

The “Never Again” Imperatives in Chinese Constitutions

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This essay aims to provide a Chinese perspective on the question of traumas and the Never Again imperative. It will first place the question in the long history of constitution-making in China, taking the view that constitutional narratives are context-driven, shaped by particular historical processes, and addressing particular historical concerns of respective nation-states, each with its trauma and Never Again imperatives. This essay then brings the current 1982 constitution into focus, highlighting the trauma it is designed to address and assessing the sincerity and effectiveness of the commitment. The essay finally makes sense of the Never Again imperatives in the 1982 Constitution in the larger historical context.

The history of constitution-making in China itself is largely a traumatic and tragic process. Constitutions are born out of domestic turmoil or foreign aggression, and they are political responses to trauma. The Chinese Never Again imperatives sharply focus on the weak and vulnerable states facing foreign aggression. From the late Qing dynasty's failed attempt to build a constitutional monarchy in 1908 to preempt its collapse to the establishment of the Republic of China in 1912, the first in Asia, and from the 1947 constitution in the aftermath of World War II, which remains valid in Taiwan, to the constitution-making in the People's Republic of China, traumas and tragedies made the constitutions.

The failure of constitutional practices led to further traumas and tragedies, with false hopes and unfounded aspirations found in between, forming a vicious cycle of constitutional failures. After multiple constitution-making exercises between 1908 and 1947 before the Communist government, and numerous experiments under the Communist government, successive governments in China, imperial, republican, or communist, came to a basic consensus. Namely, when facing external aggression, the British, Japanese, Americans, or Russians, the state must be strong to maintain sovereignty and territorial integrity, and a strong state can only be created by a strong political party, centered around a paramount leader and armed with an unifying ideology. The constitution is a state-building, and state-strengthening tool, through which China learns from foreign powers it both fears and admires. Henceforth, the political power is legitimized principally on that nationalistic ground.

The 1947 constitution was a notable exception. It was drafted in the aftermath of World War II. It was the most confident constitution of its time. By the end of 1947, when the Constitution was promulgated, the Nationalist Government had recovered concessions, ended consulate jurisdictions, and had become one of five powers in the newly-formed United Nations. Unlike its predecessor, the constitution was decisively liberal, separating the state from the leading political party and creating a state based on the separation of powers and the protection of rights and freedoms. However, this liberal triumph was short-lived. In the face of the Communist Party

of China's swift military victory, the government declared an emergency and suspended the constitution in May of 1948, merely five months after its enactment. Following defeat in the civil war, the government moved to Taiwan in 1949, and the constitutional suspension lasted until 1988.

Between domestic turmoil and foreign aggression, the focus was decisively placed on the latter as the principal source of China's tragedies. The 1982 Constitution makes that point clear. The Preamble identifies the Opium War as a significant turning point that changed the direction of the nation's long history, as its second paragraph states: "After 1840, feudal China was gradually reduced into a semi-colonial and semi-feudal country. The Chinese people engaged in heroic struggles for national independence, liberation, democracy, and freedom." The Chinese Communist Party (CCP or the Party) constructed a gold thread in the constitutional narrative for the post-Opium War era that China needs a strong state led by a strong Party to restore its sovereignty and territorial integrity, and the CCP is that Party, chosen by history as it has not only ended imperialism and safeguarded China's sovereignty and integrity but also led the country to prosperity and strength. As the Party sets the goal of achieving the "great rejuvenation of the Chinese nation" by 2049, the Never Again imperative is closely integrated into the historical mission to wash away 100 years of national humiliation and restore China to its rightful place.

With that background, let me zoom in on the current 1982 Constitution to address a specific trauma and the imperative of Never Again. It is well understood that the 1982 Constitution was made in the aftermath of the Cultural Revolution, which was commonly regarded as a disastrous period that had brought political chaos, economic decay, and human miseries on a massive scale to China. The trauma was often framed as one of arbitrary power and massive violations of rights and freedom, and as a result, the Constitution was made specifically to introduce political accountability and legality, permissible within the political framework, to prevent the trauma from happening again. But was the Party's Never Again commitment sincere and effective?

The 1982 Constitution is dualistic in nature. While the Party maintains its entrenched monopoly of political power, it also seeks to promote economic and social modernization. The Constitution pronounces the end of the continuous revolution and is decisive in shifting the political focus toward modernization. The dualism reflects the structural tension between the imperative of absolute Party control inherent in the nature of a Leninist Party and that of establishing accountability designs to adapt to economic and social changes. The Constitution is thus in constant search for mechanisms to strike a proper balance so that the CCP can transform itself from a revolutionary party to a governing party.

Primarily, the Constitution upholds the leadership of the CCP and is firmly anchored on the Four Cardinal Principles as demanded by its chief architect, Deng Xiaoping. As Article 1 states clearly, the state is rooted in "the alliance between workers and peasants" and practices "people's democratic dictatorship". The concept of class remains relevant, albeit expressed subtly. According to the Preamble, "The exploiting classes as such have been abolished in our country. However, class struggle will continue to exist within certain bounds for a long time to come". Article 6 mandates

the elimination of class exploitation. Most importantly, the CCP is constitutionally entrenched as the leading Party which will continue to lead China to success. In the 2018 Amendment to the Constitution, a new clause was inserted as the second paragraph of Article 1 that defines the core element of socialism in China as the leadership of the CCP.

At the same time, the 1982 Constitution is the most rights-friendly constitution that the CCP has made. It installs limited political mechanisms for accountability, participation, and consultation; expands and enhances the protection of individual rights and freedom in social and economic affair; and institutionalizes legality in social and economic governance. For that reason, it is often argued that the new Constitution represents a significant departure from earlier revolutionary traditions as it negates the Cultural Revolution. It is even characterized as the Constitution of emancipation that has dragged China into a new era of modernization.

Putting dual imperatives together, the 1982 Constitution aims to build a trinity of Party power, the people's will, and legal accountability in the new constitutional order. The Party holds absolute power, but it commits itself to improving people's livelihood and being responsive to people's demands and subjects its power to the principle of legality in the sense that Party members as individuals – as the norm – must obey the law, while the Party is entitled to exercise prerogative power as an exception.

Would the constitutional design be able to prevent another Cultural Revolution? The root cause of the Cultural Revolution disasters, as characterized by the Party, included the development of a personal cult of Mao, the lack of meaningful political and constitutional constraints on the exercise of political power, and the extra-institutional mobilization of society. In addition, the international communist movements never set a good example to institutionalize the relationship between a communist party and its leaders; and Chinese autocratic tradition still loomed large. As acknowledged by the Party, these factors led to Mao becoming arrogant and detached from reality and the masses, resulting in arbitrary decision-making. Under the political framework, Mao was able to place himself "above" the Party and the state, undermining the principles of collective leadership and democratic centralism. The Party's conclusion reveals a deep-seated concern with autocracy inherent in the system, yet the CCP is confident that the political and constitutional reform put in place since 1978, after Deng's return to political power and his commitment to limited political reform, is adequate to prevent another Cultural Revolution. In introducing the draft constitution to the NPC, Peng Zhen made it clear that a new constitution was needed to entrench the new policies and prevent the return of the Cultural Revolution.

In the Party's assessment, the Cultural Revolution was caused by Mao and his radical followers' arbitrariness, occasional governance errors, and personal mistakes in not correctly implementing the principles of Party leadership and socialism. The Party has never doubted its legitimacy to rule, the fundamentals of its ability for self-correction, and near infallibility in the larger direction of bringing China onto the track of a bright future of socialism, albeit with strong Chinese characteristics. Regarding the traumas of the Cultural Revolution and others, the Party has insisted that they

are part of the resolution, blaming the “errors” not on the political system but the lack of its legalization and institutionalization and on the deviation from it by those who betrayed the very principles of the Party leadership.

That distinction between the Party’s correctness and individual delinquency is significant and consequential. It allows the Party to identify what constitutes traumas and tragedies, allocate responsibilities, and design remedies and preventive measures according to its political needs. The CCP has apologized for the human disasters caused by the Cultural Revolution but has been silent on and banned public discussion of myriad traumas and disasters that its policies have caused: the elimination of landlords and capitalists, the suppression of the intellectual class, the Great Famine, all causing harms in scale and substance comparable to those by the Cultural Revolution. The key difference is that the Cultural Revolution was a revolution against the Party and Party elites, while the others were launched against the Party’s external enemies. It remains unclear whether the Party’s sincerity and ability to address the Never Forget question, generally framed, can be trusted, given that the same Party perpetrated the Cultural Revolution and other traumas. As the former Prime Minister, Wen Jiabao, warned in a televised speech, that the Cultural Revolution, or for that matter, any other traumas that occurred in history, could recur without the Party fundamentally changing itself through deep political reform.

For the Party, Premier Wen’s warning missed the point, and liberal concerns about the abuse of individual rights are misplaced. Going back to the larger constitutional narratives, the Chinese dream is about constructing a strong nation-state in a precarious world where China’s sovereignty and national security are placed at constant risk. The Cultural Revolution was a trauma and tragedy, in the Party’s view, because it brought chaos and disorder, and uncontrolled abuse and violence, posing a direct threat to the Party itself. At heart, the Never Again question relates not principally and directly to the rights and freedom of individuals but to order and stability in the context. Those two concerns could coincide but are not identical.

Historically, China has not operated as a normal state in any strict constitutional sense since the collapse of the Qing Dynasty. While there have been numerous constitutional-making efforts, China has been governed extra-constitutionally throughout the following decades due to weak central states, warlordism, foreign aggression, and the Communist revolution. The economic reforms initiated by the Party since the 1980s depended on and also demanded a stable political order in which the Constitution is taken seriously. That explains the high rhetoric and, to a lesser degree, action to enforce constitutional supremacy. The Constitution is moving slowly from irrelevance and marginality towards symbolic centrality in the zigzag and torturous process.

For the Party, memories of national humiliation remain the trauma that should continue to provoke fear and anxiety in the national psyche, which further demands a strong Party and state to defend national security and interests. The ultimate question is what would happen if China’s national humiliation were washed away by its successful rejuvenation. What would the ideal form of constitutionalism in China be, and how can the legacy of diminishing Communism be reconciled with the

resilient tradition and hidden liberal democratic aspirations? It remains to be seen how this will impact the Party's legitimacy and its claim to absolute power.

