

Faquan-in-Motion: Larry Catá Backer's Modernization and the Lebenswelt of Chinese Constitutionalism Read Through Tong Zhiwei's Faquanism

法权运动中：（Larry Catá Backer 中文名：白轲）现代化与中国宪制的生活世界

——通过童之伟的法权主义加以阅读

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Abstract: This essay places two independent theoretical projects in dialogue: Tong Zhiwei's Faquanism, a materialist general theory of law organized around the dialectical category of *quan* and its derivatives (*faquan*, residual *quan*, rights, powers, duties, and law), and an account of modernization as the sedimented *Lebenswelt* and metasignifier of contemporary Chinese constitutional discourse. Reading each through the categories of the other reveals that Tong's own methodology already subordinates the essence of law to the historically bounded criterion of "modernization construction," thereby licensing a materialist retelling of modernization as the long-arc trajectory of *quan-faquan* ratios. A narrowly semiotic (Peircean-Saussurean) redescription of Faquanism is available without phenomenological commitments that Tong's epistemology excludes; *faquan* itself functions as a jurisprudential metasignifier homologous to modernization's role one level higher. Points of divergence remain unresolved by the source texts: a distributive grammar of legitimacy versus a developmental-civilizational one; the absence in Faquanism of a categorial register for Party-internal normativity central to China's dual constitutional system; and a shared

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insistence on a rationally self-transparent vanguard planner that resists full translation into systems-theoretic, biopolitical, or indigenous rhetorical idioms. The comparison is offered as an explicit hypothesis rather than an equivalence either author would necessarily accept, and the residual tensions are treated as indices of what remains open in the general theory of the contemporary Chinese constitutional order.

摘要

本文使两个彼此独立的理论项目展开对话：其一为童之伟的法权主义，一种以“权”及其辩证展开范畴（法权、剩余权、权利、权力、义务与法）为架构的唯物主义一般法理论；其二为白轲的将现代化理解为当代中国宪制话语沉积的生活世界与元能指的论述。以彼此的范畴相互解读二者，可以发现：童之伟自身的方法论已明确将法的本质从属于“现代化建设”这一具有历史边界的标准，从而为把现代化重新表述为“权—法权”比率的长时段演进轨迹提供了唯物主义依据。在严格限定于皮尔士—索绪尔符号学（而非胡塞尔现象学）的前提下，对法权主义进行符号学重述是可能的；法权本身作为法学话语内部的元能指，与现代化在更高层宪制场域中的组织功能具有结构同源性。源文本自身未能消解的分歧依然存在：分配式合法性语法与发展—文明式合法性语法之间的张力；法权主义范畴网格中缺乏对党的内部规范性（双重宪法体制的核心要素）的专门登记；以及双方共同坚持的、理性透明且居于中心的先锋队规划者形象，这一形象难以被系统理论、生命政治或本土修辞策略完全容纳。比较被明确标示为推断性假设，而非任何一方作者必然接受的等价关系；残留张力则被处理为当代中国宪制秩序一般理论中仍然开放的问题指标。

中文版本紧随英文文本之后。

Executive Summary for General Readers and Policymakers

Two recent efforts seek to explain the foundations of China's legal-political system from within Chinese materials rather than through imported liberal categories. Tong Zhiwei's *Faquanism* builds a comprehensive materialist theory around the idea of *quan*—the total field of interests and property expressed in social norms—and shows how law settles portions of that field into legally recognized rights (individual) and powers (public), while leaving the rest as residual and unsettled. The complementary account treats “modernization” not as a vague policy slogan but as the deep, historically layered horizon that gives Chinese constitutional language its meaning and that the Party periodically recalibrates by restating the nation's “principal contradiction.”

When the two frameworks are read against each other, several practical implications emerge. First, Tong's own writing already links the essence of law to the requirements of the current stage of modernization; thus the theory is not a timeless abstraction but is itself calibrated to the Party-state's developmental diagnosis. Second, the absorption of unsettled claims into settled legal form can be understood as the institutional work performed by Whole-Process People's Democracy's consultative mechanisms rather than by adversarial rights litigation. Third, the same materialist lens yields a diagnosis of the international order that converges with existing analyses of weak institutional capacity relative to powerful states and firms: an imbalance between rights keyed to national wealth and underdeveloped international power.

Important limits remain. Faquanism lacks a clear category for the binding internal norms of the Communist Party itself—the element that sits above and directs the state constitutional apparatus. Its picture of justice as fair individual allocation of legal shares sits uneasily with the developmental and civilizational vocabulary through which Chinese authority actually legitimates itself. Attempts to bridge the frameworks with systems theory, biopolitics, or classical Chinese rhetorical strategy each capture part of the mechanism but leave the image of a comprehensively informed, centrally directing Party only partially accommodated. For policymakers, the comparison underscores that Chinese legal-political evolution is best tracked as shifts in the balance between settled and unsettled claims, rights and powers, under successive official diagnoses of the nation’s stage of development, rather than as linear convergence toward or divergence from any single external model. The unresolved tensions themselves indicate areas where further theoretical and institutional clarification may prove consequential.

Executive Summary for Experts

The essay undertakes a bilateral reading of Tong Zhiwei’s Faquanism and the author’s semiotic-phenomenological account of modernization as the *Lebenswelt*/metasignifier of Chinese constitutional discourse. Neither source text references the categories of the other; all comparative claims are therefore flagged as inferential constructions.

Tong’s architecture begins with *quan* as the total volume of interests and property, partitioned into *faquan* (legally settled) and residual *quan*, then further into rights (individual) and powers (public), with duties as the negative correlate. Two axioms fix volume proportionality to social property and the durability of the tripartite structure wherever law exists. Law’s function is structural optimization against rights-rate anarchy and powers-rate despotism. Tong’s own epistemology, drawn from Lenin’s dialectical-materialist principles, explicitly indexes the essence of law to “the basic national conditions and the zeitgeist,” glossed as the primary stage of socialism and the “fundamental national task of modernization construction,” and acknowledges that this criterion is itself historically bounded.

This internal linkage permits a materialist translation of modernization as (1) the historical absorption of residual *quan* into *faquan* and (2) the external criterion that periodically fixes the appropriate rights/powers ratio. Whole-Process People’s Democracy supplies the missing institutional mechanism: a consultative, non-adjudicative process that pre-sorts claims for recognition. The patriot/enemy binary of people’s democratic dictatorship maps onto the positive *faquan*/pure-duty distinction. Semiotically, *faquan* functions as a metasignifier within jurisprudential discourse, homologous to modernization’s role in the constitutional field; a strict Husserlian phenomenological reading is excluded by Tong’s materialism, but a Peircean-Saussurean differential reading is not.

Three divergences resist resolution from the texts alone: (a) Faquanism’s person-indexed distributive justice versus the developmental-civilizational legitimacy of the dual constitutional

system; (b) the absence of a categorial register for Party-internal normativity, which is neither ordinary state *faquan* nor residual *quan*; (c) the shared commitment to a rationally self-transparent vanguard planner that neither Luhmannian autopoiesis, Foucauldian governmentality, nor a Guiguzi-derived rhetoric of resist/reconcile can fully accommodate without denying elements the Chinese sources insist upon. An independent convergence appears at the international level: Tong's diagnosis of rights hypertrophy relative to underdeveloped institutional power, keyed to budgetary autonomy, structurally parallels network-governance analyses of the contemporary global order.

The residual tensions are treated not as defects to be eliminated by superior theory but as indicators of what remains genuinely open in the general theory of the Chinese constitutional order.

I. Two theories, one object

Two contemporary, methodologically unrelated projects attempt to theorize the foundations of the Chinese legal-political order from the inside. The first is Tong Zhiwei's Faquanism (法权主义), a materialist general theory of law built on the dialectical unfolding of *quan* (权) — "the manifestation of all interests and property in social norms of every kind" — into a seven-term categorial cluster: *quan*, *faquan* (法权, the settled, legally recognized portion of *quan*), residual *quan* (剩余权, the unsettled remainder), rights (权利, *faquan*'s individual share), powers (权力, its public share), duties (义务), and law (法) itself. The second is my own account of modernization (现代化) as the Husserlian *Lebenswelt* and Peircean-Saussurean metasignifier of contemporary Chinese constitutional discourse — the pre-given, historically sedimented horizon within which the signs of Chinese constitutionalism acquire relational meaning, and which the Party's periodic reformulation of the "principal contradiction" recalibrates without ever abandoning.

What follows reads each project through the other's categories: it asks what modernization looks like when relocated inside Faquanism's materialist apparatus, what Faquanism looks like when subjected to a semiotic-phenomenological reading, and where the two accounts converge, diverge, or simply fail to translate into one another. Neither author has drawn these connections. Tong's writing does not mention modernization, sedimentation, or *Lebenswelt*; my own account of modernization does not mention *quan* or *faquan*. Everything past straightforward comparison here is accordingly an inferential construction, offered as a hypothesis for scrutiny — flagged as such at each step — rather than as an equivalence either scholar would necessarily accept. Nor is the aim a synthesis in which the two projects turn out, on inspection, to have been saying the same thing all along; where the fit is poor, that is recorded as a finding, not smoothed over as a difference of vocabulary.

II. Faquanism's architecture

Tong's method is explicitly Marxist: ascent from the abstract to the concrete. *Quan* is the analytic starting point. It divides into *faquan*, the portion whose ownership positive law has settled, and residual *quan*, the portion that remains extra-legal because ownership is unsettled. *Faquan* in turn divides into rights, the individual portion keyed to individually owned property, and powers, the public portion keyed to publicly owned property. Duties are the negative mirror of the whole structure. Two axioms anchor the system: the volume of *quan* is proportional to the total volume of property in a society, and the tripartite structure of *quan* — though not the volumes or ratios of its parts — is a durable feature of any society in which law exists. Law's function is to optimize the allocation of *quan* and *faquan* so as to avoid two structural pathologies: an excessive rights rate (anarchy) and an excessive powers rate (despotism). Justice consists in each person receiving exactly the share of *faquan* due, and bearing no undue duty. A polemical thread runs throughout: contemporary Chinese jurisprudence remains disfigured, on Tong's account, by its reliance on the "Japanized" *quanli* (权利) inherited from Hozumi Nobushige and Hozumi Shigeto, which conflates rights and powers under one term — a defect Tong wants purged in favor of a properly national vocabulary distinguishing *quan*, *faquan*, rights, and powers on their own terms. In its most recent extension the theory is transposed onto international law: states hold international rights keyed to national wealth, the internal organs of international organizations hold international power keyed to autonomous budgetary capacity, and contemporary global insecurity is diagnosed as a structural imbalance — rights hypertrophied, power atrophied — in the resulting international *faquan* structure.

Tong's fuller methodological chapter, beyond the compressed propositions above, ties this entire apparatus to an explicit epistemology drawn from Lenin's dialectical-materialist method: four principles for identifying the essence of a thing — comprehensiveness, self-movement ("an object should be taken in development, in change"), the whole of human experience as the criterion of truth, and the concreteness of truth ("truth is always concrete, never abstract"). On this basis Tong states plainly that "the essence of law is not immutable," and that in the present period it must be identified by reference to "the basic national conditions and the zeitgeist" — glossed explicitly as the demands of the primary stage of socialism and the "fundamental national task of modernization construction." He adds, just as explicitly, that this criterion is itself temporally bounded: once China becomes a "moderately developed country," the understanding of law's essence will again change. Faquanism's foundational category is not, on Tong's own account, a timeless truth about law as such; it is a claim indexed, by design, to the present stage of a historically unfolding national project.

III. Modernization within Faquanism's own terms

That single passage changes what kind of relationship modernization and Faquanism turn out to have. It is not merely that a modernization-oriented redescription of Faquanism can be constructed from outside; Tong's own methodology already performs something close to that

redescription from within. Modernization construction functions, in his account, as the criterion that fixes what counts as the essence of law — and therefore what ratio of rights to powers, of *faquan* to residual *quan*, is to be treated as "appropriate" — at any given historical moment. This is structurally the same operation my own account assigns to the Party Constitution within the dual constitutional system: the state constitution's signs (rule of law, socialist market economy) are underdetermined by their own text and require an external interpretive key, supplied by the Party's political line, to fix their meaning. Tong's methodology performs the identical operation one level further back, inside jurisprudential theory itself. The concept of law's essence is underdetermined by legal-philosophical analysis alone — Tong catalogues dozens of candidate essential attributes (compulsory, normative, predictive, class-natured, an instrument of right protection, "the handle of a knife") and observes that nothing internal to the list picks out the correct one — and the choice is resolved by referring it to the Party-state's current, authoritative assessment of the nation's developmental stage. Faquanism does not stand epistemically outside the modernizing horizon; it subordinates its own foundational category to that horizon's periodic self-diagnosis as an explicit condition of its validity.

This licenses a more precise materialist account of modernization than a purely structural analogy would. Modernization, translated into Faquanism's vocabulary, does two things at once. First, it names the historical process Tong calls "the primary engine of legal evolution": the absorption of residual *quan* into *faquan*, previously unsettled interest and property becoming legally settled. Second — and this is the more consequential point — it supplies the external criterion by which jurisprudence itself decides, at any given moment, what ratio of rights to powers counts as appropriate to pursue through that absorption. The second point matters because Tong's own axiom of "structural balance" cannot be cashed out from within jurisprudence alone; it requires an appeal to whatever the currently authoritative political organs have determined the nation's developmental stage to require — precisely the operation the theory of modernization-as-Lebenswelt calls the recalibration of the horizon through reformulation of the principal contradiction, here operating one further step back, on the theoretical criterion of legal essence itself.

The institutional machinery by which this absorption actually proceeds is supplied by the theory of Whole Process People's Democracy (全过程人民民主), which Tong's jurisprudence, being doctrinal rather than institutional, does not itself provide. WPPD's central claim is that Chinese socialist democracy is endogenous rather than exogenous: rather than expressing popular will through contested election, it is "attached to the business of governance" through structured, multilayered consultation — conference, interview, written negotiation — running from the people, through representative mass organizations (the eight non-Communist parties, the CPPCC, the systems of regional ethnic autonomy and community-level self-governance), to the vanguard Party, and back, in the idiom of the mass line: "from the people, to the people." Read against Faquanism, this consultative architecture is the institutional mechanism by which unsettled *quan* — popular sentiment, grievance, aspiration, the "reasonable demands of the minority" the WPPD White Paper describes the system as designed to accommodate — is processed toward legal settlement without ever being treated as a rights-claim enforceable

against the state in the liberal, adjudicative sense. Consultation is the distinctively Chinese, non-adjudicative form of residual-*quan* absorption: a Party-directed, hub-and-spoke process that pre-sorts *quan*-claims for legal or policy recognition rather than a court converting claims into rights case by case.

This also supplies a materialist gloss on the "people's democratic dictatorship" binary organizing both the constitutional text and Tong's account of *faquan*'s domestic subjects. Democracy — consultation, representation, the WPPD apparatus — is available to patriots, whose *quan*-claims the system is oriented to absorb into *faquan*; dictatorship is reserved for those whose claims the system treats as permanently residual and unabsorbable, subject only to the negative-value side of the ledger. Tong's own proposition that duties are the reverse side of *quan* and *faquan* maps directly onto this: for the object of dictatorship, the system supplies no positive *faquan* channel at all, only duty. Faquanism's abstract rights/powers/duties triad and the constitutional order's concrete patriot/enemy binary are, on this reading, the same distinction expressed at two different levels of abstraction — one jurisprudential-categorical, the other institutional-constitutional.

IV. Faquanism through a semiotic-phenomenological lens

The reflexive move

Faquanism's polemic against the "Japanized" *quanli* can itself be read as an instance, rather than an external analysis, of the very sedimented, modernization-organized discourse it does not name. Tong's book situates its own project explicitly within "the initial stage of Chinese socialism," ties the essence of law explicitly to modernization construction, and narrates the history of Chinese jurisprudence as a sequence of stages tracking the same political-economic sequence that organizes the nine-layer sedimentary account of modernization elsewhere developed: a "power-centric" period Tong explicitly correlates with the pre-reform command economy ("before establishing economic development as the focus... the law... should be categorized as power-centric type"), followed by a "right-centric" revival correlated with the turn to a socialist market economy and the "adjusting [of] the ownership structure based on the level of development of productive forces." This is not a jurisprudence describing Chinese legal history from a neutral analytic vantage outside it; by its own explicit methodological commitments, it is constitutively indexed to that history's own official periodization of itself. Read this way, Tong's essay-length polemic against a "backward," foreign-derivative legal vocabulary, displaced by a properly "national, modern" jurisprudence, reproduces almost exactly the temporal grammar — backwardness overcome by properly modern, national achievement — that organizes far more overtly political texts: Party Congress reports, constitutional preambles, the White Papers on democracy. A technical, seemingly apolitical exercise in general jurisprudence turns out to participate in, rather than stand outside, the modernizing horizon it never names.

Semiotics without phenomenology

A harder question follows from Tong's own epistemology. Faquanism's method is dialectical-materialist ascent from the abstract to the concrete, and it explicitly rejects essentialism of the kind that treats concepts as bearers of fixed, intuitable meaning apart from their material-historical conditions — a rejection that appears, on its face, to rule out a Husserlian redescription just as firmly as it rules out an idealist one, since Husserl's *Lebenswelt* is precisely a horizon of sedimented, intersubjectively constituted *sense*, bracketed from naturalistic-causal explanation by a phenomenological reduction Tong's materialism has no use for. If *quan* and *faquan* are, for Tong, real effects of real property relations rather than meanings sedimented in a community's shared intentional life, then describing them as *Lebenswelt* content in Husserl's technical sense would misdescribe the theory, smuggling in a transcendental-subjective register Tong's epistemology is built to exclude.

But a semiotic-phenomenological apparatus need not be exclusively Husserlian. It draws as heavily on Peirce and Saussure, whose semiotics requires no commitment to transcendental subjectivity at all: a Saussurean claim that a sign's value is constituted relationally and differentially within a system, not by reference to any independently intuitable essence, is compatible with almost any theory of what stands behind the sign, materialist included. On this narrower reading — semiotics without phenomenology — *quan*, *faquan*, residual *quan*, rights, and powers can be described as a differential sign-system, each term's value fixed only by its position relative to the other six, without asserting anything about whether that system is, in Husserl's sense, sedimented intersubjective meaning or, in Tong's sense, the legal expression of real material relations. This is the precise point at which a semiotic redescription of Faquanism is available and a phenomenological one, in the strict Husserlian sense, is not — at least not without contradicting Tong's own stated epistemology.

Read this way, *faquan* functions as a metasignifier within jurisprudential discourse specifically — not a term standing beside rights, powers, and residual *quan* as one category among others, but the term organizing their relation to one another and supplying the field within which each acquires its differential value. Tong argues for exactly this position directly, advancing "faquan-centricity" as the correct resolution of the long-running Chinese debate over the "center of law," displacing both the "right-centric" and "duty-centric" candidates that preceded it. That Faquanism should itself require a metasignifier, structurally homologous to the metasignifier organizing the constitutional field one level up — modernization organizing socialism, rule of law, common prosperity, and the rest — is a further instance of the same formal pattern recurring at a different scale, available without touching the phenomenological register Tong's materialism excludes.

A mismatch in the grammar of legitimacy

Faquanism's conception of justice is explicitly distributive and person-indexed: each person receiving, neither more nor less, exactly the share of *faquan* due. Whatever its debts to a

materialist rather than liberal-rights ontology, this is recognizably a fairness-of-allocation conception of legal legitimacy. Nothing in the account of Chinese constitutionalism's own operative self-legitimation looks like this. The legitimacy that account describes is developmental and civilizational: Party authority is tied to its claimed capacity to lead China through modernization, and common prosperity — the signifier closest to Tong's distributive concern — appears there as one signified organized *under* modernization as metasignifier, alongside rule of law and national security, rather than as modernization's ground or measure. Reading modernization as operating within Faquanism therefore requires choosing a nesting the two texts do not resolve on their own: either Faquanism's distributive-justice axiom becomes itself one more content organized and periodically re-weighted by the modernizing horizon, in which case Faquanism loses its status as a freestanding foundational theory, or modernization is merely an instrumental narrative in service of an antecedent, more basic Faquanism-defined distributive optimum, in which case the semiotic account becomes surface rhetoric over a deeper material reality. Nothing in either text tells us which nesting is correct, and the choice cannot be made from the two texts alone without importing a preference — for semiotic or for materialist explanation as the deeper register — that neither author has defended.

The missing third register

The account of Chinese constitutionalism developed here depends heavily on the "dual constitutional system" — the Party Constitution and the State Constitution operating as a unified semiotic system, with the Party Constitution functioning as the interpretant that fixes the otherwise underdetermined meaning of the state constitution's signs. This dual structure has no obvious home in Faquanism's grid. Party-internal norms are neither ordinary state-enforced *faquan* — they do not, in general, run through courts as citizen-facing rights or powers in Tong's domestic-law sense — nor are they extra-legal social norms of the kind residual *quan* describes, since Party discipline is a binding, sanctioned, internally adjudicated normative order, neither straightforwardly *faquan* nor straightforwardly residual *quan* as Tong defines those terms. This is not a minor omission. If Faquanism is to serve as a full materialist substrate for the specifically Chinese constitutional architecture organized around the dual system — Party and State Constitution together — it would need a third categorial register for intra-organizational, Party-internal normativity that the theory, as it stands, does not supply and does not appear to have been designed to supply, since its domestic-to-international extension moves directly from citizen-state relations to state-international-organization relations without pausing over the Party as a distinct normative order standing, constitutionally, above and prior to the state apparatus it directs.

An unexpected convergence at the international register

One point of convergence arises independently of the redescriptive exercise above. Faquanism's international-law propositions — that international law exists only where mandatory norms are enacted and enforced, absent which relations are merely international morality; that state rights are keyed to national wealth while institutional international power is keyed to the autonomous,

concentrated budgetary capacity of international organizations' internal organs; and that the resulting imbalance between an overgrown volume of international rights and an underdeveloped volume of international power "can hardly be improved to any marked degree" — describe, in materialist vocabulary, substantially the same structural deficit that transnational and network-governance scholarship (including my own earlier work on governance without government) has long treated as a defining feature of the contemporary global order: powerful, wealth-backed states and enterprises operating with effective, if legally unsettled, capacity that far outruns the weak, underfunded, and only partially autonomous institutional power available to formal international organizations to discipline them. That Tong arrives at a structurally similar diagnosis — power-deficit relative to rights-surplus, tied explicitly to budgetary autonomy rather than formal legal competence — by an entirely different route, materialist *quan*-analysis rather than systems-theoretic or network-governance analysis, is worth recording as a substantive point of convergence reached independently from opposite theoretical starting points, though it is a convergence of diagnosis rather than of method, and Tong's international-law propositions remain, on his own account, considerably less developed than his domestic-law categories.

V. Modernization across the long arc, in Faquanism's own vocabulary

Tong's periodization, read continuously against the sedimentary layers that organize the account of modernization developed elsewhere, permits a reasonably precise materialist retelling of modernization's century-long history in *quan-faquan* terms — assembled here from statements Tong makes in separate, unconnected passages of his book, not a periodization he lays out as such, and offered accordingly as a construction rather than a report of his views.

Through the revolutionary period, China is, on the logic of Tong's own account of what "no law" conditions look like elsewhere, a society in which the old legal order's *faquan* has been substantially delegitimized and a new one not yet settled: overwhelmingly residual *quan*, with revolutionary morality and Party line functioning as precepts rather than *faquan* proper. The construction period of the 1950s through the 1970s is, on Tong's own explicit characterization, "power-centric": collectivization and the command economy compress the rights share of *faquan* toward its floor, approaching without ever quite reaching the theoretical pole — a rights rate near zero — that his axioms describe as anarchy's opposite extreme. Reform and opening, and especially the turn to a socialist market economy, is where Tong's account and the sedimentary-layer account align most closely: the expansion of individually held, legally recognized property drives, in Tong's own vocabulary, the subsiding of power-centricity and a corresponding rise in the rights share of *faquan* — the absorption of residual *quan*, previously extra-legal, informally tolerated economic activity, into settled legal form, which is exactly what reform and opening and the socialist market economy name at the level of policy discourse. The New Era and Chinese-style modernization introduce a further recalibration neither text states directly: renewed emphasis on national security, platform and data governance, and common prosperity suggests not a continued one-directional expansion of the rights share but a rebalancing — powers

reasserting ground in specific domains even as rights-bearing property continues to expand elsewhere — consistent with the reformulated principal contradiction naming imbalance itself, rather than mere scarcity, as the object to be addressed.

On this reading, modernization, translated fully into Faquanism's vocabulary, is not an external force acting on the *quan-faquan* structure from outside law. It is the name for the historical trajectory of the structure's own ratios — the temporal profile, in Tong's own idiom, of *faquan*'s expansion, contraction, and internal rebalancing between rights and powers, each phase legitimated by, and legible only through, the era's official diagnosis of the principal contradiction.

VI. Searching for a mediating idiom

The gap identified above — between a materialist theory whose normative vocabulary retains a picture of a rational, comprehensively informed center consciously "optimizing" the legal order, and a semiotic-phenomenological account that denies any such center could survey or set the whole system from outside — invites the search for some third theoretical idiom capable of mediating between them without smuggling in the transcendental subject Tong's materialism excludes. Three candidates present themselves, each doing real work and each leaving a residue.

Luhmann's autopoietic systems theory offers the cleanest way to redescribe Tong's claim that law "optimizes" the allocation of *quan* and *faquan* without positing any subject who performs that optimization: the legal system, on this reading, does not have its ratios set by anyone; it recursively reproduces itself by applying its own binary code — settled or unsettled ownership, in effect a legal/not-yet-legal distinction — to select, from the economic system with which it is structurally coupled, which *quan*-claims to recognize as *faquan*. This buys real convergence with Tong's own materialism, since both deny that law's content derives from a free-standing moral order external to social-material process, and it buys a way of talking about optimization that requires no actor to survey and rationally balance the whole. What it costs is a fit with the normative language both Faquanism and Whole Process People's Democracy actually use: Tong's claim that law "should" achieve the "most appropriate ratio," and WPPD's self-description of a vanguard Party that "leads," "coordinates," and translates "the correct ideas of the Party into the voluntary action of the people" through a hub-and-spoke consultative architecture with the CPC explicitly "at its core," both retain exactly the picture of a rationally self-transparent, centrally sited directing subject that Luhmann's theory was built to deny is possible for any subsystem, the political included. A strict Luhmannian account would treat the Party as merely another operationally closed subsystem, able only to irritate the legal system's self-reproduction, never to survey or set it from outside — a denial neither Faquanism's normative vocabulary nor WPPD's institutional self-description will accept.

Foucauldian biopolitics and governmentality supply what neither Tong's jurisprudence nor a bare systems-theoretic account gives on its own: an explanation of how *quan* gets shaped, before

it ever reaches the point of legal recognition, into a form the system will find recognizable. The constitutional mandate to conduct patriotic education and "combat capitalist, feudal and other forms of decadent thought" is biopolitics in close to Foucault's own sense — the conduct of conduct, the prior shaping of a population's dispositions so that the claims it comes to make are already, for the most part, *faquan*-compatible before consultation ever formally processes them. This supplies a genuine mechanism for the absorption process Tong describes only in its result and WPPD describes only in its institutional form. But Foucauldian power is diffuse and capillary rather than centrally sited, which sits no more comfortably than Luhmann's systems theory with a picture of a single vanguard institution that designs and directs the whole process from a position of comprehensive knowledge and control. Foucault helps explain how subjects come to want what the system needs them to want; it does not license the claim that any one institution stands outside that process, surveying and directing it.

Guiguzi's rhetoric is the most distinctive of the three candidates, and the one that can be advanced with the least confidence, since engagement with the *Guiguzi* corpus here is limited to a single translation and a specific prior use of its "Resist-Reconcile" (忤合) and persuasive-speech (說辭) concepts, not an independent scholarly command of the text; what follows is accordingly a suggestive analogy rather than a demonstrated equivalence. Guiguzi's rhetoric theorizes persuasive speech as a strategic technology aimed at moving an audience between resistance and alignment — captivating those who can be captivated with words, and where that fails, encumbering them with responsibilities until their weaknesses can be exposed. This is a theory of discourse as instrument of alignment rather than vehicle of truth-disclosure, and it is native to the Chinese strategic-rhetorical tradition rather than imported — which matters, since Faquanism's polemic against "Japanized" vocabulary and Chinese democratic theory's own framing of itself as a national alternative to a universalist Western model are both engaged in a project of indigenization that an analysis relying exclusively on Husserl, Peirce, Saussure, Luhmann, and Foucault would itself instantiate the very import-dependency those Chinese texts are trying to escape. Read as a semiotics of alignment rather than of meaning, Guiguzi's resist/reconcile pairing maps with some precision onto the consultative architecture of Whole Process People's Democracy: consultation's function, on this reading, is to reconcile (合) *quan*-claims that begin in a state of resistance (忤) — unsettled, potentially oppositional — into the settled, patriotically legible form that qualifies for *faquan* recognition, with the periodic White Papers themselves functioning as persuasive speech (說辭) aimed outward, at prospective partner states, to captivate and, failing that, to encumber them into alignment with the model on offer. This is a genuinely distinctive contribution precisely because it is not imported to explain a Chinese object from outside. But its scope is narrower than either Western candidate: Guiguzi theorizes the tactics of persuasion in specific encounters, not the structural conditions — systemic closure, biopolitical subject-formation — that would make a centrally directed alignment process of this kind durable across a society of 1.4 billion people over the course of a century. It supplies a vocabulary for the rhetorical surface of the absorption mechanism in a genuinely indigenous idiom; it is not a substitute for the systemic and biopolitical accounts of the mechanism's structural depth.

No one of the three closes the gap, and stacking all three does not close it either. What the three share, and what makes each a genuine partial mediator rather than a false one, is that none requires the transcendental-phenomenological subject Tong's materialism excludes — which is precisely why each is a better candidate than a straightforward Husserlian redescription would be. But the residue each leaves untouched is the same residue in every case: the picture of a rationally self-transparent, comprehensively informed, centrally sited directing subject — the vanguard Party as planner — that both Faquanism's normative vocabulary and Whole Process People's Democracy's institutional self-description insist on, and that a systems-theoretic, biopolitical, or rhetorical-strategic account can each, for different and instructive reasons, only partly accommodate. That may be the single feature of the Chinese Marxist-Leninist constitutional order most resistant to translation into any available theoretical idiom, Western or Chinese, systemic or rhetorical — not because the idioms are inadequate as such, but because the vanguard-planning self-understanding they are being asked to translate is not, on its own terms, the kind of claim any of them was built to accommodate.

VII. Conclusion

Read together, Faquanism and the account of modernization as the *Lebenswelt* of Chinese constitutionalism converge on more than their shared point of departure in Marxist premises. Tong's own methodology ties the essence of law, and therefore the entire *quan-faquan* apparatus built on it, explicitly to the criterion of modernization construction, with an express acknowledgment that this criterion is itself historically bounded — which licenses reading modernization, translated into Faquanism's vocabulary, as nothing other than the historical trajectory of the *quan-faquan* structure's own ratios, each phase legitimated by the era's official diagnosis of the principal contradiction. A semiotic redescription of Faquanism is available on the same terms, provided it is kept to the Peircean-Saussurean register that requires no phenomenological subject: *faquan* functions, on Tong's own explicit argument for "faquan-centricity," as a metasignifier organizing jurisprudential discourse in a manner structurally homologous to modernization's organization of the constitutional field one level up.

Where the two projects diverge, they diverge in ways that matter and that neither text resolves on its own: a distributive grammar of legitimacy in Faquanism against a developmental-civilizational grammar in the account of Chinese constitutionalism's own self-legitimation; a categorial grid in Faquanism with no register for the Party-internal normativity central to the dual constitutional system; and, running beneath both, a shared commitment — in Faquanism's normative vocabulary and in Whole Process People's Democracy's institutional self-description alike — to a vanguard-as-rational-planner self-understanding that none of the available mediating idioms, Western or Chinese, materialist-systemic or rhetorical-strategic, can fully accommodate without denying something the Chinese texts themselves insist on. That unresolved residue is not a defect in the comparison to be corrected by a better choice of theory. It is a fair index of how much remains genuinely open in the general theory of the contemporary

Chinese constitutional order, and a reason to keep the tension between these accounts in view rather than to resolve it prematurely in favor of either the materialist or the semiotic register.

法权运动中：(Larry Catá Backer 中文名：白轲) 现代化与中国宪制的生活世界

——通过童之伟的法权主义加以阅读

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论文讨论稿

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摘要

本文使两个彼此独立的理论项目展开对话：其一为童之伟的法权主义，一种以“权”及其辩证展开范畴（法权、剩余权、权利、权力、义务与法）为架构的唯物主义一般法理论；其二为白轲的将现代化理解为当代中国宪制话语沉积的生活世界与元能指的论述。以彼此的范畴相互解读二者，可以发现：童之伟自身的方法论已明确将法的本质从属于“现代化建设”这一具有历史边界的标准，从而为把现代化重新表述为“权—法权”比率的长时段演进轨迹提供了唯物主义依据。在严格限于皮尔士—索绪尔符号学（而非胡塞尔现象学）的前提下，对法权主义进行符号学重述是可能的；法权本身作为法学话语内部的元能指，与现代化在更高层宪制场域中的组织功能具有结构同源性。源文本自身未能消解的分歧依然存在：分配式合法性语法与发展—文明式合法性语法之间的张力；法权主义范畴网格中缺乏对党的内部规范性（双重宪法体制的核心要素）的专门登记；以及双方共同坚持的、理性透明且居于中心的先锋队规划者形象，这一形象难以被系统理论、生命政治或

² 使用 CHatGPT 和 Grok 进行翻译

本土修辞策略完全容纳。比较被明确标示为推断性假设，而非任何一方作者必然接受的等价关系；残留张力则被处理为当代中国宪制秩序一般理论中仍然开放的问题指标。

面向一般读者与政策制定者的执行摘要

近年来有两项研究尝试从中国自身材料出发解释其法律—政治秩序的基础，而非依赖外来的自由主义范畴。童之伟的法权主义围绕“权”——社会规范中利益与财产的总体场域——建构了一套完整的唯物主义理论，揭示法律如何将该场域的部分内容沉淀为法律上被承认的权利（个体）与权力（公共），而将其余部分保留为剩余的、未决的状态。与之互补的论述则将“现代化”不仅视为模糊的政策口号，而是视为赋予中国宪制语言以意义的深层、历史层累的视域，并由党通过周期性重述国家的“主要矛盾”加以重新校准。

将两个框架相互对照，可得出若干具有实践意义的启示。第一，童之伟自身的论述已将法的本质与当前现代化阶段的要求相联结，因此该理论并非永恒抽象，而是本身被校准于党—国家的发展诊断。第二，未决主张向已决法律形式的吸收，可理解为全过程人民民主协商机制所执行的制度工作，而非对抗式权利诉讼。第三，同一唯物主义透镜对国际秩序的诊断，与既有关于制度能力相对于强大国家与企业而言偏弱的分析形成汇合：即与国家财富相联系的权利过度膨胀，与制度性国际权力发育不足之间的结构性失衡。

重要限度依然存在。法权主义缺乏对共产党内部具有约束力规范的清晰范畴——而这一规范恰恰居于国家宪法体制之上并对其进行指导。其将正义理解为法律份额的公平个体分配的图景，与中国权威实际借以自我正当化的发展—文明词汇之间存在张力。尝试以系统理论、生命政治或古典中国修辞策略加以弥合，各自捕捉了机制的某一侧面，却均只能部分容纳全面知情、居于中心的指导性政党形象。对政策制定者而言，这一比较表明：中国法律—政治演变最好被追踪为在连续官方发展诊断之下，已决与未决主张、权利与权力之间平衡的转移，而非向任何单一外部模式的线性趋同或背离。未解张力本身指示了进一步理论与制度澄清可能具有后果的领域。

面向专家的执行摘要

本文对童之伟的法权主义与作者将现代化理解为中国宪制话语生活世界/元能指的符号——现象学论述进行双向解读。两源文本均未援引对方范畴，故所有比较主张均被明确标示为推断性建构。

童之伟的架构以“权”作为利益与财产的总体体积为起点，将其划分为法权（法律上已决）与剩余权，再进一步划分为权利（个体）与权力（公共），义务则作为其否定对应项。两条公理分别确立了权的总体积与社会财产总量之间的比例关系，以及在任何存在法的社会中三元结构的持久性。法的功能在于针对过高的权利率所对应的无政府状态与过高

的权力率所对应的专制状态进行结构性优化。童之伟自身的认识论取自列宁辩证唯物主义原则，明确将法的本质指向“基本国情与时代精神”，并具体阐释为社会主义初级阶段与“现代化建设这一根本国家任务”，同时承认该标准本身具有历史边界。

这一内在联结使得可以对现代化作唯物主义式的转译：（1）剩余权向法权的历史性吸收；（2）周期性确定适当权利/权力比率的外部标准。全过程人民民主提供了缺失的制度机制：一种协商性、非裁判性的过程，预先筛选主张以供承认。人民民主专政的爱国者/敌人二元，可映射于积极法权/纯粹义务的区分。在符号学层面，法权在法学话语内部充当元能指，与现代化在宪制场域更高一层的组织功能形成结构同源；严格的胡塞尔现象学解读为童之伟的唯物主义所排除，但皮尔士—索绪尔的差异解读则否。

三项分歧难以仅凭源文本消解：（a）法权主义以个人为索引的分配式正义，与双重宪法体制的发展—文明式合法性之间的张力；（b）缺乏对党的内部规范性的范畴性语汇，该规范性既非普通国家法权，亦非剩余权；（c）双方共同坚持的具有理性自我透明性、居于中心的先锋队规划者形象，既难以被卢曼式自创生系统、福柯式治理术，亦难以被鬼谷子式“忤合”修辞完全容纳，而不否定中国文本自身所坚持的要素。在国际层面出现一处独立汇合：童之伟关于权利过度膨胀相对于制度权力发育不足（以预算自主性为关键）的诊断，在结构上平行于网络治理分析对当代全球秩序的判断。

残留张力不被处理为需以更优理论消除的缺陷，而被视为中国宪制秩序一般理论中仍真正开放的问题指标。

I. 两种理论，一个对象

两个当代、方法论上彼此无关的项目试图从内部对中国法律—政治秩序的基础进行理论化。第一项是童之伟的法权主义（法权主义），一种建立在“权”（权）的辩证展开之上的唯物主义一般法理论——“一切利益和财产在各种社会规范中的表现”——并将其展开为七项范畴构成的聚类：权、法权（法权，即权中已经确定并获得法律承认的部分）、剩余权（剩余权，即尚未确定的剩余部分）、权利（权利，即法权的个体份额）、权力（权力，即其公共份额）、义务（义务），以及法（法）本身。第二项是我本人关于现代化（现代化）的论述，即将其理解为当代中国宪制话语的胡塞尔式生活世界与皮尔士—索绪尔式元能指——一个预先给定、历史沉积而成的视域，中国宪制的各种符号在其中获得其关系性意义，而这一视域又由党对“主要矛盾”的周期性重新表述不断重新校准，却从未被放弃。

以下将每一项目通过另一项目的范畴加以阅读：现代化在被置于法权主义的唯物主义架构内部时呈现为何种形态；法权主义在接受符号—现象学式阅读时呈现为何种形态；以及两个论述在哪里趋于一致、在哪里分歧，或者只是无法相互转译。两位作者均未建立这些联

系。童之伟的论述没有提及现代化、沉积或生活世界；我本人关于现代化的论述也没有提及权或法权。因此，在直接比较之外的一切内容，均属于推断性建构，作为有待检验的假设提出——并在每一步明确标示为此——而非作为任何一位学者必然接受的等价关系。这里的目标也不是进行一种综合，使两个项目经审视后被证明一直在说同一件事情；凡是二者之间契合不佳之处，均作为发现记录下来，而不是被平滑地处理为词汇差异。

II. 法权主义的架构

童之伟的方法明确具有马克思主义性质：从抽象上升到具体。“权”是分析的起点。它分化为法权，即其所有权已经由实定法确定的部分，以及剩余权，即由于所有权尚未确定而仍处于法律之外的部分。法权继而分化为权利，即与个人所有的财产相对应的个体部分，以及权力，即与公共所有的财产相对应的公共部分。义务则是整个结构的否定镜像。两条公理锚定这一体系：权的总体积与一个社会中的财产总量成比例；权的三元结构——虽然其各部分的体积或比率并非如此——是任何存在法的社会的持久特征。法的功能在于优化权与法权的配置，以避免两种结构性病理：过高的权利率（无政府）与过高的权力率（专制）。正义在于每个人恰好获得其应得的法权份额，并且不承担不应承担的义务。

贯穿其中的是一条论战性线索：按照童之伟的论述，当代中国法学仍然受到“日本化”的权利（权利）的扭曲，这一概念继承自穗积陈重与穗积八束，将权利与权力混同于同一个术语之下——而童之伟希望清除这一缺陷，转而确立一种真正民族性的词汇体系，使权、法权、权利与权力各自依其自身意义得到区分。在其最新的延伸中，该理论被移植到国际法领域：国家持有与国家财富相对应的国际权利；国际组织内部机构持有与其自主预算能力相对应的国际权力；当代全球不安全则被诊断为由由此形成的国际法权结构中的结构性失衡——权利过度膨胀，而权力萎缩。

童之伟更完整的方法论章节超越了上述压缩后的命题，将整个架构与一种取自列宁辩证唯物主义方法的明确认识论联系起来：确定事物本质的四项原则——全面性、自我运动

（“应当把对象理解为处于发展、变化之中”）、人类经验整体作为真理标准，以及真理的具体性（“真理总是具体的，而绝非抽象的”）。在此基础上，童之伟明确指出，“法的本质不是不变的”，并且在当前时期必须以“基本国情与时代精神”为依据加以确定——并明确将其解释为社会主义初级阶段的要求以及“现代化建设这一根本国家任务”。他同样明确指出，这一标准本身具有时间上的边界：一旦中国成为“中等发达国家”，对于法的本质的理解将再次发生变化。按照童之伟自己的论述，法权主义的基础范畴并不是关于法本身的永恒真理；它是一项有意以历史不断展开的国家项目的当前阶段为索引的主张。

III. 以法权主义自身的术语理解现代化

这一段单独的论述改变了现代化与法权主义最终呈现出的关系性质。问题并不仅仅在于，可以从外部建构一种以现代化为导向的法权主义重述；童之伟自身的方法已经从内部实施了某种近似的重述。在他的论述中，现代化建设发挥着确定法之本质何以被界定的标准作用——并因此确定在任何特定历史时刻，何种权利与权力比率、何种法权与剩余权比率应当被视为“适当”。这在结构上与我本人关于双重宪法体制中党章所发挥作用的论述相同：国家宪法的符号（法治、社会主义市场经济）由其自身文本无法充分确定其意义，需要一个由党的政治路线提供的外部解释性钥匙来确定其意义。童之伟的方法在法学理论本身内部又向后推进了一层，实施了完全相同的操作。法的本质这一概念无法仅凭法律哲学分析得到充分确定——童之伟列举了数十种候选的本质属性（强制性、规范性、预测性、阶级性、作为权利保护工具、“刀柄”），并指出这些属性本身没有任何一个能够从列表内部选出正确者——因此，对这一选择的解决必须诉诸党——国家当前对国家发展阶段所作出的权威性判断。法权主义在认识论上并不站在现代化视域之外；相反，它将自身的基础范畴从属于该视域通过周期性自我诊断所进行的重新校准，并把这种校准作为其有效性的明确条件。

这使得我们能够提出一种比纯粹结构类比更为精确的现代化唯物主义论述。现代化经由法权主义的词汇加以转译，同时完成两项工作。第一，它命名了童之伟称为“法律演进的主要动力”的历史过程：剩余权向法权的吸收，即原先未被确定的利益与财产转变为法律上已经确定的利益与财产。第二——而这才是更具后果性的要点——它提供了一个外部标准，法学理论据此在任何特定时刻决定，何种权利与权力比率应当被视为适当，并应通过上述吸收过程加以追求。

第二点之所以重要，是因为童之伟关于“结构平衡”的公理无法仅从法学理论内部得到兑现；它要求诉诸当前具有权威性的政治机关所确定的国家发展阶段究竟需要什么——这正是“现代化作为生活世界”的理论所称的通过重新表述主要矛盾而对视域进行重新校准的操作，只是在这里，这一操作又向后推进了一步，作用于法之本质本身的理论标准。

这种吸收实际通过何种制度机制推进，则由全过程人民民主理论提供，而童之伟的法学理论由于属于教义性理论而非制度性理论，本身并未提供这一机制。全过程人民民主的核心主张是，中国社会主义民主具有内生性而非外生性：它并不是通过竞争性选举表达人民意志，而是通过结构化的、多层次的协商——会议、访谈、书面协商——“附着于治理事务”之中；这一过程从人民出发，经由代表性的群众组织（八个非共党政党、政协、民族区域自治制度以及基层群众自治），抵达先锋队政党，再返回人民，其所使用的正是群众路线的语言：“从群众中来，到群众中去”。将其置于法权主义的对照之下，这一协商架构正是这样一种制度机制：未决的权——民众情绪、不满、愿望，以及全过程人民民主

白皮书所称该制度旨在容纳的“少数人的合理诉求”——通过制度处理，逐渐走向法律上的确定，而从未被视为一种能够以自由主义的、裁判性的方式对国家强制执行的权利主张。协商是吸收剩余权所特有的中国式、非裁判形式：一个由党领导的辐射式过程，对权利主张进行前置筛选，以供法律或政策承认，而不是由法院逐案将主张转化为权利。

这同样为组织宪法文本与童之伟关于法权之国内主体的论述的“人民民主专政”二元结构提供了一种唯物主义解释。民主——协商、代表以及全过程人民民主的制度架构——面向爱国者开放，其权利主张构成制度试图吸收进法权的对象；专政则保留给那些其主张被制度视为永久处于剩余状态、无法被吸收的人，他们只受到权利账簿的负值一侧的支配。童之伟关于义务是权与法权反面的命题，可以直接与此对应：对于专政的对象，制度根本不提供任何正向的法权渠道，只有义务。按照这一阅读，法权主义抽象的权利/权力/义务三元结构与宪制秩序具体的爱国者/敌人二元结构，是同一项区分在两个不同抽象层次上的表达——前者属于法学范畴层面，后者属于制度—宪制层面。

IV. 通过符号—现象学透镜阅读法权主义

反身性转向

童之伟针对“日本化”权利的论战本身，可以被理解为——而不是作为外部分析——其所未命名的、由沉积而成并由现代化组织起来的话语本身的一个实例。童之伟的著作明确将自身的项目置于“中国社会主义初级阶段”之中，将法的本质明确与现代化建设联系起来，并将中国法学史叙述为一系列阶段，这些阶段追踪着同一政治经济序列，而这一序列也组织着此前在其他地方发展出来的现代化九层沉积论述：一个“权力中心型”时期，童之伟明确将其与改革前的指令型经济联系起来（“在把经济发展作为重点之前……法律……应当归类为权力中心型”）；随后是一个“权利中心型”的复兴，这与转向社会主义市场经济以及“根据生产力发展水平调整所有制结构”相联系。

这并不是一种从历史之外的中立分析视角描述中国法律史的法学理论；按照其自身明确的方法论承诺，它在构成意义上已经被索引于该历史自身对其进行的官方时期划分。如此阅读，童之伟针对一种“落后”的、源自外国的法律词汇的篇幅很长的论战，以及由一种真正“民族的、现代的”法学所取代这一词汇的论述，几乎原样重现了那种时间性语法——通过恰当地实现现代的、民族性的成就来克服落后——而这一语法在政治性更为显著的文本中表现得更为直接：党的代表大会报告、宪法序言以及民主白皮书。一个在技术上看似非政治性的、关于一般法学的论述，最终参与其中，而不是站在其所从未命名的现代化视域之外。

没有现象学的符号学

由童之伟自身的认识论产生了一个更为困难的问题。法权主义的方法是从抽象到具体的辩证唯物主义上升，并明确拒绝那种本质主义——即把概念视为具有固定的、可以直观把握的意义，而不考虑其物质—历史条件——这一拒绝从表面看来似乎同样坚定地排除了胡塞尔式的重述，也排除了唯心主义式的重述，因为胡塞尔的生活世界恰恰是一种由沉积而成、由主体间性构成的意义视域，并通过现象学还原而被置于自然主义因果解释之外，而童之伟的唯物主义对此并无用处。如果在童之伟那里，权与法权是真实财产关系的真实效果，而不是沉积于共同体共享的意向性生活中的意义，那么，在胡塞尔技术意义上的生活世界中将它们描述为生活世界内容，就会误述这一理论，并偷偷引入一个童之伟认识论本身旨在排除的先验—主体性层次。

但是，符号—现象学分析装置并不必然 *exclusively* 属于胡塞尔。它同样大量依赖皮尔士与索绪尔，而他们的符号学完全不要求对先验主体性的承诺：索绪尔关于符号价值是在一个系统内部通过关系与差异构成的，而不是通过参照任何可以独立直观把握的本质来构成的主张，与几乎任何关于符号背后存在何种东西的理论都可以相容，包括唯物主义理论。

在这种较窄的阅读下——没有现象学的符号学——权、法权、剩余权、权利与权力可以被描述为一个差异性符号系统，其中每一术语的价值仅由其相对于其他六项的位置决定，而无需断言这一系统究竟是胡塞尔意义上沉积的主体间意义，还是童之伟意义上真实物质关系的法律表达。正是在这一点上，对法权主义进行符号学重述成为可能，而严格意义上的胡塞尔现象学重述则不可行——至少，如果不与童之伟自身明示的认识论相矛盾的话。

如此阅读，法权在法学话语中具体作为一种元能指发挥作用——它不是与权利、权力和剩余权并列的诸范畴之一，而是组织这些范畴彼此关系的术语，并提供一个场域，使每一范畴能够在其中获得其差异性价值。童之伟本人直接主张的正是这一立场，他提出“法权中心性”作为长期以来中国关于“法的中心”的争论的正确解决方案，从而取代先前的“权利中心型”和“义务中心型”候选方案。法权主义本身也需要一个元能指，而这一元能指在结构上与更高层组织宪制场域的元能指相同——现代化组织社会主义、法治、共同富裕以及其他诸项——这就是同一形式模式在不同尺度上的再次出现，而且这一分析并不需要触及童之伟的唯物主义所排除的现象学层次。

合法性语法的不匹配

法权主义的正义概念明确具有分配性并以个人为索引：每个人获得其应得的、既不多也不少的法权份额。无论这一概念相对于自由主义权利本体论欠下多少债务，它仍然明显是一种法律合法性的公平分配观。中国宪制自身实际运作中的自我正当化，却没有任何类似的

形态。该论述所描述的合法性是发展性的与文明性的：党的权威与其声称能够领导中国实现现代化的能力相联系，而共同富裕——最接近童之伟分配性关切的能指——在那里表现为现代化这一元能指所组织的诸多所指之一，与法治和国家安全并列，而不是作为现代化的基础或衡量标准。

因此，将现代化理解为在法权主义内部运作，需要在两个文本自身无法解决的两种嵌套关系之间作出选择：或者，法权主义的分配正义公理本身成为现代化视域所组织并周期性重新加权的又一项内容，在这种情况下，法权主义失去其作为独立基础理论的地位；或者，现代化只是一种服务于先在的、更为基础的、由法权主义定义的分配最优状态的工具性叙事，在这种情况下，符号学论述就成为覆盖于更深层物质现实之上的表层修辞。两个文本都没有告诉我们哪一种嵌套是正确的，而如果不引入某种偏好——即偏好符号学解释还是唯物主义解释作为更深层的层次——就无法仅凭这两个文本作出选择；而这一偏好又不是任何一位作者所曾捍卫的。

缺失的第三个层次

本文发展出的中国宪制论述高度依赖于“双重宪法体制”——党章与国家宪法作为统一的符号系统运作，其中党章发挥解释项的功能，为国家宪法符号原本未被充分确定的意义提供确定作用。这一双重结构在法权主义的范畴网格中没有明显的位置。党的内部规范既不是通常意义上的国家强制执行的法权——一般而言，它们并不通过法院，以童之伟国内法意义上的面向公民的权利或权力形式运作——也不是剩余权所描述的那种法律之外的社会规范，因为党的纪律是一种具有约束力、受到制裁并在内部进行裁判的规范秩序，按照童之伟对这些术语的定义，它既不能被直接归为法权，也不能被直接归为剩余权。

这不是一个小的遗漏。如果法权主义要作为围绕双重体制——党与国家宪法共同构成——而组织起来的、具有特别中国特征的宪制架构的完整唯物主义基础，它就需要一个用于党的内部、组织内部规范性的第三种范畴性语汇，而现有理论并未提供这一语汇，也似乎并非为了提供它而设计，因为其从国内向国际的延伸直接从公民—国家关系转向国家—国际组织关系，没有停留在政党这一独特规范秩序上，而这一规范秩序在宪制意义上居于它所领导的国家机构之上并先于后者。

国际层次上的意外汇合

有一点汇合独立于上述重述性工作而出现。法权主义关于国际法的命题——即国际法只有在强制性规范得到制定并执行的情况下才存在，否则相关关系仅仅属于国际道德；国家权利与国家财富相联系，而制度性国际权力与国际组织内部机构自主且集中的预算能力相联系；以及由此产生的国际权利体积过度增长与国际权力体积发育不足之间的不平衡，“很难得到明显改善”——以唯物主义词汇描述的，实质上与跨国治理和网络治理学术研究长

期以来视为当代全球秩序特征的同一结构性缺陷：强大且由财富支撑的国家与企业，以有效的、尽管在法律上尚未确定的能力运作，这种能力远远超出正式国际组织所拥有的、薄弱、资金不足且仅具有部分自主性的制度性权力，而后者原本应当对其加以约束。

童之伟通过完全不同的路径——唯物主义的权分析，而不是系统理论或网络治理分析——得出了结构上相似的诊断，即权力赤字相对于权利盈余的失衡，并明确将其与预算自主性而非形式上的法律权限联系起来。这一点值得作为一种实质性的独立汇合加以记录：两个理论从相反的理论起点出发，却独立达到相近的诊断。当然，这只是诊断上的汇合，而不是方法上的汇合；而且按照童之伟自己的论述，其国际法命题的发展程度仍明显低于其国内法范畴。

V. 以法权主义自身的词汇理解跨越长时段的现代化

如果将童之伟的时期划分与此前发展出的现代化论述中组织各层沉积的结构持续对照阅读，那么就可以用权—法权术语对现代化长达一个世纪的历史作出相当精确的唯物主义重述——这一重述由童之伟在其著作中彼此分离、相互无关的段落中的陈述拼接而成，并不是他本人以这种形式提出的时期划分，因此应当被视为一种建构，而非对其观点的报告。

在革命时期，按照童之伟自身关于其他地方“无法”状态的逻辑，中国是这样一种社会：旧法律秩序的法权已经在很大程度上失去正当性，而新的法权尚未确定；也就是说，绝大部分是剩余权，而革命道德与党的路线发挥的是原则性规范的作用，而非真正意义上的法权。

20 世纪 50 年代至 70 年代的建设时期，按照童之伟自己的明确表述，是一个“权力中心型”时期：集体化与指令型经济将法权中的权利份额压缩到其下限，接近但从未真正达到理论上的极点——即接近于零的权利率——而童之伟的公理将其描述为无政府的相反极端。

改革开放时期，尤其是转向社会主义市场经济，是童之伟的论述与沉积层论述最为接近地相互对齐的时期：个人持有的、获得法律承认的财产扩张，按照童之伟自身的词汇，推动了权力中心性的下降，以及法权中权利份额的相应上升——即此前处于法律之外、非正式容忍的经济活动被吸收进已经确定的法律形式，而这正是改革开放与社会主义市场经济在政策话语层面所命名的过程。

新时代与中国式现代化则引入了一个两个文本均未直接陈述的进一步重新校准：对国家安全、平台与数据治理以及共同富裕的重新强调，似乎并不意味着权利份额继续沿单一方向

扩张，而是意味着重新平衡——即权力在特定领域重新确立其基础，同时权利所承载的财产在其他领域继续扩张——这与重新表述的主要矛盾相一致，因为后者将失衡本身，而不仅仅是稀缺性，命名为需要解决的对象。

按照这一阅读，现代化如果完全转译为法权主义的词汇，就不是一个从法律之外作用于权——法权结构的外部力量。它是这一结构自身比率的历史轨迹之名称——按照童之伟自己的语言，是法权扩张、收缩以及权利与权力内部重新平衡的时间性轮廓，而每一个阶段都由该时代对主要矛盾的官方诊断赋予正当性，并且只有通过这一诊断才能被理解。

VI. 寻找一种中介性话语

上述所识别的间隙——一方面是唯物主义理论，其规范性词汇仍然保留着一个理性、全面知情的中心有意识地“优化”法律秩序的图景；另一方面是符号—现象学论述，后者否认任何这样的中心能够从系统之外审视或设定整个系统——促使我们寻找某种能够在二者之间发挥中介作用的第三种理论话语，同时又不偷偷引入童之伟的唯物主义所排除的先验主体。三个候选方案由此呈现出来：每一个都完成了真实的理论工作，同时又各自留下了残余。

卢曼的自创生系统理论提供了最为简洁的方式，可以在不预设任何执行优化的主体的情况下，重新描述童之伟关于法“优化”权与法权配置的主张：按照这一阅读，法律系统的比率并不是由任何人设定的；它通过运用自身的二元代码——已经确定的所有权或尚未确定的所有权，实际上即一种“法律/尚无法律”的区分——递归地再生产自身，并从与其结构耦合的经济系统中选择哪些权利主张应当被承认为法权。

这使其与童之伟自身的唯物主义获得了真正的汇合，因为二者都否认法律内容来自社会—物质过程之外某种独立存在的道德秩序；同时，它也提供了一种谈论“优化”的方式，而无需任何行动者审视并理性平衡整体。这种处理的代价，则在于它与法权主义和全过程人民民主实际使用的规范性语言之间并不契合：童之伟关于法律“应当”达到“最适当比率”的主张，以及全过程人民民主关于先锋队政党“领导”“协调”并通过辐射式协商架构将“党的正确思想”转化为“人民的自觉行动”的自我描述——其中中国共产党被明确置于“核心”——都保留了一个理性、自我透明、居于中心的指导性主体形象，而这一形象正是卢曼理论建立起来否定任何子系统（包括政治系统）能够具有的可能性。

严格的卢曼式论述会把党仅仅视为另一个操作性封闭的子系统，只能够对法律系统的自我再生产产生刺激，而永远不可能从外部审视或设定这一系统——这是法权主义的规范性词汇和全过程人民民主的制度自我描述都无法接受的否定。

福柯式生命政治与治理术提供了童之伟的法学理论以及单纯的系统理论论述各自无法独立提供的东西：一种解释权如何在抵达法律承认这一阶段之前，就已经被塑造为一种系统能够识别的形式。宪法关于开展爱国主义教育并“同资本主义、封建主义以及其他腐朽思想作斗争”的授权，在相当接近福柯自身意义上的层面上属于生命政治——即对行为的行为进行治理，在制度正式处理主张之前，预先塑造一个群体的倾向，使其最终提出的主张在很大程度上已经与法权相容。

这为童之伟只在结果层面描述、而全过程人民民主只在制度形式层面描述的吸收过程提供了一个真正的机制。但福柯式的权力是弥散的、毛细管式的，而非集中于某一中心，这与卢曼的系统理论一样，都无法舒适地容纳这样一种图景：单一先锋队机构从拥有全面知识与控制的位置设计并指导整个过程。福柯可以帮助解释主体如何开始欲求制度要求他们欲求之物；但他并不能为以下主张提供依据：某一单一机构站在这一过程之外，对其进行审视并加以指导。

鬼谷子的修辞是三个候选方案中最为独特的，也是最不应充满信心地推进的一个，因为这里与《鬼谷子》文本的接触仅限于一次译本以及此前对其“忤合”和“说辞”概念的一次特定运用，而非建立在对该文本独立而充分的学术掌握之上；因此，以下内容应当被视为启发性的类比，而不是已经得到证明的等价关系。

鬼谷子的修辞将说服性言说理论化为一种旨在使受众在抵抗与趋同之间移动的战略技术——以言辞吸引能够被吸引者；在这种方式失败时，则以责任使其受到牵制，直到其弱点能够被暴露。这是一种将话语理解为趋同工具而非真理揭示载体的理论，并且它原生于中国的战略—修辞传统，而非外部输入——这一点之所以重要，是因为法权主义针对“日本化”词汇的论战，以及中国民主理论自身将其界定为普遍主义西方模式的民族性替代方案，都参与了一项本土化工程。如果一种分析完全依赖胡塞尔、皮尔士、索绪尔、卢曼与福柯，那么它自身反而会重复那些中国文本试图摆脱的外部输入依赖。

如果将鬼谷子理解为一种关于趋同的符号学，而不是关于意义的符号学，那么其“忤/合”结构可以相当精确地对应全过程人民民主的协商架构：按照这一阅读，协商的功能在于将最初处于抵抗状态（忤）的权利主张——未决的、可能具有对抗性的——重新调和（合）为一种已经确定、在爱国主义意义上具有可读性的形式，从而获得法权承认；而周期性的白皮书本身则发挥说辞的功能，面向外部潜在伙伴国家，通过吸引他们，或者在吸引失败时通过责任牵制，使其趋向所提供的模式。

这一点之所以构成真正独特的贡献，恰恰是因为它不是从外部输入一种理论来解释一个中国对象。但其范围小于两个西方候选方案：鬼谷子理论化的是特定互动中的说服策略，而不是那些使这种由中心指导的趋同过程能够在一个 14 亿人口的社会中持续一个世纪的结

构性条件——系统封闭、生命政治式主体形成。它为吸收机制的修辞表层提供了一套真正本土的话语；但它并不能替代关于这一机制结构深度的系统性与生命政治论述。

三个理论中没有任何一个能够弥合这一间隙，把三者叠加起来也同样不能。三者共同之处，以及使每一个都成为真正的部分性中介而非虚假的中介之处，在于它们都不需要那个被童之伟的唯物主义所排除的先验—现象学主体——正因为如此，它们都比直接的胡塞尔式重述更具候选资格。

但每一种理论留下而未触及的残余，在所有情况下都是同一个残余：一个理性、自我透明、全面知情并居于中心的指导性主体形象——作为规划者的先锋队政党——而这一形象是法权主义的规范性词汇与全过程人民民主的制度自我描述共同坚持的，同时，系统理论、生命政治或修辞—战略论述又各自出于不同且具有启示性的原因，只能部分容纳这一形象。

这或许是中国马克思列宁主义宪制秩序中最抗拒被转译为任何现有理论话语的单一特征，无论这种话语是西方的还是中国的，是系统性的还是修辞性的——并不是因为这些话语本身不足，而是因为要求它们转译的先锋队规划式自我理解，按照其自身的术语，并不是它们中的任何一个在设计之初就准备容纳的那种主张。

VII. 结论

将法权主义与作为中国宪制生活世界的现代化论述放在一起阅读，可以发现，二者的汇合并不止于共同从马克思主义前提出发。童之伟自身的方法明确将法的本质，以及建立在这一基础上的整个权—法权架构，与现代化建设这一标准联系起来，并明确承认这一标准本身具有历史边界——这使得我们可以将现代化转译为法权主义的词汇，并将其理解为权—法权结构自身比率的历史轨迹，其中每一个阶段都由该时代对主要矛盾的官方诊断赋予正当性。

按照同样的条件，可以对法权主义进行符号学重述，只要将其严格保持在不要现象学主体的皮尔士—索绪尔层次之内：按照童之伟本人关于“法权中心性”的明确论证，法权作为一个元能指发挥作用，组织法学话语，其方式在结构上与现代化在更高层组织宪制场域的方式具有同源性。

两个项目发生分歧之处，是具有实质意义的分歧，而且任何一个文本自身都无法加以解决：法权主义中的分配性合法性语法，与中国宪制自身自我正当化论述中的发展—文明性合法性语法之间的对立；法权主义的范畴网格中没有为双重宪法体制核心所在的党的内部规范性提供相应层次；以及在二者之下贯穿始终的一项共同承诺——无论是在法权主义的规范性词汇中，还是在全过程人民民主的制度自我描述中——即一种将先锋队理解为理性

规划者的自我理解，而现有的任何中介性话语，无论西方的还是中国的、唯物主义一系统性的还是修辞一战略性的，都无法在不否定中国文本自身坚持的某些内容的情况下完全容纳这一自我理解。

这一未解决的残余并不是比较中的缺陷，不应通过选择更好的理论来加以纠正。它恰恰是当代中国宪制秩序一般理论中究竟有多少内容仍然真正开放的一个恰当指标，也是继续保持这些论述之间的张力于视野之中、而不是过早地将其解决为偏向唯物主义层次或符号学层次之一的理由。