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Abstract:

Since its ascent to power in 1949, the Chinese Communist Party (CCP) has adopted four distinct constitutions in 1954, 1975, 1978 and 1982. On average, People's Republic of China (PRC) rewrites its constitution in every sixteen years. However, it would be unwise to conclude that such frequent changes to constitution only reflected PRC's political instability under the reign of the Communist Party. According to a study of the constitutional history of every independent state from 1789 to 2005, most national constitutions die young, and only a handful last longer than fifty years. In fact, the average life expectancy of a typical national constitution is only nineteen years (*Elkins, Ginsburg and Melton 2009, 6*). If we are to put things into perspective, China's 1954 constitution was actually not "short-lived" per se, for it lasted twenty-one years, slightly exceeding the typical life expectancy of a constitution by two years. Furthermore, China's 1982 constitution, which is still in effect today, was heavily modeled after the 1954 constitution (*Tiffert 2009, 72*). The structural and normative connections between the 1954 and 1982 constitutions are too numerous to list here, but two Chinese scholars sum up the relationship in this way:

The 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 (Zhang and Ren, 2005, quote in Tiffert, 72).

In fact, some scholars have compared the 1954 constitution to the 1982 constitution word for word, concluding that fifty-one articles or about 45.6% of the 1954 constitution is identical to the 1982 constitution. Forty-seven articles or about 42% of the 1954 constitution can find its parallels in the 1982 constitution. In other words, there are altogether 98 articles or about 87.6% of the 1954 constitution is either identical or closely related to the 1982 constitution (*Han 2004,*

528 & 546). In this sense, although the PRC's 1975 and 1978 constitutions were indeed short-lived for lasting only three and four years respectively, we do see a degree of continuity in PRC's constitutional law/history from the 1950s through today. Therefore, it seems clear that the 1954 constitution has a very special place in the PRC's history, and deserves more attention than it currently receives.

Introduction:

This paper seeks to explore the following research questions: who were the drafters of the 1954 Chinese constitution? What political goals did the drafters hope to accomplish by putting together the first constitution of the republic, and how did they understand and play out their respective roles in the constitutional making process? Were the participants allowed and felt unrestrained to express their opinions without fearing repercussions? What kinds of constitutional debates and compromises took place during the drafting process?

The project aims to complicate the conventional understanding that constitutions of authoritarian regimes are purely symbolic and serve only to boost the legitimacy of the incumbent regime and bear no practical political significance. While it is undeniable that the 1954 Chinese constitution was indeed a symbolic document and in many ways did legitimize the newly established communist regime, this parsimonious explanation overlooks the intricate procedures under which the final 1954 document was hammered out. By carefully examining relevant historical sources from this period, I argue that although the 1954 drafting process showed some encouraging signs of democratic participation and the Communist Party's willingness to accept constructive criticism from the public, the process was nevertheless not as transparent and democratic as it first appears. In brief, this paper hopes to add a more nuanced

perspective of the 1954 drafting process to the existing literatures on the PRC's early experiences with constitutionalism.

Literature Review:

Before I turn my attention to China's 1954 constitution, it is necessary to first ask the question: what is a constitution, and what functions should it serve? Here I discuss the works of four accomplished scholars: Hanna Pitkin, Martin Shapiro, Laurence H. Tribe and Richard Epstein.

Hanna Pitkin argues that, to understand what a constitution is, one must look not for some crystalline core or essence of unambiguous meaning but precisely *at* the ambiguities (*Pitkin 1987: The Ideal of a Constitution*). According to Pitkin, a constitution is what we are – the characteristic way of life, the national character of a people and a product of their particular history and social conditions (*Pitkin, 167-168*). A constitution, as Pitkin further suggests, is also what we do, such as our capacity to act, to innovate, to break the causal chain of process and launch something anew (*Pitkin, 169*). Similar to Pitkin, Martin Shapiro thinks that we should collectively decide what sort of community we want to become, for why should we be enslaved by “certain dead gentlemen who could not possibly have visualized our current circumstances” (*Shapiro, Essay on the Meaning of the American Constitution, quote in Holmes' Article*). According to Shapiro, when we examine a democratically enacted statute, we should not ask, like text-bound lawyers: Is it constitutional? Rather we should ask, like democratic citizens: *Do we want it to be constitutional?*

Laurence H. Tribe, on the other hand, argues that the greatness of a well-designed constitution lies in its respect to plurality of ideas and resistance to ideological reductionism. In

other words, Tribe thinks a constitution should embrace conflicting and even radically inconsistent ideas and visions at one and the same time (*Tribe 1987: A Metaphor-morphosis*). Lastly, Richard Epstein takes a Hobbesian view and argues that all humans are, to various degrees, self-interested. Therefore, the main function of a constitution, in the eyes of Epstein, is to curb “those who have excessive amounts of self-interest,” for they are apt to become the most influential – and also the most dangerous individuals in society (*Epstein 1987: Self-Interest and the Constitution*).

In sum, scholars like Pitkin and Shapiro take a Jeffersonian view that the dead should not govern the living. A constitution, as they speak, is not supposed to last long because society is constantly evolving, and constitutional changes thus should be made promptly and accordingly so that it can best reflect society’s status quo. What is more, advocates of this view contend that a long-lasting constitution, together with its outdated principles, could actually become an obstacle for social progress. It is said that Thomas Jefferson once derided those who “look at constitution with sanctimonious reverence, and deem them like the art of the covenant, too sacred to be touched (*Elkins, Ginsburg and Melton*).” Scholars like Tribe and Epstein, on the contrary, saw more merits in a lasting constitution. They hold the view that the masses are intolerant; they have “little self-control, sadly undisciplined, and are always prone to sacrifice enduring principles to short-term pleasures and benefits” (*Holmes, Recommitment and the Paradox of Democracy*). Thus, a constitution, in their eyes, is nothing but a device for limiting the power of government and ambitious individuals. In other words, they believe, in order to prevent the problem of the tyranny of the majority, an ideal constitution should be less subject to democratic pressures.

Nevertheless, it is important pointing out that the aforementioned scholars all had one particular constitution in mind – the American constitution. As Ginsburg’s study of national constitutions concludes, however, the American constitution is in fact the world’s oldest surviving constitution and an unusual outlier, which was drafted in Philadelphia in 1789 and has lasted for 224 years and counting. Therefore, the normative arguments advanced by Pitkin, Shapiro, Tribe and Epstein may be limited within the American constitutional context and hence not generalizable around the globe. For example, the U.S has a two-party and democratic political system, whereas China is a one-party rule authoritarian state. In this sense, the functions performed by the American constitution may be quite different from those performed by its Chinese counterpart. Nevertheless, I think the conceptual question that what is a constitution, and what functions should it serve is still perfectly applicable to the Chinese context, because I would imagine the drafters of the 1954 constitution had also thought and struggled with this question. It would be difficult enough to reach a consensus in a group of five, let alone over sixty individuals who differed greatly in their education, occupation and class background.

Current American scholarships on the 1954 Chinese constitution tend either to examine its practical implementations or to focus on the textual analysis of the wordings of the document. For example, Jerome Cohen argues that, although the 1954 constitution enumerated a number of aspirational principles that guaranteed people the right to suffrage and freedom of speech, the actual implementations of the constitution, however, hardly lived up to these ideals. Cohen also briefly mentions that, besides serving as a symbolic document that legitimized the communist regime, the 1954 constitution also played a significant role in the Communist Party’s plan of nation building. According to Cohen, since China in the 1950s had not yet reached socialism but

was at the earlier stage of a somewhat mixed society that included both elements of socialism and capitalism, the 1954 constitution was only meant by the party leaders to function as a transitional document, facilitating China's *en route* to a true socialist country. And once China's transformation to socialism is complete, the 1954 constitution would be naturally replaced by a more permanent socialist constitution (*Cohen, 1978*). What's interesting here is that the party's view that the 1954 constitution would serve only a transitional document is somewhat in line with the that of Thomas Jefferson, who thinks frequent democratic changes should be promptly made to a constitution so that it can best reflect society's status quo. Nevertheless, to what extent can we make this connection is still unclear because it seems that the Chinese leaders of the time did want to eventually establish a more permanent socialist constitution.

Owen Fiss, on the other hand, focuses on the textual analysis of the 1954 constitution and argues that it is important to understand how China's perception of individual rights may differ from that of the United States. According to Fiss, the Chinese guarantee of liberty is coupled with a statement of duties that limits this very liberty. The Chinese constitution has a chapter entitled "Fundamental Rights and Duties of Citizens." Subsequent provisions, particularly article 51, list out these "citizens duties": "The exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens." Article 53 provides: "Citizens of the People's Republic of China must ... keep state secrets, protect public property and observe labour discipline and public order and respect social ethics." And Article 54 says: "It is the duty of citizens of the People's Republic of China to safeguard the security, honor and interests of the motherland; they must not commit acts detrimental to the security, honor and interests of the motherland" (*1982 constitution*). Such clauses about citizen duties are not found

in the American constitution. The U.S speaks of a “Bill of Rights,” not a “Bill of Rights and Duties.” Freedom of speech in China does not just consist of article 35, which guarantees the freedom of speech and some other basic individual rights that looks very similar to the first Amendment of the US constitution: “Citizens of the People’s Republic of China enjoy freedom of speech, of the press, of the assembly, of association, of procession and of demonstration” (*Article 35, 1982 constitution*). But it is a product of other proclamations of the duties of citizenship. There is a quantitative difference in the “amount of freedom” allowed. In America, the free speech guarantee is seen as a limitation upon the government or something the government simply cannot do. Whereas in China, free speech seems more like a residue, for citizens have to first fulfill their legal duties and understand what they cannot do. No legal restrictions are put on the power of the state. Citizens are allowed to engage in speech or protest only when that is lawful (*Fiss, Two Constitutions*). Although Fiss here is specifically referring to the 1982 Chinese constitution, as I’ve point out earlier, the 1982 constitution borrowed heavily from the 1954 constitution, and many of these clauses regarding to the fundamental duties of citizens of the 1982 constitution were copied word for word from the 1954 constitution. For example, article 53 of the 1982 constitution says “Citizens of the People’s Republic of China must ... keep state secrets, protect public property and observe labour discipline and public order and respect social ethics,” was almost identical to article 100 of the 1954 constitution, which says “Citizens of the People’s Republic of China must abide by the Constitution and the law, observe labour discipline, observe public order and respect public morality” (*1954 constitution*). Therefore, Fiss’ textual analysis of the 1982 Chinese constitution would still shed some light in our understanding of the 1954 constitution.

However, both Cohen and Fiss do not pay much attention to the 1954 drafting process. A scholar who does pay some attention to it is Glenn Tiffert, a history PhD candidate at UC Berkeley. In his article *Epistrophe: Chinese Constitutionalism and the 1950s*, Tiffert suggests that the 1954 drafting process showed some signs of democratic participation and constitutional debates, but the Communist Party still played a dominant role in the process (Tiffert, 2009). Tiffert's work has proved to be very helpful to me, for it put the 1954 constitution into the larger historical context, and I started out my project by looking at many of the same sources that Tiffert had used to complete his project.

Other than Tiffert's work, very few scholars have written on, in the English language, China's 1954 constitutional drafting process. However, some mainland Chinese scholars such as Han Dayuan (韩大元) and Cai Dingjian (蔡定剑) did write about it. In this sense, I hope my project can bridge the gap between China and the west's understanding of the 1954 drafting process and to add a more nuanced perspective to the existing body of literature on this subject.

Why a New Constitution in 1954?

Before it took power from the hands of the nationalists (KMT), the Communist Party assiduously courted China's intellectuals, appealing to their frustrated ambitions to undertake national salvation. The party welcomed them back into politics with promises to make China strong again. Although some of the leading advocates for constitutionalism followed the nationalist party (KMT) to Taiwan, many, alienated by the experience of the preceding twenty years or held in suspicion by KMT authorities, did not (Tiffert 2009, 64). Just three months before the official founding of the PRC, the CCP convened a Preparatory Committee for a New Political Consultative Conference in June 1949. It comprised of 134 members who had been

selected by the CCP. Its Standing Committee of twenty-one members was divided into working groups charged with articulating the political, legal and institutional framework for the new regime. Zhou Enlai (周恩来) led a group that drafted the “Common Program (共同纲领).” Meanwhile, Dong Biwu (董必武) led a group that drafted the “Organic Law of the Central People’s Government (中央人民政府组织法)” (Tiffert 2009, 64). But because the process of drafting both the Common Program and Organic Law of the Central People’s Government was elitist and out of touch with ordinary Chinese, an important reason for drafting the 1954 constitution was to atone for the democratic deficit left behind by the Common Program and the Organic Law of the Central People’s Government, which together served as the provisional constitution of the PRC from 1949 to 1954 (Cai 2004, 7-17).

It is worth to point out, however, although the CCP wanted the 1954 constitution to be perceived as more down to earth and democratic, it did not expect the 1954 constitution to be enduring. According to a constitutional report delivered by Liu Shaoqi (刘少奇) on September 15 1954, the 1954 constitution would serve only as an intermediate document to assist China’s gradual transformation to a truly socialist society. As Liu points out, the PRC in the 1950s had not yet reached socialism but was at the earlier stage marked by mixed elements of socialism and capitalism. Under the Common Program, the co-existence of both capitalism and socialism was tacitly acknowledged by the CCP. It is in this sense that, compare to the Common Program, the 1954 constitution is more ideologically orientated, for it laid down a socialist state building trajectory in the next ten to twenty years¹. Although the leaders of the CCP thought the 1954

¹ In the seventh meeting of the Constitutional Drafting Committee, Mao said: “it would take the PRC about fifteen years to transform into a true socialist country,” implying that, in the eyes of Mao, the 1954 constitution should roughly last about fifteen years (Han 2004, 285).

constitution would be eventually replaced by a more permanent socialist constitution once the ideological transformation is complete, the 1954 constitution did explicitly reject the possibility of the co-existence of capitalism and socialism in the long run. As Liu puts it, this ideological trajectory would serve as the “shining beacon of our [CCP’s] work” (*Liu Shao-qi: 关于中华人民共和国宪法的报告 1954, 27-48*).

Another reason for adopting the 1954 constitution was to further consolidate the Communist Party’s hold of political power. According to various archival sources, Joseph Stalin had played a key role in convincing Mao and other party leaders to replace the Common Program and the Organic Law of the Central People’s Government with a brand new constitution. In three occasions, Stalin had urged and suggested to Mao to adopt a formal constitution of the PRC. In a clandestine visit to Soviet Union on June 8, 1949, Liu Shaoqi asked Stalin whether the PRC should write a socialist constitution. Stalin said the PRC should not get ahead of itself, and it would be sufficient to have a constitution that reflects the country’s status quo. Stalin further explained to Liu, without a formal constitution, enemies of the PRC could question the party’s legitimacy, and to accuse it of being nothing more than a self-proclaimed, military dictatorship. When Mao visited Soviet Union in early 1950, Stalin again made several suggestions related to the PRC’s nation building plans, including writing a formal constitution (*Han 2004, 53-57*). In Liu Shaoqi’s second visit to Moscow for the Soviet 19th Party Congress in October 1952, Stalin for the third time urged Mao to adopt a formal constitution. This time, however, Liu carried a letter from Mao informing Stalin that the first election of the National People’s Congress would be postponed. And since the Common Program was well respected by both party and non-party elites, the Common Program thus would work just fine to temporarily perform the functions of a constitution. Nevertheless, Stalin

disagreed with Mao and argued that the Common Program, although was well respected and perhaps did enjoy much popular support from the public, still could not remedy the fact that the Common Program was drafted via a non-democratic political process by 132 political elites selected by the CCP. Thus, according to Stalin, only by adopting a formal constitution through a more open and democratic procedure, could the CCP then successfully fend off its potential critics.

Furthermore, Stalin pointed out, the multi-party coalition government established under the Common Program presented a grave security risk to the CCP. As a multi party political system, the CCP would inevitably, to varying degrees, share classified information with the eight minor parties. Since many members of the minor parties had close ties to foreign countries, especially the United States and United Kingdom, this multi-party system would be vulnerable to spies working on behalf of hostile powers. Stalin then argued that the CCP could solve these problems simply by holding a national election in 1954, both further securing and legitimizing its hold of power via the National People's Congress. Stalin's logic was that the CCP was genuinely supported by the masses, especially workers and peasants, and it would surely win any election. In other words, a national election was really a decoy and a means for the CCP to centralize and consolidate its political power through the National People's Congress, thereby undermining the multi-party coalition government established under the Common Program. The ultimate goal, according to Stalin, was to eliminate all oppositions and gradually transform the PRC into a one-party rule state (*Cai 2004, 24-26*). In sum, Mao was eventually convinced by Stalin's arguments and made up his mind to adopt a formal constitution in late 1952.

Who Were Involved, and What Did the Drafting Process Look Like?

In January 1953, thirty-three individuals were selected by the CCP as the members of the Constitutional Drafting Committee (宪法起草委员会)². Under the Constitutional Drafting Committee, there were seventeen Constitutional Discussion Groups that were responsible for proposing constructive feedback and revisions to the draft constitution. It is worth pointing out that a number of the selected discussants received their legal education abroad, in countries such as the U.S, Germany and Japan. In particular, Zhang Zhirang (张志让) studied law at Columbia University; Zhang Bojun (张伯君) studied philosophy and law at the University of Berlin; and Yang Zhaolong (杨兆龙) obtained his doctorate degree in law from Harvard and then went to on pursue his postdoctoral education at the University of Berlin (*Tiffert, 2009*). Overall, the Constitution Drafting Committee and the discussants of the Constitutional Discussion Groups were composed of a fairly diverse group, including party members, non-party members and both legal and linguistic experts (*Wang 2007, 259-60*).³ The basic rationale behind CCP's diverse selection of participants of the 1954 drafting process was to reward those who have "faithfully served the people" and assisted the CCP's ambition to establish a socialist China. In other words, Mao and other party elites thought those people have contributed to the PRC's nation building deserved to leave their mark on the 1954 constitution. Another reason for this diverse selection of participants was to legitimate the 1954 constitution as a "constitution of the people" (*Han 2004, 62*).

² A full list of the names of the members of the Constitutional Drafting Committee can be seen in Appendix A.

³ A full list of the names of the discussants of the seventeen Constitutional Discussion Groups can be found on page 260 of Wang's book *A Compilation of Chinese Constitution Literature Sources* (中国宪法文献通编).

Nevertheless, there is disagreement among Chinese scholars about how the members of the Constitutional Drafting Committee were selected. Law scholars such as Cai Ding-jian (蔡定剑) and historians such as Jin Chong-ji (金冲及) think that the members of the Constitutional Drafting Committee were selected by the Central People's Government Committee (中央人民政府委员会), the highest state organ of the PRC at the time. However, Han Da-yuan (韩大元), the Dean of Remin University law school and Deputy Director of the Constitutional Law Institute of China Law Society, holds the view that the committee members were handpicked by chairman Mao himself. According to Han, Mao had personally commented on the allocation of the seats in the committee, noting that "the more influential minor parties in the United Front such as the Revolutionary Committee of the Chinese Kuomintang (民革), China Democratic League (民盟) and China Democratic National Construction Association (民建) would each have two seats, and the rest of the political parties in the United Front and other grassroots organizations would each have one seat" (*Han 2004, 64*). Unfortunately, Han does not indicate the source as where and when did Mao make such utterances. But if Mao in fact did make them, the actual allocation of the seats in the Constitution Drafting Committee would then seem somewhat problematic because, according to Mao's explanation, each of the eight minor parties in the United Front would all at least have had one representative. But it turns out that some of the minor parties in the United Front such as the China Zhi Gong Party (中国致公党/致公党), the Jiu-san Society (九三学社) and the Chinese Peasants' and Workers' Democratic Party (中国农工民主党/农工党) were not represented at all. Moreover, contrary to Mao's words that the more influential minor parties would each receive two seats in the committee, the Revolutionary Committee of

the Chinese Kuomintang (民革) had three seats and the China Democratic National Construction Association (民建) only had one.

The following chart shows the official political affiliation of each of the thirty-three members of the Constitutional Drafting Committee in 1954:

Table 1: The Make-up of the Constitutional Drafting Committee⁴

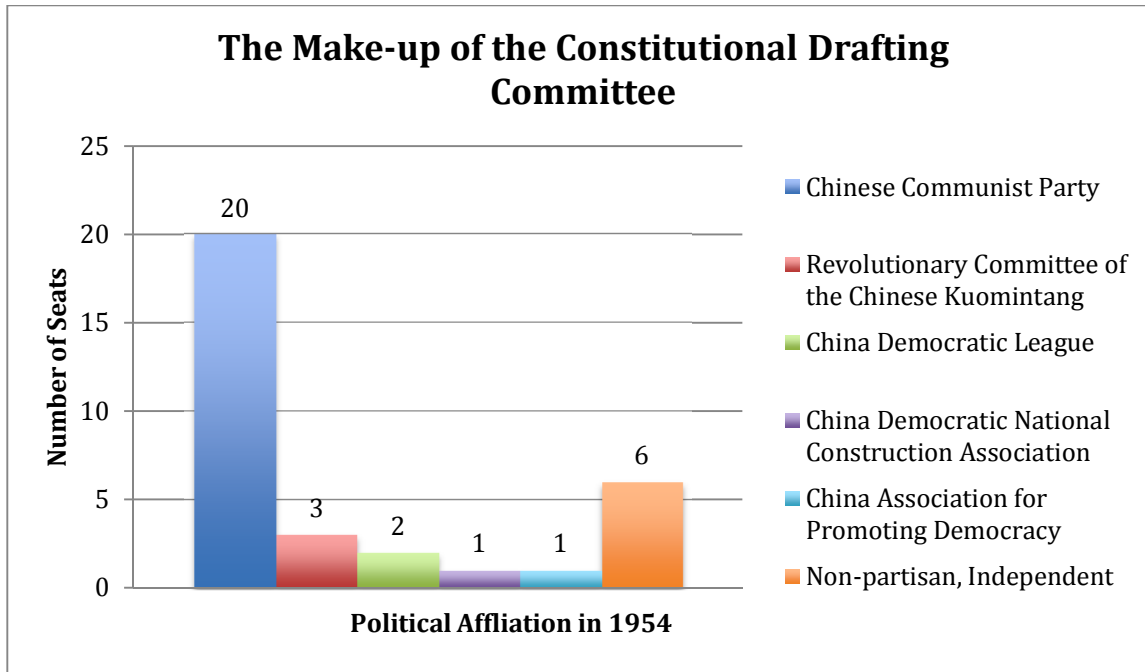
Name	Political Affiliation in 1954
1. Zhu-de 朱德	Chinese Communist Party (CCP)
2. Li Wei-han 李维汉	Chinese Communist Party (CCP)
3. Zhou En-lai 周恩来	Chinese Communist Party (CCP)
4. Lin Bo-qu 林伯渠	Chinese Communist Party (CCP)
5. Lin Feng 林枫	Chinese Communist Party (CCP)
6. Hu Qiao-mu 胡乔木	Chinese Communist Party (CCP)
7. Gao Gang 高岗	Chinese Communist Party (CCP)
8. Ulanhu 乌兰夫	Chinese Communist Party (CCP)
9. Chen Yun 陈云	Chinese Communist Party (CCP)
10. Chen Bo-da 陈伯达	Chinese Communist Party (CCP)
11. Xi Zhong-xun 习仲勋	Chinese Communist Party (CCP)

⁴ I looked up the names of the members of the Constitutional Drafting Committee, and looked into their biographies and then created the following data myself.

12. Peng De-huai 彭德怀	Chinese Communist Party (CCP)
13. Dong Bi-wu 董必武	Chinese Communist Party (CCP)
14. Liu Shao-qi 刘少奇	Chinese Communist Party (CCP)
15. Deng Xiao-ping 邓小平	Chinese Communist Party (CCP)
16. Deng Zi-hui 邓子恢	Chinese Communist Party (CCP)
17. Saifuddin Azizi 赛福鼎	Chinese Communist Party (CCP)
18. Bo Yi-bo 薄一波	Chinese Communist Party (CCP)
19. Rao Shu-shi 饶漱石	Chinese Communist Party (CCP)
20. Mao Ze-dong 毛泽东	Chinese Communist Party (CCP)
21. Song Qing-ling 宋庆龄	Revolutionary Committee of the Chinese Kuomintang (中国国民党革命委员会/民革)
22. Li Ji-shen 李济深	Revolutionary Committee of the Chinese Kuomintang (中国国民党革命委员会/民革)
23. He Xiang-ning 何香凝	Revolutionary Committee of the Chinese Kuomintang (中国国民党革命委员会/民革)
24. Shen Jun-ru 沈钧儒	China Democratic League (中国民主同盟/民盟)
25. Zhang Lan 张澜	China Democratic League (中国民主同盟/民盟)
26. Huang Yan-pei 黄炎培	China Democratic National Construction Association

	(中国民主建国会/民建)
27. Ma Xu-lun 马叙伦	China Association for Promoting Democracy (中国民主促进会/民进)
28. Shen Yan-bing 沈雁冰, also known as Mao Dun 茅盾	Non-partisan ⁵ , Independent (无党派)
29. Ma Yin-chu 马庚初	Non-partisan, independent (无党派)
30. Chen Shu-tong 陈叔通	Non-partisan, Independent (无党派)
31. Chen Jia-geng 陈嘉庚	Non-partisan, Independent (无党派)
32. Cheng Qian 程潜	Non-partisan, Independent (无党派)
33. Guo Mo-ruo 郭沫若	Non-partisan, Independent (无党派)

⁵ The label of “non-partisan, independent” does not by any means suggest that individuals such as Guo Mo-ruo (郭沫若) and Shen Yan-bing (沈雁冰) had a neutral political view that is independent of the communist party in 1954. In fact, both Guo and Shen had joined the CCP in the 1920s. Although both at one point had forsaken their party membership for personal reasons, they nevertheless remained closely affiliated with the party. Rather, it is better to understand the label of “non-partisan/independent” as the individuals such as Guo and Shen’s “official” identification to the public.



Again, had Han given us more information such as when and under what circumstance did Mao make such utterances, we might have been able to gain more insights on how the members of the Constitutional Drafting Committee were selected, so that we can better account for the apparent disjuncture between the rather plainly stated quota and the actual allocation of the seats in the Constitutional Drafting Committee.

Having said this, it is important pointing out that the Constitutional Drafting Committee did not actually *write* the draft constitution. The drafting was done by the Constitution Drafting Small Group (宪法起草小组), comprised of Mao and three of his secretaries Tian Jiaying (田家英), Hu Qiaomu (胡乔木) and Chen Boda (陈伯达).

As shown in Appendix B, the basic structure of the drafting process was as follows: the Small Group first wrote the preliminary draft constitution and presented it to the members of the Politburo for discussion. The Small Group made revisions based on the feedback received from the Politburo. In the name of the CCP, the Politburo then sent the revised preliminary draft to

the Constitution Drafting Committee and the seventeen Constitutional Discussion Groups. From there, the draft was open for a three-month intensive nationwide constitutional discussion, inviting feedback from all over the country (*Han 2004, 70*). It was said that, during the three-month period of nationwide constitutional discussion, 150 million people had participated in various ways, and the Constitutional Drafting Committee had received over one million opinions and suggested revisions to the draft constitution (*Cai 2004, 32*). The total Chinese population in the 1950s was 565 million (*UN, Population Indicators for China*), and to put the numbers into perspective, more than a quarter of the Chinese population participated in the nationwide constitutional discussion.

By mid-January 1954, Mao had produced a detailed nine-month drafting plan for the constitution in a telegraph (*毛泽东文集 1999, 320-21*). The plan is as follows:

- 1). Aim to complete the preliminary draft constitution in January 31st, and send it to the comrades of the Central for a first read.*
- 2). In the first half of February, prepare a draft review. Invite comrades Deng Xiao-ping (邓小平) and Li Wei-han (李维汉) to participate the review session. Then send the reviewed draft to the politburo and members of the Central Committee who are present in Beijing for further discussions and to obtain their initial approval.*
- 3). In early March, present the draft constitution to the Constitutional Drafting Committee (宪法起草委员会) for discussions. Discussions should be completed and the committee's approval of the draft constitution should be reached by the end of March.*
- 4). By the end of April, the Small Group would further review and amend the draft constitution, then present it again to the Politburo for more discussions, and then send it to the Constitutional Drafting Committee for its approval.*

5). *On May 1st, the Constitutional Drafting Committee would announce the draft constitution to the public, allowing a four-month period of nationwide discussions, so that the committee can make the necessary amendments to the draft based on the feedbacks received the nationwide discussions. In September, the finalized version would then be sent to the first National People's Congress for final approval.*

Moreover, Mao also instructed members of the Politburo and the Central Committee present in Beijing to read either in parts or in the entirety of the 1936 Stalin Constitution and Stalin's Report, the 1918 Russian Soviet Federated Socialist Republic Constitution, the Romanian, Polish, East German, and Czechoslovakian Constitutions, the 1913 Tiantan Draft Constitution, the 1923 Cao Kun Constitution, the 1947 Chiang Kai-shek Constitution and, last but not least, the 1946 French Constitution (*Writings of Mao Zedong 毛泽东文集 1999, 320*).

It turned out that the nationwide discussion only lasted three months instead of four as stated in Mao's original plan. But besides that, the actual drafting procedures of the 1954 constitution followed very closely to Mao's plan. As for the reading materials assigned by Mao, we sense a strong Soviet influence in Mao's constitutional thoughts. Mao in fact did not shun away from the fact that he took the Soviet and Eastern European constitutional model as a starting point for writing the PRC's 1954 constitution because of their ideological resemblances. And the 1954 constitution indeed considerably borrowed from the 1936 Soviet constitution. Not taking the different titles of the PRC and the Soviet Union's parallel organs, such as the PRC's Standing Committee of the National People's Congress and the USSR's Presidium of the Supreme Soviet, into the calculation, thirty-three articles or about 32% of the 1954 draft constitution is identical to the 1936 Soviet constitution; twenty-nine articles or about 28% of the 1954 draft constitution parallels to the 1936 Soviet constitution (*Han 2004, 104, 115*).

Discussions, Debates and Changes to the Draft Constitution

The draft constitution presented to the National People's Congress for final endorsement was by no means completed in one stroke of the pen. In fact, the final document underwent numerous changes, and, throughout the drafting process, many members of the Constitutional Drafting Committee and members of the seventeen Constitutional Discussion Group had lively discussion and disagreement.

Between November and December 1953, before Mao went to Hangzhou to work on the draft constitution, Mao asked his secretary Chen Boda to first write a preliminary draft as the foundation and a starting point for the imminent discussion within the Small Group. When Mao and the rest members of the Small Group finally arrived at Hangzhou and read Chen's draft on December 27, 1953, they, however, thought the framework, contents and structure of the draft were "too far off from what other members of the Small Group had expected" (*Han 2004, 72*). Hence, Chen's draft was discarded and replaced by a new draft. However, as Han acknowledges, he was not able to gain access to the actual texts of Chen's draft in the archive (*Han 2004, 71*), we are thus left in the dark about what Chen wrote that was considered unacceptable.

It is unfortunate that most of the historical sources of the Small Group's works in Hangzhou are now lost in the archives (*Han 2004, 76*), but, according to Han, in *The Manuscripts of Mao Zedong* (建国以来毛泽东文稿), we do have sixteen Mao's handwritten comments to the draft constitution.⁶ It is worth pointing out that Mao wrote the first twelve of these comments somewhere between the month of January and February of 1954. In other

⁶ I did look into the *Manuscripts of Mao Zedong* (建国以来毛泽东文稿) at the East Asian Library at Cal, but I did not find Mao's comments to the draft constitution. I am not sure where did Han find the comments, and whether Han here is telling the right place to find it.

words, Mao's first twelve comments were written before the draft constitution was presented to the Constitutional Drafting Committee, which means that the draft constitution at that point was still a private document only available to discuss amongst the members of the Small Group and those of the Politburo. Here I will list a few Mao's noteworthy comments. Article 80 of the preliminary draft reads: "Citizens of the People's Republic of China enjoy the freedom of speech, press, assembly, association, procession, demonstration and religious belief." Besides the phrase "procession and demonstration," Mao drew two vertical lines, a question mark and wrote: "It is better to not write it [不写为好]" (*In Han 2004, 79*). Here it seems Mao felt uncomfortable to write the right to procession and demonstration into the 1954 constitution. However, other members of the Small Group or perhaps those of the Politburo apparently did not agree with Mao, as Article 80 of the amended draft presented to the Constitutional Drafting Committee by the Politburo in March 23rd, 1954 still included the phrase "freedom of procession and demonstration" (*In Han 2004, 644*).

Article 77 of the preliminary draft reads: "the state guarantees that citizens' freedom of residence (居住自由) will not be violated; citizens' privacy of correspondence is protected by law". This draft also includes an alternative, which suggests to change the phrase "privacy of correspondence (通讯秘密)" to "freedom of correspondence (通信自由)." Right next to the phrase "freedom of correspondence," Mao drew a vertical line, and wrote "more appropriate (较妥)" (*In Han 2004, 79*). However, its parallel in the amended draft presented to the Constitution Drafting Committee in March 23rd, 1954 reads: "Citizens of the People's Republic of China's *privacy of correspondence* is protected by law" (*In*

Han 2004, 644, Article 82), suggesting again that Mao's comment was not accepted by either the members of the Small Group or the members of the Politburo. The fact that a number of Mao's comments were turned down suggests that, although Mao was the unquestioned leader of the 1954 drafting process, his normative views/proposed revisions to the early drafts of the 1954 constitution were not unchallenged by his fellow drafters. It also suggests that Mao did not have as much personal power as he would later acquire in the late 1950s/1960s.

From March 23rd to June 11th, the Constitutional Drafting Committee had seven meetings in total. During the first of the meetings, Mao's secretary Chen Boda presented the "Explication of the Draft Constitution" (宪法草案起草工作的说明) to the members of the Constitutional Drafting Committee. While Chen was speaking on the issue of ethnic minorities and autonomous regions, Mao chimed into the discussion, adding: "In order to cater to the needs of ethnic minorities and especially those of the Tibetans, we wrote in the draft constitution that, 'the specific forms of government of autonomous regions should be determined in accordance with the wishes of the ethnic majorities who reside there' (*Article 61, Paragraph Three*). Mao further explained his concern with Dalai Lama's legitimacy to rule Tibet under the 1954 constitution. As Mao reasoned, the PRC prides itself as the government of the people, and the draft constitution also explicitly states that the legitimacy of the CCP to rule China is derived from the would-be held national elections and the first National People's Congress. But Dalai Lama, in the eyes of the Tibetans, is a living Buddha, a transcendent human being. Thus, the fact that he was not elected by the Tibetan people but born to be the leader of Tibet is

problematic because it doesn't accord with the PRC's new constitution. But paragraph three of the Article 61 helps solve this problem, for, on one hand, the law helps to justify the fact that an unelected semi-holy figure is the de facto ruler of Tibet, on the other, it does not contradict the principles of democracy that has been enshrined into the new constitution, because Dalai's rule is indeed popular in Tibet and is thus "in accordance with the wishes of the ethnic majorities who reside there" (*In Han 2004, 230*).

When Mao finished his speech, Huang Yan-pei (黄炎培), a member of the Constitutional Drafting Committee, took the spotlight and made the following utterances:

*"[Paragraph three of the Article 61] is our only practical solution to this [Tibetan] problem. I've said to the Tibetan delegates at other occasions that we don't want to force your hands. Whether you want to implement the land reforms, whether to hold elections, it is up to you to decide. But to not implement the 'Seventeen Point Agreement for the Peaceful Liberation of Tibet?' Not possible, the seventeen points must be implemented. But if there are any particular points you don't feel comfortable to implement immediately, you can put them aside for now because the Seventeen Point Agreement did not set a timetable that specified which year or which month in which these seventeen points must be fully implemented. You've already dragged on for three years. If you wish, you can drag on for three more years, and when the time is up, drag on for another three year. Even if you want to drag on for a total of nine years is fine and acceptable to us. We can't force the Tibetans to do what they are opposed to; rather, we should be patient with their political preferences and wait for their genuine consent. We are confident that the Tibetan people will one day understand and embrace us (*In Han 2004, 231*)".*

The “Seventeen Point Agreement for the Peaceful Liberation of Tibet” referenced by Huang Yan-pei is a document signed by delegates of the PRC and the 14th Dalai Lama in 1951, in which the Tibetan delegates affirmed Chinese sovereignty over Tibet. Here it seems that the PRC was rather generous to the Tibetan people, willing to consider their cultural differences and not forcing the Tibetans to implement the kind of sweeping socialist reforms that were taking place at other parts of China. What the Chinese wanted from the agreement, as suggested by Huang’s speech at the Constitutional Drafting Committee, was probably Dalai Lama’s official acknowledgement of Chinese sovereignty over Tibet. As for the actual transformation/incorporation of Tibet into part of the China proper, on the other hand, was probably not a part of the PRC’s short-term plan of building a socialist China. The PRC’s strategic policy toward Tibet is thus not unlike the imperial tribute system where the vassal states acknowledged the Chinese emperor’s supremacy at court but in fact remained as the de facto ruler of their power domains. In sum, here we see some compromises were indeed made to the draft constitution amongst the attendees to accommodate the cultural and political needs of the Tibetan people.

However, it is worth pointing out that many Tibetans thought and still believe to this day that the seventeen-point agreement was signed under Chinese duress and invalid because the Chinese Liberation Army crossed the Jinsha River (金沙江) in October 1950, defeated the Tibetan army and occupied eastern Tibet. Anticipating a total victory, the PRC asked Tibet to send its representatives to Beijing to negotiate a peace agreement. Some historians have pointed out that the Tibetan representatives were not allowed to either suggest any significant alterations to the seventeen agreements or to communicate with the Tibetan government in Lhasa. Having no meaningful bargaining chips during their negotiation with the Chinese, the Tibetan delegates

signed the seventeen-agreement only to avoid a full Chinese occupation of Tibet (*Goldstein. A History of Modern Tibet, 1989, 36-71*). Furthermore, according to Huang Yan-pei, there was not a specific timetable set in the agreement which required Tibet's immediate conformity to Chinese authority, but the seventeenth point of the agreement seems to suggest the opposite, for it reads: "This agreement shall come into force immediately after signatures and seals are affixed to it" (*The Seventeen Point Agreement for the Peaceful Liberation of Tibet*). It seems that Huang, perhaps along with some other high-ranking officials of the RPC, did not take the seventeen-point agreement literally and left some wiggle room for expedient and strategic compromise. Ironically, because of this loose reading of the seventeen-point agreement by the PRC, the 14th Dalai Lama repudiated the agreement in 1959 on the grounds that since China herself had broken the terms of her own "Agreement," there could no longer be any legal basis for recognizing it" (*Dalai Lama 1991, 133-141; The Dalai Lama's Mussoorie Press Conference*).

As the aforementioned archival sources altogether suggest, what actually happened at these meetings of Constitution Drafting Committee were very nuanced. On the one hand, the discussions among the attendees did suggest that the PRC's elites made compromises to the draft constitution on the behalf of the Tibetan people and did not force them to comply to the politics of Beijing. On the other hand, however, no Tibetan delegates were present at these meetings. We are thus left with the impression that whatever "concessions" made to the Tibetans were unilateral and reflected the imbalance of power between the PRC and the Dalai Lama. Lastly, one caveat important pointing out is that we simply don't know how much and to what extent the archival sources are filtered by the PRC. With this in mind, the accessible archival sources then might only replicate a self-image of the PRC, which itself has carefully adorned over the years.

The most controversial and iconic incident reflecting the power gap between the PRC and the Tibetans was when the 10th Penchen Lama Choekyi Gyaltzen (十世班禅额尔德尼), the second highest ranking lama in Tibet, gave a surprisingly flattering speech about the draft constitution at the first National People's Congress in September 16th, 1954. Here is a brief excerpt of what the 10th Penchen Lama said at the NPC:

“We’ve extensively discussed and studied the PRC’s draft constitution in great details, I think this draft constitution is completely correct, thereby best representing each nationality and ethnic group’s interests and her longing for peace. Only a constitution such as this, can truly protect the equal rights of ethnic minorities; only a constitution such as this, can consolidate the fruits of the people’s victorious revolutions; only a constitution such as this, can guide us to march on the promising route of socialism. Therefore, I unconditionally concur to the draft constitution, and wholeheartedly support its final endorsement. Under the leadership of the great Chinese Communist Party and the revered leader chairman Mao, Tibet was liberated peacefully, and the Tibetan people are now free forever from the bondages of imperial powers, honorably returned to the motherland...” (Han 2004, 334).

Considering the strong Tibetan opposition to the seventeen-point agreement and the fact that 10th Penchen Lama Choekyi Gyaltzen was neither a member of the Constitutional Drafting Committee nor invited to Beijing to provide feedback, it is rather difficult to make sense of the Penchen Lama’s sugar-coated speech at the NPC. We don’t know whether the Penchen Lama was either coopted/compelled to make such utterances or, having realized that the imminent adoption of the draft constitution was inevitable, he just went along with the crowd and did not truly speak his mind. In any case, more research on Chinese-Tibetan relations in the 1950s is needed to unravel the stories behind the Penchen Lama’s controversial speech.

On May 29th 1954, the Constitutional Drafting Committee held its fourth meeting. During the meeting, the issue of the autonomy of ethnic minorities again became the center of discussion. Disagreement among the attendees emerged when Article 70 of the draft constitution was asked for feedback, which reads: “the political organs of autonomous/self-governing regions shall exercise their autonomy as prescribed by the constitution and by law”. Yun Long (云龙), a member of the Chinese People’s Political Consultative Conference and was a warlord based in Yunnan (云南) from 1927 to 1945, thought the phrase “exercise their autonomy as prescribed by the constitution and by law” offered only shallow protection of the autonomous rights of ethnic minorities because things that are not specified or prescribed by law would become, by implication, illegal.⁷ Dong Biwu (董必武) disagreed, arguing that the prescribed self-governing rights under this draft constitution, such as the right to have an independent budget, to set up public security forces, to make local laws, are already more than enough to secure the “independence” of ethnic minorities from the cultural and political intrusion of the Han-ethnic Chinese. Concurring with Dong, Deng Xiao-ping (邓小平) thought that it is dangerous to grant ethnic minorities an unlimited self-governing right under the constitution because it would be a slippery slope in the sense that the ethnic minorities would soon ask for unreasonable rights, such as the right to secession and the right to become part of other countries. These foreseeable demands, according to Deng, are intolerable, and it is thus necessary to make the self-governing

⁷ Yun Long was a non-Han ethnic Chinese; he was an ethnic Yi (彝族). It is also worth pointing out that he is neither a member of the Constitutional Drafting Committee nor a one of the discussants of the seventeen discussion groups. Conferee Xu Te-li (徐特立) also was neither a member of the Constitutional Drafting Committee nor a one of the discussants of the seventeen discussion groups, so it seems that these meetings held by the Constitutional Drafting Committee were not exclusive only to the committee members and discussants of the seventeen discussion groups.

rights as specific as possible, so that both parties (the PRC and the ethnic minorities) know precisely what is allowed under the law. In the end, Yun Long yielded and did not insist his objection to Article 70 of the draft constitution (*Han 2004, 241-243*). Here again we see the attendees trying to find the right balance between the ethnic minorities' right to self-government and Beijing's sovereignty over the autonomous regions.

Later in the meeting, attendees also discussed the right of defendants to counsel. The Constitutional Drafting Committee considered whether or not the proposed article should read “the accused has the right to obtain defense (获得辩护).” Noting the lack of lawyers in China, Chen Shutong (陈叔通), a committee member, 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 (辩护权).”⁸ Deng Xiaoping, however, pointed out that defense counsel needed not be a lawyer. Defendants could represent themselves, appoint a non-lawyer to represent them, or the court could appoint someone for them (*Han 2004, 245-246, Translated in Tiffert 2009, 70*). Deng's argument proved to be more persuasive, for “the accused has the right to obtain defense” survived in Article 76 of the 1954 constitution (*Tiffert 2009, 70*).

Between May 6th and 22nd, 1954, the seventeen Constitutional Discussion Groups held a series of joint conferences (宪法起草座谈会各组召集人联席会议) to further discuss the draft constitution and sent the fruits of their discussion to the Constitutional Drafting Committee. In this meetings, Li Weihai (李维汉), Qian Duansheng (钱端升), Zhang Zhirang (张志让) and

⁸ There were approximately 3,000 lawyers in China in the 1950s (F. Tian, *A Tentative Discussion on Chinese Legal Profession in the Late 80s*. Published in 1989). Since the total Chinese population in the 1950s was 565 million, the ratio of the number of people per lawyer was approximately 188333: 1.

Zhou Gengsheng (周鯁生) discussed the nature of the draft constitution's grant of judicial authority to the courts. The original text reads: "The judicial authority (*sifaquan*/司法权) 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 attendees recommended replacing the term *sifa* with the more restrictive *shenpan* (trial or adjudication/审判) to produce a revised text. And article 73 of the final text of the 1954 constitution did in fact reflect this narrower authority (Tiffert 2009, 68; Han 2004, 169-171). A related question arose with respect to the draft constitution's guarantee of judicial independence. The original draft text reads: "People's courts at every level exercise their official powers independently (独立行使职权), 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 (独立行使审判), subject only to the law." This suggestion 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" (Tiffert 2009, 68-69).

The draft constitution was then opened up to a three-month period of national discussion from June 16th to September 11th, 1954. Draft Constitutional Discussion Committees were formed in work units across the nation, and discussion leaders were trained to promote the draft constitution. For example, the Beijing Broadcasting System aired daily explanatory discussions of the text on radio. 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 and

published into a sixteen-volume reference collection entitled “Collected Opinions from the National Discussion (全民讨论意见编辑)” (Tiffert 2009, 70; Han 2004, 291-99).

In September 8th, 1954, Deng Xiaoping presided over the eighth meeting of the Constitutional Drafting Committee in Zhongnanhai to make final revisions to the draft constitution based on public feedback. After a few minor additional changes, the National People’s Congress officially adopted the 1954 constitution on September 20th, 1954. Originally envisioned as a transitional document that would be replaced upon the actualization of socialism, the 1954 constitution remained in place for nearly twenty-one years (Tiffert 2009, 70).

Other Critics of the 1954 Constitution:

Beside the aforementioned discussions that took place during the drafting process, the 1954 constitution received little to no criticism within Mainland China. It is worth pointing out, however, that it was possible that some intellectuals or observers of the drafting process residing in Mainland China at the time did critique the 1954 constitution. If they did, their names and the content of their critique was either lost in historical sources or censored by the CCP. Nonetheless, some anti-communist Chinese living overseas vehemently attacked the 1954 constitution. Here I will mainly discuss two overseas Chinese critics, Sun Zeguang (孙泽广) and Wang Housheng (王厚生). Both Sun and Wang are somewhat mysterious figures, and I was unable to find out much about their biography. However, we do know that both of them had close ties with the noted intellectual Zhang Junmai (张君勱), the founder of the China Democratic Socialist Party, and were influenced by Zhang. In his *The So-Called “Constitution”*

of the Chinese Communists (*中共的宪法*),⁹ Sun Zeguang speaks very highly of Zhang Junmai's political vision (*Sun 1954, 105-11*). Zhang advocated a middle way between the democratic, capitalist U.S.-led western European model and the socialist, non-democratic Soviet-led communist model (*Fang 1998, 50-61*).¹⁰ As for Wang Housheng, the preface of his book *Commentaries of the Constitutional Making of the Chinese Communists* (*中共制宪评论*) was written by Zhang Junmai. What is more, many of Wang's writings were published in the *National Renaissance* (*再生周刊*), a periodical also founded by Zhang Junmai.¹¹

We also know that Sun Zeguang was once a student of Luo Longji (*罗隆基*), a prominent intellectual and one of the designated discussants of the seventeen Constitutional Discussion Groups. In his book *The So-Called "Constitution" of the Chinese Communists*, Sun Zeguang mentions that he was utterly disappointed by a speech given by his former teacher Luo Longji at the first National People's Congress in September 1954 when the draft constitution was about to be formally adopted (*Sun 1954, 113*). What Luo said at the NPC, according to Sun, was: "I am a person who studied constitutional law in both the UK and the U.S; I am a person who taught constitutional law at universities; ... I am a person who was once *poisoned* by the constitutional theories of those capitalist countries; what is worse, I must frankly confess, I am a person who used such poisonous theories of constitutional law to contaminate and harm China's youths. As for myself today, I must develop a new view and a new understanding [of constitutional law], so

⁹Either Sun Zeguang (*孙泽广*) himself or probably the publisher translates *中共的宪法* as *The So-Called "Constitution" of the Chinese Communists*, as it is evident in the book.

¹⁰ More information about Zhang Junmai's party such as its unique take of democracy and socialism can be found 方庆秋's *中国民主社会党*, P50-61, 1998, 档案出版社

¹¹ If any reader wants to access Wang's publications in the *National Renaissance*, just search the author name [王厚生 in the 大成老旧刊全文数据库](#).

that I can be qualified to represent and vote on the behalf of the Chinese people to ratify the draft constitution of the PRC” (*Sun 1954, 113*). Sun decried Luo’s speech, and wrote: “Teacher Luo, you in fact did not use poisonous theories of constitutional law to contaminate your students, it was just you were contaminated by the Chinese communists, or, because of some other reasons, you contaminated yourself!” (*Sun 1954, 114*). It is unclear how Luo and Sun’s teacher-student relationship ended so badly, but this is how we know Sun’s identity as a former student of Luo Longji.

What Did the Critics Say?

According to Wang Housheng (王厚生), many members of the Constitutional Drafting Committee failed to give constructive feedback to the draft constitution. For example, as Wang points out, in June 1954, the Central People’s Government Committee (中央人民政府委员会) organized a meeting among the drafters to further discuss possible revisions to the draft constitution. In that meeting, Constitutional Drafting Committee member Li Jishen (李济深) said: “I wholeheartedly support and agree with the content of the draft constitution in its entirety.” Sai Fuding (赛福鼎), another committee member, similarly said: “I completely agree with and support the draft constitution, and recommend the Central People’s Government Committee to endorse it” (*Wang 1955, 61-71*). In sum, Wang thinks that the remarks made by Li and Sai were obviously flattering to the Communist Party, and they disappointed Wang.¹²

¹² According to Wang, other members of the Constitutional Drafting Committee also spoke in that meeting, and the content of their speech is very similar.

Sun Ze-Guang (孙泽广), on the other hand, argues that the Constitutional Drafting Committee was a token gesture by the Communist Party to create the appearance of democratic participation in the drafting process. The truth is that the “drafting committee” did not do any drafting at all, because the draft constitution was solely written by Mao himself and three of his secretaries Tian Jiaying, Hu Qiaomu and Chen Boda (*Sun 1954, 1-2*). In fact, before the draft constitution was presented to the Constitutional Drafting Committee, it was first sent to and approved by the Politburo. Therefore, the draft constitution, in the eyes of Sun, was a partisan document that served the interests of the Communist Party (*Sun 1954, 7-8*). Furthermore, Sun points out that the national constitutional discussion led by the CCP was a political formality and a hypocritical spectacle, for these so-called “discussants” were sycophants who shamelessly praised the greatness of the party and the brilliance of the draft constitution (*Sun 1954, 3-5*). For example, in August 11th, 1954, the Hong Kong Da Gong Newspaper (香港大公报) reported that the actors and actresses of the *Shanghai People’s Art Theater* were so exhilarated and honored to see the draft constitution. Actress Zhang Manping (章曼苹) said: “I just saw the draft constitution, how can I not be excited and thrilled!” Actor Shen Yangze (沈阳则), on the other hand, compared the draft constitution to a delicate flower and said: “we have to carefully cultivate it [the draft constitution] and use our blood and sweat to help it grow” (*Sun 1954, 4*). In brief, Sun thinks the national constitutional discussion failed to give any meaningful and constructive feedback to the Constitutional Drafting Committee, because the discussants were either incapable of or afraid of critique.

Lastly, both Sun and Wang argue that most of the revisions made to the draft constitution were only minor textual changes that never really challenged the ideological trajectory of the 1954 constitution. For example, as Sun points out, the original text of article three paragraph three of the draft constitution read: “All the nationalities have the freedom to develop their own spoken and written languages, and to preserve or reform their own customs and religious beliefs.” In the actual 1954 constitution, only the word “*use*” was added to the original text, which now read: “All the nationalities have the freedom to *use* and develop their own spoken and written languages, and to preserve or reform their own customs and ways.” In sum, in the eyes of Sun and Wang, such textual changes were trivial and hardly challenged the substance of the draft constitution.

Evaluating the Critics:

Despite the fact that we don't know much about Sun and Wang as individuals, we nevertheless can evaluate the substance of their critiques. For example, Wang claims that the Constitutional Drafting Committee members did not give any constructive feedback to the draft constitution in the meeting held by the Central People's Government Committee (CPGC) in June 1954, thereby failing to live up their roles as the “drafters of the constitution.” However, it is important to point out that the draft constitution was first presented to the members of the Constitutional Drafting Committee in March 23rd, 1954, which was three months prior to the CPGC meeting. In other words, between the month of March and June 1954, the members of the Constitutional Drafting Committee had plenty of time to discuss and propose their suggested revisions to the draft constitution. And, as this paper has already suggested, this was exactly what had happened between March and June 1954. In this sense, the Constitutional Drafting

Committee members probably had already reached consensus about the draft constitution before the meeting took place. It is therefore not surprising that, having already had extensive and in-depth constitutional discussion for months, many members of the Constitutional Drafting Committee simply expressed their appreciation for the draft constitution and congratulated each other for the hard work at the CPGC's meeting.

As for Sun's critique that the Constitutional Drafting Committee did not do any drafting, it is actually not unusual to have a draft constitution written only by a few individuals and then to have it be discussed by others.¹³ But I think what Sun was getting at is that the title of "Constitutional Drafting Committee" can be extremely misleading, because as the title suggests that we would expect the members of the "drafting committee" to do some drafting.

What is more, if we are to count the sheer quantity of amendments made to the draft constitution, Sun and Wang are indeed correct in saying that "most of the revisions made to the draft constitution were only minor textual changes that never really challenged the ideological trajectory of the 1954 constitution." The more interesting discussions mentioned earlier in this paper are in fact relatively rare in comparison to trivial changes that mainly involved issues of word choice and clarity.

Last but not least, I want to say few words in regard to Sun's critique to the national constitutional discussion. To Sun, the national discussion ought to be a mechanism to gather constructive feedback on the draft constitution. But this could not possibly be what the leaders of the CCP had in mind when they first initiated the discussion. With all due respect to the

¹³ I've talked the issue of "should a draft constitution be written by a few people or by many" to a number of Professors (Prof. Shannon Stimson, Prof. Bob Berring and Prof. Rachel Stern) here at Cal. They all share the opinion that it is not unusual to have a draft constitution be written by a few individuals and then to have it be discussed by others. I have to admit that I did not further look into this problem, which I perhaps should have done so.

Chinese workers and peasants, we may wonder whether it was a wise decision to look for high-quality constitutional feedback from China's vast and uneducated masses. According to China's Ministry of Education, the country's overall literacy rate in the 1950s was merely 20 percent (*Quote in Plafker, 2001*). Even amongst the few who were literate, many of them probably never received the kind of legal education that would prepare them to propose meaningful constitutional feedback. Thus, the national discussion could not possibly be an effective mechanism to perfect the draft constitution.

But Sun does seem to have a point in observing that the national discussants were afraid of critiquing the draft constitution that supposedly exemplified the wisdom of the entire nation. From a People's Daily news article titled "*Furthering Study, Promote and Discuss the Draft Constitution – the Miao Ethnic's Singings of the Draft Constitution* [进一步学习、宣传和讨论宪法草案 – 苗家歌唱宪法草案]" published in July 29th 1954, we may grasp a sense of how the national discussion was carried out in practice. For example, in the Majiang County (麻江县) of the Guizhou (贵州) province, journalists had heard folks songs that were composed to publicize the draft constitution, and they reported the following lyrics:

"The communist party is the savior, leads us to stand up for ourselves; it is quite delightful to be the masters of our own lives, constitutional discussions must be treated seriously. The more we sing the folks songs, the more pleasant they sound; the more we study the policies [of the party], the better we will understand them. The people's constitution is a shining beacon, illuminating our bright future prospects [共产党是救星，领导我们翻了身；当家作主真高兴，讨论宪法要认真。山歌越唱

越好听，政策越学心越明；人民的宪法是明灯，照着我们好前程]” (Quote in

Han 2004, 295).

Other lyrics even compared the draft constitution to the stars in the sky, “just as each and every star in the sky is always bright and clear to see, each and every articles of the draft constitution should also be remembered by heart; the people of the entire nation are closely united together to ensure that the draft constitution is well implemented [天上星宿颗颗明，宪法条条记在心，全国人民团结紧，保证条条都施行]” (*Quote in Han 2004, 295*).

Unlike some of the more interesting discussion taken place among the Constitutional Drafting Committee members, the “national discussion” hardly involved any kind of exchange of opinion. Furthermore, instead of comprehending the draft constitution themselves, the masses understood it primarily via the retellings of the promoters (宪法草案宣传员) and the aforementioned propaganda. The advantages of this are two-fold. First, since the literacy rate of China in the 1950s was merely 20%, the draft constitution was simply unintelligible to the majority of the masses. Thus, instead of having the masses to read the draft constitution firsthand, it is, in the eyes of the party, more practical and efficient to have someone else to explain the draft constitution to the masses. As a result, the masses’ understanding of the draft constitution would certainly be partial and shallow. But, via the retellings of the promoters and propaganda, the masses nonetheless could identify themselves with specific selling points of the draft constitution, such as the ones that guarantee gender equality and the universal suffrage. For example, many women supported the draft constitution because it mandated “the equality of men and women [男女一律都平等]” (*Han 2004, 295*). The second advantage of the national discussion is political. In the process of retelling and studying of the draft constitution, many

masses experienced an unprecedented level of participation in national affairs. Although only a handful of their suggested revisions to the draft constitution were incorporated into the 1954 constitution (*Liu Shaoqi's Constitutional Report*), the masses nevertheless perceived the draft constitution as legitimate and democratic. It is important pointing that, without the national discussion, the 1954 drafting process would be equally vulnerable to critiques of democratic deficit. Just as the Communist Party handpicked the drafters of the Common Program,¹⁴ it also non-democratically selected the drafters of the 1954 constitution.¹⁵ It is in this sense that the national discussion is so important, for it sets the drafting process of the 1954 constitution apart from that of the Common Program.

Here I suggest that China's national constitutional discussion is only to be properly understood in relation to China's larger political context, especially in relation to the universal suffrage elections organized by the Communist Party in the 1950s. In his Ph.D. dissertation *Voting as a Rite: Changing Ideas of Elections in Early Twentieth Century China*, Joshua Hill contends that the elections of 1950s were designed to be consensual and non-competitive, for voting was primarily "intended to 'educate' voters about the state's values, in terms of reflecting and shaping popular attitudes toward politics" (*Hill 2011, iv*). As Hill further points out, the significance of these elections did not lie in the result but in the process, by which the masses were transformed into citizens of a new socialist state and their political views were brought in line with those of the party (*Hill 2011, 314*). Just like the elections in the 1950s, the national constitutional discussion shares a similar political logic: to be educational and non-argumentative.

¹⁴ As this paper has pointed out earlier, the Common Program, together with the Organic Law of the Central People's Government, served as the provisional constitution of the PRC from 1949 to 1954.

¹⁵ Although the selection process was legitimate and democratic in the eyes of the party, it was nonetheless not democratic in the sense that no genuinely competitive elections had taken place.

In light of this, we should better understand the aforementioned lyrics as a pedagogical tool that not only helps to legitimize the draft constitution but also makes it intelligible to the masses. Therefore, rather than simply discarding the national constitutional discussion for being a mere political spectacle, which was Sun Ze-Guang (孙泽广)'s critique of it, we may want to re-conceptualize the national discussion and understand it as a kind of political education instead. It is worth pointing out that even though the party transformed elections from a choice into legitimation of the appointed candidate, the party actually embraced its dominance in the election process and thought it was perfectly justifiable. The party's rationale, in a nutshell, is that since the Communist Party views itself as a party of the people, it of course represents the interests of the people; thus, what the party desires is always in full accordance with the wishes of the people. Therefore, instead of remaining low-key, the party actively publicized these elections as a new form of democracy (*Hill 2011, 304-05*). Similarly, the party did not shun away from the educational and non-argumentative aspect of the national discussion. Since the draft constitution, in the eyes of the party, had already embodied the wisdom of the people, there was nothing more to be argued about. And the purpose of the national discussion was to awaken the people to the correct understanding and to convince them that the draft constitution was precisely what they wanted. In sum, the party's logic is clearly circular, but it is important to understand the national discussion from the standpoint of the party.

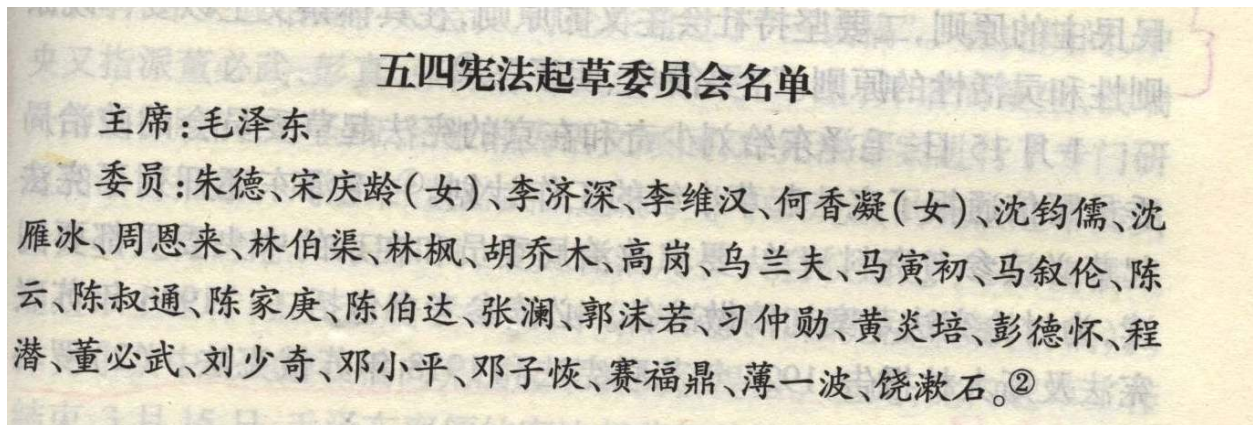
Overall, it is clear that parts of Sun and Wang's critique to the 1954 drafting process were exaggerated and, to some extent, unfounded, but the two critics are nonetheless important because they've given us an alternative perspective of the 1954 drafting process that is independent from the official portrayal of the party.

Conclusion:

As Tiffert nicely puts it, “the 1954 text was dominated by a single political party and its drafting was personally directed by Chairman Mao and the CCP’s highest leaders, though some noncommunist figures also played pivotal roles in its formulation and subsequent exegeses” (Tiffert, 2009). Although the 1954 constitutional drafting process certainly succeeded in bolstering the Communist Party’s democratic legitimacy, the question of “whether the drafting process was really as democratic and transparent as the party wanted us to perceive” still remains controversial. One on hand, the basic ideological trajectory laid out by the Small Group was never challenged by members of the Constitutional Drafting Committee, let alone by the national “discussants” who were barely literate enough to understand the draft constitution. On the other hand, archival sources suggest that the discussion taken place among the Constitutional Drafting Committee members did proceed in a respectful and somewhat democratic manner. If anything this paper has accomplished, I hope it has made its readers to realize that the kind of reductionist view that divides history into a black and white dichotomy is probably never sufficient to understand the nuances of past.

Appendix:

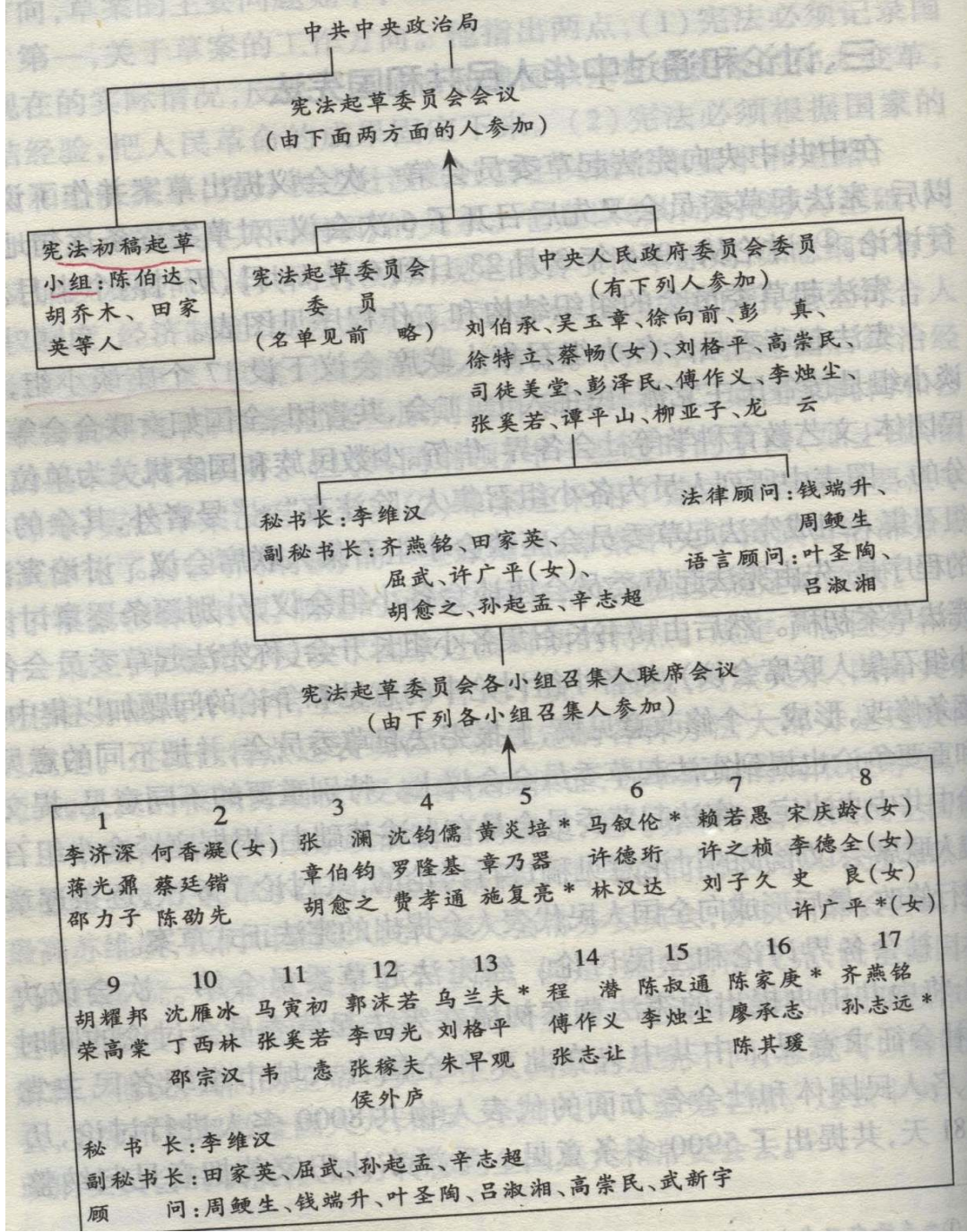
A. The attached is a full list of the members of the Constitution Drafting Committee:



(Cai 2004, 27)

B. Following this is an attachment of a basic structure of the drafting process: The Constitution Drafting Small Group first wrote a preliminary draft constitution and presented it to the Politburo for discussion. The Politburo then presented the revised preliminary draft to the Constitution Drafting Committee. After being discussed in the Drafting Committee, the draft constitution is finally presented to the constitutional advisors, who were composed of seventeen discussion groups, for further discussions. The graph below, however, does not include the nationwide constitutional discussions.

宪法起草委员会组织结构和工作程序表



(Cai 2004, 32)

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