

Study on the Constitutional Defining Mechanism of Leadership in China

ETUDE SUR LE MECANISME CONSTITUTIONNEL DEFINISSANT LA RELATION DU GOUVERNANCE EN CHINE

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Abstract

If we want to establish a constitutional defining mechanism of leadership in China, we shall first ensure the top leadership of the ruling party. The leadership should transform as the elective power in the legislation, and combine with executive power as the non-elective power. The leadership of the National People's Congress should be selectively improved on the condition that the top leadership of the ruling party is insisted, and be highlighted with its independent representative.

Key words: The ruling party; NPC; Leadership

Résumé

Si nous voulons établir un mécanisme constitutionnel définissant le leadership en Chine, nous allons d'abord d'assurer les plus hauts dirigeants du parti au pouvoir. La direction devrait transformer le pouvoir électif dans la législation, et se combinent avec le pouvoir exécutif comme le pouvoir non élective. La direction de l'Assemblée populaire nationale doit être améliorée de manière sélective, à condition que les hauts dirigeants du parti au pouvoir n'est insisté, et être mis en évidence avec son représentant indépendant.

Mots clés: Le parti au pouvoir; NPC; Relation du gouvernance

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China's current Constitution states in its preface, "all the

Chinese people will ... under the leadership of Chinese Communist Party..." (Article 3, Amendments to the Constitution), and "the multi-party cooperation and political consultation system will exist and develop under the leadership of CCP" (Article 4, Amendments to the Constitution). These statements clearly show that China's political system is a multi-party cooperation system under the leadership of CCP who is the ruling party while the others are participating parties. The power of the ruling party is a leadership and regulated by the Constitution. All national activities shall be carried out under the guide of the ruling party. The main body of the Constitution states that the NPC is the highest organ of state power in China (Article 57, the Constitution), and local people's congresses are local organs of state power (Article 96, the Constitution). The NPC is China's national authority and produce all levels of administrative and judicial organs who report to and are subject to supervision from the NPC. The NPC enjoy the top powers which all agencies and organizations are subject to and carry out activities in the regulated ranges according to the regulations and laws established by the NPC. The NPC's right is also regulated in the Constitution, and is a leadership as well. Thus, it's difficult to define the important of the leadership of the ruling party and that of the NPC. We need to study the ways and the ranges both act. Right now, the CCP plays a role as decision-maker, while the NPC as a representative of whole state organs plays a role as an executor of CCP's decisions. Obviously, the NPC's leadership is dependent on the CCP and become a channel through which the CCP perform their decisions. Consequently, the problem appears as how to constitutionally define and distinguish their leadership. Solving the problem ensure the "legality of the China's reform" and reform of China's political system. Besides, it can improve and strengthen the NPC's position which weak right now. Without solving the problem, a legal political system with a core of NPC cannot be established and function.

1. ENSURING THE TOP LEADERSHIP OF THE RULING PARTY

1.1 Reasons

To define the top leadership is the key to define the leadership. The NPC as the highest organ of state power enjoy the highest leadership in all the state businesses. This comes from the Constitution of the power structure system. All rights come from the regulations in the Constitution. If any party or political groups need right to maintain their own needs, they must acquire such right through legal channels acknowledged by the Constitution. Thus, the position of the ruling party should be confirmed from the power organs through the acknowledged ways in the Constitution. Their role as ruling party brings them the leadership, and they must perform as leadership within the frame of existing power structure and carry out their ideas through the channels of power organs. Therefore, the top leadership lies in the highest organ of state power.

However, different from other developed countries with adequate legal system, China's power structure system has its special reasons. First of all, the leadership of the ruling party does not come from the Constitution. Instead, it gradually forms in China's revolution and modern construction in a long term. Even the Constitution is published under the guide of the ruling party and takes the party's political program as the core. The position of the ruling party is established before forming the Constitution. Meanwhile, the NPC system and relevant state organs are established under the guide of CCP and based on the party's fundamental ideas. Consequently, all the top rights what NPC enjoys must respect the rights of CCP first. It shows that the top leadership still lies at the CCP. It also decides that insisting on the top leadership of CCP is the premise of defining the leadership of NPC and CCP.

1.2 Connotation

The connotation in the top leadership of CCP needs to be explicit while we insist on it. It cannot be generalized as political leadership. Otherwise, it would become hollowing out. The over 30-year reform and opening up has brought a lot of social problems to the top leadership of CCP. What is more, many supporters of "westernization" advocate that the CCP's leadership should be separated from the state's construction of law system. Before the new legal operation of power structure is set up, if the old system ruled by man was abandoned soon because of the strong pressure, a vacuum of operation would appear and there would be a risk that a loose oligarchy comes out. In such political situation, different regions and departments form various interests groups. On one side, the discipline control from the party would be gone or weaken if the party quitted. On the other side, these groups would be totally out of control

due to the lack of new system. The groups would become blind once out of supervision. Since they had the rights to allocate the interests, they would misuse their rights to satisfy their own needs, such as their groups, regions and even individuals. When interest went into different directions, the ruling party would lose their cohesive power in leadership. However, in the consideration of the complicated world and domestic situation, the loss of cohesive power would be fatal to the ruling party. The former Soviet Union proves this. Therefore, right now, it is not workable to separate the ruling party's leadership from all aspects of social life. Such a separation should be based on the strengthened leadership of the ruling party. Besides, the CCP does not need to give the leadership. Instead, they just need to change their leadership from a direct way to an indirect one. The CCP just guide the social affairs in a macro way, and let the relevant power organs or social organizations to handle with.

The power structure theory under the framework of constitutional politics emphasizes the combination of democracy, elite governance and principles of checks and balances to fully play their roles. In terms of effect, it tries to find a "delicate balance" between the rights and freedom of people governed and an effective government. The institutional protection for the balance is summarized as Separation of Powers by Montesquieu. He believes that the rights and freedom of people governed exist only when powers are not abused. "However, to avoid abuse of powers, powers must compete with powers. In other words, powers of different nature must confront and balance each other. The worst situation is that the same individual or organizations perform legislative, executive and judicial powers, and this could destroy the freedom." Montesquieu agrees that the representative body elected by the mass could perform the legislative power. Besides, he thinks the legislative power is of equal rank to administrative power, and is not higher than administrative and judicial powers. Organs who carry out the legislative power should be responsible for the mass because legislative power is from the mass rights. Instead, the administrative and judicial powers are not from the mass, but born with the country. So, organs who carry out both powers don't need to be responsible for the mass. Besides, they should be controlled by professional groups of elites to make sure the administrative and judicial efficiencies. To make a distinction of natures of the powers, people could balance the powers and make them coexist and balance each other.

Thus, rights can be divided into elective ones and non-elective ones. The former one refers to the rights of legislative institutions and represents the spirit of democracy. The latter refers to the powers of administrative and judicial institutions and represents the elite governance. Except both, the principles of check and balance are performed through abstract leadership

in a top position of the country. In western countries, the leadership is owned by the Constitution and the institution who protects the constitution. Since it is in a detached position, it can achieve a balance between the rights aforesaid. In China, the abstract leadership in the top position is possessed by CCP, the ruling party. Therefore, CCP completes the task of check and balance. However, such a check and balance carried out by the ruling party possess a strong sense of the rule of man, which is obviously against the spirit of democracy. As a result, in order to build China with a perfect law system, we need a fundamental change in the ways of check and balance. Nevertheless, it is not practical to let CCP quit the check and balance and give the top rights to the Constitution to do it as what the western countries do, because the existing Constitution is greatly dependent on the leadership of CCP who ensure the Constitution's authority and detached position. Once losing the support from the CCP, it faces to mass doubts about its top leadership and effectiveness, and further loses the necessary conditions to balance the elective and non-elective rights. What is more, the building of rule of law will be risking of out of control. All in all, to satisfy both the needs of building perfect law system and social stability, the old and new ways of check and balance needs to be combined and adjusted according to the changing environments. This ways could optimize CCP's exercise of public power system, compress the space of abusing power, and maximize the inhibition of the abuse of power, thereby increasing the cost of inner-party democracy and the institutionalization of effective input-output ratio.

1.3 Ways

1.3.1 Transformation of the Ruling Party's Leadership Methods in Elective Rights

In the area of legislation and decision-making, with full spirit of democracy, the state organs built under the Constitution should engage in specific work. The ruling party will no longer play a role as an executor or a referee to handle with these affairs. Instead, it will work as decision-makers behind the scenes and handle these decisions through legal channels to the relevant organs and make them carry out. But, they will no longer directly get involved in the effects of the decisions. All the supervisory organs will take the responsibility to trace, and coordinate with each other. Or, the ruling party could exercise their rights of personnel. It could recommend outstanding personnel to the state organs in order to keep the work of state organs in line with the major policies formulated by the ruling party.

1.3.2 Close Integration of the Ruling Party's Leadership and Administrative Rights

The administrative rights have ability of intervention and continuity, and the exercise of administrative rights is a way of elite governance. As a pioneer organization, the

CCP brings together all the talents all over the country. It could be so-called an elite group. If it could perform the administrative rights, obviously it has higher efficiency and simultaneously maintains the top position as a leader. The multi-party cooperation system under the leadership of one-party in China makes the CCP as the only ruling party and the core of all state affairs. When exercising the rights of recommendation concerning personnel, CCP set up institutions as government counterparts, and even overlap to some extent. Under such circumstance, the separation of the ruling party and administrative organs could increase the organs, lower down the efficiency and lose the control of check and balance and democratic participation. Binding up the ruling party and administration make the fate of the party integrated with the outcomes of administration. People can see and judge it, and no one can shirk his responsibility. And certainly, in the institutional designs, the ruling party should be considered as a whole and detached, and let the executors of state rights to bear the responsibilities of bad outcomes.

It becomes necessary to make the chief of CCP in each level in full charge of administrative affairs, and carry out appointment rights and administrative rights through an appropriate decision-making mechanism. In the operation of the executive power and under the democratic centralism, focus and efficiency should be emphasized more than the democracy. Suppose the administrative rights can be divided into decision-making, exercise and supervision, therefore, a perfect operation mechanism could be summarized as democratic decision-making, effective exercise and independent mass supervision. All these cannot work without the active participation of elite groups of the ruling party.

2. SELECTIVE IMPROVING THE LEADERSHIP OF NPC

2.1 Relevant Theories

Selective improvement of the leadership of NPC should logically start from clearing the nature of NPC's rights. As the representative institutions form, the problem appears concerning the relationship between the ownership of state power and the rights of exercise state power. Such a relationship in the national systems represents as a relationship between voters in the position of the owner of state power and representatives of executors of state power. The key for NPC to exercise the rights lies in the representatives of NPC. Its essence is to consider how the representatives can exercise the relevant rights. The ways NPC representatives exercise the rights are influenced by the electoral units and the will of electors. Generally speaking, there are two opinions regarding this issue in the academic world. One is the commission theory, and

the other is the independent representative theory.

The commission theory claims that a strict "private trust" relationship should be established between representatives and voters. Representatives obtain the legal authorize and commission from the voters through elections, and therefore bear the responsibilities to carry out the voters' wills in law. Representatives must act according to the commission or allowance from the voters, and cannot enjoy any rights unclearly stated. Meanwhile, in such a commission, each voter authorizes to the all representatives, and thus the representatives cannot represent the will or interest of the regions beyond the original elective regions. The representative system in the commission theory has following characteristics. First is command commission. The representatives stay in the Parliament as a "mouthpiece" for the voters. They must unconditionally carry out the instructions granted by the voters, and exercise their rights under the supervision of voters. Second is geographical responsibility. The representatives must be completely faithful to the interests, and their mission is to make the will and interests of original constituency achieved. Third is direct dismissal. To ensure that the representatives faithfully carry out their responsibilities, voters enjoy the rights of direct dismissal of any representative.

Different from the commission theory, the independent representative theory, based on the principle of social division of labor, propose that a trustable relationship built between the representatives and voters. The representatives should be loyal to the voters in political principles, but they have their own rights to make decisions in specific political affairs. Accordingly, by the media of the representatives, people can do everything that they cannot do by themselves. The voters have the trust on the representatives. This means that voters believe that the representatives are highly sensible at taking voters' business and interests as their own business, and they will protect, maintain and secure these affairs and interests when they deal with national affairs. In such ways, the representatives are really the representatives of these voters. The independent representative theory usually possesses following characteristics. First is free judgment. The representatives should act in a way which they consider as the best, and not agree to act under other conditions. Besides, the representatives must be able to make decisions on behalf of voters by their knowledge, experience and talents. Second is a centralized representative of all voters from all elective regions. The elective region is an elective unit instead of sovereign unit, and representatives represent the whole will and interests of all voters instead of part interests of voters from a specific elective region. Third is collective responsibility. Once the representatives are elected as a part of representative institution, they will not be responsible for voters as individuals, but all are responsible for voters

together.

Theoretically speaking, the commission theory pays attention to the extent how voters participate, and reflects the high demands of democratic development. However, practically speaking, the commission theory is reasonable in theory but inappropriate in practice. First, too much participation from voters may cause an imbalance in the social life structure. The instructions from decisions made by the whole voters in each elective region may make the democracy just as a formality, and even worse, someone or a certain group may manipulate the decisions. Rousseau has pointed out that "never use twenty thousand people to do the things which only one hundred can do better." This is the fact which never changes. Second, the high costs in decision-making weaken the power and position of representative institution. The cost in decision-making is referred to all the resources including time spent on getting the necessary number of affirmative votes during the process of negotiation. Due to lack of common interests among the representatives, all of them stick to their own regional interests. This makes the representative institution meets fragmented relationship and difficulties to reconcile the interests when facing to decide the interests. To reach an agreement, they need to constantly negotiate with each party and try to satisfy the needs. The increasing costs in decision-making also block the normal functioning of the representative institution. At last, the whole country will be entrapped in lack of consciousness of entirety and common goals in political life. Then, localism starts to grow and threatens the unity of the country. Since the representative institution gets involved in the fights of regional interests, the nation's common will cannot be formed and the central state organs cannot normally function. Over time, as Sieyes says, the entire country will be "cut, mutilated and torn into many small democratic countries." Nevertheless, the independent representative theory applies the principles of social division of labor into the relationship between voters and representatives. It also suggests rational allocations of state power in the society to ensure the normal functioning of the representative institutions. First, the citizens with better knowledge, skills and experience of political participation are elected into the representative institutions to make more reasonable and higher quality of decisions. Second, the representatives are required to exercise their rights independently to ensure the representative institutions working as normal and in an order. This could avoid a messy situation that during the French revolution, the transparent parliament made some citizens directly control the Parliament, interfere with their work, and even work above the Parliament. Third, the representative institutions with a independent position, capable and experienced members, integrated organizations and uniform of rights are good at negotiating and coordinating various interests to make work as procedures, systems and efficiency. Last,

the division of labor between the representatives and voters helps the check and balance among the state power organs. The representatives refine and screen the ideas from voters, and the representative institutions' decisions come from the voters and simultaneously have controls on the voters.

2.2 Ways

Selectively improving the NPC's leadership is indeed an amendment to the top rights of NPC in constitutional meaning. Then, the authority of the Constitution will not stay as a mere formality ever because of some conflicts with the leadership of the ruling party. The Constitution will play a more practical role under the limited leadership of NPC. In those fiercely conflicted fields, the NPC's leadership gets weaker, so that the ruling party can play as an elite group to put all the energy together to solve the problems. Those non-conflicts field should be paid more attention to. The Constitution and the NPC system under the Constitution can perform their right in those common fields by strengthen the power of NPC. After all, all of them are built under the guide of CCP, represent the will of CCP, and are results of leadership of CCP in macro ways. In China, the commission from the NPC should be weakened while the independent representative strengthened. Obviously, the independent representative system requires more in the representatives' quality, the competition in election and the improvement in representative institutions and relevant rules.

As for NPC, it should first add some competition to the elections in each level. The county-levels people's congress could be experimental units. According to the present Constitution, the county-levels people's congress is the highest representative institutions in direct elections. The "Three Classes, Each One Third" system of CCP during the Sino-Japanese War may provide some experience. At that time, in the Anti-Japanese democratic political power structure, the Communists (on behalf of the working class and peasants), the progressives (on behalf of the petty bourgeoisie) and the middle forces (on behalf of the national bourgeoisie and the enlightened gentry) each occupy one third. Nowadays, we can consider about two-level quota system. A county is first divided into some elective regions. In each region, there are three representative quota in which two are from the recommendations of CCP and one is from social candidates. As for social candidates, we can learn from the western countries to elect. Based on the quantity of voters, one that wins a certain percentage of supportive signatures can become a candidate. This system could highlights the leader position of CCP, and ensure the policies and

wills to be admitted by the law through the power organs. Besides, the major representatives from the CCP could also ensure the proposals from the CCP to be passed in majority, and to some extent avoid rejections to CCP's personnel recommendation or other proposals during the running of NPC. The CCP strengthen its leadership in a democratic way, and avoid some objects calling CCP as dictatorship and arbitrariness. What is more, by actively participating in the elections of NPC representatives, some citizens may get more senses of democracy and responsibility, and practically reflect the voice of people to different levels of power organs. After running for a period, this system can be pushed into the higher level of people's congress to elect the representatives, and improve the relevant institutional designs.

All in all, to build such a constitutional defining mechanism of leadership could help strengthen the leadership and the ruling position of CCP. Besides, it offers some theoretical support to build and run a perfect law system in China, and simultaneously it could step into a practical level from the formal level.

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