

In-depth: President Xi's Second Term: Prospects for Japan-China Relations

# China's New "Xi Jinping Constitution": The Road to Totalitarianism

Suzuki Ken [Profile]

Politics

President Xi Jinping's bid for unchecked power got a critical boost last spring, with the enactment of a constitutional amendment that repeals term limits and other important safeguards adopted in 1982, in the wake of the Cultural Revolution. Suzuki Ken, an expert in Chinese law, analyzes this historic shift from the "Deng Xiaoping Constitution" of 1982 to the "Xi Jinping Constitution" of 2018.

On March 11, 2018, China amended its constitution for the first time in 14 years, overturning key constitutional reforms adopted under the leadership of Deng Xiaoping. In the following, I take a look at the amendment's highlights and discuss their implications for China's political future.

## Drafted in Secrecy, Rubber-Stamped

Constitutional amendments to the Chinese constitution take the form of new articles describing additions or revisions to the existing text. The 1982 constitution has undergone four previous amendments, comprising a total of 31 articles. The latest amendment, submitted in March 2018 by the Communist Party of China (on the basis of a resolution adopted at the party's National Congress the previous October) and rubber-stamped by the National People's Congress, added another 21 articles. Among these are changes that run roughshod over the intent of the constitution's framers and in some cases overturn its core principles. Although submitted to the NPC with the assurance that "it involves no major changes," the amendment has for all intents and purposes repealed the "Deng Xiaoping constitution" of 1982 and replaced it with the "Xi Jinping constitution" of 2018.

The drafting of the amendment proposal was conducted in a "black box" from start to finish. It is widely assumed that this secrecy was motivated by concerns that public discourse would fuel internal opposition to repeal of the presidential term limit.

On January 18, 2018, human rights lawyer Yu Wensheng published an "open letter to the CPC Nineteenth National Congress" calling for constitutional reforms. He was detained early the next day and subsequently kept under "residential surveillance." Yu's letter called for deletion of the constitution's preamble, multicandidate presidential elections, elimination of the post of chairman of the Central Military Commission, and abolition of the Chinese People's Political Consultative Conference. His immediate seizure sent a clear message that the party leadership would tolerate no public debate regarding the document that confers legal legitimacy on China's one-party system.

## Highlights of the 2018 Amendment

### Solidification of One-Party Rule

One highlight of the recent amendment, as it happens, is a change that buttresses the constitutional basis for one-party rule by inserting the following declaration into article 1, paragraph 2: "The defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China."

In previous versions of the 1982 constitution, references to the party and its leadership role appeared only in the preamble, in a historical context or in conjunction with basic guiding principles. By contrast, both the 1975 constitution (enacted in the

midst of the Cultural Revolution) and the constitution of 1978 (adopted after the Cultural Revolution but before Deng Xiaoping's reforms had taken hold) spelled out the party's leadership role in the main body, which has the force of law. Article 2 of the 1978 constitution stated, "The Communist Party of China is the core of leadership of the whole Chinese people. The working class exercises leadership over the state through its vanguard, the Communist Party of China." But the committee charged with drafting the 1982 constitution made the bold decision to remove such references from the main body, arguing that a legal provision requiring the people to defend and support the party right or wrong was tantamount to *yi dang zhi guo*, "using the party to rule the state."<sup>(1)</sup> In this regard, the latest amendment is a throwback to the 1975 and 1978 versions of the constitution.

In his keynote address at the NPC's closing meeting, Xi Jinping (whose reelection by the legislature was never in doubt) repeatedly underscored the political authority of the party. "Party, government, military, civilian, and academic, north, south, east, west, and center, the Party leads everything," he declared, borrowing directly from the rhetoric of Mao Zedong. Immediately after the session's close, the CPC's Central Committee released a Plan for Deepening Reform of Party and State Institutions that called for merging a wide array of state and party organs. Viewed in this context, the new provision on the party's essential role suggests not merely an endorsement of the CPC's authority but a fundamental shift toward integration of party and state. It signals a repudiation of the policy of separating government and party functions, as embraced by Chinese leaders during the period of "reform and opening," and a return to pre-Cultural Revolution notions of vanguardism as a justification for single-party dictatorship.

### Abrogation of Term Limits

Another key change was the elimination of term limits for the presidency and vice-presidency. Article 79 previously stated, "The term of office of the President and Vice-President of the People's Republic of China is the same as that of the National People's Congress, and they shall serve no more than two consecutive terms." The amended provision eliminates the second clause. The move quickly received support from the Xi regime's scholars-in-waiting on the grounds of consistency in the context of China's "trinity" system, in which one leader occupies the three posts of party general secretary, president, and chair of the Central Military Commission.

There were no term limits on key leadership posts prior to 1982. But in drafting the 1982 constitution, Deng Xiaoping's circle made a point of imposing a two-term limit on all but the chair of the Central Military Commission. They saw this provision as the centerpiece of a systemic reform aimed at preventing a repeat of the tragic excesses of the Cultural Revolution, a product of the personality cult and dictatorship of Mao Zedong.

Through term limits, the 1982 constitution instituted a system that guaranteed a change in China's leadership every 10 years and prevented the excessive concentration of power in the hands of any single individual. In a 2012 essay, written to commemorate the thirtieth anniversary of the 1982 charter, constitutional scholar Liu Songshan called the abolition of lifetime appointments for top state leaders "a historic reform of China's political system and a fundamental change whose positive impact and progressive significance cannot be overstated."<sup>(2)</sup>

By repealing the presidential term limit, the latest constitutional amendment has made it possible for Xi Jinping to remain China's supreme leader as long as he so desires. In effect, it heralds an end to the era of collective leadership and sets the stage for a return to individual autocracy. Wang Qishan's appointment as vice-president takes on particular significance in this context. Wang, who has long acted as Xi's right-hand man, stepped down from his position in the Politburo Standing Committee last October, in accordance with longstanding custom. Ordinarily, this would have signaled his retirement from public affairs. Now he is positioned to fill the number-two slot for life.

Han Dayuan, president of the Chinese Constitutional Law Society, contributed a piece on this subject to the November 2017 issue of the Chinese law journal *Fa Xue*. The article, which appeared after the amendment process was well underway,

warned against eliminating term limits for top leaders. Han called term limits a key feature of the 1982 constitution and an important contribution to China's political development, explaining that it functioned to prevent the rise of personality cults and the excessive concentration of power in the hands of a single individual, replacing rule by the individual with rule by the law. Although his warnings went unheeded, his courage and integrity as a scholar are to be applauded.

### **Rise of the Supervisory Commissions**

The recent amendment included important changes to Chapter 3, the Structure of the State, in the form of four new articles (123–127) pertaining to the establishment of a central State Supervisory Commission to oversee anticorruption efforts, supported by local supervisory commissions at various levels. In terms of sheer volume (number of provisions and their word count) these provisions constitute the bulk of the constitutional changes approved last March. The State Supervisory Commission is not obligated to report directly to the National People's Congress, theoretically the highest organ of state. This places it above such lofty entities as the State Council, the Supreme People's Court, and the Supreme People's Procuratorate. Prior to the March session of the NPC, the government had already drafted legislation outlining the powers and organization of the new apparatus. The NPC approved the Supervision Law on March 20, and it went into effect immediately.

The establishment of the supervisory commissions is an epoch-making reform that fundamentally alters China's governing structure by establishing a separate power apparatus parallel to the administrative and judicial branches. The amended constitution, together with the 67 articles of the Supervision Law, gives this new apparatus extraordinary power over the fate of China's public servants, subjected to few legal constraints. We are witnessing the birth to a new and powerful yet strangely amorphous organ of the state.

### **Enshrinement of "Xi Jinping Thought"**

The distinctive political doctrines embraced by the Communist Party figure conspicuously in the Chinese constitution, which has accumulated more ideological baggage with each amendment. In this respect, the most important change wrought by the 2018 amendment was the inclusion of "Xi Jinping thought" as one of the state's guiding ideologies. To "Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory, and the important thought of Three Represents" have been added "the Scientific Outlook on Development and Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era." Xi Jinping now has the distinction of being the first Chinese leader ever to have his theories enshrined in the constitution during his own lifetime.

Xi Jinping Thought was adopted as a fundamental doctrine of the CPC at the party's National Congress last October. In no time, educational and research programs dedicated to Xi Jinping Thought were popping up around the country. The theory's inclusion in the constitution, billed as the centerpiece of the 2018 amendment, is a milestone in Xi's relentless campaign to amass individual prestige and power.

## **Implications of the 2018 Amendment**

### **Turning the Clock Back to 1978**

Chastised by the abuses of the Cultural Revolution, the drafters of the 1982 constitution undertook what were then groundbreaking reforms. Anxious to prevent excessive concentration of power and avert the rise of another dictator, they moved the principle of leadership by the Communist Party from the main body to the preamble and set a 10-year limit on the tenure of the president. The 2018 amendment rejects those changes and turns the clock back to the prereform era. In fact, where the power of the Communist Party is concerned, the current wording of article 1 goes even further than the 1975 and 1978 constitutions. By calling the leadership of the Communist Party of China the "defining feature of socialism with Chinese characteristics," it establishes one-party rule as an end in itself, as opposed to a means for achieving some distant goal.

## Strengthening One-Party Totalitarianism

Xi Jinping's above-mentioned declaration of the party's supremacy—"Party, government, military, civilian, and academic, north, south, east, west, and center, the Party leads everything"—also makes an appearance in the Central Committee's Plan for Deepening Reform of Party and State Institutions. The fact is that the Communist Party already dominates virtually every sector and institution of society. It controls not only the legislative, administrative, and judicial branches of government but also the military, academia (universities, research institutes, and think tanks), and the private sector (businesses and not-for-profit organizations alike). In China, the party-state apparatus characteristic of Soviet-style socialism has evolved further, toward a kind of one-party totalitarianism. The recent amendment to the constitution ratifies the current reality and signals an intent to take that control to the next level.

The supervisory commissions are one means to that end. Another is the merger of party and state organs under the Plan for Deepening Reform of Party and State Institutions, which is already moving forward, though it has yet to be legislated. The Communist Party has long functioned as a shadow government, manipulating each government agency through a corresponding party organ. Now, in the name of efficiency and stronger party leadership, it is aiming to erase the boundaries between party and state completely.

## Revival of Mao-Style Personalist Rule

But the overriding thrust of the 2018 amendment is the legitimization of Xi Jinping's own autocratic ambitions. As amended, the Chinese constitution is tailor-made for a lifetime dictator. The revival of lifetime presidential tenure opens the door for the kind of personalistic authoritarianism that prevailed under Mao Zedong. With authority thus concentrated in the hands of a single individual, the law becomes little more than an expedient, a tool to be applied (or not) according to the interests or whims of the individual in power. The 2018 amendment has set China on a path that leads ever farther from the ideals of modern constitutional government and ever closer to absolute monarchy.

*(Originally published in Japanese on June 6, 2018. Banner photo: Chinese President Xi Jinping attends a meeting of delegates from Shandong province during the March 2018 session of the thirteenth National People's Congress in Beijing. © Xinhua/Aflo.)*

(\*1) ^ Gao Kai, *Guanyu dang de lingdao* (On the Leadership of the Party) (Peking University Press, 1982), p. 33.

(\*2) ^ Liu Songshan, "Baer xianfa de jingshen zuoyong yu juxian" (The Spirit, Function, and Limitations of the 1982 Constitution), *Journal of East China University of Political Science and Law*, 2012, no. 6, p. 70.

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[2018.11.27]

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