

3. The Constitution

Historical Overview – How the Constitution has evolved

- ❖ The Common Programme (1949) – adopted to serve as an interim constitution
- ❖ The 1954 Constitution – cultural revolution began
- ❖ The 1975 Constitution – radical ideology/extreme principles
- ❖ The 1978 Constitution – cultural revolution was over; more reforms taking place
- ❖ The 1982 Constitution – in operation now; although amended since then

The 1954 Constitution

- ❖ Preamble: “Our Country has established unbreakable friendship with the USSR and other people’s democratic countries.”
- ❖ Reflect the political circumstances at the time – China/Soviet Union formed the Socialist alliance
- ❖ Comprehensive and at least on paper, progressive – guaranteed numerous civil rights
- ❖ Art. 19 PRC defends the people’s democratic system, suppresses all treasonous and counter- revolutionary activities and punishes all traitors and counter-revolutionary elements. For a certain period, the State shall, according to law, deprive the political rights of feudal landlords and bureaucratic capitalists, but will also give them ways of livelihood so that they are reformed to become self-reliant citizens through labour.
 - Communist control of the power was not stable – Chiang Kai Shek (Nationalist party) was still after power in the mainland
- ❖ **Art. 90 The citizens of PRC have the freedom of residence and migration.**
 - **This freedom was later removed and remains that way in China**
 - Chinese citizens if born in a particular place, must remain in that place for life → regulated by household registration system
 - Should a person want to migrate to another place, in order to move and become a registered migrant, person has to change the hukou status – this is a difficult change esp. from rural – city move
 - As a matter of reality, many move but as a matter of law, these migrants are rural citizens as per the household system – consequently, they do not receive welfare benefits in the new location

The 1975 Constitution

Written at the end of the cultural revolution (after millions were persecuted)

Preamble: “Over more than 20 years, the Chinese people of all nationalities have marched on triumphantly, achieved great victories in the socialist revolution and construction, achieved the great victory in the Cultural Revolution of the Proletariat, and consolidated and strengthened the proletariat dictatorship.”

- ❖ Confirmed the cultural revolution

“Socialism is a long historical period. During the period, class, class contradiction and class struggle always exist; the battle between the two lines of socialism and capitalism always exists; the danger of capitalist restoration always exists; the threat of subversion and aggression from imperialism and socialist- imperialism always exists. These contradictions can only be solved according to the Theory of Continued Revolution under the Proletariat Dictatorship.”

- ❖ Maoist theory of continuing revolution

Art. 2 CCP is the core leadership of the people of all China. The working class achieves leadership of the State through its vanguards the CCP.

Art. 12 The proletariat must implement wholesale dictatorship over the bourgeoisie in the superstructure including all cultural areas. Culture, education, literature, arts, sports, public health, science and research must all serve proletariat politics, serve the workers, peasants and soldiers and be integrated with production and labour.

Art. 25 Prosecution and trial of cases must follow the masses line. In significant counter- revolutionary criminal cases, the masses shall be mobilised in the discussion and criticism.

Art. 26 The basic rights and obligations of citizens are to support the CCP leadership, to support the socialist system and to submit to the Constitution and laws of the PRC.

Summarised the ideology behind the radical cultural revolution → But In 1976 Mao died and the radicals were prosecuted

The 1978 Constitution – under Deng Xiao Ping

Preamble: “Chairman Mao Zedong is the founder of PRC. All the victories in our revolution and construction have been achieved under the guidance of Marxism, Leninism and Mao Zedong Thought. To raise permanently and to defend resolutely Chairman Mao’s great banners is the fundamental guarantee for the unified battle of Chinese people of all nationalities in order to bring the revolutionary cause of the proletariat to the conclusion.”

- ❖ Still paid lip service to Mao Zedong

“We must uphold the proletariat’s struggle against the bourgeoisie, uphold the struggle of the socialist line against the capitalist line, oppose revisionism, prevent capitalist restoration and prepare to deal with the subversion and aggression of socialist imperialism and imperialism against our country.”

- ❖ Still some radical ideology

But noticeable changes in the direction of the CCP:

- ❖ Art. 11 The State upholds the general line of *constructing* socialism with all the efforts and in a strenuous and efficient way, develops the national economy in a planned, proportionate and speedy manner and increases without halt the social productive forces in order to strengthen the independence and security of the State and improve progressively the material and cultural life of the people.
 - **Shift towards more emphasis on the economic development**
- ❖ Art. 45 Citizens have the freedom of speech, communication, publication, rally, association, march, demonstration and strike and have the rights to “speak out freely, to air views freely, to hold great debates and to write big-character posters.” (FOUR BIGS – these were deleted because they were the hallmark of persecution against intellectuals)

The 1982 Constitution

Fundamental Ideology:

“Four Cardinal Principles”

Constitution, Preamble: “Under the *leadership of the Communist Party of China* and the *guidance of Marxism- Leninism, Mao Zedong Thought, Deng Xiaoping Theory* and the important thought of ‘Three Represents’, the Chinese people of all nationalities will continue to *adhere to the people’s democratic dictatorship* and *follow the socialist road*, persevere in reform and opening to the outside world, steadily improve socialist institutions, ...”

*in italics = the four cardinal principles

- ❖ Encapsulates the underlying principles/ideologies of the current regime
- ❖ Three represents by Jiang Zemin (Deng’s successor) officially opens up the CCP to those people who would traditionally not be working class i.e. the capitalist and therefore the political elite joined hands with the economic elite
- ❖ Current political system → *people’s democratic dictatorship*

Socialism

Art. 1: The PRC is a socialist state under the people’s democratic dictatorship led by the working class and based on the alliance of workers and peasants. The socialist system is the basic system of the PRC. Disruption of the socialist system by any organization or individual is prohibited.

Economic policy – undergone the most changes to the Constitution:

Public Ownership

Original Art. 6 The basis of the socialist economic system of the PRC is socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people.

Land Ownership

Art. 10: No organization or individual may appropriate, buy, sell or otherwise engage in the transfer of land by unlawful means. The right to the use of land may be transferred according to law.

- ❖ No private ownership
- ❖ Citizens granted a land-use right

Market Economy 1993 Amendments

Art. 15 Abolishing the planned economy “The state practises socialist market economy.”

- ❖ Officially adopted

Evolving Role of Private Economy

1988 Amendment to Art. 11: The state permits the private sector of the economy to exist and develop within the limits prescribed by law. The private sector of the economy is a complement to the socialist public economy. The state protects the lawful rights and interests of the private sector of the economy, and exercises guidance, supervision and control over the private sector of the economy.

1999 Amendments

Art. 6 on basic economic system: “In the primary stage of socialism, the state upholds the basic economic system under which the public ownership is dominant and diverse forms of ownership develop side by side and keeps to the distribution system under which distribution according to work is dominant and diverse modes of distribution coexist.”

2004 Amendments

Art. 11 (amended three times): The state protects the lawful rights and interests of the non-public sectors of the economy, including individual and private sectors of the economy. The state encourages, supports and guides the development of the non-public sectors of the economy, and exercises supervision and control over the non-public sectors according to law.

Political system at the national level

- ❖ Each local level replicates the political structure of the national level

5 entrances to the Forbidden city through Tiananmen Square reflects the formal structure created by the Constitution

- ❖ NPC – supreme organ of the state
- ❖ NPC created 4 others bodies of state power created by and accountable to the NPC -> State president; Central Military Commission (CMC); Supreme People's Court (SPC); SPP

NPC Supremacy

Art. 2: All power in the PRC belongs to the people. The National People's Congress and the local people's congresses at various levels are the organs through which the people exercise state power.

Art 3: The state organs of the PRC apply the principle of **democratic centralism**.... All administrative, judicial and procurator organs of the state are created by the people's congresses to which they are responsible and by which they are supervised.

State President

Art. 80: The President of the PRC, in pursuance of the decisions of the National People's Congress and its Standing Committee, promulgates statutes, appoints or removes the Premier, Vice- Premiers, State Councilors, ...declares a state of emergency, declares a state of war, and issues a mobilization order."

- ❖ President can act on these things pursuant to a decision of the legislature → president doesn't have independent decision-making power; symbolic figurehead/head-of-state; doesn't wield actual power
- ❖ Before president Jiang Zemin – previous presidents were lower ranked party officials

Art. 81: "The President of the PRC represents the PRC in conducting activities of national affairs and receiving foreign diplomatic representatives and; in pursuance of the decisions of the Standing Committee of the National People's Congress, appoints or recalls plenipotentiary representatives abroad, and ratifies or abrogates treaties and important agreements concluded with foreign states."

State Council

Art. 85: The State Council, that is, the Central People's Government, of the PRC is the executive body of the highest organ of state power; it is the highest organ of state administration.

Central Military Commission (CMC)

Art. 93 The Central Military Commission of the PRC directs the armed forces of the country.

- ❖ Technically two body of CMCs (party CMC and State CMC) but in reality, comprised of the same staff

Supreme People's Court (SPC)

Supreme People's Procuratorate (SPP)

- ❖ Job is to supervise the implementation of law
- ❖ Court is equal to the SPP

State Structure

In reality, there are four levels (not three). At each local level, there is usually a local govt., legislature, judiciary and procuracy

Art. 30: The administrative division of the PRC is as follows:

- (1) The country is divided into **provinces, autonomous regions and municipalities** directly under the Central Government;

First level → provincial level entities (32): 23 provinces, 5 autonomous regions (many minority groups but not necessarily the majority), 4 mega-cities (Beijing, Shanghai etc – these cities shouldn't be confused with the cities in the second level)

- will find court, govt, legislature and procuracy

(2) Provinces and autonomous regions are divided into autonomous prefectures, counties, autonomous counties, and cities;

This should be divided into two levels

- **Cities and autonomous prefectures (higher level)**
 - Districts (divisions of cities)
 - Legislature, govt, intermediate court and procuracy
- **Counties and autonomous counties (lower level)**
 - Legislature, govt, court and procuracy