

Some Key Aspects of the 1982 Draft Constitution of the People's Republic of China*

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The Draft Constitution of the People's Republic of China (PRC), released on 27 April 1982, appears to be the most comprehensive, detailed (if somewhat wordy) and reasonable (as opposed to revolutionary, erratic) since 1949. Unlike its predecessors of 1975 and 1978, it is, no doubt, a product of more careful, more balanced efforts, involving the participation of scholars and legal professionals as well as politicians and Party cadres. Barring unforeseen developments, this document will be adopted in more or less its present form later this year.¹ The Constitution of the Communist Party of China (CPC) will also be revised, probably at the same time or a little later. Significantly, the State Constitution will probably set the tone for the Party Constitution to follow rather than the other way round.² In this respect as in its fundamental conception, style, and contents, the 1982 Draft resembles the Constitution of 1954 and differs from those of 1975 and 1978. Perhaps this is why the new Draft has been described as "the Second Constitution"-to-be by Hu Sheng, a deputy secretary-general of the Committee for the Revision of the Constitution.³

All interested students are now compelled to do some rethinking about the PRC system. In my preliminary assessment, there are a number of significant changes, each with associated questions worthy of attention

*Texts of fundamental documents consulted in this paper are: (1) Committee for the Revision of the Constitution of the People's Republic of China, "Draft of the Revised Constitution of the People's Republic of China," 21 April 1982, *Ta Kung Pao*, 28 April 1982, pp. 2-3 (Chinese version), and *Beijing Review* 25:19 (10 May 1982), pp. 27-47 (unofficial English translation); (2) Peng Zhen, "Explanations on the Draft of the Revised Constitution of the People's Republic of China," 21 April 1982, *Ta Kung Pao*, 28 April 1982, p. 3 (Chinese version), and *Beijing Review* 25:19 (10 May 1982), pp. 18-26 (English version); (3) Hu Sheng, "On the Revision of the Constitution," *Beijing Review* 25:18 (3 May 1982) pp. 15-18 (4) Chen Hefu, ed., *Zhongguo Xianfa Leibian* (Categorical Compilation of the Constitutions of China) (Beijing: Zhongguo Shehui Kexue Chubanshe, 1980).

1. The 1954 Constitution reportedly had over 8,000 people involved in the first discussion stage which produced more than 5,900 suggestions for consideration by its drafting committee. Before the definitive draft was adopted, 150 million people were officially reported to have taken part in the second round of discussions and 1,180,420 proposals were transmitted to the drafting committee. See H. Arthur Steiner, "Constitutionalism in Communist China," *American Political Science Review* 49:1 (March 1955). Reprinted in George P. Jan, ed., *Government of Communist China* (San Francisco: Chandler Publishing Co., 1966), pp. 191-213.

2. The 1954 Constitution was adopted on 20 September 1954, i.e. two years before its corresponding Party Constitution of 26 September 1956. On the other hand, the second and third Constitutions, both considered more radical than conventional, were adopted 17 January 1975 and 5 March 1978, i.e. preceded by their respective corresponding Party Constitutions of 24 August 1973 and 18 August 1977.

3. *Ta Kung Pao* 27 April 1982, p. 1.

from scholars in China studies. Brief comments on some key aspects of the new Draft Constitution follow.

1. *Constitutionalism and Party Leadership*

Strictly interpreted, the Communist conception of a constitution is inseparable from the Marxist doctrine of class struggle. A constitution is not just the fundamental law of a state which legitimizes and regulates the power and authority of a regime, but is also necessarily a reflection of the power relationships between classes.⁴ It is, therefore, an instrument of struggle and a justification for dictatorship over the class enemies as well. From this perspective, the relationship between Party and state (government) represents a legal dilemma which defies any neat, logical solution. Generally, the Party either keeps practical control over the government behind the first line if it is confident and moderate, or it simply replaces the government if it is more radical and/or less confident. From this perspective also, the constitution is revised or rewritten whenever the power relationship between classes changes. Frequent class reshuffles, therefore, require frequent constitutional revisions. Furthermore, a regime which intends to, and is confident that it can, rule for a long period of time, a regime that has a constructive programme and is concerned with its administration, is more likely to develop a comprehensive, detailed and conventional constitutional document and to adhere to constitutionalism. Conversely, a regime bent on revolutionary, negative changes over a relatively short period of time and/or not confident that it can stay in power for long is less likely to do so.

The 1982 Draft, already dubbed the “ Deng Xiaoping Constitution ” in some quarters, may well be the mark of the relative moderation and confidence of the Deng group which has gradually built up its power and stature since 1978.

It is indeed noteworthy that the Preamble now states:

This Constitution – defines the basic systems and tasks of the Chinese state; it is the fundamental law of our state and its supreme legal authority. The people of all China’s nationalities, all organs of state and the people’s armed forces, all political parties and public organizations and all enterprises and institutions must make the Constitution their basic norm of conduct and have the duty to uphold the sanctity and ensure the implementation of the Constitution.

Such a clear statement of constitutionalism is refreshing. It is not to be found even in the 1954 Constitution, although we recognize it from the historic “ Resolution ” on Certain Questions in the History of Our Party Since the Founding of the People’s Republic of China adopted in

4. See, e.g. CIHAI (The Encyclopaedic Chinese Dictionary) 1979 ed., p. 2336; Li Da, ed., *Zhonghua Renmin Gongheguo Xianfa Jianghua (Talks on the Constitution of the People’s Republic of China)* (Beijing: Renmin Chubanshe, 1956) Chap. 1; and Simpson C. P. Liu, *Zhonggong Xianfa Luen (A Review on the Constitution of the People’s Republic of China)* (Taipei: the National Science Council of the Republic of China, 1972), Pt II, Chap. 2.

June 1981 by the Sixth Plenum of the CPC's 11th Central Committee.⁵ Gone are the provisions giving the Party and its leaders direct power to command the nation's armed forces (Art. 19, 1978) or to nominate the Premier (Art. 22 (4), 1978). Gone are the strange articles that proclaim the CPC "the core of leadership of the Whole Chinese people" (Art. 2, 1978) and provide that it is the citizens' duty to support the leadership of the CPC and that that duty comes before the duty to abide by the Constitution (Art. 56, 1978).

To be sure, the same Preamble still insists on the CPC's leadership along with the rest of the "Four Principles,"⁶ albeit in a calmer tone. Deng and any other leader(s) of the CPC will never yield where Party power is concerned. As Hu Sheng put it, "The draft of the revised Constitution not only confirms the leading role of the CPC in state political life but also stipulates that the Party must carry out activities within the extent of the Constitution and the law."⁷ Nonetheless, that the CPC will henceforward operate behind the state line and will abide by the Constitution is a welcome declaration. The world will no doubt watch with interest whether this is in fact the case once the Draft is adopted and put into effect.

2. *The People's Democratic Dictatorship*⁸

The definition of the state system as "a socialist state of the people's democratic dictatorship" (Art. 1) is an interesting compromise. It is neither quite a "dictatorship of the proletariat" (1975, 1978), nor just "a people's democratic state" (1954). In his Explanations on the new Draft, Peng Zhen said, "Our people's democratic dictatorship is a concrete form of the dictatorship of the proletariat," pointing out that the Preamble equates the two terms. This equation is unfortunate, for it leads to ambiguity and confusion of more than a conceptual nature which may have dangerous consequences, including potential civil strife.

Actually, we can gain an understanding of the "people's democratic dictatorship" by going back to the "Resolution" of June 1981. This "Resolution" asserted that, having eliminated the exploiters, "class struggle no longer constitutes the principal contradiction," hence, the correct path should be "to oppose both the view that the scope of class struggle must be enlarged and the view that it has died out" (Para 35

5. "Resolution on certain questions in the history of our Party since the founding of the People's Republic of China," *Beijing Review* 24:27 (6 July 1981), pp. 10-39, esp. para. 35 (9).

6. The "Four Principles" are socialism, the people's democratic dictatorship, Marxism-Leninism and Mao Zedong Thought, and the leadership of the CPC. Of these, the most important are CPC leadership and socialism, according to recent Beijing pronouncements.

7. *Beijing Review*, 25:18 (3 May 1982), p. 16.

8. For instructive discussions on this topic, see Benjamin I. Schwartz, *Communism and China: Ideology in Flux* (Cambridge, Mass.: Harvard University Press, 1968), Introduction; Stuart R. Schram, *The Political Thought of Mao Tse Tung* (New York: Frederick A. Praeger, 1963), Chap. VI; and "The Party in Chinese communist ideology," *China Quarterly* (April-June 1969), pp. 1-26.

(4)). But what is the principal contradiction in China now? Again, the “ Resolution ” is helpful: it is “ that between the growing material and cultural needs of the people and the backwardness of social production ” (para. 35 (1)). The CPC has come to recognize that failure to make the strategic shift from class struggle to “ socialist modernization centering on economic construction ” was its past mistake, and now pledges never to deviate from this central task, i.e. economic construction.

Who then are the targets of this “ people’s democratic dictatorship ”? Not the intellectuals, Peng Zhen said specifically. In the political conditions of today, the targets are “ spies and special agents as well as old and new counter-revolutionaries,” and those who commit “ serious criminal activities such as embezzlement, bribery, smuggling, selling smuggled goods, speculation, cheating and stealing public property.”⁹

Beyond these categories, elements singled-out in Zhao Ziyang’s Report on the Restructuring of the State Council, 2 March 1982 – those who rose by making themselves out to be “ rebels ” and following after Lin Biao and Jiang Qing, people whose thinking is seriously affected by factionalism, trouble-makers who hit, smash and loot, and those who have committed serious political or economic offences in the past few years¹⁰ – may also be considered “ targets of dictatorship,” in practice if not in official definitions.

Similarly, individuals and groups found guilty of “ ideas that deviate from the Party’s correct principles, . . . factionalism, . . . anarchism and ultra-individualism and . . . such unhealthy tendencies as the practice of seeking perks and privileges,”¹¹ may find life difficult in the years to come.

There are critics on the right who contend that “ dictatorship ” and constitutionalism are incompatible.¹² Unless the notion of “ dictatorship ” is abandoned altogether, it is a mockery to be speaking of constitutional rule, they say. Be that as it may, I think one cannot simply forego the choice between two less than ideal options in the face of China’s realities. As constitutional provisions go, the simple “ democratic republic of, for and by the people ”¹³ or “ people’s democratic state ” would be preferable by convention. But “ people’s democratic dictatorship ” is still more agreeable than “ dictatorship of the proletariat.”

9. *Beijing Review* 25:19 (10 May 1982), pp. 20–21.

10. Zhao Ziyang, “ Report on the restructuring of the State Council at the 22nd Session of the Fifth National People’s Congress standing committee,” *Ta Kung Pao*, 9 March 1982, p. 3. This passage is not included in the English summary that appeared in the *Beijing Review*, 25:10 (8 March 1982), pp. 6–7.

11. “ Resolutions on certain questions in the history of our Party . . . ,” para. 35 (10). See *supra*, note 5.

12. See Simpson C. P. Liu, *op. cit.* pp. 61–66; also Simpson C. P. Liu and Hao Chih-cheng, *Maogong Xianfa De Toushi (A Penetrating View of the Maoist-Communist Constitution)* (Taipei: Liming Wenhua Shiye Gufen Yixiangongsi, 1975), p. 19.

13. Art. 1 of the Constitution of the Republic of China, 1946.

3. *Economic Revisionism*

That the 1982 Draft has embraced economic revisionism is, for its authors, something not readily admitted but hard to deny. In spite of the new emphasis in Article 1, paragraph 2 that the socialist system is the country's basic system which is not to be disrupted, several other articles in Chapter One spell out these revisionist features.

As does its 1978 predecessor, the 1982 Draft Constitution will protect the working people's right to farm plots of agricultural and hilly land, engage in household sideline production and keep livestock for their own needs (Art. 9), and the right of citizens to own lawfully-earned income, savings, houses and other lawful property (Art. 14). In this regard, the 1978 proviso "that the absolute predominance of the collective economy of the people's commune is ensured" (Art. 7, 1978) has been dropped. Instead, a new article protects the lawful rights and interests of the individual economy which is declared "a complement to the socialist sector of the economy owned by the public" (Art. 11). The right of inheriting private property protected under the 1954 Constitution but dropped in 1975 and 1978 is revived (Art. 15).

In addition to state planning, there is now a direct and clear reference to the desirability of balancing economic plans with market regulation "as a subsidiary" (Art. 17). The need to rely more on "expert" and expertise (as opposed to "red" elements) is endorsed (Art. 16). Other moderate features, discussed often in the last few years, such as democratic management in a collective economy, worker participation in enterprise management, the powers of independent economic decision-making of both state enterprises and collective economies are constitutionally recognized (Arts. 18, 19). The high-sounding but problematic general line of "going all out, aiming high and achieving greater, faster, better and more economical results," which survive all the years since 1958 and was retained in 1978 (Art. 11, 1978) is gone; it is replaced by an emphasis on "proportionate and co-ordinated development" (Art. 17). Similarly, the principle of self-reliance is relegated to the background, and various roles to be played by "foreign enterprises, other foreign economic organizations or foreign individuals" in China's quest for economic development are given appropriate recognition, together with an emphasis on respect for law by all parties (Art. 12).

In these provisions about China's economy, one sees, more than in other selections, the retroactive mentality and the transitional nature of this 1982 Draft. The contents of these provisions aim to deal with the ills and the needs of China's economy as seen in the years between 1976 and 1982 rather than what the decades ahead may require.¹⁴ Together, they do not really amount to a coherent statement of a socialist economic philosophy. The search is still going on, it seems.

14. For a good related discussion, see Cyril Chihren Lin, "The reinstatement of economics in China today," *China Quarterly*, 85 (March 1981), pp. 1-48.

4. *A Stronger State Machinery*

Of the 140 Articles, 83 of them concern the state structure. In his Explanations of the new Draft, Pen Zhen cited no less than seven new features in the 1982 Draft, aimed at strengthening the government so as to enable it to function more independently and more efficiently. These features include:

- (1) the expansion of the powers and functions of the Standing Committee of the National People's Congress (NPC);
- (2) the restoration of the post of the chairman of the Republic;
- (3) the introduction of "the system of decision by the premier (the chairmen, the ministers, etc.)" in executive and administrative units;
- (4) the establishment of the Central Military Commission to lead the armed forces of the country;
- (5) the division of power between central and local governments so as to give play to local initiatives;
- (6) the strengthening of regional national autonomy; and
- (7) the separation of government administration from commune management at the grass-roots level.

Neither time nor space will permit a lengthy analysis of these significant changes, but some discussion of the most important ones is clearly in order. I focus here on selected aspects: the rationale behind the central governmental apparatus, redefinition of the NPC Standing Committee's supremacy, and key roles of the State Council.

Collective leadership by law

The rationale behind the new Central Government set up is most intriguing. With the restoration of the state chairman and the establishment of the chairman of the Central Military Commission (CMC), there will be four leaders sharing the limelight in the Central Government apparatus; the other two are the premier and the chairman of the standing committee of the NPC. The intertwining relationship among these four in terms of rank, prestige, stature, power, etc., is likely to consume much of the China-Watchers' resources in the period ahead. How should one go about it?

An editorial of the GMD's Central Daily News¹⁵ remarked: "The current Chinese communist design apparently aims at making the State Chairman a figurehead and the Premier a house-keeper, with the real power in the hands of the Chairman of the CMC, the sole man directing the barrel of the gun." This is designed to suit Deng Xiaoping, the editorial said, suggesting also that Deng will concurrently chair the Party Central's Military Commission.

Taking a short-term view, one finds this reasoning plausible. The

15. *Zhongyang Ribao (Central Daily News)*, 29 April 1982; quoted in *South China Morning Post*, 30 April 1982, p. 7.

restored state chairman is deprived of the powers to convene and to preside over the Council of National Defence and the Supreme State Conference, both enjoyed by the chairman under the 1954 Constitution. The defence policy-making power is given to the newly established CMC, and the Supreme State Conference is called “ not necessary ” by Hu Sheng. Deng has on several occasions indicated that he would not take on the ceremonial and tedious task of state chairman, has relinquished his vice-premiership, but has taken over the key military command post. If Marshal Ye Jianying actually retires from the chairmanship of the NPC standing committee, Deng’s power position will be virtually free from any immediate challenge.

In the longer term, however, our analysis may be different. One can speculate that all four leaders in these posts will occupy or be promoted to vice-chairmanships or at least become members of the Standing Committee of Politburo within the CPC. If and when Deng passes from the scene, it is hard to foresee exactly how the four will actually be ranked, especially if the next CMC chairman does not enjoy undisputed support inside the PLA as well as the Politburo. With the exception of the state chairman, a strongman can exert his influence from one of the other three posts with considerable effect, it seems.

A sympathetic, bold interpretation may well be that a collective leadership based on law, i.e. the management of state affairs by the consensus of a four-man team presumably with the support of the CPC chairman, is being created. This is conceivable if we accept the possible development of a collective leadership within the CPC and the interlocking of Party-state directorate. Such an idea has been advocated by the CPC for some time and is taken by many as an arrangement to extend beyond the Deng helmsmanship.

Looking at it this way, the Draft Constitution makes some sense. The CMC chairman’s power is limited to leading the armed forces and nothing else; on non-military matters, he is expected to defer to the premier. The premier is clearly more than a house-keeper as he actually runs the first line executive and administrative machinery of the state day-in and day-out, giving substance to government as well as Party policies. The chairman of the NPC standing committee is clearly a post whose influence can hardly be underestimated, as will be seen in the next section. As to the weaker chairman of the state, he shall rank first by protocol, enjoy personal prestige and privileges. Under certain conditions, his high position within the Party combined with his power to nominate the premier can also be significant politically.

In short, there is a balance of sorts among these power-sharing bodies built into the design of the 1982 Draft. Taken together with the application of the system of decision by the Premier (Art. 86), and by the CMC chairman (Art. 95), the limitation of terms of office in all four posts (Arts, 64, 79, 87, 96), the campaigns against personality cult since 1978, and the history of a long drawn-out debate over the state chairmanship between 1959 and 1982, the case for a “ collective leadership based on law ” interpretation is not without foundation.

Relaxation of certain doctrinaire principles

To suggest that a sign for collective leadership may be in the picture does not mean that the system will necessarily become more democratic. For the principle of collective leadership is juxtaposed with other principles such as democratic (proletarian) dictatorship, democratic centralism, and the integration of legislative and executive functions.

The principles of democratic (proletarian) dictatorship and democratic centralism, in Mao's terms, serve as the correct means of handling contradictions between the people and the enemy and contradictions among the people respectively. History has shown, however, that contradictions among the people were frequently and arbitrarily turned into contradictions between the people and the enemy, especially during the periods in which the Left radicals took charge. The principle of democratic centralism is also applied as an organizational guideline in the state institutions (Art. 3). However, we have also seen how the democratic aspects operate once in a long while at best, but the centralist aspects dominate the routine procedures at practically all levels of the government. These principles have no doubt contributed to the expansion of arbitrary power of the executive, administrative organs over the last three decades.¹⁶

The system of integrating legislative and executive functions comes from the assertion that sovereignty belongs to the people and is indivisible, and from the experience of proletarian dictatorship in the 1871 Paris Commune.¹⁷ In China, all state power is vested in the NPC and the NPC in turn delegates this power to its standing committee, to the State Council (and other central organs) and to the local governments in the fashion of descending pyramidal steps. Under this system, all organs of the state are considered to be simultaneously legislative as well as executive. At its extreme, it is argued that there is no room for a government bureaucracy that is separate and parallel to the elected representative body. Montesquieu's separation of powers and its corollary checks and balances are dismissed in a doctrinaire manner as Capitalist propaganda.¹⁸ Predictably, such a utopian approach to government and politics only plays into the hands of power manipulators, especially the strategic-minded leaders of organized revolutionary parties. The NPC in China cannot be said to have functioned well in reality; it has been ignored for long periods of time

16. All this is readily admitted in China's official and semi-official publications. See, e.g. Fong Wenbin, "Guanyu Shehuizhuyi Minzhu Wenti (On the question of socialist democracy)" *Renmin Ribao*, 24, 25 November 1980; *Zhonggong Zhongyang "Zhongfa (1980) 66 Hao" Wenjian: Deng Xiaoping zai Zhonggong Zhongyang Zhengzhiju Kuoda Huiyishang de Jianghua (CPC Central "Central Issue No. 66 (1980)"): Deng Xiaoping's Speech to the Enlarged Meeting of the Politburo of the Party Central*, *Zhonggong Yanjiu* (Studies on Chinese Communism) 15:7 (15 July 1981), pp. 104–139.

17. See Shi Xiaochong, "Jianquan Guojia Zhengzhi Zhidu Wenti Zhuyi" ("Preliminary discussions on the question of improving the national political system"), *Minzhu yu Fazhi*, October 1981, pp. 6–7.

18. See Zhou Fang, ed., *Wuoguo Guojia Jigou (The State Structure of Our Country)* (Beijing: Zhongguo Qingnian Chubanshe, 1957), pp. 32–34.

and when convened, it is at best a legitimizing rubber stamp and a transmission belt.

To be sure, these principles are involved and controversial doctrines of Marxism-Leninism-Mao Zedong thought that cannot be dealt with in this essay with justice. Suffice it to say that, in the experiences of the Soviet Union and the PRC, they have only led to the development of bulky, corrupt and inefficient bureaucracies rather than efficient, balanced and productive systems of administration and management.

Perhaps the recognition of these points is a factor in Beijing's recent reforms. PRC scholars have been writing that the separation of three powers in the west may have merits after all and may be worthy of selective emulation.¹⁹ Peng Zhen actually said "the rational division of powers of state" in the Draft is "more reasonable and clear" this time.²⁰ The message is to strengthen the state machinery by making it a sounder, more realistic and accountable system, and giving it the detailed attention it deserves. If all goes well, the NPC will still be supreme but the NPC standing committee will be taken more seriously as a routinely functioning body. The State Council will have clearer roles and will become simultaneously more responsive and more responsible. So will be the roles of law and the judicial and procuratorial organs. And the local governments too will re-emerge from the shadow of the Party committees and the muddled people's communes and play their parts as they should.

In short, the doctrinaire principles will be relaxed in the interest of better politics, better economics and for the sake of China's modernization. Reference to the CPC in the Draft Constitution is now limited to the Preamble. Direct interference in government affairs by the Party will be, by the Draft Constitution, no longer permitted, or at least, no longer encouraged.

Redefinition of the supremacy of the NPC and its Standing Committee

There is little question that the 1982 Draft Constitution is an improvement where the state machinery is concerned.

19. See Zhang Shangwu, "Zichan Jieji Fenquan Xueshuo de Liluen han Shijian" ("Theory and practice of the separation of powers by the capitalist class") *Renmin Ribao*, 7 October 1980, p. 5; Shi Pengfei, "Zichan Jieji de Sanquan Fenli Nengfou Pipan Jicheng?" ("Can the separation of three powers of the capitalist class be inherited critically?") *Wen Hui Bao*, 22 November 1980, p. 3.

20. *Beijing Review* 25:19 (10 May 1982), p. 26. See also Cao Siyuan, "Guanyu Xiugai Xianfa de Shidian Jianyi" ("Ten propositions concerning constitutional revision") *Minzhu yu Fazhi*, February 1981, pp. 6-10; Xu Chongde, "Xiugai Xianfa Shiyi" ("Ten propositions on constitutional revision") *Minzhu yu Fazhi*, March 1981, pp. 7-10; Pan Nianzhi, "Yiuguan Xiugai Xianfa de Jidian Yijian" ("Some opinions about constitutional revision") *Minzhu yu Fazhi*, April 1981, pp. 4-8; Zhang Shixin, "Dui Wuoguo Guojia Yuanshou Wenti de Qianjian" ("Some opinions on the question of the chief of state of our country") *Minzhu yu Fazhi*, 8 September 1981, pp. 8-9; and Dong Chengmei, "Shiluen Xianxing Xianfa Ruhe Xiugai de Jige Wenti" ("On some problems regarding how to revise the Constitution") *Minzhu yu Fazhi*, March 1982, pp. 8-10. Also Lung Fei, "Zhonggong Tuichi Shenyi Xiuxian de Yinsu yu Yitu" ("Factors and intentions behind the delay in communist China's constitutional revision") *Zhonggong Yanjiu* (Studies on Chinese Communism) 16:1 (January 1982), pp. 100-10.

The organization of the Central Government apparatus continues to be a manifestation of NPC supremacy over all the other Central organs: the state chairman, the State Council, the CMC, the Supreme People's Court and the Supreme People's Procuratorate. All of these organs are responsible to the NPC (or its Standing Committee when the NPC is not in session) and subject to its supervision. This is commensurate with the notion of popular sovereignty (Art. 2).

What is noteworthy, however, has to do with the way this supremacy is redefined in the 1982 Draft. It has reinstated all the items found lacking by Professor Jerome Cohen in his 1978 examination²¹ of the powers of the NPC and its standing committee – the power to appoint commissions of inquiry (Art. 70), the protection of deputies against arrest or trial (Art. 73), the power to decide on military mobilization and martial law (Art. 65 (20), (21)), and the power to annul decisions and orders of the State Council (Art. 65 (7)). Practically all the powers and functions of the NPC and its standing committee – the power to appoint commissions reappeared.

Specifically, the powers of the NPC standing committee (Art. 65) are increased in several ways:

- (1) it is to supervise the enforcement of the Constitution, a power formerly reserved only for the full NPC;
- (2) it can enact and amend not only decrees but also laws, excepting those to be enacted by the NPC, i.e. “ basic laws concerning criminal offences, civil affairs, the structure of the state and other matters ”; and
- (3) when the NPC is not in session, it can also partially amend and supplement the basic laws enacted by the NPC, and approve necessary adjustments to development plans and to the state budget.

Thus, the many powers of legislation, judicial review, appointment and removal, supervision, inquiry and investigation make the NPC and its standing committee unquestionably the organs of highest state power (Art. 54). The standing committee in particular acquires some real power in law-making, and will probably function more as a legislative body should. The Chairman of the NPC standing committee, who works through a small Chairmanship Conference (Art. 66) to oversee all these functions, can become a very formidable political figure indeed.

In this connection, attention should be called also to the new provision which prohibits members of the NPC standing committee from holding concurrent posts in organs of state administration and the judicial and procuratorial organs (Art. 63). Clearly, the intention is to make the leading NPC deputies full-time legislators with greater specialization who will pay more serious attention to their jobs.

21. Jerome Alan Cohen, “ China's Changing Constitution,” *China Quarterly*, No. 76 (December 1978), pp. 784–841.

Clearer roles for a streamlined State Council

By Article 85, "The State Council, that is, the Central People's government of the People's Republic of China, is the executive organ of the highest organ of state power; it is the highest organ of state administration." The premier is, therefore, the head of the government. The 1982 Draft has restructured the State Council and restored all of the functions and powers granted it by the 1954 Constitution and in more detail. A new article emphasizes that it is the right and the duty of the State Council to draft and submit bills concerning

- (1) plans of national economic and social development and their implementation;
- (2) the state budget and its implementation;
- (3) treaties and important agreements concluded with foreign states;
- (4) appointment and removal of certain personnel; and
- (5) other matters authorized by laws or decrees (Art. 90).

Organizationally, the State Council will have as its members the premier, the vice-premiers, the ministers, the chairmen of commissions (as in the 1978 version), and additionally, the secretary-general, the chief auditor, and "commissioners of state." This last category has been created, probably, to accommodate, in the short-run, the "former vice-premiers" forced to relinquish their posts in the recent streamlining operation, and to develop, in the longer-run, an inner cabinet of the State Council in the interest of efficiency. This is seen in the formal institution of a "regular meeting" attended by the premier, vice-premiers, commissioners of state and the secretary-general, so that the "plenary meeting" need not be called frequently (Art. 88).

Also of significance are the application of "the system of decision by the premier" (Art. 86), and the limitation of his terms of office (Art. 87). If the premier was merely "the first among equals" before,²² Article 86 now changes that fundamentally. It is to be noted that the official English translation seems to emphasize the power of decision-making, while the Chinese version stresses the responsibility side. Power and responsibility are indeed the two sides of this new coin, whose use promises greater efficiency. Whether this system of decision by the premier is compatible with the principle of democratic centralism, we have yet to find out; the Draft Constitution apparently does not consider it a problem. As to limiting the terms of office, it is a long-overdue correction. It promises the services of younger, more dynamic personnel for the key posts. The establishment of an independent auditing body is yet another indication that constitutionalism may be given a chance and that the finance of the government departments and enterprises will be supervised and audited in accordance with provisions of the law (Art. 92).

The air is there. One senses that the State Council is being given clearer roles and being fitted with leaner, hopefully more agile, machinery and

22. See Franklin W. Houn, "Communist China's New Constitution," *Western Political Quarterly*, June 1955. Reprinted in Jan, ed., *op. cit.* pp. 213-51, esp. 234-35.

equipment so as to carry out more successfully the formidable tasks of modernizing the nation. There must be expectations of more systematized planning and execution of economic and social development, more legalist work procedures, and a much-increased work load to justify all these efforts and changes.

It can be no accident that the NPC standing committee approved Premier Zhao Ziyang's reports on the extensive restructuring of the State Council and the Draft Constitution at the same time. The streamlining of the State Council can be likened to difficult surgery by a team of poorly equipped but determined doctors on a giant patient suffering from chronic diseases and devastating previous surgeries. Its purpose is to remove blockages in the digestion/circulation systems and to cut away remnants of potentially threatening malignant growths. The Draft Constitution, in turn, can be compared to a solemn pledge by that patient whose health will be greatly improved if he can abide by the contents of that pledge. Both are difficult but good for China.

Greater autonomy for local governments

Below the central apparatus, the strengthening of the state machinery at the local levels of government can also be seen. The Draft has dropped the system of "integrating government administration with commune management," reinstated the people's congresses and people's governments in rural townships, and redefined the people's communes as collective economic organizations (Arts. 98, 9). The neighbourhood committees and villagers' committees are written into the Constitution as mass organizations of self-government (Art. 113). Grass-roots level government should now have clearer lines of duty to facilitate services to the masses.

Local people's congresses of and above the county level will establish standing committees so as to carry on the work of the congresses on a more permanent basis (Art. 106). They are given the right to "formulate and promulgate local statutes" so as to meet the uneven needs and demands of various places (Art. 103). Since China "is a big country and every province has a population of tens of millions or even 100 million, equal to that of a big or medium-sized country," it is high time that the Constitution affirms this right and gives play to local initiatives.²³ The enlargement of the power of self-government in the autonomous regions of various national minorities (Arts. 116–124) is likewise to be lauded.

5. Some citizens' Rights and Duties, perhaps

It has been pointed out frequently that the protection of human rights in Communist countries is a mockery and a false promise. On paper, the Constitutional provisions are impressive; in practice, the record is

23. See Peng Zhen's "Explanations . . ." Section V, *Beijing Review*, 25:19 (10 May 1982), p. 25.

unspeakably bad. This is very true in China where even Liu Shaoqi, the late Chairman of the Republic, did not enjoy the fundamental rights supposedly protected by law.

The 1982 Draft has more articles in this Chapter written in more detail than any of its predecessors. However, even though the whole Chapter was pointedly moved ahead so that it follows the General Principles and precedes the Structure of the State, the contents are less liberal than the 1954 version. This is so largely because of the conditions imposed and some significant omissions.

First, there are extraordinary and repetitious emphases on duties. Duties to obey the Constitution and the law (Art. 32), to work (Art. 41), to receive education (Art. 44), to support one's parents (Art. 46), to do military service (Art. 52), and to pay taxes (Art. 53) are understandable. But there are also duties to "safeguard the unity of the country and the unity of all its nationalities" (Art. 49), to "safeguard state secrets, take care of public property, observe labour discipline, observe public order and respect social ethics and beneficial customs and habits" (Art. 50), and to "safeguard the security, honour and interests of the motherland" (Art. 51). Conflicts between these duties and the rights listed in this Chapter are bound to occur. What then?

Secondly, Article 34 which protects civil and political rights enumerates citizens' "freedom of speech, the press, assembly, association, procession and demonstration." Missing are these lines from earlier Constitutions:

- (1) "the freedom to strike, and have the right to speak out freely, air their views fully, hold great debates and write bi-character posters" (Art. 45, 1978); and
- (2) "by providing the necessary material facilities, the state guarantees citizens' enjoyment of these freedoms" (Art. 87, 1954).

Normally, these missing passages are not to be considered necessary as they are logically covered by the simple statement in Article 34 of the new Draft. However, the actual conditions of present-day China make these omissions particularly material. They render the freedoms listed hollow in reality.

The right to strike has probably been omitted because of the lessons of Poland's Solidarity movement. Stability will have the priority.

Thirdly, the freedom of religious belief is dampened by the proviso that "No one may use religion to carry out counter-revolutionary activities or activities that disrupt public order, harm the health of citizens or obstruct the education of the state" and by the pronouncement that "No religious affairs may be dominated by any foreign country" (Art. 35).

Fourthly, the freedom and privacy of correspondence can be infringed upon "to meet the needs of state security" (Art. 39).

Fifthly, citizens' right to change their residence (Art. 90, 1954) is still not reinstated. Either it cannot be done or the regime is not willing and ready.

It might also be mentioned that there is some propaganda (Art. 41, para. 3) which would be better left out of a Constitution.

There are, of course, positive improvements in this Chapter also.

First, the principle that “ All citizens are equal before the law ” is reinstated (Art. 32).

Secondly, there is careful and detailed attention to personal freedom (Art. 36) and personal dignity (Art. 37), thanks to some adverse personal experiences of the leaders during the Cultural Revolution.

Thirdly, citizens’ right to make criticisms of and proposals, reports, appeals, or complaints to any organ of state have been given more detailed protection (Art. 40). This is apparently aimed at the rampant bureaucratism and corruption.

Fourthly, the system of retirement is now written into the Draft (Art. 43).

Fifthly, the protection of Chinese residents abroad has been extended to cover returned overseas Chinese and the relatives of Chinese residents abroad living in China (Art. 47).

On balance, this Draft is probably more realistic, if not more liberal.

Some brief comments on the independence of the judiciary are desirable here. Article 128 has re-established that “ People’s courts shall exercise judicial authority independently according to provisions of the law and are not subject to interference by administrative organs, organizations or individuals.” One must note that it is the court, not the individual judge, who enjoy this independence, and keep in mind also that interference from the Party is not within the purview of this article. The same is true for the people’s procuratorates (Art. 133).

6. *United Front, Yes; Unification, Later*

Still another aspect of the 1982 Draft has to be treated, if only cursorily, before we conclude this discussion. That is the efforts to entice concerned parties in and out of mainland China into a national united front.

A more reasonable united front strategy is visible in the Preamble in several ways. To begin with, Dr Sun Yat-sen and his revolutionary record are given credit. Next, the Chinese People’s Political Consultative Conference, wherein the token minor parties and overseas Chinese have some roles to play, is written into the Constitution formally. The word “ revolutionary ” is left out when the united front is mentioned. Taiwan is not to be “ liberated ” any more; it is now a matter of accomplishing “ the great task of reunifying the motherland ” with the co-operation of “ our compatriots in Taiwan.”

Of particular significance is Article 30 which states: “ The state may, where necessary, establish special administrative regions. The rules and regulations in force in special administrative regions shall be stipulated by law according to specific conditions.” Clearly, this is in reference to Taiwan, and possibly to Hong Kong and Macao. Deng Xiaoping has on occasion spoken of the unification of (not unification with) Taiwan as

one of three major tasks in the present stage and seemingly generous overtures have been made along such lines by Ye Jianying and other leaders since 1979.²⁴ Now, Beijing is pushing the message constitutionally.

Yet, neither Peng Zhen nor Hu Sheng mentioned Taiwan or the special administrative regions in their explanations. This cannot be an oversight as other propaganda from PRC sources has given national unification emphasis. The issue is to be kept alive, but its priority apparently is not too high. All forces must first serve the cause of economic development.

All signs point to a Deng Xiaoping line in China ever since the key battles were won at the Third Plenum of the 11th CPC Central Committee in 1978. Step by step, Deng and his associates have led the Chinese elite, if not the whole country, to a more moderate course of modernization. The 1982 Draft Constitution is both a milestone and a guiding standard for China under the leadership of Deng and associates.

China's political development, measured by the Constitutional changes, is a torturous and discouraging one so far. The national stands in 1982 not too far from where she was in 1954, having made disastrous detours during the in-between years.

While the 1982 Draft is clearly a better document than its predecessors, it remains to be seen whether it will be faithfully implemented. The past record is not too encouraging. The 1954 Constitution was almost completely set aside after 1966. The 1975 and 1978 Constitutions lost their applicability before a new Constitution actually replaced them. What will the fate of the 1982 Draft be? For the Chinese people's sake, and for the sake of the world's peace and stability, it is to be hoped that it will be implemented, at least gradually.

24. See *Wei Taiwan Gueihui Zuguo Shixian Guojia Tongyi Er Nuli (Strive for Taiwan's Return to Motherland and the Realization of National Unification)* (Beijing: Beijing Chubanshe, 1979; Xubian, 1980).