



The Evolution and Prospect of Deliberative Democracy in Chinese Constitutional Arrangement

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Abstract

As the specific form of socialist democratic politics in the People's Republic of China (simplified as PRC hereinafter), the generation and practice of consultative democracy are due to the reality and necessity of culture, history and logic. The Chinese People's Political Consultative Conference (simplified as CPPCC hereinafter) is the major channel of consultative democracy, and the logical starting point of the power system in PRC, too. Consultative democracy not only promotes the democratic transition of CPPCC in the new times, but also updates the concept of constitutional implementation. Interests' curing currently is the huge obstacle to prevent the reform. As an important part of comprehensively further reform, the development of PRC's constitution must make a positive response to this to perfect consultative democracy and the relevant systems of constitutional implementation.

Key words: Consultative democracy; Constitutional approach; Prospect

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INTRODUCTION

The Third Plenary Session of the eighteen Central Committee of the Communist Party of China will make the promotion of extensive, multi-level and institutional development of deliberative democracy as an important aspect of strengthening the construction of socialist democratic political system, and it is required to carry out extensive consultation in the whole society, and to insist on putting the negotiation before decision-making and in the implementation of decision-making. The realization of this goal can not be separated from the support and implementation of the constitution, because it is one of the basic functions of the constitution to make sure the rule of law of democratic politics. And in the new era of comprehensive deepening reform, the character of the current constitution to guide the reform also requires continuing to fulfill its historical mission of guiding the reform and opening up, and organically combining the rule of law in China Construction with the construction of democracy.

1. DELIBERATIVE DEMOCRACY: THE REALITY AND NECESSITY OF CULTURE, HISTORY AND LOGIC

1.1 Deliberative Democracy Is Derived From the Modern Heritage of the Cultural Deposits

In ancient China, in order to conform to the people, power executors made decision after drawing on the views of the people through consultation. This reflected the ancient creed of "Listen to both sides and you will be enlightened, heed only one side and you will be benighted", thus forming time-honored "Harmonious Culture" in China. Whether we analyze from the aspect of political tradition, or from the perspective of ethical value, there is a considerable degree of agreement of the ideological

resources contained in the Harmonious Culture with the deliberative democracy.

1.2 Deliberative Democracy Is Produced in the History of Modern Social Transformation If China

Chinese society has experienced a hundred years of vibration of the transformation period from the middle of the nineteenth Century to the first half of the twentieth Century. Due to the inability to properly handle the contradictions and conflicts of internal social development, and the difficulty to absorb foreign modern thought and institution of civilization, Chinese society could not effectively integrated into the world's modernization process, and the country was coerced into a dilemmatic evolution stage of the exogenous pattern to the endogenous pattern .

Until the Communist Party of China combined the spirit of Western democracy and Marxism-Leninism creatively by upholding the “Harmonious Culture” which was swallowing anything and seeking common ground while putting aside differences ,and successfully met the requests of justice and democracy of the labors , the peasantry ,the urban middle class and the national bourgeoisie in the framework of the deliberative democracy through multiparty cooperation and the united front strategy ,then solved the social ill that the development of political institutionalization has lagged behind the social and economic reformation, the Chinese nation truly completed the transformation of modern politics and formally advanced toward the Republic.

1.3 Deliberative Democracy Is the Inevitable Logic of Building a Democratic State

For the revolutionary party, which lacks professional talents and management experiences, the deliberative democracy and political cooperation could attract many outstanding patriots gathering around to give them advises and suggestions for the country's post-war reconstruction.

The New Political Consultative Conference founded in 1948 was the constitutional convention for the Communist Party and the democratic parties to exercise the constituent power. It produced the “Common Program of the Chinese people's Political Consultative Conference”—a founding program which played the role of a provisional constitution, and endowed the coalition government with legitimacy and authority, and lay the constitutional foundation for various political forces to reach a consensus. These institutional arrangements of deliberative democracy have effectively guided the masses to participate in politics, and have turned farmers and the poor to be important roles in political life; and have also made a radical change in the form of Chinese people's political participation for the first time. And then, these institutional arrangements have realized the combination of the working class and the other classes by depending on the adaptability of the political party system and the openness of the political system, and

also have properly solved the problem of the former regime of lacking communication channels and interest representative organizations by the appropriate political institutions, which have ended the protracted political unrest and have smoothly incorporated the cities which is the country's political and economic center and the symbol of modernization into the primary work of consolidating the new regime, and have finally completed the historic mission of democratic national construction and modernization development.

2. PEOPLE'S POLITICAL CONSULTATIVE CONFERENCE: THE SYSTEM PLATFORM OF DELIBERATIVE DEMOCRACY

The Chinese people's Political Consultative Conference is the main channel to carry out the deliberative democracy, and also is the logical starting point of the new China's power system. In the history of new China's constitution, it is the deliberative democracy breeds the election democracy and vote democracy, that is, only through the Chinese people's Political Consultative Conference, can we produce the National People's Congress. In the sense of constitutional, according to the provisions of the common program which acted as the provisional constitution, before the existence of the National People's Congress, the Chinese people's Political Consultative Conference plenary meeting can take the place of its authority to be the legal highest organ of state power. This is the further sublimation of the Republican spirit and the founding tradition which combines consultation and representation of modern China from the revolution of 1911, which is experimentally prepared for the institutionalization of People's sovereignty.

The Chinese People's Political Consultative Conference (CPPCC) makes political parties, people's organizations and sectors as the basic unit of political participation, which facilitates concentrating citizens' dispersed information and requirements together to analyze and discuss. That not only helps to resolve the problem that the expanding size of consultation tends to reduce the efficiency of consultation, but also makes up the limitation functionally and attributively that under the mode of the Chinese unicameral legislature, deputies to the People's Congress are mainly produced by regional representation and they participate politics by the individual identity, which highlights the advantage that the CPPCC members are mainly produced by profession, sector representation and they participate politics by the collective identity.

Deliberative democracy of the CPPCC is one of the important ways to obtain the legitimacy of public decision-making and legislative activity under the non competitive political party system in China. Deliberative democracy caters to the mainstream values of Chinese society which realizes individual rights under the premise

of emphasizing virtue, and at the same time, emphasizes the moral concern of collective interests. Such a kind of precious original intention becomes the hard-won common thought of Chinese deliberative democracy practice. The core of this community thinking is to achieve the purpose of maintaining the community's survival through the observance of the common moral of the community, and to enhance the cohesion by interpersonal communication. More than 3,000 people's political consultative organization in the nation is the main field of promoting social cohesion. Consultation is the procedure of the political decision-making process, the mutual trust and respect between citizens can only be developed gradually through the continuous debate and communication in the consultation process. The presupposition value of deliberative democracy is to improve citizens' will of operation through friendly consultation, and to achieve the balance of collective interests at last through the expression of the individual interests, in which process citizens transcend the self-awareness of "me" to form the "us" community consciousness.

On the one hand, in order to integrate the interests of all sectors of the society and to bridge the differences between the community because of the competition to the limited social resources and natural resources, the CPPCC has taken a positive change. The participant units of CPPCC are extended from the 28 sectors in 1954 to the 34 sectors at present, covering a wide range of groups and especially integrating some new social classes, which keeps the basic of political consultation as much various and comprehensive as possible timely to avoid the limitation of participant and the separation from social development which may weaken the representative of the CPPCC.

On the other hand, under the framework of political consultation, the ruling party adheres to the principle of seeking common ground while putting aside differences, and respects the differences of members of united front in interests and values by listening to the political views of all political parties, which can prevent the various conflicts of interest that may lead to intensification of contradictions as far as possible so that coordinates and resolves the difference of society better.

3. THE IMPLEMENTATION OF THE CONSTITUTION: THE PRACTICE OF THE CONCEPT OF DELIBERATIVE DEMOCRACY

Deliberative democracy not only has promoted the democratic transition of the Political Consultative Conference in the new period, but also has updated the concept of the Constitution implementation system, namely, the constitution implementation system that the implementation of democratic politics in the manner of applying the Constitution not only means the ruling by people, but also means the ruling by people's consultation, that is to say, the attention should be paid not

only to the main body of the ruling, but also to the ruling methods. At present, China is exploring the concept and the way of deliberative democracy in different degrees in the direct or indirect implementing of the important system on the Constitutional provisions. Although the People's Congress System, as the basic political system of the country, is a representative democracy system which takes the electoral democracy and the voting democracy as the core, its negotiability is becoming its remarkable democratic character increasingly.

On the one hand, the "two sessions system" has become the most important constitutional practice in the national life. The session of all levels of the CPPCC is similar to the session of the National People's Congress, and it is actually a little earlier than the National People's Congress, which ensures that the CPPCC can provide their views and suggestions on the personnel arrangements and major issues that will be discussed in the NPC session to the NPC, so as to influence the political decision-making and legislative results. It is the deliberative democracy between the CPPCC and the National People's Congress that realizes the joint and complementary between the basic political system and the radical political system of the country.

On the other hand, in the framework of the existing system of the People's Congress, we should introduce and strengthen the consultation mechanism in the nomination and election of candidates, the legislation of the People's Congress, budget approval, personnel appointment and removal, constitutional supervision and other important matters and related works to enhance the representative and deputy functions of deputies to the people's congress in the political and legal life in the manner of deliberative democracy.

This is a good attempt to perfect the procedural and maneuverability of the representative democracy and to improve the publicity and scientificity of decision-making, which can realize the benign interaction and cooperation between the state and society.

The special administrative region system is a new type of local system which is pioneered by China in the whole world constitution. Its bold system design and complex constitution implementation have been carried out smoothly, which can not be separated from the wisdom of deliberative democracy. The Special Administrative Region, as the constitutional version of the political conception "One country, two systems", is the reflection and crystallization of the thought of deliberative democracy. The conception of "One country, two systems" takes the interests of the three parties of sovereign state, suzerain and colonial into consideration fully. Under the premise of no damage to the sovereignty, China maintains a high degree of tolerance and flexibility, and rationally adopts the reasonable suggestions provided by the foreign party. Then, the conception of "one country, two systems" is accepted by all parties concerned ultimately. And then China gives full consideration to the special historical environment of the survival of the Hong Kong

and Macao during the subsequent democratic consultation between the central government and Hong Kong and Macao residents, especially in the consultation of the Basic Law Drafting Committee, which are institutionalized and concreted further in the Hong Kong and Macao basic law to retain the original social system and life style as far as possible and to allow the existence of “enclave” of capitalism in a socialist countries. The autonomy of the special administrative region even transcends the power of the member units in the federal state, which creatively develops the state theory and the constitutional theory of the Marxism. Although there is a gap between the Special Administrative Region and the mainland in basic idea of legal institutions, value orientation, system design, cultural foundation and the principles of substantive law and procedural law, the effectiveness of the legal institutions of the special administrative region is ultimately based on the China constitutional order. In the running in and acceptance of different legal system, the concept of deliberative democracy ensures the social stability and steadiness after the return of Hong Kong and Macao.

In addition, the wisdom of deliberative democracy not only saturates the smooth implementation of the basic systems of constitution, such as administrative and judicial system, national regional autonomy system, economic system, property system and labor system, but also saturates the legitimacy of law enforcement, the fairness of judicatory, the preferential policies for the minority, the support for the non-public economy, the equal protection of citizens' private property, and the establishment of social security system. At the same time, the wisdom of deliberative democracy also fits highly with the mass line of the ruling party, which reflects the trend of the multilevel development of deliberative democracy in the process of implementation of the constitution. This indicates that the harmonious constitutional relationship should be that on the basis of the respect of the majority for the minority, the minority is subject to the majority; so that we could take the two major constitutional principles—people's sovereignty and the protection of human rights into account.

4. CHALLENGES AND PROSPECTS

The successful practice of China's deliberative democracy has brought about a long-term stability and prosperity to the country, avoiding the conflict of the non-compatible political parties or ethnic groups as it in some countries. However, it becomes increasingly clear that benefit curing has become a huge obstacle to reform of the deep zone. Because the objective results of the economic system reform are that benefit gambling begins to appear, and the division of social stratum has gradually formed. What follows is people's growing political awareness hoping to protect their own interests better through the positive impact on decision-making.

However, the participation degrees and the influences on decision-making of citizens from different classes differ because of the different social status and the different possessions of social resources. The interest groups who grasp the interests of political, economic and cultural capital make the system transition towards the direction to their advantage far more than other groups. In view of the fact that the theory of deliberative democracy is based on the goodwill assumption about community sense and the specific negotiation method and procedure is not perfect, the interest groups bring about more self-interest preference into the negotiation and the voting process through massive and initiative political participation, thus making the decision published in the form of “social instrument” bias to them and hindering the competition of other classes by blocking the passage of a rising class. As time passes, this has caused the fence of benefit curing and the closure of different classes. The selfish behavior that artificially hollowed the collective interests, coerced the political institutions, and had a monopoly on public decision-making will accelerate the overquick stereotyping of Chinese social stratum structure, limit the room for vertical social mobility, and aggravate the marginalizing and non-institutionalizing survival of the bottom society. As the result, the tension between classes will continue to rise, and non rational political participation may be explosive growth.

The new problems and challenges point out the direction of efforts of China's constitution and theoretical study, and the first mover advantage of the traditional system accumulates the experimental foundation for these efforts. The perfection of deliberative democracy and the related constitutional implementation can be at least starts from the following aspects:

First of all, research on the constitutional law should update its foundation of political philosophy. The principle of “the minority is subordinate to the majority” shouldn't be regarded as the ideal of democracy or the ideal democracy, and the good constitutional system should be defined as the system which is able to create space for the consultation groups, to reduce the risk of misunderstanding, and ultimately to limit the violence from the people who have only heard the echo of their own voice. Citizens can participate in the expression of public opinion through consultation; the government can synthesize opinions, and can move down the center of gravity, forming the socialization and normalization of interaction between political power and political rights through the consultation.

Secondly, we should further improve and implement the basic rights of citizens in the process of the reconstruction of China's constitutional rights system. Our country should amend our constitution according to the reality and the need of the developments of market economy and democratic politics to confirm the important right which is missing compared with the international

human rights convention in our constitution, and formulate a number of specific laws based on this constitution to be protected and perfect China's system of constitutional rights. Moreover, the state should not only eliminate the improper intervention to basic rights, but also promote the realization of the rights and change the abstract symbols of right to the real right protection. In particular, the state should ensure the freedom of body, speech, publication, assembly, and association which related with the effects of deliberative democracy, thus ensure the activity space of the main body of the consultation, the media foundation of the opinion expression, the integrity of citizen's personality and the independent critical spirit. In this way, people can take advantage of the rich practice to enhance the civic spirit, exercise the ability of democracy, improve the quality of consultation, and to offset the negative impact of power and wealth inequality on citizen participation.

Next, we should expand the foundation of opinion of the CPPCC, and establish the election and supervision mechanism of CPPCC members. There is a close relationship between interest curing and the fact that interest groups exert too much influence on the decision-making process while other classes lack participation in it. Therefore, in order to eliminate these ills which are not conducive to the equality of political and social, we must to expand the foundation of public opinion and representativeness of the CPPCC through the fair distribution of the number of members of the CPPCC National Committee, and reflect the differentiation of social stratum status by members' identity diversity. And we can increase in the number of vulnerable members appropriately to ensure that their interests are not ignored, narrowing the gap of political influence between them and the strong classes. And on the other hand, due to the characteristics of assignment and arrangement of the current way elect members, some members only have "specimen" meaning and lack sufficient ability to participate in politics, which is not conducive to the democratic supervision of the members' qualifications and the effect of the performance of their duties, and actually shields the interests requirements of some sectors and class members. Therefore, it is necessary to refer to the election and supervision mechanism of the people's Congress for the work of the CPPCC. In particular, that means that we should make the nomination recommendation by the members from various sectors open and transparent, and adopt direct or indirect democratic approach to generate their own candidates according to the number of the members and the geographical scope of each sector. Then, according to the twenty-first provision of the "Constitution of the Chinese People's Political Consultative Conference", the CPPCC Standing Committee at all levels review and approve the formal list of its members. And the members' performance of duties can be supervised referring to this method. Various sectors can take recall vote of the incompetent

members in the way they get the nomination, and then revoked the membership formally through submitting the recall proposal to CPPCC Standing Committee.

Finally, the constitutional status of the consultation should be cleared, so that the negotiation could become an essential legal procedure before the decision, and exist as the basic principles of the socialist democratic politics and the implementation of the constitution. The concrete idea is that the important matters and special circumstances that must be through political consultation before entering the decision-making and the voting should be listed in the constitution or constitutional laws. It should be stipulated that all resolutions without consultation not only can't be submitted to the Party committee and government to make decision, but also can't enter the proceedings and the voting procedure of the National People's Congress. The ruling party is required to carry out an equal consultation with the democratic parties and the non party people first before making a major decision, which will achieve a basic draft resolution, that is to say, a joint proposal should be proposed through the United Front. And then after the discussion, the modification, and the approval of the proposal in the people's Political Consultative Conference, the formal decision should be delivered by the ruling party to the party member representatives of the National People's Congress to submit to the People's Congress for vote separately or joining the democratic party representatives or other non-party representatives, which will form a law or a decision of National People's Congress.

According to the above procedure, the ruling party makes the spirit and mechanism of deliberative democracy run through the main stage of the Chinese political party system, the United Front system, the political consultation system and the people's Congress system. In this process, the ruling party fully takes care of the various wills of the parties through the ruling way of deliberative democracy, integrate the scattered wills of all classes into the collective will of the people, and raise it to be the national will through the authority.

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