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The PRC's First National Critique: The 1954 Campaign to “Discuss the Draft Constitution”

Neil J. Diamant and Xiaocai Feng*

ABSTRACT

This article is the first detailed exposition of the “National Discussion of the Draft Constitution”. In mid-1954, Chinese engaged in a wide-ranging deliberation about political and social rights, the obligations of citizenship, state symbols, political institutions and ideology. Many asked penetrating and frequently prescient questions about law, citizenship, class and political power, and offered provocative suggestions for revision. Using archives and intra-Party publications, we argue that, for citizens, the constitutional discussion constituted the earliest national-level, semi-public exposé and critique of the entirety of CCP governing practices—a “dress rehearsal” for the 1956 Hundred Flowers Movement. For officials, the constitutional discussion provided an opportunity to deploy the coercive language of “state law” to overcome resistance to collectivization, and a tactic to deal with “unruly” citizens. We further suggest that the 1954 discussion set the terms of broad-based, but ultimately limited, constitutional critique from the 1950s until the present.

The Constitution is a hot document in China. Emboldened by several speeches by Xi Jinping (习近平) and other senior leaders,¹ reformers have advanced the argument that “constitutional government” (*xianzheng* 宪政) based on China’s own foundational document (in force since 1954, revised in 1975, 1978 and 1982), rather than Western-style democracy, could clear a pathway towards a more open and accountable political system. In late 2012 and early 2013, influential media outlets, including *Study Times* (*Xuexi shibao* 学习时报), an

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1. On 4 December 2012, on the occasion of the 30th anniversary of the current Constitution (revised in 1982), Xi gave a speech in which he said that “the Constitution should be the legal weapon for people to defend their own rights”.

organ of the Central Party School, advised leaders to “rule by its Constitution”.² A bold New Year’s editorial in *Southern Weekend* (*Nanfang zhoubao* 南方周末), entitled “China’s Constitutional Dream”, was about to hit news-stands when it was abruptly censored and rewritten by a senior propaganda official.irate journalists took to the streets, threatening strike action against egregious and unconstitutional censorship.³ A counterattack was organized against increasingly vocal calls for constitutional rule and, by implication, political reform: between July and August, over 180 articles against constitutionalism were published.⁴ Backed by unknown powerful patrons (including a by now perhaps remorseful Xi), authors, mostly using pen names, ominously suggested that constitutional advocates were “subverting” socialism. The core ideas of constitutionalism, they proclaimed, “belonged to capitalism and bourgeois dictatorship, not to socialist people’s democracy”;⁵ and constitutional advocates were essentially tools of a CIA-backed plot to undermine the Communist Party.⁶ The government has since prevented

2. See, for example, “For China to Rise, So Must the Status of Its Constitution”, at <http://english.caixin.com/2012-12-12/100471777.html>, accessed 10 June 2013. The authors noted that the “drafting of the Magna Carta in England gave birth to the constitutional law that is now the foundation of many societies. History shows that its essence is the restriction of power.”

3. The PRC constitution grants freedom of publishing. These events were extensively covered in the Western media. See Keith Richburg, “Chinese Journalists Mount Rare Protest Over an Alleged Act of Government Censorship”, *The Washington Post* (4 January 2013), see http://www.washingtonpost.com/world/asia_pacific/chinese-journalists-mount-rare-protest-over-an-act-of-government-censorship/2013/01/04/34baf40-5688-11e2-89de-76c1c54b1418_story.html, accessed 13 August 2014.

4. See Qian Gang, “The Uncertain Death of ‘Constitutionalism’”, *China Media Project* (2 September 2013), <http://cmp.hku.hk/2013/09/02/33944/>, accessed 20 September 2013.

5. See, for example, Renmin University’s Yang Xiaoqing, “Xianzheng yu renmin minzhu zhidu bijiao yanjiu” (A Research Comparison of Constitutionalism and People’s Democracy), *Hongqi wengao* (Red Flag Drafts) (22 May 2013); “Drawing the Battle Lines”, *The Economist* (1 June 2013), p. 48; Zheng Zhixue, “‘Xianzheng’ zhuzhang jiushi yao dianfu shehui zhuyi zhengquan” (Seeing the True Nature of “Constitutionalism”), *Dang jian* (Party Construction) (30 May 2013). The “nationalist” *Global Times* (22 May 2013) went so far as to argue that even calling for constitutionalism was in itself unconstitutional.

6. Ideas of constitutional rule were said to have been fostered by foundations affiliated with US intelligence agencies since the end of the Cold War, and to have had a role in toppling Communist regimes. See Ma Zhongcheng, “‘Xianzheng’ benzhi shi yi zhong yulunzhan de wuqi” (“Constitutionalism” Is Essentially a Weapon in the Public Opinion War), *People’s Daily* (Overseas Edition) (5 August 2013). Ma, who is identified as an “invited” scholar at the World Socialism Research Center at the Chinese Academy of Social Sciences and the “Research Center for Naval Security and Cooperation” in Hainan (probably a front organization; it has no presence on the web but is “led” by Dai Xu, a well-published colonel in the Peoples’ Liberation Army Air Force), does not appear to have legal or historical credentials. Bloggers have not been able to find any information about the Center’s status in the official hierarchy, nor does Ma appear on the list of invited scholars on the World Socialism website (28 August 2013). The name is likely to be a pseudonym. Qian Gang notes of these articles: “The writing is ragged and poor and full of brow-beating language reminiscent of that during the Cultural Revolution. Some of the writings are even crude, as though off the cuff. I find it very hard to believe that these really be could be a concerted strike against a ‘reactionary current’ by an élite team of CCP theory wonks.” Even so, Zhang Xuezhong, who wrote a piece entitled “2013 fan xianfa niliu de genyuan weixian” (The Origins and Perils of the Anti-Constitutionalism Campaign in 2013) was sacked for allegedly violating the Constitution. Direct links to the original article appear to have been deleted, but an archived

searches for *xianzheng*,⁷ but online postings in favor of constitutionalism have continued.⁸

Debates over the role and status of the PRC Constitution have been lively in academia as well. Like political scientists who have recently wrangled over whether the growing propensity of protesters to cite central state policy to countermand local authorities' discretionary power represents a new rights consciousness formed in the reform era or an age-old propensity to refer to official "rules";⁹ legal scholars have reflected upon the meaning and significance of the "constitutionalization" of a wide range of conflicts. Most are pessimistic about people's ability to effect political change in the absence of constitutional litigation, and focus on the reform period as the source of constitutional awareness,¹⁰ but what the Constitution really is—whether mere words on a document, an unrealized ideal or a political weapon—is hotly contested. While Qianfan Zhang argues pessimistically that "constitutionalism will not come out of a Constitution if the people do not participate actively in its making and enforcement,"¹¹ Jiang Shigong, taking a more relativist and optimistic position, wonders if other legal and policy documents provide for a *de facto* or "common law" constitutionalism in China.¹²

In this article, we do not attempt to resolve these ongoing controversies, but rather use fresh archival evidence to offer new historical perspectives on them. We return constitutional critique to its 1954 founding season, when it broadly and directly addressed the make-up or "constitution" of the entire polity—its ideology, language, institutions and symbols. In other words, we take the "constitution" component in constitutionalism literally. In 1954, rights *and* rules were

version can be found at <http://www.letscorp.net/archives/54282>, accessed 15 August 2014; see Andrew Jacobs, "Chinese Professor Who Advocated Free Speech Is Fired", *New York Times* (11 December 2013), p. A10.

7. As of August 2013.

8. A short film on Sina Video called "100 Years of Constitutionalism" (*Bainian xianzheng*) was promoted on Weibo and shared over 10,000 times, drawing over 2,000 comments. See Qian Gang, "The Uncertain Death of 'Constitutionalism'".

9. For the former position, see Kevin J. O'Brien and Lianjiang Li, *Rightful Resistance in Rural China* (New York: Cambridge University Press, 2006), pp. 121–26; for the latter, see Elizabeth Perry, "A New Rights Consciousness?", *Journal of Democracy*, Vol. 20, No. 3 (July 2009), pp. 17–20.

10. An exception here is Weifang He, *In the Name of Justice: Striving for Rule of Law in China* (Washington: Brookings Institution Press, 2012), p. 87. He writes that "there is tremendous prospect for constitutional government in China, though the process has just started".

11. Keith Hand, "Constitutionalizing Wukan: The Value of the Constitution Outside the Courtroom", *China Brief*, Vol. 12, No. 3 (3 February 2012), pp. 5–9; Qianfan Zhang, "A Constitution Without Constitutionalism? The Paths of Constitutional Development in China", *Constitutional Law*, Vol. 8, No. 1 (2010), p. 975. To remedy this, Zhang collected the signatures of 72 intellectuals in support of stronger constitutional enforcement. See Edward Wong and Jonathan Ansfield, "Reformers Aim to Get China to Live Up to Own Constitution", *New York Times* (3 February 2013), http://www.nytimes.com/2013/02/04/world/asia/reformers-aim-to-get-china-to-live-up-to-own-constitution.html?pagewanted=all&_r=0, accessed 21 August 2014.

12. Shigong Jiang, "Written and Unwritten Constitutions in China: A New Approach to the Study of Constitutional Government in China", *Modern China*, Vol. 36, No. 1 (2010), pp. 12–46. He argues that this approach avoids Western biases in constitutional analysis.

raised, but within a more comprehensive analysis of how state–society relations had changed since the revolution. Whereas standard accounts of this period identify the Hundred Flowers Movement as the first and most vigorous “airing out” of complaints against the CCP,¹³ we make a revisionist case to place this first exposure in the constitutional discussion in early-to-mid-1954. It was at this time that the fundamental contradictions in CCP constitutional rule noted during the Hundred Flowers and so often today¹⁴—in particular, the large gap between citizens’ rights on paper and their violation “on the ground”—were exposed thoroughly and debated extensively among businessmen, intellectuals, officials, workers, minority groups and, to lesser extent, villagers.

Second, if Chinese have developed “popular constitutionalism”, a concept that Michael Dowdle uses to capture how generations of people have used and given meaning to the Constitution in ways that might challenge official understandings, was this exclusively a product of the reform period? By what mechanism did constitutional critique first enter and widely circulate in political discourse?¹⁵ While we acknowledge that some constitutional terminology circulated among élites during the late Qing and Republican eras,¹⁶ we propose that the foundation for a more popular, broad-based constitutional critique was also established by the 1954 “national discussion”, since it was the first (in the PRC) to give wide publicity to citizen rights and obligations and rules of official conduct, even by way of home visits (*deng men* 登门). This constitution-based critique of the CCP surfaced in various forms of protest in the mid-1950s and then in the Hundred Flowers

13. Eddy U articulates this view. He calls this “the most vibrant debate on Chinese socialism since the Chinese Communist Party took power through the 1949 revolution”. See Eddy U, “Intellectuals and Alternative Socialist Paths in the Early Mao Years”, *The China Journal*, No. 70 (July 2013), p. 1.

14. See, for example, Weifang He, *In the Name of Justice*, pp. 68–69.

15. Michael Dowdle traces it to the aftermath of the trial of Jiang Qing, and the CCP’s effort to “assert the Constitution as a separate source of political authority independent of the party”. See Michael Dowdle, “Popular Constitutionalism and the Constitutional Meaning of Charter 08”, in Jean-Philippe Béja, Fu Hualing and Eva Pils (eds), *Liu Xiaobo, Charter 08, and the Challenges of Political Reform in China* (Hong Kong: Hong Kong University Press, 2012), p. 212. His useful definition of popular constitutionalism is on pp. 209–10. In the introduction to their edited volume, *Building Constitutionalism in China* (New York: Palgrave Macmillan, 2009), Stéphanie Balme and Michael W. Dowdle write: “the simple fact that China is appealing to a rhetoric of ‘rule of law’ (whether *fazhi* or *yifa zhiguo*) . . . provides a *new* set of social meanings against which government and political behavior is judged by society as a whole” (p. 8) (emphasis ours). Qianfan Zhang, *The Constitution of China: A Contextual Analysis* (Portland: Hart Publishing, 2012), p. 70. Zhang notes the rise of rights consciousness among ordinary people during the “last three decades”. He attributes this to a “small number of liberal scholars and students” whose actions have been “valuable, even indispensable contributions to the enlightenment of the Chinese masses”.

16. In addition to the high tide of constitutionalism during the *xinzheng* (“New Policy”) reforms in the late Qing, important discussions took place during the 1909 provincial elections, immediately after the establishment of the Republic (1912–13) and in 1933–34. See, for example, Tu-ki Min, *National Polity and Local Power: The Transformation of Late Imperial China* (Cambridge MA: Harvard University Asia Center, 1989). Even though these discussions were mostly limited to state élites and intellectuals, legal terms were circulated widely in newspapers and journals. In the PRC, the constitutional discussion was conducted in a top-down manner and ended up reaching many more people.

Movement.¹⁷ During the Great Leap Forward and the Cultural Revolution, people who felt wronged by state policies—ranging from rusticated youth in Hunan to Liu Shaoqi during a mass rally against him—also referred to the Constitution,¹⁸ and it was cited during the 1979 Democracy Wall Movement as well.¹⁹ The 1982 Constitution, which was largely based on its 1954 predecessor, featured in the Tiananmen Square protests in 1989 and the Charter 08 movement.²⁰ In short, we argue for a revisionist genealogy of constitution-based critique and enforcement in China by focusing on its founding season in 1954. At no other time during the Mao era were millions of people encouraged to study, reflect on, criticize and offer suggestions for revisions to a foundational document (which implied acknowledging shortcomings).²¹ In contrast to Qianfan Zhang's pessimism about

17. For constitution-based critiques, see Xu Zhangben, “Tantan zhenli he zhidao sixiang wenti” (Discussing the Ideological Problems of Truth and Guidance) (19 January 1957); Wu Yaozong, “Guanyu guanche zongjiao zhengce de yixie wenti” (Some Problems in the Enforcement of Religion Policy) (9 March 1957); Yu Zhaosheng, “Fandui xuexiao dangwei zhi de yanlun” (Opposing the University's Party Committee System) (May 1957); Chen Jiafu, “Fandui Ma-Lie zhuyi de yanlun” (Against Marxism-Leninism) (May 1957); and Cheng Qianfan, “Cong tongzhi tando hongsi zhuanjia” (From Comrade to Red Expert) (30 April 1957), among others, in Song Yongyi (ed.), *Zhongguo fanyou yundong shujuku 1957* (China's Anti-Rightist Campaign Database) (Hong Kong: Chinese University of Hong Kong Universities Service Center, 2010). These articles cited the Constitution on issues such as freedom of thought and religion, Party control of universities and the 1955–56 *sufan* campaign (“a large scale trampling of the Constitution, turning it into wastepaper”). Glenn Tiffert notes that some of the drafters of the 1954 Constitution, including Luo Longji, Qian Duansheng, Wang Tiewa and Zhang Bojun “publicly invoked constitutional principles to take the CCP to task for regularly trampling multi-party democracy, human rights and the rule of law”. Many were persecuted during the Anti-Rightist campaign as Mao dismissed the Constitution's significance (see Glenn Tiffert, “Epistrophe: Chinese Constitutionalism and the 1950s”, in Stéphanie Balme and Michael W. Dowdle [eds], *Building Constitutionalism in China*, p. 71). Also see Eddy U, “Intellectuals and Alternative Socialist Paths”, p. 14.

18. For the Great Leap, see “Dui Guling xian Dashan gongshe danwei shuji Zhang Youcun ji Shi Lianghe” (On Guling County, Dashan Commune Party Secretaries Zhang Youcun and Shi Lianghe) (22 April–6 May 1959), in Song Yongyi (ed.), *Zhongguo fanyou yundong shujuku*. On urban youth rusticated to the countryside who decried the state's violation of their constitutional right to choose their residence, see Yiching Wu, “The Great Retreat and Its Discontents: Reexamining the Shengwulian Episode during the Cultural Revolution”, *The China Journal*, No. 72 (July 2014), p. 16; Liu Shaoqi protested to the Red Guards at a 1967 mass rally that his “freedom of speech and personal rights were being violated”. See Qianfan Zhang, *The Constitution of China*, p. 46; also Jeremy Brown, personal communication with first author.

19. Merle Goldman, “The Reassertion of Political Citizenship in the Post-Mao Era: The Democracy Wall Movement”, in Merle Goldman and Elizabeth J. Perry (eds), *Changing Meanings of Citizenship in Modern China* (Cambridge: Harvard University Press, 2002), pp. 172–73.

20. Andrew J. Nathan, *Chinese Democracy* (Berkeley: University of California Press, 1986), p. 10. Throughout the protests, students upbraided the Party for not enforcing constitutional rights. See Minzhu Han, *Cries for Democracy: Writings and Speeches from the 1989 Chinese Democracy Movement* (Princeton: Princeton University Press, 1990), pp. 38–39, 74, 119, 259. On popular constitutionalism and Charter 08, see Michael Dowdle, “Popular Constitutionalism”, pp. 222–28.

21. The physical circulation of the Constitution, made possible through a massive print run, widespread distribution and purchase in order “to learn about rights”, guaranteed that the Constitution had a life beyond the period of national discussion. In Foshan County, Guangdong, the county propaganda department distributed 10,280 copies of the Constitution. We estimate that as many as 1 in 30 people might have received a copy. See Guangdong Provincial Archives (GDA) 235-1-339, p. 15. The cost was one mao. (In the early 1950s, a young worker might earn 1.5 yuan a day, and an older worker 3 yuan.) Reports about the purchase of the

constitutional enforcement and Jiang Shigong's skepticism about its role in politics, the Constitution's resilience over many challenging years (if not its impact) stems from the fact that people did, in fact, serve as agents in its dissemination.

China's first national constitutional discussion, and citizens' robust and critical-minded participation in it, has been ignored, downplayed or misinterpreted in scholarship in the West and China. The discussion, which took place between April and September of 1954 (depending on the area), has been overshadowed by more dramatic movements in the early 1950s, such as Land Reform, the Marriage Law, Suppressing Counter-Revolutionaries, the Korean War, the Three and Five Antis, and agricultural collectivization. Frederick Teiwes, writing on "regime consolidation" in the *Cambridge History of China*, mentions the strong influence of the Soviet Union on the PRC Constitution, but nothing of the months of discussion and revision surrounding it.²² Hua-yu Li, also focusing on the Soviet role, briefly mentions the "so-called national discussion" of its draft, but states that it was only discussed by 8,000 citizens who offered just 5,900 suggestions for revision,²³ a substantially lower figure than most other accounts (150 million and 1,180,420 respectively), including one estimate by a member of the national body charged with writing the Constitution.²⁴ Some scholars separate the 1954

Constitution are common in the sources. To the dismay of Party officials, many were motivated to buy the Constitution out of "personal interest" (SMA A51-1-182, pp. 134–35). For example, in Shanghai's Luwan District a worker told a colleague: "go buy a constitution—it will explain things after you get arrested for something". See SMA B2-2-61, p. 3. For home visits by work teams in Foshan, see GDA 235-1-399, p. 21. Shanghai spent a tidy sum—roughly 45,000 yuan—on the campaign to discuss the draft constitution. See SMA A22-2-1531, p. 37.

22. Teiwes writes that the 1954 Constitution "basically followed the pattern of the Stalin Constitution of 1936". See Frederick Teiwes, "Establishment and Consolidation of the New Regime", in Roderick MacFarquhar and John King Fairbank (eds), *The Cambridge History of China*, Vol. 14, *The People's Republic*, Part I: *The Emergence of Revolutionary China, 1949–1965* (Cambridge: Cambridge University Press, 1987), p. 104. Jerome Cohen also calls the 1954 Constitution "essentially a foreign product", borrowed from East European people's democracies and the USSR, see Jerome Cohen, "China's Changing Constitution", *The China Quarterly*, No. 76 (December 1978), p. 798. This view is confirmed by PRC scholars (Han Dayuan, *1954 nian xianfa yu xin Zhongguo xianzheng* [The 1954 Constitution and New China's Constitutional Government] [Changsha: Hunan Renmin Chubanshe, 2004], p. 774; Liu Jianping, "Sugong yu Zhongguo Gongchandang renmin minzhu zhuanzheng lilun de queli" [The Establishment of the Theory of the People's Democratic Dictatorship in the Soviet and Chinese Communist Parties], *Lishi yanjiu* [Historical Research], No. 1 [1998], pp. 78–96).

23. Hua-yu Li, "The Political Stalinization of China: The Establishment of One-Party Constitutionalism, 1948–1954", *Journal of Cold War Studies*, Vol. 3, No. 2 (Spring 2001), pp. 43–44. Further downplaying its importance, Li claims that the national discussion lasted two months, or half the time allotted to it in the original plan. *Neibu cankao* (NBCK) ran reports from April to September. Li's figure of 8,000 discussants appears to be based on the initial rollout of the draft in Beijing (17 work units) and 18 military units in Korea, not the subsequent "national" discussion. For the higher number, see the interview with Dong Chengmei, one of the drafters, in Han Dayuan, *1954 nian*, p. 774.

24. Interview with Dong Chengmei, in Han Dayuan, *1954 nian*, p. 775. Municipal data confirm these large numbers. In Guangzhou alone, "over half a million" people participated in the constitutional discussion. See *Guangzhou shi zhi* (Guangzhou Municipal Gazetteer), Vol. 1 (Guangzhou: Guangdong Renmin Chubanshe, 1998), pp. 365–66. This would represent roughly one-third of the city's population, according to the 1953 census.

Constitution from the months-long discussion period,²⁵ while others echo the regime's claim that the discussion contributed to CCP legitimacy. According to Kam Wong, the discussions produced “overwhelming popular support” that “reflected common experience and registered collective concerns.”²⁶ Yang Su calls 1954 “a year of hope” because of the new Constitution.²⁷ The most comprehensive legal analysis of the 1954 Constitution in China also has the millions who discussed it singing its praises, and argues that the individual suggestions for revisions focused exclusively on “technical” and “language usage” issues.²⁸ No one has explored, however, the *content* of these discussions and of the suggested revisions. From our perspective, this controversy addresses critical questions in PRC legal and political history. Was the Constitution politically and legally significant—and therefore worthy of inclusion in “major” events in PRC history?²⁹ Was it widely legitimate, as suggested by Wong and Han? What did cadres and ordinary people say—in “real time”—about state-granted political rights (freedom of speech), social rights (education) and state obligations (such as military service), or about well-known national symbols (the capital and flag)? In a larger sense, how did people assess and talk about the state and the revolution? Since the Constitution covered such broad ground, the discussion surrounding it provides a perfect opportunity to answer large questions.

The sources for this article are not new or previously inaccessible. We rely on *Internal Reference* (*Neibu cankao* 内部参考, hereafter NBCK), an under-utilized intra-Party collection of news articles compiled for the perusal of senior leaders

25. See Frank Houn, “The Draft Constitution of Communist China”, *Pacific Affairs*, Vol. 27, No. 4 (December 1954), pp. 319–37. Glenn Tiffert, in “Epistrophe”, notes that the discussion took place “following Soviet precedent” but quickly moves on to its approval by the NPC (p. 70). Andrew J. Nathan’s *Chinese Democracy* provides a fascinating discussion of the 1982 Constitution but says little about 1954, which was its basis, and nothing about the discussion. Jihong Mo’s history of constitutional development in the PRC begins with the 1954 Constitution, but does not mention the national discussion. See Jihong Mo, “The Constitutional Law of the People’s Republic of China and Its Development”, *Columbia Journal of Asian Law*, Vol. 23, No. 1 (Fall 2009), p. 134.

26. Kam C. Wong, “Human Rights and Limitations of State Power: The Discovery of Constitutionalism in the PRC”, *Asia-Pacific Journal of Human Rights and Law*, Vol. 1 (2006), p. 6, nn. 21, 20. The quote by Mao is from “On the Draft Constitution”, in *Selected Works*, Vol. 5, p. 142 (Kam C. Wong, “Human Rights and Limitations of State Power”, p. 26, n. 94).

27. See Yang Su, *Collective Killings in Rural China During the Cultural Revolution* (Cambridge: Cambridge University Press, 2011), p. 161.

28. Han concludes that the constitutional discussion “elevated” socialist and patriotic consciousness and “in every area people expressed enthusiastic support”. People also expressed their “strong desire for socialism”. See Han Dayuan, *1954 nian*, pp. 293–94, 302, 304. This is not necessarily untrue, but is only a very partial representation of voices. Similarly, Qianfan Zhang claims that the 1954 Constitution “was generally well-received”, see *The Constitution of China*, p. 45. He does not provide evidence in support of this claim.

29. Kenneth Lieberthal, in *Governing China: From Revolution Through Reform* (New York: W. W. Norton, 1995), has a list of “Major National Campaigns”, but does not include it (or other campaigns occurring in 1953 and 1954); see p. 66. The national discussion is not included in Yang Su’s longer list of “Campaigns in China: 1950–1969” (*Collective Killings*, p. 169).

that is stored at the Universities Service Centre for China Studies at the Chinese University of Hong Kong. Owing to the singular significance of the Constitution to the leadership, NBSCK sent reporters to document the discussion in selected locales.³⁰ We also refer to the rich collection on the Constitution at the Shanghai Municipal Archive, two of the city's district archives (Huangpu and Yangpu³¹) and archives that in the 1950s were either suburban or rural (Baoshan, Qingpu and Songjiang). To see if our findings from Shanghai were replicated elsewhere we also consulted the more limited archival collection at the Guangdong Provincial Archive. These materials include hand-transcribed and typed reports of meetings in factories, government offices and universities, weekly "situation reports" and summaries of discussions with women, officials (of various ranks), religious groups and ethnic minorities. We supplemented these materials with one of the few remaining copies of a volume containing "suggestions for revision" that was compiled and edited by the national-level draft constitutional discussion committee, as well as local gazetteers.

Like all official sources, these need to be treated with some caution. As was the case in the 1936 Soviet instance, "discussions" in China were not gatherings of freely assembled, flinty citizens engaged in coffee-house-style political critique. They were organized by the state and took place in work units in the presence of officials; judging by their over-the-top praise of a fairly dull document (usually in the first paragraph of a report), many of the first speakers in these meetings were "planted" and told what to say.³² Not only did the harsh atmosphere of the early 1950s pressure the politically vulnerable to remain silent or lie about their support,³³ but there were highly "sensitive" articles in the Constitution—such as the right to "supervise" officials—that were rarely brought up for discussion. Nevertheless, the authorities encouraged people to "expose" their thoughts in a wide-ranging discussion, much as they did during the Hundred Flowers Movement of 1956. After meetings started and the pre-selected people spoke out, comments gushed forth, many of them confused, perceptively critical, acerbic, or satirical and mocking.³⁴ Such comments, transcribed and then archived,

30. To the best of our knowledge, NBSCK has never been used to research the 1954 constitution.

31. These archives also included materials from districts that were eliminated during administrative restructuring in the 1950s.

32. These were the comments that tended to find their way into publications such as the *People's Daily*. After reading internally circulated reports and archival materials, we found that official media often appeared to provide something approaching fiction.

33. As was pointed out in a report from a beer factory in Shanghai, "those with problems offer fake support and expressions of happiness; those under supervision don't speak up at all"; see Shanghai Municipal Archive (SMA) A51-1-182, p. 134.

34. This was also the case during the constitutional amendment process in Vietnam in 2001–02. Even though the debate was Party-led and "managed", the views expressed were "wide ranging" and the debate "robust". See Mark Sidel, *Law and Society in Vietnam: The Transition from Socialism in Comparative Perspective* (Cambridge: Cambridge University Press, 2008), pp. 19, 21. The main difference is that, in the Vietnamese case, the party

might have been used to prosecute individuals in subsequent campaigns. Indeed, intelligence-gathering may perhaps have motivated leaders to discuss the Constitution in the first place.³⁵

After briefly reviewing the 1954 Constitution, we delve into the comments, suggestions and questions that were raised by citizens and officials. Since constitutionalism was originally intended to limit executive or “despotic” power, we first focus on rights and obligations: how did people understand the articles promising them various freedoms (speech, publishing, mobility), as well as their obligation to perform military service?³⁶ Taking other core notions of constitutionalism—providing legitimacy and “giving social meaning to the metaphor of ‘the state’”³⁷—we turn to popular understandings of pivotal conceptual language, including the words “constitution” and “class”. Did people accept (and understand) the state’s rationale for a constitution and the leading role assigned in it to the working class? Rounding out this section, we look at what people considered critical *omissions* in the constitutional text—who felt “left out”? What state symbols went missing? We then turn our attention to officials’ reactions. Did officials take the Constitution seriously, or dismiss it because it threatened their power? Our last section compares the Chinese constitutional discussion to

also solicited the view of *overseas* Vietnamese, many of whom offered negative comments. Even in the US, though, constitutional discussions had well-recognized boundaries. According to Pauline Maier, “to get criticisms of the Constitution into circulation took a few more weeks [after the Constitutional Convention adjourned] and a sturdy dose of stubborn courage”. See Pauline Maier, *Ratification: The People Debate the Constitution, 1787–1788* (New York: Simon and Schuster, 2010), pp. 70–71. However, once the debate got started, criticism mounted, much as it did in the Chinese case. Maier writes: “Critics of the Constitution were engaged, articulate if not eloquent, and, above all, numerous” (p. 186).

35. To date, however, sources on the origins of the 1954 constitution do not mention this possibility, even though it motivated Soviet leaders. According to Getty, Moscow wanted to “sample public opinion” because it was “vitaly interested in public reaction” to the Constitution. See J. Arch Getty, “State and Society under Stalin”, *Slavic Review*, Vol. 50, No. 1 (Spring 1991), p. 23. In addition to any intelligence that the discussion provided, the recording, documenting and archiving of the content of the constitutional discussion may have fulfilled other political objectives. For example, local officials were given the opportunity to demonstrate their own importance by detailing their role in correcting misinterpretations and poor implementation. Others might have purposely emphasized enforcement problems in the hope that the center would respond to their concerns and put a quick end to constitutional restrictions on their authority. At the same time, central Party authorities, having recently deployed political terror during land reform and campaigns against urban élites, emphasized the historically unprecedented opportunity that it was giving ordinary people to discuss the Constitution and political rights, even when some of their reactions were highly critical. Aware as we are of the CCP’s motives and of how these affected the tone and content of the archival collection, we still maintain that the discussion surrounding the Constitution provides an excellent opportunity to analyze what a certain segment of the Chinese population circa 1954 thought about CCP power and their everyday understandings of political life. These popular musings, in turn, allow us to investigate the contradictions and tensions facing the CCP on the eve of socialist transformation as well as during the post-Mao period.

36. In the Constitution, however, this section was placed after “state institutions”. According to Dong Chengmei, the state was seen as “more important”. See Han Dayuan, *1954 nian*, p. 776.

37. See Chris Thornhill, *A Sociology of Constitutions: Constitutions and State Legitimacy in Historical-Sociological Perspective* (Cambridge: Cambridge University Press, 2011), pp. 1–2; Stéphanie Balme and Michael W. Dowdle (eds), *Building Constitutionalism in China*, “Introduction”, p. 9.

its 1936 Soviet precursor and model. Having based its constitutional process on the Soviet's, was the PRC's first experience with mass constitutional discussion basically similar to the USSR's, or did China follow its own constitutional path?

That the PRC would even have a constitution was by no means pre-ordained—many countries, including the UK, Israel, New Zealand and most of Canada—manage well enough without one. In 1954, however, there were powerful forces—historical and political—that tilted the balance in favor of adopting a constitution. Since the late Qing, reformers had seen some form of constitutional government (monarchical, democratic or authoritarian) as necessary to establish a legitimate and modern government, as well as to strengthen China against foreign powers; Japan's post-Meiji resurgence gave an example.³⁸ By 1911, when the Qing fell, all key political players accepted the idea of constitutional rule. The Republic of China emerged with two constitutional documents (a “provisional Constitution” in 1912 and the 1913 Draft Constitution [*aka* the “Tiantan Constitution”]); in 1931 and 1946 the Nationalists under Chiang Kai-shek acceded to the constitutional imperative despite their Leninist inclination for top-down Party rule. In effect, generations of politicians could agree that constitutions were important to structure and legitimize government, but *constitutionalism*—the idea that political leaders should be constrained by the document—was more controversial, as it implied limitations on executive power by a strong and independent judiciary, or even a certain degree of popular empowerment to hold leaders accountable.

The Party's cultural iconoclasm and revolutionary ideology notwithstanding, CCP leaders were receptive to the idea—advanced primarily by Stalin during the “golden age” of Sino-Soviet cooperation—that constitutions were a prerequisite for political legitimacy and modernity, and towards this end they employed many senior constitutional scholars who had received their training in the West and worked under the Kuomintang.³⁹ Prior to 1954, the CCP laid out the basics of state structure and its relationship to different social classes in an “interim” Constitution, called the “Common Program” (*gongtong gangling* 共同纲领).⁴⁰ In

38. See Andrew J. Nathan, *Chinese Democracy*, p. 107; Peter Zarrow, *After Empire: The Conceptual Transformation of the Chinese State, 1885–1924* (Stanford: Stanford University Press, 2012); Jerome Cohen, “China's Changing Constitution”, p. 795; David Strand, *An Unfinished Republic: Leading By Word and Deed in Modern China* (Berkeley: University of California Press, 2011), esp. Chapter 5.

39. Jian Chen notes that 1954—the year in which the Constitution was promulgated—was the highpoint of friendly relations, in part the result of Soviet support during the Korean War. See Jian Chen, *Mao's China and the Cold War* (Chapel Hill: University of North Carolina Press, 2000), p. 62; Glenn Tiffert, in “Epistrophe”, writes that “the 1954 Constitution bridged a century of intellectual trends and political movements, joining together several generations of jurists in an authentically Chinese discourse knit from disparate traditions” (p. 60).

40. Zhou Enlai was responsible for drafting this document. “Common” referred to the extensive participation of non-Communist élites in its drafting, a reflection of the Party's “united front” strategy. For more background on the evolution of the Common Program, see Kevin J. O'Brien, *Reform Without*

November 1948, as the struggle for political power was nearing its end, a small group of CCP leaders drafted a document intended to have wide appeal and to calm fears of Communist rule.⁴¹ After some discussion with non-Party intellectual élites in a CCP-led “Constitutional Draft Committee”, it was promulgated in the name of the Chinese People’s Political Consultative Conference. Reflecting the CCP’s goals at the time, the Common Program used class to incorporate, rather than exclude. The preamble stated that “New Democracy” would be the “political foundation” of the state; Article 1 recognized the leading role of workers in alliance with peasants, but noted also that “uniting all democratic classes and all nationalities in China” was a priority. The document also protected private property and explicitly recognized “peasant land ownership”. A generous list of political rights, including freedom of thought, speech, publication, assembly, association, correspondence, person, change of domicile, religious belief and of holding processions and demonstrations, were provided to “*renmin*” (the “people”, which included the working class, peasants, petit bourgeoisie, national capitalists and some “patriotic democratic elements”) without excluding the “reactionary” classes (landlords, bureaucratic capitalists and the like). However, if these were the constitutional carrots intended to draw in non-Communist, (mostly) urban élites, the Common Program also had its sticks. Article 7 dealt with either “suppressing” or threatening counter-revolutionary war criminals, traitors and others “who oppose the cause of people’s democracy”. The Common Program was in force between 1949 and 1954, but never “sent down to the people” in a national educational campaign. As a result, the more “burdensome” constitutional requirements, such as obeying the law, observing “labor discipline”, paying taxes and serving in the military (Article 8), did not stir public concern.

As acknowledged at the time, the 1954 Constitution drew extensively upon the Common Program (as well as the Soviet Constitution of 1936), but included important differences. Citizens’ obligations were largely similar (Articles 100–03); the state still defined the proletariat as the leading class in alliance with peasants; rights were handed down by the state. However, the Constitution was designed to advance new political objectives—moving China from united front policies to socialism, and communicating China’s national and “class” identity to its citizens and the rest of the world.⁴² The reassuring language in the preamble to the Common Program, such as the CCP’s interest in “uniting all democratic classes”, disappeared, while many politically threatening terms were added to describe the

Liberalization: China’s National People’s Congress and the Politics of Institutional Change (Cambridge: Cambridge University Press, 1990), pp. 22–25.

41. Leading roles were assigned to Li Wei-han and Hu Qiaomu, but Mao, Zhou Enlai and others offered many suggestions and criticisms of the draft.

42. In his “Report on the Draft Constitution of the People’s Republic of China” (Beijing: Foreign Languages Press, 1954), Liu Shaoqi boasted that “the masses of the people in no capitalist country enjoy, or can enjoy, as broad a measure of personal freedom as do our people” (p. 40).

socialist transition: the “rich peasant” rural economy would gradually be “eliminated” (*xiaomie* 消灭); the state reserved the right to “expropriate” (*zhengyong* 征用) private property. Rights were expanded upon. In addition to those in the Common Program, the 1954 Constitution added work, education, rest and judicial due process—but then restricted them to either “citizens” or, in the case of “rest”, to “laborers” (*laodongzhe* 劳动者). Unlike its predecessor, the Constitution devoted significant space to elaborating the structure and function of the state apparatus (mostly along Soviet lines) in Section I, as well as formally proclaiming the state flag, national emblem and the location of the capital.⁴³ Again following the Soviet example, the PRC launched the nationwide campaign to gather people’s views (or, more didactically, “educate” them) about its various provisions, including the more sensitive ones such as military service (the war in Korea had just ended), police compensation for miscarriages of justice, freedom of speech (amid multiple repressive campaigns) and the right to education (where few such opportunities existed). We turn now to how people assessed the Constitution, focusing in particular on rights and obligations, core terminology and “missing” elements.

FAIRYTALE RIGHTS AND FRIGHTFUL OBLIGATIONS

Given the poor record of the Communist Party in enforcing constitutional rights such as those to privacy, procedural justice and freedom of speech, it is hardly surprising that scholars have either downplayed or dismissed the “rights” in the 1954 Constitution as not worth the paper they were written on.⁴⁴ We do not disagree with this assessment. However, if we shift the spotlight away from “did rights work?”—a complex and sometimes doubtful proposition even in liberal democracies—to “what legal learning took place?” and trace this forward in history, the 1954 Constitution gains significance; rights cannot be expected to have any weight unless they are stated and understood. We suggest that the constitutional document was far less significant than the prolonged exposure to the discussion about it, which quickly revealed multiple unresolved contradictions in CCP rule.

Consider people’s reaction to several constitutional rights and one obligation: Article 87, which dealt with freedom of speech, publishing and assembly;⁴⁵ Article 90, which granted the right to privacy in homes and in correspondence,

43. In scope, the PRC constitution was more ambitious than its more famous American counterpart, which initially included no mention of basic rights.

44. Hua-yu Li, “The Political Stalinization of China”, p. 28; Kam C. Wong, “Human Rights and Limitations of State Power”, pp. 1–2.

45. The text states that “citizens of the PRC have freedom of speech, freedom of the press, freedom of assembly, freedom of association, freedom of possession and freedom of demonstration. By providing the necessary material facilities, the state guarantees enjoyment of these freedoms.”

as well as “freedom of residence and freedom to change their residence”; Article 94, which awarded citizens the right to education; or Article 103, which required “perform[ing] military service according to law”.⁴⁶ By 1954, when these articles were conveyed to people in meetings, lectures, newspapers and cartoons, many businessmen had been harassed, investigated and punished on charges of tax evasion during the Five Antis campaign, landlords had been persecuted, migrants had been expelled from large cities, the educated élite had experienced strict limitations in curricular matters, publishing and speech, and many Chinese soldiers had been killed or taken prisoner during the Korean War. In short, the Constitution either flagrantly contradicted political and legal practice or demanded considerable sacrifice. The constitutional discussion allowed people to “call the state out” about this, and many citizens did.

The CCP was, of course, aware of and wary about this possibility when the national discussion of the Constitution commenced in April 1954. Following standard operating procedure for campaigns, the “National Committee for Discussing the Draft Constitution” coordinated the organization of committees down the administrative hierarchy, and work units proceeded to divide up the discussant population according to a variety of sociopolitical categories (cadres, activists, capitalists, intellectuals, women, workers and so on). Discussions were led by officials. Despite this setting, critical comments flowed. In a meeting of “capitalists” in Beijing’s Qianmen district, a former Kuomintang officer who was running an oil business told his associates that Article 87 was “useless . . . who would dare! Is it OK to have demonstrations like during the Kuomintang era?”⁴⁷ In Shanghai, a man who worked at the television station mocked the article: “The Chinese have freedom of speech and publishing but we can’t say anything reactionary or publish reactionary books . . . in the United States, even though you say there’s no freedom, you can still buy Communist publications”.⁴⁸ In Guangdong, cadres compared publishing in capitalist countries and Hong Kong favorably to China, noting that it was no longer possible to publish sentimental poetry and literature (*fenghua xueyue* 风花雪月) and that the entire province only had two Party-led newspapers.⁴⁹ High school teachers asked why it was necessary to get a permit to demonstrate (“is that freedom?”), whether “fascist and reactionary ideas” were now permissible, whether people could legitimately “shout” that they oppose the

46. According to Dong Chengmei, Mao objected to the “freedom to change one’s residence” clause, arguing that mobility should be tightly regulated, but was overruled by the national committee because “we all thought that [this right] was necessary” and Mao proved persuadable. See Han Dayuan, *1954 nian*, p. 778.

47. NBCK, 23 June 1954, p. 285.

48. NBCK, 24 July 1954, p. 397. For a similar question in Guangzhou, see GDA 225-4-104, p. 50: “In the past anything that was published had to undergo censorship. Is this still the case after the Constitution? If yes, doesn’t it conflict with the Constitution?”

49. GDA 225-2-29, p. 91.

CCP, and why pornographic fiction was banned.⁵⁰ Faculty of Jiaotong University, Shanghai, queried officials: “What’s the definition of ‘freedom’ in publishing and speech? Is it ‘freedom’ when what you write has to undergo review? Does ‘freedom’ include ‘indiscreet speech and writing’ (*luan xie wenzhang, luan jianghua* 乱写文章, 乱讲话) or spreading a counter-revolutionary rumor?”⁵¹

Such skepticism was not limited to educated, often Western-influenced, élites. Officials and “good class” workers were also dubious. A cadre at *Zhejiang Daily* (*Zhejiang ribao* 浙江日报) asked whether “the capitalist class would be allowed to publish and put their views out there”, and if not, “isn’t there a contradiction with the Constitution?”⁵² Public Security officials quizzed their superiors: “The Constitution protects freedom of speech and publishing, but in practice isn’t the freedom of speech of the bourgeoisie restricted? Which newspaper will give them the freedom to publish?”⁵³ Cadres also compared the freedoms in the Constitution to the restrictions imposed by Leninist party discipline. A cadre in Shanghai’s Longhua district asked: “Citizens have a right to free speech, but staff members (*gongzuo renyuán* 工作人员) have been locked up just for complaining (*fa laosao* 发牢骚). What sort of ‘freedom of speech’ is that?”⁵⁴ Their privileged constitutional position as the “leading class” did not prevent workers from noticing constitutional contradictions. An employee of a candy manufacturer in Beijing quipped: “Now we can make suggestions! So, how about this: during a campaign to ‘Suppress Counter-Revolutionaries,’ let’s not suppress them.” A barber said: “The Constitution is a fundamental law (*dafa* 大法) to control people; the Constitution locks people up and the government has the key.”⁵⁵ When a transport worker in Panyang was spotted purchasing 20 copies of the document, he was asked why he wanted so many. He replied, “For wiping my ass.”⁵⁶

This form of popular constitutional critique—contrasting the text with lived political experience—was also prominent in the discussions over Article 90. In Hunan, a businessman asked the leader of his group meeting: “The Constitution prohibits the violation of the home (*qinfan zhuzhai* 侵犯住宅) but the Residence Committee has already entered homes looking for hoarded food. Isn’t this a constitutional violation?”⁵⁷ Faculty at Jiaotong University had friends and relatives abroad, and knew that their mail was inspected. They asked: was not inspecting letters from Hong Kong and Taiwan a constitutional violation?⁵⁸ In a Women’s

50. SMA A22-2-1525, pp. 95–96; SMA B105-5-2046, p. 8.

51. SMA A26-2-304, p. 35.

52. NBCK, 31 July 1954, p. 519.

53. SMA B2-2-62, n.p.

54. SMA A71-2-975, p. 108.

55. NBCK, 23 June 1954, pp. 283–84.

56. NBCK, 10 July 1954, p. 162.

57. NBCK, 9 August 1954, p. 136.

58. SMA A26-2-304, p. 36; in Guangdong, see GDA 225-4-104, p. 50.

Federation meeting, someone asked: “If citizens have the right to change their residence, why can’t they leave for Hong Kong or other places abroad?”⁵⁹ As interested as people were in using the constitutional discussion to “feel out” the boundaries of legal behavior, the CCP was content to keep people guessing.⁶⁰ In our materials, these questions were rarely answered on the spot⁶¹—with Mao’s consent the national constitutional committee decided not to publish an authorized “explanation” of various articles⁶²—but constitution-based mocking of “protections” continued well into the Hundred Flowers Movement.⁶³

Awkward silence also tended to greet those who questioned the constitutional provision allowing “freedom to move one’s residence”. Unlike the clauses that mostly affected urban élites, Article 90 had broad implications for villagers, millions of whom had migrated to cities in the early years of the PRC, only to find themselves pressured to return home.⁶⁴ The gap between the Constitution and political practice was too fat a target to ignore. At Shanghai Finance College, faculty wanted to find out whether expelling peasants wanting to come to Shanghai was a violation of the Constitution.⁶⁵ Cadres of the South China Party Bureau wondered the same thing about their rural migration.⁶⁶ Workers, generally not known for invoking constitutional arguments in the 1950s, also noticed this discrepancy: “Peasants want to come to the city but the government doesn’t allow it. Why can’t they come to the city to enjoy labor rights?”⁶⁷ Other forms of mobility now supposedly protected by the Constitution also came under intense scrutiny.

59. SMA B2-2-58, p. 53.

60. Legal ambiguity and mixed signals are used today as well. See Rachel Stern and Kevin J. O’Brien, “Politics at the Boundary: Mixed Signals and the Chinese State”, *Modern China*, Vol. 38, No. 2 (2012), pp. 174–98.

61. Because of low literacy levels and many shortcomings in constitutional training, few officials were capable of answering these complicated questions. Many preferred to focus their limited time and energies on tasks deemed more important. For example, in Zhejiang Province, cadres complained, “Shit (*tamade*)! Why am I being called to deal with this trivial stuff?” See NBCK, 31 July 1954.

62. According to Dong Chongmei, Mao requested such a volume. After six months the completed book was sent to the printer. However, questions arose about its legal status. If constitutional problems surfaced, would the book be considered the final word? Legal scholars requested that Mao’s secretary, Tian Jiaying, explain these problems to him. Mao cancelled the publication and had all existing volumes recalled. See Han Dayuan, *1954 nian*, p. 778. Archival sources support this (ongoing) concern. In Guangdong, people asked: “Who has the power to interpret the Constitution?” See GDA 225-4-104, p. 42.

63. See Roderick MacFarquhar, *The Hundred Flowers Campaign and the Chinese Intellectuals* (New York: Praeger, 1960), p. 94.

64. See Jeremy Brown, *City vs. Countryside in Mao’s China: Negotiating the Divide* (Cambridge: Cambridge University Press, 2011), pp. 37–47. Despite this, most migrants remained in the city.

65. SMA A26-2-304, p. 64; SMA A22-2-1525, p. 96. Rural officials, on the other hand, were less concerned about this contradiction than about the constitutional protection granted to peasants who wanted to abandon their land: “the Constitution will cause peasants to move blindly (*mangmu*) to cities and the land will be barren; it will make it harder for district and township cadres to prevent them from moving away”. See NBCK, 19 August 1954, p. 266.

66. GDA 225-2-29, p. 32.

67. SMA B2-2-66, p. 83.

At Jiaotong University, faculty quizzed officials: “How can we even speak of the right to move homes when there’s no freedom to change jobs? With state-allocated jobs (*tongyi fenpei* 统一分配) there’s no occupational freedom, so there’s no freedom to move either.”⁶⁸

These sorts of questions, provoked by the constitutional education campaign in 1954, continued throughout the 1950s. For instance, in 1955, Shanghai factories were instructed to relocate to the interior. In a meeting in Hongkou District, residents pushed back, arguing that the policy violated the Constitution.⁶⁹ In another incident, over two dozen unemployed Shanghaiese who had been sent to Jiangxi Province to reclaim land marched on the city’s Labor Bureau to demand household registration in Shanghai. They argued, unsuccessfully: “We are speaking with reason. The Constitution guarantees freedom of movement; why can’t we move our registration?”⁷⁰ Two years later, during a protest against a factory’s relocation to Wuhan, a worker “pulled out a copy of the Constitution” in an effort to contest their union’s acquiescence to management demands.⁷¹ Constitutional rights were also used to critique mobility restrictions during the Hundred Flowers Movement.⁷²

Citizens also used Article 94—“Citizens of the PRC have the right to education”—to comment on the “fairytale” quality of legal rights. As Elizabeth J. Perry demonstrates, providing education opportunities to workers had been central to the Party’s appeal among workers in the early 1920s, but this strategy was placed on the back burner as politics became militarized during the 1930s and 1940s.⁷³ Article 94 appeared to revive the state’s commitment to social mobility for the lower classes, but people did not credit it: the article was met with scorn on many fronts and by different groups. University and high school faculty seized upon the clash between “citizen” rights, which were supposed to be distributed equally, and discrimination against children from “bad class” families. One asserted that education rights “are an empty promise for some; if a right cannot be completely fulfilled, it shouldn’t be raised in the first place”. Criticizing the policy of investigating family background, one asked, “What is there to investigate about a 7-year-old? Isn’t it a constitutional violation of Article 94 to prevent the kids of landlords or capitalists from attending school?”⁷⁴ Other faculty noted social stratification as a barrier to exercising education rights, questioning how the government could possibly provide education to millions of peasants as well as poor

68. SMA A26-2-304, p. 36.

69. SMA B168-1-233 (25 August 1955). We are grateful to Nara Dillon for the references in this paragraph.

70. SMA B-54—2 (20 May 1955).

71. SMA B54-4 (13 August 1957).

72. See Roderick MacFarquhar, *The Hundred Flowers Campaign*, p. 94.

73. Elizabeth J. Perry, *Anyuan: Mining China’s Revolutionary Tradition* (Berkeley: University of California Press, 2012).

74. SMA A26-2-304, p. 36.

workers: “Chinese citizens are ‘equal under the law’ but . . . there are so many peasants in the countryside—where are their education rights?”⁷⁵ People in all areas cited the absence of basic resources for education, such as books and classroom space, to critique the state for “not knowing people’s real situation and only talking in high principles.”⁷⁶ In a township in Ding County, for example, 140 out of 250 primary school students could not enter middle school, which only had 110 places available. Disillusionment was widespread. NBCK reported to leaders that there was general “support” for the Constitution, but Article 94 “raised their objections” because it “connected to their own situation.”⁷⁷

While mockery, cynicism and skepticism were common in the discussion of rights, confusion and fear underlay conversations about the Constitution’s few obligations.⁷⁸ Among these, Article 103, stating that it is “the sacred duty of every citizen in the PRC to defend the homeland” and “the honorable duty of citizens of the PRC to perform military service according to law”, provoked the most critical and alarmed comments. Even though the constitutional draft discussion took place in the immediate aftermath of China’s “victory” in the Korean War, support for this article was shallow.⁷⁹ In Jiangxi, a province that provided critical support for both the fledgling PLA in the 1920s and the Nationalist military during the Civil War, propaganda officials hesitated even to raise the topic of conscription—“if we do, people will be scared.”⁸⁰ In Shanghai, a cadre described as “backward” said, “We’ll have to enlist! Isn’t this the same as the Kuomintang?”⁸¹ Cadres reported that “very many” people were worried that they would have to serve; they then attempted to figure out whether state officials could gain exemptions for “having already participated in revolutionary work.”⁸² In some cases, officials were responsible for generating panic. In Chuansha County near Shanghai, an elderly woman called her son to warn him that “the law again has called for a ‘press gang’, so he should be more careful”. A cadre who overheard the conversation

75. SMA C1-1-62, p. 36.

76. SMA A22-2-1525, p. 8; SMA B2-2-58, pp. 9, 12; SMA B122-2-31, p. 18; SMA B2-2-61, n.p.; SMA A38-2-144, p. 7; SMA A22-2-1531, p. 56; SMA A71-2-974, p. 81; GDA 235-1-399, p. 4.

77. NBCK, 31 July 1954, p. 521. Villagers also took advantage of constitutional discussion to complain about land, fertilizer and collectivization.

78. See Articles 100–03: citizens had the duty to “abide by the Constitution and law, uphold discipline at work, keep public order and respect social ethics.” They were also required to respect public property and pay taxes. In public sources such as the *People’s Daily*, expressions of fear were quite rare.

79. Given widespread and deep skepticism about PLA military capacity, the war and draft registration, such concerns are not surprising. See Neil J. Diamant, *Embattled Glory: Veterans, Military Families and the Politics of Patriotism in China, 1949–2007* (Lanham: Rowman & Littlefield, 2009), pp. 128–34; Stephen Smith, “Fear and Rumour in the People’s Republic of China in the 1950s”, *Cultural and Social History*, Vol. 5, No. 3 (2008), pp. 272–75.

80. NBCK, 22 July 1954, p. 353.

81. SMA A22-2-1525, pp. 8, 15.

82. SMA A22-2-1531, p. 56.

asked her how she knew this. She replied, “Chuansha’s not Shanghai—it’s what they said in the mass meeting.”⁸³

In addition to a residue of fear left by wartime conscription practices, people’s critique of the constitutional requirement of “glorious” military service might be prompted by a logical analysis of the text. According to the draft Constitution, military service was required of PRC “citizens” but, as anticipated in the question above about exemptions, it was not clear whether citizenship included “all people” in the country—many were confused about the definition of “citizen”, “people” and “PRC national”, and remain so to this day.⁸⁴ In Guangdong, cadres asked whether the people subject to conscription also included women,⁸⁵ and in Dalian, NBCK reported that workers asked whether they were required to serve, given their importance to “production”, and whether single children had the same constitutional duty as those from larger families.⁸⁶ In Anshan, PLA veterans asked if the Constitution required that they re-enlist, while villagers and workers were said to be “panic-stricken”, fearing that they would have to serve for three years; the PRC, they said, “wanted to do the same thing” as the former Japanese regime in the region.⁸⁷ In nearby Panyang, forced conscription under the Japanese and concerns about how their families would fare under a draft also framed workers’ worries (“backward” city people, according to NBCK); others thought that exemptions should apply to engineers, since the country did not have enough of them.⁸⁸

The critique of conscription could also veer away from questions about the terms of military service towards the identity of the state and the military policies that flowed from this. The preamble of the Constitution claimed that the Chinese were “peace-loving” people. If this was the case, a question cutting across age and occupational groups was simple: why was military service even necessary?⁸⁹ From a narrow, textual perspective, this question was not entirely justified—Article 103 referred to “defense of the homeland”. From a broader perspective, however, by noting the gap between “peace” and “conscription”, people used the constitu-

83. SMA A71-2-974, p. 101.

84. See, for example, SMA A26-2-304, pp. 36, 64; also Baoshan District Archive 9-6-1, p. 2. In Guangdong, people asked whether “children were also considered citizens” (GDA 235-1-399, p. 3). Xingzhong Yu argues that “if the concept of citizenship is to be effectively incorporated into Chinese political life and discourse, conceptual difficulties such as the confusion between the terms ‘people’ and ‘citizens’ and the leading-led mentality must be resolved”. See Xingzhong Yu, “Citizenship, Ideology, and the PRC Constitution”, in Merle Goldman and Elizabeth J. Perry (eds), *Changing Meanings of Citizenship*, p. 306. On creating “non-people” (*fei renmin*), see Michael Schoenhals, “Demonising Discourse in Mao Zedong’s China: People vs. Non-People”, *Totalitarian Movements and Political Religions*, Vol. 8, Nos. 3–5 (September–December 2007), pp. 466–68.

85. GDA 225-2-29, p. 32.

86. NBCK, 2 July 1954, pp. 25–26.

87. NBCK, 6 July 1954, p. 86.

88. NBCK, 10 July 1954, p. 162.

89. NBCK, 24 July 1954, p. 398; SMA A22-2-1525, p. 3; SMA A22-2-1531, p. 57.

tional discussion to point out obvious “contradictions” between the state’s propaganda and its political practice.

THE CRITIQUE OF CONFUSING CONCEPTS: “CONSTITUTION” AND “CLASS”

In the broadest sense, constitutions define the relationship between state institutions (such as between the executive and the legislature) and between state and society (the conditions of citizenship, for instance). Conceived more narrowly, however, they are a collection of words and concepts penned by elected or unelected political and legal élites to claim or secure legitimacy and to notify various audiences about the state’s identity. Even if constitutions are well-written, they cannot be effective politically if key words and core concepts are not understood or are grossly misunderstood, or if serious questions about them are not answered adequately. To what extent was the language of the 1954 Constitution (or, in a larger sense, the language of the revolution and Communism) understood and accepted by ordinary people? Can we see in concept-oriented questions further evidence of constitutional critique? We begin at the beginning—with the word “constitution” itself—and then move on to examine the critical concept of “class”. Although propaganda officials were aware that some constitutional terminology was abstract,⁹⁰ they were more confident that “constitution” (*xianfa* 宪法) and “class” (*jieji* 阶级), as relatively historically grounded concepts, required less elaboration. This proved problematic when people, seeking greater clarity about the text, infused their own knowledge, fears and criticisms of politics into their understanding of the terms.

Even though the individual words *xian* (宪) and *fa* (法) have a long provenance in Chinese and “constitution” had been prominent in élite discourse for over half-a-century, NBCK and archival documents reported widespread “confusion” about what *xianfa* meant. In Panyang, some thought that the Constitution was a “provision of the Geneva Conference” (which was taking place in 1954 as well, and thus in the news), or had been “brought to China by [the recent] delegation from North Korea”.⁹¹ In Shanghai, summary reports noted that, at the beginning of the education campaign among workers, “the majority” did not know “what a Constitution was”,⁹² and among uneducated women, including district-level Women’s Federation officials, “what a Constitution is and the very term for it

90. For example, the terms *suoyou zhi* (ownership), *shehui liliang* (social power) and *guojia jiguan* (state institution) were frequently questioned. At a beer factory in Shanghai, cadres offered this helpful explanation: “state ownership is the elder brother that leads the younger brother ownership systems towards socialism”. See SMA A51-1-182, p. 11.

91. NBCK, 10 July 1954, p. 163.

92. SMA A38-2-144, p. 25.

(*benshen de mingzi* 本身的名字) are not clear . . . [they understand] that it's a 'state law' and 'basic law'; others had never heard of the two words before".⁹³ In the suburbs, officials had to explain the concept before reading them the articles: "peasants and workers don't understand what a Constitution is (*bu dong shenme jiao xianfa* 不懂什么叫宪法). Nor do they understand what's good about it (*hao-chu zai shenme difang* 好处在什么地方)." Some thought it was another "Suppress Counter-Revolutionaries Law" or something that was only important for cadres to understand.⁹⁴ At the Guangdong Provincial Radio Station, very many cadres did not know what a Constitution was and what it was for. Some recognized the words, but thought that "a Constitution was a 'reactionary government thing' and that our country should not have such a bad law".⁹⁵ Officials in Pingshun County, Shanxi, were contending with losses from a recent flood and showed little interest in the document, but even those who participated in constitutional education and basic-level literacy classes were said to lack basic understanding.⁹⁶

Explaining the meaning and import of *xianfa* was particularly challenging because the character *xian* in pre-simplified Chinese is difficult to write (憲), and its lack of everyday usage for most everybody made it difficult to differentiate from other *xians* in the lexicon (and, for those used to non-standard dialects, even a view *xis*). Like pre-1949 linguistic mangling of legal and political concepts,⁹⁷ reports filed by local "Discuss the Draft Constitution" committees frequently mentioned "misunderstandings" of *xianfa* during small-group meetings. The list was extensive, but, we argue, far less arbitrary than officials admitted: Military Police Law (*xianbing fa* 宪兵法);⁹⁸ Law of the Immortals (*xian fa* 仙法);⁹⁹ Theatrical or Magical Law (*xi fa* 戏法);¹⁰⁰ County Law (*xian fa* 县法);¹⁰¹ Death Law (*si fa* 死法);¹⁰²

93. SMA B2-2-58, pp. 9, 30; also SMA A79-2-385, p. 10; SMA A80-2-309, p. 34. At a Shanghai beer factory, workers found the presentation of the Constitution "difficult to understand" (*nan tingdedong*). See SMA A51-1-182, p. 13.

94. SMA A71-2-974, p. 166; SMA A71-2-975, p. 2.

95. GDA 225-2-29, p. 117.

96. NBCK, 28 July 1954, p. 465. According to an analysis of Liu Family Village, only 8 among 24 women who had received schooling understood "something" about the Constitution.

97. Yung-fa Chen reports on an incident in Anhui in the 1940s in which an elderly woman "confused imperial bestowal of titles [*gongmin* 功臣] with "citizen" [*gongmin* 公民] because they sounded the same. She observed: "The Eighth Route Army has offered so many official titles to people that everyone seems to be an official." See Yung-fa Chen, *Making Revolution: The Communist Movement in Eastern and Central China, 1937-1945* (Berkeley: University of California Press, 1986), p. 238. We thank David Strand for pointing out this reference.

98. NBCK, 31 July 1954, p. 522 (Wuxi); NBCK, 24 July 1954, p. 397 (Shanghai), p. 400 (Panyang); SMA A22-2-1525, p. 3; SMA A38-2-144, p. 3; SMA A71-2-974 (Shanghai suburbs), p. 63; SMA B2-2-61 (Luwan District), pp. 3, 31-32; SMA A80-2-309, p. 34 (Shuisheng District).

99. NBCK, 31 July 1954, p. 522 (Wuxi); SMA B2-2-58, p. 30.

100. NBCK, 31 July 1954, p. 522 (Wuxi); Songjiang District Archives 7-1-6, p. 37; SMA B2-2-58, pp. 9, 30; NBCK, 24 July 1954, p. 399 (Jiaying).

101. NBCK, 23 June 1954, p. 280 (Beijing); NBCK, 15 September 1954, p. 213 (Sichuan); NBCK, 24 July 1954, p. 397 (Shanghai).

102. SMA A22-2-1525, p. 8. In Shanghainese, *xian* would be pronounced *xi*.

Danger Law (*xianfa* 险法);¹⁰³ “Restrict an Invasion by France” Law (*xian fa qinru Zhongguo* 限法侵入中国);¹⁰⁴ Western Law (*xifa* 西法);¹⁰⁵ Restriction Law (*xian fa* 限法);¹⁰⁶ and Modern Law (*xian fa* 现法).¹⁰⁷

While some of these conceptualizations were the product of faulty propaganda efforts and of difficulty in understanding Mandarin, others spoke to how Chinese assessed the role of the state in society after the revolution. Interpreting *xian fa* as “Law of the Immortals”, for example, occurred among older women in Shanghai, who used a Daoist template to comprehend the new law; among Shanghai workers, many of whom had migrated from the countryside, “County Law” made sense, given the historical role of county magistrates in dispensing justice; “Modern Law” was plausible in light of the Constitution’s foreign origins; and misunderstanding the Constitution as a “Restrict an Invasion by France Law” was understandable in the light of French colonial history in Asia and particularly the battle of Dien Bien Phu, which was in the news in 1954, because “fa” was used both for “France” and for “law”.

Context is also crucial to grasp the significance of the less innocuous and sometimes comical interpretations. The notion that the Constitution was a “Danger Law” was voiced by “not a few peasants” in Jianyang County, Sichuan, because two “corrupt elements” had recently been executed. Villagers said that “the Constitution is a law for prosecuting people, especially cadres who violate discipline, and a law to punish bad people”.¹⁰⁸ Referring to the Constitution as a “Restriction Law” was a lucid assessment of post-1949 limitations on personal freedoms, which some that feared the Constitution would reinforce.¹⁰⁹ In Panyang there were businessmen who compared it to parents laying down the law to their children: “From here on, if you violate that article we’ll spank your rear end”.¹¹⁰ “Theatrical” or “Magical Law” was a misinterpretation of *xian* in Shanghai-area dialect (*xi*, second tone), as well as an observation about the “theatrical” or “disappearing act” quality of promised rights in the Constitution¹¹¹ while, among some businessmen burned by the “Five Antis” campaign, “death”

103. NBCK, 15 September 1954, p. 213 (Sichuan).

104. NBCK, 24 July 1954, p. 402 (Heilongjiang).

105. NBCK, 24 July 1954, p. 397 (Shanghai).

106. NBCK, 23 June 1954, p. 280 (Beijing); NBCK, 24 July 1954, p. 112 (Panyang).

107. NBCK, 15 September 1954, p. 213 (Sichuan); NBCK, 23 June 1954, p. 280 (Beijing). This list is not exhaustive. In Foshan, Guangdong, for instance, ordinary citizens thought that the Constitution was “a campaign”, “elected by the NPC”, an “order”, a “decision”, a “name of a state”, another word for “state planning” and an “election law”. At a toothbrush factory, workers asked, perhaps mockingly (or comically stereotypically), “so in the end, what is the Constitution? Something we can eat?” See GDA 235-1-399, p. 21.

108. NBCK, 28 July 1954, p. 466.

109. NBCK, 23 July 1954, p. 281.

110. NBCK, 23 July 1954, p. 400.

111. A tea shop owner in Jiaxing, Zhejiang, acerbically commented that “everything the government does in each campaign is ‘theatre law’”; in Fuzhou, businesspeople and residents wondered if it was just “words without substance” (*you ming wu shi*). See NBCK, 24 July 1954, p. 399. Reference to theater law was also

framed their understanding of the Constitution and was a metaphor for their fate under socialism. In Guangzhou, for example, some “capitalists” referred to the Constitution as a “death sentence for immediate execution” and a “slipknot around their necks”,¹¹² and in Panyang they said they were “waiting for death while getting along”.¹¹³ A hand-written district-level report from Shanghai noted that “very many people in the business community say with great terror (*kongju* 恐惧) that their class will become a ‘class enemy’”.¹¹⁴ Bad memories of the Kuomintang and fear of the CCP’s “despotic power” overlapped in “Military Police Law”: during the Nationalist era, the military police, a force with a fearsome reputation, were known as the “constitutional police”. In Panyang, a manager of a textile factory said, “Did you see how much damage those military policemen (*xian bing* 宪兵) did? Those were soldiers who restricted people; if there’s a Constitution, there will also be a ‘constitutional soldier’ to enforce it.”¹¹⁵ A Shanghai worker expressed his apprehension about the Constitution in the same way: “As soon as I heard about the Constitution [*xian fa*], I immediately thought about the military police and got scared”.¹¹⁶

The constitutional articulation of class hierarchy and the state’s “class identity” (the state represented workers in alliance with peasants) were also subject to rigorous questioning, as was also the case during the Hundred Flowers Movement.¹¹⁷ Unsurprisingly, pre-1949 élites, including businessmen, teachers, members of China’s “democratic parties” and others, sought to take advantage of any conceptual loophole that would ameliorate their bad class backgrounds, even as most recognized their dismal future in the PRC.¹¹⁸ In a small-group discussion in Shanghai, a businessman’s wife argued that the Constitution should not have a “class character”, and suggested it be renamed the “Common Constitution” (*gongtong xianfa* 共同宪法) like the “Common Program”.¹¹⁹ Jiaotong University faculty seized upon the constitutional language of power “belonging to the peo-

noted among workers in Shanghai. See NBCK 24 July 1954, p. 397. Some may have been thinking of “magic tricks” (*bian xifa*), fooling the audience of citizens.

112. NBCK, 24 July 1954, p. 396; GDA 225-4-104, p. 24. They compared themselves to dogs: “the more we resist, the tighter the knot gets, and that the only thing we can do is to be good little pups and obey”.

113. NBCK, 10 July 1954, p. 163.

114. Huangpu District Archives 48-2-113, p. 21.

115. NBCK, 24 July 1954, p. 401.

116. SMA A38-2-144, p. 3. Also see SMA B2-2-61, p. 3.

117. Eddy U, “Intellectuals and Alternative Socialist Paths”, pp. 14–15. Former élites were not yet considered non-people, but were clearly subject to official discrimination. See, in particular, the language of Article 19: “The state deprives feudal landlords and bureaucrat capitalists of political rights for a specific period of time according to law; at the same time it gives them a way to earn a living, in order to enable them to reform through labor and become citizens who earn their livelihood by their own labor”.

118. Evidence for this is overwhelming in the texts. A quote by one firm owner gives some of the flavor of these comments: “Today we talk about the Constitution; tomorrow maybe someone will be in Tilanqiao [the Shanghai prison]”. See SMA C1-1-62, p. 29.

119. SMA B2-2-58, p. 50.

ple” to put officials on the spot: “The Constitution says that ‘the people’ includes the bourgeoisie, so can we say that power belongs to the bourgeoisie as well?”¹²⁰ In Wudong County, Inner Mongolia, a rich peasant was assigned to read newspapers to villagers. When they asked him about future state policy towards members of his class, he answered that the government “protects people’s rights, and rich peasants are people.”¹²¹

Cadres also raised critical questions about class. In Shanghai, they asked whether the notion of “equality under the law” contradicts “class consciousness,”¹²² which class was dominant (*tongzhi* 统治) and which was dominated (*bei tongzhi* 被统治), whether the Constitution represents the will of the working class or “the people” and whether counter-revolutionaries were included in the “people”. While Article 1 of the Constitution stipulated that the “foundation” (*jichu* 基础) of the state was the worker–peasant alliance, some officials did not know what the word *jichu* meant.¹²³ Rural representatives in Jiangxi objected to the constitutional rights provided to workers as the “leading class” (vacation, limited working week and so on), because peasants, with whom they were allied, received none. At the same time, they also cited the Constitution’s language of “protecting peasants’ interests” to object to grain requisition.¹²⁴ In the Shanghai suburbs, some cadres asked whether the bourgeoisie and petty bourgeoisie were “part of the dominant class” because the Constitution represented their interests.¹²⁵

Like officials, workers were winners in the Constitution, but some could not wrap their heads around the gap between their exalted constitutional status on the one hand and their occupational history, poor working conditions and identity on the other. In Anshan, a worker was surprised by the configuration of class in the Constitution, given peasants’ leading role in the revolution.¹²⁶ In the Shanghai suburbs, a worker could not fathom why the Constitution sharply

120. SMA A26-2-304, pp. 32, 44. Among Shanghai high-school teachers, roughly 80 per cent were said to have a muddled or “backward” understanding of class, seen in their expressions of sympathy with rich peasants and the bourgeoisie. Some said that “capitalist constitutions” have positive elements in them and rejected CCP claims that the American president was a “dictator”. See SMA B105-5-2046, pp. 8–9. In the Shanghai suburbs, even cadres disagreed with propaganda that stressed that bourgeois constitutions reflected the selfishness of their societies, citing the examples of the sons of President Franklin Delano Roosevelt and General James Van Fleet (a commander of the 8th Army and UN Forces in Korea), all of whom served in the military during WWII or Korea. See SMA A71-2-974, p. 39. A pilot, Van Fleet’s son was killed during the war.

121. NBCK, 21 August 1954, pp. 298–99.

122. SMA A22-2-1525, p. 17.

123. Huangpu District Archives (records of meeting of Penglai District officials), H202-01-182, pp. 29–30. In a three-hour study session in Shanghai, higher-level officials devoted most of their time to parsing one concept—“base and superstructure”. The remainder of the class focused on why China’s constitution was “socialist”, and its basic features. Nonetheless, the most common reaction was “we don’t get it”. See SMA B2-2-68, p. 28.

124. NBCK, 19 August 1954, p. 264.

125. SMA A71-2-974, p. 64.

126. NBCK, 6 July 1954, p. 86.

differentiated between classes: “Why do workers lead? Peasants and workers are the same.”¹²⁷ While the Constitution called labor “glorious”, skilled workers and factory staff in Shanghai disparaged the dangerous toil of manual labor: “what’s the big deal about workers’ labor as glorious? Workers are crass.”¹²⁸ Others questioned whether the “labor” of counter-revolutionaries, dancing girls and athletes was also glorious, and why labor was so esteemed if “those under state supervision are forced to use it to reform themselves.”¹²⁹ Housewives, for their part, were irate that their labor in the home was considered less important than the labor of workers in factories.¹³⁰ At the time, these questions were left unanswered, but subsequent events show that the problems which they presciently highlighted have endured. In the reform period, questions about whom the CCP represents in ideology and practice remain problematic. It is not quite clear what sort of “labor” deserves state protection and recognition, and critics of the “reform through labor” system have questioned labor’s redemptive value, particularly when there is coercion involved.

THE CRITIQUE OF CONSTITUTIONAL SILENCES: SOVEREIGNTY, GENDER AND STATE SYMBOLS

As political documents, constitutions are important both for what they include and for what they omit. Groups with claims to power may be ignored; issues that the population considers important may be dismissed by Constitution drafters. On the symbolic front, the location of the capital, the design of the flag and the national anthem have been politically contested—in the US, for example, the South “got” the capital in return for allowing the federal government to assume state debt.¹³¹ In 1954, the Chinese state made its political and symbolic choices, and these have remained largely in place today: the CCP has included “advanced productive forces” in the state, but still remains the vanguard of the three revolutionary classes (workers, peasants and soldiers); Beijing is the capital; the flag has five stars. The people, however, also had their say, commenting on their situations through the Constitution and often expressing perceptive and prescient

127. SMA A71-2-973, p. 73. This made complete sense, since many workers had migrated from the countryside.

128. SMA A38-2-144, p. 4. On the poor working conditions in Chinese factories in the 1950s as revealed in *Neibu cankao*, see Feng Chen, “Against the State: Chinese Labor Protests in the 1950s,” *Modern China*, Vol. 40, No. 5 (2014), pp. 499–502.

129. SMA A71-2-973, p. 79; SMA B2-2-66, p. 73.

130. As one stated: “why do only ‘laborers’ (*laodongzhe*) get the right to rest? Housewives work all day without rest. Why not write that ‘citizens have the right to rest’? Does doing housework well get considered as a right that is worthy of ‘glory’?” See SMA B2-2-58, p. 26.

131. See Joseph Ellis, *Founding Brothers: The Revolutionary Generation* (New York: Knopf, 2000), Chapter 2.

reservations about various silences in the text. Some of the blank spaces were filled in by future amendments to the Constitution, or by public opinion.¹³²

The Chinese government places sovereignty at the center of “nationalism”. This is not surprising: so-called nationalists have made the return of lost territories a state goal since the late 19th and early 20th centuries. The 1954 Constitution, however, was silent about territorial boundaries or policies (in ironic contrast to the Kuomintang’s 1946 Constitution and the 1949 “Common Program” [see Chapter 13, Section 6 in the former; Article 2 in the latter]). Unsurprisingly, given the importance of “political cartography” in Republican-era Nationalist education curricula,¹³³ this omission did not go unnoticed. In Sichuan, for example, NBCK noted that among “democratic personages” there were “many questions” about this issue: was it because “there are still many problems there, which would be harder to solve if they were in the Constitution? Is it because of problems with Hong Kong and Macau or because of a plan to return Inner Mongolia to the USSR?”¹³⁴ In Hunan, representatives from Hengshan County “thought that the Constitution should establish national and provincial boundaries, and clarify that Taiwan and Hong Kong are part of Chinese territory”; in Beijing, cadres also asked why the government was not taking a firmer stand on Taiwan.¹³⁵ Such criticism also appears in multiple archival sources.¹³⁶ These questions, unlike millions of others, provoked the leadership to respond. In his report on the 1954 Constitution, Liu Shaoqi dismissed these concerns, arguing that an additional article establishing boundaries was “unnecessary” because the “fundamental task of a constitution is to set down the social and state system in legal form”, not to “describe the country’s territorial boundaries”. He also rejected popular calls for an article about Taiwan: “That Taiwan is China’s inviolable territory has never been questioned” and so “the Constitution does not need articles to be added for this purpose”.¹³⁷ However, after the Cultural Revolution, with Liu dead and the

132. In the sources, military and gender-related omissions appear more frequently in the collection of suggested revisions published by the National Draft Constitutional Discussion Committee (NDCDC hereafter). This is probably a reflection of the drafters’ primary concern with domestic and international legitimization, which discouraged discussion of potentially sensitive issues (such as borders and military personnel—veterans did not participate as a group anywhere in the country) or less urgent matters (the status of women) in various meetings. Those left out probably wrote to the center to raise their concerns. See multiple volumes of *Quanguo renmin taolun xianfa yijian huibian* (A Compilation of Suggestions from the National Discussion of the Constitution) (Beijing: Quanguo Xianfa Cao’an Taolun Weiyuanhui Bangongshi, 1954).

133. See David Strand, *An Unfinished Republic*, pp. 179–81. Political cartography was critical to give people the tools to “imagine China”.

134. NBCK, 2 July 1954, p. 21; GDA 235-1-399, p. 4.

135. NBCK, 9 August 1954, p. 136; NBCK, 23 June 1954, p. 283.

136. SMA A26-2-304, p. 32; SMA A22-2-1525, p. 17; SMA A71-2-973, p. 83; SMA A71-2-975, p. 108.

137. Liu Shaoqi, *Report on the Draft Constitution*, pp. 60–61. In Vietnam as well, the “fierce” debate in society produced only one significant change to the original draft submitted by the Constitutional Amendment Commission. See Mark Sidel, *Law and Society*, p. 41.

CCP's legitimacy in tatters, the 1978 Constitution finally included the "liberation" of Taiwan (altered to "peaceful unification" in the 1992 revision).

Unsurprisingly, given the two Marriage Law campaigns in the early 1950s, gender issues were also at the forefront of constitutional critique. The Constitution included two articles dealing with women's equality¹³⁸ (irking quite a few men, who thought this was excessive¹³⁹), but women used the Constitution to point out that their opportunities were still limited, men's attitudes towards them had not changed much, and they needed more done to protect them. Recognizing that women's progress would be limited by their low levels of education, women used the discussion on the draft Constitution to argue that they should "have priority" in education (in Article 94), that 4–6 years of mandatory education was "insufficient", and that the state should expand kindergarten-level education and child-care and dining facilities "so women can enjoy rights".¹⁴⁰ Given the high birth rate during the early 1950s and the burden that this placed on them,¹⁴¹ women wanted the Constitution to include a provision guaranteeing a "paid" 52-day postpartum vacation, a Soviet-inspired "heroic mother" designation for every woman "who has given birth to 12 children" and "honors" to mothers with four children or more, with a stipend.¹⁴² Other women sought "defensive" measures: a constitutional ban on gambling; a legal requirement for children to take care of their parents; punishment of step-parents who abuse children; "protection" for orphans and "equal rights" for children born out of wedlock; and "care" (*zhaogu* 照顾) for "citizens" who were widows, widowers, blind or mute.¹⁴³ Of these issues, only the responsibility of children to "support and assist" their parents was included in the 1982 Constitution (Article 49).

State symbols were also targets for critiques by citizens. Here there were both items that people thought should be missing and ones that were actually not there. The flag was in the former category. Predicting that the CCP would soon "eliminate" the bourgeoisie and petty bourgeoisie, each of whom was thought to

138. Article 86 stipulated that "women have equal rights with men to vote and stand for election" and Article 96 stated that they "enjoy equal rights with men in all spheres—political, economic, cultural, social and domestic" and that "the state protects marriage, the family, and the mother and child".

139. See, for example, SMA B2-2-61, pp. 12, 33; SMA A42-2-86, p. 40; SMA A26-2-304, p. 36. Qingpu District Archives 2-2-50, p. 19; GDA 225-2-29, p. 32.

140. NDCDC, pp. 209, 215; for women's complaints that Guangdong men resisted the state's push for more equality in the division of household labor, see GDA 225-2-29, p. 93.

141. On this issue, see Gail Hershatter, *The Gender of Memory: Rural Women and China's Collective Past* (Berkeley: University of California Press, 2011).

142. NDCDC, pp. 182, 214. Women also cursed the Constitution for not addressing the shortage of non-staple foods, noting that in the countryside elderly women had been crushed to death in ration lines: "How will the Constitution help them?" See SMA A51-1-182, p. 136; also see GDA 235-1-399 for colorful Cantonese curses (p. 22).

143. NDCDC, pp. 215, 182, 184, 205; SMA B2-2-58, pp. 15, 26, 49; SMA B2-2-61, n.p. In Vietnam, some also proposed that constitutional social policy emphasize the "duty of the state to protect" groups such as the poor, the unemployed and the elderly. See Mark Sidel, *Law and Society*, p. 33.

be represented by a star,¹⁴⁴ cadres and citizens were convinced that the flag had two stars too many. Turning an abstraction into something very literal, people asked whether the Party would issue new flags with three stars after these people were eliminated. How would it do this, and how could they explain the change to ordinary people?¹⁴⁵ Never resolved in 1954, the CCP, probably unknowingly, finally addressed this “too many stars” problem in the fall of 2002, when the “Three Represents” policy allowing businessmen into the Party was inserted into the Constitution. In the second category, an almost universal sentiment cutting across class, occupation and region was that the Constitution should include a national anthem, one that was “solemn, dignified, upbeat and bright” (this was addressed in an amendment to the 1982 Constitution).¹⁴⁶ Finally, much like during the Republican era, in the early 1950s it was far from a consensus position that the capital should be in Beijing, or even be called “Beijing” and not “Peiping”. Beijing, after all, was the former imperial capital (associated with the much-criticized Qing dynasty), and was considered “backward” by many. In this sense, the capital was “missing” from other places. Much like Republican-era discussions of national political geography, citizens proposed better locations, such as Shanghai for its economic significance and central location, as well as the Shaan-Gan-Ning border region, a CCP “base area” in the 1940s.¹⁴⁷ As we know, these suggestions—like most others—were not accepted, or deemed worthy of comment by Liu Shaoqi in his final report.

To be sure, not all suggestions fit snugly into these categories, but they were nevertheless significant. Some were fanciful, such as a constitutional article requiring sports stadiums, or whether the “Liberation” in the “People’s Liberation Army” should be removed because Taiwan would soon be liberated.¹⁴⁸ Others spoke to group interests not represented in the Constitution: disabled veterans and families of revolutionary martyrs were (rightly) concerned that their livelihood problems were not addressed; workers in private stores requested a guarantee of employment after they lost their jobs in the transition to socialism.¹⁴⁹

144. The star represents the “national bourgeoisie”, not the “bureaucratic bourgeoisie”. However, state policy towards these groups was often unclear to people, so they were lumped together as targets for elimination.

145. NBCK, 7 July 1954, p. 111 (Taiyuan); NBCK, 23 June 1954, p. 282 (Beijing); NBCK, 24 June 1954, p. 397 (Shanghai); SMA A22-2-1525, p. 17; SMA A79-2-381, p. 157; SMA B2-2-58, p. 53; SMA B2-2-66, p. 86.

146. See, for example, NBCK, 7 July 1954, pp. 110–11 (Taiyuan); NBCK, 2 July 1954, p. 25 (Anhui); NBCK, 13 July 1954, p. 212 (Zhejiang); NBCK, 22 July 1954, p. 350 (Xi’an); NBCK, 8 July 1954, p. 126 (Changsha); SMA A26-2-304, p. 36; SMA A71-2-975, p. 65; SMA B2-2-62, p. 4; Baoshan District Archives 9-6-1, p. 3; Qingpu District Archives 2-2-50, p. 17.

147. NBCK, 6 July 1954, p. 86 (Anshan); NDCDC, p. 232; SMA A71-2-973, p. 81; GDA 225-2-29, p. 32. For Republican-era discussions, see David Strand, “A High Place Is No Better Than a Low Place: The City in the Making of Modern China”, in Wen-hsin Yeh (ed.), *Becoming Chinese: Passages to Modernity and Beyond* (Berkeley: University of California Press, 2000), pp. 100–01.

148. NDCDC, pp. 206, 210.

149. SMA B2-2-58, p. 9; NDCDC, pp. 203, 206.

Some were “statist” (or wanted to give officials the impression that they were, to earn recognition): people requested that citizen obligations include the “responsibility to report reactionary sects and secret societies”; that there was only a right to “correct speech”; and that “freedom of religious faith should not include Buddhism, Daoism and Catholicism”.¹⁵⁰ Others wanted the Constitution to mention the CCP’s success in “eliminating the remnants of Chiang Kai-shek’s bandits”.¹⁵¹ However, in a constitutional critique that prefigured the Hundred Flowers campaign and the current political scene, some people focused on rights and freedoms. At the Shanghai Finance College, faculty noted that “freedom of thought” (*sixiang ziyou* 思想自由), inscribed in the Common Program, was missing from the Constitution, and pointed out that the Party had already violated it during its campaign for “Thought Reform” in universities.¹⁵² A high-level Shanghai Buddhist acerbically asked officials: “Do we now have the freedom to not believe in materialism?”, and in Taiyuan, Shanxi, factory staff wanted to know whether the CCP would now “allow shamanic trance dances (*tiaoshen* 跳神)”.¹⁵³ Elsewhere, citizens wanted the Constitution to include the freedom of “entertainment and leisure” (*yuele* 悦乐), a comment on state repression and general prudishness.¹⁵⁴ The Party yielded to these sorts of demands in the reform period as it sought to reverse some of the heavy-handed intrusions into private life during the 1950s and 1960s.

CADRES ASSESS THE CONSTITUTION

At the heart of constitutions, and of constitutionalism as a legal doctrine, is the recognition by authorities that political power should be exercised within certain boundaries (religious, moral, ethical and territorial). Whether these are constitutional rules or implicit legal norms, constitutionalism is meaningless unless state authorities possess a modicum of “self-restraint” *vis-à-vis* society.¹⁵⁵ Indeed, the CCP’s demonstrated refusal to accept political limitations in pursuit of its

150. NDCDC, pp. 191, 193, 210. Statist suggestions for revision were prominent in the *People’s Daily* coverage, as might be expected; see, for example, “Shandong renmin relie yonghu xianfa cao’an” (The People of Shandong Enthusiastically Support the Draft Constitution) (7 September 1954). In NBCK, rural representatives in Jiangxi, perhaps reflecting their famous “leftism” during the 1920s and 1930s, were also inclined to suggest changes to the Constitution emphasizing class struggle.

151. GDA 235-1-399, p. 2.

152. SMA A26-2-304, p. 64.

153. SMA B2-2-63, n.p.; NBCK, 7 July, 1954, p. 111.

154. NDCDC, p. 191.

155. This is admittedly the more liberal, Anglo-American or common law version. However, even in cases where the state is perceived to have a “political will” (as in France), it is still assumed that the government will address, not suppress, popular voices that generated that will. More importantly, it has been the more liberal/American version that has been more influential in Chinese constitutional thinking. See Xingzhong Yu, “Western Constitutional Ideas and Constitutional Discourse in China, 1978–2005”, in Stéphanie Balme and Michael W. Dowdle (eds), *Building Constitutionalism in China*, p. 114.

goals—whether during the early 1950s urban terror, the Anti-Rightist Campaign, the Cultural Revolution, 1989 or various “strike hard” campaigns to curb crime—suggests strongly that officials disparaged the Constitution even as they saw it as a “required document” to legitimate a modern state. Does evidence from the constitutional discussion period confirm this bleak assessment? Did China have a “constitutional season” in which state authorities took the notion of “boundaries” more seriously?

Cadres’ reaction to the Constitution only partially confirms this skeptical perspective. Many did in fact downplay the significance of the Constitution, but often for reasons that were more prosaic and practical than philosophically “anti-constitutional”. It was mainly among Public Security officials that aversion to constitutionalism was expressed most directly but, here again, their reasoning tended to be pragmatic.

For many cadres, the Constitution was not viewed as a direct threat to their power but simply as administratively unnecessary and overly burdensome. There were several versions of this argument. In one, local cadres rejected the claim advanced by propaganda officials (following national guidelines) that the establishment of socialism required a constitution: “We didn’t have a constitution and the revolution succeeded anyway; even without a constitution we’ll be able to establish socialism”, as Zhejiang officials put it, in a perspective echoed around the Shanghai area.¹⁵⁶ Others argued that it was a waste of time, because it was similar to the “Common Program” and the “General Line”, studied between January and March 1954.¹⁵⁷ Some low-level officials were accused of lackadaisical participation in constitutional study sessions, not because they opposed the document itself but because they feared suggesting revisions to it. The Constitution, they argued, was drafted by Mao himself, so who were they to improve upon it?¹⁵⁸ As a consequence, constitutional study sessions could be farcical. In an all-district Party meeting in Panyang, the audience slept, chatted, read *The Dream of the Red Chamber* and played poker as the Party Secretary talked about the Constitution.¹⁵⁹ It is no wonder that many were unprepared to answer tough questions about core concepts and ideas.

Cadres’ boredom and their sense that studying the Constitution was pointless was an understandable reaction to the endeavor itself. Unlike *The Dream of the Red Chamber*, the Constitution was an uninspired text, with difficult terminology. Cadres, fearing a mistake in speech and interpretation, tended to read

156. NBCK, 31 July 1954, p. 518 (Zhejiang); SMA A22-2-1525, p. 14; SMA A71-2-975, p. 2.

157. NBCK, 31 July 1954, p. 518; Songjiang District Archives 5-6-33; SMA A38-2-144, p. 27; SMA A71-2-973, p. 29; SMA A22-2-1525, p. 14; SMA A71-2-974, p. 62.

158. NBCK, 7 July 1954, p. 107 (Wuhan); NBCK, 31 July 1954, p. 519 (Cao Village, Ding County, Hebei); NBCK, 23 June 1954, p. 281 (Beijing); NBCK, 22 July 1954, p. 353 (Jiangxi).

159. NBCK, 10 July 1954, pp. 161–62.

it to audiences article-by-article and word-for-word.¹⁶⁰ In Wuhan, cadres said, “We just don’t have the head for it” (*mei you xue tou* 没有学头).¹⁶¹ A Shanghai Women’s Federation cadre remarked, “I understood it when I heard it, but then forgot half of it on the way home. When I arrived, only a couple of sentences were left in my head.”¹⁶² Confusion was common in the countryside. In villages in Ding County, cadres “could not really say what very many articles are all about” and confused people by announcing that “the Draft Constitution is our country’s highest program” and significant because “it was written with martyrs’ blood”. On a blackboard, cadres wrote that the Constitution “lawfully protects laborers’ life and property and suppresses counter-revolutionary activities”, and little else.¹⁶³

It is difficult to determine if these cadres took this message to heart. Nevertheless, they did identify officials’ constitutional dilemma: did crimes against the state reflect underlying social conditions or political subterfuge? How could rights be protected when “counter-revolutionaries” were still lurking around? The police were, and remain, at the center of this “contradiction”, and struggled mightily with the document. Many were sympathetic to people accused of crimes against “state property” and violations of “social morality”, attributing them to poverty and unemployment rather than malicious political intent. They considered the Constitution’s “obligations”—such as the requirement to observe labor discipline—excessively harsh, reflecting “the demands of the exploiting classes” rather than those of ordinary citizens.¹⁶⁴ At the same time, their concerns also reflected an acute awareness that whatever “success” they enjoyed from 1949 to 1954 (and today as well) hinged entirely upon “boundless” authority, which was now threatened by several constitutional rights. In Lianhua County, Jiangxi, policemen were “terrified”: “If we arrest someone by mistake, people can use the Constitution to appeal, and the error will be on our heads”.¹⁶⁵ In Shanghai, they feared not having enough funds to compensate victims in cases of mistaken arrest (unnecessarily, as the Hundred Flowers constitutional critique noted¹⁶⁶). The Constitution, they complained, “protects everyone—except the Public Security Bureau”.¹⁶⁷ Police officers seemed particularly worried about pushback by urban élites. In Tianjin and Guangdong, “very many” policemen anticipated that, after the Constitution, “it will be especially hard to conduct investigations, particularly among upper-class

160. NBCK, 21 August 1954, p. 300. Officials were aware of this problem. In Shanghai, cadres said that, if they used the general outline [sent from above] to give a report, “the audience will doze off”. See NBCK, 26 June 1954, p. 314.

161. NBCK, 7 July 1954, p. 107; NBCK, 29 June 1954, p. 350.

162. SMA B2-2-58, p. 14.

163. NBCK, 19 August 1954, p. 263; NBCK, 31 July 1954, p. 520.

164. GDA 225-2-29, p. 92.

165. NBCK, 22 July 1954, p. 352.

166. Roderick MacFarquhar, *The Hundred Flowers Campaign*, p. 111.

167. SMA A22-2-1525, p. 17.

people (*shangceng renwu* 上层人物)—if our low skill is exposed, it will be a real pain”. Much like today, officials in the judicial and security apparatus worried that people could become “extremely democratic” (*jiduan minzhu* 极端民主) as a result of the Constitution.¹⁶⁸

Recent experiences as the political opposition were behind many of these concerns. For all their castigations of “bourgeois” law and imperialism, even low-level cadres realized that they had benefited from a relatively liberal period in Chinese politics after the fall of the Qing, and that rights afforded to the current opposition could be their downfall. In a meeting of security officials in Shanghai, an official asked: “We took advantage of freedoms against the Kuomintang, but now we have the same laws. Won’t our enemies take advantage?”¹⁶⁹ Rural officials expressed these concerns in similar terms.¹⁷⁰

Of course, in hindsight we know that the police and other officials had little to fear from the Constitution. On the contrary, after rushed study sessions covering basic terms, they found much to appreciate in it. Widely recognized at the time as the country’s “basic law”, or “mother law” from which all other ones descended,¹⁷¹ the Constitution was quickly pressed into service to advance unpopular political projects. In Jiangxi, rural representatives from Gao’an and Yongxin Counties were rebuked for viewing the Constitution mainly as a tool to “deal with” (*duifu* 对付) people: “cadre work will be easier now—the masses won’t be uppity and brash because the Constitution is there to support us”; “since Land Reform there are backward peasants but nothing we say moves them—now that there’s a Constitution we can use law to deal with them”.¹⁷² A village leader in Heilongjiang faced resistance to collectivization. He told villagers that “agricultural collectivization is already in the Constitution . . . it’s a legal violation if you don’t participate in a cooperative”. Elsewhere in the province, district-level cadres “used it as a substitute for complicated and detailed education and organization work . . . a tool for

168. NBCK, 24 July 1954, p. 403. A traffic policeman, Mr Gu, said: “From here on in we won’t be able to be so sloppy and careless as we’ve been in the past . . . no more giving two-hour lectures over a minor issue”. For Guangdong, see GDA 204-3-43, p. 114. Another Guangdong report noted that judicial and security officials worried that, because “the Constitution protects human rights” and “people will be able to hold us accountable”, security work would encounter many obstacles. See GDA 225-4-104, p. 32.

169. SMA A22-2-1525, p. 17. For similar complaints in other districts, see SMA B2-2-61, p. 12; SMA A79-2-381, p. 2. In Penglai, officials were incredulous that the Constitution offered an expansive right to free speech and protest, fearing that students, Catholics and “bad elements” would take advantage. They proposed inserting the words “correct” and “legal” as adjectives before “speech”. See Huangpu District Archives H202-1-182, p. 30. In Guangdong, see GDA 204-3-43, p. 114.

170. NBCK, 19 August 1954, p. 265 (Jiangxi).

171. Huangpu District Archives (Shanghai) N7-1-455, p. 95; NBCK, 23 June 1954, p. 283 (Beijing); NBCK, 24 July 1954, p. 403 (Tianjin); NBCK, 22 July 1954, p. 353 (Jiangxi); SMA B2-2-58, p. 30. This proved problematic because other laws, such as Land Reform and the Marriage Law, preceded the Constitution. People asked how the “children laws” could have been born prior to the “mother law”. For the “mother law” understanding of the Constitution in Vietnam, see Mark Sidel, *Law and Society*, p. 56.

172. NBCK, 19 August 1954, p. 265.

establishing cooperatives [and] . . . forcing peasants into them”.¹⁷³ (In Pingshun County, Shanxi, peasants nicknamed the Constitution the “Grass Law” [*caofa* 草法]—because this is what they were eating—and “Subtraction Law” [*jianfa* 減法] because it authorized confiscation of grain.¹⁷⁴) In Songjiang County, rural propaganda guidelines focused on rich peasants’ counter-revolutionary mischief and pushed for collectivization by “uniting” poor and middle peasants.¹⁷⁵ Draping the Constitution around collectivization was part of a broader trend in Songjiang to append the word “law” to controversial “policies”, including the “Unified Purchasing Law” and “Suppress Counter-Revolutionaries Law”, neither of which were the product of legislation.¹⁷⁶ In sum, as much as the Constitution could provide “legal ammunition” to citizens, it was the state that ultimately defined its terms and how they would be applied. This reasoning is at the core of official constitutional understanding in the PRC today.

CONSTITUTIONAL PROCESSES AND REGIME CHANGE: THE 1954 CONSTITUTION IN COMPARATIVE PERSPECTIVE

As noted earlier, many scholars argued that the Chinese Constitution—in its promulgation, content and “national discussion”—was influenced decisively by Stalin, who based his argument for a constitution primarily around the need to secure political legitimacy. The USSR already had two constitutions under its belt (1924, 1936), so it is understandable that CCP leaders, at least in the early 1950s, would be open to persuasion. However, when we look specifically at the dynamics of the national discussion and how this discussion was used by authorities, the Chinese constitutional experience diverged quite sharply from that of the Soviet Union, foreshadowing and perhaps explaining to some extent the divergent paths taken by their revolutions. In the interest of space, we focus on two important differences.¹⁷⁷

173. NBCK, 26 August 1954, p. 385.

174. NBCK, 28 July 1954, p. 466.

175. Songjiang District Archives 5-6-32, p. 29. It is not clear whether these guidelines were followed in Songjiang or elsewhere. For example, in Guangdong, a provincial-level investigation found that the constitution generated a rumor among township and village cadres: “In the past we eliminated the landlords, but now, with the constitution, we have to finish off the rich peasants; after them we get rid of the middle peasants”. Panicked, wealthier villagers fled to the city. See GDA 225-4-104, p. 24. On the role of rumors in how people understood early CCP policies, see Stephen Smith, “Fear and Rumour”.

176. Songjiang District Archives 7-1-6, p. 38.

177. Another topic worthy of further exploration is how ordinary Chinese citizens viewed the Soviet Constitution. There is evidence suggesting that some women considered the Chinese constitution inferior when it came to protecting their rights (SMA A26-2-304, p. 36; NBCK, 30 June 1954, p. 367 [Fuzhou and Guizhou]). However, the Soviet Union was also seen in a negative light. In Shanghai, for example, the wife of a beancurd store manager saw a cadre reading a pamphlet in her store and asked what it was. When he said, “the Constitution”, she panicked. She informed the cadre that she had heard about the Soviet constitution. In her view, it was among the “tricks and ruses” that the Soviets used to kill people. The PRC’s constitution

First, the national discussion in the USSR was somewhat more “liberal”, in the sense that a major national media outlet used the implementation of the discussion period to mount a highly critical campaign against local officials, many of whom, like their PRC counterparts, were far from enthusiastic about such a discussion. As Ellen Wimberg noted, the newspaper *Izvestia*, edited by Nikolai Bukharin, was “consistently and openly critical” of local officials, whereas *Pravda* and *Trud*, like the *People's Daily* in China, emphasized the “positive elements” of the draft. Unlike PRC newsmen, reporters from *Izvestia* “consistently put local officials on the spot” and its editors featured an “almost daily column”, along with highly critical reports.¹⁷⁸ Heads rolled. Charged with negligent or incompetent enforcement of the Constitution, Moscow removed close to 15,000 deputies from office, in what amounted to a constitution-centered campaign to centralize power.¹⁷⁹ In the PRC, national leaders had no appetite for a crusading newspaper, gave little inkling in the national press of widespread dissatisfaction, and, as far as we know, did not sack a single official for poor implementation.

Second, the Soviet “all-union” discussion was larger in scope than that in the PRC, particularly in its broader inclusion of the countryside. Soviet villagers, like their PRC counterparts, were excluded from constitutional perks (free vacations, health care, pensions) which were conferred upon “workers”.¹⁸⁰ However, in contrast to China, Soviet peasants made “extensive complaints” about this (although to no avail).¹⁸¹ In fact, the most common suggestion for revision was to have the Constitution provide social benefits to collective farmers. As Getty puts it, “peasants wanted benefits as workers” and were “brave enough to speak up about it”.¹⁸² They also wrote. While critique of the Constitution was rarely published in the press, Soviet archives document “intensive activity by the countryside”, including thousands of letters written by villagers about various abuses and suggested revisions.¹⁸³ In China, in contrast, the CCP appears to have struggled to organize village and township cadres to engage in constitutional study sessions that went beyond the very superficial, or to hold question-and-answer meetings with villagers who were busy with their work.¹⁸⁴ Higher illiteracy rates among of-

was part of a “conspiracy to eliminate Chinese business owners” such as herself. Her reaction indeed proved prescient. See SMA A51-1-182, p. 136.

178. Ellen Wimberg, “Socialism, Democratism and Criticism”, *Soviet Studies*, Vol. 44, No. 2 (1992), pp. 313, 318, 320.

179. J. Arch Getty, “State and Society under Stalin”, pp. 24, 35.

180. As Getty notes, citizens had rights to these benefits, but only workers got them at no cost. See J. Arch Getty, “State and Society under Stalin”, p. 23.

181. J. Arch Getty, “State and Society under Stalin”, p. 23.

182. J. Arch Getty, “State and Society under Stalin”, p. 26.

183. Lewis Siegelbaum and Andrei Sokolov, *Stalinism as a Way of Life* (New Haven: Yale University Press, 2000), pp. 170, 173, 178, 180.

184. Many villagers were exposed to the language in lectures, but not given much opportunity to raise questions. For example, in a village in the Shanghai suburbs the Constitution was discussed once, but villagers

ficials and peasants may have further limited the impact of the campaign since, even more than an ordinary “policy” document, the Constitution used complex and unfamiliar terminology and was quite long.¹⁸⁵ As a result, Soviet scholars, unlike their PRC counterparts,¹⁸⁶ stress their Constitution’s *long-term* impact even as they recognize that the discussion was tightly controlled. According to Lewis Siegelbaum and Andrei Sokolov, the Soviet Constitution served as “the starting point for resistance to illegalities, abuses of power, deprivation of rights and arbitrary rule. Attempts to reform the system began, as a rule, with appeals to the Constitution.”¹⁸⁷ In China, we suggest, the 1954 discussion established the foundation and basic framework for constitutional critique, but its further development was hindered by logistical problems and educational deficits in the countryside.

What accounts for these differences? The timing of the constitutional discussion explains a great deal. In contrast to the 1936 Constitution, promulgated nearly 20 years after the Bolshevik victory and successive internal purges, the CCP had been in power for fewer than five years when the discussion took place. More insecure in its domestic position, the CCP’s “founding” constitutional season was tightly circumscribed, limiting the Constitution’s impact. Moreover, unlike villagers in the USSR who had already undergone collectivization by 1936, in China the constitutional discussion overlapped, or blended with, ongoing campaigns to procure grain and form cooperatives, leaving rural officials little time for serious enforcement of constitutional study sessions. In the early 1950s, the pace of political transformation was simply too great to allow “temporal space” for vigorous discussion of the Constitution to take place in the countryside. Finally, for reasons that relate partly to timing but perhaps also to political culture, China did not have a figure comparable to Bukharin—a potent politician with a power base strong enough to use the constitutional discussion for his own

said that it was “no matter, because we just get together and don’t talk anyway” (*zuozhe bu jianghua*). See SMA A71-2-974, p. 126. In Songjiang, 269,000 people “participated” (67 per cent of the population), but only 32 suggestions for revisions were made (15 among peasants, the rest among educated groups). Most suggestions for revision focused on the section on state institutions. See Songjiang District Archives 5-6-33. (The *Songjiang Gazetteer*, in contrast, does not mention any of this.) For examples of limited rural exposure in gazetteers, see *Mei xian zhi* (Mei County Gazetteer) (Xi’an: Shaanxi Renmin Chubanshe, 2000), p. 543. Constitutional training was conducted among cadres, representatives and teachers at the county seat. These people (*baogao yuan*) then went to villages to lecture about the Constitution. However, there was a very large discrepancy between those who “heard a report” (400,000) and those who offered “suggestions for revision” (22).

185. In 1955 the illiteracy rate in China (around 80 per cent) was roughly comparable to the USSR circa 1929. By 1939, 81.2 per cent of people in the USSR were deemed literate. See Glen Peterson, *The Power of Words: Literacy and Revolution in South China, 1949–1995* (Vancouver: University of British Columbia Press, 1997), p. 77; Lenore Grenoble, *Language Policy in the Soviet Union* (New York: Kluwer, 2003), p. 157.

186. Jiwei Tong, for example, argues that the 1954 constitution had only a “slight” impact on “actual political practice”; see Jiwei Tong, “China’s Constitutional Research and Training: A State of the Art”, in Stéphanie Balme and Michael W. Dowdle (eds.), *Building Constitutionalism in China*, p. 100.

187. Lewis Siegelbaum and Andrei Sokolov, *Stalinism as a Way of Life*, p. 206.

purposes. Irreparable fissures in the highest levels of the wartime political leadership emerged only in the late 1950s.

CONCLUSION

This article has focused on the discussions about the draft Constitution in 1954, but it seems just as useful to think about the criticisms, questions and suggestions for revision as commentary on the Communist Revolution itself, or at least the part of it that people had experienced up to that point. Unlike many early 1950s campaigns that had specific targets and solicited the “masses’ reaction” (*qunzhong fanying* 群众放映) about relatively narrow issues, the 1954 draft constitutional discussion encompassed such diverse subject matter that it effectively constituted a quasi-social survey about what the CCP had wrought after 1949.¹⁸⁸ The wide range of documented responses—ranging from fear, anger, skepticism, confusion and disagreement to occasional support—challenge the rosy assessments presented to this point in scholarship about the 1954 Constitution, and add to the growing literature complicating the opinion, held even among critics of the CCP such as Weifang He,¹⁸⁹ that the early 1950s was a “honeymoon” phase or halcyon period in the CCP’s relationship to society and its overall legitimacy.¹⁹⁰ Even if it is not possible to gain a firm understanding of the Party’s legitimacy during this tumultuous period, it seems appropriate to view the concept in highly disaggregated terms, varying by location, social group and policy issue.¹⁹¹

This article has offered several arguments. The most important is historiographical: the national discussion of the draft Constitution was *the first* national critique of CCP governance practices, preceding the Hundred Flowers Movement by over two years, though obscured by other dramatic political events during the early 1950s. We think that it merits scholars’ further attention and inclusion in standard “timelines” of historical events, as an unprecedented solicitation of mass views about the nature of the polity and the “state of the revolution” up to that

188. This is similar to Getty’s assessment of the Soviet national discussion, see J. Arch Getty, “State and Society under Stalin”, p. 24.

189. According to He, “in the 1950s, almost every Chinese was bathed in joy and jubilation in the firm belief that the Chinese people had finally stood up and risen to become the masters of the country while bidding goodbye forever to the exploitation and suppression of the past”. See Weifang He, *In the Name of Justice*, p. 103.

190. See, for example, Jeremy Brown and Paul Pickowicz (eds), *Dilemmas of Victory: The Early Years of the People’s Republic of China* (Cambridge: Harvard University Press, 2007); Elizabeth J. Perry, “Shanghai’s Strike Wave of 1957”, *The China Quarterly*, No. 137 (March 1994), pp. 1–2. In the PRC, see East China Normal University, PRC Research Center, *Zhongguo dangdaishi yanjiu* (Research on Contemporary Chinese History), Nos. 1–3 (Beijing: Jiuzhou Chubanshe, 2011).

191. On this point, see Neil J. Diamant, *Revolutionizing the Family: Politics, Love, and Divorce in Urban and Rural China, 1949–1968* (Berkeley: University of California Press, 2000), p. 319.

point.¹⁹² In significant ways, popular fulminations on the Chinese Internet today are nothing new in the PRC. The constitutional discussion was also the foundation for constitutional education and critique during the Mao years,¹⁹³ and has continued to set the terms for constitutional arguments via the 1982 Constitution (which was largely based on the 1954 version). Problems raised by citizens in 1954—the gap between the constitutional text and political practice, accountability, class structure and police power—stayed in people’s minds as Mao and the Party repeatedly violated core constitutional provisions. Constitutional analysis, therefore, would benefit from widening the scope of inquiry beyond current concerns with “rule of law” to examine the Constitution in its more classical formulation—as constituting the “total composition, the shape or form of the state.”¹⁹⁴ As noted by Mark Sidel in his analysis of law and society in Vietnam, the Constitution “has become a platform for [a] wide-ranging debate on political and social arrangements in a transitional state.”¹⁹⁵

Finally, our descriptive argument—our evidence about “what happened” during the national discussion—adds to the body of knowledge about early PRC political and social history by documenting many voices that have not been heard.¹⁹⁶ This evidence is particularly valuable in the case of constitutional scholarship, which tends to focus on the ideas and activities of elite lawyers, judges, academics and politicians, even in studies of “popular constitutionalism.”¹⁹⁷

Many questions remain. Late Qing, Republican and Soviet influences were clearly critical in convincing CCP leaders that constitutions are an indispensable

192. In his comparisons of constitutional discussions in Vietnam and China, Sidel focuses exclusively on those taking place during the 1989 Tiananmen protests, which were, in light of new evidence, modest fare compared to 1954. See Mark Sidel, *Law and Society*, p. 44.

193. This education could have unanticipated consequences. In a report from an archive in Sichuan, a father grumbled that his unemployed, “stupid” son was “an adult according to the Marriage Law” and had “labor rights according to the Constitution” but was still dependent on him. “If the government gives you labor rights, why don’t you go bother them?” See “Sichuan sheng Zigong shiwei mishu chu, ‘Guanyu bannian lai renmen laixin gongzuo qingkuang baogao’” (Zigong City Party Committee Secretariat [Sichuan], “Semi-Annual Report on the Handling of Letters and Visits from the People”) (13 July 1957), in Song Yongyi (ed.), *Zhongguo fanyou yundong shujuku*.

194. See Graham Maddox, “A Note on the Meaning of ‘Constitution’”, *American Political Science Review*, Vol. 76, No. 4 (1982), p. 806.

195. Mark Sidel, *Law and Society*, p. 21.

196. Here we are indebted to John Gerring, who suggests that description and causation are both types of arguments, with the former aiming to answer important “what” questions. See John Gerring, “Mere Description”, *British Journal of Political Science*, Vol. 42, No. 4 (October 2012), pp. 721–23.

197. For example, Qianfan Zhang, in *The Constitution of China*, calls the case of Sun Zhigang—a young university-educated fashion designer arrested and then killed during police interrogation—a “typical human rights case” and a “model” (p. 198) for popular constitutional pressure and change through media pressure. Yuezhi Zhao’s analysis, however, demonstrates that the burst of media attention was closely linked to the fact that Sun was no longer an ordinary peasant. The mobilization on his behalf was linked to his class status. See Yuezhi Zhao, *Communication in China: Political Economy, Power and Conflict* (Lanham: Rowman and Littlefield, 2008), Chapter 5.

component of modernity and legitimacy. Was this all? Did CCP leaders also seek to use the national discussion as a political trap? Was the political intelligence that it produced (and stored in archives) ever used as evidence against targets of political repression? Did the CCP view the constitutional discussion as a rudimentary survey of public opinion? That hardly any suggestions for revision were accepted and that no one appears to have been punished for raising important questions about the nature of CCP rule weighs in favor of the “social survey” and “modernist/legitimacy checklist” explanations for the regime’s desire to discuss the Constitution.¹⁹⁸ Finally, the question of rural participation requires further exploration. Was the limited availability of villagers’ responses in the Shanghai-area countryside typical? Perhaps other rural regions experienced the Soviet-style upsurge in critique. NBSK reported on the countryside, but its reporters were not placed in every county. During the constitutional discussion and afterwards, the state produced educational texts about the Constitution that were aimed at peasants.¹⁹⁹ Did these have a broad circulation, and, more importantly, were they widely read?

Rather than speculate on the future of constitutional rule in China—a topic well beyond the scope of this article—we conclude with a short note on something closer to our hearts: sources in legal scholarship. Unlike historians of the Ming and Qing who utilize archives as a matter of course, legal scholars of the PRC have been somewhat less enthusiastic about mining them as an important source, particularly at the local level. It is the case that court archives are closed to all but the best-connected researchers but, as this article has shown, new insights on history, law and politics can be found using previously untapped sources outside the court system. We agree with Glenn Tiffert’s call for “greater historicity in the study of Chinese law”,²⁰⁰ but would tack on an additional plea for archival research as a highly effective way to capture this history. We hope that PRC legal scholars will move in this direction.

198. According to Tiffert, “on September 8, 1954, Deng Xiaoping presided over a meeting of the Constitution Drafting Committee in Zhongnanhai to make revisions based on this public feedback. *After a few minor additional changes*, the NPC adopted the text on September 20, 1954” (Glenn Tiffert, “Epistrophe”, p. 70), emphasis ours.

199. For example, Xu Yiguan, *He nongmin tantan xianfa* (Talking to Peasants about the Constitution) (Beijing: Tongsu Duwu Chubanshe, 1955).

200. Glenn Tiffert, “Epistrophe”, p. 59.

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