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China’s Comparative Constitution

Bui Ngoc Son*

ABSTRACT

The academic field of comparative constitutional law has recently had greater engagements with China’s constitution. This Article explains the modes, conditions, and factors of these engagements. The country-studies of China’s constitution echo and complicate recent comparative debates on transnational constitution making and the varieties of constitutionalism. Comparative constitutional scholarship formulates new concepts, such as constitutional entrepreneurship and constitutional dissonance, to understand China’s constitution. Additionally, it explains China’s constitutional divergence from the most similar case, namely Vietnam, and its unexpected constitutional similarities with the most different cases, such as the United States and the United Kingdom. Finally, this scholarship discusses China’s constitution as a difficult case of constitutional authoritarianism, a prototypical case of authoritarian constitutionalism, an outlier case of party-state constitutionalism, and an illustrating case of global constitutional trends, such as the statist constitutional model and presidential term-limit evasion. The comparative engagements with China’s constitution are due to the increasing sociopolitical significance of the country’s constitutional text and the institutional trend of its living constitutional order, as well as the recent jurisdictional, substantive, and epistemological expansion of comparative constitutional law. The comparative engagements

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are principally animated by scholars' intellectual curiosity to explore the unknown regarding China's constitutional dynamics and partially by the need of its constitutional development and particular outlooks on constitutional justice.

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I. INTRODUCTION

In his seminal book *Comparative Matters*, published in 2014, Ran Hirschl lamented that mainstream comparative constitutional law has focused on “a handful of ‘usual suspect’ settings that are mainly of the western, liberal-democratic breed.” China has been marginalized in the field for this reason. Wen-Chen Chang and David Law observe that: “Perusal of the English-language comparative constitutional law literature leaves the vague impression that there has been as much written on Singapore—an independent city-state with roughly the

population of greater Miami—as on China, home to one-fifth of the world’s population and a growing economy to match.”

Recent years, however, have witnessed comparative constitutional law’s greater engagements with China. Chinese constitutional experience has been discussed by leading constitutional comparatists, published in major law reviews and journals, and included in important collections.

In addition to comparative literature, a growing body of English language country studies provides detailed treatments on China’s constitutional issues. These national accounts have comparative implications.

This Article seeks to explain how and why comparative constitutional law scholarship has had greater engagement with China’s constitution than the previous periods. It also discusses the comparative implications of the national accounts of China’s constitution. This Article focuses on the relevant English language scholarship in the last five years. It adopts a functional definition of “constitution” to denote “a larger set of constitutional elements,” including the written text, theories, traditions, aspirations, and interpretations. In this sense, the term “Constitution” with the large-C refers to China’s constitutional text, while the term “constitution” with the small-c refers to China’s larger constitutional order.

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4. See generally Chang & Law, supra note 2 (this collection includes a single chapter on China); Qianfan Zhang, The Constitution of China, in THE CAMBRIDGE COMPANION TO COMPARATIVE CONSTITUTIONAL LAW 171 (Roger Masterman & Robert Schütze eds., 2019) (including the China chapter, along with other country-chapters on the US, UK, France, and India that are included in the part on constitutional history); Albert H.Y. Chen, Constitutions and Values in Three Chinese Societies, in AN INQUIRY INTO THE EXISTENCE OF GLOBAL VALUES THROUGH THE LENS OF COMPARATIVE CONSTITUTIONAL LAW 119 (Dennis Davis, Alan Richter & Cheryl Saunders eds., 2015).

5. See Part II.A.


This study is drawn on Hirschl's formulation of modes and factors of comparative constitutional inquiry. The modes include single-country studies, concept formation, inference-oriented small-N studies (with the most similar, most different, most difficult, prototypical, and outlier cases principles), and large-N studies. According to Hirschl, comparative constitutional engagement is driven by three analytically distinct but possibly intersecting factors, namely: necessity or the need for political and legal development; inquisitiveness or intellectual curiosity and quest to explore and explain the unknown; and politics or comparative engagement as the instrument to promote certain political agenda, worldview, ideology, or conceptions of good society. In addition to modes and factors, this study contends that it is important to explore the conditions for comparative engagements with China's constitution. These conditions involve the changing context of China's constitution and the changing state of comparative constitutional law.

On that epistemological and methodological base, this Article argues that the comparative engagements with China's constitution are due to the increasing sociopolitical significance of the country's constitutional text and the institutional trend of its living constitutional order, and the recent jurisdictional, substantive, and epistemological expansion of comparative constitutional law. The comparative engagements are principally animated by the constitutional intellectuals' curiosity to explore the unknown regarding China's constitutional dynamics. But the engagements are also partially driven by the need of China's constitutional development and particular outlooks on constitutional justice.

The remainder of this Article is structured as follows: Part II explores national and comparative accounts of China's constitution, Part III explains the conditions and factors of comparative constitutional law's engagement with China's constitution, and Part IV concludes.
II. CHINA'S CONSTITUTION COMPARED

This Part reviews some recent national accounts of China's constitution and discusses their comparative implications. It then explores, in a critical way, various modes of comparative inquiry into China's constitution.

A. Country-Studies

1. Overview

A rich body of English language country studies canvasses a range of Chinese constitutional issues. Numerous papers on Chinese constitutional law have appeared in national, regional, and comparative outlets, such as the Chinese Journal of Comparative Law, the Hong Kong Law Journal, and the Tsinghua China Law Review, among others. Several nonlegal periodicals focusing on China, such as the Modern China, The China Journal, and the China Review, have also published scholarship on Chinese constitutional issues and their relations to the broader social and political milieu. Last but not least, Chinese constitutional issues have been discussed in recent collections dealing with Chinese law reform generally or on constitutional development particularly.

Such country studies provide readers a deep understanding of China's constitutional system, different aspects of its constitutional history. Such inquiries also explore China's contemporary, specific constitutional institutions, practices, dynamics, such as the 2013 constitutionalism debate, the 2018 constitutional amendments, constitutional legitimacy, judicialization of the constitution, etc.

10. See generally Chinese Legal Reform and the Global Legal Order: Adoption and Adaptation (Yun Zhao & Michael Ng eds., 2017); China's Socialist Rule of Law Reforms Under Xi Jinping (John Garrick & Yan Chang Bennett eds., 2016).


constitutional enforcement,17 and constitutional education.18 These country studies contain some comparative elements and resonate with recent debate in comparative constitutional law. From a functional perspective, it can be said that that the constitutional problems (e.g., design, constitutionalism, and identity) confronting China may be the common constitutional problems. To illustrate, consider the three books below.

2. Constitution Making, Constitutionalism, and Identity

The book Chinese Legal Culture and Constitutional Order, written by Chinese-American political scientist Shiping Hua, provides a comprehensive treatment of constitution making in China.19 It divides China's constitution making and reform into six periods: late Qing (e.g., the Imperial Constitutional Outline); Republican (e.g., the 1946 constitution of the Republic of China or ROC); early People's Republic of China or PRC (e.g., 1954 Constitution); Maoist (e.g., 1975 Constitution); the Dengist (e.g., the current 1982 Constitution); and the four constitutional amendments in 1988, 1993, 1999, and 2004.20 Hua argues that constitutional reforms in China are shaped by Chinese legal culture's four common elements, namely, pragmatism, statism, instrumentalism, and favoritism. He contends that legal and constitutional reforms were based on political elites' practical consideration and used as the tool to strengthen the state and to grant or withdraw rights to citizens depending on circumstances.21 The book offers useful contextual knowledge on the cultural, social, political, and economic conditions of Chinese constitutional change. Although it is primarily a country study, it includes some horizontal comparisons (with Meiji, US, and Soviet constitutions) and vertical comparisons (e.g., the 1982 and 1954 constitutions).22

Another important book, Chinese Constitutionalism in a Global Context by Peng Chengyi, a Chinese political science scholar in Beijing, is a comprehensive exploration of Chinese contemporary debate on constitutionalism.23 The debate has a long history in China but reached wider popular platforms (newspapers and the internet) in

17. See generally ZHAI LIN & GUOQIANG ZHAI, REPORT ON CONSTITUTIONAL ENFORCEMENT AND CONSTITUTIONAL REVIEW IN CHINA (2018).
20. Id. at 5.
21. Id. at 2.
22. Id. at 5.
2013, triggered by President Xi Jinping’s statement on the implementation of the Constitution. Chengyi identifies three approaches in Chinese constitutionalism debate: Western liberal, Confucian, and Marxist. He documents two waves in the spread of Western liberal constitutionalism in China: the first wave during late Qing and early republic periods and the second or contemporary wave starting from the reform era. Driven by the concern of political freedom, advocates of Western liberal constitutionalism called for free elections, institutional checks and balances, the rule of law, human rights protection, and constitutional supremacy.

The liberal constitutional discourse generated a traditionalist reaction—the Confucian approach. The advocates of Confucian constitutionalism believe that the liberal constitutional proposals “all lack native features.” Consequently, some descriptive accounts explored constitutional ideas and institutions (e.g., institutional checks on royal power through remonstrance and censorship, li, or propriety as a system of fundamental rules and norms) in Chinese Confucian tradition, while other normative accounts proposed a model of constitutionalism for future China, rooted in Confucian philosophy. Particularly, Jiang Qing submitted a normative model of Confucian constitutional order characterized by, among others, a bicameral legislature (Confucian, national, and common houses) as the institutional embodiment of triple sources of constitutional legitimacy (Heaven, national culture, and the people). Like the liberal approach, the Confucian approach implicitly or explicitly denies the legitimacy of the existing socialist constitutional system in China.

Another critical reaction to the liberal model is the so-called “Sinicized Marxist Constitutionalism.” China’s legal reforms and socioeconomic development in the last three decades have generated the nationalist sources for the intellectual normative accounts of the Chinese socialist way of constitutionalism, rather than copying the Western liberal model. The nationalist discourse on the socialist or Marxist model, however, is diverse. Some Chinese scholars underlined
the idea of the Communist Party of China under the rule of law. Other Chinese intellectuals stressed the party-state structure with the orthodox ideology, while political authority and pro-government scholars advocated for the triple combination of the party’s leadership, people’s sovereignty, and the rule of law.\(^\text{32}\)

Chengyi notes that, by 2017, Chinese constitutionalism debate “is still going on with neither side convincing the other side, which is a well reflection of the ideological nature of the debate.”\(^\text{33}\) While his book focuses on national debates on constitutionalism, it includes some elements of comparison. The book compares different approaches to constitutionalism in Chinese discourse. In addition, it also compares the Chinese discourse with other East Asian discourses, such as the Korean debates on Confucian constitutionalism.\(^\text{34}\)

Another important book, The Constitutional Identity of Contemporary China by Han Zhai, a lecturer at Wuhan University, argues that a unitary system defines today’s Chinese constitutional identity or aspirational and viable fundamental constitutional features.\(^\text{35}\) This unitary system is characterized by three elements: regional autonomy (e.g., Hong Kong) within the “one-country, two systems” arrangement, the pragmatic legislative and fiscal decentralization within a unitary state, and the separation of the state and the Communist Party within the one party system.\(^\text{36}\) Although this book focuses more on the “contextual analysis” of Chinese constitutional arrangements,\(^\text{37}\) it also discusses European and American debates on constitutional identity and comparative experience of autonomous subnational units (e.g., United Kingdom, Netherlands, and Spain).

3. Comparative Implications

Hua’s book resonates with recent debate on comparative constitution making and constitutional amendments. To illustrate, the book’s discussion of Western and Japanese influences on late Qing’s constitutional reforms, American influence on the 1946 ROC constitution, and the Soviet influence on the PRC 1954
Constitution echoes the global debate on the transnational and international influences on constitution making.38 The debate on the involvement of various sectors of the global community in domestic constitution making and the diffusion of constitutional ideas tends to focus on recent practices in the globalizing era. But the Chinese story indicates that transnational constitution making and diffusion may have a rich history, and hence comparative study of transnational constitutional history is an important enterprise which deserves further attention.

In addition, the main argument in Hua’s book resonates with the Xenophon Contiades and Alkmene Fotiadou’s pragmatic model of amendments defined by smooth, efficient, and incremental formal change to the constitutions within an entrenched clause guaranteed by courts.39 The Chinese experience, however, suggests that pragmatic constitutional amendments may not be limited to the institutional settings with judicial protection of unamendable contents of the constitutions. Incremental constitutional change is possible within the constitutional ambit constructed by political elites and social and political conditions.40

Chengyi’s book echoes and complicates the global debate in comparative constitutionalism. Mark Tushnet has recently called for “pluralizing the category of constitutionalism”41 and identified the varieties of constitutionalism, including the liberal, social-democratic, authoritarian, and Islamic varieties.42 At a global level, the emergence of various non-liberal forms of constitutionalism43 has animated the pluralist discourse on constitutionalism. The Chinese debates present the local embodiment of the pluralist discourse on the varieties of constitutionalism. Particularly, the nationalist, critical response on liberal constitutionalism in Chinese discourse resonates with “the

40. For various forms of unamendability, see RICHARD ALBERT, CONSTITUTIONAL AMENDMENTS: MAKING, BREAKING, AND CHANGING CONSTITUTIONS 140 (2019).
coming demise of liberal constitutionalism," which is also rooted in nationalist sentiments.\textsuperscript{44} The arguable crisis of liberal constitutionalism in the global scale may render it less attractive in local intellectual discourse, in turn, potentially serving as the empirical base for local political, nationalist justifications of alternative constitutional forms.

Together with Islamic and Buddhist varieties,\textsuperscript{45} the Chinese and East Asian discourse on the Confucian variety may complement the comparative inquiry into the traditional and transcendent dimensions of constitutionalism.\textsuperscript{46} There are three possible lines of positivist inquiry: theory, design, and adjudication.

The first of these lines—the theoretical exploration of constitutional ideas in Confucian philosophy—may add to comparative constitutional theory. To illustrate, in a recent book, Sungmoon Kim explores two competing theories by two classical Confucians. The first theory—Mencius's "virtue constitutionalism"—features the idea of political virtue as the base for legitimate power and rests on the belief in the good nature of human beings. The second—Xunzi's "ritual constitutionalism"—underlines the observation of ritual institutions as the source of legitimate power and stems from the conviction on the evil nature of human beings.\textsuperscript{47} Comparatively, the concerns of virtue ethics and propriety are not unique to Confucian constitutional theory. Richard H. Fallon, Jr. discusses constitutional legitimacy as "a function of moral justifiability or respect-worthiness" and argues that "[e]ven if a regime or decision enjoys broad support, or if a decision is legally correct, it may be illegitimate under a moral concept if morally unjustified."\textsuperscript{48} Similarly, Ronald Dworkin "brings political morality into the heart of constitutional law."\textsuperscript{49} Political morality seems to be the shared concern of various constitutional theories. To be sure, the substantive contents of political morality are different in different constitutional theories, and one function of comparative constitutional theory is to explore these substantive variations, which include human


dignity associated with individual rights or governmental duty to serve the common good.

Second, the Confucian traditional values (particularly "filial piety, respect for elders, ancestor worship, ritual propriety, and social harmony") inform contemporary constitutional design. In China, this is particularly implied in the incorporation of the idea of "harmony"—the core of Confucian morality—in China’s constitutional preamble through the 2018 amendment. In South Korea, the Constitution stipulates the state’s duty “to sustain and develop the cultural heritage and to enhance national culture”; this implies that the state’s reservation of Confucian culture is a major part of Korean culture. This has implications for positivist comparative inquiry into constitutional design in pluralist societies. Comparative constitutional design is not merely about rules and institutions but is also concerned with the way various sources of ideas and values are expressed in constitution making. In societies with Confucian traditions, the constitutions may express the Confucian values:

Third, Confucian values do not merely implicate constitutional design: they also inform the manner, style, and even substantive contents of constitutional adjudication. To illustrate, as Ginsburg early demonstrated, the remonstrant manner in the operation of constitutional courts in Korea and Taiwan was connected to the Confucian tradition. In a case in 2011 involving a daughter suing her mother for abuse that lasted over forty years, the Korean Constitutional Court even explicitly referred to the Confucian values in the substantive contents of its decision to uphold the Criminal Procedure Act’s provision prohibiting criminal accusation against one’s lineal ascendants. The dominant opinion wrote:

The current provision is based on our historical ideology of “hyo,” or the Confucian tradition of filial piety, which imposed on children a duty to take care of the parents or grandparents. According to this tradition, it is a good custom for a child to endure harm caused by his or her parents or grandparents; filing a criminal complaint against one’s parents or grandparents is regarded as a behavior against morality.

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52. DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] art. 9 (S. Kor.).
53. Kim, supra note 50, at 192.
56. Id. at 63.
Thus, the Confucian value of filial piety explicitly informs the substantive contents of constitutional adjudication. More recently, focusing on the Korean Constitutional Court’s 2017 decision to uphold President Park Geun-hye’s impeachment, Kim Sungmoon explains the association of the Confucian ideas with the Court’s jurisprudence was “characterized by highly moralistic language and style of reasoning.”\textsuperscript{57} Confucian values coexist with alternative constitutional values, and this disharmony animates constitutional dynamics in East Asia, as Gary J. Jacobsohn early anticipated.\textsuperscript{58} In this regard, the Confucian discourse may add to the general, comparative study of constitutional identity.

Let us now turn to the comparative implications of Zhai’s book on Chinese constitutional identity. The cores of the Chinese constitutional system discussed in the book are intimately connected to the socialist constitutional principles. Particularly, these elements are defined by the socialist principle of “democratic centralism,” which enables vertical and horizontal distribution of public power within a centralized party-state.\textsuperscript{59} The broader evolution of Chinese constitutional identity is shaped by the dissonant interactions of liberal, socialist, and Confucian constitutional aspirations. In addition, the contextual Chinese constitutional knowledge presented in the book complicates comparative constitutional identity. Comparative accounts of constitutional identity tend to focus on the liberal constitutional states, which are limited to fundamental structures defined by liberal aspirations.\textsuperscript{60} A non-liberal state may also acquire a constitutional identity driven by the dynamic interchanges of liberal and non-liberal constitutional ideals.

\textbf{B. Concept Formation}

Several comparatists created new analytical concepts to understand China’s constitution. To illustrate, consider two concepts, namely “constitutional entrepreneurs” and “constitutional dissonance.”

Mark Jia creates the concept of constitutional entrepreneurship to explain successful constitutional advocacy in China.\textsuperscript{61} The concept is empirically informed by two cases during the tenure of President Hu

\textsuperscript{58}. See GARY J. JACOBSON, CONSTITUTIONAL IDENTITY 339-42 (2010).
\textsuperscript{59}. For more on this principle and its use in China, see N. W. BARBER, THE PRINCIPLES OF CONSTITUTIONALISM 76–77 (2018).
\textsuperscript{60}. See generally JACOBSON, supra note 58 (focusing on the United States, India, Israel, and Ireland).
Jintao (2002–2012), “a period of relative policy stability conducive to comparative inquiry.” The first case involves advocacy surrounding the “Sun Zhigang incident,” in which three legal scholars argued for the unconstitutionality of the system of detention and, in turn, influenced the abolition of this system. The second case concerns Peking University’s Marxist Professor Gong Xiantian’s use of constitutional argumentation and popular pressure to influence the enactment of a national property law. Jia’s study is based on both his personal interviews with the constitutional advocates and on primary written materials.

Jia’s concept formation is based on the integration of several existing theories on grassroot constitutional and policy dynamics, such as popular constitutionalism, adaptive authoritarianism, and theories of policy process. Jia states that “[c]onstitutional entrepreneurship is both an advocacy strategy and an explanatory theory.” The theory includes a generalized set of positions that both explain Chinese constitutional advocacy and guide ordinary Chinese citizens to use constitutional argument to shape policy.

The theory of constitutional entrepreneurship sees constitutional advocates as policy entrepreneurs. Their work is entrepreneurial in the sense that they construct new constitutional arguments like “a fundamentally creative enterprise” to influence policy. The lifecycle of constitutional entrepreneurship is divided into four stages: incubation or advocates’ adoption of a coherent policy position and the commitment to legal argument; disruption or the moment opening the window for raising the profile of their policy; mobilization or advocate of the broader populations; and recalibration or the state’s adjustment under the pressure by incorporating the proposals mobilized by the advocates. Jia’s model features several strategies and conditions for the success of constitutional advocacy. These include the use of constitutional, rather than ideological or policy-specific, arguments to achieve target policies; the collaboration with media organizations, particularly the internet, to spread the message to the broader population; and the “locat[ion] and exploit[ation] [of] internal divisions inside the state.”

62 Id. at 623.
63. See id. at 633–35.
64. See id. at 631.
65. See id. at 623.
66. See id. at 624–29.
67. Id. at 629.
68. See id.
69. See id. at 627–28.
70. Id. at 630.
71. See id. at 630–33.
72. See id. at 631–32.
Jia's concept of constitutional entrepreneurship is connected to the comparative constitutional inquiry's recent turn to social mobilization. In his recent book, Bruce Ackerman examines the role of a mobilizing citizenry with "high-energy politics" in the constitutional revolutions that took place in India, South Africa, France, and Italy. Jia's concept suggests that the comparative inquiry into social mobilization for constitutional change is not necessarily accompanied by the heightened engagement of the broader society. Constitutional mobilization can occur at a micro-level with low-energy politics, which involves the society's narrow sectors. This kind of micro-mobilization does not result in constitutional revolutions but renders the constitutions socially meaningful even under authoritarian settings.

Jia's concept can be further refined by considering the way in which constitutional entrepreneurs are influenced by broader structural opportunities. Why do constitutional advocates operate in an entrepreneurial manner rather than turn to higher-energy politics (e.g., social movements)? Among other factors (e.g., resources), the lack of specific structural opportunities, such as the window of constitution making or amendments, limits the substantive scope and defines the entrepreneurial manner of constitutional advocacy. In addition, the general structural opportunity defined by the authoritarian control of citizens' political activities prompts constitutional advocates to use entrepreneurial tactics.

The related concept of "constitutional dissonance" is put forward by Chang Wen-Chen and David Law. This concept denotes the idea that the gap between the constitutional text and practice creates "constructive irritant" or "the resulting state of deep tension and contradiction furnishes the intellectual material and generates the dialectic needed for transformation of the constitutional order."

On that base, Chang and Law argue that China's Constitution functions as an irritant in the sense that its gap (between text and practice) generates the space for normative and meaningful constitutional discourse and argumentation which the regime cannot ignore. Two stories in Jia's study illustrate these discursive dynamics.

75. Chang & Law, supra note 2, at 509.
76. See id. at 511–13.
Chang and Law’s concept of constitutional dissonance echoes Jacobsohn’s concept of “constitutional disharmony.” Both concepts suggest that gap between constitutional texts and practices are the sources of constitutional dynamics. However, there are two important differences. First, while Jacobsohn recognizes two aspects of constitutional disharmony (internal and external), he focuses more on the former: the dissonant constitutional commitments within a constitution. Chang and Law are more concerned with the external dimension: the gap between the constitution and its practice. Second, while the three scholars recognize that constitutional disharmony or dissonance is universal, Jacobsohn explores this phenomenon specifically in the context of constitutionalist regimes while Chang and Law focus on authoritarian regimes.

The concept of constitutional dissonance can be further explored. In addition to the external gaps, the dissonance internal to the constitution can also create the space for constitutional mobilization and discourse. To illustrate, China’s Constitution is replete with ambiguities, such as the socialist rule of law, human rights, and civic virtues, which provide a wide space for different interpretative dynamics. The meanings of these constitutional provisions are not merely determined by the party-state; rather, they can be also influenced by social constitutional discourse and mobilization. Discursive and mobilizing dynamics animated by internal and external dissonances may generate some constitutional qualities of authoritarian regimes, such as legislative protection of constitutional rights.

C. Causal Inference

Several comparative explanatory accounts of China’s constitution display aspects of the principles of case selection in inference-oriented small-N (or micro) comparative studies, although not all of these studies are principled in this line by research design.

Consider first China’s constitutional divergence from the most similar case: Vietnam. Both countries share the same socialist legal system, socialist constitutional system under the leadership of a communist party, and socialist market economy. Despite that, comparative political studies have, for years, explored institutional divergence (particularly, the representativeness and competitiveness of elite political institutions) between the two countries. On

77. JACOBSOHN, supra note 58, at 4.
78. Id. at 87.
comparative constitutional scholarship, Fu Hualing and Jason Buhi have recently discussed the divergent constitutional trends; they argue that "Vietnam is presently moving in a direction that offers more prospects for convergence with international norms, as the current Vietnamese party-state is relatively less politically monolithic, more open to the influence of international laws and more tolerant of civil society than its Chinese counterpart."\(^{80}\) To illustrate, they demonstrate that "whereas Vietnam appears to be liberalizing its perspective on consultation, input and debate since 2013, China has opted to go in the opposite direction, rendering the terms 'constitutionalism', 'civil society' and 'judicial independence' (among others) taboo in academic discourse."\(^{81}\) This qualitative observation complicates Law's quantitative grouping of China and Vietnam together among the top of statist constitutional preambles (first and third respectively).\(^{82}\) Beyond the convergent preambles, the real dynamics of constitutional rules, institutions, and debates indicate the following: Vietnam's constitutional trend tends to move toward the universalist direction to gain international legitimacy while China's constitutional trend tends to be more static due to the exceptionalist aspiration to develop an alternative model to the Western liberal and universalist models.\(^{83}\)

Other studies explain China's unexpected constitutional similarities to the countries to which it is most different, such as the United States and the United Kingdom. Yan Lin and Ginsburg argue that due to the lack of judicial constitutional review in China, the Chinese Constitution is interpreted through the law-making process of the Standing Committee of the National People's Congress in major areas, such as distribution of governmental power, citizens' rights, and the economic structure.\(^{84}\) China's legislative constitutional interpretation shares a similar feature with the constitutional dialogue between the legislature and courts in what Stephen Gardbaum called the "New Commonwealth" (Canada, New Zealand, and the United

81. *Id.* at 146 (referring to the debates on an independent institution constitutional adjudication during Vietnam's 2013 constitution-making process).
China’s comparative constitution also is the most difficult case for the recent theoretical prediction that authoritarianism in the twenty-first century relies on legal and constitutional tools rather than personal fiat.88 The case of China may challenge this claim. Carl F. Minzner argues that “[i]n the early twenty-first century, Chinese authorities turned against law,” citing party political control over the judiciary, cracking down on public interest lawyers, and curtailing the influence of foreign rule-of-law norms.89 However, in a recent contribution, Taisu Zhang and Ginsburg put forward an antithesis: “China’s turn toward law.”90 They argue that China has institutionalized the court system and increasingly engaged with the Constitution, including the 2018 amendments, to institutionalize political functions.91 According to Zhang and Ginsburg, this legal and institutional trend is due to both the regime’s top-down commitment to bureaucratic legalization and the citizens’ bottom-up attachment of sociopolitical legitimacy to law and legal institutions.92 This argument is situated within the comparative literature on the empowerment of courts and constitutions in authoritarian regimes.93 Zhang and Ginsburg conclude that “[t]he Chinese case adds much to our understanding of authoritarian legality.”94 This conclusion, however, does not assume that there is “a rise of ‘constitutionalism’ in Chinese politics” because its authors believe that “[t]here is little evidence to suggest that the Party leadership has internalized the normative authority of the

86. Lin & Ginsburg, supra note 3, at 21.
90. See generally Taisu Zhang & Tom Ginsburg, China’s Turn Toward Law, 59 VA. J. INT’L L. 278 (2019).
91. Id. at 282.
92. Id. at 284–85.
93. Id. at 287 (citing CONSTITUTIONS IN AUTHORITARIAN REGIMES (Tom Ginsburg & Alberto Simpser eds., 2014); ROBERT BARROS, CONSTITUTIONALISM AND DICTATORSHIP (2000); Mark Tushnet, supra note 41, at 391).
94. Id.
Constitution in any fashion." Thomas E. Kellogg holds the same skeptical view, arguing that China's Constitution functions as a "false blueprint" to legitimate the party's rule "by maintaining the political fiction that China is transitioning to constitutional governance." China's engagement with the Constitution, however, validates the claim on the legality of authoritarianism in the twenty-first century.

Different from the above skeptical views, other comparative accounts contextualize China as a prototypical case of authoritarian constitutionalism. Consider first the general features of authoritarian constitutionalism. Using Singapore as an original case, Tushnet generalizes authoritarian constitutionalism as a regime that "is controlled by a dominant party"; "does not arrest political opponents arbitrarily"; "allows reasonably open discussion and criticism of its policies"; "operates reasonably free and fair election"; "is sensitive to public opinion and alters its policies at least on occasion in response to what it perceives to be public views"; "may develop mechanisms to ensure that the amount of dissent does not exceed the level it regards as desirable"; and renders courts "reasonably independent and enforce basic rule-of-law requirements reasonably well." Chang and Law contend that categories of authoritarian constitutionalism "are capable of encompassing China." In a contribution to a comparative study on authoritarian constitutionalism, Michael W. Dowdle explores the "routinized" practices (e.g., legislative hearings, the bureaucratic process of legislative drafting, administrative legislation, judicial professionalism, and public interest litigations) as the "infrastructural" source of constitutional evolution of the Chinese state. These practices are closer to the rule of law than constitutionalism; rather than impose institutional limitations on the decision makers, they are a means for the decision makers to ensure the legality of the work of government officials and judges.

Constitutionalism and authoritarianism are not clearly bifurcated institutional configurations. Partial authoritarian practices may emerge within a stable constitutionalist polity; conversely, partial constitutionalist practices may emerge within a stable authoritarian polity. Authoritarian constitutionalism as a stable hybrid regime and

95. Id. at 319.
98. Chang & Law, supra note 2, at 18.
100. See generally CAN IT HAPPEN HERE?: AUTHORITARIANISM IN AMERICA (Cass R. Sunstein ed., 2018).
partial constitutionalist practices under authoritarianism are conceptually distinct. An authoritarian regime defined as "a regime-level commitment to a set of practices that help unfetter rule through undermining institutions that hold ultimate decisionmakers accountable"\textsuperscript{101} may partially embrace some constitutionalist practices, but it is not equated to authoritarian constitutionalism. In this regard, China may embrace partial constitutionalist practices that place institutional limitations on the ultimate decision makers, but this does not necessarily amount to authoritarian constitutionalism.

Cuban-American legal scholar Larry Catá Backer even moves further to create a theory of Chinese party-state constitutionalism as an \textit{outlier} of comparative constitutionalism.\textsuperscript{102} He rejects the Western approaches to China’s constitution, arguing that “Chinese constitutionalism cannot be approached as a variant of a Western project grounded in the fundamental premise that the constitution of a state represents the culmination of a process of managing all of the political authority.”\textsuperscript{103} He then proposes the theory of Chinese party-state constitutionalism, which is defined by the two interrelated but distinct spheres of authority—namely, political authority and administrative obligation—and the concomitant coexistence of two constitutions.\textsuperscript{104} The political authority is vested in the leading communist party and constrained by the party’s constitution (the political constitution), while the state constitution expresses the political constitution’s values and objectives, regulates government administration, and limits individuals’ arbitrary use of power.\textsuperscript{105}

Backer’s theory is both normative and explanatory. As an explanatory model, it has implications for inference-oriented comparative inquiries into China’s constitution. It explains why China’s Constitution has changed to institutionalize the directions put forward by the party’s constitution. For example, the 2018 constitutional amendment’s incorporation of Xi Jinping Thought follows the same move in the 2017 amendments to the party’s constitution.\textsuperscript{106} The party’s constitution is, therefore, not separate from

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\textsuperscript{104} \textit{See id.}
\textsuperscript{105} \textit{Id.}
China's living constitution. Comparatively, the political parties' constitutional function is not unique to China but is common in living constitutional orders in multiparty systems. However, in contrast to the political parties in multiparty democracies, the Communist Party in China is not an electoral party: it is not an institution of the civil society created to compete for power through competitive elections. Rather, it is constitutionally mandated by a living and recently textual norm as the leading force of the socialist regime, making it a constitutional institution inseparable from the state.

D. Large-N Studies

China's constitution has often been referred to as an illustrating case in large-N comparative constitutional studies. In an earlier macro-study on the right to resist in the world's constitutions, scholars discussed this right within the context of Chinese political-legal tradition. They demonstrate that the idea of a right to resist is associated with Mencius, a Chinese Confucian philosopher, who believed that when the rulers lost the Mandate of Heaven, as "reflected in the rise of natural disasters, wars, or economic difficulties," the people's resistance to commands of the rulers became justified. They conclude that "[t]he Chinese tradition thus included the seeds of a right to resist, though the idea did not fully blossom as it did in the era of the French and American revolutions." Hence, Chinese legal-political concepts are historically contextualized in the macro-comparative study of a constitutional right.

In a recent macro-study of the world's constitutional preambles, Law uses the Chinese constitutional preamble to epitomize the statist constitutional archetype and compares it with Australia's liberal preamble. He demonstrates that China's constitutional preamble

R9-PN2G] (archived Sept. 20, 2020). Xi Jinping emphasizes socialism with Chinese characteristics, including the leadership of the Communist Party of China, governing the country with the rule of law, and comprehensive reforms, among others. For law reform in China under Xi Jinping, see generally CHINA'S SOCIALIST RULE OF LAW REFORMS UNDER XI JINPING, supra note 10.


109. Id. at 1196–97.

110. Id. at 1198.

111. Law, supra note 82, at 185.
"offers nothing less than a social, political, and economic history of the Chinese people, much of which amounts to their glorious struggle under the tutelage of great leaders against a parade of maladies and injustices," and that "the Chinese preamble also takes care to equate the Chinese people with the Chinese state.\textsuperscript{112}

The Chinese case has been recurrently discussed in the recent large-N study ("2020 Study"), in which Versteeg and her collaborators explore a range of constitutional strategies of presidential term-limit evasion used by 234 incumbents in 106 countries since the year 2000. Particularly, they indicate that constitutional amendment is the most common strategy, as it comprised 60 percent of all evasion attempts and 40 percent of successful cases. They identify two ingredients—president’s power and the ease of amendments—as essential for the successful use of amendments to evade term limits, and the Chinese case is repeatedly used to illustrate the success.\textsuperscript{113} This Article will focus on the 2020 Study to consider the possibility and the limits in the way China’s constitution is integrated into large-N comparative constitutional inquiry.\textsuperscript{114}

Term limits were first established in China’s Constitution in 1982 and are attributed to Deng Xiaoping’s intention to break through one-man rule after the Mao years.\textsuperscript{115} Article 79 of the original Constitution provides that "[t]he 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."\textsuperscript{116} In March 2018, China’s National People’s Congress adopted a package of constitutional amendments, which included, among other things, the deletion of the second sentence in that provision, effectively abolishing term limits to the President and the Vice President.\textsuperscript{117} This move has generated much controversial debate both inside and outside China; supporters believe that term-limit deletion is consistent with China’s needs—particularly to continue Xi’s anti-corruption campaign\textsuperscript{118}—while critics considered this "a drawback and a means for President Xi to stay in power forever."\textsuperscript{119} Term-limit deletion through formal constitutional amendment in China is consistent with the prevailing claim that formal constitutional amendment is the most

\textsuperscript{112} Id.
\textsuperscript{113} See Versteeg, Horley, Meng, Guim & Guirguis, supra note 3, at 187.
\textsuperscript{114} The below discussions of presidential term-limit evasion in China are drawn from my book, BUI NGOC SON, CONSTITUTIONAL CHANGE IN THE CONTEMPORARY SOCIALIST WORLD 310–12 (2020).
\textsuperscript{115} Feng Lin, supra note 14, at 14.
\textsuperscript{116} XIANFA art. 79 (1982) (China).
\textsuperscript{117} XIANFA art. 79 (2018) (China).
\textsuperscript{118} Feng Lin, supra note 14, at 14.
\textsuperscript{119} Id. at 11 (noting domestic scholars criticized the amendments through WeChat groups since they cannot express such criticisms through official media).
common way of term-limit evasion in the world. This explains why the China case is used as an illustrating case in the 2020 Study.

The 2020 Study demonstrates that the removal of term limits in China's 2018 constitutional amendment was smooth and successful, "with essentially no opposition at all," due to Xi's mass popularity and support.\textsuperscript{120} That claim is debatable. Considering unusual secrecy and urgency regarding the Communist Party of China's meetings surrounding the amendment process, Zhang and Ginsburg believe that "there is no evidence to suggest that the removal of constitutional term limits was, in fact, painless or easy. Instead, there is reason to suspect that Xi had actually encountered opposition that was only overcome with some difficulty."\textsuperscript{121} Related to the president's power, the 2020 Study also holds that the success of term-limit evasion is due to the fact that the president had sufficient control over the legislature.\textsuperscript{122} Perhaps, that the Chinese legislature overwhelmingly approved the amendments with only 2 dissenters\textsuperscript{123} generates the impression that the president had sufficient control over this body, and hence the amendments were achieved easily and smoothly. But the final approval at the legislative platform is just the facial manifestation of political elite's internal agreement. In addition, the legislature in China is under the institutional control of the party as a collective entity rather than a single party leader.\textsuperscript{124}

Next, consider the second element of evasion success—the ease of the amendment. The formal rule requires a two-thirds legislative majority for the amendment's approval.\textsuperscript{125} This requirement is relatively low compared with other experiences—for example, four-fifths legislative majority or three-fourths legislative majority plus popular referendum.\textsuperscript{126} In addition, the two-thirds requirement is easily achievable in China as there is no opposition party in the communist party-controlled legislature. In addition to the procedural features, China has not codified unamendability and hence any changes to the Constitution are constitutionally possible, including term-limit deletion. It seems that China's case is consistent with the theory that amendment's ease is the element (or reason) of evasion success.

\textsuperscript{120} Versteeg, Horley, Meng, Guim & Guirguis, supra note 3, at 200, 208.
\textsuperscript{121} Zhang & Ginsburg, supra note 90, at 327.
\textsuperscript{122} Versteeg, Horley, Meng, Guim & Guirguis, supra note 3, at 207.
\textsuperscript{124} See He, supra note 6, at 75–82.
\textsuperscript{125} XIANFA art. 64 (1982) (China).
\textsuperscript{126} Versteeg, Horley, Meng, Guim & Guirguis, supra note 3, at 208–10.
However, the amendment practice in China is not merely determined by the formal rule but must be situated within the broader political dynamics. This requires systematic considerations of amendment culture and temporal variability in difficulty to amend the constitution driven by the particularities of the moment.127 Chinese amendment culture is characterized by the political perception of the Constitution’s stability as a desirable condition for the nation’s stability and the cautious attitude toward amendments as associated with radical political changes informed by the experience in Eastern Europe.128 That culture makes amendments difficult to pass despite the ease of formal rules. In fact, since its enactment in 1984, China’s Constitution was amended only five times in four decades: 1988, 1993, 1999, 2004 and 2018. In addition, temporal variability in amendment difficulty is considerable; there are four amendments in fourteen years (from 1988 to 2004), but there is only one amendment in sixteen years (from 2004 to 2018). These amendments are shaped by the particularities of the moment. The 1988 and 1993 amendments were shaped by the context of the domestic reformist era when China opened the country in the early stage, while the 1999 and 2004 amendments were associated with the particularities of the globalizing era when the country joined the global market, including the WTO.129 The 2018 amendment of the exceptional moment occurred when China was rising as the global power and had become confident to move its own way in the course of development, which differed from the Western models of development. The 2018 amendments are a part of Chinese constitutional exceptionalism. Particularly, term-limit deletion expresses the exceptional attitude that China does not follow the Western constitutional model of limited government.130

While the 2020 Study identifies interesting global constitutional trends regarding term-limit evasion, it treats the Chinese case, to borrow Hirschl’s words, “much like a doctor in a triage system treats patients: with empathy and urgency, but ultimately in a distant, composed fashion.”131 The consequence is that this macro study overlooks micro contextual dynamics surrounding China’s term-limit evasion through constitutional amendments.

127. ALBERT, supra note 40, at 110–11, 126.
128. See Yan Lin, supra note 87, at 81–82.
130. For Chinese constitutional exceptionalism, see BUI, supra note 114, at 277.
131. HIRSCHL, supra note 1, at 272.
This Part seeks to explain why the field of comparative constitutional law has had greater engagements with China's constitution than previous periods. These comparative engagements, which are conditioned by the dynamics of both China's constitution and of comparative constitutional law, are mainly animated by the curiosity and quest to understand China's constitutional dynamics, and, to some extent, China's practical need to develop its constitutional system and particular views about constitutional justice.

A. Conditions

1. The Dynamics of China's Constitution

The comparative constitutional law scholarship's engagements with China are conditioned by the increasing dynamics of China's constitution. The marginalization of China in comparative constitutional law is largely due to the relegation of China's Constitution as a sham text. However, in recent years, China's Constitution has been increasingly relevant to the real politics and the society. Zhang and Ginsburg demonstrate that China's Constitution "already carries much more political weight than scholars have previously given it credit for, indeed at the highest levels of the party-state, and that recent developments have only further bolstered its influence and significance." The recent developments include the Xi Jinping-era political discourse, which enhanced the Constitution's sociopolitical salience, and the 2018 constitutional amendments, which displayed the attachment to the Constitution as the source of sociological legitimacy. Zhang and Ginsburg paid greater attention to China's Constitution as they realized the greater political significance of the document.

China's Constitution is not only politically but also socially relevant. The 2013 constitutionalism debate and earlier constitutional advocacy indicate that China's Constitution is increasingly socially relevant to public discourse and mobilization. The same constitutional text has different significances to the party-state and the society. Political leaders may attach to political discourse and functions to the constitution to consolidate the legal foundation of the legitimacy of the party-state. But public intellectual discourse and social mobilization

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132. See David S. Law & Mila Versteeg, Sham Constitutions, 101 CALIF. L. REV. 863, 905 (2013) (listing China among top ten countries in the world with constitutional underperformance scores in the areas of civil and political freedoms).
134. See id. at 351, 357.
seek to realize the Constitution's normative commitments, such as human rights and the rule of law. The public discourse and mobilization render the Constitution socially significant. The Constitution's social and political significance makes it a discursive site for comparative constitutional engagement.

Timing is relevant. The 2013 constitutionalism debate and the 2018 amendments provide particularly important sources for comparative constitutional engagements with China in the last five years. By 2013, the constitutionalism debate did not merely occur within the Chinese intellectual community but reached the broader community via social media, which drew comparative attention. In addition, the 2018 amendments attracted comparative inquiry partially because they were domestically extensive and partially because they echoed international constitutional phenomena in recent years (e.g., the rise of constitutional authoritarianism generally and term-limit evasion particularly).

Apart from the increasing importance of the constitutional text, the dynamics of the Chinese living constitution generate the condition for comparative engagement. The dynamics include the increasing institutionalization of the state and the party. The new bureaucracy emerging in China since the beginning of the reforms in 1978 corresponded to "the massive shift from a centrally planned economy to a more open and marketized one."135 The administrative government in China today "is centralized, massive, and extraordinarily complex."136 The country's National People's Congress, a unicameral legislature elected every five years, is composed by a standing committee and special committees and included 2,980 members in 2018, making it the largest parliamentary body in the world.137 The court system has been highly institutionalized, consisting of thousands of district-level basic people's courts (the lowest level courts), staffed by 146,000 judges; hundreds of prefecture-level intermediate people's courts, staffed by 36,000 judges; thirty-one provincial-level high people's courts, staffed by 7,000 judges; and the Supreme People's Court at the central level, staffed by more than 500 judges, in addition to specialist courts.138 These institutional dynamics generate sources for comparative constitutional engagement with China.

136. Id. at 374.
As Backer and He Xin indicate, the Communist Party of China is an internal part of the Chinese living constitutional order. Like the state, the Communist Party in China has been highly institutionalized. The party has its own Constitution based on the Leninist principle of "democratic centralism," which allows for the combination of a collective leadership and "division of labor" among the party members. To maintain its ruling capacity and its legitimacy, the party has complex institutional structures at the central level (the National Congress, Political Bureau, Central Committee, Standing Committee, and other specific committees) and a web of local party cells. Some doubted that under Xi's era the party returned to personalistic rule. Other studies, however, have demonstrated the party's institutionalization under Xi-era, including establishment of a National Security Commission, the reorganization of the party leadership of the People's Liberation Army, the reorganization of the various civilian maritime security agencies, and the establishment of the Cybersecurity and Informatization Leading Small Group. The party's institutional dynamics create the conditions for comparative political-constitutional studies, as indicated the work by Backer, Zhang and Ginsburg.

2. The Dynamics of Comparative Constitutional Law

Comparative constitutional law's jurisdictional, substantive, and epistemological expansion creates the condition for the field's greater engagements with China's constitution. First, in the last few years, comparative constitutional law has incrementally expanded its jurisdictional scope beyond the Western or similar institutional settings. For example, the International Society of Public Law was held in Asia (Hong Kong) for the first time in 2018, and

139. See generally He, supra note 6.
140. Id. at 76–77.
142. But see, e.g., Susan L. Shirk, China in Xi’s "New Era": The Return to Personalistic Rule, 29 J. DEMOCRACY 22, 23 (2018).
144. For recent efforts, see generally CONSTITUTIONAL CHANGE AND TRANSFORMATION IN LATIN AMERICA (Richard Albert, Carlos Bernal & Juliano Zaiden Benvindo eds., 2019); Maartje De Visser & Bui Ngoc Son, Contemporary Constitution Making in Asia-Pacific, 7 CHINESE J. COMPAR. L. 241 (2019); JAMES FOWKES, BUILDING THE CONSTITUTION: THE PRACTICE OF CONSTITUTIONAL INTERPRETATION IN POST-APARTHEID SOUTH AFRICA (2016).
correspondingly the *International Journal of Constitutional Law* published an issue focusing on Asia. The jurisdictional expansion prompts comparative constitutionalists to reach out to unfamiliar institutional settings, including China.

The second aspect of comparative constitutional law's dynamics concerns the substantive issues of inquiry. The fact that China lacks judicial review disfavors it as a site for comparative constitutional studies, which have been dominated by the questions on courts and their constitutional adjudication. However, in recent years, comparative constitutional inquiry has expanded its substantive scope, discussing a range of nonjudicial issues, including constitution making, constitutional amendments, and political or legislative aspects of constitutionalism. China's recent constitutional experience echoes these comparative issues. Consequently, the field's exploration for nonjudicial issues renders countries without judicial review, like China, attractive sites for comparative inquiry.

The third dimension of the expansion of comparative constitutional law concerns the epistemological underpinnings of constitutional systems. China has been less attractive to comparative constitutional inquiry, in part, because its Constitution is rooted in Leninist-Marxist ideas, while the field has focused on constitutional protection of liberal rights by liberal institutions (such as courts, separation of powers, and other forms of checks and balances), which are intellectually connected to Enlightenment liberalism. However, recent years have witnessed the comparative exposition to various ideational foundations (liberal, neoliberal, and non-liberal) of constitutional systems. Particularly, Tushnet's suggestion of pluralizing the concept of constitutionalism exemplifies the pluralist thinking about constitutional issues in non-liberal terms. Such epistemological expansion enables the field to engage with constitutional systems underpinned by communitarian and socialist ideas, such as those of Singapore and China respectively.

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B. Factors: Knowledge, Necessities, and Political Views

The comparative constitutional law scholarship's engagements with China are mainly driven by the intellectual curiosity and quest to discover the unknown regarding the dynamics of China's constitution. Why has China's Constitution become more politically important? Is Chinese constitutionalism an oxymoron? How does China implement the Constitution without judicial review? How does China's constitution evolve overtime without frequent formal amendments? Why is the party constitution important for Chinese living constitution?

Most comparative studies of China's constitution involve casual inference—the mode of comparative inquiry that seeks to provide answers for a range of the above curious Chinese constitutional questions. To illustrate, Zhang and Ginsburg sought to provide "the first comprehensive survey of judicial and constitutional developments in the Xi Jinping era" due to the intellectual drive to understand the "underappreciated features of the party-state" and "how its current structural layout demands higher levels of legality in both the party and the state."149 Even the studies that create new concepts, such as Jia's constitutional entrepreneurs and Chang and Law's constitutional dissonance, also primarily seek to understand the driving forces (social advocacy and political discourse) of Chinese constitutional dynamics. Macro-studies generally aim to create constitutional knowledge and their engagement with China is also mainly driven by intellectual curiosity: for example, what contributes to China's success with presidential term-limits evasion through constitutional amendments?

Although the discovery of the unexplored constitutional knowledge is the main drive, comparative engagements implicitly or explicitly respond to the practical need for Chinese constitutional development. For example, Jia's concept of constitutional entrepreneurship seeks to both explain and guide Chinese constitutional advocacy.150 Chang and Law also write that "[t]he marginalization of China as an object of study has deleterious effects not only for the field of comparative constitutional law, but also potentially for the development of constitutionalism in China itself."151 In this line, their concept of constitutional dissonance not only explains but also facilitates Chinese constitutional development. The normative implication of this concept tends to be that the dynamics of constitutional discourse are a constructive condition for China's constitutional development. In the same vein, Backer's model both

150. Jia, supra note 61, at 674.
151. Chang & Law, supra note 2, at 3.
explains and advances the Chinese model of party-state constitutionalism.152

In addition to knowledge and necessities, some comparative studies of China’s constitution are driven by particular political outlooks. To illustrate, Kellogg’s critical view of China’s Constitution as a “false blueprint” is animated by a liberal view about constitutional justice that is associated with limited government.153 In contrast, Backer’s positive view of the Chinese model of party-state constitutionalism is informed by a socialist outlook on constitutional justice.154

IV. CONCLUSION

This study has explained the modes, conditions, and factors of comparative constitutional engagements with China. The comparative engagements with China’s constitution, however, should not be overstated. A range of Chinese constitutional questions have not yet been substantively explored and explained within a comparative constitutional framework. Questions for future comparative inquiry into China’s constitution include constituent power, participatory constitution making, transnational engagement and resistance in constitution making, the political construction of unconstitutional constitutional amendments, the Constitution’s international dimensions, and legislated constitutional rights, among others.

152. See Backer, supra note 103, at 179.
153. See Kellogg, supra note 96, at 351.
154. See Backer, supra note 103, at 205–11.