

CONSTITUTIONAL REFORMS IN CHINA

This book offers the reformist perspective of one of the most persistent and outspoken constitutional reformers in China. Through the analysis of landmark constitutional events in China since the late nineteenth century, it reveals the fatal dilemma faced by constitutional reform and the deadly dangers of any violent revolution that arises out of the frustration with the repeated failures of reform. Although there is no easy way out of such a predicament, the book analyzes available resources in the existing system and suggests possible strategies that might bring success to future constitutional reforms.

Qianfan Zhang is the leading constitutional scholar and public intellectual in China. He obtained his Ph.D. in Government from University of Texas at Austin (1999), and taught comparative constitutional law and administrative law at School of Law, Nanjing University, where he served as the Chief Editor of the faculty law journal, Nanjing University Law Review. He joined the law faculty in Peking University in 2003, where he is now the director of the Center for the People's Congress and Parliamentary Studies. He has published widely in the areas of Chinese and comparative constitutional law, moral and political philosophy.

COMPARATIVE CONSTITUTIONAL LAW AND POLICY

Series Editors

Tom Ginsburg *University of Chicago*
Zachary Elkins *University of Texas at Austin*
Ran Hirschl *University of Toronto*

Comparative constitutional law is an intellectually vibrant field that encompasses an increasingly broad array of approaches and methodologies. This series collects analytically innovative and empirically grounded work from scholars of comparative constitutionalism across academic disciplines. Books in the series include theoretically informed studies of single constitutional jurisdictions, comparative studies of constitutional law and institutions, and edited collections of original essays that respond to challenging theoretical and empirical questions in the field.

Books in the Series

- Constitutional Reforms in China: Past, Present, Future* Qianfan Zhang
- The Entrenchment of Democracy: The Comparative Constitutional Design of Elections, Parties and Voting* Tom Ginsburg, Aziz Z. Huq and Tarun Khaitan
- Deciphering the Genome of Constitutionalism: The Foundations and Future of Constitutional Identity* Ran Hirschl and Yaniv Roznai
- Courts that Matter: Activists, Judges, and the Politics of Rights Enforcement* Sandra Botero
- The Story of Constitutions: Discovering the We in Us* Wim Voermans
- Democracy Under God: Constitutions, Islam and Human Rights in the Muslim World* Dawood Ahmed and Muhammad Zubair Abbasi
- Buddhism and Comparative Constitutional Law* Edited by Tom Ginsburg and Ben Schonthal
- Amending America's Unwritten Constitution* Edited by Richard Albert, Ryan C. Williams, and Yaniv Roznai
- Constitutionalism and a Right to Effective Government?* Edited by Vicki C. Jackson and Yasmin Dawood
- The Fall of the Arab Spring: Democracy's Challenges and Efforts to Reconstitute the Middle East* Tofiq Maboudi
- Filtering Populist Claims to Fight Populism: The Italian Case in a Comparative Perspective* Giuseppe Martinico
- Constitutionalism in Context* David S. Law
- The New Fourth Branch: Institutions for Protecting Constitutional Democracy* Mark Tushnet
- The Veil of Participation: Citizens and Political Parties in Constitution-Making Processes* Alexander Hudson
- Towering Judges: A Comparative Study of Constitutional Judges* Edited by Rehan Abeyratne and Iddo Porat
- The Constitution of Arbitration* Victor Ferreres Comella
- Redrafting Constitutions in Democratic Orders: Theoretical and Comparative Perspectives* Edited by Gabriel L. Negretto

From Parchment to Practice: Implementing New Constitutions Edited by Tom Ginsburg and Aziz Z. Huq

The Failure of Popular Constitution Making in Turkey: Regressing Towards Constitutional Autocracy Edited by Felix Petersen and Zeynep Yanaşmayan

A Qualified Hope: The Indian Supreme Court and Progressive Social Change Edited by Gerald N. Rosenberg, Sudhir Krishnaswamy, and Shishir Bail

Reconstructing Rights: Courts, Parties, and Equality Rights in India, South Africa, and the United States Stephan Stohler

Constitutions in Times of Financial Crisis Edited by Tom Ginsburg, Mark D. Rosen, and Georg Vanberg

Hybrid Constitutionalism: The Politics of Constitutional Review in the Chinese Special Administrative Regions Eric C. Ip

Constitution-Making and Transnational Legal Order Edited by Tom Ginsburg, Terence C. Halliday, and Gregory Shaffer

The Invisible Constitution in Comparative Perspective Edited by Rosalind Dixon and Adrienne Stone

The Politico-Legal Dynamics of Judicial Review: A Comparative Analysis Theunis Roux

Constitutional Courts in Asia: A Comparative Perspective Edited by Albert H. Y. Chen and Andrew Harding

Judicial Review in Norway: A Bicentennial Debate Anine Kierulf

Constituent Assemblies Edited by Jon Elster, Roberto Gargarella, Vatsal Naresh, and Bjorn Erik Rasch

The DNA of Constitutional Justice in Latin America: Politics, Governance, and Judicial Design Daniel M. Brinks and Abby Blass

The Adventures of the Constituent Power: Beyond Revolutions? Andrew Arato

Canada in the World: Comparative Perspectives on the Canadian Constitution Edited by Richard Albert and David R. Cameron

Constitutions, Religion and Politics in Asia: Indonesia, Malaysia and Sri Lanka Dian A. H. Shah

Courts and Democracies in Asia Po Jen Yap

Proportionality: New Frontiers, New Challenges Edited by Vicki C. Jackson and Mark Tushnet

Constituents before Assembly: Participation, Deliberation, and Representation in the Crafting of New Constitutions Todd A. Eisenstadt, A. Carl LeVan, and Tofigh Maboudi

Assessing Constitutional Performance Edited by Tom Ginsburg and Aziz Huq

Buddhism, Politics and the Limits of Law: The Pyrrhic Constitutionalism of Sri Lanka Benjamin Schonthal

Engaging with Social Rights: Procedure, Participation and Democracy in South Africa's Second Wave Brian Ray

Constitutional Courts as Mediators: Armed Conflict, Civil-Military Relations, and the Rule of Law in Latin America Julio Ríos-Figueroa

Perils of Judicial Self-Government in Transitional Societies David Kosař

Making We the People: Democratic Constitutional Founding in Postwar Japan and South Korea Chaihark Hahm and Sung Ho Kim

Radical Deprivation on Trial: The Impact of Judicial Activism on Socioeconomic Rights in the Global South César Rodríguez-Garavito and Diana Rodríguez-Franco

Unstable Constitutionalism: Law and Politics in South Asia Edited by Mark Tushnet and Madhav Khosla

Magna Carta and Its Modern Legacy Edited by Robert Hazell and James Melton

Constitutions and Religious Freedom Frank B. Cross

International Courts and the Performance of International Agreements: A General Theory with Evidence from the European Union Clifford J. Carrubba and Matthew J. Gabel

Reputation and Judicial Tactics: A Theory of National and International Courts Shai Dothan

Social Difference and Constitutionalism in Pan-Asia Edited by Susan H. Williams

Constitutionalism in Asia in the Early Twenty-First Century Edited by Albert H. Y. Chen

Constitutions in Authoritarian Regimes Edited by Tom Ginsburg and Alberto Simpser

Presidential Legislation in India: The Law and Practice of Ordinances Shubhankar Dam

Social and Political Foundations of Constitutions Edited by Denis J. Galligan and Mila Versteeg

Consequential Courts: Judicial Roles in Global Perspective Edited by Diana Kapiszewski, Gordon Silverstein, and Robert A. Kagan

Comparative Constitutional Design Edited by Tom Ginsburg

Constitutional Reforms in China

PAST, PRESENT, FUTURE

QIANFAN ZHANG

Peking University, Beijing



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press & Assessment
978-1-009-50411-9 — Constitutional Reforms in China
Qianfan Zhang
Frontmatter
[More Information](#)



CAMBRIDGE
UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India

103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment,
a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of
education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781009504119

DOI: 10.1017/9781009504126

© Qianfan Zhang 2024

This publication is in copyright. Subject to statutory exception and to the provisions
of relevant collective licensing agreements, no reproduction of any part may take
place without the written permission of Cambridge University Press & Assessment.

When citing this work, please include a reference to the DOI 10.1017/9781009504126

First published 2024

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data

NAMES: Zhang, Qianfan, 1964– author.

TITLE: Constitutional reforms in China : past, present, future / Qianfan Zhang,
Peking University, Beijing.

DESCRIPTION: Cambridge, United Kingdom ; New York, NY : Cambridge University Press, 2024. |

Series: Comparative constitutional law and policy | Includes bibliographical references and
index.

IDENTIFIERS: LCCN 2024022106 (print) | LCCN 2024022107 (ebook) | ISBN 9781009504119
(hardback) | ISBN 9781009504133 (paperback) | ISBN 9781009504126 (epub)

SUBJECTS: LCSH: Constitutional history—China. | Constitutional law—China. |
Law reform—China.

CLASSIFICATION: LCC KNQ2101 .Z447 2024 (print) | LCC KNQ2101 (ebook) |

DDC 342.5103—dc23/eng/20240528

LC record available at <https://lcn.loc.gov/2024022106>

LC ebook record available at <https://lcn.loc.gov/2024022107>

ISBN 978-1-009-50411-9 Hardback

Cambridge University Press & Assessment has no responsibility for the persistence
or accuracy of URLs for external or third-party internet websites referred to in this
publication and does not guarantee that any content on such websites is, or will
remain, accurate or appropriate.

This book is dedicated to my parents, Zhang Chunyi and Li Suohua, who have experienced both successes and failures of Chinese revolution and reform.

谨以本书敬献我的父亲张纯益、母亲李锁华，
他们共同经历了中国革命与改革的成败。

Contents

<i>List of Figures and Tables</i>	<i>page</i> xi
<i>Preface</i>	xiii
<i>Acknowledgments</i>	xxv
<i>List of Abbreviations</i>	xxvii
1 From the Third Cooperation to the Third Republic: A Centennial Anticipation	1
2 From the Xinhai Revolution to the May Fourth Movement: Fatal Failures	34
3 The Rise and Fall of Totalitarianism: The Cultural Revolution and Beyond	83
4 The Vicissitudes of a Crippled Reform: 1978–Present	130
5 The Constitutional Manifesto: A Centennial Memorial to the Xinhai Revolution	179
6 Towards the Future: Constitutional Design, Social Contract, and Human Dignity	230
<i>Bibliography</i>	291
<i>Index</i>	305

Figures and Tables

FIGURES

2.1	The total number of articles with titles containing “constitutionalism” (a) by decade, 1900–1949 and (b) annually, 1900–1909	<i>page 71</i>
2.2	The total number of articles with titles containing “republic” (共和) or “democracy” (民主) (a) by decade, 1870–1949 and (b) annually, 1910–1927	72
2.3	The combined total number of articles with titles containing “social contract” (民约) and “social covenant” (社会契约) by decade (1900–1949)	74
2.4	The total number of articles with titles containing “reform” or “revolution” by decade (1890–1949)	76
2.5	The total number of articles with titles containing “socialism,” “communism,” or “Communist Party” by decade (1900–1949)	77
2.6	The total number of articles with titles containing (a) “Marx,” “Lenin,” and “Soviet” by decade, 1910–1949 and (b) “Soviet,” “Lenin,” and “Three People’s Doctrine” annually, 1918–1927	79

TABLES

P.1	Major signposts of China’s modern constitutional history	<i>page xv</i>
-----	--	----------------

Preface

As I said in 2012,

China's constitutional misfortune is not merely limited to itself, but may be sown, incubated, and exported beyond its borders. If a regime is irresponsible to its own people, so much the less can it be held accountable to the rest of the world.¹

The point was attested in less than a decade, when the Covid-19 virus spread virulently in Wuhan, where the local police harshly suppressed the whistleblowing of Doctor Li Wenliang (李文亮) and his colleagues in early 2020. The virus quickly spread all over the world and, in the next three years, caused at least 700 million infections and 7 million deaths.² The actual death toll is expected to be much higher than that figure since, when China suddenly decided to reverse its zero-Covid (清零) policy in December 2022, the instant spread of the virus caused the death of millions, primarily among the Chinese elderly.³ The suppression of free speech in China, as the cumulative result of the repeated failures of its past and present constitutional reforms, has cost the world dearly. The future of its constitutional reform not only decides the fate of China, but also has much to do with the rest of the world.

This book collects six non-technical essays written over the past fifteen years or so, most of which are commemorations and reflections on China's constitutional history of the past century. I am not a historian by profession and have not conducted a systematic study of Chinese constitutional history.

¹ Qianfan Zhang, *The Constitution of China: A Contextual Analysis* (Oxford: Hart Publishing, 2012), p. 261.

² <https://ourworldindata.org/explorers/coronavirus-data-explorer>.

³ Bernard Orr, "Nearly 2 million excess deaths followed China's sudden end of COVID curbs, study says," Reuters (August 25, 2023), www.reuters.com/world/china/nearly-2-million-excess-deaths-followed-chinas-sudden-end-covid-curbs-study-2023-08-25/.

My writings have been largely “a hammer to the east, a stick to the west”; a centennial review on one event, a sexagenary (甲子) reflection on another. Looking back, however, I have found that these scattered events do connect themselves to form a line of more or less complete narrative. From the Outline of the Imperial Constitution (1908) to the Xinhai Revolution (1911) and the May Fourth Movement (1919), from the Cultural Revolution (1966–76) to Deng Xiaoping’s Southern Tour (1992) and the death of Sun Zhigang (2003), these events were the major constitutional turning points in modern Chinese history. I have decided that I will *not* be writing any more commemorative essays of such kind in the near future, until things turn favorably for China’s constitutionalism – in the past 120 years, it has never fared well, and we cannot keep living in the tragedies of the past. After learning painful lessons, we need to look and move forward. Having experienced setbacks, failures, difficulties, and regressions, China’s constitutionalism needs new, positive milestones, which I believe *will* arrive before long.

The six pieces included in this book cover China’s constitutionalism in its past and present as well as its prospects for the future. For the reader’s convenience, the major signposts of China’s modern constitutional history are summarized in Table P.1.

The first chapter, completed in March 2008, is a political commentary written to commemorate the 100th anniversary of China’s first written constitution as a symbol of its constitutional reform. It was partly inspired by Ma Ying-jeou’s election as the President of the Republic of China (Taiwan), which temporarily eased the tension across the Strait. Over the past century, there have been two founding events in Chinese constitutionalism: the promulgation of the Outline of the Imperial Constitution in 1908 and the Xinhai (辛亥) Revolution in 1911. In between there was also the hastily enacted and short-lived Nineteen Articles. If the Outline launched the Qing government’s half-hearted constitutional reform when it was still confident about its control over China, the Nineteen Articles was the product of the forced reform of its political system when its confidence was fatally diminished by the Wuchang Uprising. Had the revolutionary party and Yuan Shikai (袁世凯) had enough wisdom to learn from the British Glorious Revolution or the Japanese Meiji Restoration, and followed the trend to maintain the imperial throne by surrendering the imperial power as stipulated in the Nineteen Articles, China would have long embarked on the path of a constitutional monarchy, and avoided a century of civil wars and the calamities of the ensuing totalitarian regime, such as the Great Leap Forward and the Cultural Revolution. Unfortunately, the Qing government, dominated by the small Manchu minority, repeatedly obstructed the constitutional reforms and squandered

TABLE P.1 *Major signposts of China’s modern constitutional history*

Year	Events
1840–60	The Opium Wars. China’s first defeat by the Western powers in its history compelled it to initiate the Westernization movement (洋务运动) aimed at developing modern industry, commerce, and military.
1894	The Sino-Japanese War (甲午战争). Shockingly defeated by the Japanese fleet, China began its constitutional reform.
1898	The Hundred Days’ Reform (百日维新). Intellectual reformers persuaded Emperor Guangxu (光绪) to undertake massive institutional reforms, which were quickly suppressed by the conservative force under the leadership of Empress Dowager Cixi (慈禧).
1900	The Boxers’ Rebellion. The Qing government secretly encouraged the civilian militia to attack and kill foreign missionaries, leading to the intervention of Allied Forces (八国联军) of eight major powers, which forced the imperial court to flee from Beijing.
1908	The Outline of the Imperial Constitution. Under international and domestic pressures, the conservative imperial government was forced to continue constitutional reform and promulgated the first written constitution highlighting imperial supremacy.
1911	(1) The Wuchang Uprising (武昌起义). A mutiny threatened the Qing government, which was challenged not only by increasing social discontent, but also by armed rebellion. (2) The Nineteen Articles (十九信条). The Luanzhou mutiny (滦州兵变) forced the Qing government to promulgate another constitution, reducing the imperial court to a constitutional monarchy with nominal powers. (3) The Xinhai Revolution (辛亥革命). The “uprising” was turned into what is much more widely known as a “revolution” after the imperial Prime Minister Yuan Shikai failed to negotiate a deal with the revolutionary force led by Sun Yat-sen, the founder of the Nationalist Party (KMT), who firmly demanded the establishment of a republic.
1912	The Republic of China (中华民国). The First Republic ended the millennia of Chinese dynastic cycles, while incorporating some elements from the old regime. Sun Yat-sen quickly yielded interim presidency to Yuan Shikai.
1913	The Assassination of Song Jiaoren. As a major Nationalist leader advocating parliamentary democracy, Song’s untimely death ended the cooperation between the KMT and Yuan

(continued)

TABLE P.1 (continued)

Year	Events
	Shikai, prompting Sun Yat-sen to initiate the “second revolution” (二次革命).
1915–17	<i>The New Culture Movement</i> (新文化运动). A group of liberal intellectuals, represented by Hu Shih and Chen Duxiu at Peking University, initiated an overall liberal movement that aimed to modernize Chinese language and culture.
1919	<i>The May Fourth Movement</i> (五四运动). Furious about the Treaty of Versailles, which allowed Japan to take over Shandong province formerly under German control, students initiated mass protests against the Western powers. In the meantime, the new Soviet regime in Russia, established in 1917, actively propagated communism in China.
1921	<i>The Founding of the Chinese Communist Party (CCP)</i> . With the split of Chinese liberals, the leftist faction founded the CCP. Chen Duxiu served as its first General Secretary.
1924	<i>The First Nationalist–Communist Cooperation</i> (第一次国共合作). Sun Yat-sen decided to reorganize the KMT along Soviet lines and ally with the CCP in order to more effectively fight against warlords and grab national power.
1927	<i>The Northern Expedition</i> (北伐). After Sun’s death in 1925, Chiang Kai-shek initiated war against warlords and achieved quick success. The KMT ended the First Cooperation, purged its Communist ally and established strict one-party rule over China.
1937	<i>The Xi’an Incident</i> (西安事变) and the <i>Second Nationalist–Communist Cooperation</i> (第二次国共合作). With Japan’s comprehensive invasion of China, Chiang Kai-shek was under intensifying pressure to stop fighting with the CCP. He was kidnapped by his own officers, forcing him to agree to the Second Cooperation.
1946	<i>The Constitution of the Republic of China</i> (中华民国宪法) and the <i>Civil War</i> (国共内战). After Japan surrendered in 1945, the Republic of China finally passed a formal constitution. While the KMT briefly negotiated with the CCP to establish a coalition government, it never materialized as the two parties soon engaged in a bloody civil war.
1949	<i>The People’s Republic of China</i> (中华人民共和国). Following the KMT’s quick defeat and retreat to Taiwan, Mao Zedong led the CCP to take over the mainland, establishing a thorough totalitarian regime.

Year	Events
1958	<i>The Great Leap Forward</i> (大跃进). Among the numerous political movements launched by the new Communist regime, the Great Leap Forward was the most devastating, leading to the Great Famine in the next three years, with a death toll of at least 30 million.
1966	<i>The Cultural Revolution</i> (文化大革命). Mao's refusal to admit political failure despite the grave mistakes in his radical industrialization policies led him to mobilize students and the masses, leveraging the mass worship for him as a charismatic leader. He launched the Cultural Revolution to forcibly overthrow his political rivals within the party.
1976	<i>The Downfall of the Gang of Four</i> (四人帮). After Mao's death in 1976, the CCP veterans arrested Mao's widow and her political allies, marking the end of the Cultural Revolution.
1978	<i>The Reform and Opening</i> (改革开放). Learning from the lessons of the Cultural Revolution, the CCP mainstream initiated economic reforms to allow limited freedoms.
1982	<i>The Promulgation of the Current Constitution</i> . The Constitution symbolizes the consolidation of the reformist forces within the CCP led by Deng Xiaoping and others.
1989	<i>The Tiananmen Protests and Crackdown</i> . The untimely death of the widely respected former General Secretary Hu Yaobang sparked massive student protests. The CCP conservative mainstream, determined to suppress the peaceful protests, ousted the liberal General Secretary Zhao Ziyang.
1992	<i>The Southern Tour</i> (南巡). After the suspension of all reforms due to the crackdown, Deng Xiaoping decided to restart economic reforms, embarking on a tour of southern cities, where he delivered a speech advocating reform while intensifying political control, particularly over education and university campuses.
1999	<i>Judicial Reform</i> . The Supreme People's Court (SPC) launched a belated judicial reform to modernize the Chinese judicial process. Together with the <i>Qi Yuling</i> case in 2001, when the SPC referenced the Constitution for the first time in its legal interpretation, these events indicated the potential for an official path towards constitutional reform in China.
2003	<i>The Sun Zhigang</i> (孙志刚) <i>Incident</i> . The tragedy occurred amid the SARS pandemic, coinciding with the ascension of General Secretary Hu Jintao and Premier Wen Jiabao. Facing both international and domestic pressures, the new regime swiftly

(continued)

TABLE P.1 (continued)

Year	Events
	abolished the long-standing Detention and Repatriation (收容遣送) system, signaling the growth of China’s civil society and the emergence of its popular path towards constitutional reform in the internet era.
2004	<i>Constitutional Amendment.</i> This significant amendment added liberal principles to the current Constitution, such as the respect and protection of human rights, governing the state according to law (依法治国), establishing a socialist state based on the rule of law (法治国家), the inviolability of private property, and compensation for taking.
2013	<i>The Neo-Totalitarian Revival.</i> China entered a new era as the reforms were systematically reversed with the ascendance of General Secretary Xi Jinping. Terms such as “constitutionalism” and “civil society,” designated as “sensitive,” have become untouchable in public discourse.
2022	<i>The White Paper Movement (白纸运动).</i> Having suffered severe restrictions on individual freedoms since the outbreak of the pandemic in early 2020, students and civilians in various cities took to the streets to protest the strict zero-Covid policy in late 2022. Within ten days, the policy was reversed, demonstrating the strength and viability of popular constitutionalism despite stringent state control.

its own opportunities of self-renovation by forfeiting the faith of the Chinese public. When it began to repent and reform, it was too late, and the Nineteen Articles was quickly reduced to a waste of paper. While the arrogant and myopic rulers of the Qing Dynasty (清朝) dug their own graves and deserved their fate, the success of the republican revolution meant the very end of constitutional reform. Although the First and Second Republics came one after another, China has decidedly drifted away from the path of constitutional reform over the past century.

The second chapter commemorates the centennial of the May Fourth Movement (1919), the turning point between the republican revolution and the Communist success, which verified the prophecy of Chinese historian Wang Guowei (王国维): “that which starts from republicanism is destined to end with communism.” Prior to the publication of this relatively late article, I visited the Berlin Institute of Advanced Studies for nearly a year, where I developed the basic framework of reconstructing a social contract theory centered on the notion of “political natural law.” The century-long predicament of Chinese constitutionalism lies not in its written constitutions, but in

the complete absence of social contracts as the legitimizing foundation of any constitution. A violent revolution is necessarily against constitutionalism because it is opposed to the very idea of social contract. Whether revolutionary or counter-revolutionary, the political powers throughout Chinese history violated every single one of the political natural laws. Although the Xinhai Revolution did not shed much blood, it was carried out very much in a way opposed to the spirit of social contract. The imperial court and the royalist faction were an important social force at the time, but were completely swept out in the revolutionary process. Without the mediation of a third party, the temporary compromise reached by the Nationalists and Yuan Shikai would sooner or later collapse. Sure enough, in less than two years, the assassination of Song Jiaoren in 1913 put an end to the ill-fated political cooperation. Thereafter, the restoration of the monarchy and warlords took turns to grab power, making the people thoroughly frustrated with the republican trial with democracy. It happened to be the time when Western democracy was in a low ebb, with Europe devastated by World War I. The Chinese seemed to have lost patience with the practice of learning from the West that had gradually formed since the Opium War of 1840. The Treaty of Versailles, portrayed as harming China's territorial sovereignty, ignited the patriotic fire overnight, and set the stage for Communist ascendance. The frequency analysis of keywords from the Xinhai Revolution to the May Fourth Movement showed that anti-contractual concepts such as revolution, Leninism, and socialism had been soaring in popularity, and had become an intellectual trend by 1919. In a short span of three decades, the Communist revolution would ultimately achieve a comprehensive victory.

Once the totalitarian regime is established, various disasters are bound to recur. Constant movements arrived one after another, epitomized in the Anti-Rightist Movement (反右运动) in 1957. The Great Leap Forward (大跃进) launched by Mao Zedong in 1958 quickly led to the Great Famine. When Chairman Mao's authority was challenged, he launched an unprecedented catastrophe to maintain his power that he believed was dwindling. To commemorate the outbreak of the Cultural Revolution half a century ago, the third chapter analyzes the characteristics of a totalitarian regime and the path of transformation after its decline. A totalitarian state is diagonally opposite to liberal democracy, which is characterized by prevalence of horizontal connections, the sum total of which constitute a social contract. On the contrary, an ideal totalitarian structure is like a zero-impedance conductor: orders flow from the top of the power pyramid to the lowest level, and information from the grassroots to the very top, all without any obstacle. It was this totalitarian system that enabled Mao, the charismatic leader, to use his

overwhelming social support to overthrow his political rivals within the system when his authority was challenged. Like a courtly struggle, the Cultural Revolution was for the sake of Mao's personal power, but the cost of social destruction was incomparably greater. Indeed, its legacy is lasting today, as the “seven dwarves”⁴ of the top power circle in China at the moment, all educated during the Cultural Revolution, are truly “sons of the revolution.”

The word for “crisis” (危机) in Chinese implies opportunities, however. Reform arrived after the Cultural Revolution was over. The fourth article commemorates – more accurately, mourns (祭奠) – the twentieth anniversary of Deng Xiaoping's Southern Tour, intended to restart reform after the suppression of the Tiananmen protests in 1989. In contrast to the deteriorating political environment today, Deng Xiaoping's pragmatic strategy of biding his time and keeping a low profile, even Jiang Zemin's “Three Represents” (三个代表) slogan and Hu Jintao's “No Stumbling” (不折腾) pledge, have become cherishable nostalgia of contemporary Chinese. Yet, once the constitutional reform is abandoned, opportunist pragmatism cannot last long, inevitably leading to today's predicament. Needless to say, China has been unfortunate throughout its history replete with calamities. All constitutional movements have so far ended in failures: the 1898 Hundred Days' Reform, the 1908 constitutional reform, the Xinhai Revolution that put an end to China's dynastic cycles, the 1927–28 Northern Expedition that established the Nationalist one-party dictatorship, the establishment of the Second Republic in 1949 after the Nationalist-Communist Civil War, followed by frequent political movements thereafter. Eventually, after the downfall of the Gang of Four in 1976, China was blessed with the “Golden Age” of reform, which ended tragically within a decade in 1989. To an extent, the failure of reforms is also attributed to the misfortune of reforming too early. As attested in Chinese history, genuine reform inevitably leads to a direct confrontation between the old and the new interests. The “second-generation leaders,” such as Deng Xiaoping and Chen Yun, were still revolutionary vanguards, and would never allow a change of their regime. This is fundamentally different from the Soviet Union, established more than three decades earlier. China's failure served as a bloody lesson for the socialist Eastern Bloc, which had succeeded in the democratic transition since the fall of the Berlin Wall in November 1989. Reciprocally, adding to China's misfortune, the success of the Third Wave transition served as a lesson for the CCP to maintain its power in China, which strengthened the political control of the post-89 society.

⁴ The term refers to seven members of the Standing Committee of the CCP's Politburo, headed by the General Secretary Xi Jinping.

Deng's Southern Tour launched economic reforms without its political counterpart, and created huge interest groups that have benefited from – indeed, lived on – the post-totalitarian system, further hindering political reforms. Without political reform that makes the rulers accountable to the ruled, no matter how much freedom, wealth, or half-baked rule of law temporarily enjoyed by the ruled, all can be taken away overnight, as the zero-Covid policy has shown during 2020–22.

So what needs to be done? When the current General Secretary came to power in late 2012, partly due to his special family background, many Chinese liberals had high expectations for political reform, among whom I was one. I drafted an Initiative for Building Consensus on Reform. With the courageous support of Wu Si (吴思) and Hong Zhenkuai (洪振快), both being outstanding scholars in their own fields and the chief editors of *Yanhuang Chunqiu* (炎黄春秋), an influential liberal journal now taken over by an appointed leadership, we jointly held a seminar and collected joint signatures for the petition. Many liberal scholars, lawyers, and journalists, such as Professors Guo Daohui (郭道晖), Jiang Ping (江平), and Zi Zhongyun (资中筠), participated. Mr. Li Rui (李锐), who served as Mao's secretary and was then in his nineties, came in a wheelchair. Not surprisingly, the event had been interfered with and the venue had to be changed before it took place. I was required by my university not to participate and to cease to organize. In order to ensure the smooth progress of the conference, I could only make an opening speech, and left the rest to the co-organizers from the magazine. Although the magazine itself could not carry the Initiative, it was translated into various languages and widely circulated overseas. The first batch of joint signatures included more than seventy influential intellectuals, and two more batches were collected before the collection efforts were totally banned. This was the first large-scale joint activity of public intellectuals in China since the severe suppression of the Charter 08 movement. Consistent with my reformist strategy, the Initiative was moderate in tone and was not intended to directly challenge the authority. As a result, it did not bring any adversity to or deterrence on any participants. Yet, its moderate outlook was criticized by some radical liberals, who claimed among other things that we were “kneeling down” to the authority. I will leave the readers to judge for themselves whether such an accusation is fair after reading the content of the Initiative reproduced in this book.

In fact, I used the name “Initiative” instead of “Proposal,” or “Advice,” precisely because it was meant not merely as a “petition” to the authority, but also as a call directed towards the Chinese society at large, hoping to form a social consensus on the focus and direction of the reform through public

discourse. Even at that time, which was characterized by a good deal more optimism than it is today, I was reminded by senior scholars not to pin too much hope on the current leadership. In retrospect, such a warning was prescient, but that advice would still characterize the Initiative as a sort of petition to leaders rather than the general public. In fact, even if it is no more than a petition, I still believe it is necessary in the sense that, when a new leader takes office, it is the obligation of the intellectual community to express its expectations on his leadership. True, later experience shows that he has taken the opposite direction, but that is his business. It is *our* business to speak out. Indeed, this is the attitude that any responsible citizen should have towards his or her own country. And I hereby reassert my unchanging reformist aspiration: if there is any turning point in the future, I will organize the joint signature event again, with the original text of the Initiative. Like China's constitutional reform itself, the Initiative is an ongoing process. While the so-called reform in the recent decade has taken the very opposite direction to our proposal, it is the duty of the liberal community to uphold the unfulfilled ideals of constitutional reform and publicly advocate these ideals.

The fifth chapter serves as a summary of the tortuous path of China's constitutional reform in the past century, analyzing the cultural causes of failures and exploring the possibilities of continuing reform in the current desperate situation. It was originally published on Christmas Day of 2011 as the centennial commemoration of the Xinhai Revolution in 1911. Since the hosting of the Olympic Games in 2008, in the short span of three years, as a result of the continuous fermentation of social events and the general disappointment near the end of the Hu Jintao–Wen Jiabao administration, China's social emotions in general and the liberal sentiment in particular have grown more pessimistic. This change in mood is reflected in the contrasting tones between this and the first chapter. As the title suggests, the “Manifesto” is filled with much more firepower. To be sure, pessimism is *not* necessarily a bad thing for what Max Weber saw as a “hopelessly optimistic” culture. China's failures in the past century are precisely attributed to the naïve optimism, believing that the world would be better no matter what the revolutionary vanguards do and how they do it, so long as they do for a benign purpose. A century of revolutionary turmoil has led China away from constitutionalism to the point beyond redemption, while “revolution” (革命) is still eulogized by the ruling party as well as the general public as a great cause for nation-building. A centennial judgment has to be made by an impartial observer for the interest of China's constitutional cause. Drawing on the American Declaration of Independence, the French Declaration of the Rights of Man

and of the Citizen, and the Communist Manifesto, the Constitutional Manifesto is the most widely circulated document I have published in China to date. Despite its sharp language, its main theme is to explore the conditions and mechanisms of constitutional transformation, as well as the way out of the seemingly hopeless cycle of reforms and revolutions. The manuscript was delivered at a lecture under the title of “The Xinhai Revolution and Chinese Constitutionalism (辛亥革命与中国宪政),” invited by a Peking University student organization for the centennial commemoration of the republican revolution. Although the school administration for some reason moved the lecture to a smaller classroom right before it took place, the two-and-a-half-hour lecture attracted a large crowd and received a thunderous applause at the end. The publication of the essay on the internet soon stirred the Standing Committee of the Politburo, the top organ of the CCP, and I have been blacklisted since. The relatively free speech environment did last for a few more years, however. A censored version of the manuscript was published under different titles in the *Leadership* (领导者) magazine hosted by Mr. Zhou Zhixing and the *Lawyer Digest* (律师文摘) edited by Sun Guodong. Both magazines have been discontinued for many years by now, showing serious deterioration in China’s political environment since 2013. Despite severe blocking, the video of the Manifesto lecture is still intermittently viral on the internet today.

At the beginning of 2020, the Covid outbreak showed many Chinese the importance of constitutional democracy for a healthy homeland. To explore the future framework of China’s constitutional system, Guo Feixiong, a liberal activist later arrested for his harsh criticism of the totalitarian regime, drafted a Questionnaire on Constitutional Democracy for Chinese Liberal Intellectuals, which covers the basic concepts and institutional designs of constitutional democracy. I revised and finalized the Questionnaire, and provided my detailed answer to each of the thirty-six questions therein. On the occasion of the 101st anniversary of the May Fourth Movement in 2020, French sociologist Zhang Lun launched an academic website – “China: History and Future,” which published my Answers as the first article.⁵ It provides me with an occasion to summarize my thinking on constitutionalism over the past two decades. My general conclusion, as implied in the title, consistently reflects my reformist position: China’s most

⁵ For Zhang Lun’s editorial announcement “Thinking Future, Renovating Civilization” and Guo Feixiong’s opening introduction and comment on my answer, see www.chinese-future.org/www.chinese-future.org/articles/lzssnll7h7hte5sgcbh8tzyt8fbpnd, and www.chinese-future.org/articles/enr4pywj3htjwajtmkdp7bac7s8zx.

pressing task is not making a new and better constitution, but rather formulating social contract through implementing the existing constitution, which does pay lip services to many political natural law precepts. Unlike many admirers of the American presidential system, I advocate for a Westminster-type parliamentary system, which has largely been borrowed by China's current Constitution, to be embedded in a federal framework through future constitutional reform. As the closing chapter of the book, the Answers can be taken as my intellectual preparation for future reforms in China, while actions are presently handicapped in an era of neo-totalitarian resurgence.

Chinese tradition often views the past as a guide to the present and future, likening it to a reflective “mirror” of history. To be sure, history itself never replays its exact course. Time never simply flows back to offer a chance to revisit past junctures and make alternate choices. The people, institutions, material, and cultural conditions, and motivating forces that shape critical decisions are all irreversibly different. Nevertheless, certain patterns do sometimes reemerge, especially in a society where the political system has remained largely unchanged. The recent zero-Covid policy bore resemblance to the lockdown during the Great Famine six decades ago, when fleeing peasants were forcibly detained by local militia to suffer starvation at their homes. Like that man-made tragedy, this one also persisted for three years until it was put to an abrupt end by the White Paper Movement – a seemingly insignificant but vital difference sixty years later. Should history indeed weave its patterns anew, we had better get ready for the next turn of events, which is swiftly approaching, in order to grasp the missed opportunities when they reemerge.

Acknowledgments

The collection of essays in this book grew out of my academic activities in mainland China during the last quarter-century, during which so many colleagues and friends have contributed to shaping my thinkings and writings. I am indebted to them all for their kind support and exchange of ideas, particularly Guo Daohui, Jiang Ping, Mao Yushi, Zhang Sizhi, Zhang Yihe, Zhou Xiaozheng, Zi Zhongyun, Chung-ying Cheng, Jerome Cohen, Donald Clarke, Paul Gewirtz, Tom Kellogg, Eva Pils, Ewan Smith, Jeremy Webber, Chen Min (Xiaoshu), Gao Quanxi, Guo Yuhua, He Weifang, Su Xiaoling, Xu Zhangrun, Yang Maodong (Guo Feixiong), and Zhang Lun, among others. I also thank Joe Ng for excellent editorial assistance and two peer reviewers for helpful comments. Last but not least, I express my gratitude to my wife, Wei Xiaoyang, and son, Zhang Yichi, for their understanding and patience throughout all these years.

Abbreviations

CCP	Chinese Communist Party
CCPCC	Chinese Communist Party Central Committee
CPG	Central People’s Government
GDP	gross domestic product
KMT	Kuomintang (Nationalist Party)
PNL	political natural law
NGO	nongovernmental organization
NPC	National People’s Congress
NPCSC	National People’s Congress Standing Committee
SARS	severe acute respiratory syndrome
SPC	Supreme People’s Court
SS	Schutzstaffel (Protection Squadron)