

Safeguard the Authority of the Constitution: Comprehensively Promote the Cornerstone of Ruling the Country by Law

TAN Ya^{[a],*}

^[a] Ph.D., College of Marxism, Southwest University, Chongqing, China.
*Corresponding author.

Received 28 August 2015; accepted 19 October 2015
Published online 26 November 2015

Abstract

Comprehensively promoting ruling the country by law is a systematic project, but in the end the most important thing is to safeguard the authority of the Constitution. Constitution is the fundamental law of the country, and the fundamental guarantee to comprehensively promote ruling by law. The Constitution of our country is essentially different with Western constitutionalism. Safeguarding the authority of the Constitution is the cornerstone to comprehensively promote ruling the country by law.

Key words: Authority of the constitution; Comprehensively promote; Rule by law; Cornerstone

Tan, Y. (2015). Safeguard the Authority of the Constitution: Comprehensively Promote the Cornerstone of Ruling the Country by Law. *Cross-Cultural Communication*, 11(11), 42-46. Available from: <http://www.cscanada.net/index.php/ccc/article/view/7908>
DOI: <http://dx.doi.org/10.3968/7908>

INTRODUCTION

From ruling by men to rule by law is the common regulation of human development, and ruling by law is the most scientific way of governance. The 4th Plenary Session of the 18th Central Committee of CPC is the first central committee themed in ruling the country by law. *CPC Central Committee's Decision on Some Major Problems Concerning Comprehensively Promoting Ruling the Country by Law* (hereinafter referred to as *The Decision*) approved by the Session further emphasized the status of the Constitution in comprehensively promoting

ruling the country by law. In fact, establishment of the authority of ruling a country by law relies on the authority of the Constitution, and safeguarding the authority of the Constitution is the cornerstone to comprehensively promote ruling by law.

1. CONSTITUTION IS THE FUNDAMENTAL LAW OF THE COUNTRY

Comrade Mao Zedong once said,

An organization must have a regulation. A country must also have a regulation, and constitution is a general regulation, is the fundamental law of a country. When we ascertain the principles of people's democracy and socialism in the fundamental law of constitution, the people will have a clear and unambiguous right path to follow, so that the enthusiasm of the whole nation can be enhanced. (Mao, 1977)

The position of the Constitution as the fundamental law of China is determined by the nature and status of the Constitution. The Constitution is the concentrated expression of the will of the Party and the people, is the fundamental law developed through scientific and democratic procedures, and is the general regulation to administer state affairs well and ensure national security. It is the foundation to generate state's power, and the foundation for legitimate national organizations and various national functional organs.

Our Constitution, in the form of the fundamental law of the country, has established the socialist road with Chinese characteristics, the theoretical system of socialism with Chinese characteristics, and the developmental achievements of the socialist system with Chinese characteristics, reflected the common will and fundamental interests of our peoples, and became the highest embodiment of the Party and the state's central tasks, basic principles, major lines and policies in the state's legal system in the new historical period. (Xi, 2012)

The Constitution has also stipulated the fundamental system and basic system of the country, stipulated the

fundamental political status of the people and their basic rights, planned and established the economic order, political order, social order and legal order of People's Republic of China.

The Constitution, as the fundamental law of the country, has important functions that general laws do not have: Firstly, adjusts and regulates the relation between the people and the government, provides the fundamental legal guarantee for people's status as the masters of the country; secondly, adjusts and regulates the relation between national public power authorities, ensures the effective exercise of public power and prevents abuse and corruption; thirdly, adjusts and regulates the relation between central government and local government, fully mobilizes the enthusiasm of both; fourthly, adjusts and regulates the relation among citizens, state and government to realize unification of civil rights and obligations.

The Constitution is at the commanding and central position in China's socialist legal system, and has the highest legal force and legal authority. In order to make all work of the state to be implemented according to law, we must firstly implement constitutional principles and systems effectively; in order to establish the thought of ruling by law, we must firstly establish the thought of constitution. The General Secretary Xi Jinping stressed that the full implementation of the Constitution was the primary task and fundamental work of building a socialist country ruled by law. Maintaining the authority of the Constitution was to safeguard the common will of the Party and the people. Defending the dignity of the Constitution was to defend the dignity of common will of the Party and the people. Ensuring the implementation of the Constitution was to ensure the realization of fundamental interests of the people. As long as we effectively respected and implemented the Constitution, people's status as the masters of the country could be assured, and cause of the Party and the State could be developed smoothly. Conversely, if the Constitution was ignored, weakened or even destroyed, the people's rights and freedoms could not be guaranteed, and the Party and the country would suffer setbacks.

2. ESSENTIAL DIFFERENCES BETWEEN RULING BY CONSTITUTION AND WESTERN CONSTITUTIONALISM

The Decision of the 4th Plenary Session of the 18th Central Committee of CPC stated, "to adhere to rule by law we must adhere to rule by the constitution, and to adhere to governance by law we must adhere to governance by the constitution." Then someone said, ruling the country by the constitution came from Western constitutionalism, and constitutionalism was to effectively implement the constitution and ruling the country by the Constitution.

In fact, a country which has developed and implemented the constitution can be either a bourgeois dictatorship or proletarian dictatorship, can also be a personal dictatorship or sectarian dictatorship. Therefore, it cannot generally say that a country which has a constitution and rules according to the constitution is a constitutional state. Ruling by constitution is essentially changed with Western constitutionalism.

Western constitutionalism is a political concept accompanying generation and development of Western capitalism. It was birthed and developed in Europe and the USA, then evolved to be institutional arrangement of the political mainstream and liberalism of Western bourgeoisie. This involves not only national constitution, government system and regime organizational way, etc., but also includes state system, state nature and a series of fundamental political issues, serving for the bourgeoisie. It includes "judicial independence," "separation of powers", "freedom of the press", "Nationalization of the military" and a set of bourgeois state philosophy, political model and system design. In a certain sense, constitutionalism becomes the special term for governance of the bourgeoisie. As Lenin pointed out,

Compared with medieval regime, bourgeois democracy is a big step forward in history, but it is still a narrow, incomplete, false and deceptive democracy, which is a paradise for the rich, but a trap and a fraud for the exploited and the poor.

Proletarian democracy is one million time more democratic than any bourgeois democracy; the Soviet regime is one million time more democratic than the most democratic bourgeois republic. Only the conscious servants of the bourgeoisie, or those people who die politically, get into musty old papers ignoring real life, or saturated with bourgeois democratic prejudices and thus become the slaves of the bourgeois, will not see it. (Lenin, 1918/2012, pp.601,606-607)

China is now already a socialist country, and implements democracy for the vast majority of people and dictatorship over the very few people, which prepares the conditions for the ultimate realization of free and full development of each person, and is a significant progress of human civilization. If Western constitutionalism was implemented in our country, its essence is to make people's democratic dictatorship back to the bourgeois dictatorship, make a country where people are the masters back to a country where capitals dominate, and will bound to lead to disasters such as destruction of the Party of the Soviet Union.

Ruling by constitution that we are talking about has at least five fundamentally different points with West constitutionalism: Firstly, different leaderships. Our ruling by constitution is characterized by the leadership of CPC whose purpose is to serve the people wholeheartedly, while Western constitutionalism is characterized by the dominance of the bourgeois mastering state power; secondly, constitutions' nature is fundamentally different. Our socialist Constitution is featured by people's

democratic dictatorship, and West constitution is featured by capitalist bourgeois dictatorship; thirdly, economic bases are different. In the primary stage of socialism, we are implementing a basic economic system under which public ownership remains dominant and meanwhile diversified economic sectors are developed jointly, while Western constitutionalism under which private ownership of the means of production acts as the economic base; fourthly, operating mechanisms are different. National People's Congress is the highest authority in our country, while in West countries separation of powers is the supreme; fifthly, fundamentally purposes are different. The fundamental purpose of our ruling by constitution is to ensure that people are the masters, and service for the majority of the population, while West constitutionalism is in a purpose of ensuring capitals' dominance and serving for a handful of people.

3. CONSTITUTION IS THE FUNDAMENTAL GUARANTEE TO COMPREHENSIVELY PROMOTE RULING BY LAW

The Constitution is China's political declaration, fundamental law, general regulation to administer state affairs and ensure national security, and fundamental guarantee to comprehensively promote ruling by law.

Firstly, the Constitution has established the political foundation and direction to comprehensively promote ruling by law. The preamble of the Constitution has adopted a narrative language to comprehensively exposit the political ideological guidance and social developmental path that we must insist,

The fundamental task of our country is to advance along the road of socialism with Chinese characteristics, and concentrate our efforts on socialist modernization construction. Under the leadership of the Communist Party of China, with the guidance of Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory and the "Three Represents" important thought, Chinese people of all nationalities will adhere to the people's democratic dictatorship and the socialist road.

Practices have proved that writing the political guidance and social developmental path that we adhere to into the Constitution is absolutely necessary. It is the common political foundation for Chinese people of all nationalities to go forward in unity, points out the direction for our political civilization construction, selection of developmental path and comprehensive promotion of ruling by law, and provides the constitutional guarantee. Based on the status of fundamental law, the political foundation of unity and national guidelines established by the Constitution are bound to be the guiding ideology for comprehensively promoting ruling by law. This has been fully reflected in *The Decision* issued by the 4th Plenary Session of the 18th Central Committee of CPC. *The*

Decision pointed out that, in order to comprehensively promote ruling by law, we must

uphold the great banner of socialism with Chinese characteristics, take Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory, the important thought of 'Three Represents', the scientific concept of development as the guidance, thoroughly implement the General Secretary Xi Jinping's series of important speeches, uphold the integration of the Party's leadership, people being the masters and ruling by law, and unwaveringly follow the socialist road of ruling by law with Chinese characteristics.

Secondly, the Constitution has embodied the consensus of the whole society. "From the perspective of generation, constitution can be understood as the consensus reached by various political forces in the game and compromise, and is the most basic and most fundamental national consensus." (Qin, 2014) This consensus is reflected as: (a) The Constitution conforms to public opinion, and centralizes the wisdom of the whole society. China's current Constitution is based on the 1954 Constitution, sums up the successful experiences and negative lessons of the constitutional theories and practices since the founding of People's Republic of China, especially the lessons since the "Cultural Revolution", fully embodies a series of principles and policies since the 3rd Plenary Session of the 11th Central Committee of CPC, and reflects the tremendous changes in China's political life, economic life, cultural life and social development after the reform and opening up. The current Constitution confirms the focus shift of all work of the state, reflects the contemporaneity and spirit of reform, has a more comprehensive, scientific content and a more reasonable structure. Compared to the 1954 Constitution, 1975 Constitution and 1978 Constitution, the current Constitution not only sums up the historical experience, takes into account the realities, but also attaches importance to the future development. From the perspective of content, it complies with public opinion, adequately reflects the people's desire, and centralizes the wisdom of the whole society. (b) The Constitution is the uniform standard of pluralistic interests of the society. Since the reform and opening up, China has realized a unified political foundation, and social development tends to show an increasingly diversified trend. This is mainly reflected in the diversified social values and interest demands brought about by diversified economic development. To reach a common understanding on the most fundamental issues, and integrate various interested parties and social values, we must consider what is the integration criteria. In this diverse context, the common criterion to unify people's behaviors and thoughts is the Constitution. The Constitution provides a uniform guideline for the interests of all parties and people's thoughts and behaviors. The content of the Constitution is a product of social consensus, reflects the basic requirements of different social groups, and is

also the result of the gamble of all interests and political powers in different social developmental stages. The process of the establishment to amendment of China's current Constitution has also proved this point. (c) The Constitution provides the highest guidance for social governance. The 4th Plenary Session of the 18th Central Committee of CPC pointed out that one significance of ruling by law was "a necessary requirement to achieve the modernization of national governance system and governance ability." Innovating social governance, building a socialist harmonious society, ensuring people's happy, peaceful life, social stability and orderliness is an important objective of the current social development of our country. A harmonious society should firstly be a stable and orderly society. Order is the necessary prerequisite for all human activities, and the basic value of social development. In a civilized society, law is the primary and common means to eliminate social disorder, or prevent and suppress social disorder. Law's maintenance to social order is manifested in the establishment and maintenance of a country's political governance order and social public order. The foundation of social stability and orderliness is the establishment and compliance of social rules. Rules are the core of ruling by law, thus ruling by law is the foundation for a harmonious society. In various means and methods, law is the most basic and most primary adjustment means and method of social relations. In the system of legal norms, the Constitution is the highest code of conduct that all state organs, social organizations and citizens must abide by. This supremacy of the Constitution is not only reflected in its contents and development procedures, but also in the authority level higher than ordinary laws. The Constitution provides a uniform criterion for solving the contradictions between constitutionality examination and ordinary laws. The supremacy of the Constitution is also reflected in the immediacy of its legal effects. The constitution is the foundation based on which all domestic organizations and individuals carry out activities.

Thirdly, the Constitution has designed the mechanism and track to run state power. The setting of state organs and their relationships to each other is the most fundamental expression of democracy of a country. Conducting scientific and rational division of power, and implementing effective supervision and control to power is an important issue to be solved by the construction of a country ruled by law, and also an important content of the Constitution. The most effective way to supervise and restrict the power is to achieve through laws and institutions. The Constitution, as the fundamental law of our country, while confirming and guaranteeing the fundamental rights of citizens with its supreme legal authority, should make the necessary restrictions on public powers. Our Constitution has reestablished the People's Congress system as China's fundamental political system, and clarified the powers relations among

people's congress, government and judiciary organs. It has enumerated the powers of people's governments at all levels, and provided a foundation and running track for power exercise of administrative organs at all levels. On the relationship between powers of different state organs, China's Constitution has stipulated, "The National People's Congress and local people's congresses have been democratically elected, responsible to the people and under their supervision." "State administrative organs, judicial organs and procuratorial organs have been determined by the people's congresses, are responsible to the people and under their supervision." On the relationship between People's Congress and government, People's Congress has the power to review constitution violation and supervise the work of government. On the relationship between People's Congress and judiciary organs, People's Congress must achieve supervision to judiciary organs while maintaining the independence of judiciary power. This is the embodiment of power supervision and restriction spirit in the Constitution. China's current constitution provides a legitimate basis for various state organs to perform their duties according to law, and provides a constitutional basis for various national organs to implement operational mechanism reform and system design, as well as to work according to law in the new situation.

Finally, the overall objective and measure of comprehensively promoting ruling by law is the implementation plan of the constitutional principle of ruling by law. *The Decision* approved by the 4th Plenary Session of the 18th CPC Central Committee is based on the realities of China's socialist legal construction, faces the prominent problems in the field of China's legal construction, elaborates the significance of comprehensively promoting ruling by law, clearly puts forward the guiding ideology, overall objective and basic principle of comprehensively promoting ruling by law, and answers a series of major theoretical and practical issues concerning the Party's leadership and ruling by law. On the issues of scientific legislation, strict law enforcement, fair justice, law observance by all people, legal team building, strengthening and improving the Party's leadership in comprehensively promoting ruling by law, *The Decision* is targeted to respond to the voices of the people and social concerns. *The Decision* will greatly promote the process of ruling by law, and is a programmatic document to accelerate the construction of a socialist country ruled by law. *The Decision* consists of seven parts, including more than 180 major legal initiatives and reform initiatives. On how to comprehensively promote ruling by law, and how to accelerate the construction of a socialist country ruled by law, *The Decision* makes a top-level design and a full deployment, and develops a "route figure" for the process of building a socialist country ruled by law. The process of building a socialist country ruled by law is the process

of implementing the Constitution. The Constitution provides a guiding thought and framework for ruling by law. In a sense, *The Decision* approved by the 4th Plenary Session of the 18th CPC Central Committee to comprehensively promote ruling by law and the security initiatives is to comprehensively implement the spirit of the Constitution, and effectively implement the program of the constitutional principles.

The Constitution is the fundamental law of the country, and upholding the authority of the Constitution is the cornerstone to comprehensively promote ruling by law. Therefore, respect for the Constitution cannot just stay in “political declarations” and papers. The life of the Constitution lies in implementation, and its authority also lies in implementation. To comprehensively promote ruling by law, we must make ruling by the Constitution

the strongest voice of China’s ruling by law. Only when we vigorously promote ruling by the Constitution and governance by the Constitution, ruling by law in form can be developed to be ruling by law in substance.

REFERENCES

- Lenin. (1918/2012). *Lenin anthology (Vol.3)*. Beijing: People’s Publishing House.
- Mao, Z. D (1977). *Mao Zedong anthology (Vol.5)* (p.129). Beijing: People’s Publishing House.
- Qin, Q. H. (2014). Rule according to the constitution: The soul of ruling by law. *Journal of Jinan University*.
- Xi, J. P. (2012, December 5). Speech on the general assembly to commemorate the 30th anniversary of promulgation of the current constitution. *People’s Daily*, p.1.