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Constitutionalism with Chinese and American Characteristics: A Comparative Essay

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CONSTITUTIONALISM WITH AMERICAN AND CHINESE CHARACTERISTICS:
A COMPARATIVE PIECE

Constitutionalism is defined as “the degree to which government limits its powers (Cord et al, 354).” This political theory has been adopted by countries all over the world, namely the People’s Republic of China and the United States of America. While constitutionalism has been an essential part of governmental affairs in the US for hundreds of years, it was recently introduced in China. Criticism looms around the ability of the China, and namely the Chinese Communist Party, to effectively implement ideology into practice. Does the United States provide a good example of constitutionalism? Can a one-party system such as China really adopt constitutionalist principles?

These questions have yet to be answered. Before forming an opinion on these concerns, one must first understand the interpretation of constitutionalism in both countries. The political theory of constitutionalism can be interpreted in several different ways. Its interpretation is mainly based on the morals and political values of a certain country. The goal of this essay is to further define constitutionalism, state the similarities of constitutionalism in the US and China, and to also highlight the differences.

Constitutionalism.

Constitutionalism is the idea that a government can and should be legally limited in its powers, and that its authority depends on observance of these limitations. A *constitution*, which is the legal document of constitutionalism, consists of a set of norms (rules, principles or values) that creates, structures, and defines the limits of government power or authority (American Government). Anything recognizable as a state must have some acknowledged means of constituting and specifying the limits placed upon the three basic forms of government power. A foundation of constitutionalism is the action of checks and balances between three main governmental branches: legislative (branch that makes the laws), executive (branch that implements the laws) and judicial (branch that enforces the laws).

American Constitutionalism.

The United States of America (USA) adopted constitutionalism as a way to govern the country. This is mainly because of how unsatisfied the colonies were with the rule of the British monarchy. The monarchy wielded a substantial amount of control ranging from the amount of money people were to pay in taxes to what products could be imported and exported. The founding of an independent republic was the surest way to rid the United States of the threat of being controlled by another country. Constitutionalism guided the establishment of the republic.

In 1787, the Constitution of the United States was drafted. This was 10 years after the US

established itself as an independent country. The purpose of the constitution was to replace the *Articles of Confederation* written a decade prior. The articles did not effectively state how to govern the US as a whole, and did not gain support from the founding fathers. Although inspired by the Articles of Confederation, the US Constitution is more concrete (The Charters of Freedom).

The seven articles of the constitution include the following:

- Article One: describes the Congress, which is the legislative branch of the federal government;
- Article Two: describes the office of the President of the United States
- Article Three: Describes the court system, or judicial branch;
- Article Four: Outlines relations between states and the federal government;
- Article Five: Describes the process for amending the Constitution;
- Article Six: Establishes the Constitution and all federal laws and treaties as the supreme law of the land; and
- Article Seven: Describes the process for establishing the proposed new frame of government.

There was one major issue with the constitution. Although the document outlined the limited powers of the government, it failed to state the rights of the people. Americans citizens did not feel comfortable with this style of rule. Without assurance of their individual rights, people may have thought that they were allowing themselves to be governed blindly without accountability or protection. The changes made to the Constitution are known as the amendments. The constitution had to be amended 27 times to ensure the rights of all Americans who identify with certain gender and ethnic groups. There are 27 amendments, and the first ten are known as the “Bill of Rights” (Bardes et al, 47).

The Bill of Rights outlines the following privileges of the American people:

- 1. Freedom of speech and press**
- 2. Right to bear arms**
- 3. Right to dismiss soldiers in need of housing during times of war and peace**
- 4. Dismiss illegal search and seizure**
- 5. Right to a grand jury**
- 6. Criminal case rights**
- 7. Civil case rights**
- 8. Reasonable bail amount**
- 9. Guarantee of constitutional rights**
- 10. Recognition of state rights and laws**

A fundamental element of constitutionalism is the act of *checks and balances*. This is a system through which each branch of government-executive, legislative and judicial- can check the actions of the others. For example, Congress can enact laws, but the president has veto power over congressional acts (Bardes et al, 46). The Supreme Court has the power to declare acts of congress and of the executive branch unconstitutional, but the president appoints justices of the Supreme Court, with the advice and consent of the Senate (Bardes et al, 46).

The checks and balances model was proposed by United States founding father and political theorist James Madison.

Chinese Constitutionalism.

The People's Republic of China drafted its first Constitution in 1954. After several revisions, the constitution was standardized in 1982. The latest version of the constitution reflects Deng Xiaoping's determination to lay a lasting institutional foundation for domestic stability and modernization. Much of the PRC Constitution is modeled after the 1936 Constitution of the Soviet Union (US Constitution). However, there is a clear distinction between the Soviet Union's federal system and China's unitary multi-national state system. The constitution clearly states that mainland China and its territories are governed by the Chinese Communist Party.

The Constitution of the People's Republic of China has 138 articles and four amendments. Of the articles, the following are the most striking (People):

- Article One: The People's Republic of China is a socialist state under the people's democratic dictatorship led by the working class based on the alliance of workers and peasants.
- Article 10: Land in the cities is owned by the state.
- Article 25: The state promotes family planning

- Article 35: Citizens of the People’s Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.
- Article 49: Marriage, the family, and mother and child are protected by the state.

The term *rule of law* has two definitions. It can either be defined as mandatory systems for maintaining firm limits on the arbitrary use of state power by the individual; or, it is the state taking a critical role in guarding communally embraced substantive norms through the use of state power grounded in law (Cata Backer,111). Chinese constitutionalism is guided by the second definition. As China’s government is a unicameral system, the Chinese Communist Party executes its constitution and governs citizens on this philosophy. Evidence of the rule of law can be seen in the morally and society-based articles of the constitution. In establishing these widely accepted concepts, the Chinese Communist Party is able to the support of the state to enforce these values as laws. The actual enforcement of the 138 articles, however, takes on different forms.

Similarities between Chinese and American Constitutions.

The Preambles:

<p>China is one of the countries with the longest histories in the world. The people of all nationalities in China have jointly created a splendid culture and have a glorious revolutionary tradition.</p>	<p>We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America</p>
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Both preambles put strong emphasis on the people of the country being fully represented in the creation of the Constitution. Every citizen of the United States and the People's Republic of China were not instrumental in the drafting of either constitution. The founding fathers drafted the US Constitution, and the Chinese Communist Party wrote the document for China. It is evident that a select few people in power bared the responsibility of creating laws for the masses.

Differences between Chinese and American Constitutions.

Length and age of the two documents: The most striking feature of the US Constitution is that it is the shortest of its kind in the world. With seven articles, the constitution is very broad, and the lack of details makes it open to interpretation. The Chinese Constitution, on the other hand, is very long and specific. The 138 articles cover a wide range of affairs. Whereas the US Constitution was drafted in the late 1700s, the Chinese Constitution was introduced within the last 35 years.

The Unicameral, One Nation Approach: As stated before, the People's Republic of China embraces the one-party system and is governed by the Chinese Communist Party. This explains the numerous articles listed in the constitution. The Party explains in detail each right that is given to the citizens and the government. The constitution is in place for all of China, including territories outside of the mainland. The US on the other hand, has a

two-party system. The constitution is a part of federal law. In addition, each state has its own set of laws. The constitution respects each state's right to create its own laws as long as they are in line with federal law. This can also explain why the US Constitution is short.

Ideology vs. Practice: The articles of the People's Republic of China's Constitution are based on practices accepted by the Chinese Communist Party and the Chinese society at large. Some of the articles appear to be great ideals instead of laws that are put into practice. For example, Article 35 states that every citizen enjoys the right of freedom of speech and the privilege participating in protests. Historical events suggest otherwise. The Tiananmen Square Incident was discouraged by the Chinese Communist Party. People who have expressed their views on the government or societal issues were silenced. Additionally, the government controls the media sensors the content of news, television shows and movies.

Articles of the United States Constitution are capital practices of American society. Citizens can actually site the articles in certain cases. For example, there have been many mass shootings in recent years that have resulted in the deaths of people from different demographics, including children and African Americans. Efforts have been made to change the gun laws in the country. However, the second amendment of the Constitution guarantees every citizen the "right to bear arms". This is a very controversial right that is criticized by American nationals and people from foreign countries alike.

Conclusion.

Although constitutionalism is defined by one phrase, there are many different perspectives about the implementation of the ideology. Whereas the United States instituted this doctrine as the foundation of forming the country, this concept was recently adopted by the People's Republic of China. The interpretation of constitutionalism is mainly based on the morals and political values of a certain country. The goal of this essay was to further define constitutionalism, state the similarities of constitutionalism in the US and China, and to also highlight the differences.

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