

**Crafting a Theory of Socialist Democracy For China  
in the 21st Century:  
Considering Hu Angang’s (胡鞍钢) Theory of  
Collective Presidency in the Context of the  
Emerging Chinese Constitutional State**

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I. INTRODUCTION

Where does democracy happen? How is it legitimately expressed? What is its principal marker in the construction of democratic political institutions? The West has developed an elaborate theory of democratic constitutionalism grounded on the premise that democracy occurs *outside* of the organs of state, through elections and discourse. Recently Chinese constitutional theorists have begun to elaborate a distinct view—that democratic constitutionalism may also be grounded on the premise that democracy occurs *within* the organs of state and the political apparatus of the nation, through collective and representational decision making.<sup>1</sup> The

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<sup>1</sup> This was reflected in *China, State Council, White Paper on Political Democracy, Building of Political Democracy in China* (Oct. 19, 2005) available at <http://www.china.org.cn/english/2005/Oct/145718.htm#10> (“Democratic rule means that the CPC sticks to the principle of ruling the country for the people and relying on the

narrative of democracy and the parameters of legitimate constitutionalism,<sup>2</sup> once wholly the construct of ancient Western notions of the character of society, politics and the state, may now be witness to the emergence of a counter narrative that is unfolding (albeit slowly and incompletely for the moment) in the form of Chinese socialist democracy.<sup>3</sup>

One of the most important aspects of campaigns to win the hearts and minds of target populations is the ability to control the master narrative -- the script that is used when we tell stories or understand what is going on around us, the fundamental stories and groundings from which one understands and orders knowledge and cultural practices as legitimate or not.<sup>4</sup> Despite its political origins, the concept has become important to

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people in its rule, guarantees that the people are the masters of the state, upholds and improves the people's democratic dictatorship and the democratic centralism of the Party and the state, and promotes people's democracy by enhancing inner-Party democracy." *Id.*, Section VIII).

<sup>2</sup> For my premises in approaching the ideal of constitutionalism, see Larry Catá Backer, *From Constitution to Constitutionalism: A Global Framework for Legitimate Public Power Systems*, 113 PENN ST. L. REV. 671 (2009) (positing five characteristics of constitutionalism—"Constitutionalism is (1) a system of classification, (2) the core object of which is to define the characteristics of constitutions (those documents organizing political power within an institutional apparatus), (3) to be used to determine the legitimacy of the constitutional system as conceived or as implemented, (4) based on rule of law as the fundamental postulate of government (that government be established and operated in a way that limits the ability of individuals to use governmental power for personal welfare maximizing ends), and (5) grounded on a metric of substantive values derived from a source beyond the control of any individual." *Id.* at 679). The focus is on the parameters necessary for establishing a legitimate state order, the absence of which can legitimize either internal revolution or external intervention. Also central to the constitutionalism ideal is the notion of rule of law. See, e.g., Michel Rosenfeld, *The Rule of Law and the Legitimacy of Constitutional Democracy*, 74 S. CAL. L. REV. 1307, 1308-20 (2001). But the notion of constitutionalism as ideal or as normative system remains highly contested. *Contra* Daniel S. Lev, *Social Movements, Constitutionalism and Human Rights: Comments from the Malaysian and Indonesian Experiences*, in CONSTITUTIONALISM AND DEMOCRACY: TRANSITIONS IN THE CONTEMPORARY WORLD (Douglas Gerenberg et al. eds., 1993)(explaining that constitutionalism is neither compelling nor inevitable and reflects power and will under local circumstances); in the same volume see also H.W.O. Okoth-Ogendo, *Constitutions Without Constitutionalism: Reflections on an African Political Paradox*, in CONSTITUTIONALISM AND DEMOCRACY 65-83(explaining that constitutions serve to provide legitimacy to leaders without limiting governmental power).

<sup>3</sup> See WOEI LIEN CHONG, *CHINA'S GREAT PROLETARIAN CULTURAL REVOLUTION: MASTER NARRATIVES AND POST-MAO COUNTERNARRATIVES* (Rowman & Littlefield Publishers, 2002) (showcasing the widely recognized power of ideological narratives within China).

<sup>4</sup> JEAN-FRANÇOIS LYOTARD, *THE POSTMODERN CONDITION: A REPORT ON KNOWLEDGE* sections 9-10 (Manchester UK: Manchester University Press 1984) (arguing that we live in an age where the grand narratives around which we establish reality (e.g., the unity of knowledge, history progresses toward an identifiable objective, etc.) has been shattered and a fragmented assortment of master narratives (the history of nationalist

both business practices and academic understanding of the context in which people provide meaning to the contexts in which they operate. Scholars, government officials, and the business community have come to understand the importance of narrative in framing the way social and political practices are understood. The Harwood Institute has suggested a useful approach to narrative: “Our adherence to a master narrative dictates how we frame stories, whom we interview, the questions we ask, and ultimately the work we produce, which typically reinforces our belief in the master narrative.”<sup>5</sup> Once an institution or institutional actors can assert substantial control over the master narrative, they can easily manage populations to their point of view.

The importance of a master narrative is particularly acute in the context of constitutionalism and constitutional legitimacy of states.<sup>6</sup> Within the constitutional master narrative that has arisen, especially after 1945, the ideal of popular democracy has become central to the concept of a legitimate constitutional state.<sup>7</sup> Legitimacy was central to the master narrative of constitutional states because illegitimacy empowered internal resistance and external intervention.<sup>8</sup> Indeed, the rhetoric of legitimacy is

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struggle, the role of class in government, the foundational importance of capitalism or democracy, etc.) seek to claim some of the space once reserved for the unifying vision of the world and its explanation of everything in it).

<sup>5</sup> *What is a Master Narrative?*, COVERING COMMUNITIES.ORG, The Harwood Institute for Public Innovation (2007), available at <http://www.coveringcommunities.org/PDFs/MasterNarrativeNEW.pdf>.

<sup>6</sup> See, e.g., Larry Catá Backer, *Theocratic Constitutionalism: An Introduction to a New Legal Global Ordering*, 16 IND. J. GLOBAL LEGAL STUD. 85 (2009).

<sup>7</sup> See Louis Henkin, *A New Birth of Constitutionalism: Genetic Influences and Genetic Defects*, in CONSTITUTIONALISM, IDENTITY, DIFFERENCE AND LEGITIMACY: THEORETICAL PERSPECTIVES 30, 40-42 (Michel Rosenfeld, ed., Durham, NC: Duke University Press, 1994) (noting that constitutionalism is based on popular sovereignty, and government bounded by rule of law and installed through the application of democratic principles, that is of political democracy and representative government. *Id.* at 40-42).

<sup>8</sup> Considering the implications of determinations of democratic legitimacy as a foundation for respect of territorial integrity:

A defiant Russian President Vladimir Putin said Tuesday that masked gunmen are fueling anarchy in Ukraine. He decried what he called an illegitimate government that illegally seized power in a coup with U.S. backing, arguing that his country has a right to use military force.

U.S. President Barack Obama and his country’s top diplomat said Ukraine’s new government is democratically responding to the people’s will. They warned of invading forces and a desperate Russia breaking international law.

See Catherine E. Shoichet, *Putin vs. Obama: Facing off over facts in Ukraine*, CNN WORLD, (Mar. 5, 2014), <http://www.cnn.com/2014/03/04/world/europe/putin-obama-ukraine-facts/>.

powerful enough to be invoked in 2014, in the context of the Russian partitioning of Ukraine and its interventions in large parts of Ukrainian territory.<sup>9</sup> It has a Chinese dimension as well.<sup>10</sup>

Within the conventional master narrative of constitutional democracy, *elections are the manifestation of the most basic foundation for the operation of democratic principles in a constitutional state grounded in popular sovereignty.*<sup>11</sup> Elections are understood as the periodic performance of popular sovereignty, the objective of which is to structure a process in which the mass of a state's citizens may choose individual representatives to the legislative and executive branches of a government. I have previously suggested the idea that:

In this age of mass democracy, elections are the essence of democratic constitutionalism. Elections, like some purifying elixir, cleanse all (political) sins of states that indulge in the practice. An act of sovereign will, by which the people of a state convey their political power to agents who act on their behalf, elections conform the appropriate relationship between state apparatus and the sovereign masses. Elections have proven crucial for legitimating states and their governments. There is a strong connection between democracy and elections. One is impossible without the other. Together they implement notions of popular sovereignty in the construction and operation of government.<sup>12</sup>

This basic, elections-based premise of constitutionalist legitimacy has been questioned<sup>13</sup> and criticized.<sup>14</sup> Yet while for critics elections might

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<sup>9</sup> See generally, e.g., Backer, *supra* notes 2 & 6.

<sup>10</sup> See generally WOEI LIEN CHONG, *supra* note 3, at 2.

<sup>11</sup> See, e.g., James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty under the Lockean Constitution*, 52 U. PITT. L. REV. 189 (1990).

<sup>12</sup> Larry Catá Backer, *Democracy Part XIX: Electoral Legitimacy in Honduras and Afghanistan*, Law at the End of the Day (Nov. 29, 2009), <http://lcbackerblog.blogspot.com/2009/11/demo-racy-part-xix-electoral-legitimacy.html>.

<sup>13</sup> See, e.g., Bo Rothstein, *Creating Political Legitimacy Electoral Democracy Versus Quality of Government*, 53(3) AM. BEHAV. SCIENTIST 311 (November 2009) (explaining that “political legitimacy depends at least as much on the quality of government than on the capacity of electoral systems to create effective representation.”).

<sup>14</sup> See e.g., Giandomenico Majone, *The Regulatory State and its Legitimacy Problems*, 22(1) 22 W. EURO. POL. 1-24 (1999); see generally Larry Catá Backer, *Democracy Part XXVI: Democratic Accountability--From Voter to Managed Mob*, Law at the End of the Day (June 3, 2012), <http://lcbackerblog.blogspot.com/2012/06/democracy-part-xxvi-democratic.html> (“The rise of highly efficient administrative apparatus in states, and tightly networked clusters

have lost their function of direct accountability for representative government, they retain legitimating power under constitutionalism principles in a number of important ways. Elections, for example, function as a social act and an act of social discipline, as a means of managing popular violence, as a measure of governmental legitimacy, and as a ritual of affirmation of the mass democracy *grundnorm* as the basis of political organization, as a method of popular organization to support or undermine the state apparatus, and as an affirmation of belonging.<sup>15</sup> Beyond that, elections in Western liberal constitutional states appear to require a set of mechanisms for ensuring that the masses vote effectively. To that end, civil society has been said to critically support a vigorous democracy.<sup>16</sup>

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of functionally differentiated non-governmental actors with power to affect individual and group behavior may require a more direct confrontation with the question: has public participation in democratic governance is becoming largely symbolic.”).

<sup>15</sup> See generally Larry Catá Backer, *Democracy Part XXVII--The Utility of Voting in the Shadow of the Administrative State*, Law at the End of the Day (July 27, 2012), <http://lbackerblog.blogspot.com/2012/07/demcracy-part-xxvii-utility-of-voting.html>.

<sup>16</sup> See ANN C. HUDOCK, *NGOS AND CIVIL SOCIETY: DEMOCRACY BY PROXY?* (Polity Press, 1999); Amy Hawthorne, *Middle Eastern Democracy: Is Civil Society the Answer?*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE PAPERS No. 44 (Mar. 2004), available at <http://carnegieendowment.org/files/CarnegiePaper44.pdf> (supporting a critical view of the connection between civil society’s support of a vigorous democracy). Thus, for example the “OHCHR Management Plan for 2014-2017” recently released by the Office of the United Nations High Commissioner for Human Rights appears to mark a modest shift from the traditional emphasis on economic and social rights to civil and political rights. Office of the United Nations High Commissioner for Human Rights, *OHCHR Management Plan 2014-2017: Working for your Rights* (Geneva 2014), available at [http://www2.ohchr.org/english/OHCHRreport2014\\_2017/OMP\\_Web\\_version/media/pdf/0\\_THE\\_WHOLE\\_REPORT.pdf](http://www2.ohchr.org/english/OHCHRreport2014_2017/OMP_Web_version/media/pdf/0_THE_WHOLE_REPORT.pdf). This takes the form of a new emphasis on “widening the democratic space” in states. (Management Plan, pp. 73-83). It appears modest because it looks to target “public freedoms, human rights education and the work of human rights defenders and the media.” (Management Plan p. 7). The interactions among economic reform and civil society as furthered through the programs of the large public institutional lenders also suggests the extent to which institutional actors have sought to infuse the expressive and participatory potential of civil society within elections-based democratic constitutional systems. The World Bank, for example, has devoted substantial resources to developing its relationship with civil society as a tool for aiding economic and political development. See, e.g., World Bank, *Civil Society, Frequently Asked Questions*, available at <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/CSO/0,,contentMDK:20093224~pagePK:220503~piPK:220476~theSitePK:228717,00.html>. Francis Fukuyama nicely captured the connection between elections and civil society, framed through law, “I mean, democracy--we have a good sense of it. It means something like elections, multiparty, secret-ballot elections. But the kind of society we live in is a liberal democracy. It’s elections plus guarantees of certain, you know, fundamental rights of individuals like freedom of the press, freedom of religion, freedom of political association, and, most importantly, the freedom to participate in the political system.” Interview by Brian Lamb

Nevertheless, can democracy take other forms? If the central problem of the expression of democracy—popular elections—ignores the effectiveness of democratic function *within* modern governments, and indeed, remains exterior to it, then might an alternative path to democratic expression also serve to legitimize the democratic constitutionalism of a state? These questions are central to the constitutional discourse of states, like China, that have developed a strong constitutional discourse but are organized on Party-State principles.<sup>17</sup> Recently, Chinese scholars have begun arguing with greater force that traditional notions of democratic constitutionalism do not describe all the possible means by which a state may be organized along constitutional and democratic lines, and that states like China are developing an alternative to traditional Western models.<sup>18</sup>

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with Francis Fukuyama, Author, in Wash. D.C. (Feb. 9, 1992) (discussing Mr. Fukuyama's book, *THE END OF HISTORY AND THE LAST MAN* (New York: Free Press, 1992)) available at <http://www.booknotes.org/Watch/24282-1/Francis+Fukuyama.aspx>.

<sup>17</sup> Very briefly, in China, Party-State principles are organized around the “Four Cardinal Principles” (四项基本原则) which include the principles of upholding the socialist path, the people's democratic dictatorship, the leadership of the Communist Party and Mao Zedong Thought and Marxist Leninism. The “socialist path” is perhaps best understood as embracing the Chinese notion of socialist modernization—the direction of the productive forces for the creation of wealth that is required to move China to a stage of development within which the establishment of communist economic structures can be established. The people's democratic dictatorship (人民民主专政) is incorporated in the Chinese Constitution (art. 1) and is premised on the idea that political power is vested in the Chinese Communist Party (the “CCP”) that must act both on behalf of the people, and also against those who seek to reject the leadership role of the CCP and its objective to follow the socialist path. The socialist path itself suggests political obligations and constraints on the CCP leadership, which is also constrained by the ideological principles of Mao Zedong Thought and Marxist Leninism (and currently also its refinement expressed in the CCP Congresses and incorporated into the Constitution of China (Preamble)). Essentially, the Party State system is constrained by the principles of Marxist Leninism and incorporated into the official CCP “line” yet posits a political order in which political authority is vested in a vanguard (Communist) Party that exercises its leadership on political policy )Administrative authority is vested in a government, bound by the Chinese Constitution which itself represents the highest political expression of the CCP as applied and exercises administrative authority under the CCP's guidance. See Jiang Shigong, *Written and Unwritten Constitutions: A New Approach to the Study of Constitutional Government in China*, 36(1) MODERN CHINA 12-46 (2010); see also, Larry Catá Backer, *Party, People, Government, and State: On Constitutional Values and the Legitimacy of the Chinese State-Party Rule of Law System*, 30 B.U. INT'L L.J. 331-408 (2012). The political constitutionalism represented in these writings is discussed in Albert H.Y. Chen, *The Discourse of Political Constitutionalism in Contemporary China: Gao Quanxi's Studies on China's Political Constitution*, 14(2) THE CHINA REVIEW 183 (2014) [hereinafter *Party, People, Government, and State*].

<sup>18</sup> See, e.g., Zhiwei Tong, *A Comment on the Rise and Fall of the of the Supreme People's Court's Reply to Qi Yuling's Case*, 43 SUFFOLK U. L. REV. 669 (2010); Frank Fang, *Taking the China Model Seriously: One-Party Constitutionalism and Economic Development*, in CONTEMPORARY CHINESE POLITICAL THOUGHT: DEBATES AND PERSPECTIVES 209 (Frank Dallmayr & Zhao Tingyang, eds., Lexington: Univ. of Ky.

The 21st century has seen the rise of a number of constitutionalist schools within China, and with them the genesis of a healthy debate. This debate is about the character of Chinese constitutionalism as an exercise in constitutional legitimacy and the relationship of Chinese constitutionalism to global principles of legitimate constitutionalism.<sup>19</sup> Together these schools have been debating the contours of what is emerging as Chinese socialist democracy—a rule-of-law-constitutionalism centered on the division of authority between the Chinese Communist Party (“CCP”) and the government. This form of distinctly Chinese constitutionalism seeks to establish a system that is meant to be representative and democratic in a way consistent with a separation of powers and checks and balances system quite distinct from the tripartite separation of power premises in the West.<sup>20</sup> The ongoing internal debate among Chinese constitutional scholars remains relatively opaque to foreigners, who tend to view any effort to deviate from Western premises of constitutionalism as a rejection of constitutionalism itself, a position around which some Chinese intellectuals disagree.<sup>21</sup>

One of the central issues debated in constructing a constitutionally legitimate socialist constitutionalism with Chinese characteristics<sup>22</sup> is the

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Press, 2012); Jiang Shigong, *supra* note 17, at 12-46. (2010); Zhu Suli, *Political Parties in China's Judiciary*, 17 DUKE J. COMP. & INT'L L. 533, 557 (2007).

<sup>19</sup> Tong Zhiwei, for example, has identified three schools of constitutional thought—anti-constitutionalists, socialist constitutionalists, and universal constitutionalists. The first rejects western notions of constitutionalism and seek to develop an autonomous structure for constitutional debates. The second recognizes the CCP's vanguard role and its political ideology, but seeks to conform that political framework to larger constitutional principles applied in the Chinese context. The last posits that Chinese constitutionalism must eventually adopt the form of western constitutional democracies. I have also posited a school of political constitutionalism that recognizes the special role of the CCP as the organizer of the Chinese polity and the expression of its political mandate through a binding constitution. Zhiwei Tong, Paper presented at the conference, China-Constitution-Politics at Penn State University, (Apr. 9, 2014) (on file with author).

<sup>20</sup> Jiang Shigong, *Chinese-Style Constitutionalism: On Backer's Chinese Party-State Constitutionalism*, 40 MODERN CHINA (2014).

<sup>21</sup> Hu Angang, COLLECTIVE PRESIDENCY IN CHINA (Beijing: Tsinghua Institute for Contemporary Chinese Studies, 2013) (unpublished manuscript) (on file with author) (Angang notes, “China has adopted a collective central leadership system, which cannot be understood by foreigners; they think of it as a one-party, undemocratic, or autocratic system.” *Id.* at 155.); also see Rogier Creemers, *The Constitutionalism Debate in China*, INT'L J. CONST. L. BLOG, July 17, 2013, available at <http://www.icconnectblog.com/2013/07/the-constitutionalism-debate-in-china>.

<sup>22</sup> See Hu Jintao, *Hold High the Great Banner of Socialism with Chinese Characteristics and Strive for New Victories in Building a Moderately Prosperous Society in all*, Report to the 17th National Congress of the Communist Party of China (Oct. 15, 2007), available at <http://www.china.org.cn/english/congress/229611.htm>.

precise character and role of the CCP.<sup>23</sup> This issue is important because of the CCP's role within Chinese politics and its place within the Chinese constitutional system.<sup>24</sup> Beyond whether or not the CCP falls inside or outside the 1982 State Constitution,<sup>25</sup> the issue of the exercise of democratic (that is representative, institutional, and non-arbitrary) governance is a foundational one. In effect, Chinese theorists suggest that the constitutional principle of democracy does not merely manifest itself through the exercise of popular elections for a rotating slate of representatives who exercise substantial authority and are accountable only through the election cycle. It also (and perhaps more importantly) manifests itself through the development of democratic practices within the representative institutions of party politics (the CCP) and the state (the government).<sup>26</sup> This different focus becomes the lynchpin through which socialist democracy is developed.<sup>27</sup>

One of the most interesting variations of this approach within Chinese constitutional discourse is the notion of *collectivity* in the decision-making structures of Party and state in China. Hu Angang<sup>28</sup> has

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<sup>23</sup> See, e.g., Zhiwei Tong, *Part XXIX—Zhiwei Tong (童之伟) Series: Five Theoretical Issues Should Be Addressed to Restart Political Reforms, Law at the End of the Day* (Nov. 1, 2013), available at <http://lbackerblog.blogspot.com/2013/11/part-xxxzhiwei-tong-series-five.html>; see also Larry Catá Backer, *The Rule of Law, The Chinese Communist Party, and Ideological Campaigns: Sange Daibiao (the "Three Represents")*, *Socialist Rule of Law, and Modern Chinese Constitutionalism*, 16 *TRANSNAT'L L. & CONTEMP. PROBS.* 29 (2006).

<sup>24</sup> "China experimented in the past with various political systems, including multi-party democracy, but it did not work, President Xi Jinping said during a visit to Europe, warning that copying foreign political or development models could be catastrophic. China's constitution enshrines the Communist Party's long-term 'leading' role in government, though it allows the existence of various other political parties under what is calls a 'multi-party cooperation system.' But all are subservient to the Communist Party." *Xi Jinping says multi-party system didn't work for China*, REUTERS (Apr. 2, 2014), available at <http://in.reuters.com/article/2014/04/02/china-politics-xi-jinping-idINDEEA3101U20140402>.

<sup>25</sup> Zhōnghuá Rénmín Gònghéguó Xiànfǎ (Constitution of the People's Republic of China 1982 as amended), available at <http://en.people.cn/constitution/constitution.html>.

<sup>26</sup> Hu Jintao, *supra* note 22. ¶ XII, available at <http://www.china.org.cn/english/congress/229611.htm> ("We will expand intra-Party democracy to develop people's democracy and increase intra-Party harmony to promote social harmony. We need to respect the principal position of Party members, guarantee their democratic rights, increase transparency in Party affairs and create favorable conditions for democratic discussions within the Party.").

<sup>27</sup> See, e.g., Information Office of the State Council of the People's Republic of China, *Building of Political Democracy in China* (Beijing, New Star Publishers, Oct. 2005), available at <http://english.people.com.cn/whitepaper/democracy/democracy.html>.

<sup>28</sup> "Hu Angang 胡鞍钢 is a Tsinghua University-affiliated economist who is

most recently drawn on this general theory of democratic governance through collective action, and more especially on its theory of socialist democracy organized around a collective presidency.<sup>29</sup> He is part of a line of theorists who are developing a theory of democracy that looks beyond the exercise of elections to the exercise of power within state and political entities. Hu suggests that if the ideal of a constitutionalist state is the exercise of democracy through representative and accountable institutions of governance, then it is possible to implement that ideal both by focusing on popular elections (traditional view) and by increasing responsive democracy within governmental and political institutions (Chinese socialist democracy).<sup>30</sup> In both systems, the core democratic principle of legitimate constitutionalism is exercised. In one case (Western democracies), democracy is operationalized through the exercise of the franchise to elect leaders. In the other case (Chinese democracy), democracy may be embedded in the exercise of democratic and representative practices within the institutions of state -- and as a critical part of the operation of the democratic functions of the party in power in one-party (or vanguard party) constitutional states.<sup>31</sup> Either way, systems

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regarded as a leading figure in what could be translated as ‘China National Exceptionalism Studies’ 国情研究 . . . . A fierce defender of China’s political institutions, Hu argues that China’s current political model deserves more credit than reformists who urge speedier democratization often allow.” The China Story. *Hu Angang*, AUSTRALIAN CENTRE ON CHINA IN THE WORLD, <http://www.thechinastory.org/key-intellectual/hu-angang-%E8%83%A1%E9%9E%8D%E9%92%A2/>.

<sup>29</sup> Hu Angang, *supra* note 21.

<sup>30</sup> Hu Angang, *supra* note 21 at 129 (“The CPC aims at future expansion, and it intends to create political trust and confidence as it builds and develops China.”).

<sup>31</sup> There is sometimes confusion about the difference between political parties, like those common in the West, and vanguard parties, which are central to Leninism and the organization of Marxist-Leninist states. Western political parties are generally understood as the aggregation of individuals joined by a particular political agenda that operate through an institutionalized organization. Political parties have no formal relation to the organs of state power, nor are they recognized as agencies of public power. Vanguard parties, on the other hand, have a quite different relationship to the state and state power. Vanguard parties are the institutional expression of the entire sovereign political power of the people. They are constituted to guide the people (and its administrative institutions) toward the fundamental objectives for which the state was established. In Marxist-Leninist states, those objectives are defined by the normative framework of Marxism, as developed through its application by the vanguard party as it seeks to apply its principles in national context. All political power can be exercised only under the guidance of the vanguard party or in concert with it, and such exercise is legitimate only to the extent it conforms to the core normative principles for which the state was established. The vanguard party, then, in states like China, may be better understood as the organization of a polity rather than as the formation of a western style political party. See, e.g., Larry Catá Backer, *Party, People, Government, and State* *supra* note 17. The notion of Vanguard party is discussed *infra* at text and notes 46-52.

are instituted that enhance rule of law governance grounded in principles that reflect the political community as a whole in whose collective interests the representatives act. Yet Hu understands that “in almost 200 countries around the world, the personal presidential system is known, but the notion of a collective presidential system is not. This innovative practice by China is poorly understood, and it is not one that foreigners agree with.”<sup>32</sup>

Hu has sought to introduce Western thinkers to the emerging theories of constitutionalism and economic policy,<sup>33</sup> with notions of collective democracy at the heart of the move toward socialist democracy with Chinese characteristics.<sup>34</sup> Here, democratic principles run from people to the CCP and then outward toward the state apparatus and back to the people. It is democratic theory reconstituted as the mass line.<sup>35</sup> This

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<sup>32</sup> Hu Angang, *supra* note 21, at 177.

<sup>33</sup> HU ANGANG, CHINA IN 2020: A NEW TYPE OF SUPERPOWER (Washington, D.C.: Brookings Institute, 2011).

<sup>34</sup>The General Program of the CCP’s Constitution provides the framework for socialist democracy, grounded in an adherence to the Party’s basic line. The whole Party must achieve unity in thinking and in action with Deng Xiaoping Theory, the important thought of Three Represents and the Party’s basic line, by thoroughly applying the Scientific Outlook on Development and persevering in doing so for a long time to come. The Party must integrate the reform and open up its policy with the Four Cardinal Principles. The Party carries out its basic line in all fields of endeavor, implementing in an all-round way its basic program for the primary stage of socialism, and combating all “Left” and Right erroneous tendencies. The Party must also intensify the building of leading bodies at all levels by selecting and promoting cadres who have scored outstanding achievements in their public service and have won the trust of the masses in reform. This will open up a modernization drive, and train and cultivate millions upon millions of successors to the cause of socialism, thus ensuring organizationally the implementation of the Party’s basic theory, line, program and experience.

See also Larry Catá Backer, *Review Essay: Hu Angang (胡鞍鋼), China in 2020: A New Type of Superpower*, CONSORTIUM FOR PEACE & ETHICS WORKING PAPER No. 2013-2 (2013) available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2223279](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2223279) (suggesting the contours of a seamless merger of domestic and internal policies grounded in China’s substantive political norms, now harmonized with global internationalism).

<sup>35</sup> The General Program of the Chinese Communist Party Constitution provides: “The Party follows the mass line in its work, doing everything for the masses, relying on them in every task, carrying out the principle of ‘from the masses, to the masses,’ and translating its correct views into action by the masses of their own accord. The biggest political advantage of the Party lies in its close ties with the masses while the biggest potential danger for it as a ruling party comes from its divorce from them. The Party’s style of work and its maintenance of ties with the masses of the people are a matter of vital importance to the Party.” See *People’s Daily editorial stresses stronger ties with masses*, PEOPLE.CN (July 1, 2013), <http://english.people.com.cn/90785/8305053.html>. (“In June, Xi Jinping, general secretary of the CPC Central Committee, stressed that the mass line, or furthering ties with the people, is the lifeline of the Party and the fundamental route of work. The upcoming education campaign, including cracking down on undesirable work styles, will bring a closer tie between the Party and the people . . . .

essay considers Hu Angang's theory and defense of the role of the CCP in China's constitutional system, with particular focus on the evolution of the premises of collective action merged with democratic theory and applied to the operations of a party-state system. This essay's objective is to theorize the CCP's internal democratic structures, and through them, the structures of the government as a whole. It focuses on the development of collective leadership at the very top of the political and state organs of China, and especially on the operation of what Hu identifies as a "collective president."<sup>36</sup>

These efforts are in line with the CCP's political project that aims to treat the ideological foundations of the Chinese state as a living force,<sup>37</sup> but which seeks to accomplish these aims in ways that remain true to the fundamental political principles under which China is organized.<sup>38</sup> To a large extent, these efforts provide an important additional element of progress in the scientific development of Chinese constitutionalism.<sup>39</sup> This development has occurred over a long period, with origins in the Leninist principles that blended Chinese with 20th century European Marxist thought, and emerged in the 21st century as a set of principles based on the rule of law and democratic socialism.<sup>40</sup> The question for

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Undesirable work styles, such as formalism, bureaucratism, hedonism and extravagance, are like an invisible wall that cuts off the Party from the people, depriving the CPC of people foundation, it says."); *People's Daily editorial stresses stronger ties with masses*, NEWS OF THE COMMUNIST PARTY OF CHINA (July 1, 2013), <http://english.cpc.people.com.cn/206972/206974/8305468.html>; Hu Angang, *supra* note 21, at 111-12 (discussing the application of the mass line in the context of the collective presidency.).

<sup>36</sup> Hu Angang, *supra* note 21, at 113, 128-29 ("The major purpose of this book is to examine this development of the collective presidency. It aims to explore the operations of this mechanism, analyze the methods of government by collective presidency, and identify the rationale, innovation, and international competitiveness of this system.").

<sup>37</sup> The General Program of the Chinese Communist Party Constitution provides: "The Party must adapt itself to the march of events and changing circumstances, improving its system and style of leadership and raising its governance capability." See "Full text of Constitution of Communist Party of China," available at [news.xinhuanet.com/english/2007-10/25/content\\_6944738.htm](http://news.xinhuanet.com/english/2007-10/25/content_6944738.htm) (last accessed Dec. 29, 2014).

<sup>38</sup> See, e.g., Hu Jintao, *Report to the 18th Party Congress* (Nov. 17, 2012), available at [http://news.xinhuanet.com/english/special/18cpcnc/2012-11/17/c\\_131981259\\_7.htm](http://news.xinhuanet.com/english/special/18cpcnc/2012-11/17/c_131981259_7.htm).

<sup>39</sup> The concept of Scientific development is an important ideological expression of Chinese political principles which was added to the Chinese Constitution. See Constitution of the People's Republic of China, Preamble. See also, Liu Xian, *Incorporating Scientific Outlook on Development into CPC guideline historic*, ECNS NEWS (Nov. 19, 2014), available at <http://www.ecns.cn/2012/11-19/36019.shtml>.

<sup>40</sup> This has been captured nicely by the report of the 4th Plenum of the CCP, concluded in October 2014. "CCP Central Committee Decision concerning Some Major

both Chinese and Western elites is whether the CCP's construction of socialist democracy (grounded in basic principles distinct from those that underlie Western democracies) actually describes a distinct strain of constitutionalist theory. A consideration of the construction of a distinctly Chinese theory of democratic organization is the subject of this review essay.

Part II first considers the theoretical underpinning of Hu's theory of collective presidency—grounded in China's history, context and its political ideology. Its objective is to better situate the history and utility of a collective presidency within the political structures and ideological premises of Chinese constitutionalism, and then to consider the connection between that construction and global principles of constitutional democracy. While the West focuses on the *external* elements of democracy, Hu focuses on its *internal* elements. Both focus on the collective elements of social action. Traditional Western democracies emphasize the mechanics and integrity of elections as the marker of democratic legitimacy while the type of socialist democracy that Hu engages with emphasizes the mechanics and integrity of the collective government as the marker of democratic legitimacy. The fundamentally distinct political premises of political organization that separate Western liberal democracies from Chinese socialist democracy best explain the difference. There is no question that the two systems are incompatible, and that each system values quite different aspects of governance. However, their objectives are similar—to institutionalize rule of law governance systems that avoid arbitrariness and that are constrained by the normative political frameworks from which they draw their values. Hu's theory represents an interesting and scientific development that transforms the original Marxist and Leninist structures of the early Chinese state, during its revolutionary period, into rule of law structures that advance the socialist and democratic values of a Communist Party in power. But this theory of collective presidency is also one that suggests the theoretical and implementation work that remains to be done.

Part III considers the arguments advanced for the efficiency and representation-reinforcing<sup>41</sup> elements of the collective presidency—

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Questions on Moving Ruling the Country According to the Law Forward" (Oct. 2014) (on file with author).

<sup>41</sup> Compare JOHN HART ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* (1980) (asserting that a constitution embodies principles that make the ideal of representative democracy possible, and these representation-reinforcing principles served to structure representative democracy--the framework of which was protected by an independent judiciary), with David A. Strauss, *Modernization and Representation Reinforcement: An Essay in Memory of John Hart Ely*, 57 *STAN. L. REV.* 761 (2004) (arguing that, in China, the representation-reinforcement system that makes representative democracy possible is structured around the CCP and its internal mechanics).

collective succession, collective labor division and cooperation, collective learning, collective research, and collective decision-making. The specific focus is on the application of this model for the Standing Committee of the CCP Politburo. The implications, however, are far broader and suggest a general approach to governance where the implementation of socialist democracy focuses inward. In this way, Hu offers an alternative way to think about the focus of the “representation-reinforcing”<sup>42</sup> elements of democratic organization. He starts by developing a theory and its potential mechanics of collective presidency in China’s history and of the CCP. He then considers each of the elements of collective presidency in detail—drawing from a study of the elements of the collective presidency those characteristics that contribute to the efficiency of the model. He underscores and opens the door to consideration of the way that this collective presidency model also is consonant with and further develops the CCP line of socialist rule of law and contributes to the building of socialist democracy.

Part IV briefly considers the work that remains to be done as the CCP continues to scientifically develop its democratic socialism theory and attends to the harder task, not of drawing theory from facts, but of living theory through practice. This is both inherent in the CCP’s scientific development line<sup>43</sup> and the “truth from facts”<sup>44</sup> elements of the mass line<sup>45</sup> as a fundamental element of the democratic character of the Chinese constitutional system. Current approaches to refining the collective presidency mechanisms are analyzed with a view to their effectiveness in deepening the ideal of collective decision-making within the premises of the organization and the substantive principles of the Chinese constitutional state.

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<sup>42</sup> Under principles of U.S. Constitutional law, American legal scholars have advanced the idea of “representation-reinforcing” principles of constitutional interpretation. This principle asserts that constitutional interpretation is rooted in the idea that the legislature ought to have a broad discretion to make policy unless the Congressional acts reduce the ability of individual groups to effectively participate in political life. The best-known articulation of the theory is John Hart Ely, *supra* note 41.

<sup>43</sup> See Xian, *supra* note 39.

<sup>44</sup> The General Program of the Constitution of the Chinese Communist Party suggests the nature of the principle of seeking truth from facts: “persevering in emancipating the mind, seeking truth from facts and keeping up with the times. The Party’s ideological line is to proceed from reality in handling all matters, to integrate theory with practice, to seek truth from facts, and to verify and develop the truth through practice.” See “Full text of Constitution of Communist Party of China,” *supra* note 37.

<sup>45</sup> See *supra* note 35.

## II. FROM RUSSIAN LENINISM TO CHINESE SOCIALIST DEMOCRACY—THE THEORY OF COLLECTIVE PRESIDENCY AS A MARXIST AND DEMOCRATIC INNOVATION

One of the most difficult issues for revolutionary movements in the 20th century was the transitioning from the status of revolutionary party -- an outsider force -- to that of party in power -- as the organized institution of the political settlement through which a government is established and society ordered. The problem was managed in the 18th century through the mechanics of representative government that limited the effective exercise of political power to the vanguard elements of society (represented by socio-economic, religious, gender and race status) and gradually opened as additional social elements were deemed appropriately socialized and invested in the founding ideology of the state (to which they contributed in turn).<sup>46</sup> Elites used existing social frameworks and patterns to strategically exercise political authority more organically, with periodic “constitutional moments,”<sup>47</sup> and more rarely formal constitutional revisions,<sup>48</sup> that effected or memorialized change.

Marxist revolutionary parties sought to manage the problem differently when they came into power starting after World War I. Through the middle of the 20th century and starting with European states, Marxist vanguard parties sought to institutionalize the political settlement their victory represented. These revolutionary Marxist parties were confronted by the problem of managing political power within a system

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<sup>46</sup> See generally Larry Catá Backer, *Chroniclers in the Field of Cultural Production: Interpretive Conversations Between Courts and Culture*, 20 B.C. THIRD WORLD L.J. 291 (2000); see also Larry Catá Backer, *Retaining Judicial Authority: A Preliminary Inquiry on the Dominion of Judges*, 12 WM. & MARY BILL RTS. J. 117 (2003); see also Larry Catá Backer, *Reifying Law-- Government, Law and the Rule of Law in Governance Systems*, 26 PENN ST. INT'L L. REV. 521 (2008).

<sup>47</sup> The reference here is to Bruce Ackerman's theory of constitutional moments as the engine of change through a process of malleable interpretation of law that effectively serves to develop political organization of the United States. See BRUCE ACKERMAN, 1 WE THE PEOPLE: FOUNDATIONS (Belknap Press, 1991); BRUCE ACKERMAN, 2 WE THE PEOPLE: TRANSFORMATIONS (Belknap Press, 2000); BRUCE ACKERMAN, 3 WE THE PEOPLE: THE CIVIL RIGHTS REVOLUTION (Belknap Press, 2014); Bruce Ackerman, *2006 Oliver Wendell Holmes Lectures: The Living Constitution*, 120 HARV. L. REV. 1737 (2007). This has produced a bit of academic scientism in its own right. See, e.g., Daniel Taylor Young, *How Do You Measure a Constitutional Moment? Using Algorithmic Topic Modeling to Evaluate Bruce Ackerman's Theory of Constitutional Change*, 122 YALE L.J. 1990 (2013).

<sup>48</sup> Prohibition provides an example of the use of constitutional change to effectuate social changes. See generally DANIEL OKRENT, *LAST CALL: THE RISE AND FALL OF PROHIBITION* (2010). The direct election of U.S. Senators in the early 20th century provides an example of an important change in the allocation of political power. See generally THOMAS H. NEALE, *FILLING U. S. SENATE VACANCIES: PERSPECTIVES AND CONTEMPORARY DEVELOPMENTS* (2011).

that thought of itself as democratic but that also understood its core foundational premises as incompatible with those of the democratic states of Europe and North America. The transition from revolutionary to a representative polity-party—from a revolutionary vanguard role to that of a vanguard party in power proved to be difficult.<sup>49</sup> The resulting state organization developed in European Marxist Leninist states embraced a notion of permanent class struggle and recognized the government apparatus as the site in which that struggle could be waged. In this sense the resulting development of Leninism as a basis for state organization proved to be at once more instrumental and formal, and one in which the vanguard party played a central but constantly revolutionary role.<sup>50</sup> In lieu of the organic social construction of an institutionalized political culture backed by effective social allocations of political power, states established on Marxist principles sought a more scientific, formal, and instrumental turn through principles that came to be understood around the concept of “Leninism.” As György Lukács, a great student of European Leninism, explained: “Political questions cannot be mechanically separated from organization questions, said Lenin, and anybody who accepts or rejects the Bolshevik party organization independently of whether or not we live at a time of proletarian revolution has completely misunderstood it.”<sup>51</sup>

Leninism was once thought so central to Marxism that the terms became inseparable in describing states whose political and economic order was founded on Marxist principles. Those states of the Soviet Union and its satellites epitomized a classic conception of “Marxist-Leninist” state. Marxism supplied the substantive values of the states (its

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<sup>49</sup> It remains difficult in states such as Cuba. See, e.g., Larry Catá Backer, *The Cuban Communist Party at the Center of Political and Economic Reform: Current Status and Future Reform*, NW. INTERDISC. L. REV. (forthcoming 2015).

<sup>50</sup> See, e.g., Joseph Stalin, *The Foundations of Leninism*, in PROBLEMS OF LENINISM 1-116 (Foreign Languages Press, Peking, 1976), available at <http://www.marx2mao.com/Stalin/POLtc.html> (“The essence of Soviet power consists in the fact that these most all-embracing and most revolutionary mass organizations of precisely those classes that were oppressed by the capitalists and landlords are now the ‘permanent and sole basis of the whole power of the state, of the whole state apparatus’ . . . Soviet power, by combining legislative and executive power in a single state organization and replacing territorial electoral constituencies by industrial units, factories and mills thereby directly links the workers and the labouring masses in general with the apparatus of state administration, teaches them how to govern the country.” *Id.*, pp. 51-2). This serves as an important example of European Marxism transforming into an oligarchic *nomenklatura*. The best criticism might well have been that of Leon Trotsky before agents of Joseph Stalin murdered him in 1940. See, e.g., LEON TROTSKY, *THE REVOLUTION BETRAYED* (Chauhau Press, 1936).

<sup>51</sup> Georg Bernhard Lukács von Szegedin (György Lukács), *The Vanguard Party of the Proletariat*, LENIN: A STUDY IN THE UNITY OF HIS THOUGHT (Nicholas Jacobs, trans., NLB, 1970) (original Verlag der Arbeiterbuchhandlung, Vienna, 1924 © Hermann Luchterhand Verlag GmbH, 1967) (internal quotation marks omitted), available at <http://www.marxists.org/archive/lukacs/works/1924/lenin/index.htm>.

normative principles) and Leninism supplied its process values and political organization (its ordering principles). One might argue, then, that if Marxism could be understood as framing the Sozialstaat,<sup>52</sup> then Leninism was the embodiment of Marxist *Rechtstaat* principles.

But the shift from revolutionary to institutional party was difficult, especially for European Marxist Leninist states and other states patterned after the Soviet experiment in that form of political organization. By the end of the 20th century, Leninism<sup>53</sup> appeared both ossified and anachronistic. Despite its elaboration in complex theory,<sup>54</sup> its application within European and Soviet Communist movements had produced contradictions that became quite controversial<sup>55</sup> before the edifice of European Leninism came apart with the dissolution of the Soviet Union in 1991.<sup>56</sup> Indeed, Leninism's manifestation within European Communism,

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<sup>52</sup> Sozialstaat notions are built into modern constitutional states. The German Basic Law provides a good example. "Die Bundesrepublik Deutschland ist ein demokratischer und sozialer Bundesstaat" ["The Federal Republic of Germany is a democratic and social federal state"] GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GRUNDGESETZ] [GG] [Basic Law], May 23, 1949, BGBl. I, art. 20 (Ger.). See, e.g., Hans Michael Heinig, *The Political and the Basic Law's Sozialstaat Principle—Perspectives from Constitutional Law and Theory*, 12(11) GERMAN L.J. 1887 (2011), available at [http://www.germanlawjournal.com/pdfs/Vol12-No11/PDF\\_Vol\\_12\\_No\\_11\\_1887-1900\\_Heinig%20FINAL.pdf](http://www.germanlawjournal.com/pdfs/Vol12-No11/PDF_Vol_12_No_11_1887-1900_Heinig%20FINAL.pdf).

<sup>53</sup> For my purposes here, Leninism is an aggregation of theory and principles derived from the work of Vladimir Lenin which maybe understood as developing the political theory touching on the organization of a revolutionary vanguard party and its institutionalization as a holder of political power under the concept of the dictatorship of the proletariat. See e.g., Georg Bernhard Lukács von Szegedin (György Lukács) *supra* note 51 ("Lenin was the first and for a long time the only important leader and theoretician who tackled this problem at its theoretical roots and therefore at its decisive, practical point: *that of organization.*" (emphasis in original) *supra* § 3)).

<sup>54</sup> See, e.g., JOSEPH STALIN, *PROBLEMS OF LENINISM* (Moscow: Foreign Language Press, 1953).

<sup>55</sup> See, e.g., Noam Chomsky, *The Soviet Union Versus Socialism*, OUR GENERATION (1986), available at <http://www.chomsky.info/articles/1986----.htm> ("It is also worth noting the great appeal of Leninist doctrine to the modern intelligentsia in periods of conflict and upheaval. This doctrine affords the 'radical intellectuals' the right to hold State power and to impose the harsh rule of the 'Red Bureaucracy,' the 'new class,' in the terms of Bakunin's prescient analysis a century ago. As in the Bonapartist State denounced by Marx, they become the 'State priests,' and 'parasitical excrescence upon civil society' that rules it with an iron hand.").

<sup>56</sup> In 1990, "Gorbachev's decision to allow elections with a multi-party system and create a presidency for the Soviet Union began a slow process of democratization that eventually destabilized Communist control and contributed to the collapse of the Soviet Union." See *Milestones 1989-1992: The Collapse of the Soviet Union*, U.S. DEPARTMENT OF STATE, OFFICE OF THE HISTORIAN, <https://history.state.gov/milestones/1989-1992/collapse-soviet-union>. ("The unsuccessful August 1991 coup against Gorbachev sealed the fate of the Soviet Union . . . . He resigned his leadership as head of the Communist party shortly thereafter—separating the power of the party from that of the presidency of the Soviet Union. The Central

especially in the Soviet Union and its satellites, had been criticized as little more than a variant of the dictatorships of class and religion that had come before it.<sup>57</sup> Leninism's ties to class struggle<sup>58</sup> and vanguardism<sup>59</sup> had become subsumed within the construction of elaborate bureaucracies and cults of personality. As a consequence, at least in the West, these characteristics had substantially eroded the legitimacy of Leninist notions of the role of a Communist Party as a vanguard element of a new politico-economic order whose dictatorship would pave the way toward socialist democracy.<sup>60</sup>

Even within China and other Asian Communist states, the debilitating effects of certain cults of personality<sup>61</sup> had produced a substantial measure of self-criticism and a renewed effort to further develop Marxism and Leninism in a way more true to its core ideological principles.<sup>62</sup> The notion of the proletarian state (the dictatorship of the

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Committee was dissolved and Yeltsin banned party activities." *Id.*).

<sup>57</sup> The criticism was particularly acute from Chinese Communists. "As the United States got bogged down in wars and its strength began to decline, Soviet social-imperialism came up from behind. The Khrushchov-Brezhnev renegade clique, which had snatched the fruits of the socialist construction carried out by the Soviet people for over 30 years, gradually transformed what had been a socialist power into an imperialist power." *Chairman Mao's Theory of the Differentiation of the Three Worlds is a Major Contribution to Marxism-Leninism: The Two Hegemonist Powers, the Soviet Union and the United States, Are the Common Enemies of the People of the World; the Soviet Union is the Most Dangerous Source of World War*, in *ENCYCLOPEDIA OF ANTI-REVISIONISM ON-LINE* (Nov. 1, 1977) (Reprinted in pamphlet form in English by Foreign Languages Press, Peking, 1977), available at <http://www.marxists.org/history/erol/ncm-5/theory-3-worlds/section2.htm>.

<sup>58</sup> GEORG BERNHARD LUKÁCS VON SZEGEDIN (GYÖRGY LUKÁCS), *HISTORY AND CLASS CONSCIOUSNESS* (Rodney Livingstone, trans., Merlin Press, 1967) (original 1924), available at <http://www.marxists.org/archive/lukacs/works/history/>; also see Hu Angang, *supra* note 21., 80-1 ("The key to the future is to cultivate thousands of successors to the cause of the proletariat, especially to develop China's politicians and leaders.").

<sup>59</sup> See VLADIMIR LENIN, *WHAT IS TO BE DONE?: BURNING QUESTIONS OF OUR MOVEMENT* (New York International Publishers 1929) (1902).

<sup>60</sup> See, e.g., KONSTANTIN M. SIMIS, *USSR: THE CORRUPT SOCIETY: THE SECRET WORLD OF SOVIET CAPITALISM* (New York: Simon and Schuster, 1982).

<sup>61</sup> Cf. MAX WEBER, *POLITICS AS A VOCATION (POLITIK ALS BERUF) 2* (1919), available at <https://www2.southeastern.edu/Academics/Faculty/jbell/weber.pdf>. Originally 'Politik als Beruf,' *Gesammelte Politische Schriften* (Muenchen, 1921), pp. 396-450. Originally a speech at Munich University, 1918, published in 1919 by Duncker & Humblot, Munich. From H.H. Gerth and C. Wright Mills (Translated and edited), *From Max Weber: Essays in Sociology*, pp. 77-128 (New York: Oxford University Press, 1946).

<sup>62</sup> In a famous interview with Oriana Fallaci, Deng Xiaoping provided the basis of the modern Chinese approach to the issue of Mao Zedong and his place within Chinese history and that of the Chinese Communist Party. "We should not lay all past mistakes on Chairman Mao. So we must be very objective in assessing him. His contributions were

proletariat),<sup>63</sup> and with it the centrality of class struggle in post revolutionary Marxist states,<sup>64</sup> created tensions that discredited the idea in

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primary, his mistakes secondary. We will inherit the many good things in Chairman Mao's thinking while at the same time explaining clearly the mistakes he made." Deng Xiaoping, *Answers To The Italian Journalist Oriana Fallaci*, PEOPLE'S DAILY.COM (Aug. 21 and 23, 1980), <http://english.peopledaily.com.cn/dengxp/vol2/text/b1470.html>. Deng elaborated in ways that continue to have resonance in China:

Question: We Westerners find a lot of things hard to understand. The Gang of Four are blamed for all the faults. I'm told that when the Chinese talk about the Gang of Four, many of them hold up five fingers.

Answer: We must make a clear distinction between the nature of Chairman Mao's mistakes and the crimes of Lin Biao and the Gang of Four. For most of his life, Chairman Mao did very good things. Many times he saved the Party and the state from crises. Without him the Chinese people would, at the very least, have spent much more time groping in the dark. Chairman Mao's greatest contribution was that he applied the principles of Marxism-Leninism to the concrete practice of the Chinese revolution, pointing the way to victory. It should be said that before the sixties or the late fifties many of his ideas brought us victories, and the fundamental principles he advanced were quite correct. He creatively applied Marxism-Leninism to every aspect of the Chinese revolution, and he had creative views on philosophy, political science, military science, literature and art, and so on. Unfortunately, in the evening of his life, particularly during the "Cultural Revolution,["] he made mistakes -- and they were not minor ones -- which brought many misfortunes upon our Party, our state and our people . . . . In quite a number of instances he went counter to his own ideas, counter to the fine and correct propositions he had previously put forward, and counter to the style of work he himself had advocated. At this time he increasingly lost touch with reality. He didn't maintain a good style of work. He did not consistently practice democratic centralism and the mass line, for instance, and he failed to institutionalize them during his lifetime. This was not the fault of Comrade Mao Zedong alone. Other revolutionaries of the older generation, including me, should also be held responsible. Some abnormalities appeared in the political life of our Party and state -- patriarchal ways or styles of work developed, and glorification of the individual was rife; political life in general wasn't too healthy. Eventually these things led to the "Cultural Revolution,["] which was a mistake.

*Id.* Deng was careful to try to overcome the contradiction of personality cult even in the reference to the Thought of Mao Zedong. "As you know, during the Yan'an days our Party summed up Chairman Mao's thinking in various fields as Mao Zedong Thought, and we made it our guiding ideology. We won great victories for the revolution precisely because we adhered to Mao Zedong Thought. Of course, Mao Zedong Thought was not created by Comrade Mao alone -- other revolutionaries of the older generation played a part in forming and developing it -- but primarily it embodies Comrade Mao's thinking." *Id.*

<sup>63</sup> See VLADIMIR LENIN, *THE STATE AND REVOLUTION* 17-25 (Peking, Foreign Language Press, 1970).

its Soviet form,<sup>65</sup> and in its institutionalization through the Chinese cultural revolution.<sup>66</sup> These tensions produced both a development away from a mid-20th century European and Soviet understanding the notion of class struggle reflected in the 1954 Chinese Constitution,<sup>67</sup> and the re-constitution of class struggle principles as societal advancement in the form of Jiang Zemin's Three Represents (Sange Daibiao),<sup>68</sup> Hu Jintao's Scientific Development,<sup>69</sup> and most recently Xi Jinping's "Socialist Core Values,"<sup>70</sup> reflected in both the 1982 Chinese Constitution<sup>71</sup> and the Constitution of the Chinese Communist Party.<sup>72</sup> This reflected, in part, a

<sup>64</sup> Cf. Louis Althusser, *Ideology and Ideological State Apparatuses (Notes Toward an Investigation)*, in *THE ANTHROPOLOGY OF THE STATE: A READER* 86, 88-94 (Aradhana Sharma & Anil Gupta, eds., Blackwell (2006)).

<sup>65</sup> ALFRED B. EVANS, JR., *SOVIET MARXISM-LENINISM, THE DECLINE OF AN IDEOLOGY* 195 (Westport, CN: Greenwood Publishing, 1993) ("Soviet reformers of the Gorbachev period charged that previous Soviet leaders, by perpetuating the myth of socialist social homogeneity and rationalizing the domination of society by the state bureaucracy, had suppressed the expression of social interests and stifled the initiative and enthusiasm of the Soviet people." *Id.* at 193); cf. ROBERT STRAYER, *WHY DID THE SOVIET UNION COLLAPSE? UNDERSTANDING HISTORICAL CHANGE* (1998) (referencing declining self-legitimacy of the Soviet elite and increasing corruption in and of the harsh Stalinist order characterized by sloppiness, cynicism and personal self seeking; *Id.* at 199).

<sup>66</sup> See LYNN T. WHITE III, *POLICIES OF CHAOS: THE ORGANIZATIONAL CAUSES OF VIOLENCE IN CHINA'S CULTURAL REVOLUTION* (Princeton University Press, 1989) (on the Cultural Revolution); also see WOEI LIEN CHONG, *CHINA'S GREAT PROLETARIAN CULTURAL REVOLUTION: MASTER NARRATIVES AND POST-MAO COUNTERNARRATIVES* (Rowman & Littlefield Publishers, 2002); also see PAUL CLARK, *THE CHINESE CULTURAL REVOLUTION: A HISTORY* (Cambridge University Press, 2008).

<sup>67</sup> See, e.g., XING LU, *RHETORIC OF THE CHINESE CULTURAL REVOLUTION: THE IMPACT ON CHINESE THOUGHT, CULTURE, AND COMMUNICATION* (University of South Carolina Press, 2004).

<sup>68</sup> Sange Daibiao advances three fundamental premises, that the CCP: represents the advanced productive forces, represents advanced culture, and represents the fundamental interests of the vast majority of the people. On Sange Daibiao, see Larry Catá Backer, *supra* note 23.

<sup>69</sup> See Hu Jintao, *supra* note 22.

<sup>70</sup> Teddy Ng and Li Jung, *Communist Party Orders 'Core Socialist Values' on the Curriculum*, *SOUTH CHINA MORNING POST*, (Dec. 24, 2013), <http://www.scmp.com/news/china/article/1389382/communist-party-orders-core-socialist-values-curriculum> ("The 24 values, which include prosperity, democracy, social harmony, credibility and rule of law, were detailed by last year's national party congress. The values were divided into three groups, known as the 'three advocates[.]'").

<sup>71</sup> See XIANFA (1982) (China), available at <http://english.people.com.cn/constitution/constitution.html>.

<sup>72</sup> See *CONSTITUTION OF THE CHINESE COMMUNIST PARTY* (2007), available at

determination, in the wake of the fall of European Communist states, most famously described by Deng Xiaoping,<sup>73</sup> that a successful Communist Party ought to act more as a ruling party and less as a revolutionary party.<sup>74</sup>

Yet the CCP appears to be developing its organizational structures and governance principles away from a set of rigid and uncontextualized Leninist principles toward a Chinese form of democracy that may well be compatible with emerging notions of democratic principles of global constitutionalism.<sup>75</sup> In one of his earliest speeches as Communist Party General Secretary,<sup>76</sup> Xi Jinping suggested the continued importance of moving away from an old style European Leninism to chart a course forward for the Chinese Communist Party as the party in power with Chinese characteristics.<sup>77</sup> That movement necessarily focused efforts at democratization within the vanguard elements of the polity, increasing popular welfare through the application of the structural political and

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[http://news.xinhuanet.com/english/2007-10/25/content\\_6944738.htm](http://news.xinhuanet.com/english/2007-10/25/content_6944738.htm).

<sup>73</sup> “But despite his opposition to political liberalization, Deng never abandoned his vision of economic reform. Following the collapse of Soviet communism, Deng concluded that the best hope of keeping the Chinese Communist Party in power -- and avoiding another Tiananmen -- was to deliver the economic goods to the people.” *Chinese Leader Deng Xiaoping Dies*, CNN, (Feb. 19, 1997), available at <http://www.cnn.com/WORLD/9702/19/deng.obit/>.

<sup>74</sup> Joseph Fewsmith, *Studying the Three Represents*, CHINA LEADERSHIP MONITOR NO. 8 HOOVER INSTITUTE, available at [http://media.hoover.org/sites/default/files/documents/clm8\\_jf.pdf](http://media.hoover.org/sites/default/files/documents/clm8_jf.pdf), cited in Jiang Zemin, Speech Given on the 80th Anniversary of the Founding of the Chinese Communist Party (July 1, 2001), available at <http://news.xinhuanet.com/english/20010726/433646.htm>.

<sup>75</sup> That, indeed, is the focus of much of the internal discussion of Chinese constitutionalism in its various forms both within the CCP and among academics. See *China Debates Constitutional Government*, VOICE OF AMERICA, (June 3, 2013), <http://www.voanews.com/content/china-debates-constitutional-government/1673995.html>.

<sup>76</sup> Xi Jinping, *China's new party chief Xi Jinping's speech*, BBC NEWS CHINA, (Nov. 15, 2012), available at <http://www.bbc.com/news/world-asia-china-20338586>.

<sup>77</sup> He noted especially:

Our party is a political party that serves the people wholeheartedly. The party has led the people in scoring accomplishments that capture the attention of the world. We have every reason to be proud. However, we are proud but not complacent, and we will never rest on our laurels. In the new situation, our party faces many severe challenges, and there are many pressing problems within the party that need to be resolved, especially problems such as corruption and bribe-taking by some party members and cadres, being out of touch with the people, placing undue emphasis on formality and bureaucracy must be addressed with great effort. The whole party must be vigilant.

*Id.*

economic premises on which the state is organized. The movement represented by the Communist Party, and its own efforts at internal mass democracy, produced a stable political order that is better able to meet its core political objectives. This is a substantially distinct view of democracy, one in which the *internalization* of democracy as an operative principle *within* the structures of government and politics displaces the traditional Western approach to *externalizing* democratic principles to the selection of its representatives in government and politics.

That, in essence, is Hu Angang's starting point for constructing a *theory* of an element of that democratizing principle within the structures of the Chinese state and Party organs. Hu starts with governing philosophy.<sup>78</sup> Its objective was to reinforce the compatibility of internally democratic notions with the Politburo Standing Committee's innovative work, and to tie that innovation to the CCP's focus on scientific development concept (*kexue fazhan guan*) and harmonious society (*hexie shehui*), both of which were central to the program of Hu Jintao.<sup>79</sup> Innovation is in turn adaptable to the context of Chinese conditions.<sup>80</sup> Thus, governmental innovation on the issue of implementing socialist democracy is also understood as another aspect of promoting Chinese development in the form of stability and economic growth.

In effect, then, Hu frames his understanding of the theoretical task that presents itself, which is to be resolved through the mechanism of the collective presidency. That task requires a transposition into the living language of Chinese Marxist Leninism, with its governing philosophy of social harmony and its mechanics of scientific development. Just as the politics of the CCP line embrace the premise of a harmonious society as inherent in the basic operating framework of the political order, so must those principles that are basic to that political order be applied by the vanguard party to its own internal operations (as well as externally in meeting its obligations to the nation). The external application is well

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<sup>78</sup> Hu Angang, *supra* note 21, at 1 (referencing his address to the Politburo Standing Committee in 2007 where he stated that the Standing Committee "had brought about a scientific approach to development and established a governing philosophy characterized by harmony.").

<sup>79</sup> See Kin-man Chan, *Harmonious Society*, in INTERNATIONAL ENCYCLOPEDIA OF CIVIL SOCIETY 821-25 (Helmut K. Anheier & Stefan Toepler, eds., New York: Springer, 2009), available at [http://www.cuhk.edu.hk/centre/ccss/publications/km\\_chan/CKM\\_14.pdf](http://www.cuhk.edu.hk/centre/ccss/publications/km_chan/CKM_14.pdf). (According to President Hu . . . a harmonious society is a society that is "democratic and ruled by law, fair and just, trustworthy and fraternal, full of vitality, stable and orderly, and maintains harmony between man and nature." *Id.* at 821) (internal quotation marks omitted).

<sup>80</sup> Hu Angang, *supra* note 21, at 2 (referencing a public speech of Hu Jintao in 2011, Hu Angang noted that the "speech indicates that China's political system is adaptable and appropriate and it also announces the rationality and suitability of this system.").

understood; it is in its internal operation as compelled by the CCP that serves as the starting point for Hu's analysis.<sup>81</sup>

A harmonious society that scientifically develops within the context of Chinese socialism points inevitably to the notion of the *collective* and consequentially to the normative structures of *collectivity* in governance. It is in this initial and fundamental insight that Hu both situates the collective presidency (and collective government generally) within the historical context of theoretical Leninism, and also scientifically develops it to embrace the objective of social harmony projected inward. Collectivization, then, is not something imposed by the vanguard party on the masses; instead, it is a central concept that the CCP, as a vanguard party, must necessarily apply to itself. Collectivization, in this context, serves as an important expression of the mass line.<sup>82</sup> For Hu it serves as a fundamental political premise transposed *from* the masses *to* the Party (and *back* to the masses as scientifically applied by the CCP).<sup>83</sup> That

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<sup>81</sup> Hu Angang, *supra* note 21, at 2 (referencing a July 2011 speech of Hu Jintao, Hu Angang suggested the way in which collectivization is already foundational to the operation of the National People's Congress system, "characterized by multi-party cooperation and political consultation, led by the CPC and working through regional ethnic autonomy and grassroots autonomy." *Id.* at 2).

<sup>82</sup> The mass line has been incorporated into the General Program of the Chinese Communist Party Constitution. Its original sense suggests the reciprocal character of the mass line.

In all the practical work of our Party, all correct leadership is necessarily 'from the masses, to the masses.' This means: take the ideas of the masses (scattered and unsystematic ideas) and concentrate them (through study turn them into concentrated and systematic ideas), then go to the masses and propagate and explain these ideas until the masses embrace them as their own, hold fast to them and translate them into action, and test the correctness of these ideas in such action. Then once again concentrate ideas from the masses and once again go to the masses so that the ideas are persevered in and carried through. And so on, over and over again in an endless spiral, with the ideas becoming more correct, more vital and richer each time. Such is the Marxist theory of knowledge.

Mao Zedong, "Some Questions Concerning Methods of Leadership" (June 1, 1943), Selected Works, Vol. III, p. 120, available <http://www.marxists.org/reference/archive/mao/works/red-book/ch11.htm>. See also Discussion, *supra* note 34, at 11.

<sup>83</sup> Again, in harmony with the CCP mass line applied specifically to the internal democratic structures of CCP socialist democracy. See *Xi's Call for 'Mass Line' Answered by Actions*, PEOPLE'S DAILY (June 28, 2013), <http://english.people.com.cn/90785/8302726.html> ("On June 18, Xi, also general secretary of the CPC Central Committee, said that the 'mass line' is the lifeline of the Party and the CPC's upcoming year-long campaign will be a 'thorough cleanup' of undesirable work styles such as formalism, bureaucracy, hedonism and extravagance. Xi also stressed that CPC members should be critical and self-critical in the spirit of rectifying improper work styles, and said the campaign should focus on self-purification,

application is expressed in the forms (collective presidency mechanisms) by which vanguard Party operations are legitimately and democratically institutionalized.

Hu Angang describes the progression of his scientific development of the idea of collective presidency between 2007 and 2012 within this overarching normative framework.<sup>84</sup> That framework initially produced a set of questions for the Politburo Standing Committee that went to implementation.<sup>85</sup> The “biggest challenge that many developing countries around the world face is the lack of a scientifically-based, efficient decision-making mechanism for dealing with major problems.”<sup>86</sup> That challenge ties in with the objective of promoting Chinese development, which is part of the universal problem -- the search for a decision-making mechanism for dealing with major problems.

For Hu Angang, the way to success is collectivization with Chinese characteristics.<sup>87</sup> Hu first rejects the notion of a single ideal political system by which all national systems must be judged.<sup>88</sup> But the absence of a single universal ideal does not mean that all systems are acceptable. Quite the opposite is true -- while systems might not be judged against a single abstract ideal, their value may still be judged objectively within the context in which they are implemented.<sup>89</sup> For China, Hu suggests that this objective context is framed by the political ideology on which the Chinese state was established in 1949, and now understood as socialist modernization.<sup>90</sup> Hu suggests that the value of the Chinese political system ought to be measured against the objectives of socialist modernization.<sup>91</sup> And the measure of that success is measured against the most successful political state of the 20th century -- the United States.<sup>92</sup>

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self-perfection, self-renewal and self-progression.”).

<sup>84</sup> Hu Angang, *supra* note 21.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 1-2.

<sup>87</sup> *Id.* at 2-6.

<sup>88</sup> *Id.* at 2.

<sup>89</sup> *Id.* at 3.

<sup>90</sup> *Id.* Angang includes catching up with developed Western capitalists states, creating more advanced and practical democracy and cultivating better human resources as the “Deng Xiaoping” or “China’s” standards.

<sup>91</sup> Economic success is the master and measure of political success. *Id.* at 4 (“Catching up with and surpassing the United States has always been a main strategy for China, as expressed by Mao Zedong in 1956.” *Id.*).

<sup>92</sup> *Id.* at 4-6 (“[t]he United States is often thought of as representing the classical model of democracy, and many people regard it as kind of political role model—one that should become an object of imitation” *Id.* at 6).

The principal difference that Hu Angang believes will permit China to surpass the United States is its development of a distinct approach to democracy that rejects the Western construct of externalized democratic mechanisms for the Chinese internalized approach, and more specifically with what Hu Angang introduces as the “collective presidency.”<sup>93</sup> That sets the foundation for the mechanics of collectivization<sup>94</sup>—built around the Standing Committee of the CCP’s Politburo.<sup>95</sup> And it is through the institutionalization of collective leadership within the Politburo Standing Committee that Hu Angang fashions his theory: the practice of collective leadership, which he calls a “collective presidency with Chinese characteristics.”<sup>96</sup>

Hu is most concerned with the practicalities and mechanics of the collective presidency.<sup>97</sup> That focus defines the nature of his analysis.<sup>98</sup> There is indeed great advancement in the development of political theories that focus on China and its operational system. Yet I find the theoretical foundations of the mechanics just as important. The analysis suggests they are critically important for elaborating ideological basis of both the democratic and constitutional elements of the current Chinese system on their own terms. That foundation, in turn, lends legitimacy in explaining

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<sup>93</sup> *Id.* at 6 (rejecting the value of Western notions of separation of powers and of popular elections in favor of internal collectivization.).

<sup>94</sup> *Id.* at 7 (“When assessing different political systems, it is necessary to examine how they are practically implemented so that their achievements can be identified and compared.” *Id.*). One wonders, though, of the value of comparison in the context of establishing the political framework and mechanics of China’s system in the specific context of China’s actual conditions. The comparative reflex, while necessary in order to test the adequacy of indigenous efforts, ought not to be viewed as a standard against which indigenous systems are constructed. It is not against the realities of the American political and economic situation that China must measure its progress -- it is against its failures to implement correctly its own ideals that Chinese leaders ought to assess the progress toward the building of a democratic state along lines that conform to the actual situation of China. While success might be measured by the manifestation of economic gain in other states, necessary improvements might be better assessed in accordance with the logic of China’s own internal system and its better application. That would require a development of China’s political theory to suit the facts of its own national reality.

<sup>95</sup> “So what is the actual mechanism by which China’s political system operates? . . . . Deng said that the key to China’s issues was for the CPC to have a competent Political Bureau . . . . Having a good Standing Committee of the Political Bureau of the Central Committee of the CPC is thus essential to China’s achieving a stable society, sustainable development, and rapid growth.” *Id.* at 7.

<sup>96</sup> *Id.* at 8.

<sup>97</sup> *Id.* at 9-16.

<sup>98</sup> *Id.* at 9 (presenting his “ongoing thinking . . . regarding the scientific approach, advances and originality of the collective leadership of the Central Committee of the CPC. I further intend to discuss the rationality, appropriateness and achievements of the CPC as the ruling party in China.” *Id.*).

the characteristics of the collective presidency, both as a coherent innovation within the ideological framework of the Chinese political order and as an authentic and normatively sound variation of democratic constitutionalism. That exercise remains to be expanded in Chinese political theory, but its contours are well expressed by Hu Angang.

Hu understands the collective presidency as a deeply embedded collectivization of decision-making—and thus an expression of democratic representative governance—reproduced at the highest levels of Chinese political and administrative governance. He relates that collectivization, and its internalization of the democratic element, to the ideological foundation of the Chinese political order.<sup>99</sup> Indeed, Hu suggests in the collective leadership principle a rationale grounded in Chinese Marxist theory, the application of the normative premise of mass action affected through the collective wisdom of the vanguard party. Indeed, the collective action of the collective presidency merges and extends the “collective action” premise inherent in Marxist class struggle with the Leninist notion of government through a vanguard party.<sup>100</sup> Both are applied in the form of the collective presidency through extending principles of Chinese socialist democracy to the mechanics of the operation of the “party in power” itself. In effect, Hu Angang has hit on the foundational principle of Chinese socialist democracy—the CCP itself should mirror in its organization and operation the organization and operation of socialist society by adopting the notions of collective action and organization to its own internal organization and operation. For Hu Angang, this suggests an important distinction between a dictatorship of the proletariat and the practice of effective personal dictatorship within the Communist Party. The concept of a dictatorship of the proletariat (now a people’s democratic dictatorship in China)<sup>101</sup> is increasingly understood as a collective mechanism grounded in the sensibilities and normative values of an economic/political class.<sup>102</sup> In contrast, personal dictatorship within the Communist Party, a leadership style in which a single individual takes

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<sup>99</sup> *Id.* at 9 (“Both Mao Zedong and Deng Xiaoping held important discussions that stressed the superiority of collective wisdom over individual wisdom and the advantage of collective leadership over individual leadership.”); See Chinese State Constitution, Preamble; Constitution of the Chinese Communist Party, General Program (references to Mao, Deng, Hu Jintao and other leaders is important not only for their connection to the history of the evolution of Chinese political thought but also to the political premises that are officially understood as framing the structures of the Chinese state and political order.).

<sup>100</sup> For a discussion of the nature and role of vanguard parties see *supra* note 31, 46-52 and accompanying text.

<sup>101</sup> XIANFA art. 1 (1982) (China).

<sup>102</sup> Originally, membership of the community party was limited to workers and peasants under principles of class struggle and *Sange Daibiao*. See Larry Catá Backer, *supra* note 23.

for herself a representative authority over the entire operation of the Communist Party, is itself contrary to Leninist principles of internal democratic decision-making within the vanguard party,<sup>103</sup> and fails to reflect the collective nature of the dictatorship of the proletariat.<sup>104</sup>

In this sense that one can understand the important theoretical advances that lie beneath Hu Angang's examination of one aspect of the development of the CCP's vanguard role within China's constitutional system. This constitutional system expresses democracy differently than Western models. That difference, focusing on internalizing representative democracy within the structures of the political and governmental organs, represents an innovative advance from a 20th century expression of Marxism and Leninism to a 21st century expression of democratic socialist democracy. This is the aspect of Chinese political theory that offers an alternative to foundational Western conceptions of the core nature of democratic organization. The collective presidency is a significant part of that expression of socialist democracy—an example of the progress from its European Marxist Leninist origins into a response to the changing circumstances of Chinese democratic socialism. Hu Angang thus argues:

The way in which collective presidency with Chinese characteristics has developed from its birth, formation, and growth . . . is a process that has involved making and correcting mistakes by means of innovation, learning and making changes to the system. *The new democratic revolution in China that began 28 years ago laid the foundation for this system of collective presidency.*<sup>105</sup>

The collective presidency represents the CCP's transition from a revolutionary actor to an institutionalized actor within constitutional system where the CCP bears the heavy obligations of a role as mass line vanguard party. Further work along these lines is still necessary, but the framework is visible. The conformity of the collective presidency line<sup>106</sup>

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<sup>103</sup> Within Chinese principles of democratic socialism this may be captured by the premises of democratic centralism. *See* CONSTITUTION OF THE CHINESE COMMUNIST PARTY, *supra* note 72.

<sup>104</sup> “The individual is meaningless without collective support. In China, it is important for the leader to depend on collective support so that the leader can obtain the wisdom of all of the people, the wisdom of the country as a whole, the wisdom of the whole CCP, and the wisdom of the central committee of the CPC.” Hu Angang, *supra*, note 21, at 10.

<sup>105</sup> Hu Angang, *supra* note 21, at 11 (emphasis added).

<sup>106</sup> The use of the word “line” is specific to the political language of Marxist Leninist states. It refers to the directives of the governing bodies of the vanguard party, in this case the Standing Committee of the Politburo, which develops specific policy. For

with the CCP theory, without more, represents a major advance of institutionalizing further the normative order introduced during Deng Xiaoping's leadership. But like all theories, the operationalization of these theories in the lives of CCP members in order to instruct the way in which they work from day to day, represents a challenge that the CCP leadership has recognized. Since the start of the leadership of Xi Jinping, for example, the CCP has directed campaigns to deepen understanding of the mass line as an applied concept to the work of CCP cadres down to the local level.<sup>107</sup> This task also requires some additional elaboration, and the development of a mechanics to ensure better conformity with the collective governance line. I suspect these are tasks for the future.

That said, as Hu Angang reminds us, theory is useful only if it can meet its objectives when applied in the ordinary course of governance. And to that end it is necessary to consider not merely the conformity of collective leadership to the CCP line but also its value in advancing socialist modernization, a core objective of China's state and party institutions.<sup>108</sup> This, Hu posits, follows from what he considers the efficiencies of information-sharing and decision-making structures inherent in the collective presidency model. The key to the collective presidency model is in its structure—the central element of that structure is its application of the principle of *representative fiduciary duty*. That principle imposes on individuals an obligation to serve solely in a representative capacity, the incarnation of various key elements of government and party—and in that role serve as decision contributing stakeholders—“Different members represent different institutions.”<sup>109</sup> That kind of representative decision-making, Hu Angang argues, produces representation-reinforcing structures that also produce efficient decision-

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example ., the Constitution of the Communist Party of China provides: “The basic line of the Communist Party of China in the primary stage of socialism is to lead the people of all ethnic groups in a concerted, self-reliant and pioneering effort to turn China into a prosperous, strong, democratic, culturally advanced and harmonious modern socialist country by making economic development the central task while upholding the Four Cardinal Principles and the reform and opening up policy.” *See supra*, note 72.

<sup>107</sup> “Officials should devise specific measures to ensure the ‘mass-line’ campaign does not remain a mere formality, senior leader of the Communist Party of China (CPC) Liu Yunshan said Saturday . . . . The one-year campaign was launched in June by China’s leaders to boost ties between CPC officials and members and the people, while cleaning up undesirable work styles such as formalism, bureaucracy, hedonism and extravagance.”

*Efficient implementation of ‘mass-line’ campaign urged*, CHINA DAILY, (Oct. 26, 2013), [http://www.chinadaily.com.cn/china/2013-10/26/content\\_17061033.htm](http://www.chinadaily.com.cn/china/2013-10/26/content_17061033.htm).

<sup>108</sup> Hu Angang, *supra* 21, at 11-12.

<sup>109</sup> *Id.* at 12.

making.<sup>110</sup> Hu devotes the bulk of his analysis to our next topic: an analysis of the efficiency of the collective presidency and its mechanics for operation.<sup>111</sup>

### III. FROM THEORY TO SYSTEM OPERATION—THE THEORY OF COLLECTIVE PRESIDENCY FROM HISTORICAL FOUNDATION TO CURRENT IMPLEMENTATION

Hu Angang looks to the Standing Committee of the CCP Politburo's works as the key to the organization of the Chinese political sphere.<sup>112</sup> The works, he understands, are the operational expression of the organizational line of the CCP -- its application, in concrete terms, of the sense of the meaning of the founding ideology of the state as an institutional experience. That experience, once rationalized and appropriately developed, can serve as the template for incorporating the political line throughout the CCP's organization, and inform the state organs—the NCP and ministries -- about the appropriate form in which they must practice socialist democracy.<sup>113</sup> Indeed, its utility may have trans-cultural influence as well.<sup>114</sup> It is here that one sees European Leninism transforming into Chinese socialist democracy.<sup>115</sup> Collectivity in governing both the political and economic spheres enhances “the political consciousness, political confidence, and political self-improvement of the CPC membership and the Chinese people.”<sup>116</sup>

Hu Angang asks: “What kind of collective presidency can reduce the asymmetries of information and power to form a virtuous circle regarding information structure and power structure?”<sup>117</sup> He argues that the

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<sup>110</sup> *Id.* (“It also supports the crucially important ability to correct policy-related mistakes in a timely fashion.”).

<sup>111</sup> *See id.* at 49-127.

<sup>112</sup> *Id.* at 163 (quoting Deng Xiaoping: “In early 1990, Deng Xiaoping stated, ‘The key issue for China is that the CCP should create an excellent Political Bureau, especially an excellent Standing Committee of the Political Bureau. As long as there are no problems in this area, China is assured of a stable future.’”).

<sup>113</sup> *Id.* at 164 (“China’s development largely depends on the CPC. The CPC’s development largely depends on its Standing Committee of the Political Bureau. The development of the Standing Committee of the Political Bureau largely depends on the leadership mechanism, which is characterized by collectivity.”).

<sup>114</sup> *See id.* at 150 (noting his belief “that more and more foreign academics will continue to discover the uniqueness and advantages of China’s political system . . . . As a result, foreign scholars will pay increasing attention to the Chinese system, particularly the system of collective presidency.”).

<sup>115</sup> *Id.* at 168 (arguing that China has created a “more practical system of socialist democracy, in which decision making is more democratic, more efficient, and achieves greater consensus than exists in other countries.”).

<sup>116</sup> *Id.* at 166.

<sup>117</sup> *Id.* at 12.

Chinese collective presidency is best understood as the amalgam of five distinct mechanisms: “collective succession, collective labor division and cooperation, collective learning, collective research and collective decision-making.”<sup>118</sup> Hu Angang first examines the historical development of collective leadership. The objective is to firmly anchor the practice within the CCP’s historical practices (and theoretical foundations), and thus to cement its legitimacy.<sup>119</sup> He then closely considers each of the five mechanisms he identifies as central to the structure and operation of collective leadership. The focus is on collective leadership’s expression in the Standing Committee of the Politburo. However, it is also clear that this practice is meant to be replicated at all levels of government and CCP organization.

Hu Angang grounds his analysis of the legitimacy of the collectivity idea for a presidency, and one compatible with the core CCP political line (including the mass line and the four cardinal principles) by looking to history as evidence of the application of theory to the realities of the Chinese context (seeking truth from facts (实事求是)).<sup>120</sup> Historical analysis is key.<sup>121</sup> Hu describes a process that has involved considerable mistakes as well as progress, maturing into a mechanism appropriate to China’s circumstances.<sup>122</sup> He identifies that progress in five phases, phases that parallel those of the scientific development of the CCP itself, and its structuring of the basic political, economic and administrative line to be applied by the administrative apparatus of the state through the National People’s Congresses and state ministries. Each of these phases set the pattern of collectivity and each added or diminished those efforts in turn, producing the current approach, which is considered in the succeeding chapters.

During the first phase of emergence, which occurred from 1927-1948, Hu Angang examines the way the PSC commenced its work as the site for the implementation of central political and military leadership over CCP organization at a time when there was no state apparatus for the CCP to direct.<sup>123</sup> He describes the development of the CCP’s institutional structure so that on the eve of the Communist victory in 1949, something

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<sup>118</sup> *Id.* at 13.

<sup>119</sup> *Id.* at 17-48.

<sup>120</sup> This is derived from an ancient expression that was used by both Mao Zedong and Deng Xiaoping and is now included in the Constitution of the Chinese Communist Party, General Program, *see supra* note 72.

<sup>121</sup> “The CPC has a clear historical mission. The CPC’s Constitution explicitly stipulates that the party shall lead all of China’s people in achieving the grand objectives of socialist modernization.” *Id.* at 138.

<sup>122</sup> *Id.* at 17.

<sup>123</sup> *Id.* at 17-20.

like the present chain of command emerged. That chain of command was pyramidal and representative in nature at its head—from central committee to the Politburo and from the Politburo to the Politburo secretariat,<sup>124</sup> which included a standing committee after 1948.<sup>125</sup> The aim, institutionalized from 1943 on, “was to ensure collective leadership and prevent individual autocracy.”<sup>126</sup>

With the framework more or less established by 1948, the second phase of establishment (1949-57) marked a period of consolidation—the classical period of earliest efforts to move from a revolutionary to a ruling party.<sup>127</sup> It was during this period that the conversations about the scientific development of socialist democracy began to take their present form, developing into the form of collective presidency.<sup>128</sup> Hu Angang stresses the connection between historical antecedents and current operations. “As Deng Xiaoping declared, the leadership of the party and the state depends on ‘a system of democratic life, collective leadership, democratic centralism, and individual responsibility.’”<sup>129</sup> Thus, even at this early phase, there appeared to be an effort to move Leninist organizational theories—democratic centralism and collective leadership—beyond their roles as mere organizational processes, to seek their normative element within the substantive premises of Marxism.

This produces a way toward democratic legitimacy that starts within the vanguard party rather than against it. Hu Angang stresses that “Democracy allows different opinions and suggestions to be heard [yet] these systems are also centrist . . . . This unique form of leadership of both the party and the state combines features of strong democracy with a centrist approach, and it is also a merger of collective leadership with a division of labor.”<sup>130</sup> Interestingly, Hu, centers the political creativity of the first phase of the collective presidency around Mao Zedong.<sup>131</sup> He notes the rise of the Politburo standing committee in 1956 as an innovation away from European Marxist practice to avoid the problems of

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<sup>124</sup> *Id.* at 19.

<sup>125</sup> *Id.* at 20.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 20-25. (“I refer to this phase as the first ‘golden period’ for economic development in the new China.” *Id.* at 21.)

<sup>128</sup> *Id.* at 21.

<sup>129</sup> *Id.* at 20-21.

<sup>130</sup> *Id.* at 21.

<sup>131</sup> *Id.* at 23. A close reading of this part of the book makes it clear that the Chinese characteristics and institutional innovation of the collective model may well have been the product of the collective participation of a fairly stable group of representatives of the emerging great institutions of Chinese institutional life.

succession.<sup>132</sup> The framework was Leninist with Chinese characteristics: “it opposed individual power, enhanced the collective leadership of the Party, limited the authority of the supreme leader, and consolidated the functions of the national party congress in supervision and decision-making.”<sup>133</sup>

For Hu Angang, the third phase, from 1958-1976, marked a time of trial and testing for the structures of CCP institutional rule developed during the first two phases.<sup>134</sup> Hu Angang is quite blunt in describing the contradiction between the forms of CCP’s organization and its operation in fact, a contradiction induced by the error of Mao Zedong in applying the core CCP line.<sup>135</sup> The description of the realities of power in CCP decision-making during the Cultural Revolution is dispassionately reviewed. But the implications are unavoidable. This is a period of form masking [dys-]function, and a very useful exposition of the methodologies by which the collective internal socialist democratic project of the CCP can come apart. The central lesson comes at the end of this exposition. The great danger of ascribing to an individual the development of the application of the mass line in the internal governance of the CCP creates the danger of investing that individual (or any strong enough) with the power to obliterate the collective socialist democracy of the party. The ability to assert that power, in turn, imperils the legitimacy of the CCP as the vanguard *party* of the masses.<sup>136</sup> Hu Angang extracts the lesson learned from the pen of Deng Xiaoping: “overall centralized power

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<sup>132</sup> *Id.* at 23-24. Thus, succession appeared to be a principal early motivator for collective leadership. However, the efficiency of collective representation-reinforcing constitution of the Standing committee was also emerging at this time. “That is the earliest collective presidency. Seven members of the Standing Committee . . . represented the five major institutions.” *Id.* at 25.

<sup>133</sup> *Id.* at 25 (citing *Leftist Infantilism in Communist Movements*, in 39 LENIN COMPLETE WORKS 21 (Beijing: People’s Publishing House, 1986)).

<sup>134</sup> *Id.* at 26-34.

<sup>135</sup> *Id.* at 26. Hu Angang describes the three levels of collective leadership at the CCP’s senior level—Politburo, Politburo Standing Committee and Politburo Secretariat, “however Mao himself was always the decision-making center, the one who had the final say during the period of the Cultural Revolution.”

<sup>136</sup> Hu Angang summarizes this lesson well: the development of collective leadership in the Politburo Standing Committee had been an innovation ascribed to Mao. “However, during the period from 1958 to 1976, Mao Zedong, Chairman of the Central Committee of the CPC, centralized too much personal power, and his behavior produced a shift from collective leadership toward individual leadership.” *Id.* at 33. Essentially, Mao moved the Chinese Communist Party away from the path toward Socialist Democracy by practicing the errors of European Marxist parties, particularly those of the former Soviet Union.

obstructs the implementation of socialist democracy and democratic centralization of the party; it also helps create bureaucracy.”<sup>137</sup>

Those insights and Deng’s leadership produced a fourth phase, one of recovery and reconstruction that stretched from 1977 to 1991.<sup>138</sup> It is during this phase that the connection between state and party acquired its current form—one in which the CCP assumes a leadership role as the custodian of the political decisions and policy, while the state apparatus assumes its obligations to implement the CCP’s political line.<sup>139</sup> That division requires coordination and internal democratic mechanisms quite distinct from those of Western democracies, which are founded on more traditional “separation of powers” principles.<sup>140</sup> In particular, it requires the coordination of Party and state power through an alignment of representation between the two centers of authority. Thus, Hu Angang describes the development of this coordination as custom and practice.<sup>141</sup> Custom and practice were structured to conform to the CCP core line, “that it was essential to establish the Marxist ideal that a party had to be under collective leadership, with the leaders being individuals possessing virtue and competence who had emerged through mass struggle, and individual worship of a leader in any form was forbidden.”<sup>142</sup> But internal democracy and voting reached a crisis during what Hu describes as the “political storm of 1989.”<sup>143</sup> The lessons learned were that consensus was a key to collective governance and that decision taken on divided votes were disruptive. Additionally, a small Politburo Standing Committee also posed dangers,<sup>144</sup> especially when these members exercise power in ways that might question the fundamental political program of the CCP.<sup>145</sup>

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<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 34-41.

<sup>139</sup> See generally Larry Catá Backer & Keren Wang, *The Emerging Structures of Socialist Constitutionalism With Chinese Characteristics: Extra-Judicial Detention (Laojiao and Shuanggui) and the Chinese Constitutional Order*, 23 PAC. RIM L. & POL’Y J. 251 (2014).

<sup>140</sup> See, e.g., Bruce Ackerman, *The New Separation of Powers*, 113(3) HARVARD LAW REVIEW 633 (2000); Peter L. Strauss, *Formal and Functional Approaches to Separation of Powers Questions a Foolish Inconsistency*, 72 CORNELL L. REV. 488 (1986-1987).

<sup>141</sup> Hu Angang, *supra* note 21, at 34-36, 38-40 (aligning the Standing Committee membership with the major administrative institutions. Over this phase this alignment ranged from five to nine institutions, according to the needs of the times and the decisions of the leadership).

<sup>142</sup> *Id.* at 37.

<sup>143</sup> *Id.* at 40.

<sup>144</sup> *Id.*

<sup>145</sup> See *id.* at 41., n. 2.

Hu Angang describes the current phase of consolidation and optimization (1992-2012), as a stock taking description of where scientific development has taken the state and the CCP.<sup>146</sup> The determination to resort to custom continues to produce variability in the size of the Politburo Standing Committee,<sup>147</sup> with little other than tradition to guide the leadership. That makes the Standing Committee nimble but the institution both unpredictable and less efficient than it might be. This becomes clearer as one considers the shifts in the mix of institutions represented in the Politburo Standing Committee.<sup>148</sup> Thus, it is possible to suggest that Hu Angang's idea of stability is still a work in progress. To that end, Hu Angang points to the decision to require the Standing Committee to meet regularly,<sup>149</sup> and the role of the Secretary General.<sup>150</sup> In summarizing the current state of Politburo's Standing Committee,<sup>151</sup> Hu argues that the historical progression has produced a more perfect collective governance model, yet his own suggestions<sup>152</sup> point to the obligation, central to a core CCP line, that the system continues to be open to innovation.

Hu Angang also applies an internationalist and comparative matrix in assessing the value of collective leadership as an element of socialist modernization.<sup>153</sup> It is not clear why such a comparative assessment is necessary for a system that is meant to be grounded on specifically Chinese conditions. It might be more useful to focus criticism and self-criticism on the internal logic of the CCP's line, and its utility in meeting its objectives for socialist modernization. Hu argues that the U.S. system, in particular, is inefficient when compared to the collective leadership system that has evolved in China.<sup>154</sup> I suspect that the comparisons with the United States are meant for internal rather than external consumption, and may be part of an important conversation with Chinese universalist constitutionalists, who tend to hold up the U.S. model for adoption in China.<sup>155</sup> That secondary conversation then becomes an important element of the analysis that follows.

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<sup>146</sup> *Id.* at 41-48.

<sup>147</sup> *Id.* at 42.

<sup>148</sup> *See id.* at 54-55.

<sup>149</sup> *Id.* at 42.

<sup>150</sup> *Id.* at 42-43.

<sup>151</sup> *Id.* at 46-48.

<sup>152</sup> *Id.* at 149-55.

<sup>153</sup> *Id.* at 146 (noting that "many in China still feel that the political system in China lags far behind that in the West, especially the United States.").

<sup>154</sup> *Id.* 47-48.

<sup>155</sup> *See, e.g.,* Zhang Xuezhong, *I want to draw a square circle---An analysis of*

Beyond historical practice, Hu Angang devotes the bulk of this work to a detailed discussion of the five principal mechanics of the collective presidency.<sup>156</sup> Hu does a masterful job of disaggregating the characteristics of collective presidency in ways that hold substantial promise for its general application to governance. The analysis is rich and detailed, and a sustained review beyond the scope of this essay. But there are several points worth stressing. Each of the mechanisms is grounded in its historical context, which provides a measure of continuity and legitimacy. Each is also focused on results and efficiency, a focus that indicates economic analysis applied to the political and institutional field, which is essential when considering the ultimate obligation of state and party to socialist modernization. Lastly, consideration of each of the mechanisms also focused on the effectiveness and depth of collaboration—the problem of function over form that is important as a lesson from the Cultural Revolution era.<sup>157</sup> Each mechanism builds on itself (and builds with each other) to produce a synergy that is then captured in the final chapter on the political value of collective leadership.<sup>158</sup>

Collective division of labor and cooperation points to the method by which collective leadership is exercised. Reflecting on the focus on cooperation after 1989, Hu Angang explains the consensus as the basis for cooperative action<sup>159</sup>—the object is not to generate voting majorities but to exercise democratic deliberation that leads to consensus that then serves as a basis of decision.<sup>160</sup> Consensus is grounded in another set of premises. If individuals serving on the Politburo Standing Committee serve in a representative capacity, then “each standing committee represents not only the personal views of the attending members but also the views of the various organizations that the members represent . . . . Once the Standing Committee has arrived at its collective decision, the various institutions have to abide by this.”<sup>161</sup> Hu Angang thus suggests a fiduciary element to cadre service. And that makes sense if one can find the means of enforcing it. Every cadre in his or her official capacity necessarily

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*the views of the universal constitutionalism faction*, (July 03, 2013 13:12:57, [http://blog.sina.com.cn/s/blog\\_3fe785710101mkiy.html](http://blog.sina.com.cn/s/blog_3fe785710101mkiy.html) (only available in Chinese).

<sup>156</sup> Hu Angang, *supra* note 21, at 49-134.

<sup>157</sup> See PAUL CLARK, *THE CHINESE CULTURAL REVOLUTION: A HISTORY* (Cambridge University Press, 2008).

<sup>158</sup> Hu Angang, *supra* note 21, at 128-56.

<sup>159</sup> “The relationship within the Political Bureau of the Central Committee is one of collaboration, unity, and cooperation rather than one characterized by division of powers.” *Id.* at 62 (comparing the decision-making system in the United States).

<sup>160</sup> *Id.* at 57 (involving extensive negotiation in conference).

<sup>161</sup> *Id.* at 58, 63.

represents the vanguard element of the CCP, and when engaged in party work ought to act solely in the best interests of the vanguard, rather than his or her own -- even when that action may be individually detrimental. This element, combined with the internal democratic element of cooperation, and democratic centralism suggests the potential power of the collective presidency concept. But this theoretical possibility has not been completely attained, though it is a goal for which further scientific development might prove useful.

The key to this function is not merely the interlocking nature of state and party institutions, but also what Hu Angang identifies as individual responsibility grounded in the theory of democratic centralism.<sup>162</sup> Hu also distinguishes collective division of labor and cooperation for the way in which it permits the Standing Committee to seek information from outside information providers (mostly national think tanks).<sup>163</sup> Furthermore, Hu notes the value of the collective information mechanism as a coordination nexus, both internal and external, and its function as an accountability mechanism.<sup>164</sup>

With respect to collective succession,<sup>165</sup> Hu Angang considers the way in which the CCP has institutionalized collective succession. The principal value of this mechanism touches on risk diversification and the institution of an orderly system of steady movement by promising cadres up the chain of governance. Collective succession thus refers to two objectives—the first goes to the predictable replacement of older members, and the second (perhaps more important) objective is the orderly provision of governance experience to individuals selected for promotion.<sup>166</sup> Hu emphasizes that the path to power is through local experience rather than relying on the serendipity of elections. Senior leaders cultivate promising cadres through local experience.<sup>167</sup> Hu is also sensitive to the need to use succession as a means of deepening the fundamental class struggle elements of Chinese politics. Collectivity requires not merely producing a collective leadership but also producing a

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<sup>162</sup> *Id.* at 61-62.

<sup>163</sup> *Id.* at 59-60 (“Thus, all the information, knowledge, and advice relating to a particular decision converge in the Standing Committee.” *Id.* at 60).

<sup>164</sup> *Id.* at 60-61.

<sup>165</sup> *Id.* at 64-84.

<sup>166</sup> *Id.* at 64, 68 (citing in part Ye Jiangying, Speech on the First Conference of the Eleventh Plenary Session (Feb. 24, 1980), in Central Committee of the Communist Party Research Centre, Important Documents Since the Third Plenary Session, vol. 1, pp. 386-91 (Beijing, People’s Press, 1982)).

<sup>167</sup> *Id.* at 75.

larger collective proletariat to achieve the long-term goal of attaining a communist state.<sup>168</sup>

It is in this context that Hu Angang raises one of the more interesting theoretical issues of socialist democracy and its quite distinct vision of the essence of democratic action—*the role of elections as central to the practice of democracy*. In the West, the ideal of democracy is expressed externally. It is evidenced in the periodic role of the body politic, those members of the state with the right to participate in political life (now much broader than it was even a century ago), to choose individuals who will represent them in the exercise of all sovereign authority ceded to the state apparatus.<sup>169</sup> These individuals exercise that portion of authority assigned to their office, but together, the aggregation of these individuals exercise the entirety of popular power. The approach may reflect a Western view of the individual and the individual in political life. There is a heroic and individual element in the concept of democracy centering on election of individuals.<sup>170</sup> The election system cultivates the specific and unique character of the individual and personal approaches to political issues. Accountability is post hoc—expressed by voters in subsequent campaigns for re-election, subject only to impeachment and recall, and to the limits of their authority. These individuals may do as they like, and indeed are encouraged to do so, until it is time to stand again for election. During that inter-election period, free discussion is permitted to the electorate, and constitutionally protected in many places, but it is understood that these expressions by individuals or civil society actors need not be heeded, nor are they given political effect.

In China, Hu Angang has suggested, the ideal of democracy is expressed internally. That follows from a distinct view of the role of the individual in politics. The heroic model of individual participation is rejected—indeed, one of the principal lessons of the errors of the Cultural Revolution was precisely the dangers of the uncontrolled expression of

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<sup>168</sup> *Id.* at 80-81 (“It also prevents the emergence of Gorbachev-type political leaders.” *Id.* at 82). This is particularly important in light of Gorbachev’s idea that successful economic reform was impossible in the absence of radical political reform. See ALFRED B. EVANS, JR., *SOVIET MARXISM-LLENINISM, THE DECLINE OF AN IDEOLOGY* 195 (Westport, CN: Greenwood Publishing, 1993) (indicating the CCP from Deng Xiaoping has followed the opposite path).

<sup>169</sup> Thus, for example, the U.S. Constitution provides both for direct election of representatives, based on a territorial division of the electorate. See U.S. CONST. ART. I. But it also provides for indirect election of the president through the election of representatives of the electorate constituted as an electoral college. See U.S. CONST. ART. I.

<sup>170</sup> An excellent example of this normative understanding of elections as a mechanism of collective will is underscored in a book written by a popular former U.S. president. JOHN F. KENNEDY, *PROFILES IN COURAGE* (New York: HarperCollins 1961).

individual desire in political life.<sup>171</sup> In addition, the nature of office is understood differently—Hu Angang suggests the role of the fiduciary element in political life.<sup>172</sup> Individuals serve as representatives of representative organs (state and CCP units) and are expected, as an ideal of political behavior, to act in the best interest of their respective organizations and the nation, rather than to further personal agendas or visions of political decisions. Freewheeling discussion is permitted, but again within the structures of the vanguard party, in which political authority is vested.<sup>173</sup> That discussion, grounded in the framework of democratic centralism, aims to cultivate robust discussion within the polity, but again structured inside the framework of the fiduciary and representational capacity in which cadres operate through the institutional structures of the CCP.

That fundamentally distinct view of the relationship of political representatives to the state (and party) substantially shapes the view of the place where democracy ought to be practiced and the mechanics of its most effective practice. A collective presidency is incompatible with political systems that are grounded on the special character of the individual, the direct connection between individual power and the electorate, and the expression of the connection between popular sovereignty directly through elections and otherwise through discussion. The opposite is also true—Western democratic systems are incompatible with notions of internal collectivity and strict fiduciary obligations. Yet both seek the same functional ends—representative and democratic governance. That basic compatibility and functional convergence makes conversation about the utility of democratic mechanisms difficult, though important.

It is in this context that the discussion of the collective mechanics of succession becomes so interesting—both for Chinese intellectuals seeking to deepen the scientific development of socialist democracy according to the political logic of the Chinese political order, and for Western scholars seeking to understand the compatibility of internally-focused democracy with global principles of constitutionalism. Hu has moved a step closer to elaborating the mechanics of a distinct functional mechanics of democracy. Its deep theorization awaits further development for both internal use and external comparison.

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<sup>171</sup> Cf. Jeremy T. Paltiel, *The cult of personality: Some comparative reflections on political culture in leninist regimes*, 16(1) STUDIES IN COMPARATIVE COMMUNISM 49-64 (1983).

<sup>172</sup> See Hu Angang, *supra* note 21 at 83-92.

<sup>173</sup> See, e.g., Larry Catá Backer, *Towards a Robust Theory of the Chinese Constitutional State: Between Formalism and Legitimacy in Jiang Shigong's Constitutionalism*, 40(2) MODERN CHINA 168 (2014), available at <http://mcx.sagepub.com/content/40/2/168>.

The collective learning mechanism suggests the connection between the Politburo Standing Committee and China's intellectual elites.<sup>174</sup> But it suggests more. As a vanguard party, the CCP must set an example. And the example here is to teach how to learn,<sup>175</sup> or better put, to avoid the anti-intellectualism of the Cultural Revolution period.<sup>176</sup> The most interesting part of the analysis is Hu Angang's efforts to distinguish individual from collective learning.<sup>177</sup> Collective learning includes learning by sharing and exchanging ideas (learning as collective engagement), by reaching out to experts, by approaching learning with an open mind (avoidance of rigidity in the face of issues), by treating learning as a path toward innovation, and by a focus on law.<sup>178</sup> The connection between collective learning and law is particularly interesting for the way it blends the act of learning with the forms of governance expression through which learning is applied.<sup>179</sup> Learning is instrumental to the CCP's basic objective of ruling by law and under the principles of the CCP constitution for its political obligations and the national constitution for the state apparatus.<sup>180</sup> It is thus an inherently political act. Collective learning ties rule of law to democracy,<sup>181</sup> and is fundamental to the CCP's role as a vanguard element consistent with the CCP's learning and socialization role under the Sange Daibiao (三个代表) line.<sup>182</sup> Indeed, it is

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<sup>174</sup> *Id.* at 85-93.

<sup>175</sup> *Id.* at 85.

<sup>176</sup> *Id.* at 86 ("In 1978 Deng Xiaoping declared that the party needed to resume learning." *Id.*).

<sup>177</sup> *Id.* at 88-91.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* at 91 ("Today the leadership is committed to collective learning with regard to laws, regulations, and basic systems so that the party can be properly ruled by its Constitution, and the country ruled by the Constitution for the People's Republic.").

<sup>181</sup> "The fourth plenary Session of the 16th National Congress of the CCP stipulated clearly the guideline of 'ruling by law' whereby as well as being emphasized, democracy is also a rule of the law." *Id.*

<sup>182</sup> Sange Daibiao ("Three Representations") was the theory advanced by Jiang Zemin in 2000. It is a move toward rethinking the characteristics of a vanguard party away from the centrality of class struggle to focus more directly on socialist modernization. The three representations are based on the premise that the communist party represents the productive forces of the country, its culture and its people. The effect is to emphasize the Leninist notions of vanguard party characteristic in a post revolutionary context.

The important thought of Three Represents is a continuation and development of Marxism-Leninism, Mao Zedong Thought and Deng Xiaoping Theory; it reflects new requirements for the work of the Party

this learning function that distinguishes Chinese socialist democracy from European Marxist Leninism.<sup>183</sup> Learning is tied to the CCP's scientific development line, "the CCP is essentially a learning party and China's government is a learning government."<sup>184</sup> However, that requires a substantial investment in knowledge acquisition, from the top to the lowest cadre levels of the CCP—with the object not merely of imparting policy expertise but of socializing CCP cadres in the political structures and ideology of the state. In this sense, the collective learning mechanism is a foundational essence of the CCP's political work. Success will ultimately be assessed by the success of the CCP in having its political framework internalized as natural first by its cadres and then by the rest of Chinese society. For that, knowledge-transmission systems will be critical to the success of the CCP.

Related to collective learning is what Hu Angang identifies as collective research.<sup>185</sup> This mechanism is also grounded in the "truth from facts" approach of the CCP's operation<sup>186</sup> and is central to constructing a constitutional state with Chinese characteristics.<sup>187</sup> The essence is a functional approach to resolving challenges, the genesis of which was set the CCP's early history.<sup>188</sup> There is a focus on the cultivation of personal research.<sup>189</sup> Research characteristics include quick implementation (recall that the ideal of focused responsiveness is an important element of the utility of collective presidency for China's conditions),<sup>190</sup> a division of

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and state arising from the developments and changes in China and other parts of the world today; it serves as a powerful theoretical weapon for strengthening and improving Party building and for promoting self-improvement and development of socialism in China; and it is the crystallized, collective wisdom of the Communist Party of China.

Constitution of the Chinese Communist Party General Program. *See supra* note 37. The most commented consequence of the Three Represents was the decision to allow wealthy industrialists and merchants into the Communist Party. See, Charles Wolf Jr., China's Capitalists Join the Party, *NEW YORK TIMES* (Aug. 13, 2001), *available at* <http://www.rand.org/blog/2001/08/chinas-capitalists-join-the-party.html>.

<sup>183</sup> *Id.* at 91-93.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.* at 94-113.

<sup>186</sup> *See* CONSTITUTION, *supra* note 72.

<sup>187</sup> *See* Report of the 4th Plenum of the 18th Party Congress, Oct. 2014 (on file with author).

<sup>188</sup> Hu Angang, *supra* note 21, at 94-95 ("Since then a network of investigation agencies has been set up by all committees of the CCP—from the Central Committee to local party committees—and these directly provide decision-making information to the Central Committee of the CCP." *Id.* at 95).

<sup>189</sup> *Id.* at 98-102.

<sup>190</sup> *Id.* at 102.

labor among the members of the Standing Committee,<sup>191</sup> the cultivation of fast response to sudden events,<sup>192</sup> and the investment in internal and international conferences and exchanges.<sup>193</sup> These characteristics are to some extent more hortatory than institutionalized; and one of the difficulties of the cultivation of research is that the Standing Committee relies on custom. Yet the research component must be understood as far more important as it might be understood in the West, precisely because it may be connected to a core element of the CCP line—the mass line campaigns.<sup>194</sup>

Indeed, the most interesting part of Hu Angang's analysis of the research mechanics is the effort to tie this to the mass line.<sup>195</sup> The interest is twofold. First is the effort to directly connect the fundamental CCP line to the core mechanics of Standing Committee governance. Second is the effort to distill the mass line for purposes of connecting it to the collective presidency. With respect to the first point, Hu Angang connects the mass line to collective governance through Mao Zedong,<sup>196</sup> reaffirmed by Deng Xiaoping.<sup>197</sup>

First, Mao said, 'True knowledge comes from practice,' and truth gleaned from practice is applied to practice, which is consistent with Marx's epistemology. Second, Mao said, 'Policies come from the masses,': the correct policy comes from the masses and goes back to the masses, which is consistent with the party's mass line . . . . Third, Mao said, 'Innovation comes from the local,' which means that local innovations are practiced locally.'<sup>198</sup>

The central role of research within the collective presidency is tied to the core line, the democratic line, of the CCP.<sup>199</sup> It follows that

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<sup>191</sup> *Id.* at 104-05.

<sup>192</sup> *Id.* at 106 (fast response enhanced by system of coordinating with state organs (*Id.* at 107)).

<sup>193</sup> *Id.* at 107-10.

<sup>194</sup> For discussion on mass line, *see generally* Hu Angang, *supra* note 21, starting at 110.

<sup>195</sup> *Id.* at 110-13 ("The process of research by the central leadership leads to understanding China, its people's needs and local innovations." *Id.* at 111).

<sup>196</sup> *Id.* at 112 (showing that the political and social basis of research derives from practice, from the masses and from the local).

<sup>197</sup> *Id.* at 112-13 ("This is the train of thought of Chinese reform and innovation advocated by Deng Xiaoping.").

<sup>198</sup> *Id.*

<sup>199</sup> "That is to say, collect the opinions of the masses (sporadic and unsystematic

*collective* research element is understood as a political act and the legitimating element of the internalization of democratic practice in China. Collective research, in effect produces that relation with the people that in the West is exercised through voting. A failure of proper research, then, amounts to a failure to comply with the core element of socialist democracy exercised through the Standing Committee's collective mechanisms.

However, research as an expression of the mass line assumes a particular character. "Wang Shaoquang thinks that the mass line is equivalent to the decision-making process model in Western social sciences, including information collection, agenda setting, policy planning, policy adoption, policy implementation, and policy evaluation."<sup>200</sup> In this sense, the mass line serves to legitimize the collective presidency because of its close connection to a core substantive element of state's organization. Nevertheless, it also achieves legitimacy through its connection to the global norms of responsible policy engagement through a functional equivalence with Western social science methodologies. As both substance and method, then, the mass line, exercised through the research imperative, becomes a defining element of socialist democracy.

The last of the collective presidency mechanisms, collective decision making, is likely the most important for Hu Angang.<sup>201</sup> If the effectiveness of the collective presidency system is measured by the success of its strategic decisions, then the question of collective decision-making is tied to avoiding poor decisions; "the crux of the issue is the collective decision-making mechanism, which is the converse of individual decision making."<sup>202</sup> The object is to make collective-decision making systematic, democratic and collective.<sup>203</sup> After examining its history,<sup>204</sup> Hu Angang considers the way in which collective decision-making works using the analogy of the body.<sup>205</sup> Key elements blend much

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views), and refine them (refined and systematic ideas based on research). Then publicize and explain these ideas back to the masses. Translate them into action by the masses and prove through practice whether these ideas are correct or not. Then once again collect ideas from the masses."

*Id.* at 112.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.* at 114-27.

<sup>202</sup> *Id.* at 114.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.* at 114-19.

<sup>205</sup> "The party's and the country's decision-making system direct the national economy and social development in the same way as the human brain controls the body. The decision-making system is both the country's 'wisdom center' and its 'information

of the insights from the earlier mechanics described. Of these, Hu Angang emphasizes institutionalization and standardization of operations,<sup>206</sup> reinforcement of the culture of collectivization,<sup>207</sup> developing systems of accountability and mitigating errors in decision-making,<sup>208</sup> and the intake of expert advice.<sup>209</sup>

From the perspective of political theory, Hu's discussion of the relationship of the role of the United Front Parties<sup>210</sup> and the CCP is most valuable.<sup>211</sup> These are treated as consultation bodies, who also serve a representative capacity that must be considered for the CCP to meet its obligations under the mass line—and thus its objectives of strengthening socialist democracy as a project of internalized, endogenous, democracy. But, of course, this endogenous system works only to the extent that individuals exercise their responsibilities in a representative rather than personal manner. And that project may require further institutionalization through a cage of rules.<sup>212</sup> Hu notes that “the basic approach for democratic parties should be as follows: participate in government, participate in national basic policy and consultations among national leaders, participate in the management of state affairs, and participate in national policies, laws, and regulations execution.”<sup>213</sup> They ought also to be consulted for the larger national policy issues.<sup>214</sup> The relationship of the United Front parties to the CCP and their role in socialist democracy

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center.” *Id.* at 119.

<sup>206</sup> *Id.* at 120-21.

<sup>207</sup> *Id.* at 121.

<sup>208</sup> *Id.* at 122

<sup>209</sup> *Id.* at 123.

<sup>210</sup>The United Front represents a number of political parties and others that, under the direction of the CCP, joined with it to establish the People's Republic. See Allen B. Cole, *The United Front in the New China*, 277 *Annals of the American Academy of Political and Social Science*, Report on China (Sep., 1951), pp. 35-45. The United Front now plays a role in advising the CCP on issues of policy through the Chinese People's Political Consultative Conference. On the Chinese People's Political Consultative Conference, see, *Backgrounder: Chinese People's Political Consultative Conference*, available at [http://www.chinadaily.com.cn/china/2014npcandcppcc/2014-03/03/content\\_17317558.htm](http://www.chinadaily.com.cn/china/2014npcandcppcc/2014-03/03/content_17317558.htm). See also *What is China's CPPCC and How to Get Kicked Out of It*, CHINA REAL TIME (Mar. 3, 2014), available at <http://blogs.wsj.com/chinarealtime/2014/10/29/what-is-chinas-cppcc-and-how-to-get-kicked-out-of-it/>.

<sup>211</sup> *Id.* at 122-23.

<sup>212</sup>See, e.g., *Cage power with rule of law*, CHINA DAILY (Oct. 9, 2014), available at [http://www.chinadaily.com.cn/cndy/2014-10/09/content\\_18709369.htm](http://www.chinadaily.com.cn/cndy/2014-10/09/content_18709369.htm).

<sup>213</sup> *Id.* at 122.

<sup>214</sup> *Id.* at 122-23.

becomes clear and its understanding can only be appreciated through the lens of the class struggle elements at the core of the construction of the Chinese polity. These parties are understood as political in the sense that they represent important class elements that are allied with the CCP. To that extent, and in their representational capacity, they serve as an important element of political authority, but only under the leadership of the vanguard social elements in which the power to represent the nation are vested.<sup>215</sup> In this sense, consultation is necessary, but the individuality of the specific representative matters less. This underscores again the importance of the fiduciary character of political authority under emerging theories of Chinese socialist democracy.<sup>216</sup> The full realization of these broad principles, of course, will require both vigilance and constant effort.

It is with respect to this last point that Hu Angang focuses his assessment of the value of collective decision-making mechanisms. Again, looming large in that assessment is the need to institutionalize structures that minimize the possibility of reprising the errors of governance of the Cultural Revolution period, through “systematic and democratic decision-making.”<sup>217</sup> The utility of these mechanisms for reducing the likelihood of error is also important. If individuals tend to make mistakes because of their own flaws and limits, perhaps a collective of individuals can combine their strengths and check each other’s flaws to produce generally better decisions that are more likely to reflect the fiduciary character of their roles.<sup>218</sup> Lastly, Hu Angang suggests the consequential utility of collective decision making within the ideological structures of the Chinese constitutional system. Collective decision-making helps create solidarity among the vanguard leadership as an example to the nation.<sup>219</sup> And collectivity in decision-making again helps to avoid the tendency, in systems that focus on individual achievement, of the sort of cult of personality that is dangerous for any democratic system.<sup>220</sup> As importantly, and in ways that would be incompatible with externally focused Western democratic systems, it would strengthen the

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<sup>215</sup> Hu Angang explains: the CCP’s constitution stipulates that the CCP is the pioneer of the working class in China, and it is also the pioneer of the Chinese people and the Chinese nation. It is the leading core of the socialist cause with Chinese characteristics and fulfills the requirements of China’s advanced productivity.

*Id.* at 137.

<sup>216</sup> “The main concern is not which party will achieve power, but how the government rules the country such that all the people derive benefit.” *Id.* at 139.

<sup>217</sup> *Id.* at 124.

<sup>218</sup> *Id.*

<sup>219</sup> *Id.* at 125.

<sup>220</sup> *Id.*

practice of internalization (a tendency institutionalized within the logic of democratic centralism as well) of keeping democratic debate within deliberate bodies, and eliminate such discussions outside of them.<sup>221</sup>

At the end of this extended analysis, we come to a singular conclusion: “China’s development is a huge proving ground for political democracy. It is an enormous classroom not only for learning of democratic decision making but also for its practice.”<sup>222</sup> However, it is also an experiment in democratic political organization, the fundamental premises and operational expressions of which are sometimes substantially different from and incompatible with those developed in advanced Western democracies. In their own ways, each seeks the same objectives: response, inclusive and representative political and administrative institutions that are accountable to the people. In the final chapter of his work, considered in the next section, Hu Angang address the work that remains to be done to develop the collective element of socialist democracy.

#### IV. UNFINISHED BUSINESS—INNOVATION AND THE SCIENTIFIC DEVELOPMENT COLLECTIVE LEADERSHIP

In the last part of his analysis, Hu Angang turns to an evaluation of the political advantages of the system of collective presidency.<sup>223</sup> He then offers a specific set of thirteen suggestions for improvement.<sup>224</sup> The evaluation of the collective presidency mechanism is tied into two key objectives. The first are the objectives of the socialist modernization project, which is central to state and party policy over the last generation. The second is tied to the political project of building a sound institutional architecture for a distinctive way of practicing democracy compatible with the core parameters of the Chinese constitutional system.<sup>225</sup> The core issue remains one tied to both national objectives and legitimacy. These

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<sup>221</sup> Different voices in the Central Committee would inevitably lead to confusion among Party members, the men and women of the People’s Liberation Army, and the people as a whole. This would create negative effects and could even bring new disaster to the country. This is not allowed in the party’s constitution. Individuals may hold different opinions and make suggestions to the central collective leadership of the CCP, but they must never be allowed to make decisions and express views without authorization.

*Id.* at 126.

<sup>222</sup> *Id.* at 127.

<sup>223</sup> *Id.* at 128-47.

<sup>224</sup> *Id.* at 149-55.

<sup>225</sup> Hu Angang notes, “The CCP has a clear historical mission. The CCP’s constitution explicitly stipulates that the party shall lead all of China’s people in achieving the grand objectives of socialist modernization.” *Id.* at 138.

converge on the core issue of the role of the CCP.<sup>226</sup> The rationale of the collective presidency can be understood as a means of maximizing the ability of the CCP to do its economic and political work by beginning to institutionalize its operations with rules and predictable processes as the CCP moves from a role as a revolutionary to an institutional party.<sup>227</sup> The issue is not mere political consistency, but consistency measured against efficiency concerns.<sup>228</sup> From a comparative perspective, efficiency (as against possible alternative approaches to democracy and decision-making) must be measured against the unique realities of China. Hu Angang posits that this presents the problems of a supranational rather than of a federal state.<sup>229</sup> This supra-national status makes unhelpful the conventional approach to government, grounded in individuals operating within a system where power is divided substantively and exercised against both internal and external checks.<sup>230</sup> Practical necessity, then, as well as ideology, marks the boundaries within the issues of Chinese governance ought to be considered.<sup>231</sup>

With these suggestions, Hu Angang moves from theory to practice. It is here that much of the future of the CCP's work may well lie. He offers thirteen suggestions to start. Each suggests a number of subsidiary points that will be worth considering.

Hu Angang first suggests refining the work codes of the CCP Central Committee.<sup>232</sup> The focus is on institutionalizing procedures through rules,<sup>233</sup> the clarification of decision-making principles and mechanisms,<sup>234</sup> and the refinement of procedures and regulations.<sup>235</sup> This

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<sup>226</sup> *Id.* at 129.

<sup>227</sup> *Id.* at 129-30.

<sup>228</sup> *Id.* at 131.

<sup>229</sup> *Id.* at 132.

<sup>230</sup> *Id.* (“A standard two party system, a system involving separation of powers, a presidential system, and a bicameral system are too simple to be effectively applied to China since there would be huge limitations and obvious shortcomings.” *Id.*). While I am not sure about the comparative shortcoming, it is clear that as a matter of maximizing institutional governance under the parameters of Chinese constitutionalism, such conventional traditional systems would not mirror the realities of the Chinese political construct, and for that reason alone should be cautiously approached as a matter of internal coherence.

<sup>231</sup> *Id.* at 133.

<sup>232</sup> *Id.* at 149.

<sup>233</sup> *Id.* (“a section should be added . . . to refine the decision-making procedures of the Central Committee . . . to make it more institutionalized, regularized and standardized.”).

<sup>234</sup> *Id.* at 149-50 (to “make the processes of research, consultation, suggestion, and democratic decision-making more concrete, standardized and predictable.”).

<sup>235</sup> *Id.* at 150 (focusing on the decision-making procedures and regulations of the

objective requires some substantial thought beyond the brief reference. One of the most important structural pillars of rule of law institutionalization is the development of certain and predictable well-understood structures for decisions.<sup>236</sup> These structures not only need to be well known, but they must also be followed. Additionally, they require a close connection to the core substantive values to which the actions of the governance organs subject to the procedures are to further.<sup>237</sup> In this case, those objectives are socialist modernization effected through a practice-centered fidelity to the party line. These procedures must be clear about the fiduciary character of the participatory role of the members of these committees. If democracy is internalized in government and party, then the fiduciary and representative element of Party work must be emphasized and inculcated as a basic part of the political education of cadres. More importantly, perhaps, the rules discussed ought to be specific and enforceable. Rules without enforcement procedures, and direction without accountability, are meaningless. But the procedures must be clear and straightforward and reflect the consensus line of the CCP as an institution. That consensus line is grounded in the application of the mass line to the issue of internal democracy arrived at through the application of a thoroughgoing democratic centralism in discussion and decision making. Still, clear and straightforward rules may be insufficient. Its implementation may require creating an accountability institution, or perhaps a broadening of the application of shuanggui principles to collective decision-making.<sup>238</sup> In a sense, a focus on the individual is potentially as corrupting to socialist democracy as other more crude forms of corruption now central to the enforcement of Party discipline through shuanggui.<sup>239</sup>

Hu Angang offers some suggestions for the research and learning mechanisms of the collective presidency as well. These include a refinement and regularization of research scope and methodologies,<sup>240</sup> greater requirements for pre-research efforts,<sup>241</sup> and the more muscular

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CCP National Congress and Central Committee plenary meetings).

<sup>236</sup> See, e.g., James R. Maxeiner, *Some Realism About Legal Certainty in Globalization of the Rule of Law*, 31 HOUS. J. INT'L L. 27 (2008).

<sup>237</sup> See generally Randall Peerenboom, *Varieties of Rule of Law: An Introduction and Provisional Conclusion*, in THEORIES AND IMPLEMENTATION OF RULE OF LAW IN TWELVE ASIAN COUNTRIES, FRANCE AND THE U.S. 1, 4 (Randall Peerenboom ed., 2004).

<sup>238</sup> See generally Backer & Wang, *supra* note 139.

<sup>239</sup> *Id.*

<sup>240</sup> Hu Angang, *supra* note 21, at 150 (noting that written reports must be made to the Politburo and announced when necessary to all CCP members)

<sup>241</sup> *Id.* (regularizing technical consultations with experts in the pre-research

incorporation of theoretical studies in the Work Codes.<sup>242</sup> The key elements here appear to be to reduce the likelihood of erroneous decision-making and to increase the likelihood of consensus on major decisions. Consensus, of course is a key to the operation of socialist democracy as practiced through the collective presidency. The difficulty is that at times facts clarify the policy issue that must be decided, but may not point inevitably to a single best course of action. The equally important ingredient in making policy choices is the application of political values to well understood facts. For that effort, it is necessary first to resolve factual ambiguities, and then to discuss the political values that must be furthered by policy. To that end, research is less valuable than the proper inculcation of socialist values—starting with a deep understanding of the political meaning of the CCP’s line. It would follow that the CCP will fail in its duty if it does not also develop seminars to teach its cadres the appropriate ways of translating the CCP’s political values (and the CCP line) to the specific issues to be considered and problems to be solved. This is a task that may well require more work.

The focus on consensus touches on another of Hu Angang’s reform proposals: the mechanics of voting.<sup>243</sup> The focus is on crafting rules that ensure majority decision-making and the avoidance of individual dictatorship. Yet tyranny of the majority may be as corrupting to socialist democracy as tyrannies of the individual and of the minority. The objective of research and teaching mechanics is to reduce the need for decisions on a voting basis and to avoid splits—especially for decisions at the highest levels. Indeed, Hu Angang himself noted Deng Xiaoping’s assessment that a close voting split among the members of the CCP Standing Committee in part produced the difficulties of 1989.<sup>244</sup>

While voting is sometimes necessary, consensus is more in keeping with the culture of socialist democracy and the character of the CCP as a vanguard element. A need for a vote, and a voting split, may therefore suggest the need for greater research and more discussion of the appropriate values to guide decisions than it suggests a vigorous democracy. Lastly, voting opens the way for factionalism within the CCP in ways that would detract from the vanguard role of the Party and the

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phase of major decisions and proposals by ministries; “Opinions should be elicited from all sectors, and efforts by all departments should be coordinated.)

<sup>242</sup> *Id.* (making mandatory listing of theoretical studies in the Work Code, increased the frequency of seminars, where “information needs to be shared, thoughts broadened, perceptions sharpened, and consensus formed.”).

<sup>243</sup> *Id.* at 151. (“Anonymous voting (including agreement, default decisions, and opposition) on major decisions and majority rule are necessary to prevent the dictatorship of one individual or a minority.”).

<sup>244</sup> *Id.* at 152.

objectives of socialist modernization. In a sense, it also brings the CCP closer to the potential error of bourgeois politics and provides a backdoor for the more significant error of personal aggrandizement through factional politics.<sup>245</sup> To remain true to the core principles of socialist collectivization of decision making as an expression of internal democracy, a better approach might be to use voting to determine where more work is necessary to reach consensus, rather than to use voting in the Western style (where this approach makes sense given the logic of that system) as the means of decision making. Voting within the collective leadership in order to determine policy, in this sense, may be *antithetical to and inconsistent with the core values* of collective leadership and socialist democracy.

Hu acknowledges the value of this position in the context of his suggestion that the collective leaders engage in criticism and self-criticism.<sup>246</sup> It is understandable that this device might be viewed with some suspicions, given its abuse during the time of the Cultural Revolution.<sup>247</sup> Yet it is also true that a safe space for collective self-criticism may be useful to hold leaders acting in a representative capacity accountable, and to guide appropriate attitudes and avoid perhaps unconscious slipping into individualism. The danger of the perversion of this mechanism into an instrument of control and dictatorship, though, should not be dismissed lightly. Consequently, there may be value in Hu Angang's redirection of criticism-self-criticism into the learning mechanism to be undertaken only in the context of seminars and symposia around particular issues of research.<sup>248</sup>

Related to this set of recommendations are those that seek to refine the means for correcting mistakes and ascertaining responsibility.<sup>249</sup> Hu Angang suggests that "Those who are held accountable should conduct self-criticism."<sup>250</sup> Yet there is no suggestion of a connection between accountability and shaunngui. The establishment of that connection may well be necessary to strengthen legitimacy and better operation. That relationship is in need of refinement as the CCP seeks to institutionalize its

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<sup>245</sup> In suggesting the importance of publicizing the collective leadership of the CCP, Hu Angang notes that this principle of collectivity "is the difference between statesmen of the proletariat class and those of the capitalist class as well as the difference between China's political leaders and those in the West." *Id.* at 153.

<sup>246</sup> *Id.* at 151.

<sup>247</sup> Thus, Hu Angang emphasizes that such mechanism should be undertaken in a "mild constrictive way." *Id.* Hu Angang also references the "Principles on the Political Life Within the Party" (11th National Congress 5th Plenary Session, 1980) for its constraints on behavior limits.) *Id.* at 152.

<sup>248</sup> *Id.* at 152.

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

systems for decision making and those for accountability, while promoting the sort of vigorous debate (in keeping with principles of democratic centralism) about policy based on facts produced through research that is necessary to further the substantive programs of the state and party.

A further connection between the internal democratic elements of collective presidency and accountability may be undertaken through transparency. Collective democracy may work best, and further the CCP's political work as a vanguard element of the political order in China, where the CCP undertakes its work in a more transparent manner—and certainly more transparent within the CCP itself. To that end, Hu Angang offers the suggestion that it is necessary to refine the report system in which all departments in all localities report the implementation of major decisions received from the central leadership.<sup>251</sup> Perhaps a more thoroughgoing transparency and reporting would be useful as well. Certainly such a broadened reaching out by the CCP to the masses would be consistent with the mass line (from the people *to the people*) and with the obligations of the CCP under principles Sange Daibiao, especially in its third prong.<sup>252</sup>

Hu Angang seeks to suggest a different means by which these obligations might be fulfilled. He speaks to the need to publicize the work of the collective presidency.<sup>253</sup> This is offered as a means of disciplining any tendency to highlight the efforts of any one individual and to drive home the point among the masses that “personality cults should be strictly forbidden.”<sup>254</sup> Yet it would also aid in the process of deepening respect for collective leadership as the essence of socialist democracy if the collective leadership's specific reports and decisions would be circulated as well. Indeed, it appears to be an explicit insight of the mass line itself,<sup>255</sup> when it refers to refining the vanguard party's mass opinion and its publicizing and explaining these refined opinions and decisions back to the masses.<sup>256</sup> That sort of openness would further the CCP's political work as well by providing a clear and specific guidance not merely to its cadres, but to the people (especially when decisions affect the operation of the administrative organs of state).

Last, it is not merely the errors committed during the Cultural Revolution that helped shape the return to socialist democracy. It is also the need to avoid the specific errors of European Marxism.<sup>257</sup> To this end,

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<sup>251</sup> *Id.* at 150.

<sup>252</sup> See BACKER,, *supra* note 23.

<sup>253</sup> Hu Angang, *supra* note 21 at 150 .

<sup>254</sup> *Id.* (referencing the CCP Constitution Art. 10).

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.* at 154.

Hu Angang suggests the need to strengthen mechanisms to deepen CCP discipline on the ideological level.<sup>258</sup> Hu does not suggest ossification, but continued innovation within the ideological premises that define China as a socialist state with a legitimate and democratic constitutional system and welfare-maximizing economic program. Fear is more practical—that factionalism will produce error, and that these errors will not be resolved within the internalized democratic structures of the CCP, but rather outside of them.<sup>259</sup> Yet beyond the concern lies a deeper issue—that of the fundamental mission of the CCP. That mission, grounded in the classical insights of class struggle, now requires a shift toward objectives that more broadly develop a culture in which socialist democracy is accepted throughout the system and among all people (even those excluded from deep political participation)<sup>260</sup> in the way that the basic premises of Western democracy are accepted by its masses. That defines one of the most important political projects of the CCP, and one for which socialist modernization, alone, cannot provide a substitute. This exposition of collective leadership is an important step in the right direction.

The open and deep practice of collective leadership will be even more important in the next decades. But the reception of these insights by the people (the last and most important element of the mass line) is likely to be among the most important task that still awaits completion and perfection. Until that project is more thoroughly underway, the problem of legitimacy will haunt the project of building robust socialist democracy,

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<sup>258</sup> “In view of the fact that two secretaries general made serious mistakes regarding capitalistic liberalization, and the Mikhail Gorbachev, secretary general of the communist party of the former Soviet Union, disbanded the party and the country, it is imperative to adhere to the ideological, political, and organizational guidelines established.” *Id.*

<sup>259</sup> *Id.* at 155 referencing “Guidelines on the Political Life Within the Party”.

<sup>260</sup> In his Report to the 18th Party Congress, Hu Jintao set the tone for the current approach. Core socialist values are the soul of the Chinese nation and serve as the guide for building socialism with Chinese characteristics. We should carry out thorough study of and education in these values and use them to guide social trends of thought and forge public consensus. We should continue to adapt Marxism to China's conditions in keeping up with the times and increase its appeal to the people, work hard to equip the whole Party with the system of theories of socialism with Chinese characteristics and educate the people in these theories. We should further implement the national project to study and develop Marxist theory, build an innovation system in philosophy and the social sciences, incorporate the system of theories of socialism with Chinese characteristics into the curriculum and make it a way of thinking.

Hu Jintao, *Report to the 18th Party Congress (VI. Developing a Strong Socialist Culture in China; 1. Strengthen Core Socialist Values)* (Nov. 17, 2012), available at [http://news.xinhuanet.com/english/special/18cpcnc/2012-11/17/c\\_131981259\\_7.htm](http://news.xinhuanet.com/english/special/18cpcnc/2012-11/17/c_131981259_7.htm).

necessitating constant justification and comparison with purported ideological alternatives, and detract from that important work.

That project is made harder, of course, because within Chinese constitutional discourse, the idea of a collective presidency is quite controversial. Chinese academics would tend to criticize this premise of constitutional and democratic collectivity from a variety of perspectives.<sup>261</sup> Universalist constitutionalists<sup>262</sup> would reject the notion as incompatible with their view of the basic structure of democratic government—the election of a representative government by the citizens on the basis of competition among a variety of political parties. Because democratic elements are not externalized in elections, the reform might be rejected as irrelevant to the greater objective of eliminating the CCP as the party in power and substituting the structures of Western liberal democracies. Anti-constitutionalist<sup>263</sup> might view the collective presidency model as threatening to the scope of the power of the CCP and its operations in politics, unconstrained by rule or law. Anti-constitutionalists would be suspicious of a model predicated on the institutionalization of power and its ordering through rules. They might reject the collective presidency model as an impermissible constraint on the discretionary authority of leaders and too great a reform of the Leninist principles that anti-constitutionalists would seek to preserve. Socialist constitutionalists<sup>264</sup> might view a move toward a collective presidency model. They might welcome the deepening of democratic mechanism within the CCP's operations and by extension, to the operations of the state apparatus. But they might also see in the collective presidency model a means of avoiding the principle issue of bringing the CCP, even as the party in power, within the bounds of constitutional law—whether the 1982 constitution or some

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<sup>261</sup> For a discussion of the different schools of Chinese constitutional thought, *see, e.g.*, Zhiwei Tong, Two Issues on Constitutional Government in China (April 9, 2013 Conference paper) (on file with author).

<sup>262</sup> On Chinese universalist constitutionalists, *see*, Zhang Xuezhong, *I want to draw a square circle---An analysis of the views of the universal constitutionalism faction*, (July 03, 2013, 13:12:57), [http://blog.sina.com.cn/s/blog\\_3fe785710101mkiy.html](http://blog.sina.com.cn/s/blog_3fe785710101mkiy.html) (Chinese language only);

<sup>263</sup> On anti-constitutionalist thought, *see, e.g.*, Ma Zhongcheng, *'Constitutionalism' Is Essentially a Weapon in the Public Opinion War*, PEOPLE'S DAILY OVERSEAS EDITION, (Aug. 15, 2013), *available at* <https://chinacopyrightandmedia.wordpress.com/2013/08/07/constitutionalism-essentially-is-a-weapon-of-public-opinion-war/>.

<sup>264</sup> On socialist constitutionalists, *see, e.g.*, Tong Zhiwei, the Constitution of 1982 and Constitutionalism, YANHUANG CHUNQIU VOL. 12 (2013); *also see* Zhou, Zhaocheng "Duihua He Weifang tan Zhongguo xianzheng zhengyi." ("Discussing China's constitutionalism debate with He Weifang.") Lianhe Zaobao (联合早报), (June 4, 2013) (discussed in Rogier Creemiers, *China's Constitutionalism Debate: Context and Implications*, THE CHINA J (forthcoming 2014).

other law revised to explicitly place the CCP within the Chinese constitutional order.

Thus, it is perhaps only within the emerging school of Chinese political constitutionalism<sup>265</sup> that a collective presidency model might find support and through which its theoretical implications might be further developed. Political constitutionalists could see in the collective presidency model a refinement of the constitution of the CCP and its ordering within a rule system that applies the principles of the 1982 Constitution, and through it, remains consistent with the fundamental political principles which the CCP is bound to obey. Western constitutionalists might find the notion of a collective presidency interesting, but its failure to address issues of direct popular participation in politics, and its foundation in the CCP with paramount political authority, renders the device suspect and not aimed at “solving” the “problem” of “democracy” in China.

The collective presidency mechanism, then, presents a number of challenges. From the outside, the collective presidency model is questioned because it seeks to build on the premises of the Chinese constitutional order, which in itself may be questioned. The willingness to concede the “legitimacy issue” tends to sidetrack consideration of the collective presidency model on its own terms.<sup>266</sup> This is an issue that distracts both foreign and Chinese scholars. To the extent that the current Chinese constitutional model is understood as deficient or illegitimate, the collective presidency will suffer the same assessment. From the inside, the collective presidency model continues to present the need for further refinement.<sup>267</sup> It provides a valuable avenue for institutionalizing intra-CCP democracy. The collective presidency model seeks a clearer division of responsibility between the state and political apparatus, between the role of the CCP and that of the organs of state which operate under its guidance and leadership. The object is the same as that of Western exogenously driven democratic systems, to produce a self-referencing and sustainable rule of law system for the conduct of administrative and political life animated by the founding political principles of the state as scientifically developed. Yet few scholars are willing to undertake the

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<sup>265</sup> See Albert H. Y. Chen, *The Discourse of Political Constitutionalism in Contemporary China* University of Hong Kong Faculty of Law Research Paper No. 2014/009 (February 24, 2014), available at <http://ssrn.com/abstract=2400385>; see generally, Albert Chen Hung-yeet 陳弘毅, “The Discourse of Political Constitutionalism in Contemporary China” (當代中國的政治憲法學話語), in Andy Chiu (趙文宗) and Xu Zhangrun (徐章潤) (eds), *World Chinese Legal Philosophy Congress 2013 《2013年世界華人法哲學大會文集》* (Hong Kong: Red-Publish, 2013), pp. 18-46.

<sup>266</sup> For the problem of the legitimacy issue in the context of examining the concepts of *laojiao* and *shuangui*, see, Backer & Wang, *supra* note 139.

<sup>267</sup> See *supra* Part IV.

work of moving from theory to practice and of ensuring that practice reflects the rules created to reflect principle. Hu Angang has attempted this. Perhaps others will follow.

#### V. CONCLUSION

Hu Angang relates: “After several thousand years of travel on the vast seas of turbulent world civilizations, this great ship, China, finally in 1949 took on a new state helmsman—the Communist Party of China.”<sup>268</sup> But like the young American Republic in its first decades, this helmsman had had the difficult task of maturing in sometimes difficult circumstances, made more so by internal errors and missteps. Yet like the young American Republic, China may be engaged in the project of developing something new—a new form of exercising democratic constitutionalism. Whatever its future course, Hu Angang has provided a window on one of its key features—the notion of collectivization of decision making as one facet of a broader theoretical foundation for interiorized democracy, the touchstone of which is not elections but collectivized decision-making by individuals who act in a representational rather than an individual capacity.

This essay has sought to engage the ideas represented by this collective presidency model on broader theoretical grounds. It considered one application of an important new theory that is gaining traction in China—the notion that democracy can be expressed beyond Western-style popular elections. The idea springs from the rejection of the premise that democratic government can only be expressed externally through elections (and external accountability through elections and civil society pressure). There are of course, alternative views, including the perspective that situates democratic exercise as exercised internally through the enhancement of representational and democratic processes within the apparatus of state government. Though still hotly contested even within China, some important Chinese theorists are beginning to consider the possibility that socialist democracy might be better grounded in these notions of internalized democracy, rather than what they might consider the empty externalization of democracy (and thus of legitimate constitutionalism) expressed through periodic elections for the small exposed tip of the administrative state.

The essay also suggested the ways in which the ideal of a collective presidency has wider implications for the ordering of the CCP’s internal democracy and the decision-making structures of the state organs. The essay has sought to suggest the ways in which socialist democracy may more robustly embrace both its Marxist and democratic elements in the service of the core functional mission of socialist modernization, and the advancement of a harmonious society. It remains cautious that while

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<sup>268</sup> Hu Angang, *supra* note 21, at 163.

theory is important, actual practice, and the appropriate functioning of the system from the highest to the lowest levels, is critical for success. To that end, the CCP has not concluded its task of better embracing the insights and obligations embedded in its mass line. The political work of naturalizing socialist democracy with the Chinese people remains a task as important in China as the equivalent task of civic education has been important in the West for a long time.

Lastly, the essay has sought to show that this approach to collective decision making might be understood as democratic and a legitimate expression of popular sovereignty. Yet it is one that is both remarkably distinct from and incompatible with the core premises of Western liberal democratic states. That difference and incompatibility does not make Chinese socialist democracy wrong, or the Chinese constitutional system illegitimate. It does suggest, however, that the metrics used to judge both legitimacy and compatibility with core global consensus notions of legitimate constitutionalism might have to be rethought.