purity could challenge the legitimacy of the military and the Kim clan.

Note
1 In Chinese authoritarian tradition, “rule by law” refers to the socialist idea that the law is the subjective whim of the king, dictator, or society itself. The “rule of law” is referring to objectively defined rational law that all must obey, including the government. The concept of “rule of law” is used in Western countries. Today political reformers in China use both terms to refer to the Chinese concept fazhi. In this chapter, I will use “rule of law” for fazhi.

Bibliography
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