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Philip C. C. Huang^{1,2}

The two articles that form the core of this special issue share an emphasis on how things actually work rather than how they are represented. Both aim to uncover the underlying logics of operative realities, or practices, and both adopt a change-over-time perspective. The commentators, while acknowledging the value of such an approach, raise specific as well as broader issues. As is often customary in scholarly discussions, approbation and criticism alike are not always explicit; at the risk of doing violence to some of the comments, this introduction will state and pose problems more starkly than perhaps the commentators themselves intended.

Jiang Shigong

Jiang Shigong’s article represents an important advance over past Chinese scholarship on constitutionalism. He begins his analysis by pointing to two different traditions of constitutionalism identified by A. V. Dicey and others—one the tradition of a single written constitution, exemplified by the United States, and the other the tradition of an “unwritten constitution,”

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exemplified by Britain. Jiang employs this dichotomy to look at modern China's constitutional tradition. In his analysis, the former goes back to the late Qing and the early Republic and has been shaped largely by a hegemonic Western discourse of constitutional government and democracy; the latter, on the other hand, is to be found in the history and practice of the Chinese Revolution and the Chinese Communist Party, including the party charter and its unwritten rules of practice. Only by looking at both the written and unwritten constitutions and their interrelationship, Jiang argues, can one come to understand the actual workings of Chinese constitutionalism. One must not merely criticize Chinese governance from the standpoint of formalistic texts, nor simply dismiss the present constitution as a meaningless sham and its associated people's congresses of various levels as mere "rubber stamps." Rather, true understanding requires, first of all, a grasp of the actual workings of Chinese constitutionalism and governance through both its written and unwritten constitutions. Even the American constitution, Jiang argues, needs to be understood in terms of its "secret constitution" tradition, its (Supreme Court) "judicial reviews," and other constitutional "conventions," and not in terms of a single formal text.

Jiang focuses in particular on four important dimensions of China's dual constitutional makeup. First, there is the "democratic dictatorship" of the Chinese Communist Party, supreme in policy making given its historical role, but that is coupled with constitutional provisions for law-making and multi-party rule by the National People's Congress. The dual makeup is laid out in the written constitution of the People's Republic and the "unwritten constitution" of the charter of the Chinese Communist Party. (Lest anyone dismisses the formal written constitution, along with its National People's Congress [and its Standing Committee] as being inconsequential, we might recall here the tortuous contentions over the "head of state" [i.e., chairman of the People's Republic, *guojia zhuxi*] post between Mao Zedong and Liu Shaoqi leading up to the Cultural Revolution.)

Second, there is the complex history involving the three main institutional sources of power: the party, the military, and the government. Contentions over their separation or nonseparation have ended in the unwritten "three-in-one" rule (*sanwei yiti*, "trinity system") of uniting the three under a single individual, established in 1954 under Mao but in contention from 1959 on, before being restored by Deng Xiaoping in 1993 for Jiang Zemin, and then continued under Hu Jintao. It is taken for granted today by the top leadership, something that operates, in Jiang's view, like a "constitutional convention."

Third, there is the deliberate decentralization to allow for local government initiative, but that is coupled with centralized command and control through

the party organization (as well as the vertical chain of command of the government bureaucracy). This Jiang traces back to the principle of “initiative from two sources” (*liangge jijixing*) in Mao’s “Ten Great Relationships,” designed to allow and release local government initiative within a framework of centralized control. That principle was in turn applied by Deng Xiaoping in the Reform era. This, too, makes up a key component of the unwritten constitution operative today.

Finally, there is the “one country; two systems” “Basic Law” employed for Hong Kong, which combines a high degree of local autonomy, more than American “federalism” would allow, with centralized control by China, represented by the person of the Chief Executive. It is a rather unique structure that bears resemblance in part to a relationship or treaty between two nations, in part to the relationship between China’s special “autonomous regions” and the central government, in part to the foreign relations model of the old Chinese empire, and in part to the modern nation-state as we think of it. That formulation, too, now makes up a part of China’s unwritten constitution.

Xueguang Zhou

Like Jiang Shigong, Xueguang Zhou emphasizes the operational realities of governance rather than ideological or theoretical ideals. In particular, he seeks to explain the following “paradoxes” in the actual operation of the Chinese state: why and how is it that highly centralized policy making is combined with considerable local flexibility and deviation (as, e.g., in birth control or environmental protection), that centrally set goals and centrally allocated resources are applied at the local levels to different purposes, and that an impersonal bureaucratic organization comes to be based strongly on personal relations?

Zhou’s central concept is “collusion,” not that among enterprises (considered in existing economic/organization theory) that is secret, but that which is done within the government almost legitimately in the open. Thus, a county government (or a certain bureau of it) might act in cahoots with a township government, and the latter in cahoots with a village, to cover for one another in order to meet upper-level demands.

Zhou’s explanation for such “collusion” is, first of all, the high degree of centralization and uniformity of policy making, which can only be at some remove or variance from local realities. In the face of such a system, local governments can only adapt generalized central policies to particular local circumstances and will join together (one layer with the next to which it is directly responsible) out of common interest to maintain the appearance

of meeting central requirements. Moreover, because the bureaucratic system sets impersonalized goals and standards, with a system of inspections and of incentives to control and motivate local officials, the local officials resort widely to personal administrative ties to cope with the pressures and to seek advancement, as in covering up deviations, shifting resources earmarked for one target (such as reforestation) to another (such as road construction for infrastructural buildup to attract outside investment), or engaging in other kinds of “illicit resource transfers.” The combination of centralized authority with the bureaucratized “intensive incentive” system is what has created the “unintended consequence” of local official collusion, so pervasive today in the Chinese state organization.

In short, like Jiang Shigong, Zhou emphasizes the importance of focusing on operational realities in order to uncover the underlying logics of such. Mere attention to institutional structure or ideology/theory (whether “democratic” or “authoritarian,” for example) will not advance our understanding. Instead, in a dialogue with existing organization theory, he aims to develop novel concepts more appropriate for grasping how the Chinese state system actually works.

Kevin O’Brien

Kevin O’Brien approves of Jiang’s and Zhou’s spotlighting of actual practice and also their engagement in a dialogue with their respective disciplines (constitutional law and the sociology of organization), but he also raises a number of specific reservations.

With Zhou’s analysis, he questions just how likely is it that the center is not aware of the open local deviations from policy. By implication, then, O’Brien is asking about the possibilities of central-local “collusion” over and above the “local collusion” that Zhou focuses on, a subject to which we will return below. In addition, O’Brien asks, has Zhou perhaps gone too far in arguing that “local collusion” is essential to the very functioning of the Chinese state system? While clarifying the puzzle of how and why the centralized authority is not able to see to implementation downstream and taking some of the onus off local officials who have borne the brunt of the blame, Zhou’s analysis might have gone too far in underplaying the problem of local corruption. His “unabashedly institutional analysis” (O’Brien’s words) might have served to avoid the question of culpability for greed and abuse. O’Brien thus raises implicitly the question of what ought to be as opposed to what is—another point to be discussed further below.

As for Jiang Shigong, while crediting him with a laudable concern for practice as opposed to words, O’Brien reads him as having gone too far to

apologize for the Party's leadership/dictatorship role. According to O'Brien, Jiang has also not given sufficient weight to the growing importance of the people's congresses, especially the local people's congresses, and the growing role they play in "the policy process." O'Brien grants readily, however, the validity of Jiang's analysis of the convoluted history involving the post of state chairman: those who see in that history only political maneuvering, and no constitutional order, are, in O'Brien's judgment, mistaken. O'Brien agrees also with Jiang's analysis of the constitutional combination of centralized authority with local initiative and sees in it a framework for understanding the center-local relations analyzed by Xueguang Zhou. Finally, O'Brien says that Jiang views the Hong Kong Basic Law mainly "as a treaty-like agreement between two nations," which he agrees with, but he raises the objection that such a view cannot account for the political insistence on a chief executive.

O'Brien notes in conclusion that both articles have the merit of bringing to light persistent rules/patterns in the actual workings of Chinese governance. A coincidental benefit of such, which is most evident in Jiang's article, he says, is to remind us of the role that the Maoist legacy continues to play—something easily overlooked today (especially in the still highly ideologized post-Mao intellectual climate of China [albeit in the opposite direction], we might add). At the end, O'Brien urges continued attention to the "long-lasting rules that pattern behavior" in Chinese governance. He leaves unspoken, however, the objection he had raised implicitly earlier: that Jiang's and Zhou's emphasis on how things actually work might limit their perspective to a mainly retrospective one—they say nothing about further reform or democracy, he had observed. This is something we will return to below.

Donald Clarke

Donald Clarke takes particular issue with Xueguang Zhou's analysis of the paradox between uniformity in central policies and flexibility in local implementation. First, Clarke argues that central policies are, in fact, often not uniform. They may be couched in general terms to allow for local variation or even explicitly urge local variation. They may also provide differently for different localities, as, for example, in deliberate redistribution of wealth across different regions or provinces or differential tax breaks. There cannot, therefore, be the kind of direct correlation between degree of uniformity and extent of local deviation postulated by Zhou. Second, Clarke notes that "collusion" as concept and as phenomenon does not adequately encompass different phenomena involved in central-local relations, nor even some aspects taken up by Zhou. It excludes, for example, a single governmental level's deviance from central policy, for by Zhou's definition collusion must involve

two different levels of government. It also excludes other problems that may not involve collusion, such as officials' currying favor with superiors or the center's excessive reliance on statistical data. For Clarke, the problem with the "collusion" emphasis is that it does not consider important dimensions of the basic theoretical model—principal-agent theory—that Zhou starts from.

As for Jiang Shigong's article, Clarke approves of its departure from conventional Chinese scholarship that focuses only on the written constitution and its own focus on the rules by which Chinese governance actually functions. But he takes issue with what he considers some of its almost euphemistic representations of the realities of party rule. One is the characterization of the party's relationship with the so-called democratic parties as a matter of "the system of multiparty cooperation under the leadership of the Chinese Communist Party." Another is the claim that the party represents the interests of the workers and peasants. Still another is its claim, especially with the "three-represents" policy, to represent all of the people. Yet another is Jiang's glossing over of party control over selection of the members of the National People's Congress. For Clarke, these problems suggest that Jiang has not quite successfully escaped from the "formalism" that he criticizes.

Although Clarke himself might argue that he takes issue with Jiang not from any normative point of view, but rather in terms only of empirical evidence and a more precise characterization of how things really work, it seems to me that a certain amount of normative judgment, like Clarke's attitude toward one-party dictatorship, is quite unavoidable and perhaps should be made explicit. To do so, of course, takes us into the realm of what ought to be and the issue of whether a practice-based approach gives that question sufficient attention.

Lynn White

Lynn White, for his part, adopts for "constitution" a still broader conception and understanding than Jiang, conceptualizing it as equivalent to "structures of influence/power." He employs that conception both to affirm and to critique Jiang's and Zhou's articles. For White, Jiang's and Zhou's analyses are about the "behavioral constitution," about what states actually do rather than what they say they do. That is better than mere attention to the text. Yet, White asks, what about issues of power that lie outside the scope covered by the state's formal and informal constitutions? Even more, what about those that are perhaps forbidden or even rendered unthinkable by the state? And the question of how power ought to be exercised as opposed to how it is used? For example, with respect to political and ethnic minorities?

Furthermore, against Jiang's characterization of the history of Chinese constitutionalism, White asks: Has not that history evinced greater change than in Jiang's narrative, from "relative constitutionalism by 1954" to "absolutism by 1975" and back to "more constitutionalism" in 1982? And, against Jiang's notion of the three-in-one unity, White asks: What about separation of powers, something that Sun Yat-sen had called for? White points to other historical changes not noted by Jiang: appointments made "Leninist" style through the party organization by the next immediate level up (and not two levels up, which was tried in the early 1980s); the "norm" of different generational leadership at the top, from the "second generation" of Deng Xiaoping to the third of Jiang Zemin, the fourth of Hu Jintao (mainly engineers), and the fifth of Xi Jinping (much lower proportion of engineers). Can such conventions also count as parts of the "unwritten constitution"?

White points also to regional and local variations not noted by Zhou's analysis of central-local relations: from Hong Kong to the "autonomous" regions of minorities, from different provinces and municipalities to different cities that vary greatly in their relationship with the center, such as Gansu versus Hebei, Chongqing versus Tianjin, Guangzhou or Xiamen versus cities closer to the center. China, White emphasizes, is, in fact, a "hyperfederation" or "conjoint state."

And he questions a possible overdichotomizing of China and the West by Jiang. China's 1954 constitution, he notes, was not adopted under Western pressure, any more than India's on independence. The U.S. constitution has changed greatly since its first days when its citizens included only male freeholders (no slaves, poor, or women). Legal norms evolve and change. Jiang may have presented too coherent a view of Chinese culture and too consistent a view of constitutions.

In the end, White concludes, China can only be understood as a large, complex, and changing entity, something that Jiang and Zhou may have oversimplified. As for his earlier theme, that Jiang's (and Zhou's) type of "behavioral" approach does not take up issues of what ought to be as opposed to what is, as suggested by his broader conception of constitutionalism, White leaves it unspoken in his conclusion.

Philip C. C. Huang

My own comment, which doubles as a kind of summary comment or "post-script" for both this special issue and the Chinese book that will be made up of Dialogues I, II, and III,¹ focuses on the question of how the history-of-practice approach, employed by most of the articles gathered together in these

discussions, might or might not adequately consider prospective issues. This is a partly explicit and partly implicit criticism made by the above commentators, even as they affirmed the move away from discussions driven by theoretical-ideological ideals to focus on how things actually work.

The specific topic singled out for emphasis in my own article is the nature of the state system of the Reform era. If we look back from a history-of-practice perspective, I argue, it becomes clear that both the “economic miracle” highlighted by the Right and the “social crisis” emphasized by the Left actually stem from the same state system. That system is made up of a distinctive combination of an authoritarian center with decentralized local practice, the former exercising through the party organization highly centralized control over policy making and cadre appointment, and the latter much initiative and autonomy in actual implementation. This is consistent with Jiang Shigong’s analysis of the “constitutional” structure of China’s center-local relations. That system’s avowed ideology includes not just developmentalism (or modernizationism) but also social equity and environmental protection, but, seen in actual practice, it becomes obvious that primacy is given to economic development (understood as quantifiable GDP growth) above all else. That developmentalist preoccupation has undergirded a kind of central and local “collusion,” one that is distinct from the local governments’ collusion against the center highlighted by Xueguang Zhou. It lies at the root of the distinctive pattern of economic development of the Reform era, one in which cheap “informal economy” labor from the countryside and relative disregard for environmental protection have been used for higher rates of return to invested capital, to make up *the* “secret” to attracting outside investments. The result has been both stunning GDP growth and mounting social inequalities and environmental degradation.

Such a history-of-practice perspective, my comment suggests, points to its own recommendations for reform. The need today is for state provision of public services and social welfare to address social inequities (as well as to expand the domestic market). The key to that, in turn, consists in the rewards and punishment system for local cadres. The avowed goals of social equity cum environmental protection have in the past been more talk than substance, when in actual practice GDP growth is the “hard” logic that must be obeyed, while the others are “soft” ones that can be fudged. That is what needs to be reformed if China is really to move from an extractive-controlling state system to a service-oriented one, a goal that the current leadership has already formally advocated. The key here consists not in ideological/theoretical choices, but rather in the grasp of operative realities and how they might be changed.

In a longer view, I argue in my comment, what the history-of-practice approach calls for is not the either capitalism or socialism, either liberalism or centralized-authoritarianism choices that the Right and the Left urge, but rather to start from the historical reality of the co-presence of both and to seek a combination of the two that would go beyond both. Cui Zhiyuan's advocacy of "liberal socialism" contains strongly provocative notions (one central idea is to use market-appreciated values of state properties to support public goods programs). Jiang Shigong's written and unwritten constitutions, likewise, provides the basis for thinking about reforms that are more grounded in historical realities (e.g., one might imagine a kind of one-party democracy with the people's congresses exercising the powers, in addition to lawmaking, of budgetary oversight and recall of party officials) than simple ideology-driven "shock therapy" prescriptions. Sebastian Heilmann's and Shaoguang Wang's highlighting of the Chinese state's distinctive experimenting and adapting-and-learning-in-practice approach to policy making, in turn, offers the conceptualization for a practical approach to further reform. Such notions make for more workable proposals for change than purely theoretical or ideological prescriptions; they constitute possible examples of the prospective dimension of the history-of-practice approach.

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