

# CHINA'S DUAL CONSTITUTION SYSTEM

*Backgrounder 03*



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**8 SEPT 2022**

## Summary

- China follows a dual constitution system; the Party Constitution and the State Constitution.
- The State Constitution lays down the law, gives different organs of the government duties, and is the “written” constitution.
- Due to the CCP’s authority and position in Chinese politics, the Party Constitution is more important than the State Constitution.
- The Preamble of the State Constitutions highlights the importance of the Party and its necessity at the top of the political hierarchy.

## Introduction

China has a dual-constitution system; the Party Constitution of the Chinese Communist Party (CCP) and the State Constitution of the People’s Republic of China (PRC). The State Constitution, also referred to as the “written” Constitution, is the governing text of the PRC and assigns duties to different organs and institutions of the country. On the other hand, the Party Constitution, largely referred as the “unwritten” Constitution, is more important as the Party holds absolute power and authority.

## What are the Two Constitutions?

Since the founding of the People’s Republic of China (PRC) in 1949, the State Constitution has been constantly revised. The current Chinese Constitution is a written and codified document, in its fourth promulgation. The Constitution was adopted in 1982, superseding the 1954, 1975, and 1978 Constitutions. The 1982 Constitution, since its adoption, has gone through revisions every five years and has been amended five times.

The State Constitution bestows national legislative power to the National People’s Congress (NPC) — the highest organ of state power — and in extension, to the NPC Standing Committee (NPCSC) which is the permanent organ of the NPC. The Constitution provides the NPCSC with the power to amend it, but in actual practice, only the Party can initiate the

amendment process. PRC’s Constitution also provides a legal justification for the power of the CCP and its ideological control over government policies. The State Constitution allows the executive organ – the State Council, headed by the Chinese Premier – to appoint state councillors, vice-premiers, and secretaries-general, and enact laws and statutes. Decision-making power solely rests with the executive organs of the state and the CCP.

Nonetheless, it is important to keep in mind that the CCP, which derives its legal power and legitimacy from the State Constitution, holds overarching control over the state, military, and media. Every five years, the CCP convenes the National Party Congress (NCCPC) to select senior leaders, set policies, outline party priorities for the upcoming five years and make revisions to the Party Constitution.

Both, the 2017 NCCPC and the 2018 NPC adopted the “Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era” in the Party and State Constitutions respectively. This has only helped Xi Jinping, the paramount leader of the PRC, to consolidate his power and strengthen Party control. Recent amendments to the State and Party constitutions have made the distinctions between the State and Party, as well as the Party and its leadership in China, murky and ambiguous.

## The CCP and its Relationship with the State Constitution

While the Constitution lays down the decision-making power for different organs of the government, the CCP is still placed above it. The CCP holds absolute authority and power in China, making the leader of the CCP, the General Secretary, the most powerful man in the country. Xi Jinping has been the most powerful and influential man in the country since 2012.

The Chinese Communist Party sits on top of the political and legal hierarchy of China. While the central government holds absolute power, local governments are “pulled in two directions”, as Tian Lei puts it. The local governments are held accountable and must

report to the people, as well as central authorities. As seen during the internal border dispute between Jiangsu and Shandong that laid claim to a valuable lake, local governments also have to look out for the best interests of its jurisdiction. The central authorities were forced to step in and make a ruling after violent clashes broke out between residents of Jiangsu and Shandong.

Despite the ruling being made, provincial leaders continued to push for a solution more suitable to them, highlighting their dedication to the interests of the masses and that China is not entirely an internally centralised state. Moreover, whenever the central authorities step in, they take a more mediatory role and help disputing parties reach a consensus, reducing the costs and consequences of enforcement.

The 1982 Constitution, similar to its previous iterations, affirms the CCP as the leader of China and the Chinese people in its Preamble. Unlike other Constitutions, the preamble is considered to be the most important part of the document and it takes importance over the rest of the body of the Constitution. As the Preamble states, only under the leadership of the Chinese Communist Party was China and its people victorious in its New-Democratic Revolution. It is enshrined in the Preamble that “Under the leadership of the Communist Party of China.... to turn China into a socialist country that is prosperous, powerful, democratic and culturally advanced.”

The Chinese Constitution is amended every five years to reflect the “current situation” of the world. The phrase “Chinese Characteristics” is often used to describe how China acts according to the circumstances present to it. While the Constitution is ever-changing, it has five fundamental laws: The Chinese people are under the leadership of the CCP; socialism; democratic centralism; construction of modernity; and the guarantee of basic rights. These fundamental laws, according to Chen Duanhong, are central to the national integration and political identity of China.

As Gao Quanxi puts it, the changes in society and the

experience learned are what drive constitutional change. Chinese constitutions, in their many iterations, were key revolutionary texts used during important historical events. The 1954 Constitution was part of the Revolution of 1949, the Cultural Revolution was preserved in the 1976 Constitution. In contrast, the 1978 Constitution ended the Cultural Revolution, and the 1982 Constitution summarised the learnings and experiences of the Cultural Revolution and started setting up the foundation for the “reform and opening revolution”.

Peng Zheng played an important role in framing the 1982 constitution. Peng, called "the main founder of China's socialist legal system" in his obituary, served three terms in the NPC as the legislator before it was suspended during the Cultural Revolution. After the NPC was restored, Peng returned to the NPC to formulate the new Constitution.

With the understanding that the CCP should not have to amend the current iteration of the Constitution after hastily making changes to the previous iterations, Peng cautiously framed the constitution. While he centralised the role of the individual in the economy, he also framed the Constitution that had previously held broad consensus by the Party members.

### **Characteristics of the 1982 Constitution**

The 1982 Constitution has major features enshrined in it which distinguish it from its previous iterations and its Western counterparts. Some of these features include:

#### *Socialist Constitution*

The first Article of the Constitution describes China as a "socialist state", with the state "...led by the working class and based on the alliance of workers and peasants", changing from the "State of the dictatorship of the proletariat" in the previous constitutions. While instruments of production are socialist property, private property is allowed to exist and operate in the 1982 Constitution, protecting it rights by law.

### *Rights and Duties of Citizens*

Similar to other constitutions, the 1982 Constitution guarantees a bill of rights to its citizens such as economic and civil rights. These also come with duties for Chinese citizens, such as "the duty to support the socialist system", safeguarding public property and more, essentially making rights and duties inseparable.

### *Role of the Military*

As per the 1982 Constitution, the Chinese armed forces play an important role in the country not just against foreign aggressors, but also as protectors of the socialist system, national reconstruction, and serving the people. As such, the army belongs to the people. The military control comes under the Central Military Commission, whereas in the previous iterations of the Constitution such power was given to the Chairman of the CCP.

### *Judiciary and the Party*

Section 7 of the State Constitution of the PRC talks about the People's Courts and the People's Procuratorates. Article 126 stipulates that the courts "exercise judicial power independently, in accordance with the provisions of law, and not subject to interference by any administrative organ, public organization or individual." However, this is not the case, in actuality.

The Party has expanded its domain beyond the political realm to exercise its control in different arenas of the country. It has deeply penetrated the judiciary, using it as a tool to expand its power and leadership in the country. In practice, the judiciary is not independent of the Party. Not only does the Party appoint members to the judiciary, many members of the judiciary are also outspoken supporters or affiliated with the Party. The Party, through the Central Political and Legal Affairs Commission (PLAC), provides guidance to cases that the judiciary deals with and intervenes in some of them.

Moreover, the judiciary does not just make judgments according to the rule of law, but according to different interests and questions of morality. The PLAC guides

the judiciary to ensure balance of power and interests among the lawyers, the judges, the public, and the Party. Despite the deep penetration of the Party in the judiciary, the public has more confidence in it to guarantee justice, than in the court system. This further legitimises Party control over the judiciary and ensures that the Party is the "guarantor of justice." The Party also brings local leaders into its fold, localising accountability, and insulating the Party's overall authority and power from public backlash.

### **CCP, the Party Constitution, and Xi**

According to Chinese legal and political theorist Jiang Shigong, the "unwritten" constitution of China is manifested in the leadership of the CCP. Jiang stresses that to understand China's constitutional order in totality, both the written and unwritten constitutions must be taken into account. The unwritten nature of China's constitutionalism is derived from sources such as constitutional conventions, doctrines, statutes and the Party constitution, which is arguably more important than the State constitution.

As a result of the existence of this dual constitution in China, unwritten constitutional issues like the relationship between the CCP and the NPC crop up. The Party's leadership is affirmed in three aspects in the Preamble.

- First, the role of the party and its leadership in overthrowing the rule of imperialism, feudalism, and establishing modern China.
- Second, the leadership's achievements in the socialist construction in China.,
- Third, it affirms the "four fundamental principles," stipulated in the Party's Constitution as upholding the socialist road, upholding the people's democratic dictatorship, upholding the leadership of the party, and upholding the guidance of Marxism-Leninism and Mao Zedong thought.

While the NPC and the NPCSC are the organs that possess a wide scope of powers and the highest political authority, in reality, these organs are relegated

as insignificant “rubber stamps”. The NPC exists to legitimise the CCP and recast the “revolutionary party” to a “constitutional” one. Instead, it is the leadership of the CCP that has been called China’s “absolute constitution” and the “primary fundamental law” by Chen Duanhong. This showcases that the CCP leadership is the core of the Chinese government and the basis of China’s constitutional institutions. This can be seen by the fact that, despite the State Constitution undergoing several revisions, the fundamental nature of the PRC has remained intact. According to Yu Keping, the Party stipulates the governance of the country according to the law, and the Party Constitution exhibits a way to interpret and recognise China’s reality. The Party Constitution is an integral part of China’s “unwritten” constitution, and not just a normative charter. The unwritten constitution derives its status from rich political traditions, documents, conventions, constitutional statutes, and the doctrines of party and state leaders.

Both the CCP and the NPC personify “popular sovereignty” in China, in the unwritten and written constitutions, respectively. The head of the state of the PRC attains a unique character. Xi Jinping holds party to power as the General Secretary of the CCP since 2012, military power as the Chairman of the Central Military Commission (CMC), and state power as the President of the People’s Republic of China since 2013. This trinity system of rule is not present in any written or unwritten constitution, rather it developed under the influence of Mao.

Party leadership extricates the CCP from its ties with state institutions and makes itself synonymous with China. Xi’s leadership does away with the virtues of “collective leadership” which began when Deng Xiaoping came to power in the 1970s. Since assuming office in 2012, Xi has steadily amassed power and extended his authority over the CPC. The adoption of “Xi Jinping Thought” in the 2017 NCCPC and later, in the 2018 NPC, has also elevated Xi to the position previously enjoyed by Mao Zedong, Deng Xiaoping and Jiang Zemin. The Party established Comrade Xi Jinping as the core of the Party Central Committee and

the entire party, according to the communiqué at the 6th plenary session of the Communist Party’s 19th Central Committee. With the repeal of the term limits for the PRC President and Vice President, which earlier had a limitation of two consecutive 5-year terms, Xi’s infallibility as the paramount leader of China is further cemented. As the lines between the Party and Xi begin blurring, a threat to Xi or an attack on his leadership is considered an attack on China and the Party.

## **Xi and the Two Constitutions**

With the 20th National Party Congress approaching, Xi is more than guaranteed to retain the top role in the CCP. A lot of changes are expected to be made in the Party as many members are either reaching term limits or retirement age. Using this to his advantage, Xi is expected to install more loyalists into the top positions of the Party, further consolidating his power. Moreover, there seems to be no evidence of any pushback towards Xi’s leadership, with more members of the CCP aligning themselves with him for protection and career advancement. As the Party Congress edges closer, Xi’s power continues to expand. Recently, more than nine party chiefs pledged their loyalty to Xi.

Among the notable departures is Li Keqiang, whose replacement will be a showcase of Xi’s power and authority. While historically, vice premiers have almost always become the premier, Xi has broken custom before—in 2017, by not choosing an heir that would take over his leadership when he steps down, Xi broke years of longstanding political tradition. At present, Hu Chunhua is expected to take over Li Keqiang’s role. However, Xi is likely to do whatever it takes to sideline him.

Xi has termed the 20th Party Congress as the most significant event “in the political life of the party and the country”. In a nationally televised address, Xi stated that he hopes to have Taiwan reunited with China, following its “one country, two-system” rule. The “one country, two-system” model followed in Hong Kong and Macao is the perfect showcase of “Chinese characteristics”. What remains to be seen is

how the Party Congress will pan out and shape China's future politics and governance.

## **Conclusion**

The Party has repeatedly stressed on the importance of the Constitution in building a moderately prosperous Chinese society. Furthermore, Xi highlighted how the Constitution can only function to its full potential under the leadership of the CCP. The inclusion of the Party's role in the constitution provides it with a legal basis to cement its political leadership. It is hence noted that, the two constitutions, especially the Party Constitution, play an integral role in enhancing the power and legitimacy of the CCP and the political leadership of mainland China.

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