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Epistrophe: Chinese Constitutionalism and the 1950s¹

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Imagine, for a moment, interpreting the American Constitution ignorant of *The Federalist Papers*, *Marbury v. Madison*, the New Deal or the Warren Court. How would we comprehend English common law absent Coke, Blackstone and Dicey? What if our grasp of French jurisprudence barely acknowledged the legacy of the Napoleonic Code and overlooked the political crises and constitutional innovations attending the birth of the Fifth Republic? At best, our understanding of these legal systems and the discourses that animate them would be deficient; at worst, we might misread them altogether.

The tendency in both China and abroad to treat contemporary Chinese law as discursively, even genetically, distinct from its Imperial, Republican or Maoist antecedents is therefore arresting. That many present reformers and observers of Chinese law are better versed in Jellinek, Vyshinsky, and Posner than in Shen Jiaben, Yang Zhaolong, and Zhang Youyu begs discomfiture, as does the paradox of their reluctance to take China's legal heritage seriously while simultaneously grappling with its normative and institutional legacies.

Through a glimpse into the drafting of the 1954 Constitution, this essay joins those who would argue for greater historicity in the study of Chinese law.² It aims to complement the excellent tools social science has furnished for unpacking legal

¹ An earlier version of this paper appears in: *Building Constitutionalism in China*, Michael Dowdle and Stephanie Balme eds. (Palgrave Macmillan, 2009): 59-76.

² Stephen C. Angle and Marina Svensson, *The Chinese Human Rights Reader: Documents and Commentary 1900-2000* (Armonk: M.E. Sharpe, 2001); Jérôme Bourgon, "De Quelques Tendances Récentes de la Sinologie Juridique Américaine," *T'oung Pao* 84, no. 4-5 (1998): 380-414.

“modernization” by urging greater sensitivity to local and diachronic processes, especially those that borrow seemingly familiar legal concepts and institutions and then quietly refashion them into something native.³ After all, since the shock of the First Opium War in the 1840s, China has more or less been permanently engaged in a quest for modernity; and nearly every successive generation of legal observers has borne the conceit of this phenomenon as novel, and then framed it against the favored, exogenous benchmarks of the day, only to emerge confounded that China would not submit to their designs.⁴

Plainly, “[i]magine China’s possible futures simply on the basis of its present conditions” invites misapprehension.⁵ It obscures the contingency in human affairs and the power of hidden, suppressed narratives to alter the course of the body politic unexpectedly. Alternatively, in contexts where sensitive ideas are expressed Aesopically, and where terms and symbols may conjure up unspoken historical associations that modify their surface meaning, our capacity to detect and interpret the semiotics of a discussion and the positional dynamics of its participants depends on familiarity at least with its background. Consider, for example, the discourse of federalism in the United

³ Randall Peerenboom, *China Modernizes: Threat to the West or Model for the Rest?* (New York: Oxford University Press, 2007).

⁴ Frank J. Goodnow, “Reform in China,” *American Political Science Review*, 9, no. 2 (1915): 209-224; Roscoe Pound, “Development of a Chinese Constitutional Law,” *New York University Law Quarterly* 23, no. 3 (1948): 375-392; Roscoe Pound, *Some Problems of the Administration of Justice in China* (Nanking: National Chengchi University, 1948); A. G. Krymov and M. A. Shafir, eds., *Konstitutsiia i osnovnye zakonodatel’nye akty Kitaiskoi Narodnoi Respubliki, 1954-1958 [Constitution and Basic Legislative Acts of the Chinese People’s Republic, 1954-1958]* (Moscow: Inlitzdat, 1959).

⁵ R. Bin Wong, “The Political Economy of Agrarian Empire and Its Modern Legacy,” in Timothy Brooks and Gregory Blue, eds., *China and Imperial Capitalism: Genealogies of Sinological Knowledge* (Cambridge: Cambridge University Press, 1999), 243.

States, which is encrusted with decades, if not centuries, of accumulated meaning. Finally, a neglect of history invites mechanistic applications of theory; for without a local, empirical dimension, there is no way to test the soundness and applicability with respect to China of our theoretical tools and models, or to improve them and possibly turn them inward to reap fresh insights about our own experience.

The 1954 Constitution was a dismal failure as a body of binding rules; the twenty-one years it remained in force were the darkest and most despotic in PRC history. Yet, it merits attention here because it redounds powerfully to the present in ways that belie its fate as enforceable law. Indeed, in myriad ways, the 1954 Constitution seeded China's present legal order. To begin with, it codified the institutional structure, offices and powers of the nascent PRC state along lines that are instantly recognizable today. Its stipulations also established an acceptable framework in the PRC for speaking about democracy, rights, rule of law, political accountability and social harmony--the very framework upon which current elaborations on those questions are based. More specifically still, the 1954 Constitution was the primary model upon which China's present Constitution, adopted in 1982, was founded. Many of the same people were involved in the drafting of both texts, and their kinship is evident. Even the present PRC doctrine of non-justiciability originates in the 1954 Constitution.⁶

⁶ See Supreme People's Court (PRC), "Zuigao renmin fayuan guanyu zai xingshi panjue zhong buyi yinyong xianfa zuo lunsui kexing yiju de pifu (July 30, 1955) [Reply of the Supreme People's Court on Not Citing the Constitution as the Basis for Determining Guilt or Sentences in Criminal Judgments (July 30, 1955)]," in *Xin zhongguo sifa jieshi daquan* (Beijing: Zhongguo Jiancha Chubanshe, 1990), 420-421. *But see* Wang Chenguang, "Falü de kesuxing: xiandai fazhi guojia zhong falü de tezheng zhiyi [Justiciability of Law: One Characteristic of a Modern Rule of Law Country]," *Faxue* 8 (1998): 18.

Next, the 1954 Constitution bridged a century of intellectual trends and political movements, joining together several generations of jurists in an authentically Chinese discourse knit from disparate traditions. There was Shen Junru, the first President of the Supreme People’s Court of the PRC, who earned the highest *jinshi* degree in the Qing imperial examinations of 1904, studied law in Japan, was a Republican era leader of the Shanghai Bar and the China Democratic League, and was among the “Seven Gentlemen” whose arrest by Jiang Jieshi (Chiang Kai-shek) helped to precipitate the 1936 Xi’an Incident. There was Qian Duansheng, Harvard Ph.D., close friend of John Fairbank, and a leading Republican era constitutional scholar who served as the first post-1949 Dean of the Beijing University School of Law and founding President of what is now the China University of Politics and Law (*Zhongguo zhengfa daxue*). There was Wang Tieya, renowned scholar of International Law, student of Harold Laski, drafter of the 1990 Hong Kong Basic Law and, near the end of his life, Judge on the International Criminal Tribunal for the Former Yugoslavia. And finally there were the political elites: among them, Mao Zedong, Deng Xiaoping, and Hu Yaobang, the death of whom in 1989 catalyzed the protests in Tian’anmen Square.

The fascinating way in which the drafting of the 1954 Constitution brought such varied figures together illustrates a larger point—one that, while self-evident, is in practice rarely acknowledged in any meaningful detail with respect to China. That is, constitutions and constitutionalism, fundamentally expressions of ideas about the organization and functioning of a polity, respect no neat periodizations. They partake of dynamic and often recurring political problematics in society, and are fundamentally processual in nature. Little wonder then that constitutional questions last openly debated during the 1950s

drew heavily on Republican antecedents and now, fifty years later, suddenly seem salient again – questions about the rule of law, legal instrumentalism, political pluralism, restraints on autocracy, the proper balance between central and local power, the boundaries between state and Party, judicial independence, and the scope and justiciability of rights, to name just a few; or that Chinese struggling to find local materials with which to build practicable, native solutions to such constitutional questions might find purchase in the pioneering work of their forebears.

Rather than attempt a comprehensive history or textual analysis in the space available, this essay pursues the much more limited aim of demonstrating the authenticity of constitutional discourse in the early PRC and the links that bind it to China's past and future. Drawing on contemporary materials and recent Chinese scholarship, it traces the historical background, political considerations and human inputs that underlay the formulation of the 1954 Constitution, especially the role key participants in its drafting played in nurturing and transmitting constitutionalism across the span of twentieth century China. The reader should bear in mind that, as they traveled through time, constitutional norms, regardless of their points of origin, acquired new usages and meanings informed by local traditions, needs and experiences; that is to say, they became and continue to be Chinese.⁷ Finally, because some of the figures in the text may be

⁷ Angle and Svensson, *The Chinese Human Rights Reader: Documents and Commentary 1900-2000*; Thomas E. Greiff, "The Principle of Human Rights in Nationalist China: John C. H. Wu and the Ideological Origins of the 1946 Constitution," *The China Quarterly* 103 (1985): 441-461; Teng Biao, "Huayu, shijian yu zhidu bianqian: dangdai Zhongguo sifa de guanjianci fenxi (1949-2002) [Discourse, Practice and Systemic Changes: Analysis of Key Judicial Terms in Contemporary China]" (Ph.D. diss., Peking University School of Law, 2002); Edmund S. K. Fung, "The Idea of Freedom in Modern China Revisited," *Modern China* 32, no. 4 (2006): 453-482; Young-Tsu Wong, "The Fate of Liberalism in Revolutionary China," *Modern China* 19, no. 4 (1993): 457-490.

unfamiliar, brief biographical notes on selected individuals appear in Appendix I for the reader's convenience. With that, let us begin.

I.

The 1954 PRC Constitution emerged most directly out of two main texts: the 1936 Stalin Constitution of the USSR, which exemplified for the drafters socialist constitutional forms and doctrines, and the 1949 *Common Program of the Chinese People's Political Consultative Conference* ("Common Program"), which reflected Chinese political conditions and the CCP's own revolutionary experience on the eve of the Party's ascension to power. Consistent with the pattern set by earlier Chinese constitutions, production of the 1954 text was dominated by a single political party; its drafting was personally directed by Mao Zedong and the CCP's highest leaders, though some non-Communist figures also played pivotal roles in its formulation and subsequent exegeses. All of these figures were veterans of the constitutional controversies of the Republican era; and the intellectual and political currents of that time--complete with their contradictions, tensions, concerns and priorities--inextricably shaped the enterprise.

Specifically, the 1946 Republican Constitution schooled an entire generation in the language, rituals, syntactical conventions, normative choices and political possibilities present in constitutionalism. Based on a 1936 Draft prepared by the Guomindang (GMD) and shaped by the political legacy of Sun Yat-sen, it proposed to transition China from its present state of "political tutelage" under the GMD to democratic, constitutional

government.⁸ However, for a variety of reasons, including the outbreak of war with Japan, revision and ultimate adoption of this Draft was postponed for a decade.

In the intervening years, much had changed in China. Throughout the war, Jiang's persistent efforts against the CCP aroused the patriotic indignation of many who felt that he was dissipating China's capacity to defend itself against Japan. These critics, many of them urban intellectuals who had absorbed ideas about human rights, democracy and constitutional government from abroad also increasingly chafed at the incompetence and growing dictatorial militarism of the GMD regime. Their views ran the ideological gamut from the Anglo-American-inspired liberalism of Chu Anping and Chen Qitian to the idiosyncratic, neo-Confucian socialism of Liang Shuming. Despite harassment, arrest and even occasional assassination, many of them persisted in denouncing the repressive political climate, and appealed in fora such as the advisory People's Political Council and the popular and academic press for adoption of the stalled Draft Constitution, rule of law, genuine multi-party democracy, and the expansion of civil and political rights.⁹ Some of them remained lone voices, while others, hoping to articulate an alternative "Third Road" (*di san tiao lu*) to the GMD-CCP binary, formed oppositional political groups, perhaps the most famous of which was the center-left China Democratic League whose founders included Luo Longji, Shen Junru, Shi Liang and Zhang Bojun, all of whom played

⁸ A interesting contemporary account of this episode may be found in Chi'en Tuan-sheng, *The Government and Politics of China* (Cambridge: Harvard University Press, 1961). Originally written in 1948, this text stands out because the author (Qian Duansheng) was a leading Republican era constitutional scholar who went on to an illustrious career in the PRC and served as legal advisor to the drafters of the 1954 Constitution.

⁹ Roger B. Jeans, ed., *Roads Not Taken: The Struggle of Opposition Parties in Twentieth Century China* (Boulder: Westview Press, 1992); Edmund S. K. Fung, *In Search of Chinese Democracy: Civil Opposition in Nationalist China, 1929-1949* (Cambridge: Cambridge University Press, 2000).

significant roles in the drafting of the 1954 Constitution and the development of the early PRC legal system.

After the victory against Japan, the Republican government convened a Political Consultative Conference in 1946, in part to shore up its legitimacy and foster national unity. Given that the GMD and CCP had long professed commitments to constitutionalism and democracy and were now actively courting public opinion in their contest for political supremacy, this Political Consultative Conference, with the minor parties playing a mediating role, secured agreement on convening a National Assembly and a committee to formalize proposed revisions to the 1936 Draft Constitution in preparation for its adoption.¹⁰ In the end, however, the outbreak of civil war further polarized politics, and the ensuing renunciation of participation by the CCP and its allies among the minor parties ensured that the resulting 1946 Constitution and Republican government would be a mostly GMD affair. The CCP refused to recognize the legitimacy of the new Constitution and, in any case, within months, the document was itself amended in April 1948 by the “Temporary Provisions Effective During the Period of Communist Rebellion.” These “Temporary Provisions” sharply curtailed many rights, granted the ROC President emergency powers, and remained in effect in Taiwan until 1991.

The CCP’s refusal to recognize the 1946 Constitution formalized in the legal realm what was already clear politically and militarily. The Party aspired not just to replace the GMD in power, but also to supercede the Republic itself. By attacking the

¹⁰ Mao Zedong, “Xin minzhu zhuyi de xianzheng [New Democratic Constitutionalism] (February 20, 1940),” in *Mao Zedong Xuanji*, vol. 2 (Beijing: Renmin chubanshe, 1991), 676-677; Mao Zedong, “Lun lianhe zhengfu [On Coalition Government] (April 24, 1945),” in *Mao Zedong Xuanji*, vol. 3 (Beijing: Renmin chubanshe, 1991), 1056.

Constitution, it essentially targeted the moral-juridical legitimacy (*fatong*) of the Republican state.¹¹ (See also Chapter ___ discussing the role that the notion of *fatong* has played in China's 20th century constitutional evolution.) In fact, the CCP went further still; it attacked the very concept of *fatong*, rooted as it was in traditional modes of political thought that the revolution aimed to supplant. In CCP usage, the term acquired a pejorative connotation, as in the common construction 'wei *fatong*' (falsely legitimated legal authority)--contemporary CCP shorthand for the Republican legal and constitutional order.¹² Although, in effect, the CCP proposed a *fatong* of its own grounded in socialism and people's democracy, it spoke instead of building a *fazhi* (legal system), the term still most commonly in circulation, or, for a period in the 1950s, a *faquan*, which was a neologism inspired by the Russian term *pravo* that combined the dual meanings of "law" and "right" also encapsulated by *jus*, *recht* and *droit*. Only recently, as the CCP has begun to reconcile itself with China's pre-1949 heritage, have PRC jurists again begun to speak approvingly of a present *fatong*.

Nevertheless, as explored earlier in this volume by Xiaohong Xiao-Planes in the context of China's Republican period constitutionalism, the concept of *fatong* remains useful because it captures the traditional ethical dimension of the Party's quest for

¹¹ On the eve of Beijing's fall to the Communists in January 1949, Mao specifically called for the abrogation of the "false" Constitution (*feichu wei xianfa*) and the "false" Republican legal order (*feichu wei fatong*) as conditions for further negotiations with the retreating Guomindang. Mao Zedong, "Guanyu shiju de shengming [Statement on the Present Situation] (January 14, 1949)," in *Mao Zedong wenji* vol. 4, (Beijing: Renmin chubanshe, 1991), 1389.

¹² Li Long and Liu Liantai, "Feichu 'liufa quanshu' de huigu yu fansi [Looking Back at and Reconsidering the Abrogation of the 'Complete Book of the Six Codes']," *Henan sheng zhengfa guanli ganbu xuexiao xuebao* 5 (2003): 39-50; Xiong Xianjue, "Feichu 'liufa quanshu' de yuanyou ji yingxiang [The Causes and Influence of the Abrogation of the 'Complete Book of the Six Codes']," *Yanhuang chunqiu* 3 (2007): 10-13.

legitimacy and, in particular, its tacit acknowledgement that the allegiance of China's learned elite still conferred singular proof of its fitness to govern. Hence, the CCP assiduously courted intellectuals, appealing to their self-image as successors to China's imperial scholar-officials, their patriotism and their frustrated ambitions to undertake national salvation. In savvy propaganda, it welcomed them back into politics with promises to revitalize China and to usher in an age of multi-party New Democracy. To be sure, some of the leading advocates for constitutionalism and rule of law followed the GMD to Taiwan, but many, alienated by the experience of the preceding twenty years or held in suspicion by GMD authorities, did not.¹³ Through underground Party cells and overt entreaties, the CCP enticed even high-ranking officials and judges of the former regime with no apparent leftist sympathies, such as the brilliant Yang Zhaolong, head of the Criminal Section of the Republican Ministry of Justice and protégé of Roscoe Pound, to stay and contribute to the building of "New China."¹⁴

In anticipation of total victory, the Party convened a Preparatory Committee for a New Political Consultative Conference in June 1949. Patterned after its earlier GMD namesake, it comprised 134 members from the CCP, affiliated mass organizations, minor

¹³ Hao Tiechuan, "Zhongguo jindai faxue liuxuesheng yu fazhi jindaihua [Returned Law Students in Modern China and the Modernization of the Legal System]," *Faxue yanjiu* 6 (1997): 3-26; Hao Tiechuan, "Zhongguo jindai faxue liuxuesheng yu xin zhongguo chuqi de fazhi jianshe [Returned Law Students in Modern China and the Construction of the Legal System in the Early Years of New China]," *Faxue yanjiu* 2 (2000): 136-153; He Qinhu, "Fake liuxuesheng yu zhongguo jindai faxue [Returned Law Students in Law Departments and the Study of Law in Modern China]," *Faxue luntan* 19, no. 6 (2004): 82-90; He Qinhu, "Xifang faxue guan zai jindai zhongguo de chuanbo [The Dissemination of Western Legal Concepts in Modern China]," *Faxue* 12 (2004): 3-16.

¹⁴ See e.g., Yang Zhaolong, "Xianzheng zhi dao [The Road to Constitutionalism] (1944)," in Ai Yongming and Lu Jinbi, eds., *Yang Zhaolong faxue wenji* (Beijing: Falü chubanshe, 2005), 455-465; Pang De [Roscoe Pound], "Lun zhongguo xianfa [On the Chinese Constitution] (1946)," in *id.*, 544-548.

parties, ethnic minority groups, various prominent citizens, and overseas Chinese.¹⁵ Its Standing Committee of twenty-one members were divided into working groups charged with articulating the political, legal and institutional framework for the new regime. Zhou Enlai led the Drafting Group for what would become the “Common Program,” the forerunner to the 1954 Constitution (discussed below). This Group also included numerous other top-level communist and non-communist political figures, such as Luo Longji and Zhang Bojun. Meanwhile, Dong Biwu, the only top level CCP leader to have had a legal education, led a group that included Luo Longji, Shen Junru and Zhang Zhirang that was charged with drafting what would become the “Organic Law of the Central People’s Government.” Together these complementary documents functioned as China’s effective constitution from 1949 to 1954, and they were adopted by the first plenary session of the newly constituted Chinese People’s Political Consultative Conference (CPPCC) on September 29, 1949, two days before the founding of the People’s Republic.¹⁶

As the Chinese historiography puts it, the 1954 Constitution took the Common Program as its foundation and elaborated upon it.¹⁷ According to the Common Program, the PRC was to be a people’s democratic dictatorship led by the working class, but uniting all democratic classes and nationalities (Article 1). It enumerated a familiar series

¹⁵ Qian Duansheng, “Tongyi zhanxian, renmin zhengquan, gongtong gangling [The United Front, the People’s Regime and the Common Program],” *Guancha* 6, no. 1 (1949): 6-8.

¹⁶ Cai Dingjian, *Xianfa jingjie [Constitution: An Intensive Reading]* (Beijing: Falü chubanshe, 2006), 11.

¹⁷ Du Chengming, “1954 nian xianfa de jichu — gongtong gangling’ de lishi diwei ji qi fansi [The Foundation of the 1954 Constitution — Rethinking The Historical Position of the ‘Common Program’],” in Zhang Qingfu & Han Dayuan, eds., *1954 nian xianfa yanjiu* (Beijing: Zhongguo renmin gong’an daxue chubanshe, 2005), 22-35.

of rights, including gender equality, and freedoms of thought, speech, publication, assembly, association, correspondence, person, domicile, change of domicile, religious belief and of holding processions and demonstrations (Articles 5 and 6). With respect to economics, it took a measured, evolutionary tone, protecting private property and trade, though also announcing an intention to carry out land reform and to develop China from an agricultural economy to an industrial “state-capitalist” economy in which the state-owned sector would take the leading position, to be followed respectively by cooperatives and private (though not “bureaucratic”) capital (Articles 27-38). Of particular interest for our purposes, the Common Program brought the CCP’s earlier, polemical renunciation of the existing *fatong* to concrete fruition by summarily abrogating the entire “oppressive” Republican legal system, including all of its laws and regulations (Article 17). Under the Common Program, political power in the PRC was vested in the people, as exercised at various levels through their elected representatives in People’s Congresses and by government organs. The highest organ of state was to be the National People’s Congress (NPC), and until such time as the National People’s Congress could be constituted, the CPPCC would act in its stead and carry out its official powers (Articles 12-13).

Under rules adopted separately, the CPPCC fixed each of its sessions to a term of three years.¹⁸ As the first session drew to a close in 1952, the PRC leadership faced a choice: maintain the status quo by convening a second session of the CPPCC, or supercede it by electing the National People’s Congress described in the Common Program. According to recent Chinese scholarship, various opinions on this question

¹⁸ Han Dayuan, *1954 nian xianfa yu xin zhongguo xianzheng [The 1954 Constitution and Constitutionalism in New China]* (Changsha: Hunan renmin chubanshe, 2004), 53.

were aired, but a consensus emerged to forego the NPC indefinitely. In October, 1952, Liu Shaoqi visited Moscow to attend the Soviet 19th Party Congress carrying a letter from Mao informing Stalin of this decision.

Stalin took a different view. Twice before, specifically in 1949 and again in 1950, he had personally urged Mao and Liu to promptly hold elections and adopt a constitution. Mao had always demurred, noting that the Common Program was working well and could be amended as necessary; and that the momentous step of promulgating a constitution should wait until the transition to socialism, when the fundamental change in class relations reflected in such a shift would necessitate it.¹⁹

Now, with Liu once more before him, Stalin restated his position and buttressed it with several points. First, the government of the PRC had not been elected. This allowed its enemies to question its legitimacy, and to accuse it of being nothing more than a self-proclaimed, military dictatorship. Second, the country had no official constitution. The Common Program offered little consolation here since its legitimacy and the legitimacy of all PRC law were clouded by their origin in the equally unelected CPPCC. Third, the multi-party coalition government established by the Common Program presented a grave security risk to the CCP. Many members of the minor parties had close ties to foreign countries, especially the United States and United Kingdom, and could spy on behalf of those hostile powers. Stalin argued that the CCP could solve these problems and deny its enemies propaganda points simply by holding an election in 1954, which it would surely dominate thanks to its deep reservoir of popular support and experience with mass mobilization. Such an election would allow it to claim a genuine popular mandate and

¹⁹ Cai, *Xianfa jingjie*, 26.

sideline its coalition partners, thereby legitimating at the ballot box a one-party state that could draft a constitution and govern with an essentially free hand.²⁰

Stalin's logic evidently proved persuasive, and Mao abruptly reversed course. On December 24, 1952, the CPPCC, as one of the final acts of its first session, agreed to initiate work on an electoral law and a draft constitution with an eye towards convening the NPC in 1953. In mid-January of that year the decision to begin work on the NPC and the new Constitution was discussed in a series of meetings chaired by Mao and Zhou Enlai and attended by leaders of the various minor parties present in the coalition government, members of the CPPCC, and of the Committee of the Central People's Government. In short order, each of these bodies established organizational entities through which the drafting process would ultimately flow. However, further progress towards a Constitution stalled for nearly one year due to a series of natural disasters, the Gao-Rao affair, and the need to hammer out an agreed ideological framework upon which constitutional drafting could proceed. The Electoral Law was completed on time and elections took place across China for people's congresses at the local, provincial and finally national levels between 1953 and 1954.

On December 27, 1953, Mao traveled to Hangzhou for a respite from the day-to-day management of the nation. Accompanying him were two bookcases of reference materials and three of his personal secretaries: Chen Boda, Hu Qiaomu and Tian Jiaying. Together, they constituted the Constitution Drafting Small Group ("Small Group"). By mid-January, 1954, they had produced a detailed nine month drafting plan for the

²⁰ Cai, *Xianfa jingjie*, 27.

Constitution, which Mao cabled back to Beijing along with a reading assignment for some of those who would soon contribute to and deliberate on the text.

[I]n order to facilitate discussion of this plan in the Politburo in mid-February, starting now I would like every Politburo member and Central Committee member present in Beijing at once to find the time to read each of the following main reference documents:

- 1) the 1936 Stalin Constitution and Stalin's Report;
- 2) the 1918 Russian Soviet Federated Socialist Republic Constitution (read Volume One of the *Collected Materials on the Constitution and Electoral Law* edited by the Government Office);
- 3) the Romanian, Polish, East German, and Czechoslovakian Constitutions (read the *Collected Constitutions of the People's Democracies* published by the People's Press. The various national constitutions collected in this volume are similar with minor variations. Select the Romanian and Polish Constitutions as relatively new examples, select the German and Czechoslovakian Constitutions as relatively detailed examples with minor points of difference. If you have time, read the others.);
- 4) the 1913 Temple of Heaven Draft Constitution, the 1923 Cao Kun Constitution, the 1946 Jiang Jieshi Constitution (read Volume Three of the *Collected Materials on the Constitution and Electoral Law*. These represent three models: a ministerial system, a federalist system, and a presidential dictatorship.);
- 5) the 1946 French Constitution (read Volume Four of the *Collected Materials on the Constitution and Electoral Law*. This represents a comparatively progressive and complete capitalist ministerial system constitution.).

Please inform me of your opinions.

Mao Zedong
January 15, 1954²¹

The drafting process hewed fairly closely to Mao's plans. His Small Group presented a preliminary draft to the Politburo for discussion and adoption on February 18, 1954. The Small Group made revisions to this draft on the basis of those discussions, and the Politburo then sent the now formalized Draft to the thirty-three member Constitution

²¹ Mao Zedong, "Xianfa qicao gongzuo jihua [Plan for Constitutional Drafting Work] (January 15, 1954)," in *Mao Zedong wenji* vol. 6, (Beijing: Renmin chubanshe, 1999), 320.

Drafting Committee of the Central People's Government on March 23, 1954. From there, it was forwarded to the CPPCC and to leading cadres in provincial governments, major cities, higher military commands, and key mass organizations for comment.²² The Constitution Drafting Committee also met separately and jointly with seventeen CPPCC Constitution Discussion Small Groups to deliberate over the text during May and June of 1954. After further revisions, the Committee of the Central People's Government adopted the Draft on June 14, 1954 and opened it up to nearly three months of public comment. Finally, on September 20, 1954 the NPC adopted the text as the official Constitution. Archival sources indicate that, up to the eve of adoption, every step of the process entailed multiple readings with continual feedback from diverse participants (but always overseen by the CCP), and ongoing revisions.

Advising the drafters as the text moved forward were a pair of philologists (Ye Shengtao and Lü Shuxiang) and two principal teams of lawyers (Zhou Gengsheng, Qian Duansheng, Fei Qing, Lou Bangyan and Wang Tieya).²³ None of these advisors were members of the CCP. The legal advisors in particular had had extremely distinguished academic careers, and were well-traveled, multi-lingual and conversant in the dominant trends in international legal scholarship at the time.

²² *Xianfa cao'an chugao taolun yijian huiji [Collected Opinions from Discussions of the Draft Constitution]*, 25 vols. (Beijing: Zhonghua renmin gongheguo xianfa qicao weiyuanhui ban'gongshi, 1954).

²³ The first group consisted of Zhou Gengsheng and Qian Duansheng, who were attached to the Politburo's Constitution Study Small Group made up of Chen Boda, Deng Xiaoping, Dong Biwu, Hu Qiaomu, Li Weihang, Peng Zhen, Tian Jiaying and Zhang Jichun. The second group, known as the "Law Small Group [*falü xiaozu*]," consisted of Qian Duansheng, Fei Qing, Lou Bangyan and Wang Tieya. It advised the Constitution Drafting Committee of the Central People's Government. Some of these experts also aided in the compilation and annotation of printed reference materials for the drafters. Renmin ribao tushu ziliao zu, ed., *Xianfa wenti cankao ziliao [Reference Documents on Constitutional Questions]* (Beijing: Renmin chubanshe, 1954).

The record of the deliberations on the Draft, once it moved out of the Politburo in March 1954, reveals lively debates over the text and countless proposals for substantive modification, many of which made their way into the final language. Importantly, the discussants made efforts to coordinate and harmonize their proposals with the parallel efforts then under way to draft related legislation, such as the Organic Law of the People's Courts, the Organic Law of the State Council, and the Criminal Procedure Law. Over several weeks in May 1954, for instance, members of the Constitution Drafting Committee met with the leaders of the CPPCC's Constitution Discussion Small Groups in joint conference. Among the Party elite in attendance were Li Weihai, Tian Jiaying and Hu Yaobang, and non-CCP luminaries such as Fei Xiaotong, Luo Longji, Shen Junru, Shi Liang, Song Qingling, Zhang Bojun and Zhang Zhirang, virtually all of whom had actively campaigned for constitutionalism in Republican China. Every article of the Draft received scrutiny.²⁴

According to the archival record, in these meetings Li Weihai, Qian Duansheng, Zhang Zhirang and Zhou Gengsheng debated the nature of the Draft Constitution's grant of "judicial" authority to the courts. The original text read: "The judicial authority (*sifaquan*) of the PRC is exercised by the Supreme People's Court, local people's courts and special people's courts established according to law." However, the conferees recommended replacing the term *sifa* with the more restrictive *shenpan* (trial or adjudication) to produce a revised text which read: "The Supreme People's Court of the PRC, local courts and special courts created according to law exercise the official power

²⁴ Han, *1954 nian xianfa yu xin zhongguo xianzheng*, 131-175.

of adjudication (*shenpan zhiquan*).” The final text of the Constitution reflects this narrower grant of authority (Article 73).

A related question arose with respect to the Draft Constitution’s guarantee of judicial independence. The original Draft text read: “People's courts at every level exercise their *official powers* independently (*duli xingshi zhiquan*), subject only to the law.” But on the grounds that the PRC was a unitary state and its courts, as institutions, were distinguished only by their delegated, functional specialization, and not by any unique, independent powers, it was suggested that this should be revised to read: “People's Courts at every level carry out *adjudication* independently (*duli jinxing shenpan*), subject only to the law.” This suggestion too was taken to heart, as the final text of Article 78 of the 1954 Constitution reads: "People's Courts carry out adjudication independently, subject only to the law."

With respect to religion, the conferees also debated several questions. Under the Draft Constitution, the state guaranteed to materially facilitate the enjoyment of an enumerated set of fundamental rights. Minister of Justice Shi Liang asked if freedom of religion should be included within this set and, if so, whether that would then commit the state to establish places of worship. Legal advisor Zhou Gengsheng suggested that religious freedom be excluded from the enumerated rights contained in that clause because it was best understood as a matter of individual conscience, unlike the freedom of the press or freedom of speech which, by contrast, were political in nature. Therefore, he argued, freedom of religion should be described separately, in its own article. Li Weihai and Luo Longji agreed, and the group’s recommendation to the Constitution Drafting Committee reflected this position. Shao Lizi, a veteran of Sun Yat-sen’s

Tongmenhui and the Guomindang, then asked if the wording of this proposed article ensuring the right to enjoy “freedom of religious belief” should also stipulate the freedom to hold religious services. Tian Jiaying disagreed and carried the day, pointing out that if such a clause was added it would be necessary also to stipulate the freedom to proselytize *against* religion (Article 88). Notably, the current 1982 Constitution stipulates both the right of religious worship and freedom *from* religious belief (Article 36).

Similar exchanges occurred across the text, and in many cases the Constitution Drafting Committee heeded the resulting proposals for revision when it next took up the Draft in late May 1954. At these meetings, still more questions were raised. Deng Xiaoping, Li Weihuan and Liu Shaoqi explored the connotations of the terms *renmin* (the people), *gongmin* (citizen) and *guomin* (national) as used in the Draft. This discussion was particularly important because of the ideological significance attached to “the people” in Mao's essay “On the People's Democratic Dictatorship” and its later application in his 1957 essay “On Contradiction.” Liu pointed out that while members of the landlord class did not fit Mao's definition of the people, they were still citizens. Legal advisors Qian Duansheng, Fei Qing, Lou Bangyan and Wang Tieya explained that on the basis of the opinions recently rendered by the CPPCC's Small Discussion Groups, “the people” was to be understood as a social and political concept, while “citizen” was a legal concept. These concepts had to be distinguished clearly and used appropriately in the Constitution.²⁵

On the right of defendants to counsel, the Constitution Drafting Committee considered whether or not the proposed article should read “the accused has the right to

²⁵ Han, *1954 nian xianfa yu xin zhongguo xianzheng*, 233.

obtain defense (*huode bianhu*),” following Article 111 of the 1936 Stalin Constitution.²⁶ Noting the dearth of lawyers, Chen Shutong did not feel comfortable stipulating a right that could not be exercised in practice and, as a result, favored the more general formulation “the accused has the right to defense (*bianhu quan*).” Deng Xiaoping, however, pointed out that defense counsel need not be a lawyer. Defendants could represent themselves, appoint a non-lawyer to represent them, or the court could appoint someone for them. The result was that “the accused has the right to obtain defense” survived (Article 76).

Even a proposed article declaring the President of the PRC, a job that was to be undoubtedly reserved for Mao, as “head of state” (*guojia de yuanshou*) fell prey to cold constitutional logic. On the recommendation of Qian Duansheng, Wang Tieya and the other legal advisors, the Constitution Drafting Committee struck this language because it potentially conflicted with other provisions in the Draft: namely, the article that defined the NPC as the highest organ of state (with the power to elect the President); and the article defining the State Council as highest administrative organ.

In the end, the Draft was adopted by the Committee of the Central People's Government on June 14, 1954, and, following Soviet precedent, it was opened up to three months of public comment from June 16 to September 11, 1954.²⁷ Draft Constitution

²⁶ Article 111 of the 1936 Stalin Constitution read in part: “the accused is guaranteed the right to be defended by Counsel.”

²⁷ “Canjia xianfa cao'an taolun shi gongmin de zuida rongyao [Participating in the Discussions of the Draft Constitution is the Greatest Honor for a Citizen],” *People's Daily*, July 28, 1954, 2; “Zhongyang ge jiguan ganbu shenru taolun xianfa cao'an, ge minzhu dangpai jiguan ganbu relie jinxing xuexi he taolun [Cadres of Every Central Organ Thoroughly Discuss the Draft Constitution, Cadres of Every Organ of the Democratic Parties Enthusiastically Carry Out Study and Discussion],” *People's Daily*, August 2, 1954, 2.

Discussion Committees were formed in work units across the nation, and discussion leaders were quickly trained to direct them. The Beijing Broadcasting System aired daily explanatory discussions of the text. According to statistics reported at the time, over 1,180,420 questions, opinions and suggested revisions were received during this period, and these were compiled, digested, categorized and published into a sixteen volume reference collection for the drafters entitled “Collected Opinions from the National Discussion [*Quanmin taolun yijian bianji*]”. On September 8, 1954, Deng Xiaoping presided over a meeting of the Constitution Drafting Committee in Zhongnanhai to make revisions based on this public feedback. After a few minor additional changes, the NPC adopted the text on September 20, 1954, and soon enacted a host of related legislation filling out the institutional framework of the state. Originally envisioned as a transitional document that would be superseded upon the attainment of socialism, the 1954 Constitution remained officially in force for nearly twenty-one years: from September 20, 1954 to January 17, 1975.

II.

The legacy of the 1954 Constitution is manifold. It heralded a brief surge of legal construction across the PRC unmatched until the reforms of the 1980s. Then, as now, economic modernization drove much of that effort. China’s march towards industrialism called for a professional corps of civil servants who were both “red and expert” to draft and apply the legislation and rules required to operate a planned, socialist economy. Law schools expanded to meet this need and to study the experience of China’s allies, especially the Soviet Union. Translation and drafting projects brought Soviet and Eastern

European jurisprudence to a Chinese audience, along with scores of foreign legal experts to advise on legislation, build organizational capacity and teach law school classes. Chinese students went to Moscow for advanced legal training, and both countries exchanged fact-finding delegations to learn first-hand about the professionalized legislative organs, courts, prosecutors, legal aid offices and public defenders contemplated under the new Constitution.²⁸ These years also witnessed the founding of some of the PRC's most famous law journals, including the seminal *Faxue*, *Zhengfa Yanjiu* and *Renmin Sifa*, which explored in their pages the nature of the new rights, norms and institutions codified by the Constitution. In these and other outlets, lawyers and academics, influenced by Soviet jurisprudence, translated the notions of rule of law and constitutionalism that had entered China during the early Republican period, and that have proved vital to its numerous constitutional movements ever since, into a discourse of “socialist legality” that promised many of the same deliverables.²⁹ The state, using its

²⁸ Visiting Delegation of Chinese Justice Workers to the Soviet Union, *Sulian sifa gongzuo fangwen ji guanyu shenpan sifa xingzheng gongzuo bufen* [Visitor's Journal of Soviet Judicial Work--Section on Adjudication and Judicial Administration Work] (Beijing: Zhongguo sifa gongzuozhe fangsu daibiaotuan, 1955); Visiting Delegation of Chinese Justice Workers to the Soviet Union, *Sulian sifa gongzuo fangwen ji guanyu jiancha gongzuo bufen* [Visitor's Journal of Soviet Judicial Work--Section on Procuratorial Work] (Beijing: Zhongguo sifa gongzuozhe fangsu daibiaotuan, 1956).

²⁹ China Society for Politics and Law, ed., *Xianfa fenjie cankao ziliao* [Analytical Reference Materials on the Constitution] (Beijing: Renmin chubanshe, 1954); Ministry of Higher Education and Ministry of Justice, *Zhonghua renmin gongheguo gaodeng jiaoyubu, sifabu tuijian zhonghua renmin gongheguo xianfa jiaoxue dagang (zonghe daxue falüxi ji zhengfa xuexuan yong)* [Teaching Plan for the PRC Constitution Recommended by the PRC Ministries of Higher Education and Justice (for use by the law departments of comprehensive universities and institutes of law and politics)] (Beijing: Falü chubanshe, 1957); Central Political-Legal Cadres School, Theory of State and Law Teaching and Research Office, ed., *Guojia he fa de lilun jiangyi* [Teaching Materials on the Theory of the State and Law] (Beijing: Falü chubanshe, 1957); Central Political-Legal Cadres School, State Law Teaching and Research Office, ed., *Zhonghua renmin gongheguo xianfa xuexi cankao ziliao* [Reference Materials for the Study of the PRC

enormous capacity to mobilize people, then disseminated and popularized this language across the nation in an unprecedented constitutional education and propaganda campaign that forever altered the popular political vocabulary of China.³⁰

Tragically, the Hundred Flowers Campaign of 1956 and 1957, a period of several months during which the Party encouraged citizens and especially intellectuals to openly air their opinions about its governance, marked the beginning of the end for this abortive embrace of socialist legality. Since at least 1911, Chinese law reform had foundered on instrumentalism, political expedience and ambivalence towards due process and restraints on absolute power. The rush of legal construction in the mid-1950s proved no different--it merely papered over the Party's own particular divisions over those issues.

Constitution] (Beijing: Falü chubanshe, 1957); Central Political-Legal Cadres School, State Law Teaching and Research Office, ed., *Zhonghua renmin gongheguo xianfa jiangyi* [*Teaching Materials on the PRC Constitution*] (Beijing: Falü chubanshe, 1957); People's University Law Department, State Law Teaching and Research Office, ed., *Zhonghua renmin gongheguo xianfa jiangyi (chugao)* [*Teaching Materials on the PRC Constitution (Draft)*] (Beijing: Zhongguo renmin daxue chubanshe, 1964).

³⁰ See e.g., Xu Yiguan, *He nongmin tantan xianfa* [*Talking about the Constitution with Peasants*] (Beijing: Tongsu duwu chubanshe, 1955); Chen Hanbo, *Yingjie zuguo di yi bu xianfa* [*Meet the Motherland's First Constitution*] (Beijing: Zhongguo qingnian chubanshe, 1954); Xuexi xianfa ruogan wenti jieda [*Answers to Certain Questions in Studying the Constitution*] (Beijing: Tongsu duwu chubanshe, 1955); Jiang Bikun, *Zhonghua renmin gongheguo xianfa mingci jianshuo* [*Brief Explanation of the Terms Used in the PRC Constitution*] (Wuhan: Hubei renmin chubanshe, 1957); Liu Qing, *Xianfa changshi jianghua* [*Introduction to General Knowledge about the Constitution*] (Beijing: Gongren chubanshe, 1954); Lou Bangyan, *Zhonghua renmin gongheguo xianfa jiben zhishi* [*Basic Knowledge about the PRC Constitution*] (Shanghai: Xin zhishi chubanshe, 1955); Xu Panqiu, *Xianfa changshi* [*General Knowledge about the Constitution*] (Shanghai: Xin zhishi chubanshe, 1954); Ma Lianzhang and Ji Mengqun, *Woguo de guojia jiegou* [*Our Country's State Structure*] (Beijing: Tongsu duwu chubanshe, 1955); Wu Jialin, *Xianfa jiben zhishi jianghua* [*Introduction to Basic Knowledge about the Constitution*] (Beijing: Zhongguo qingnian chubanshe, 1954); Wu Defeng, *Zhonghua renmin gongheguo xianfa jianghua* [*Introduction to the PRC Constitution*] (Zhengzhou: Henan renmin chubanshe, 1954); Meng Guang, *Renmin xianfa jianghua* [*Introduction to the People's Constitution*] (Guangzhou: Huanan renmin chubanshe, 1955); Li Da, *Zhonghua renmin gongheguo xianfa jianghua* [*Introduction to the PRC Constitution*] (Beijing: Renmin chubanshe, 1956).

The Hundred Flowers Campaign unleashed a wave of pent-up criticism towards the Party from many levels and sectors of society. Inconveniently, some of those who had prominently participated in the drafting of the 1954 Constitution--Luo Longji, Qian Duansheng, Wang Tieya and Zhang Bojun among them--now publicly invoked constitutional principles to take the CCP to task for regularly trampling multi-party democracy, human rights and the rule of law. Even Party stalwarts spoke out, such as senior Supreme People's Court Justice Jia Qian, who championed judicial independence and condemned Party interference in judicial cases. The Party responded with the Anti-Rightist Movement of 1957, which struck the legal and intellectual communities especially hard. Lou Bangyan, Luo Longji, Qian Duansheng, Wang Tieya, Yang Zhaolong, Zhang Bojun and countless others suffered persecution, tremendous personal loss, and in many cases arrest and long-term imprisonment. The Ministry of Justice was shuttered in 1959 and remained closed for the next twenty years. Having crushed or cowed his critics, Mao proudly declared: "The Civil Law, the Criminal Law, who remembers those texts? I participated in the drafting of the Constitution, but even I don't remember it."³¹ Then, as proof of their contempt for legality, he and the Party plunged the nation into a crescendo of disasters that ran from the Great Leap Forward, through the massive famine of 1960, and into the Cultural Revolution.

Following Mao's death and the fall of the Gang of Four, Deng Xiaoping steered China away from the radical leftism that had shaped its Constitutions of 1975 and 1978, and back to an evolutionary path that recalled the mid-50's emphasis on socialist legality

³¹ Xiang Chunyi, "Dang de lingdao yu fazhi jianshe [Party Leadership and the Construction of the Legal System]," *Zhongguo faxue* 4 (1991): 4; Wen Zhengbang, *Gongheguo xianzheng licheng [The Course of Constitutionalism in the Republic]* (Zhengzhou: Henan renmin chubanshe, 1994).

and modernization. Much as they had twenty-seven years before, the Party's political elites again engaged constitutional specialists, Qian Duansheng among them, for guidance on how to cement this shift, restructure the state, and lay the foundations for stable economic growth. The resulting 1982 Constitution, which remains in effect today, anchored the post-Mao transformation of China and provided the space for jurists such as Chen Shouyi, Jiang Ping, Li Buyun, Qian Duansheng, Wang Tieya and Zhang Sizhi—all of whom had either participated in the drafting of the 1954 Constitution or came of age in the brief flowering of law it spawned—to restore the legal and legislative machinery of the state, to reconstitute the legal profession, rebuild legal education and, in time, to reopen suppressed debates on marketization, democracy, the rule of law and human rights.

The structural and normative connections between the 1954 and 1982 Constitutions are too numerous to list here, but one Chinese scholar sums up the relationship this way: “[t]he 1982 Constitution takes the 1954 Constitution as the basis of its formulation. From the basic structural framework established by the 1954 Constitution to the basic orientation, principles and system established by the 1954 Constitution, all were inherited and developed by the current Constitution.”³² Of course, this inheritance included the deep tensions that had been embedded in the 1954 Constitution as well, tensions that animate debates over legal and constitutional reform in China today.

³² Zhang Qingfu and Ren Yi, “1954 nian xianfa--xianxing xianfa de jichu [*The 1954 Constitution—The Foundation of the Current Constitution*],” in Zhang Qingfu and Han Dayuan, eds., *1954 nian xianfa yanjiu [Research on the 1954 Constitution]* (Beijing: Zhongguo renmin gong’an daxue chubanshe, 2005), 7.

All of which brings to mind the provocative identification by the historian Philip Kuhn of a “persistent constitutional agenda” linking the late Imperial and modern eras.³³ From the end of the Qianlong reign (1790) to the present, he posits three recurring problematics at the center of Chinese political life, namely: how to connect the enlargement of political participation in society to the absolute exercise of state power; the perceived contradiction between the principle of political competition and the possibility of an impartial leadership acting in the public interest; and, the difficulty in reconciling the requirements of the centralized state and the interests of local communities.

One finds each of these problematics richly represented in the experience of the 1954 Constitution. Their manifestations in legal instrumentalism, the uneasy co-existence of state and private capital, and the tensions between Party and state, political pluralism and dictatorship, and liberal conceptions of the rule of law versus more traditional Chinese articulations of the asymmetric ethical relationship between ruler and ruled were far from novel. Indeed, they are neither unique to the CCP nor to the present. Analyses or prescriptions premised otherwise are bound to err. Even the language and symbols employed to negotiate these phenomena profoundly reference the past. Following Kuhn, we would do well to bear such insights in mind and, as we seek to understand the evolving normative content and boundaries of Chinese constitutionalism, pause periodically also to remember their *longue durée*. For herein lies the most significant contribution of the 1954 Constitution: political practice notwithstanding, it took a rich if problematic legacy--that of Republican constitutionalism--made it its own, and then

³³ Philip A. Kuhn, *Les origines de l'État chinois moderne*, trans. Pierre-Étienne Will (Paris: Éditions de L'Ecole des Hautes Études en Sciences Sociales, 1999), 71.

bequeathed this endowment to later generations, secure in the knowledge that their inheritance is at once of the Party, socialist *and* Chinese.

Appendix I: Biographical notes

Dong Biwu (1886-1975) was one of the CCP's celebrated four elders (*si lao*). He studied law in Japan as a young man, represented the CCP in the Chinese delegation to the 1945 San Francisco Conference establishing the United Nations, and held a variety of high government posts including President of the Supreme People's Court (1954-1959) and Vice-President of the PRC (1959-1975). He played an instrumental role in the legal construction initiatives of the early 1950s as Chair of the Political-Legal Committee of the Government Administration Council.

Luo Longji (1896-1965) studied at the University of Wisconsin, Madison and the London School of Economics before obtaining a Ph.D. in Political Science from Columbia University. Prior to 1949, he taught politics and edited Tianjin's *Yishi bao*, one of the four leading newspapers of the Republican period. After 1949, he served on the Government Administration Council as Minister of Forestry (1949-1957). During the Hundred Flowers Campaign, with the support of many intellectuals, he joined Zhang Bojun in challenging the sham multi-party democracy erected by the CCP and the Party's weak commitment to the Constitution and the rule of law. Accused of plotting an anti-Party coup, they were named the top two national targets of the ensuing 1957 Anti-Rightist Movement.

Qian Duansheng (1900-1990) was one of the most acclaimed constitutional scholars in 20th Century China. He edited one of the leading Republican era newspapers, Tianjin's

Yishi Bao, where he frequently wrote on legal and political questions. He held a Ph.D. from Harvard in Government and taught there during the 1948 academic year before being invited to serve the nascent People's Government, where he took up a position as the Dean of Beijing University Law School the following year. In 1952, he served as founding President of the Beijing Institute of Politics and Law (*Beijing zhengfa xueyuan*), which reorganized the law schools and political science departments formerly housed at Beijing, Qinghua, Yanjing and Furen Universities under one roof and later evolved into the current China University of Politics and Law (*Zhongguo zhengfa daxue*). Prior to 1954, he authored various studies of foreign legal and political systems, including: *The Government of France* (1934), *The Government of Germany* (1934) and *The New Soviet Constitution* (1937). With respect to China, he penned multiple articles on the 1936 Draft Republican Constitution, a widely used English language introduction to *The Government and Politics of China* published by Harvard University Press (1950), and co-wrote the authoritative Republican era textbook *Comparative Constitutional Law* (1937). In the post-Mao era, he contributed to the drafting of the 1982 Constitution, received some of China's highest academic honors and accolades, and held numerous prestigious posts, including membership on the Standing Committee of the Sixth National People's Congress.

Shen Junru (1875-1963) obtained the highest *jinshi* degree in the imperial examination of 1904, studied law in Japan, served as Procurator-General of Sun Yat-sen's 1917 military government in Guangzhou, and was elected President of the Shanghai Bar Association in the early 1930s. Together with Zou Taofen, in 1936 he helped to organize the National

Salvation Association to resist Japanese militarism, which later united with other organizations to form the oppositional China Democratic League. He was among the infamous “Seven Gentlemen” arrested and jailed for several months in 1936 and 1937 for mobilizing opposition to Jiang Jieshi’s strategy of fighting the CCP and Japanese simultaneously. The case became a *cause célèbre* in China and helped to turn many intellectuals against the GMD regime. Pressure on Jiang grew to the point that he was forced to release them “on bail” and abandon their trial. After the founding of the PRC, Shen served as the first President of its Supreme People’s Court (1949-1954).

Shi Liang (1900-1985) graduated from Shanghai Law School (*fake daxue*) and played a key role in the drafting and enforcement of the landmark 1950 Marriage Law while serving as PRC Minister of Justice (1949-1959). She too was a leading member of the Republican era Shanghai Bar, was among the founders of the oppositional China Democratic League, and was the only woman among the above “Seven Gentlemen.”

Wang Tieya (1913-2003), a renowned scholar of international law, graduated from Qinghua University and pursued doctoral studies at the London School of Economics where he studied under Hersch Lauterpacht and Harold Laski. He spent most of his career at Beijing University, where he chaired the Political Science Department (1947-52), wrote the first PRC textbook on international law (1981), and pioneered the reestablishment of connections between Chinese legal education and the outside world. Among his other accomplishments, he served on the drafting committee for the Hong Kong Basic Law (1985-1990), became the first Chinese invited to lecture on international

law at The Hague Academy (1990) and, near the end of his life, served as Judge on the International Criminal Tribunal for the Former Yugoslavia.

Yang Zhaolong (1904-1979) obtained a Doctorate in Law from Harvard (1935) and did post-doctoral work at the University of Berlin. He wrote and taught prolifically on matters of civil, criminal and constitutional law, and collaborated closely with his mentor and friend Roscoe Pound, who was legal advisor to the Republican government. Yang served as a judge on the Provisional Court of the Shanghai International Settlement (1928), as a member of the Draft Constitution Committee of the Legislative Yuan (1938) and, after World War II, as chief of the Criminal Section of the Ministry of Justice and acting Procurator-General of the Nationalist Supreme Court. After the founding of the PRC, he was briefly Dean of his undergraduate alma mater, one of most famous institutions of legal education in Republican China, Dongwu (Soochow) Law School. In 1956 he was a founding editor of the seminal PRC legal journal *Faxue*. His deep associations with the GMD and the critical spirit which estranged him from that party in the first place led over the 1950s to increasing marginalization from the PRC legal community. After mounting sharp public criticism of the PRC legal system in 1957, he became a leading target of the Anti-Rightist Movement, was arrested and imprisoned for twelve years. However, very recently his brilliant contributions to Chinese law and his lifelong advocacy of rule of law have been honored in a series of articles and conferences in the PRC.

Zhang Bojun (1895-1969), studied philosophy at the University of Berlin and briefly joined the CCP in 1922 under the influence of his close friend and roommate at the time, Zhu De. During the Republican era, he taught English literature, edited *China Forum* (*Zhonghua luntan*) and organized a succession of political parties (including the China Democratic League) dedicated to expanding democracy in China and opposing one-party rule. After 1949, he served on the Government Administration Council as Minister of Communications (1949-1957). During the Hundred Flowers Campaign, with the support of many intellectuals, he joined Luo Longji in challenging the sham multi-party democracy erected by the CCP and the Party's weak commitment to the Constitution and the rule of law. Accused of plotting an anti-Party coup, they were named the top two national targets of the ensuing 1957 Anti-Rightist Movement. His daughter is the acclaimed and sometimes banned PRC writer Zhang Yihe.

Zhang Zhirang (1894-1978) studied law at Columbia University. During the Republican era he taught at Beijing University, was Dean of Fudan University Law School in Shanghai, edited the journal *Constitutionalism* (*Xianzheng*), and served as chief defense attorney for the "Seven Gentlemen" (see *Shen Junru* entry above). After 1949, he held a number of high-level PRC governmental and legal posts including Vice-President of the Supreme People's Court (1954-1975). Interestingly, he held no party affiliation.

Zhou Gengsheng (1889-1971), sometimes referred to as the "Dean of Chinese Jurists," studied in Japan and England before obtaining a Doctorate in Law from the University of Paris. One of China's leading mid-century specialists in international law, he introduced

the work of Hans Kelsen to China, taught at Beijing University, and was legal advisor to the Chinese delegation at the 1945 San Francisco Conference establishing the United Nations. After 1949, he was President of Wuhan University, an advisor to the Foreign Ministry and Deputy Director of the NPC Bills Committee (*fa'an weiyuanhui*).