

Why Does China's Constitution Belong to "Us"?

LIN Laifan * & TAN Yinhao**

Abstract: *The development of the Constitution of the People's Republic of China to date has been driven by the will of the people, and it can rightly be called "the constitution of we the people." However, the justification for why the constitution deserves our intergenerational recognition does not rely solely on historical narratives; it can also be clarified by exploring its normative characteristics. First, in terms of functional positioning, China's Constitution is not only the "fundamental charter for governing the country and ensuring national stability" but also ideally expected to be the "guarantee for the people's happiness." Only by safeguarding the basic dignity and rights of every individual will future generations recognize the constitution. The normative characteristics of China's Constitution also lie in its preamble that contains historical narratives, its democratic orientation, the coexistence of two types of programmatic provisions, and its textual feature of combining explicit and implicit content. These characteristics not only mark the uniqueness of China's Constitution but also enable constitutional practice to continuously develop into a common cause of "we the people." Moreover, the constitutional spirit of safeguarding human dignity, as a fundamental characteristic, provides the ultimate rationale for "the goodness of the*

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constitution.” In the new era, we must further promote the implementation of the constitution, give play to its function as the “guarantee for the people’s happiness,” carry forward its outstanding normative characteristics, and enable the people to gain a genuine sense of fulfillment and happiness through concrete and vivid constitutional practice.

Keywords: China’s Constitution ♦ constitutional norms ♦ happiness ♦ constitutional implementation ♦ human dignity

I. About the constitution and “We”

In terms of legal form and procedural significance, the *Constitution* of the People’s Republic of China began with the 1954 *Constitution* and has evolved over more than 70 years. Looking back, under the guidance of the Communist Party of China’s vision of “breaking out of the historical cycle through a new democratic path,”¹ millions of people embraced the revolutionary ideals of “national independence and liberation and for democracy and freedom” (Paragraph 2 of the Preamble to the current constitution) and participated in the drafting of the 1954 *Constitution*, thereby inaugurating a new course of people’s democracy in the history of China’s *Constitution*. Since then, the will of the people has remained a driving force in the development of China’s *Constitution*. Although the practice of China’s *Constitution* experienced a tortuous course, fortunately, the year of 1982 witnessed the adoption of what can be regarded as the most complete *Constitution* in the history of the People’s Republic of China. It incorporated elements of the rule of law and put the will of the people firmly within the constitutional norms.²

From the perspective of the history of human constitutions, almost every constitution adopted through democratic procedures faces, from its inception, a fundamental question: how does this constitution belong to “we the people”? This formulation may easily evoke the work of American scholar Bruce Ackerman, who depicted the history of the U.S. *Constitution* as a continuous process of renewal in which “we the people” participate during “constitutional

¹ Huang Yanpei, *For Eighty Years* (Beijing: China Literature and History Press, 1982), 157.

² Lin Laifan, “The Spirit of the ‘1982 Constitution’,” *China Legal Review* 5 (2022): 157.

moments.”³ However, the question of why a constitution is the law of “we the people” is not merely a concern of the populace within the political life of individual countries, nor can it be answered solely through such historical narratives of popular constitution-making. On the one hand, Ackerman’s notion of “constitutional moments” often reveals the underlying struggles among political forces, and “we the people” can easily become a floating “phantom” over the constitutional norms. Consequently, historicist narratives tend to obscure the normative dimension of the constitution, turning them into arbitrary retrospection or even groundless speculations.⁴ On the other hand, over time, “our constitution” is not merely the historical product of the will of the people from past constitution-making generations. It also signifies certain qualities that subsequent generations of the people should recognize and commit to as part of a common cause for the constitution. In this sense, the aforementioned question is closer to the view of Jack Balkin, who argues that a constitution intrinsically requires successive generations of the people to participate in the ongoing construction of its text, thereby enabling positive transformation through interpretive practice. Thus, a constitution is not only a fundamental or higher law, but may also rightly be regarded as “our law.”⁵

It should be noted, however, that what Balkin calls “our law” carries only a “thin” theoretical connotation. Its primary purpose is rather methodological, emphasizing that appropriate constitutional interpretation should allow for the democratic participation of successive generations of the people.⁶ While in the context of China, the theoretical proposition that the constitution belongs to “we the people” cannot be satisfied merely by a methodological claim; it also requires further exploration from a value-theoretical perspective. To illustrate this point, we need to return to a fundamental question: in what sense does the constitution belong to “us”? How the term “we” should be understood is itself a question. In this regard, the author argues that the term “we” is always linked to “the people” in its extension, even forming the combined conceptual device

³ Bruce Ackerman, *We the People: Foundations*, Wang Qinghua trans. (Beijing: China University of Political Science and Law Press, 2017), 3-61.

⁴ Lin Laifan, “The Implementation Forms of the Constitution in the Transitional Period,” *Journal of Comparative Law* 4 (2014): 24-26.

⁵ Jack M. Balkin, *Living Originalism*, Liu Liantai and Liu Yuzi trans. (Xiamen: Xiamen University Press, 2015), 44-54.

⁶ *Ibid.*, Translator’s Preface, 1-9.

“we the people.” However, compared with the objective and abstract notion of “the people” as the bearer of sovereignty, the meaning of “we” emphasizes the subjective relationship of belonging between a specific subject and the semantic object. In other words, “we the people” signifies that “we” project intentionality onto the political community referred to as “the people,” thereby recognizing not only that the latter is a qualified bearer of sovereignty (“the people”), but also that it is subjectively appropriated as “ours.” Accordingly, “the constitution of we the people,” as opposed to “the people’s constitution,” does not merely imply that a constitution possesses objective attributes of being “for the people” or “made by the people”; it also entails that “we” acknowledge the constitution as part of our own subjective belief and reasoning for action.⁷

In light of this, this paper proceeds from the perspective of normative constitutional theory to trace the various normative characteristics that make China’s *Constitution* truly belong to “us.” Here, the term “normative characteristics” does not refer merely to those elements entirely different from those of other countries’ Constitutions, which thereby would suggest an exceptionalist understanding of its “distinctiveness.” Certainly, uniqueness constitutes an important dimension of “our constitution.” Yet from the standpoint of what generates normative belief, those aspects possessing generality and universality also merit special attention. Accordingly, the constitutional characteristics worthy of the people’s belief often exhibit a dialectical integration of particularity within universality. Only by grasping the normative characteristics of China’s *Constitution* in this sense can we identify the legitimate reasons why it belongs to “we the people,” thereby contributing to the advancement of governance in compliance with the constitution in China.

II. The Proper Functional Positioning: “The Guarantee for the People’s Happiness”

In general terms, the reason why the constitution deserves our collective adherence and continued observance across generations lies, to some extent, in

⁷ It is worth noting that the subjective belief (collective intentionality) of attributing something to “us” carries particularly constitutive significance for institutional facts such as the Constitution. John Searle, *Making the Social World: The Structure of Human Civilization*, Wen Xueping and Ying Li trans. (Beijing: Peking University Press, 2014), 44-63.

the functions it performs. What, then, should be the functional positioning of China's *Constitution*? Given that the early leaders of the Party and the state, who served as the "constitutional engineers" of the People's Republic of China, set forth the normative vision of the constitution, it is worth adopting an approach of intellectual archaeology to revisit their relevant statements and explore the possible functional positioning of China's *Constitution*.

The early Party and state leaders offered remarkably sophisticated reflections on the constitution, giving rise to a series of well-known aphoristic expressions. Among them, one of the most representative characterized the constitution as the "Fundamental Charter." As Chairman Mao Zedong observed: "Every organization needs a charter; every state also needs a charter. The constitution is the Fundamental Charter, the basic law."⁸ In the years that followed, this notion was further publicized, ultimately forming the conventional narrative that the constitution is the "fundamental charter for governing the country and ensuring national stability."⁹ Correspondingly, many of the great leaders of that era also referred to the constitution as a "certificate of confirmation" or a "general outline of the law" to describe its functional positioning. For example, Mao Zedong once remarked: "After the revolution has succeeded and democracy has become a fact, we must promulgate a basic law to acknowledge it, i.e. the constitution."¹⁰ Similarly, Xie Juezai, one of the founders of the judicial system of the New China, explicitly stated: "The constitution is the source of all other laws, the general outline of the legal system." Moreover, at that time, people attached great importance to the constitution's function as a "guarantee" of rights. For instance, "a certificate issued by the state granting rights to the people."¹¹ One particularly incisive expression in this regard has long failed to receive the attention it deserves,

⁸ Mao Zedong, *Collected Works of Mao Zedong*, vol. 6 (Beijing: People's Publishing House, 1999), 328.

⁹ The expression "fundamental charter for governing the country and ensuring national stability," as a conventional phrase, can be traced at least as far back as the period immediately before and after the adoption of the 1982 Constitution. Han Dayuan, "On the 1954 Constitution as the Fundamental Charter for Governing the Country and Ensuring National Stability," *Law and Social Development* 5 (2024): 27-28. In the historical context of the new era, the Party and state leaders have not only continued this formulation but have further emphasized that the Constitution is "the fundamental charter for the country's governance." Xi Jinping, *On Adhering to Comprehensive Rule of Law* (Beijing: Central Party Literature Press, 2020), 10, 213.

¹⁰ Mao Zedong, *Selected Works of Mao Zedong*, vol. 2 (Beijing: People's Publishing House, 1991), 735.

¹¹ Party Literature Research Office of the CPC Central Committee and National Archives Administration of China, *Selected Important Documents Since the Founding of the Communist Party of China (1921-1949)*, vol. 1 (Beijing: Central Party Literature Press, 2011), 179.

namely, Ye Jianying's statement made at the time of the adoption of the 1954 Constitution, that the constitution is "the guarantee for the people's happiness."¹² Looking history, this expression was already quite popular at the time and carried significant meaning. It not only resonated with the constitution-making goal articulated in the "1954 Constitution" to "build a prosperous and happy socialist society" (Paragraph 1 of the Preamble), but also guided the people's eager expectations for the superior functional positioning of the *Constitution* of the People's Republic of China.¹³

From these remarks by the "constitutional engineers" of the People's Republic of China, we can further glimpse their understanding of the functional positioning of the constitution. Two main perspectives can be discerned, forming the two poles of the spectrum of constitutional function cognition. At one end, as represented by sayings such as "fundamental charter," "certificate of confirmation," or "general outline of the law," the constitution was conceived as an objective framework of order. More specifically, these three expressions reflect different dimensions of the constitution as such an objective framework, displaying a logical progression among them. First, the notion of an "certificate of confirmation" embodies the factual dimension of the constitution as an objective framework of order, i.e., in the Marxist view, the constitution reflects the balance of social class forces as an objective social order.¹⁴ Building on this factual dimension, the constitution was further emphasized as having the function of a "fundamental charter" that unifies social forces and guides national governance. It was in this sense that Mao Zedong stressed that the essence of a "fundamental charter" lies in "enabling all the people of the country to feel that there is a clear, definite, and correct path to follow."¹⁵ On this basis, the functional positioning of the "fundamental

¹² Liu Zheng, *The Historical Footprints of the People's Congress System* (revised edition) (Beijing: China Democracy and Legal System Publishing House, 2014), 43.

¹³ During the drafting of the 1954 *Constitution*, many representatives of the public expressed the expectation that the Constitution would lead the people toward "happiness." Han Dayuan, *The Drafting Process of the 1954 Constitution* (Beijing: Law Press, 2014), 348-362. After the adoption of the 1954 *Constitution*, there were also numerous discussions portraying the Constitution as a "guarantee for the people's happiness." Liu Geping, "China's Constitution as a Guarantee of the Growing Prosperity and Happiness of All Ethnic Groups: Also on Five Years of Ethnic Work," *Political and Legal Studies (Zheng Fa Yan Jiu)* 4 (1954).

¹⁴ Zhai Guoqiang, "Constitutional Concept History of Chinese Communist Party: Transition of Beyond Reality History," *Law Review* 1 (2016): 153-154.

¹⁵ Mao Zedong, *Collected Works of Mao Zedong*, 328.

charter" became further linked with the maxim of "general outline of the law." This is understandable: once the constitution functions as a "fundamental charter," it naturally becomes a guide for national governance. Since law is the principal medium of modern governance, this guide operates primarily at the normative level by imposing upon the legislature the duty to implement the law through legislation. Accordingly, the positive orientation of the "fundamental charter" implies that the legislative realization of the constitution is not merely a matter of non-contradiction with the constitution, but also of actively requiring to promote the values of the constitution. This is precisely the essence of the constitution as the "general outline of the law."¹⁶ In this sense, the notions of "fundamental charter," "certificate of confirmation," and "general outline of the law" collectively present the constitution as an objective framework of order guiding legislation. Its implementation relies chiefly on the preemptive procedural mechanisms that operationalize the principle of "formulating laws in accordance with the constitution."

In contrast, the notion of the "guarantee of happiness (rights)" constitutes the other end, explicitly oriented toward the protection of citizens' subjective rights, with constitutional implementation realized through constitutional review. The idea of a "guarantee of rights" goes without saying: if the constitution is to be a guarantee of rights, it not only requires the law to actively implement rights norms, but also implies that when the law infringes upon citizens' rights, the constitution can provide correction. Only in this way can the happiness and rights of citizens be safeguarded from violation. For this reason, constitutional review or constitutional supervision becomes an inherent aspect of the "guarantee" function.

At this point, a question arises: why does the "guarantee for the people's happiness" also embody an orientation toward rights protection? Some may argue that "happiness" does not automatically establish a normative connection with "rights." This is especially the case considering China's modern historical value tendency of "national self-reliance taking precedence over individual

¹⁶ Lenin, *Collected Works of Lenin*, vol. 12, 1085-1086; Chen Minghui, "The Basic Law Nature of the Chinese Constitution: A Localized Theoretical Construction," *Journal of National Prosecutors College* 5 (2024): 97-100.

freedom,”¹⁷ with the 1954 *Constitution* putting “happiness” before a “socialist society;”¹⁸ the meaning of “people’s happiness” can thus be interpreted in a somewhat “collective-oriented” manner. We must acknowledge that, within the historical context of that time, “people’s happiness” indeed contained an intrinsic tension “oscillating between the collective and the individual,”¹⁹ leaving normative space for collectivist or even statism interpretations. Nonetheless, we must also recognize that for “people’s happiness” not to become an empty statutory goal, the “people’s happiness” that the constitution seeks to guarantee must ultimately trace back to the intentions of individual citizens. It follows that the “guarantee for the people’s happiness” must intrinsically point to the protection of rights at the individual level. On this basis, scholarly consensus holds that the term “happiness” in the 1954 *Constitution* inherently encompasses both a functional positioning toward rights protection and an institutional opportunity for constitutional supervision, though it was not fully developed in the context of the time.²⁰ In this regard, the “guarantee for the people’s happiness” and the “guarantee of rights” form a closely connected semantic network, both jointly oriented toward the functional positioning of protecting subjective rights.

Of course, the two functional conceptions mentioned above are merely ideal types in scholarly theory. In practice, the “constitutional engineers” discourses always encompass both, and neither can be neglected at the normative level. In this sense, we can say that the two constitute the “endpoints of the spectrum” for functional positioning, because in reality, the function of the constitution always lies somewhere between them. The question is only

¹⁷ For the classic discussion on this “national salvation and self-reliance” tendency, see Li Zehou, *On the History of Modern Chinese Thought* (Beijing: Dongfang Press, 1987), 7-41.

¹⁸ Some scholars argue that the 1954 *Constitution* presupposed so robust a conception of people’s democracy and collectivism that it displayed a tendency toward the “unification of the relationships between the state and society, the state and citizens, and society and citizens.” Han Dayuan, “The Historical Status and Spirit of the 1954 Constitution,” *China Legal Science* 4 (2014): 42-44. For a similar evaluation, see Yu Wenhao, “The Function of State Construction for the Fundamental Rights Clauses in 1954 Constitution,” *Global Law Review* 2 (2015): 26-33.

¹⁹ Yu Ying-shih, *On Modern Confucianism*, 2nd edition (Shanghai: Shanghai People’s Publishing House, 2010), 189-192.

²⁰ Zheng Xianjun, “Pursuing a Happy Life: On the Fundamental Rights Provisions of the 1954 Constitution,” in *Research on the 1954 Constitution*, Zhang Qingfu and Han Dayuan ed. (Beijing: Chinese People’s Public Security University Press, 2005), 218-234; Zheng Xianjun, “Modernity and Transcendence: The Conception of Freedom in the 1954 Constitution’s Democratism,” *China Legal Science* 4 (2014): 64-65; Liu Guixin, “The Constitutional Conception of the 1954 Constitution and Its Development,” *Law and Modernization* 3 (2024): 96-97.

which it tends toward more. Then, what is the connection between the constitution as "our law" and its functional positioning? What kind of function does the constitution need to tend toward?

It should be noted that for a constitution to become "our law," it should provide legitimacy. That is, the constitution should demonstrate why it is justified, so that different generations of "us" can regard its practice as a common cause for the community. In this regard, the two kinds of functional positioning point to different forms of legitimacy. First, the functional positioning of the constitution as an objective order guiding legislation embodies democratic legitimacy. In other words, when the constitution serves merely as an objective legislative order, the legitimacy it provides lies in the fact that it is created by the people themselves, and legislation is enacted in accordance with this constitution established by the people; thus, the constitution aligns with the ideal of self-governance. By contrast, the functional positioning focused on subjective rights protection provides moral legitimacy. When the constitution is oriented toward safeguarding rights, it ensures individuals' freedom to pursue their own life ideals and their capacity for moral autonomy.²¹ In this sense, this functional positioning renders the constitution good for each of us, thereby endowing it with a morally grounded legitimacy.

Needless to say, given the deep-rooted tradition of people's democracy in China's *Constitution*, the former functional positioning and the democratic legitimacy it embodies naturally constitute an important basis for our recognition of the constitution. However, even so, this democratic legitimacy alone is insufficient to establish the constitution as "the constitution of we the people"; it should be supplemented by the moral legitimacy pointed by the function of rights protection. It should be noted that the latter is not an external opposition to democracy but rather reinforces democratic legitimacy, thereby ensuring that people of different generations recognize the following intrinsic components of the constitution²²: on the one hand, rights protection can serve as an "activator" of democracy. In other words, "the people being the masters of the country" not only entails that the constitution, as a legislative guide,

²¹ Zhu Zhen, "Rights and Autonomy: Exploring a Moral Basis for the Priority of Rights," *ECUPL Journal* 3 (2016): 26-34.

²² Qian Kun, "On Fundamental Rights as Democratic Rights: A Study Based on the Evolution of the Chinese Constitution," *Northern Legal Science* 3 (2024): 64-68.

directs people's self-legislation, but also implies the necessity of rights protection. Only when the constitution safeguards the rights of every citizen can citizens genuinely participate in political life, and only then can the will of people's democracy maintain sustained vitality. On the other hand, rights protection can also serve as a "safety valve" for democracy. Imagine if constitutional norms functioned merely as a legislative guide: when legislation "in accordance with the constitution" contradicts the constitution itself, this appeal to the people's self-legislation would inevitably undermine democratic legitimacy. Only by incorporating the function of rights protection, ensuring that the autonomous space of the present and future generations is not infringed upon by decisions of past majorities, can people's democracy operate across generations, and the constitution earn the recognition of people of different generations. It follows that only when the constitution, based on its role as a legislative guide, actively promotes the function of rights protection, thereby reinforcing democratic legitimacy with moral legitimacy, can the constitution truly belong to "we the people."

Viewing the evolution of China's *Constitution* through this lens, it can be said that: although the 1954 *Constitution* established the normative foundation for "the people's happiness," its overemphasis on the narrative of democratic legitimacy came at the expense of the moral legitimacy inherent in rights protection, thereby limiting the constitution's full potential to guarantee "the people's happiness (and rights)."

Accordingly, under the current constitution, it is even more imperative to emphasize the "guarantee for the people's happiness" as an essential functional positioning of the constitution.²³ Only in this way can the unfinished mission of the 1954 *Constitution* be carried forward, fully realizing the moral legitimacy and normative possibilities embedded in the *Constitution* of the People's

²³ It is noteworthy that today's Party and state leaders also attach great importance to this functional orientation of the Constitution. General Secretary Xi Jinping has remarked that China's Constitution is a good Constitution that "guarantees the people the creation of a happy life." See Xi Jinping, *On Adhering to Comprehensive Rule of Law* (Beijing: Central Party Literature Press, 2020), 9. If we further examine General Secretary Xi's usage of "happiness," we find that he also emphasizes grounding "happiness (and rights)" in the concrete, subjective experiences of individual citizens. Guo Ye, "The Human Rights Approach to a Better Life in the New Era: Xi Jinping's Rule of Law Thought and Human Rights Theory," *ECUPL Journal* 5 (2021): 95-97.

Republic of China, and thereby genuinely ensuring that the constitution serves as "the constitution of we the people."

This concern actually aligns with the mainstream trend in Constitutions worldwide: most modern countries initially emphasized the function of the constitution as an objective framework guiding legislation, but later also established mechanisms of constitutional review to reinforce the dimension of rights protection.²⁴ By comparison, China's current constitution, based on the 1982 *Constitution*, has reached the following point: the will of the people is embedded within the constitution and cannot arbitrarily breach constitutional norms. Accordingly, the constitution at this stage cannot rely solely on "people's constitution-making" to legitimize itself, but should appeal to an inherent quality of goodness with stronger moral significance. At the same time, it is worth noting that, in comparative law, it is not uncommon for constitutional documents to express the pursuit of "happiness" in terms of rights. For example, the *Declaration of Independence* of the United States explicitly mentions the rights to "Life, Liberty and the pursuit of Happiness." Article 13 of Japan's current constitution even explicitly guarantees the "right to the pursuit of happiness."²⁵ In this sense, although China's 1982 *Constitution* does not have the explicit textual provisions of the 1954 *Constitution*, it is even more aligned with this orientation.

Of course, as noted above, the association between "happiness" and rights discourse under China's *Constitution* is not self-evident and requires clarification of two points: first, given that the notion of a "guarantee of happiness" may still mean a statism, collective-prosperity-oriented approach²⁶, to prevent an overly strong statism from suppressing claims to individual freedoms, the current constitution should, in the new era where the Chinese nation has transformed from "standing up and growing prosperous to becoming strong," further advance toward a value position that effectively safeguards the people's right to pursue happiness.²⁷ Second, this right to pursue happiness

²⁴ Lin Laifan, "The Implementation Forms of the Constitution in the Transitional Period," 32-33.

²⁵ Nobuyoshi Ashibe, *Constitution* (6th edition), Lin Laifan, Ling Weici, and Long Xuanli trans. (Beijing: Tsinghua University Press, 2018), 92-98.

²⁶ Yu Hao, "A Study on the Legal Concept of Statism: An Introduction," *Renmin University Law Review* 2nd series (Beijing: Law Press, 2017), 103-121.

²⁷ In this regard, some scholars have pointed out that under the current Constitution, based on the 1982 Constitution, fundamental rights have gradually attained an independent normative status, free from the

should also be distinguished from individualist and liberal conceptions of rights. Under a socialist constitution, the right to pursue happiness not only points to the traditional constitutionalist notion of negative freedom to defend against the political state, but further encompasses the pursuit of equality and freedom for individuals within the social sphere.²⁸ On this basis, it also to some extent embodies a requirement for the “balance between the collective and the self.” It is therefore evident that the functional positioning of the “guarantee of happiness” carries a theoretical significance that embeds particularity within universality: on the one hand, it traces back to the general expectation that the constitution should protect citizens’ subjective rights; on the other hand, it reflects a distinctive conception of rights that entails normative demands beyond traditional constitutionalism.²⁹ It is precisely in this sense that the author defines the constitution’s proper functional positioning as the “guarantee for the people’s happiness,” rather than merely as a general “guarantee of rights.”

III. The Normative Characteristics of the Constitution of the People’s Republic of China: The Reproduction of the Consciousness of “Our Constitution”

Even if the constitution is defined as the law that safeguards citizens’ right to pursue happiness, this alone does not suffice to regard it as “our constitution.” After all, Constitutions in other constitutional states may also be oriented toward protecting rights. What, then, makes China’s Constitutional

shadows of statism, and their function has progressively shifted from serving as objective norms for state construction to being oriented toward individual claims and subjective rights. Li Zhongxia, “Constitutional Connotation of Rule of Law Country: A Constitutional View on Functionally Differentiating Society,” *Chinese Journal of Law* 2 (2017): 5-21.

²⁸ For further discussion on the socialist conception of freedom and rights, see Wang Xu, “Democratic Centralism as a Principle of State Organs,” *Social Sciences in China* 8 (2019): 71-72.

²⁹ In this context, tracing particularity back to a dialectical positioning within universality reflects a deeper theoretical concern. In contemporary scholarship on the conception of rights in China’s *Constitution*, one frequently encounters a tension among commentators who emphasize either the universal aspects or the particular aspects. For claims emphasizing universality, see Yu Wenhao, “The Function of State Construction for the Fundamental Rights Clauses in 1954 Constitution,” 33-42; for claims emphasizing particularity, see Qi Yanping, “The Developmentalism Form of Constitutional Fundamental Rights,” *Science of Law (Journal of Northwest University of Political Science and Law)* 3 (2025). In this regard, the dialectical positioning of “embedding particularity within universality” is always beneficial: we should not pursue the path of particularity too far and adopt an exceptionalist stance. Only by tracing the function and value of rights back to some shared human values can specific conceptions of rights be properly understood.

practice a uniquely Chinese cause? To answer this, we should look not only at the general dimensions of constitutional functions, but also uncover the distinctive elements that differentiate China's *Constitution* from others, thereby strengthening the theoretical justification for it being "the constitution of we the people." The articulation of these distinctive elements should rest on a dual positioning: first, it ensures that China's Constitution is unique as a whole; second, it provides a continuing source of justification, thereby fostering the ongoing reproduction of the consciousness of "our constitution."

In a stronger sense, these elements together form the defining characteristics of the *Constitution* of the People's Republic of China. From the perspective of the text itself, at least four distinctive elements stand out.

A. The constitution containing a preamble marked by epic historical narratives

Unlike the typical preambles of Western Constitutions, China's Constitution follows the tradition of socialist Constitutions, featuring a relatively long preamble (13 paragraphs). This preamble unfolds along a main narrative line centered on the "great historical transformations" of revolution, reform, and construction, and interweaves guiding thoughts, fundamental tasks, and major national goals. It thus sketches a grand vision of "we the people" striving for national development and their own happiness through historical progress. It can be said that this narrative, grounded in a view of great historical transformation and progress, imbues China's Constitutional preamble with an epic tone and enduring resonance, thereby also serving to justify the constitution's legitimacy. First, in a diachronic dimension, the preambles of the successive Constitutions of the People's Republic of China share similar narratives of people's revolution and reform, helping to create an impression of constitutional continuity and thereby reasonably construct a collective imagination of "our constitution." Second, in a synchronic dimension, this epic-style historical narrative not only shapes an enduring image of the state and a shared constitution-making goal³⁰, but also turns successive generations of the people into a continuous subject of self-determination and persistent striving, making constitutional practice itself a common cause of the people.

³⁰ Qian Jinyu, "Constitution Preamble, National Dream and Political Systems: A Constitutional Interpretation of the Chinese Dream," *Legal Forum* 4 (2013): 31-32.

In this regard, the narrative strategy of Paragraph 1 of the Preamble to the 1982 *Constitution* serves as a striking example of how the people's will is integrated and the national image is shaped. Unlike the previous Constitutions, which began directly with the history of the New Democratic Revolution, Paragraph 1 of the 1982 *Constitution's* Preamble starts from China's long and rich cultural history and concludes with the statement that the people of all nationalities in China "have a glorious revolutionary tradition." In this way, the extension of historical narratives supplements the constitution with an image of "Cultural China." Specifically, this image of "Cultural China" is situated, on the one hand, within the framework of the revolutionary narrative ("glorious revolutionary tradition"), while on the other hand, it softens the earlier image of the people inclined toward "continuing revolution" through a more culturally and historically grounded portrayal of "the Chinese people of all nationalities." Consequently, it not only serves to integrate the people of different generations into a continuous collective subject but also provides an opportunity to reintegrate the people's will into constitutional norms.³¹ Thus, it may be said that the narrative technique adopted in the Preamble to China's current constitution is both deliberate and sophisticated³², and it holds even greater potential for embedding legitimacy within the constitution itself. Of course, as noted earlier, we should not overemphasize the legitimacy supplied by the preamble and its historical narratives, for such narratives point to a legitimacy that appeals primarily to a sense of shared imagination and emotional belonging. To stress this form of legitimacy alone risks obscuring the normative character of the constitution.³³ Only when the constitution not only inspires our collective sentiments but also, through its normative quality, provides us with good reasons to identify with it, can it truly be regarded as "our law."

³¹ Yao Zhongqiu, "From Revolution to Civilization: Interpretation of First Paragraph of 1982 Constitution Preface," *Law Review* 2 (2015): 51-55.

³² During the revision process of the 1982 Constitution, the wording of the first paragraph of the preamble was carefully deliberated by numerous delegates, making it a deliberately crafted and meticulously arranged narrative. For specific examples of the discussion, see Xu Chongde, *History of the Constitution of the People's Republic of China*, vol. 2 (Fuzhou: Fujian People's Publishing House, 2005), 420-421.

³³ Some scholars (of political constitutionalism) attach great importance to the justificatory function of the constitutional preamble. On this basis, they argue that as the normative source of the "basic law," the preamble possesses greater substantive importance than the main text of the Constitution, and even infer from this that the preamble therefore carries superior authority. For a critical assessment of this theoretical approach, see Chen Yushan, "On the Fundamental Law in Preamble to China's Constitution," *Zhejiang Social Sciences* 6 (2012): 68-71.

B. The value orientation emphasizing democracy

In modern and contemporary Constitutions around the world, there are generally two different value orientations: one adopts or emphasizes constitutionalism, while the other adopts or emphasizes democracy. The former focuses on restraining public authority to safeguard individual fundamental rights, whereas the latter, as the name suggests, tends to rely on people's democracy to realize the protection of individual rights. Although China's *Constitution* leans toward constitutionalism in hermeneutics, as noted earlier, it has attached great importance to democracy since its inception.

Focusing on constitutional norms, the democracy with Chinese features manifests on two levels: the first is the principle of people's sovereignty established in the provisions on the form of the state.³⁴ This principle can be analyzed from a dual perspective. In terms of normative expression, the form-of-state provisions of China's *Constitution* adopt a "double inversion structure." Unlike the general practice in comparative constitutional law, China's *Constitution* does not state the principle of people's sovereignty at the beginning of the text. Instead, it first specifies the class affiliation of state sovereignty, or the nature of the state (Paragraph 1 of Article 1), and then expounds the traditionally understood people's sovereignty clause, namely, "All power in the People's Republic of China belongs to the people." (Paragraph 1 of Article 2).³⁵ This "double inversion structure," where the nature of the state is specified first and people's sovereignty second, highlights the distinctive contextual logic of the principle of human-rights sovereignty in China. From the substantive content perspective, China's "people's sovereignty" differs from the Western modern notion of "national sovereignty," and carries the following implication: the "people," composed of a complex class structure (even including the "patriotic united front"), exercise "all state power." Marxists consider that under this principle, the composition and authority of the sovereign are broad and genuine.³⁶ In recent years, the

³⁴ For an analysis of the connotation and tracing of the origins of China's highly distinctive concept of the state form, see Lin Laifan, "History of State Form as a Concept: Transnational Transplants and Evolution," *Social Sciences in China* 3 (2013).

³⁵ Lin Laifan, *Lectures on Constitutional Law*, 4th edition (Beijing: Tsinghua University Press, 2023), 199-200.

³⁶ Lin Laifan, "The Spirit of the '1982 Constitution'," 22-23.

concept of “whole-process people’s democracy”³⁷ has further expanded the meaning of people’s sovereignty on the basis of the above conception, potentially exploring the depth of democracy embedding in constitutional implementation.³⁸

Correspondingly, the constitution also establishes distinctly characteristic democratic mechanisms. First, in terms of the political system, China adopts the system of people’s congresses. On this basis, the current democratic representation system in practice forms a dual structure of “governing party – people’s congress”.³⁹ Under the principle of democratic centralism, the National People’s Congress, as the “people’s representative organ,” is not only the state’s legislative body but also constitutes the source of state power in the division of state authority (the highest organ of state power). Meanwhile, the governing party, acting as the “people’s representative,” is strongly expected to supplement the democracy of the traditional representative system through its strong capacity for political leadership and mobilization, in areas such as forming public opinion, shaping collective political will, and even political enlightenment. Moreover, the current constitution also establishes grassroots mass self-governance, self-management by the people, and other forms of democratic participation that are “beyond the representative system,” thereby shaping a public sphere of direct democracy. As such, the interaction between the dual representation and democratic participation constitutes the envision for the implementation mechanism of people’s sovereignty and whole-process people’s democracy.⁴⁰ In this regard, the principles and mechanisms of democracy not only provide democratic legitimacy for the constitution but also constitute a mechanism for the reproduction of “our constitution.” That is, the people, based on the continuity of intergenerational self-governance, view

³⁷ Xi Jinping, *On Upholding the People as Masters of the Country* (Beijing: Central Party Literature Press, 2021), 336-337.

³⁸ Han Dayuan, “On the Principle of People’s Democracy in China’s Current Constitution,” *China Legal Science* 1 (2023): 42-44; Li Zhongxia, “The Theoretical Logic and the Constitutional Realization of People’s Democracy in the Whole Process,” *Contemporary Law Review* 1 (2023): 17-27.

³⁹ This point is grounded not only in empirical observation of China’s political system but is also widely advocated in a normative sense in academic circles. This is what is referred to as the “dual representation theory,” in which the governing party and the people’s congresses together constitute the people’s representative organs. Li Zhongxia, “A Normative Interpretation of ‘Socialism with Chinese Characteristics’ in the Constitution,” *Tribune of Political Science and Law* 5 (2018): 123-125.

⁴⁰ Sun Guodong, *Public Philosophy of Law: The Rule of Law and Justice in Transitional China* (Beijing: China Legal Publishing House, 2018), 248-250.

constitutional practice as the enduring cause of our community across generations.

C. Programmatic provisions imbued with a dual significance

Generally speaking, programmatic provisions can be understood as “constitutional norms whose temporal effect points to the future,”⁴¹ namely, norms aimed at stipulating the state’s fundamental tasks and development goals, various constitutional institutions, and national policies. It goes without saying that, compared with Western Constitutions, China’s *Constitution* contains prominent programmatic provisions, to the extent that scholars consider this a basic feature of our constitution.⁴² Among these, we can further interpret two types of programmatic provisions with distinct meanings: the first is general national policy provisions, also referred to in German law as “state objective provisions.”⁴³ These provisions are aimed at stipulating specific state goals and particular tasks and are not uncommon in comparative constitutional law. In China’s current constitution, they are frequently found in the General Principles, such as “The state shall ensure the consolidation and development of the state sector of the economy” (Article 7) and “The state shall practice strict economy and combat waste” (Paragraph 2 of Article 14).

The second is programmatic provisions that embody the character of historical stages. Compared with general national policy provisions, they are more abstract and embed a progressive historical perspective unique to socialist states, thereby pointing to the direction of national development, the construction goals of an ideal “national image”⁴⁴ in the future, and the overarching framework of historical stage division. Such provisions mostly appear in preambles, and it is noteworthy that they were already present in the Preamble of the 1954 Constitution. For example, “From the founding of the

⁴¹ Li Long, *Fundamental Theories of the Constitution* (Wuhan: Wuhan University Press, 1999), 129.

⁴² Yin Xiaohu, “Reflections on the Function and Effectiveness of Policy Provisions in China’s Constitution,” *Political Science and Law* 8 (2019): 17.

⁴³ Chen Zheng, “National Policies in the Constitution and Their Guidance for Legislative Power,” *Peking University Law Journal* 4 (2024): 846-847; Wang Kai and Liu Benhao, “The Nature and Effect of the General Principles of the Constitution,” *Legal Forum* 3 (2018): 28-29.

⁴⁴ The term “national image” refers to a normative image of the state. It can be said that nearly all countries’ Constitutions establish and contain a state image primarily shaped by organizational norms. China’s Constitution not only includes this general sense of a “national image” but also, through programmatic provisions with the character of historical stages, defines the future direction and construction blueprint of the country, thus forming an ideal “national image” for the future. Lin Laifan, “The Image of a ‘Civilized’ State in China’s Constitution.”

People's Republic of China to the attainment of a socialist society is a period of transition. During the transition the fundamental task of the state is, step by step, to bring about the socialist industrialization of the country and, step by step, to accomplish the socialist transformation of agriculture, handicrafts and capitalist industry and commerce" (Paragraph 2). Here, it can be observed that this type of provision explicitly refers to historical stages and thus has a "roadmap" significance; in terms of content, it differs from "national objective provisions" that do not embed state rationalism or a progressive historical perspective.⁴⁵ In this regard, if we review the early debates among the "constitutional engineers" on whether a socialist constitution needed programmatic provisions, it is not difficult to see that the main disagreement concerned this latter type of programmatic provisions.⁴⁶ As Liu Shaoqi explained regarding the 1954 Constitution's programmatic nature: "The constitution... must reflect the changes occurring in real life and the goals toward which these changes are directed. If this goal is not specified, many things in real life cannot be understood. This is precisely why our constitution includes certain programmatic articles."⁴⁷ In the current constitution, a typical example of such programmatic provisions is found in Paragraph 7 of the Preamble, which states: "Our country will long remain in the primary stage of socialism. The fundamental task for our country is to ... We the Chinese people of all ethnic groups will continue, under the leadership of the Communist Party of China ... build China into a great modern socialist country that is prosperous, strong, democratic, culturally advanced, harmonious and beautiful, and realize the great rejuvenation of the Chinese nation."⁴⁸

⁴⁵ Some scholars, focusing on this aspect, have proposed that China's Constitution embodies the character of a "governance-oriented and reflective Constitution." Wang Xu, "The Chinese Logic of Governing the Country in Accordance with the Constitution," *Peking University Law Journal* 5 (2021): 1135-1140.

⁴⁶ For the historical debate among the early "constitutional engineers" of the People's Republic of China over whether programmatic provisions were necessary, see Mao Zedong, *Collected Works of Mao Zedong*, 153-154.

⁴⁷ Liu Shaoqi, "Report on the Draft Constitution of the People's Republic of China," in *Selected Important Documents on the Formulation and Amendment of the Constitution of the People's Republic of China*, the Constitutional Affairs Office of the Legislative Affairs Commission of the Standing Committee of the National People's Congress ed. (Beijing: China Democracy and Legal System Publishing House, 2021), 416.

⁴⁸ Some scholars have also noted the distinction between the programmatic provisions in the Preamble and those in the General Principles of China's Constitution. Chen Yushan, "On the Constitutional Status of the Fundamental Tasks of the State," *Tsinghua University Law Journal* 5 (2012): 83-85.

On this basis, the two types of programmatic provisions with different meanings also help facilitate the reproduction of the consciousness of "our constitution." On the one hand, the highly abstract formulation of programmatic provisions allows for an open-ended stance toward the future application of the constitution. On the other hand, programmatic provisions, especially the latter type, which embody a progressive historical perspective, enable the diachronic application of the constitution to advance as an objective process of social progress. That is to say, the dynamic process through which we, in the past, present, and future, apply the constitution also constitutes the progressive course of social history. The two jointly move toward the goals of the people's happiness and the liberation of freedom. In this context, constitutional practice naturally becomes "a common cause of we the people."

D. The constitution possessing a textual feature of combining explicit and implicit content

In many places, the expression of China's *Constitution* intentionally leaves interpretive openness and employs strategic ambiguity, thus forming a style that integrates the explicit with the implicit content. In this regard, a particularly illustrative example can be found in the provisions on socialism and the leadership of the Party: the 1982 *Constitution* initially did not fully articulate the meaning of socialism, and the provisions concerning Party's leadership were not included in the constitutional text (formerly often referred to as the "main body of the constitution"). However, this textual openness does not prevent us from interpreting the normative connection between the two in constitutional interpretation. After all, Article 1 of the 1982 *Constitution* provides that China is "led by the working class," while the 1982 *Constitution* of the Communist Party of China stipulates that "The Communist Party of China is the vanguard of the Chinese working class, the faithful representative of the interests of the people of all nationalities in China, and the force at the core leading China's cause of socialism." Combined with the Preamble of the constitution of the state regarding "under the leadership of the Communist Party of China," it is not difficult to conclude that the Party's leadership is an inherent part of socialism.⁴⁹ Of course, the *Amendment to the Constitution* in

⁴⁹ Lin Laifan, "The Spirit of the '1982 Constitution'," 21-22; Qin Qianhong and Liu Yida, "The 'Party's Leadership' Norm in China's Current Constitution," *Chinese Journal of Law* 6 (2019): 22-25.

2018 explicitly defined that “Leadership by the Communist Party of China is the defining feature of socialism with Chinese characteristics,” making such indirect interpretation unnecessary. Yet, the inclusion of this provision also introduces new interpretive openness. For instance, defining Party’s leadership as “the defining feature of socialism” creates a broad space for normative correlations between the Party’s leadership and various socialist institutions. Thus, this textual structure that combines explicit and implicit content expands the space for constitutional interpretation and thereby contributes to the reproduction of the consciousness of “our constitution.”

At this point, it is worth emphasizing that there once existed an idealized academic position focusing on constitutional normativity, which argued that both programmatic provisions and the textual technique combining explicit and implicit content contained unclear behavioral orientations and excessively broad semantic openness, thereby hindering the realization of the constitution’s own normativity.⁵⁰ However, it must be recognized that as the normative order of a political community, a constitution cannot avoid a certain degree of substantive breadth.⁵¹ On this basis, the more visible and also more distinctive features of China’s *Constitution*, namely, its programmatic provisions (especially the second type discussed above) and its textual technique combining explicit and implicit content, should rather be regarded as a form of limited delegation by the constitution-makers. Within this strategically designed interpretive openness and normative space, future generations of “we the people” can continue the act of constitutional creation, thereby accomplishing constitutional change. In this sense, the realization of constitutional normativity still requires the maturation of constitutional doctrine and the activation of constitutional supervision mechanisms.⁵²

⁵⁰ Hu Jinguang, “On the Basic Characteristics of Constitutional Norms,” *Journal of Renmin University of China* 2 (1996): 43-44; Xie Weiyan, “Looking Back at 1954: The Constitutional Concepts of the Constitution-Makers and Their Reflections,” *Journal of Sichuan University (Philosophy and Social Science Edition)* 6 (2011): 114-116; Ma Ling, “The Programmatic and Constitutional Nature of the ‘Common Program’,” *Journal of Political Science and Law* 1 (2010): 24-27.

⁵¹ This point is undoubtedly valid in comparative constitutional law as well; for example, see Konrad Hesse, *Grundzüge des Verfassungsrechts der Bundesrepublik Deutschland*, Li Hui trans. (Beijing: The Commercial Press, 2007), 18-21.

⁵² Zhang Xiang, *The Normative Construction of Fundamental Rights*, revised edition (Beijing: Law Press, 2017), 242-243.

It may thus be said that the *Constitution* of the People's Republic of China, through the distinctive elements discussed above, i.e. a) its epic-style historical narratives, b) its pronounced orientation toward people's democracy, c) its dual combined programmatic provisions, and d) its textual design that combines explicit and implicit content, stands apart from the Constitutions of other nations and thereby constitutes "our constitution." Moreover, and more importantly, these elements are not only commendable in themselves but also render the constitution open to future generations of "we the people." This openness enables us, through the processes of constitutional application and transformation, to connect the past, present, and future, to regard the enduring fundamental principles of the constitution as timeless exemplars, and to engage collectively in the common cause of reproducing the consciousness of the constitution.

Of course, if the practice of the constitution as a common cause is to endure and progress steadily, we should ultimately seek the constitution's fundamental quality, i.e., what is often referred to as the constitutional spirit.

IV. The Spirit of the *Constitution* of the People's Republic of China: Safeguarding Human Dignity

If we are to trace to the source the quality of the constitution that constitutes the deeper reason for our identification with it, we must inevitably turn to the spirit of the constitution. As for the definition of the constitutional spirit, scholarly opinions today are widely divergent. Different scholars focus either on the function of the constitutional spirit or on its value, leading to diverse interpretations.⁵³ Even so, if we set aside the plurality of value-based claims about the constitutional spirit and approach it from the perspective of its normative status, we may, at least in a preliminary sense, understand the constitutional spirit as referring to the fundamental value principles underlying the constitution. A representative view holds that "the constitutional spirit governs the essential content of the constitution and runs throughout it ... It is the guiding thought of constitution-making and implementation,"⁵⁴ or "the

⁵³ For a useful theoretical overview of the different dimensions of scholarly discussion on the spirit of the Constitution, see Ren Xirong and Zhang Wei, "On the Application of Constitutional Spirit as a Standard for Judicial Review of Constitutionality," *Northern Legal Science* 6 (2024): 124-125.

⁵⁴ Fan Yi, "On the Scientific Connotation of Constitutional Spirit," *Seeker (Qiusuo)* 8 (2004): 57.

fundamental spirit that pervades constitution-making and constitutional practice.”⁵⁵ By this reasoning, since the constitutional spirit, as a foundational value principle, runs through the entire process of constitutional implementation, our deeper reason for identifying with the constitution may also be traced back to it.

Of course, the above argument is only a preliminary conclusion based on an intuitive conceptual definition. On this basis, we may still ask: what exactly is the ontology of the constitutional spirit? How does it differ from what is commonly referred to as constitutional rules and principles? Only by answering these questions and clarifying the normative structure of the constitutional spirit within legal dogmatics can we fully explain why the constitutional spirit serves as the foundational value principle of the constitution, and how it constitutes the fundamental quality that grounds our identification with it.

In this regard, the first author of this paper once pointed out that the constitutional spirit is the core value orientation running through the constitutional normative system, which can be expressed in several basic principles.⁵⁶ However, the first author also does not object to advancing further with a minimalist position in expression. In other words, given the highly abstract nature of the constitutional spirit, it can indeed be understood through constitutional principles, which themselves are also abstract in character. At the same time, if we assume that spirit, principles, and rules should be distinguished normatively, then, since principles are generally understood as value distillations of rules, “spirit” should likewise be regarded as a further distillation of principles. To ensure that the spirit, as the ultimate distillation of multiple principles, maintains an appropriate distance from the construction of principles, it may be understood as a value orientation external to specific constitutional rules yet capable of being condensed into a single proposition. According to this conception, the relationship among “constitutional spirit – principles–rules” presents a “pyramid” structure, with constitutional values extending from abstraction to concreteness.⁵⁷ Among these, the refinement or tracing back from concrete norms to abstract values relies on value-theoretical

⁵⁵ Zhou Yezhong, ed., *Constitution*, 5th edition (Beijing: Higher Education Press, 2020), 84.

⁵⁶ Lin Laifan, “The Spirit of the ‘1982 Constitution’,” 16-20.

⁵⁷ Zuo Yilu, “The Constitutional Spirit in Constitutional Review,” *China Legal Science* 3 (2024): 27-29.

interpretation within jurisprudence. Thus, as the apex of the pyramid of constitutional values, the constitutional spirit provides value-based justification for constitutional principles and rules, thereby constituting the foundational value principle of the constitution, and may even be regarded as its "basic norm."⁵⁸

Accordingly, we believe that the functional positioning and unique elements discussed above should ultimately be justified by reference to the constitutional spirit. After all, merely asserting that the constitution functions to protect rights, or that it possesses certain unique elements, does not suffice to offer an intuitive reason for our identification with it: for what purpose does the constitution protect rights? And further, why should the fact that the constitution protects rights or embodies these unique elements lead us to commit constitutional practice to a common cause? At this point, we still need a final justification. As the foundational value principle of the constitution, the constitutional spirit naturally embodies the ultimate reason for the goodness of the constitution.

What, then, is the content of this constitutional spirit? The first author of this article has previously, by abstracting values from normative foundations,⁵⁹ interpreted the spirit of China's current constitution as comprising three basic principles normatively grounded in the constitutional text: socialism, democracy, and the rule of law. If we follow the minimalist approach mentioned above, these three basic constitutional principles may further be reduced to a single foundational value principle that defines the constitutional spirit: the protection of human dignity.

This argument is grounded in the following reasons: first, in a broad sense, all these three basic principles, i.e. socialism⁶⁰ (the pursuit of human freedom

⁵⁸ Yu Hao, "A Study on the Legal Concept of Statism: An Introduction," 6-7.

⁵⁹ In contrast, some scholars, adopting a more pragmatic perspective that traces constitutional historical materials, have articulated the value content of China's constitutional spirit differently, for instance, by arguing that the spirit of China's current Constitution is "reform and opening up." Liu Songshan, "The Spirit, Function, and Limitations of the 1982 Constitution," *ECUPL Journal* 6 (2012): 67-68; Zhang Xiang and Liang Zhicheng, "A Historical Interpretation of the 'Constitutional Spirit,'" *Journal of China University of Political Science and Law* 6 (2022): 63-72.

⁶⁰ It is worth noting that, compared with the normative interpretation of democratic and rule-of-law principles, interpreting the principle of socialism is particularly challenging and should constitute a core topic in the study of China's Constitution. The overview provided here is rather preliminary, aiming only to grasp the core conceptual structure of this principle. For theoretical attempts useful to this topic, see

and emancipation), democracy (the self-governance of the people), and the rule of law (respect for individual autonomy), embody respect for the human being as a human, or as a subject of practical reason. Second, from a historical dimension, the evolution of China's *Constitution* is also a history of the development of human dignity. As noted earlier, since the 1954 Constitution, China's *Constitution* has aimed not only to guarantee that the people are the masters of the country, but also to counteract, through equal material guarantees, the exploitative and alienating social structures of the old society, thus enabling citizens to attain genuine personal dignity. Furthermore, the current constitution, founded upon the 1982 *Constitution*, has reinforced its respect for individuals' diverse life ideals, thereby promising to safeguard citizens' personal dignity both in public life and in private spheres. In this sense, China's *Constitution* and the protection of human dignity may be said to share a common origin and to grow together. Finally, tracing constitutional values back to the human being itself also possesses an intuitive moral appeal, and thus serves as the ultimate justification that puts an end to further questioning. In short, the principle of respect for humanity should be understood as a constitutive moral commitment of political order.⁶¹ It is precisely on this basis that this proposition responds to the inner demand of the constitutional spirit: on the one hand, the spirit of a nation's constitution, in the normative sense, may be viewed as the "value crystallization" of constitutionalism, shaped by the will of the people as the maker or amender and thereby embodied in the constitutional text. In this regard, the constitutional spirit should share a value affinity with constitutionalism, and taking human dignity as the constitutional spirit clearly aligns with the very essence of constitutionalism. On the other hand, this affinity between the constitutional spirit and constitutionalism also implies that the interpretation of the constitutional spirit should appropriately trace back to the shared values of humankind, thereby reflecting the convergent tendencies of comparative

Sun Guodong, *Public Philosophy of Law: The Rule of Law and Justice in Transitional China*, 121-123; Zhang Xiang, "'Common Prosperity' as the Normative Content of the Socialist Principle in the Constitution," *Science of Law: Journal of Northwest University of Political Science and Law* 6 (2021): 20-25; Chen Minghui, "What Kind of Republic? — The Nature and Connotation of the 'Socialist State' in the Current Constitution," *Peking University Law Review*, vol. 20, no. 2 (Beijing: Peking University Press, 2019), 67-73.

⁶¹ Zheng Yushuang, "The Value Composition and Jurisprudential Structure of Human Dignity," *Journal of Comparative Law* 5 (2019): 178-180.

constitutional values. Accordingly, given that "human dignity" dialectically embeds particularity within universality, identifying it as the theoretical crystallization of the constitutional spirit may indeed be regarded as an unassailable conclusion.⁶²

Accordingly, we may assert that only a constitution imbued with the fundamental spirit of safeguarding human dignity, thus equally respecting every individual, including each of "us" of different generations, as a person of dignity and a subject of practical reason, can become "our constitution" in the ultimate sense.

However, this assertion may encounter two objections. The first is the so-called "theory of the uselessness of dignity." Even if the concept of dignity carries the aforementioned appeal, if it remains an empty or redundant notion, there would be little meaning in elevating it to the level of the constitutional spirit.⁶³ In response, we maintain that although it cannot be denied that the notion of human dignity seems not to offer a precise definition, taking it as the constitutional spirit is by no means meaningless. At the very least, it reorients constitutional practice toward a humanistic foundation, or in other words, embeds a sense of human concern within the moral justification of the constitution. Put differently, to declare that the constitutional spirit lies in respect for the person is to pose the following questions to "we the people," both now and in the future: what image of humanity did past Constitutions set for us? As we carry this legacy forward, what kind of citizens do we aspire to become? This introspective pursuit of individual autonomy not only renders the constitution "ours" in the sense that it respects us, but also transforms constitutional practice into a common cause linking successive generations through the self-referential and self-reflective engagement of "we the people."

⁶² Some scholars hold a similar view. For example, Fan Jinxue and others argue: "Regardless of how one interprets the 'constitutional spirit,' as the spirit of the Constitution it should embody the common values of humanity..." Fan Jinxue and Ma Chongchong, "On Xi Jinping's Important Discourses on the Full Implementation of the Constitution in His Thought on the Rule of Law," *Study & Exploration* 9 (2023): 61. However, according to that view, the constitutional spirit is primarily a spirit of protecting rights and limiting power. In the view of the first author of this paper, however, the protection of rights and the restriction of public power are merely functions of the Constitution, or, more precisely, they fall within the scope of the principle of the rule of law. By contrast, the protection of human dignity constitutes the fundamental essence of the Constitution as a universal value of humankind.

⁶³ Wang Hui, "The Theory and Institutionalization of Human Dignity," *China Legal Science* 4 (2014): 106-109.

Second, even if taking human dignity as the constitutional spirit does not render the concept “semantically empty,” it may still face another objection: since this spirit focuses on the common values of humanity, most Constitutions could in principle ground their fundamental spirit in the same idea, so how, then, can it serve as the distinctive quality that enables “we the people” to identify with our constitution? In response, this paper considers the following explanations appropriate.

a) As previously discussed, placing the constitutional spirit within the dimension of universal human values does not diminish the internal motivation of the people to identify the constitution as “our law.” Rather, it is precisely when the spirit of our constitution embodies the shared aspirations found in comparative constitutionalism and thereby fulfills the common expectations of human value, this spirit can become the fundamental basis of “we the people’s” identification with the constitution.

b) It should also be recognized that human dignity is a refinement of spirit that embeds particularity within universality, and therefore naturally contains a dimension of particularity as well. In other words, while different Constitutions may indeed trace their fundamental spirit to the idea of human dignity, what constitutes the protection of that dignity varies, as each constitution embodies a distinct image of the human person. This in turn leads to different normative implications. For example, some scholars argue that a) the “person” in the U.S. constitution is characterized as a self-sufficient “individualist” and b) that respect for the person primarily entails respect for private autonomy, whereas the “person” in the German constitution is grounded in a Kantian conception of “personalism,” so that respect for the person first and foremost requires protection of the integrity of individual personality.⁶⁴

Returning to China’s *Constitution*, it too presupposes a distinctive image of the human person, and human dignity therefore carries a uniquely Chinese

⁶⁴ For an early discussion in Chinese scholarship on Germany’s dignity theory based on personalism, see Lin Laifan, *From Constitutional Norm to Normative Constitution: An Introduction to Normative Constitutionalism* (Beijing: Law Press, 2001), 174-175. For comparative studies on the concept of dignity in Germany and the United States, see Lin Laifan, “Human Dignity and Personal Dignity: On the Interpretive Approach to Article 38 of the Chinese Constitution,” *Zhejiang Social Sciences* 3 (2008): 48-49; Yu Jun, “‘Individual Freedom’ and ‘Human Dignity’: A Comparison of the Foundational Principles of Human Rights Protection in the U.S. and German Constitutions,” *Archives for Legal Philosophy and Sociology of Law* 1 (Beijing: Peking University Press, 2009), 194-200.

connotation and normative vision. On this point, several insightful preliminary studies have already been conducted in the academic community. These works often focus on China's cultural traditions and the value context of socialism, elaborating this distinctive human image in terms of the relationship between the collective and the self. As some scholars have pointed out, the "person" presupposed by China's *Constitution* is not an abstract, individualistic being, but one who "co-exists" with other members of the community in the concrete material world. Accordingly, respect for the person further presupposes the requirement of "balance between the collective and the self." In other words, since the community and the individual are mutually constitutive and share a common origin, respect for the individual should take into account one's ethical responsibilities toward others and the community.⁶⁵ It is not difficult to see that these discussions of the human image, centered on the relationship between the collective and the self, share a core concern: the "person" envisioned in China's *Constitution* should seek a "balance point" between communal life and personal autonomy and this is precisely the essence of the "balance between the collective and the self."⁶⁶

On this basis, if we further examine the intrinsic values of socialism, we can find that this image of the person "being-with-others" and its requirement of "balance between the collective and the self" carry far richer implications. Specifically, Marxism puts this conception of the person within two interrelated contexts: first, while "being-with-others" certainly implies that the community constitutes the very condition of possibility for individual existence and development, the flourishing of the community must ultimately rest upon "the all-around and free development of every individual."⁶⁷ Second, the "collective" aspect of the "balance between the collective and the self"

65 Qi Yanping, "The Humanistic Foundation of Human Rights in Contemporary China," *Contemporary Law Review* 3 (2023): 3-16; Yu Jun, "On the 'Image of People' in the Constitution," *Zhejiang Academic Journal* 6 (2011): 134-135; Li Long and Long Sheng, "On the Model of Image of Man of Human Dignity in Constitutional Law — Analysis of the Transition and Reconstruction of the Image of Man in Our Constitutional Law," *Journal of Northeast Normal University (Philosophy and Social Science Edition)* 3 (2007): 84-86.

66 As noted above, this ongoing negotiation and balancing of values between the collective and the self has also been a central issue in the construction of the concept of freedom and rights in China since the modern era. For a specific case study on this, see Lin Laifan, "Translation and Rejection: Autonomy in the Formation of Modern Chinese Conceptions of Rights," *Peking University Law Journal* 5 (2024).

67 Marx and Engels, *Karl Marx and Friedrich Engels Selected Works*, vol. 2 (Beijing: People's Publishing House, 2012), 267.

represents a notion of the common goodness; yet this goodness is not predetermined. Rather, it points toward a future vision in which, through historical progress, human beings can resist alienated labor and thereby achieve freedom, emancipation, and all-around development.⁶⁸ In this sense, the “person” in China’s *Constitution* is indeed “being-with-others,” but attention is likewise given to the cultivation of diverse individual personalities and the enlightenment of personal consciousness. At the same time, this “balance between the collective and the self” respecting people means that the enhancement of collective well-being must be accompanied by a commitment to safeguard individual autonomy. Only in this way can the “collective” and the “self” attain “balance” in the course of historical progress. It can thus be said that, from the Marxism standpoint, this represents a truly humanistic form of respect for the person. Accordingly, the constitutional spirit that takes this conception of dignity as a central component constitutes the fundamental character of China’s *Constitution*. Only when grounded in this spirit, one that regards successive generations of “us” as concrete individuals endowed with autonomous consciousness and as historical subjects of human emancipation, can China’s *Constitution* ultimately become “our constitution” under socialism with Chinese characteristics.

It is worth noting that this constitutional spirit also provides value guidance for China’s Constitutional development. If the 1982 *Constitution* had already preliminarily mitigated the inherent arbitrariness of popular democracy through the incorporation of the rule of law, then, as mentioned above, the constitutional spirit of safeguarding human dignity requires us to continue emphasizing citizens’ personal autonomy and the protection of rights, thus ensuring that the constitution appropriately returns to the rule-of-law end. Accordingly, the constitutional spirit guides us to the inherent significance of constitutional development and governance under the constitution: only by further incorporating the protection of rights and the rule of law as intrinsic components of the constitution can we continue realizing the function of China’s *Constitution* as “the guarantee for the people’s happiness,” promote its

⁶⁸ Lin Shangli, *Contemporary Chinese Politics: Foundation and Development* (Beijing: Encyclopedia of China Publishing House, 2016), 79-87.

outstanding normative characteristics, and ensure that the constitution belongs to different generations of "we the people" and remains enduringly relevant.

V. Conclusion

In sum, from the perspective of normative constitutionalism, China's *Constitution* is considered "the constitution of we the people" not merely because of the historical narratives of "popular constitution-making," but because different generations of "we the people" continuously uphold normative faith in the constitutional text, thereby making constitutional practice our common cause that links the past, present, and future. This point is particularly significant in contemporary China. Given that the current constitution has already embedded the will of the people within its established norms, the practice and development of the constitution cannot easily resort to "people's revolutions." Rather, it must primarily rely on the constitution itself with its inherent outstanding qualities to achieve self-realization and evolution through interpretation and application.

On this basis, the main task of this paper is precisely to clarify, from a value-theoretical dimension, those good qualities of China's *Constitution* that make "we the people" maintain normative faith in it. These qualities constitute the core of the normative attributes of our constitution. They not only establish the value source for "we the people" to uphold a normative faith, but also serve as important grounds for the constitution to maintain its normative force.⁶⁹ This is possible precisely because these qualities have a dialectical significance: on the one hand, they demonstrate aspects of China's *Constitution* that are distinct from other Constitutions; on the other hand, this distinctiveness can be embedded within common human values such as constitutionalism. Ultimately, "the constitution of we the people" requires not only that the constitution's objective form differs from others, but also that it provides us with justifiable reasons for recognition. Thus, a universal normative foundation rooted in the common values of humanity is always necessary.

⁶⁹ Hesse once pointed out that the decisive factor in the optimal development of constitutional normative force lies in "the attitudes of all those participating in constitutional life," i.e., a "will to respect the Constitution." Konrad Hesse, *Normative Kraft Der Verfassung*, Liu Yawei and Zeng Tao trans., *Law and Modernization 2* (2024): 195.

Of course, the normative characteristics of China's *Constitution* require not only theoretical exposition but also the realization of healthy evolution and transformation through interpretation and application. In the historical context of the new era, it is necessary to further advance reforms in rights protection and mechanisms for overseeing the implementation of the constitution, so as to give full play to the constitution's good qualities and enable the people to attain a genuine sense of fulfillment and happiness through concrete and dynamic constitutional practice.

(Translated by *JIANG Yu*)