

On the Viability of Polycentric Governance Theory to Contemporary China

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Abstract

The common-pool-resource governance theory initiated and developed by Professor Vincent Ostrom and Professor Elinor Ostrom is a combination of empirical methodology, field studies and theoretical analysis. This theory effectively challenged the methodology, hypotheses and conclusions by traditional rational choice theorists on analyzing the management of public goods. As such, this theory proposed a new approach of governing the commons, i.e. self-governance of the commons, outside the scope of the government as well as the market.

The common-pool-resource governance theory is a mixture of both theoretical and empirical studies. Indeed, this theory has been substantiated by the experience and reality of more than a few countries and regions. Accordingly, this theory provides for many insights into institutional evolution and choice in the world.

This article would first explore into the theoretical elements and basic preconditions of the common-pool-resource governance theory. Further, this article would describe current circumstances in China at issue. Based on such description, this article would evaluate the effectiveness of applying the common-pool-resource governance theory to relevant Chinese issues at constitutional, collective choice level and in attributes of community and individual personality levels, given existing political, economic and social order in China. Then, this article would articulate special significance of this comparison between the theory and the commons governance practice in China.

I. Introduction

The self-governance theory on the commons initiated and developed by Professors Vincent Ostrom and Elinor Ostrom was formed on the basis of empirical research and experimental substantiation. This theory effectively challenges the traditional rational choice theory and its pessimistic attitude on the governance of the commons. As such, this theory proposes a new approach of self-governance of the commons, aside from the government and the market offered as solutions by the traditional rational choice theory.

After some twenty-year studies, experiments and development, the self-governance theory has established not only a comprehensive and detailed theoretical system, but also a series of operative rules and elements in terms of practical application. In general, the key parts of the self-governance theory consist of an analytical framework as well as a practical proposal on the governance of the commons.¹ The analytical framework, namely the framework of IAD, was generalized from a large amount of successful cases of self-governance. The practical proposal, namely the proposal of polycentric governance, indicates that the governance of the commons, especially the common-pool-resource, should be conducted under institutional arrangements of polycentric governance. While the self-governance analysis framework constitutes the foundation of the proposal of polycentric governance, the latter is deemed the conclusion of the former.

Because the existence of the commons is common in human society, its governance has become a hot issue for the management of human societies and institutional arrangements. Because the self-governance theory of professors Ostrom has broad coverage and great significance, it is potentially applicable to various governance systems of the commons worldwide.

Despite this, the question remaining unanswered is whether the self-governance theory of professors Ostrom, especially the proposal of polycentric governance, is practically applicable to the governing the commons in contemporary China, a developing country with her own political, economic, and cultural characteristics. Exploring into this question would potentially be important to both the governance practice of the commons in contemporary China and the development of self-governance theory itself.

Generally speaking, there are two alternatives to test whether a particular theory is applicable to specified circumstance: a) empirical approach, or directly applying the theory to specified circumstance or practice in evaluating its applicability and effectiveness; b) logical comparison approach, which is to analyze the conclusion of the theory as well as the prerequisites of its practical proposal by logical reasoning, compare its logical prerequisites with the factual circumstances and conditions, and evaluate its effectiveness based on the degree of their similarity and distinction.

The empirical approach is impossible for the purpose of this article, because we cannot find any real cases in the mainland of China from the existing case studies or documents of the self-governance theory, also because we are having an academic discussion in the United States. Accordingly, this article adopts the logical comparison approach. In other words, this article would comment on the proposal of polycentric governance of the commons by comparing the prerequisites of the theory with current conditions in contemporary China.

The analytical framework of professors Ostrom consists of a combination of complex multiple parameters in its application. This framework has both subjective (individual) and objective

(context) aspects in the process of the commons governance. With respect to the subjective aspect, the main parameter is the attributes of individuals in collective decision-making. With respect to the objective aspect, the main parameters include attributes of physical world, attributes of community in which the decision-making participants, attributes of events, and attributes of rule in use. The latter three parameters together constitute the decision situation that the decision makers face. Also, from the perspective of institutional arrangement, the governance of the commons can be analyzed at three levels: constitutional decision-making, collective choice, and operation. All those parameters above somehow influence the behavior of decision maker at three levels simultaneously.²

Undoubtedly, it is impossible to analyze and compare all the elements of this complex framework in connection with China's practice in this article. Because the attributes of physical world and attributes of events are largely of natural feature, which is generally given or predetermined in any relevant analysis, this article would primarily focus on the attributes of community as well as attributes of rule in use. For this reason, this article would comment on the prerequisite of institutional arrangements of polycentric governance, the precondition of the attributes of community, and the precondition of the characteristics of individual on basis of my understandings by referring to China's practice.

II. The Understanding of the Preconditions of Polycentric Governance Theory

As mentioned above, the polycentric governance approach is concluded from the self-governance of common-pool-resources. The framework of institutional analysis refined from empirical cases and experiments is its condition. However, this framework of institutional analysis refined from successful cases of governance is not the initial precondition for the polycentric governance approach. The initial preconditions should be the constraining hypotheses and assumptions that are indispensable for the setup of the framework of institutional analysis. Some of these hypotheses and assumptions are implicitly embedded in the framework; others are dispersed in the works of Ostroms. Therefore, explicit understanding these preconditions from the relevant addressments would be necessary.

A. The Understanding of the Institutional Preconditions

Institutions are rules. Institutional arrangements consist of a series of rules. "Institutional arrangements are the rules used by individuals for determining who and what are included in decision situations, how information is structured, what actions can be taken and what sequence, and how individual action will aggregated into collective decisions".³ As stated above, the self-governance theory's application to how institutional arrangements of Common-Pool Resource (CPR) are affected is conducted at three levels: constitutional choice, collective choice, and operation. Rules of constitutional decision-making are fundamental rules by which constitutional decision design makes a collective choice. Indeed, constitutional choice rules are

guidance of collective choice rules. Collective choice rules “stipulates the condition for adopting, enforcing, and modifying operational rules”,⁴ including who would participate in changing operational rules and how to make an agreement at whatever level to achieve the goal of change. “who may participate in changing operational rules and the level of agreement required for their change.”⁵ In other words, collective-choice rules are guidance of operational rules. Operational rules stipulate who can participate as appropriators and providers; what the participants may, must, or must not do; and how they will be rewarded and punished. Indeed, operational rules are the rule directly affecting daily decisions of the participants.⁶ Obviously, those three levels of institutional arrangement are closely related yet different.

The self-governance theory and its analysis framework is a microinstitutional approach to the governing the commons. As indicated by Michael D. McGinnis in the introduction of *Polycentric Games and Institutions*:

“The metatheoretical framework focuses on scholarly work in political science and economics that uses a microinstitutional approach to the analysis of political phenomena. The microinstitutional approach is “micro” because it starts from the individual as a basic unit of analysis to explain and predict individual behavior and resulting aggregated outcomes. It is “institutional” approach because major variables include the set of institutional arrangements that individuals use to affect the incentive systems of a social order and the impact of incentive systems on human behavior.”⁷

This kind of microinstitutional approach beginning with individual makes the framework of IAD not only take into consideration many factors affecting interactive individuals in the collective decision-making, but also expand the analysis of institutional arrangement into the levels of constitutional and collective choice. Nevertheless, the analysis itself still gives primary weight to operational rules directly influencing the micro-actors in institutional arrangement. In fact, the well-crafted seven rules, including position rules, boundary rules, authority rules, scope rules, aggregation rules, information rules, pay-off rules, are all rules at operational level. As argued, whenever those seven rules are met, the institutional arrangement of polycentric governance might have very positive result and achieve the sustainable development of CPR.⁸

According to the polycentric governance theory, the three-level rules affecting individual behavior in collective choice as to governance of the CPR were formed in different but consecutive sequence. Constitutional rules were formed first, then collective choice rules, and then operational rules. Also, those three level rules have different importance. Constitutional rules are the prerequisite to all other rules, while collective-choice rules are determining and shaping operational rules. Nevertheless, it is unclear exactly what are included in constitutional and collective rules in the literatures, I have read, on the polycentric governance theory, though constitutional and collective-choice rules are the preconditions of operational rules. As a result,

we might decode underlying constitutional and collective-choice rules based on the interpretation of operational rules.

As inferred from the seven rules at operational level of the self-governance theory and other relevant documentation, the constitutional prerequisites to institutional arrangements include the following:

1) Individual rights must be defined and protected. According to the polycentric governance theory, individual is the basic unit of the society. “The individual person is the doer of acts. The way each individual as a person relates himself to others is the basis of all social organization.” Thus, “individuals form the basic unit in the design of all political institution”.⁹

Precisely for the reason of the importance of individual to society and theoretical analysis, definition and protection of individual rights is the first constitutional rule of the self-governance theory as well as the foundation of other constitutional rules. In other words, in social self-governance, citizens are entitled to a broad range of rights and liberty interests guaranteed by constitution and other laws, while all citizens are equal and independent as a matter of law.

2) To a certain extent, society should respect the self-governance of individual citizens. Primarily, each individual should be deemed her or his own governor. “Transactions and social relationship can be broadly based upon a decision rule of willing consent.”¹⁰ Thus, “No single center of authority need dominate all of the rest. Smaller communities of interest can be organized on principles of self-government and maintain autonomy in the governance of their own internal affairs. Other interests that are shared by several different communities can be organized as autonomous self-governing authorities.”¹¹

To achieve this self-governance, not only constitutional rules must clearly grant the autonomy power to certain communities, but also law must specifically limit the potential intrusion into the autonomy by other organizations, especially the governmental branches, so as to achieve the self-governance on the part of participants by freeing them from any unnecessary outside interference and control. In addition, the constitutional principle must strictly carry out such proposition as: “a body of men are unfit to be both judges and parties at the same time”.¹² It would be very difficult to imagine that individuals or a group of individuals without full autonomy power can ever exercise the decision-making at collective or operational level.

3) The public property rights must effectively exist both as a matter of law and as a matter of fact. “A property right is the authority to undertake particular actions related to a specific domain.”¹³ Modern property rights are essentially a set of rights, though what are included in the set is in dispute. As explained by the self-governance theory of CPR, modern property rights include the rights to access, acquire, manage, exclude and transfer.¹⁴ Based on this, we might concentrate on the right to use, manage, benefit and transfer. On the other hand, the ownership is still the

key to modern property rights, namely, whether public property is owned by all participants jointly or the government apart from all participants. If the property is owned by all participants jointly, its change must be made through collective discussion and agreement. The ownership often determines the realization of other property rights. Without modern property rights, the participants in the self-governance of CPR would not be able to act at either individual or collective levels.

4) The rule of law must exist. Law is indeed legally enforceable agreements among individuals in social life. When interpreting the constitutional choice of democracy, professor Vincent Ostrom specifically emphasized the importance of contracts or covenants. “The Hobbesian assumption that ‘covenants, without the sword, are but words’ is congruent with the American theory of constitutional decision making only when one adds: ‘And the sword, without covenants, is but an instrument of tyranny’. Use of the sword is legitimate only when used in accord with the terms of a covenant to maintain reason and justice in the conduct of human affairs. The terms of the covenant specify the basic political formula controlling the operations of any basic structure of government in the American theory of constitutional decision making.”¹⁵ Thus, as social contracts or covenants in legal formality, law really means the rule of law, rather than the rule by law. The existence and enforcement of law mandates both the compliance and penalty upon violations. As such, the law would become the supreme authority of social order, which imposes mandatory requirements on each individual, both the ruler and the ruled, in the society. “The relationships of both rulers and ruled are bounded by rules of law and commonly accepted standards of judgment.”¹⁶ It would also require an independent, neutral and powerful judiciary branch in the interest of justice and constitutionality.

In addition to those constitutional rules, the polycentric governance theory also requires certain preconditions at collective-choice level in institutional arrangement. Those preconditions are as follows:

1) The existence of the CPR governance organization. For the purpose of collective decision of the CPR self-governance, the participants or their representatives must form a specified CPR governance organization. Such organization must engage in adopting the rules of the collective decision making of self-governance as its function so as to accomplish the goal of CPR’s rational governance and sustainable development. Such organization might not include any organization acting either toward market or under government will.

2) The establishment and operation of sound election rules. Because it is impossible for each individual CPR participant to be involved in collective decision-making process, a special selection mechanism must be up in determining who would act as representatives for the participants at large. For this purpose, the ideal selection mechanism is a fair election and its rules. Such election rules should establish fair and reasonable election process, and allow the realization of each participant’s equal and legitimate voting rights and impeachment rights.

3) The establishment and operation of sound decision-making mechanism. According to the self-governance theory, the polycentric governance is improved by continuous communications and learning among participants, which is largely carried out face-to-face. As a result, effective face-to-face communication as to decision-making is an important condition of collective action. Generally speaking, sound decision-making mechanism at the least contains a set of negotiation rules among participants with equal status. In other words, the outcome of negotiation and consultation must come out of true compromise and accommodation, rather than majority versus minority voting. Also, sound decision-making mechanism ensures that the representatives in the decision-making process must act in the best interest of the represented group, free from influence of money, political power and race and so on. As Professor Elinor Ostrom's findings, the private associations and the interbasin coordinating arenas may be efficient and better forms of such mechanism.¹⁷

4) The establishment and operation of an effective and fair sanction system. To prevent the violation of collective rules, an enforcement agency must be placed. Also, certain punishment arrangements must be up for the violators. This might signify the protection of supervision rights of members in certain communities.

5) The decision makers must have access to relevant information. Insufficient information is sure to cause incorrect decisions. Also, asymmetric information distribution would lead to irrational and incorrect rules, which disproportionately benefit certain participants with relatively more information. Thus, "without access to reliable information about complex processes, participants may not understand the ambiguous situations they face."¹⁸

B. The Understanding of the Preconditions of Attributes of Community

According to the polycentric governance theory and methodology, attributes of community are the important factor in collective-choice action of the self-governance for CPR. Thus, the following preconditions must be met for the purpose of successful operation of the polycentric governance:

1) The existence of social trust. Since basic rules of the polycentric governance are the outcome of negotiation and consultation among various participants, they are essentially mutual agreements or contracts. Such agreements, especially in the case of multiple parties, must be based on social trust. Only if each single individual expects trustworthiness from others, such individual would have incentive to engage in collective-choice action, comply with collective decision as well as constitutional rules. "Those who have developed form of mutual trust and social capital can utilize these assets to craft institutions that avert the CPR dilemma and arrive at reasonable outcome."¹⁹ In this sense, social trust is the social capital of the polycentric governance.

2) The mutual understanding and recognition of the CPR governance rules at high level. This requires the understanding and recognition of just and correctness implicated by the CPR governance rules on the part of community members. The higher the recognition, the lower the governance costs. “This is especially important in situation that force consumption upon individuals in a community. Lack of agreement usually distorts the distribution of cost among community members, causing ferment among those assuming disproportionate burdens... Agreement about the moral correctness and the fairness of rules constraining decision-making reduces the need for enforcement. Otherwise, individuals seek to evade and change the rules. Individuals’ actions becomes less predictable and the order of the system breaks down, causing authorities to invest heavily monitor community members’ actions and do impose sanctions on members taking unauthorized action.”²⁰

3) Fair distribution of resources. The community members must maintain a balanced distribution of resources, rather than a monopoly or disproportionate control. “Individuals controlling disproportionate resource shares for participating in particular decision structures fundamentally affect the nature of the decision situation.”²¹ Thus, such balanced distribution of resources among community members is the necessary element of the polycentric governance.

C. The Understanding of the Preconditions of Individual Personality in the Polycentric Governance

Individual is the foundation of institutional formation and operation, as well as the basis of collective action of the CPR governance. Although institutions might greatly constrain the individual behavior, individual personality might also affect the interplay models with others, thus influencing the features and effectiveness of institutions. On the one hand, individual interaction resulting from individual personality produces institutions as outcome. On the other hand, institutions, once established, could have huge impact on individual behavior. Thus, understanding individual personality is important to evaluate the way by the governance applies and the institutional arrangements.

It is worth to note that such analysis on individual personality is about how participants act in collective action or other social-political circumstances, rather than purely psychological description. In addition to assuming that individual participant is reasonable, able to learn and might make mistakes, the self-governance theory establishes certain hypothesis on individual participant as follow: individual participant is subject to constant change, e.g., her or his information access level; individual is able to evaluate the potential consequence of her or his action as well as alternative actions; and individual might have certain computation process among various actions or strategies.²² Nevertheless, in my opinion, the successful application of the polycentric governance theory would still require more individual personality preconditions:

1) The existence of citizenship personality. In terms of rights, “citizen came to mean someone free to act by law, free to ask and expect the law’s protect.”²³ Thus, citizenship means the legal status of individuals in a democratic polity. As citizens, individuals have rights to seek their own interests, to expect equal opportunities with others, to expect protections by law. In the meantime, citizen has personality significance. Citizens have civic virtue, the capability of self-governance, the way people associated with others to cope with problems, to achieve common knowledge and mutual understanding. As a result, aside from the citizenship in terms of legal rights, citizens with healthy personality are the best judges of their own interests, “Every person is presumed to be the best judge of that person’s own interest,”²⁴ thus constituting the individual personality basis of the polycentric governance.

2) The precondition of individual personality in pursuit of common good. In the process of the self-governance, individual might achieve a suboptimal outcome as well as effective CPR governance through computation and reciprocal studies in collective action. Here, reciprocity is “an especially important class of norms.”²⁵ Nevertheless, reciprocity has its value dimension in real life. People might have reciprocity toward either good or evil in collective action. The good reciprocity has positive social utility, while the evil reciprocity is damaging to society. Because the polycentric governance is assumed on the basis of the good reciprocity, such common good in the CPR governance would expect to have constructive and positive CPR governance and its sustainable development. In fact, such assumption is only with the bright side of human nature.

III. Relevant Constraints for Governing Commons in Contemporary China

The interpretations for the Polycentric Governance Theory mentioned above would not only help us to understand the basis and preconditions for the theory and approach, but also provide a useful analytical framework to analyze comparatively the relevant contemporary Chinese situations, which therefore will be described and explained in this article in term of these understandings.

What deserves to be pointed out is that in China, CPR such as forests, fisheries and irrigation are primarily concentrated in the farming and pasturing regions. In these regions, China has been officially implementing villager-autonomy since 1982. Accordingly, for the analysis of the relevant Chinese situations, the article is very selective and focusing on the situations and information about village autonomy. However, when it comes down to some general issues, certain data of the general situations of contemporary Chinese society will not be totally excluded.

A. *The Situation of Relevant Institutional Arrangements*

As analyzed above, in the governance of CPR, institutional arrangements and rules in the operational level are based on those in constitutional level and collective-choice level, which two constitute the constraints for the operational rules. Therefore, I will describe the contemporary situation for rural China from the rules of the constitutional level and collective-choice level.

First of all, the institutional arrangements in the constitutional level:

1) The situation of confirmation and realization of individual rights. The present *Constitution of the People's Republic of China* stipulates that, "...All citizens of the People's Republic of China are equal before the law. Every citizen is entitled to the rights and at the same time must perform the duties prescribed by the Constitution and the law. ...All citizens of the People's Republic of China who have reached the age of 18 have the right to vote and stand for election, regardless of ethnic status, race, sex, occupation, family background, religious belief, education, property status or length of residence, except persons deprived of political rights according to law ...Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration." ²⁶

However, there still are problems in two aspects: First, the current Chinese Constitution does not stipulate property rights about individual citizens. Second, the citizen rights stipulated in the Constitution are often at odds with the de facto social life. They cannot be guaranteed to be realized in reality. Thereby currently, the individual rights of the Chinese peasants are seriously inadequate. The citizen rights of the peasants are not well established or adequately ensured and respected. According to the surveys and researches done by Dang Guoying, an expert on village issues at the Chinese Academia of Social Sciences, four aspects of the essential citizen rights are not well established or realized. "The predominant rights is the property rights of land for the peasants. Since the land reform of contract-management is merely a "half-cut" property rights reform, the (relatively) full property rights for land of the peasants failed to be established till now. Unless the peasants' property rights for land be established, there will be neither competitive advantage of agriculture nor the social security for the peasants. The second rights is the equal citizenry status rights for the peasants. ... The institutional precondition of social discrimination against the peasants status has not been changed. We need to abolish the status discrimination at one stroke. Provide equal rights for the peasants on employment, education, migrate and taxpaying. The third rights is the rights for self-determined management by the peasants and the rights for self-organization for economic development. The fourth is the rights for democratic election. The law for villager autonomy was promulgated in 1998. But it is very difficult to put it into effect." ²⁷

2) The degree of autonomy for individual citizens in certain communities. We can investigate the purview of villager autonomy in contemporary China in three levels. The first is the legal level. Villager autonomy in China was originated in 1980 for the steal of several farm cattles in Hezhai Production Brigade of Sancha Commune of Yishan County (Now, Hezhai Village of Pingnan Township of Yizhou City) of Guangxi Zhuang Autonomous Region. For preventing such stealing, a self-organization was set up by the villagers. The present Chinese Constitution promulgated in 1982 affirmed to implement autonomous institutions in the rural area. In 1987 the National People's Congress promulgated *Organic Law on the Villager Committees of the People's Republic of China*, which was amended in November 1998. It merely gives general principal stipulations about the purviews of autonomy in rural communities,²⁸ but gives no rigorous division and confirmation about the purview of villager autonomy or about the cleavage of rights between the government and the village autonomous organizations. Neither is there any judicial interpretation available. This makes the rights borderline for the peasants and villagers committee obscure, thus leaves legal leakage for other organizations, especially the government, to infringe. Second is the level of power structure. The power structure for contemporary China consists two substructures. One is the general governmental power including legislative, executive and judicial systems. The other is the power system of the communist party as ruling party. The party power system, which is outside the governmental power system, leads and dominates the latter. In the micro-level for villages, both power systems restrict and affect the villager autonomy. According to the present Constitution, the grass root power structure for the Chinese government is township and town,²⁹ which is outside the purview of villager autonomy. However, according to the fourth article of the *Organic Law on the Villager Committees of the People's Republic of China*, "governments of townships, nationality townships or towns provide guidance, support and help for the villager committees' work. Villager committees assist governments of townships, nationality townships or towns to carry out their work". Simultaneously, Article 8 stipulates that "the instauration, abolition and purview adjustment of villager committees should be proposed by the governments of townships, nationality townships or towns, agreed via the discussions by villager congress and approved by county government." Therefore, the governments of townships or towns have very strong actual control power over the villagers' autonomy organizations and process. What is more important in the aspect of power structure is that the grass root branches of the communist party have more effective control power over villager autonomy. The Chinese Constitution stipulates that the Chinese Communist Party is the leading party. Correspondingly, the *Organic Law on the Villager Committees of the People's Republic of China* stipulates the leading status of the communist party for village autonomy. Article three of the *Organic Law on the Villager Committees of the People's Republic of China* stipulates, the grass root organizations of the Chinese Communist Party in villages function and exert a leading role according to the *Constitution of the Communist Party of China*. Thereby, besides villagers committees there exist communist branches that are even endowed with leading role in the purview of villager autonomy. This limits the villagers' rights for self-governance with concrete powers. The third one is the social level. In Chinese rural areas, there are commonly clan and family forces because of the weak social mobility.

What's more, in recent years there appear some worthy upstarts who tamper with villager elections and villager committee decisions with money.

The restrictions and impacts from these three levels greatly constraint the autonomy by the Chinese peasants. They only can be said to have low self-governance rights.

3) Institutional situation for public property rights. Property rights in modern sense consist of a set of rights. The property rights for public resources including CPR also consist of a set of rights including ownership, usufruct and the rights to manage and to transfer. In contemporary China, the issue of property rights is a very complex problem. Since the implementation of contract-out system in the rural area in 1978, the ownership and usufruct for resources such as rural land, fishery and forest have been separated. Current state laws stipulate that the ownership for these resources including CPR belongs to the state and collectives.³⁰ However, in practice the public resources, such as CPR, by collective ownership are only nominally owned by formal members of specific communities. In a village, it is the villager committee instead of the villager congress which has the independent legal status. The *Law of Land Administration* and the *Organic Law on the Villager Committees* stipulate that the contract let-out of public resources to be committed by the villager committee. Therefore, the so-called collective ownership is de facto the ownership by the cadres of the villager committee. They have the actual domain for the public resources including CPR. For the rules in the collective-choice level, the ownership rights is very important. It causes other property rights for public resources processing around ownership. Thus, in fact, the property rights for public resources in rural China are the power of the cadres. On the other hand, the Chinese laws merely stipulate that the contract for land will be fixed for 30 years but give no stipulation about such collective resource property rights as usufruct, the right of management or the right of transfer. Therefore, these property rights of the contractors often fluctuate due to the will of cadres in the townships and villages committees after the public resources being contracted out to the peasants.

Therefore, since the institutional arrangements at the constitutional level for public property rights have not been feasibly settled, in the practice of autonomy in Chinese villages the property rights for public resources including CPR translated into the control power of the village committees' cadres. This forms the power ownership in the micro sense.

4) The situation of the rule of law. Historically, China is a country ruled by Confucianism ethics. The societal and political order was based on the ligament of consanguinity. This kind of society and order is often considered as extended family. Society and politics process similar to the hierarchic institutions of a family. Therefore, Chinese political leaders are considered playing fatherly roles in the social and political life. This kind of society is ruled in a charismatic way. All rules are decided by the rulers and vary due to the needs of the rulers. What's more, the rulers do not need to obey the rules. This means the so called "no penalty reaches the gentry, no courtesy reaches the plebeian" and "the rule of man."³¹

Since 1978 especially from the 80s, the Chinese government has emphasized the rule by law. However, it is not the rule of law based on social contract but the rule by law. In the villages where there is profound traditional political culture, it is very common for little observation of existing laws and rare supervision for violation. The nonobservance and violation of law is especially common among the cadres. “It is a prevalent phenomenon in villages that cadres violate the law. When law is useful for them, they will take rule of law as excuse. When law is useless or even harmful for them, they will disregard law.”³²

On the other hand, rule of law requires just and independent judicial system. Especially, it requires supervision institute, such as Constitutional Court, in the Constitutional level to investigate and punish unconstitutional conducts and to interpret the constitution. Hitherto, however, China has neither this kind of institute nor the existence let alone successful operation of relevant legal provision. This causes the lack of reasonable and authoritative interpretation for the constitutional principles and provisions, which are interpreted by governmental officials especially those in the township or town government. Hence there is great executive arbitrariness.

In the collective- choice level, current institutional arrangements in China also have great defects. There is great disparity between the reality and the preconditions for the institutional arrangements of Polycentric Governance.

1) Situations for the specialist organizations for CPR governance. As mentioned above, Self-governance of CPR requires specialist private associations and the interbasin coordinating arenas consist of attendants or their representatives to act as the organizational prop for collective decision. However in contemporary Chinese villages, there exists no such specialist organization. This leads to the lack of specialist self-governance organization to undertake the tasks of governing the public resources such as forest, fishery and grassland.

Then, whether or not the organizations in Chinese villages undertake the function of governing the CPR? Presently, there are three kinds of legal organizations in the village level in Chinese villages. They are the branches of Chinese Communist Party, villager committees, and various associations by the peasants.

Although party branches of the Chinese Communist party participate and decide important issues in villages, their primary function is political control. They are organs established for carrying out the political purposes of superior party organizations. Simultaneously, they are not self-governance organizations but authoritative democratic centralism organizations.

Villager committees are legal autonomous organizations. However in the actual autonomy process in Chinese villages, there persists the problem of vagueness of functions and status for

the villager committees. First, the current laws did not stipulate their functions. Thus, their functions are unclear legally. Second, article 25 of the *Organic Law on the Villager Committees of the People's Republic of China* stipulates that owing to needs, villager committees may establish committees for people's mediation, public security and public health. However, these subcommittees are typically established according to the functional branches of the township or town government. According to the surveys done by the Research Center for Village Issues at Huazhong Normal University, currently the subcommittees of village committees are primarily to undertake tasks from the government. On this aspect they are the same as functional branches of township or town government.³³ Therefore, villager committees are actually highly executive and largely subordinate branches for township or town governments. Third, from the aspect of actual process, the primary task for the villager committees is economic development. The main criterion for the villagers to elect committee members is whether the candidates can lead everyone to become rich. Thereby, according to the surveys, villager committees very rarely hold discussions or decisions on governing public resources.³⁴

According to the statistics done by the Ministry of Agriculture, P.R.China, there are over 100,000 self-organized associations by the peasants in rural China. However, these private associations are typically for market activities and development or even for market development of public resources including CPR.³⁵ The consequences are usually devastating for public resources, especially CPR.

2) The establishing and processing conditions of election institutions. According to the polycentric governance theory, in governing the CPR, decision process on collective rules are usually among the participants or representatives of participants, who set down the rules for self-governance. The election institution has been implemented for villager autonomy in contemporary Chinese villages. Elections for villager committees are held to entrust power to the committee members to manage public affairs in the villages and to frame rules for governance. However, from the aspect of elections for villager committees, there are many severe problems in this institute. First is the nomination system of candidate. Except for competitive elections by villagers themselves in a few regions (such as the so-called “haixuan” in Haicheng City of Liaoning Province), in most villager committee elections in rural China, candidates run for director and members of village committee are nominated by township or town government or party branch in the village. This is firstly unfair in the nomination procedure because the candidate nominated by government or party branch might not be the ones that villagers want to elect. If the candidate nominated by government or party branch fails to get elected, the future work of the elected villager committee members will be extremely hard to carry out. Secondly, in the election process, the fractions in a village often vote for their own side. Reports from provinces such as Hubei, Zhejiang and Jiangxi all suggest that fractions interfere the fairness of villager committee elections.³⁶ These fractions might be along patriarchal clan, political or even economical cleavages, among which the patriarchal clan fractions are especially forceful in the elections. “They clearly support some while opposing others. They make biased public opinions

and hook in villagers with sentiments and commitments. Thus they pull every apolitical villager to the locale for villager committee elections.”³⁷ Thirdly, there is bribery in many local elections. Some candidates even buy votes openly. In some regions, some blank ballots are bought and filled out. Besides, some party committees or governments of townships or towns break the rules to replace members of the village committees before expiration of their office terms.³⁸ Thus, the peasants’ right of recall is violated.

Problems in villager committee elections are widespread in Chinese villages. From January to August 1998, the Ministry of Civil Affairs alone had taken in over 100 person-times for collective appeal about this issue and received nearly 100 appeal stuffs from teens of provinces (municipalities or autonomous regions) including Liaoning, Hebei, Shanxi, Shandong, He’nan, Jiangsu, Zhejiang, Fujian, Guangxi, Sichuan and Chongqing.³⁹

These problems in election institutions in Chinese villages jeopardize the suffrage of the peasants, reduce their trust for the fairness of collective decision making, distort the justice of the rules and become devastating factors for village autonomy and the governance of CPR.

3) The situation for decision-making mechanism of the autonomous organizations. The ideal decision-making by self-governance organizations should proceed independently by the participants or representatives. In Chinese village autonomy, the theoretically hegemonic decision-maker should be the villager congress. However, the *Organic Law on the Villager Committees of the People’s Republic of China* stipulates that the villager congress be summoned by the villager committee. Thus, the autonomous system is actually inverted. i.e., the villager committee as executive branch actually decides the convocation and agenda for the villager congress. As for the issues about governing public resources including CPR, which function the villager committee neither cares for nor assumes, it is very hard for villager congress to discuss and make relevant decisions. Since the typical criteria by Chinese peasants to choose committee members is whether the candidate can lead them to become wealth, village committee members cares little about the governance for public resources including CPR. This is a very common phenomenon in rural China.

On the other hand, according to self-governance theory, polycentric governance is realized gradually via continuous face-to-face communications and learning. Therefore, the existence and proceeding of effective institutional arrangements for face-to-face communication for decision-making is important for collective decision-making. However, in village autonomy in China, there is no such communication mechanism in most places. Most of the relevant rules and provisions are made by the members of the villager committees. As indicated by the empirical studies, in most regions in China, villager congresses or villager council of representatives still cannot indeed organize to exert its function and power. In the actual process of village governance, villager congress in most villages exists merely as a form required by the institutions and laws. Besides the election at expiration of office terms every three years, villager

committee has no activities perennially.⁴⁰ Therefore, ordinary villagers have little chance to participate decision-making in the collective-choice level besides election. Thus, autonomous decision-making in Chinese villages not only has no face-to-face communications, negotiations and consultations among the participants, but also has no majority rule. It is more like executive decision-making by the chief of villager committee as executive head.⁴¹

4) The institutional arrangements and its implementation of just and effective supervision and punishment. To prevent violation of rules for collective decision-making, just and effective institutional arrangements for supervision and punishment is indispensable in the level of collective decision-making. In villager autonomy in Chinese villages, there is neither special independent supervising setup jointly elected nor the guarders employed jointly by the villagers to supervise and punish violators. Usually the villagers' violating behaviors against collective decision-making rules are treated in two levels. One is in the legal level. If the action breaks the law, e.g. illegally engrosses or even destroys public resource, it is usually run by the judicial body above township (or town) level. The other is on the collective rule level. Usually the violation of communal norms are supervised and punished by such setup as villager committee. However, in the practice of villager autonomy in China, supervision and punishment in both levels are considerably weak.

In the legal level, the effectiveness of judicial body above township (town) level is very limited. First, the judicial body is not independent, but corresponding agency of power controlled by the ruling party. Therefore, it is very difficult to ensure justice and exactitude for its administration of justice. The legal penalty against violation of law cannot make the villagers to obedience. Hence there appear many cases of defying the law enforcement even to the extent of defying with violence.⁴² Second, the social characteristics of gratuitous relationship and acquaintance society in rural China prevent inform of offences by individual villagers. The legal principle of no informing no tracing often makes these violators elude from intervening by the judicial body.

In the level of village norms in the villages, the supervision and punishment functions of villager committees and villager congress are very flabby. Currently, many villages have framed written *Rules Set by the Villagers* (or *Constitution of Villager Autonomy*, the notions is diverse among different regions). Some have quite detailed provisions. However, as mentioned above, villager congresses play little role in village autonomy. Some even hold no meeting at all. Therefore, the functions of supervision and punishment are essentially undertaken by villager committees. Villager committee is the establishment that concentrates execution, supervision and punishment. The heavy burden of executive affairs leaves little time for the committee to carry out special supervision. On the other hand, villager committees are commonly constituted by those of conjunctive interests. Thus the justness of supervision and punishment is often questioned. Actually, the power of villager committees in Chinese villages is only supervised by the township (or town) government. However, "single-dimensional supervision inside a power system is very easily to induce abuses of power because of lack of restriction for the

supervisor.”⁴³ Therefore, the corruption and injustice of the cadres of the villager committees also become severe problems.

5) The situation of effective information access by the decision-makers. In villager autonomy in Chinese villages, it is common for relevant information channel be obstructed. In the collective-choice decision-making level, on the one hand, there needs information of professional skills. Since most colleges, universities and other research institutes are in far away cities, villagers are very unfamiliar with computers and networks. There is merely telephone disseminated among the villages. Therefore, it is very difficult for the villagers to be aware of and understand the characteristics for governing CPR and other public resources. On the other hand, in the process of making collective rules, there is severe information asymmetry between cadres of villager committees and ordinary villagers because of the low degree of openness of village administrative affairs. “The quality of announcement board for village affairs is low and the contents opened are incomprehensive. Some villages set up the announcement boards inside the offices or homes of village cadres where it is hard for the villagers to find. Some even have no announcement board and just use one or two pieces of paper and carelessly paste on walls. Some scrape together some unpractical contents and the villagers cannot understand what it is about.”⁴⁴ This prevents the villagers from concerning about the political affairs in the villages and induces them to follow the arrangements by the villager cadres blindly no matter whether the village affairs have been managed appropriately or not. In Chinese villages currently, most villagers are still passively obeying the orders of the village cadres and passively attending the villager autonomy. This tampers with the development of the openness for village affairs.⁴⁵

B. The Situation of Relevant Attributions of the Communities

From the perspective of attributes of community that are necessary for the successful implementation of polycentric governance, the essential situations for China are as follows:

1) The situations for social trust. In modern societies, social trust as social capital is the cultural and normative basis for social contract. “Contract is not only a way for market exchange, but also can be used to create other forms of economic organizations and power structures.”⁴⁶ However, in traditional Chinese social culture, social trust is not contract but emotions and relationships between individuals. It reflects the ethics of traditional ligament based on patriarchic clanship and consanguinity. This kind of social trust is different from the one that is based on contract between atomic individuals with clearly defined self-interest. It is a kind of blurry trust based on emotions and relationships. There is no contractual social trust of modern western societies in this culture. In contemporary Chinese society, although traditional Confucianist culture and ethics still survives, because the Chinese market economy is in the stage of primitive accumulation, market competition and scrabbling between self-interests badly demolished the traditional moral faithfulness and order partly. No new contractual social trust was formed and the level of social trust therefore decreases greatly. Falsity and cheat become

very severe social problems. Although social trust data specifically aiming at village communities are scarce, the issue can be largely illuminated via the overall trust situation in Chinese society, in which village communities is an essential part. According to surveys by the Chinese Public Opinion Survey website, social trust has already been a severe moral problem in contemporary Chinese society.

Moral Virtues

Figure 1. Question: Which of the following moral virtues is the scarcest one for most contemporary people?

Time	Choice	Number	Percentage
2000.12	Honesty	330	33.5
	Independence	98	9.9
	Obedience	28	2.8
	Prudence	147	14.9
	Professionalism	213	21.6
	Generosity	82	8.3
	Tolerance	357	36.2
	Accommodating	329	33.4
	Courtesy	229	23.2
	Perseverance	76	7.7
	Kindness	239	24.2
	Disciplinarity	106	10.8
	Punctuality	28	2.8
	Credibility	116	11.8
	Frankness	117	11.9
	Filial piety	166	16.8
	Braveness	137	13.9
	Fidelity	139	14.1
	Perseverance	106	10.8
	Responsibility	389	39.5
	Honesty	486	49.3
	Faithfulness	194	19.7
	Forbearance	92	9.3
	Respect	264	26.8

Figure 2. Question: Which of the following moral vices are prominent for most contemporary people?

Time	Choice	Number	Percentage
2000.12	Arrogance	94	9.5
	Abjection	136	13.8
	Irreverence for aged	166	16.8
	Lack of professionalism	166	16.8
	Reap without Sowing	199	20.2
	Incredibility	128	13.0
	Disrespect	258	26.2
	Levity	119	12.1
	Jealousness	138	14.0
	Laziness	214	21.7
	Peremptoriness	105	10.6
	Cheat	338	34.3
	Succumb	50	5.1
	Extravagance	141	14.3
	Avarice	454	46.0
	Infidelity	110	11.2
	Irresponsibility	421	42.7
	Hypocrisy	486	49.3
	Self-abasement	52	5.3
	Selfishness	678	68.8

Data source: [Http://www.chinaminyi.com](http://www.chinaminyi.com)

In figure 1, 33.5% and 11.8% of the respondents think respectively that the scarcest virtue among most contemporary Chinese people is honesty or credibility. In figure 2, 34.3% and 13.0% of the respondents think respectively that cheat and incredibility are prominent vices for most contemporary Chinese people. Such situation is similar to what Professor Ostrom has addressed about the pessimism of self-governance, “where individuals have no expectation of mutual trust and no means of building trust through communication and constituted interaction.”⁴⁷

2) The situation of consensus and approval rate for collective rules. Currently, the Chinese society is in transition from planned economy to market economy, this transition is not only a transition of interest structure, power structure and institutional arrangements, but also is a transition of culture and norms. In this transitional process, as discussed above, the original cultural values have been largely destroyed while new values and social consent has not been established. Thus, although the diversification of social values is a sign for progression, the

society lacks common spiritual pillars and norms. Social members hold different or even totally opposite understandings on laws, institutions, moralities and norms of conduct. At this point, some scholars figure that the Chinese society is currently in chaos for moralities and values.⁴⁸ This indicates that the level of consent on social values and norms is considerably low. After the gradual lapse of the dominant ideology and the loss of traditional values, there is largely no consent among the social members. Although for the moment, I have no survey data to describe accurately the de facto situation, there is profuse information about substantive social conflicts and disobediences for social norms in reports of Chinese medias. This kind of information reveals the behaviors of social members. Backside lays the conflicts and contradictions of social values. Because of this, the cost for governance is very high in the Chinese society while the effect is really low. This should be the deep normative reason for the typical Chinese phenomenon of little observance for laws in the process of rule by law. Under such social value background, participants can hardly reach consentient collective rules on governing public resources including CPR. Moreover, even if collective rules are consented form within or imposed by some external authority, they are still very hard to get identified by the participants. Thus hard to get them implemented.

3) The situation of justice for distributing resources. In the process of public resources distribution, peasants as individuals have little negotiation power against the controllers of public resources. These controllers include township (or town) government, villager committees, party branches and some other powerful cliques. There are several reasons this consequence in the villager autonomy in Chinese Villages. First, the property rights of public resources are irrational. Second, there are defects in the institutional arrangements for autonomy and the autonomous organizations are overly similar to an executive branch. Third, the party members and leaders are both decision-makers of collective rules for public resources and the participants in resources distribution. Fourth, there are still some other reasons in the aspects of patriarchic clan, money and fractions. Therefore, there are severe disequilibria between peasants and controllers throughout the distribution process including the beginning and final result.⁴⁹ This greatly restrains the capacity for self-governance of the participants in villager autonomy, and makes the justice of the rules and their implementations of public resource governance a mission impossible

C. The Situation of Individual Personalities of Relevant Participants

1) The individual personalities. The traditional Chinese culture regards persons as components for social groups instead of as individuals with independent personalities. The dominant traditional culture in China is Confucianism, whose core concept is “Ren”. Sun Longji, an expert in the study of personality structure in Chinese culture, explains that “‘Ren means humanness’; The Chinese character for ‘Ren’ is composed of ‘two person’”. Therefore, a Chinese person is defined by the group and is different from the Western notion of individual.⁵⁰ Such explanation for Chinese personalities in Chinese culture is indivisible from the construction of traditional

Chinese society. As mentioned above, Chinese society is organized with consanguinity and patriarchal clan. The society and families are isomorphic. The existence of an individual in society is similar to his existence in the family. Therefore, traditional Chinese society is strictly hierarchic. Every individual is merely a small component in the hierarchic structure. Politics is integrated with social and patriarchal clan structures. There exists a trinity of politics, ethics and religion. *Hsun-tse* claims that the three roots for courtesy are: to serve the heaven upward, to serve the earth downward, and to honor ancestors, princes and teachers.

The Chinese worship the heaven, ancestry, emperors and even teachers. This is of ethics, religion and politics. Therefore, the social politics and families are incorporated in the order of “prince as prince, minister as minister; father as father, and son as son.”⁵¹

In such social order, individuals in traditional Chinese society actually have no independent personality. They deal with their relationships with others and the society, and control their own social behaviors according to the universal criteria of ethics and norms. In the history of thousands of years, the Chinese people formed collective oriented value perspective under such order and institutional arrangements. Their personalities are self-constrained and dependent on leaders or authorities. And the boundary between self and group is unclear. As for politics, since traditionally Chinese people regard government and government officials as parents and consider themselves as their children, they obey the rules imposed by the governmental authority and governmental officials in the way that they defer their parents. “Retreat in order to advance”, “peace is predominant,” “grin and bear it” etc. all belongs to another kind of self-compression.⁵² Simultaneously, there is very strong personal bondage to the government and government officials. Accordingly, government and government officials often possess unlimited authority upon social members and have unlimited responsibility. This behaves as the basis for the Chinese totalitarianism government and the subject personalities of Chinese social members.

Currently, no doubt there has been social reform in China especially since the market economy reform implemented and the citizenry consciousness is awakening gradually. However, the traditional culture that had been established in thousands of years still predominant especially in rural areas. Thus there become a kind of mixed personality formatted, which according to Zhuang Liwei is of the characteristics of nepotistic capitalism. These characteristics are mainly as follows: “a). Premodern. Sustained with pre-modern political culture such as patron-client or master-subject relationship. The powerless lack independent personalities with very strong intention for bondage. b). Schematic. Worships for the political rule of authoritarianism... c). Familial. Political and economic interests are malformed along the consanguine, marital or tribal relationships... the interests of patriarchal clan or that of close friends override the laws and appropriate order of market economy. d). Omni-social. The below follow the behavior of the above. Cabal relationships and buddy-buddy relationships in each level forms a pyramidal network... causes great chaos of the market economy and traps the social development into a vicious circle.”⁵³ Therefore, in current China, social members do not have the citizen

personalities in the modern sense. Instead they have more traditional subject characteristics. At most, self-interest and rights are brought by the market economy. Such individual personalities do not enable the competence or consciousness for neither self-governance for public resources as CPR nor negotiation with others or government for their own long-term interests and rights. Furthermore, the responsibility and obligation for public resource management and for provision of institutional arrangements are considered solely the business of government and its officials.

2) The individual personalities of reciprocity. Because in traditional China the kindheartedness for others is emphasized and individual life is said to be of meaning only in the society and in helping the others, reciprocity actually has always been a vital idea. However, what deserves to be pointed out is that reciprocity in traditional Chinese culture is based on kinship piety instead of rational computation and individual rights.

Ever since the reform and openness, the traditional mutual-aid and reciprocity have been greatly distorted during the primitive accumulation in an out-of-order market. Mutual-aid and reciprocity become means for particular communities to seek short-term interest via coordination no matter it is legal or not, good to social interest or not. Therefore, such personalities of reciprocity are totally different from the good reciprocity assumed by polycentric governance theory. I will denote this kind of reciprocity “evil reciprocity”. In poor areas that are close to public resources such as CPR in China, the evil reciprocity not only manifests very patently and strongly but also keeps downgrading intensively. In the mining areas in China, there are small mines all over owned individually or jointly by peasants and over-mining becomes a prevalent phenomenon. In fisheries, over-fishing is also very severe. In forests and grasslands, people collude to commit overexploitation so that to get rich fast. These instances appear in the media almost every day. The reciprocity for temporary interest devastatingly destroys the public resources including CPR. Although the government spends enormous money, material resources and manpower to protect these resources, the input-output is extremely disproportional at the presence of the evil reciprocity of vast number of people who plunge into the devastating “people’s war”.

IV. Comments and Conclusion

Based on the above analysis and reasoning, we can see that there is a great gap between the basic preconditions of the theory of polycentric self-governance, and the present reality of the Chinese society, as regards the individuals who are exercising the governance of such common resources as CPR, and the social context (such as the institutional arrangement on the level of the Constitution and of collective choices, and the attributes of the community). This gap has practically limited the applicability of the polycentric self-governance in Chinese governance of such common resources as CPR, since the absence of the preconditions will no doubt make it difficult to put the theory into social practice and to achieve the expected result. In fact, we have not found any successful case of entire self-governance in the governance of Chinese common resources, even on the micro-level. To the contrary, those more or less successful cases almost all

involve the initiative from and the investments of the government, governmental interventions to prescribe, supply, execute and monitor relevant arrangements, the mobilization of countryside autonomous organizations, and the participation of community members.⁵⁴

Then, what is the significance of this discovery of the above-said gap and the resulted limit to the applicability of the theory? In my opinion, it has both theoretical and practical significance.

A. The Theoretical Significance

Theories are gray, so to speak, while practices are multicolored. As the biggest developing country in the world with its unique and long cultural tradition, as a transitional regime developing from totalitarian planned economy to a modern market economy, changing from a society based on traditional kinship and ethical relationship as the binding factor of the polity, to a society bound by the contract relationship based on individual interests and rights, China, with its practices in governance of common resources, has raised a set of questions to be explored by the polycentric self-governance theory, which has its assumption about the organizations, arrangements and individuals in the modern society. These questions are as follows:

- 1) If there are multi-centers in the structuring and organizing of the governance, if power and rights are unevenly distributed among these centers, and if an unstable structure is resulted, what will be the outcome of the self-governance of CPR? What measures should be taken?
- 2) How will a different arrangement on the level of the constitution and the collective decision-making, especially an absence of such arrangement, affect the rules of policy-making and the behavior of the participants? Under such circumstances, how should the self-governance of CPR be pursued?
- 3) Besides taking into account the economic rational behavior of the participants of CPR governance, how will traditional culture and ethics affect individual behaviors, rules of collective decision-making in the self-governance of CPR?
- 4) In a society with a low social trust, what is the applicability of the self-governance of CPR?
- 5) Where there is a sharp heterogeneity as regards the common values in the social community, what arrangements should the self-governance of CPR make?
- 6) When community members, because of universal poverty, take collective measure to overuse CPR without considering their long-term interests, is the self-governance of CPR still possible? If possible, how should it be pursued?

7) In addition to analyzing the static rules and arrangements of the self-governance of CPR, should we not take into account the dynamic governance arrangements? In other words, should we not transcend the first-generation rational choice theory, and the institutional change theory of the neo-institutionalism, and develop a new theory of institutional change based on self-governance?

These questions, arising as they are from the governance practices in contemporary China, are also ones Chinese society has to face and overcome. If the theory of polycentric self-governance can take into account the reality of China, expand its analysis and answer the above-listed questions, its applicability will be greatly enhanced. If this theory, besides developing a rational institutional analysis based on rational choice and poly-centric game, can also consider the arguments of historical institutionalism, this will perhaps expand the scope of its applicability.

B. Practical Significance

We have found the great gap between the preconditions of the theory and proposal of polycentric self-governance on the one hand, and the reality in contemporary China on the other hand. The autonomy of villages has been in place for more than 2 decades. However, the comparison we have made in this article make us aware of the absence of institutional arrangement on both of the constitutional and the collective-choice level; the deficiency of community attributes; the lapping behind of the formation and development of the individual citizen. This can help us to better position the contemporary villager autonomy in China. In the words of some Chinese scholars, this autonomy is in fact one pursued by the government, and is thus a way of organizing, integrating and governing the Chinese rural society, not an self-governance in the sense of autonomous organizations of citizens.⁵⁵ On the other hand, such comparison also makes us aware of the agenda of institutional reforming and restructuring in the transitional process of Chinese society. The tasks within this agenda are manifold and formidable. They not only involve the reforming of mere economic or political institution, but the wholesale transforming of the logic of social organization. It also involves the reforming and restructuring of Chinese traditional culture and personality. In a word, it involves the reforming and restructuring of the Chinese society. We hope that, based on the market economy reform, beginning with the social governance (especially of CPR), the society and economy will make it necessary to create, reform and improve the social pre-condition and arrangements for governance, and thus bring about an institutional change, gradually transform the characteristics of the community and its members, and achieve democracy and autonomy step by step in the public sphere, foster a civil society, and finally achieve the goal of democracy and self-governance of the citizens. This might be a practicable agenda for the political development of the Chinese society.

To summarize, the theory and proposal of the polycentric self-governance, with its great achievements, provides us with a clear and effective framework for analysis, so that we can use this framework to make minute analysis of the social organizational order and self-governance of

CPR in China. Presently, we are doing a project “Transforming and governance,” sponsored by Education Ministry of China. We will use the theory of polycentric self-governance as our basic methodology, and will do research based on the Chinese reality, to develop a theory with more explanative power, more relevant to China, to enhance the modernization of China.

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Appendix

I. CONSTITUTION OF THE PEOPLE’S REPUBLIC OF CHINA

(Adopted on December 4, 1982)

PREAMBLE

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. Feudal China was gradually reduced after 1840 to a semi-colonial and semi-feudal country. The Chinese people waged wave upon wave of heroic struggles for national independence and liberation and for democracy and freedom. Great and earth-shaking historical changes have taken place in China in the 20th century. The Revolution of 1911, led by Dr Sun Yat-sen, abolished the feudal monarchy and gave birth to the Republic of China. But the Chinese people had yet to fulfill their historical task of overthrowing imperialism and feudalism. After waging hard, protracted and tortuous struggles, armed and otherwise, the Chinese people of all nationalities led by the Communist Party of China with Chairman Mao Zedong as its

leader ultimately, in 1949, overthrew the rule of imperialism, feudalism and bureaucrat capitalism, won the great victory of the new-democratic revolution and founded the People's Republic of China. Thereupon the Chinese people took state power into their own hands and became masters of the country.

After the founding of the People's Republic, the transition of Chinese society from a new-democratic to a socialist society was effected step by step. The socialist transformation of the private ownership of the means of production was completed, the system of exploitation of man by man eliminated and the socialist system established. The people's democratic dictatorship led by the working class and based on the alliance of workers and peasants, which is in essence the dictatorship of the proletariat, has been consolidated and developed. The Chinese people and the Chinese People's Liberation Army have thwarted aggression, sabotage and armed provocations by imperialists and hegemonists, safeguarded China's national independence and security and strengthened its national defence. Major successes have been achieved in economic development. An independent and fairly comprehensive socialist system of industry has in the main been established. There has been a marked increase in agricultural production. Significant progress has been made in educational, scientific, cultural and other undertakings, and socialist ideological education has yielded noteworthy results. The living standards of the people have improved considerably. Both the victory of China's new-democratic revolution and the successes of its socialist cause have been achieved by the Chinese people of all nationalities under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, and by upholding truth, correcting errors and overcoming numerous difficulties and hardships.

The basic task of the nation in the years to come is to concentrate its effort on socialist modernization. Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship and follow the socialist road, steadily improve socialist institutions, develop socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernize industry, agriculture, national defence and science and technology step by step to turn China into a socialist country with a high level of culture and democracy. The exploiting classes as such have been eliminated in our country. However, class struggle will continue to exist within certain limits for a long time to come. The Chinese people must fight against those forces and elements, both at home and abroad, that are hostile to China's socialist system and try to undermine it. Taiwan is part of the sacred territory of the People's Republic of China. It is the lofty duty of the entire Chinese people, including our compatriots in Taiwan, to accomplish the great task of reunifying the motherland. In building socialism it is imperative to rely on the workers, peasants and intellectuals and unite with all the forces that can be united. In the long years of revolution and construction, there has been formed under the leadership of the Communist Party of China a broad patriotic united front that is composed of democratic parties and people's organizations and embraces all socialist working people, all

patriots who support socialism and all patriots who stand for reunification of the motherland. This united front will continue to be consolidated and developed. The Chinese People's Political Consultative Conference is a broadly representative organization of the united front, which has played a significant historical role and will continue to do so in the political and social life of the country, in promoting friendship with the people of other countries and in the struggle for socialist modernization and for the reunification and unity of the country. The People's Republic of China is a unitary multi-national state built up jointly by the people of all its nationalities. Socialist relations of equality, unity and mutual assistance have been established among them and will continue to be strengthened. In the struggle to safeguard the unity of the nationalities, it is necessary to combat big-nation chauvinism, mainly Han chauvinism, and also necessary to combat local-national chauvinism. The state does its utmost to promote the common prosperity of all nationalities in the country. China's achievements in revolution and construction are inseparable from support by the people of the world. The future of China is closely linked with that of the whole world. China adheres to an independent foreign policy as well as to the five principles of mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence in developing diplomatic relations and economic and cultural exchanges with other countries; China consistently opposes imperialism, hegemonism and colonialism, works to strengthen unity with the people of other countries, supports the oppressed nations and the developing countries in their just struggle to win and preserve national independence and develop their national economies, and strives to safeguard world peace and promote the cause of human progress. This Constitution affirms the achievements of the struggles of the Chinese people of all nationalities and defines the basic system and basic tasks of the state in legal form; it is the fundamental law of the state and has supreme legal authority. The people of all nationalities, all state organs, the armed forces, all political parties and public organizations and all enterprises and undertakings in the country must take the Constitution as the basic norm of conduct, and they have the duty to uphold the dignity of the Constitution and ensure its implementation.

CHAPTER I. GENERAL PRINCIPLES

Article 1. The People's Republic of China is a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants. The socialist system is the basic system of the People's Republic of China. Sabotage of the socialist system by any organization or individual is prohibited.

Article 2. All power in the People's Republic of China belongs to the people. The organs through which the people exercise state power are the National People's Congress and the local people's

congresses at different levels. The people administer state affairs and manage economic, cultural and social affairs through various channels and in various ways in accordance with the law.

Article 3. The state organs of the People's Republic of China apply the principle of democratic centralism. The National People's Congress and the local people's congresses at different levels are instituted through democratic election. They are responsible to the people and subject to their supervision. All administrative, judicial and procuratorial organs of the state are created by the people's congresses to which they are responsible and under whose supervision they operate. The division of functions and powers between the central and local state organs is guided by the principle of giving full play to the initiative and enthusiasm of the local authorities under the unified leadership of the central authorities.

Article 4. All nationalities in the People's Republic of China are equal. The state protects the lawful rights and interests of the minority nationalities and upholds and develops the relationship of equality, unity and mutual assistance among all of China's nationalities. Discrimination against and oppression of any nationality are prohibited; any acts that undermine the unity of the nationalities or instigate their secession are prohibited. The state helps the areas inhabited by minority nationalities speed up their economic and cultural development in accordance with the peculiarities and needs of the different minority nationalities. Regional autonomy is practiced in areas where people of minority nationalities live in compact communities; in these areas organs of self- government are established for the exercise of the right of autonomy. All the national autonomous areas are inalienable parts of the People's Republic of China. The people of all nationalities have the freedom to use and develop their own spoken and written languages, and to preserve or reform their own ways and customs.

Article 5. The state upholds the uniformity and dignity of the socialist legal system. No law or administrative or local rules and regulations shall contravene the constitution. All state organs, the armed forces, all political parties and public organizations and all enterprises and undertakings must abide by the Constitution and the law. All acts in violation of the Constitution and the law must be investigated. No organization or individual may enjoy the privilege of being above the Constitution and the law.

Article 6. The basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people. The system of socialist public ownership supersedes the system of exploitation of man by man; it applies the principle of 'from each according to his ability, to each according to his work.

Article 7. The state economy is the sector of socialist economy under ownership by the whole people; it is the leading force in the national economy. The state ensures the consolidation and

growth of the state economy.

Article 8. Rural people's communes, agricultural producers' co-operatives, and other forms of co-operative economy such as producers' supply and marketing, credit and consumers co-operatives, belong to the sector of socialist economy under collective ownership by the working people. Working people who are members of rural economic collectives have the right, within the limits prescribed by law, to farm private plots of cropland and hilly land, engage in household sideline production and raise privately owned livestock. The various forms of co-operative economy in the cities and towns, such as those in the handicraft, industrial, building, transport, commercial and service trades, all belong to the sector of socialist economy under collective ownership by the working people. The state protects the lawful rights and interests of the urban and rural economic collectives and encourages, guides and helps the growth of the collective economy.

Article 9. Mineral resources, waters, forests, mountains, grassland, unreclaimed land, beaches and other natural resources are owned by the state, that is, by the whole people, with the exception of the forests, mountains, grassland, unreclaimed land and beaches that are owned by collectives in accordance with the law. The state ensures the rational use of natural resources and protects rare animals and plants. The appropriation or damage of natural resources by any organization or individual by whatever means is prohibited.

Article 10. Land in the cities is owned by the state. Land in the rural and suburban areas is owned by collectives except for those portions which belong to the state in accordance with the law; house sites and private plots of cropland and hilly land are also owned by collectives. The state may in the public interest take over land for its use in accordance with the law. No organization or individual may appropriate, buy, sell or lease land, or unlawfully transfer land in other ways. All organizations and individuals who use land must make rational use of the land.

Article 11. The individual economy of urban and rural working people, operated within the limits prescribed by law, is a complement to the socialist public economy. The state protects the lawful rights and interests of the individual economy. The state guides, helps and supervises the individual economy by exercising administrative control.

Article 12. Socialist public property is sacred and inviolable. The state protects socialist public property. Appropriation or damage of state or collective property by any organization or individual by whatever means is prohibited.

Article 13. The state protects the right of citizens to own lawfully earned income, savings, houses and other lawful property. The state protects by law the right of citizens to inherit private property.

Article 14. The state continuously raises labour productivity, improves economic results and develops the productive forces by enhancing the enthusiasm of the working people, raising the level of their technical skill, disseminating advanced science and technology, improving the systems of economic administration and enterprise operation and management, instituting the socialist system of responsibility in various forms and improving organization of work. The state practices strict economy and combats waste. The state properly apportions accumulation and consumption, pays attention to the interests of the collective and the individual as well as of the state and, on the basis of expanded production, gradually improves the material and cultural life of the people.

Article 15. The state practices economic planning on the basis of socialist public ownership. It ensures the proportionate and coordinated growth of the national economy through overall balancing by economic planning and the supplementary role of regulation by the market. Disturbance of the orderly functioning of the social economy or disruption of the state economic plan by any organization or individual is prohibited.

Article 16. State enterprises have decision-making power in operation and management within the limits prescribed by law, on condition that they submit to unified leadership by the state and fulfill all their obligations under the state plan. State enterprises practice democratic management through congresses of workers and staff and in other ways in accordance with the law.

Article 17. Collective economic organizations have decision-making power in conducting independent economic activities, on condition that they accept the guidance of the state plan and abide by the relevant laws. Collective economic organizations practice democratic management in accordance with the law, with the entire body of their workers electing or removing their managerial personnel and deciding on major issues concerning operation and management.

Article 18. The People's Republic of China permits foreign enterprises, other foreign economic organizations and individual foreigners to invest in China and to enter into various forms of economic co-operation with Chinese enterprises and other economic organizations in accordance with the law of the People's Republic of China. All foreign enterprises and other foreign economic organizations in China, as well as joint ventures with Chinese and foreign investment located in China, shall abide by the law of the People's Republic of China. Their lawful rights and interests are protected by the law of the People's Republic of China.

Article 19. The state develops socialist educational undertakings and works to raise the scientific and cultural level of the whole nation. The state runs schools of various types, makes primary education compulsory and universal, develops secondary, vocational and higher education and promotes pre-school education. The state develops educational facilities of various types in order to wipe out illiteracy and provide political, cultural, scientific, technical and professional

education for workers, peasants, state functionaries and other working people. It encourages people to become educated through self- study. The state encourages the collective economic organizations, state enterprises and undertakings and other social forces to set up educational institutions of various types in accordance with the law. The state promotes the nationwide use of Putonghua (common speech based on Beijing pronunciation).

Article 20. The state promotes the development of the natural and social sciences, disseminates scientific and technical knowledge, and commends and rewards achievements in scientific research as well as technological discoveries and inventions.

Article 21. The state develops medical and health services, promotes modern medicine and traditional Chinese medicine, encourages and supports the setting up of various medical and health facilities by the rural economic collectives, state enterprises and undertakings and neighborhood organizations, and promotes sanitation activities of a mass character, all to protect the people's health. The state develops physical culture and promotes mass sports activities to build up the people's physique.

Article 22. The state promotes the development of literature and art, the press, broadcasting and television undertakings, publishing and distribution services, libraries, museums, cultural centres and other cultural undertakings, that serve the people and socialism, and sponsors mass cultural activities. The state protects places of scenic and historical interest, valuable cultural monuments and relics and other important items of China's historical and cultural heritage.

Article 23. The state trains specialized personnel in all fields who serve socialism, increases the number of intellectuals and creates conditions to give full scope to their role in socialist modernization.

Article 24. The state strengthens the building of socialist spiritual civilization through spreading education in high ideals and morality, general education and education in discipline and the legal system, and through promoting the formulation and observance of rules of conduct and common pledges by different sections of the people in urban and rural areas. The state advocates the civic virtues of love for the motherland, for the people, for labour, for science and for socialism; it educates the people in patriotism, collectivism, internationalism and communism and in dialectical and historical materialism; it combats the decadent ideas of capitalism and feudalism and other decadent ideas.

Article 25. The state promotes family planning so that population growth may fit the plans for economic and social development.

Article 26. The state protects and improves the living environment and the ecological environment, and prevents and controls pollution and other public hazards. The state organizes

and encourages afforestation and the protection of forests.

Article 27. All state organs carry out the principle of simple and efficient administration, the system of responsibility for work and the system of training functionaries and appraising their work in order constantly to improve quality of work and efficiency and combat bureaucratism. All state organs and functionaries must rely on the support of the people, keep in close touch with them, heed their opinions and suggestions, accept their supervision and work hard to serve them.

Article 28. The state maintains public order and suppresses treasonable and other counter-revolutionary activities; it penalizes actions that endanger public security and disrupt the socialist economy and other criminal activities, and punishes and reforms criminals.

Article 29. The armed forces of the People's Republic of China belong to the people. Their tasks are to strengthen national defence, resist aggression, defend the motherland, safeguard the people's peaceful labour, participate in national reconstruction, and work hard to serve the people. The state strengthens the revolutionization, modernization and regularization of the armed forces in order to increase the national defence capability.

Article 30. The administrative division of the People's Republic of China is as follows: (1) The country is divided into provinces, autonomous regions and municipalities directly under the Central Government; (2) Provinces and autonomous regions are divided into autonomous prefectures, counties, autonomous counties and cities; (3) Counties and autonomous counties are divided into townships, nationality townships and towns. Municipalities directly under the Central Government and other large cities are divided into districts and counties. Autonomous prefectures are divided into counties, autonomous counties, and cities. All autonomous regions, autonomous prefectures and autonomous counties are national autonomous areas.

Article 31. The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of the specific conditions.

Article 32. The People's Republic of China protects the lawful rights and interests of foreigners within Chinese territory, and while on Chinese territory foreigners must abide by the law of the People's Republic of China. The People's Republic of China may grant asylum to foreigners who request it for political reasons.

CHAPTER II. THE FUNDAMENTAL RIGHTS AND DUTIES OF CITIZENS

Article 33. All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China. All citizens of the People's Republic of China are equal before the law. Every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law.

Article 34. All citizens of the People's Republic of China who have reached the age of 18 have the right to vote and stand for election, regardless of nationality, race, sex, occupation, family background, religious belief, education, property status, or length of residence, except persons deprived of political rights according to law.

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 36. Citizens of the People's Republic of China enjoy freedom of religious belief. No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion. The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state. Religious bodies and religious affairs are not subject to any foreign domination.

Article 37. The freedom of person of citizens of the People's Republic of China is inviolable. No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organ. Unlawful deprivation or restriction of citizens' freedom of person by detention or other means is prohibited; and unlawful search of the person of citizens is prohibited. Article 38. The personal dignity of citizens of the People's Republic of China is inviolable. Insult, libel, false charge or frame-up directed against citizens by any means is prohibited.

Article 39. The home of citizens of the People's Republic of China is inviolable. Unlawful search of, or intrusion into, a citizen's home is prohibited.

Article 40. The freedom and privacy of correspondence of citizens of the People's Republic of China are protected by law. No organization or individual may, on any ground, infringe upon the freedom and privacy of citizens' correspondence except in cases where, to meet the needs of state security or of investigation into criminal offences, public security or procuratorial organs are permitted to censor correspondence in accordance with procedures prescribed by law.

Article 41. Citizens of the People's Republic of China have the right to criticize and make

suggestions to any state organ or functionary. Citizens have the right to make to relevant state organs complaints and charges against, or exposures of, violation of the law or dereliction of duty by any state organ or functionary; but fabrication or distortion of facts with the intention of libel or frame-up is prohibited. In case of complaints, charges or exposures made by citizens, the state organ concerned must deal with them in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposures, or retaliate against the citizens making them. Citizens who have suffered losses through infringement of their civil rights by any state organ or functionary have the right to compensation in accordance with the law.

Article 42. Citizens of the People's Republic of China have the right as well as the duty to work. Using various channels, the state creates conditions for employment, strengthens labour protection, improves working conditions and, on the basis of expanded production, increases remuneration for work and social benefits. Work is the glorious duty of every able-bodied citizen. All working people in state enterprises and in urban and rural economic collectives should perform their tasks with an attitude consonant with their status as masters of the country. The state promotes socialist labour emulation, and commends and rewards model and advanced workers. The state encourages citizens to take part in voluntary labour. The state provides necessary vocational training to citizens before they are employed.

Article 43. Working people in the People's Republic of China have the right to rest. The state expands facilities for rest and recuperation of working people, and prescribes working hours and vacations for workers and staff.

Article 44. The state prescribes by law the system of retirement for workers and staff in enterprises and undertakings and for functionaries of organs of state. The livelihood of retired personnel is ensured by the state and society.

Article 45. Citizens of the People's Republic of China have the right to material assistance from the state and society when they are old, ill or disabled. The state develops the social insurance, social relief and medical and health services that are required to enable citizens to enjoy this right. The state and society ensure the livelihood of disabled members of the armed forces, provide pensions to the families of martyrs and give preferential treatment to the families of military personnel. The state and society help make arrangements for the work, livelihood and education of the blind, deaf-mute and other handicapped citizens.

Article 46. Citizens of the People's Republic of China have the duty as well as the right to receive education. The state promotes the all-round moral, intellectual and physical development of children and young people.

Article 47. Citizens of the People's Republic of China have the freedom to engage in scientific research, literary and artistic creation and other cultural pursuits. The state encourages and

assists creative endeavours conducive to the interests of the people made by citizens engaged in education, science, technology, literature, art and other cultural work.

Article 48. Women in the People's Republic of China enjoy equal rights with men in all spheres of life, political, economic, cultural and social, and family life. The state protects the rights and interests of women, applies the principle of equal pay for equal work for men and women alike and trains and selects cadres from among women.

Article 49. Marriage, the family, and mother and child are protected by the state. Both husband and wife have the duty to practice family planning. Parents have the duty to rear and educate their minor children, and children who have come of age have the duty to support and assist their parents. Violation of the freedom of marriage is prohibited. Maltreatment of old people, women and children is prohibited.

Article 50. The People's Republic of China protects the legitimate rights and interests of Chinese nationals residing abroad and protects the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad.

Article 51. The exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens.

Article 52. It is the duty of citizens of the People's Republic of China to safeguard the unity of the country and the unity of all its nationalities.

Article 53. Citizens of the People's Republic of China must abide by the constitution and the law, keep state secrets, protect public property and observe labour discipline and public order and respect social ethics.

Article 54. It is the duty of citizens of the People's Republic of China to safeguard the security, honour and interests of the motherland; they must not commit acts detrimental to the security, honour and interests of the motherland.

Article 55. It is the sacred obligation of every citizen of the People's Republic of China to defend the motherland and resist aggression. It is the honourable duty of citizens of the People's Republic of China to perform military service and join the militia in accordance with the law.

Article 56. It is the duty of citizens of the People's Republic of China to pay taxes in accordance with the law.

CHAPTER III. THE STRUCTURE OF THE STATE

SECTION 1. THE NATIONAL PEOPLE'S CONGRESS

Article 57. The National People's Congress of the People's Republic of China is the highest organ of state power. Its permanent body is the Standing Committee of the National People's Congress.

Article 58. The National People's Congress and its Standing Committee exercise the legislative power of the state.

Article 59. The National People's Congress is composed of deputies elected by the provinces, autonomous regions and municipalities directly under the Central Government, and by the armed forces. All the minority nationalities are entitled to appropriate representation. Election of deputies to the National People's Congress is conducted by the Standing Committee of the National People's Congress. The number of deputies to the National People's Congress and the manner of their election are prescribed by law.

Article 60. The National People's Congress is elected for a term of five years. Two months before the expiration of the term of office of a National People's Congress, its Standing Committee must ensure that the election of deputies to the succeeding National People's Congress is completed. Should exceptional circumstances prevent such an election, it may be postponed by decision of a majority vote of more than two-thirds of all those on the Standing Committee of the incumbent National People's Congress, and the term of office of the incumbent National People's Congress may be extended. The election of deputies to the succeeding National People's Congress must be completed within one year after the termination of such exceptional circumstances.

Article 61. The National People's Congress meets in session once a year and is convened by its Standing Committee. A session of the National People's Congress may be convened at any time the Standing Committee deems this necessary, or when more than one-fifth of the deputies to the National People's Congress so propose. When the National People's Congress meets, it elects a presidium to conduct its session.

Article 62. The National People's Congress exercises the following functions and powers:

- (1) To amend the Constitution;
- (2) To supervise the enforcement of the Constitution;

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- (3) To enact and amend basic statutes concerning criminal offences, civil affairs, the state organs and other matters;
 - (4) To elect the President and the Vice-President of the People's Republic of China; (previously translated as Chairman and Vice-Chairman of the People's Republic of China--translator's note.)
 - (5) To decide on the choice of the Premier of the State Council upon nomination by the President of the People's Republic of China, and to decide on the choice of the Vice-Premiers, State Councillors, Ministers in charge of Ministries or Commissions and the Auditor-General and the Secretary-General of the State Council upon nomination by the Premier;
 - (6) To elect the Chairman of the Central Military Commission and, upon his nomination, to decide on the choice of the other members of the Central Military Commission;
 - (7) To elect the President of the Supreme People's Court;
 - (8) To elect the Procurator-General of the Supreme People's Procuratorate;
 - (9) To examine and approve the plan for national economic and social development and the reports on its implementation;
 - (10) To examine and approve the state budget and the report on its implementation;
 - (11) To alter or annul inappropriate decisions of the Standing Committee of the National People's Congress;
 - (12) To approve the establishment of provinces, autonomous regions, and municipalities directly under the Central Government;
 - (13) To decide on the establishment of special administrative regions and the systems to be instituted there;
 - (14) To decide on questions of war and peace; and
 - (15) To exercise such other functions and powers as the highest organ of state power should exercise.

Article 63. The National People's Congress has the power to recall or remove from office the following persons:

- (1) The President and the Vice-President of the People's Republic of China;

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- (2) The Premier, Vice-Premiers, State Councillors, Ministers in charge of Ministries or Commissions and the Auditor-General and the Secretary-General of the State Council;
 - (3) The Chairman of the Central Military Commission and others on the commission;
 - (4) The President of the Supreme People's Court; and
 - (5) The Procurator-General of the Supreme People's Procuratorate.

Article 64. Amendments to the Constitution are to be proposed by the Standing Committee of the National People's Congress or by more than one-fifth of the deputies to the National People's Congress and adopted by a majority vote of more than two-thirds of all the deputies to the Congress. Statutes and resolutions are adopted by a majority vote of more than one half of all the deputies to the National People's Congress.

Article 65. The Standing Committee of the National People's Congress is composed of the following: The Chairman; The Vice-Chairmen; The Secretary-General; and Members. Minority nationalities are entitled to appropriate representation on the Standing Committee of the National People's Congress. The National People's Congress elects, and has the power to recall, all those on its Standing Committee. No one on the Standing Committee of the National People's Congress shall hold any post in any of the administrative, judicial or procuratorial organs of the state.

Article 66. The Standing Committee of the National People's Congress is elected for the same term as the National People's Congress; it exercises its functions and powers until a new Standing Committee is elected by the succeeding National People's Congress. The Chairman and Vice-Chairmen of the Standing Committee shall serve no more than two consecutive terms.

Article 67. The Standing Committee of the National People's Congress exercises the following functions and powers:

- (1) To interpret the Constitution and supervise its enforcement;
- (2) To enact and amend statutes with the exception of those which should be enacted by the National People's Congress;
- (3) To enact, when the National People's Congress is not in session, partial supplements and amendments to statutes enacted by the National People's Congress provided that they do not contravene the basic principles of these statutes;
- (4) To interpret statutes;

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- (5) To examine and approve, when the National People's Congress is not in session, partial adjustments to the plan for national economic and social development and to the state budget that prove necessary in the course of their implementation;
- (6) To supervise the work of the State Council, the Central Military Commission, the Supreme People's Court and the Supreme People's Procuratorate;
- (7) To annul those administrative rules and regulations, decisions or orders of the State Council that contravene the Constitution or the statutes;
- (8) To annul those local regulations or decisions of the organs of state power of provinces, autonomous regions and municipalities directly under the Central Government that contravene the Constitution, the statutes or the administrative rules and regulations;
- (9) To decide, when the National People's Congress is not in session, on the choice of Ministers in charge of Ministries or Commissions or the Auditor-General and the Secretary-General of the State Council upon nomination by the Premier of the State Council;
- (10) To decide, upon nomination by the Chairman of the Central Military Commission, on the choice of others on the commission, when the National People's Congress is not in session;
- (11) To appoint and remove the Vice-Presidents and judges of the Supreme People's Court, members of its Judicial Committee and the President of the Military Court at the suggestion of the President of the Supreme People's Court;
- (12) To appoint and remove the Deputy Procurators-General and procurators of the Supreme People's Procuratorate, members of its Procuratorial Committee and the Chief Procurator of the Military Procuratorate at the request of the Procurator-General of the Supreme People's Procuratorate, and to approve the appointment and removal of the chief procurators of the people's procuratorates of provinces, autonomous regions and municipalities directly under the Central Government;
- (13) To decide on the appointment and recall of plenipotentiary representatives abroad;
- (14) To decide on the ratification and abrogation of treaties and important agreements concluded with foreign states;
- (15) To institute systems of titles and ranks for military and diplomatic personnel and of other specific titles and ranks;
- (16) To institute state medals and titles of honour and decide on their conferment;

(17) To decide on the granting of special pardons;

(18) To decide, when the National People's Congress is not in session, on the proclamation of a state of war in the event of an armed attack on the country or in fulfillment of international treaty obligations concerning common defence against aggression;

(19) To decide on general mobilization or partial mobilization;

(20) To decide on the enforcement of martial law throughout the country or in particular provinces, autonomous regions or municipalities directly under the Central Government; and

(21) To exercise such other functions and powers as the National People's Congress may assign to it.

Article 68. The Chairman of the Standing Committee of the National People's Congress presides over the work of the Standing Committee and convenes its meetings. The Vice-Chairmen and the Secretary-General assist the Chairman in his work. Chairmanship meetings with the participation of the chairman, vice-chairmen and secretary-general handle the important day-to-day work of the Standing Committee of the National People's Congress.

Article 69. The Standing Committee of the National People's Congress is responsible to the National People's Congress and reports on its work to the Congress.

Article 70. The National People's Congress establishes a Nationalities Committee, a Law Committee, a Finance and Economic Committee, an Education, Science, Culture and Public Health Committee, a Foreign Affairs Committee, an Overseas Chinese Committee and such other special committees as are necessary. These special committees work under the direction of the Standing Committee of the National People's Congress when the Congress is not in session. The special committees examine, discuss and draw up relevant bills and draft resolutions under the direction of the National People's Congress and its Standing Committee.

Article 71. The National People's Congress and its Standing Committee may, when they deem it necessary, appoint committees of inquiry into specific questions and adopt relevant resolutions in the light of their reports. All organs of state, public organizations and citizens concerned are obliged to supply the necessary information to those committees of inquiry when they conduct investigations.

Article 72. Deputies to the National People's Congress and all those on its Standing Committee have the right, in accordance with procedures prescribed by law, to submit bills and proposals within the scope of the respective functions and powers of the National People's Congress and its Standing Committee.

Article 73. Deputies to the National People's Congress during its sessions, and all those on its Standing Committee during its meetings, have the right to address questions, in accordance with procedures prescribed by law, to the State Council or the ministries and commissions under the State Council, which must answer the questions in a responsible manner.

Article 74. No deputy to the National People's Congress may be arrested or placed on criminal trial without the consent of the Presidium of the current session of the National People's Congress or, when the National People's Congress is not in session, without the consent of its Standing Committee.

Article 75. Deputies to the National People's Congress may not be called to legal account for their speeches or votes at its meetings.

Article 76. Deputies to the National People's Congress must play an exemplary role in abiding by the Constitution and the law and keeping state secrets and, in production and other work and their public activities, assist in the enforcement of the Constitution and the law. Deputies to the National People's Congress should maintain close contact with the units and people which elected them, listen to and convey their opinions and demands and work hard to serve them.

Article 77. Deputies to the National People's Congress are subject to the supervision of the units which elected them. The electoral units have the power, through procedures prescribed by law, to recall the deputies whom they elected.

Article 78. The organization and working procedures of the National People's Congress and its Standing Committee are prescribed by law.

SECTION 2. THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF CHINA

Article 79: The President and Vice-President of the People's Republic of China are elected by the National People's Congress. Citizens of the People's Republic of China who have the right to vote and to stand for election and who have reached the age of 45 are eligible for election as President or Vice-President of the People's Republic of China. The term of office of the President and Vice-President of the People's Republic of China is the same as that of the National People's Congress, and they shall serve no more than two consecutive terms.

Article 80. The President of the People's Republic of China, in pursuance of decisions of the National People's Congress and its Standing Committee, promulgates statutes; appoints and removes the Premier, Vice-Premiers, State Councillors, Ministers in charge of Ministries or Commissions, and the Auditor-General and the Secretary-General of the State Council; confers state medals and titles of honour; issues orders of special pardons; proclaims martial law;

proclaims a state of war; and issues mobilization orders.

Article 81. The President of the People's Republic of China receives foreign diplomatic representatives on behalf of the People's Republic of China and, in pursuance of decisions of the Standing Committee of the National People's Congress, appoints and recalls plenipotentiary representatives abroad, and ratifies and abrogates treaties and important agreements concluded with foreign states.

Article 82. The Vice-President of the People's Republic of China assists the President in his work. The Vice-President of the People's Republic of China may exercise such parts of the functions and powers of the President as the President may entrust to him.

Article 83. The President and Vice-President of the People's Republic of China exercise their functions and powers until the new President and Vice-President elected by the succeeding National People's Congress assume office.

Article 84. In case the office of the President of the People's Republic of China falls vacant, the Vice-President succeeds to the office of President. In case the office of the Vice-President of the People's Republic of China falls vacant, the National People's Congress shall elect a new Vice-President to fill the vacancy. In the event that the offices of both the President and the Vice-President of the People's Republic of China fall vacant, the National People's Congress shall elect a new President and a new Vice-President. Prior to such election, the Chairman of the Standing Committee of the National People's Congress shall temporarily act as the President of the People's Republic of China.

SECTION 3. THE STATE COUNCIL

Article 85. The State Council, that is, the Central People's Government of the People's Republic of China, is the executive body of the highest organ of state power; it is the highest organ of state administration.

Article 86. The State Council is composed of the following: The Premier; The Vice-Premiers; The State Councillors; The Ministers in charge of Ministries; The Ministers in charge of Commissions; The Auditor-General; and The Secretary-General. The Premier has overall responsibility for the State Council. The Ministers have overall responsibility for the respective ministries or commissions under their charge. The organization of the State Council is prescribed by law.

Article 87. The term of office of the State Council is the same as that of the National People's Congress. The Premier, Vice-Premiers and State Councillors shall serve no more than two

consecutive terms.

Article 88. The Premier directs the work of the State Council. The Vice- Premiers and State Councillors assist the Premier in his work. Executive meetings of the State Council are composed of the Premier, the Vice-Premiers, the State Councillors and the Secretary-General of the State Council. The Premier convenes and presides over the executive meetings and plenary meetings of the State Council.

Article 89. The State Council exercises the following functions and powers: (1) To adopt administrative measures, enact administrative rules and regulations and issue decisions and orders in accordance with the Constitution and the statutes; (2) To submit proposals to the National People's Congress or its Standing Committee; (3) To lay down the tasks and responsibilities of the ministries and commissions of the State Council, to exercise unified leadership over the work of the ministries and commissions and to direct all other administrative work of a national character that does not fall within the jurisdiction of the ministries and commissions; (4) To exercise unified leadership over the work of local organs of state administration at different levels throughout the country, and to lay down the detailed division of functions and powers between the Central Government and the organs of state administration of provinces, autonomous regions and municipalities directly under the Central Government; (5) To draw up and implement the plan for national economic and social development and the state budget; (6) To direct and administer economic work and urban and rural development; (7) To direct and administer the work concerning education, science, culture, public health, physical culture and family planning; (8) To direct and administer the work concerning civil affairs, public security, judicial administration, supervision and other related matters; (9) To conduct foreign affairs and conclude treaties and agreements with foreign states; (10) To direct and administer the building of national defence; (11) To direct and administer affairs concerning the nationalities and to safeguard the equal rights of minority nationalities and the right of autonomy of the national autonomous areas; (12) To protect the legitimate rights and interests of Chinese nationals residing abroad and protect the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad; (13) To alter or annul inappropriate orders, directives and regulations issued by the ministries or commissions; (14) To alter or annul inappropriate decisions and orders issued by local organs of state administration at different levels; (15) To approve the geographic division of provinces, autonomous regions and municipalities directly under the Central Government, and to approve the establishment and geographic division of autonomous prefectures, counties, autonomous counties and cities; (16) To decide on the enforcement of martial law in parts of provinces, autonomous regions and municipalities directly under the Central Government; (17) To examine and decide on the size of administrative organs and, in accordance with the law, to appoint, remove and train administrative officers, appraise their work and reward or punish them; and (18) To exercise such other functions and powers as the National People's Congress or its Standing Committee

may assign it.

Article 90. The ministers in charge of ministries or commissions of the State Council are responsible for the work of their respective departments and convene and preside over their ministerial meetings or commission meetings that discuss and decide on major issues in the work of their respective departments. The ministries and commissions issue orders, directives and regulations within the jurisdiction of their respective departments and in accordance with the statutes and the administrative rules and regulations, decisions and orders issued by the State Council.

Article 91. The State Council establishes an auditing body to supervise through auditing the revenue and expenditure of all departments under the State Council and of the local governments at different levels, and those of the state financial and monetary organizations and of enterprises and undertakings. Under the direction of the Premier of the State Council, the auditing body independently exercises its power to supervise through auditing in accordance with the law, subject to no interference by any other administrative organ or any public organization or individual.

Article 92. The State Council is responsible, and reports on its work, to the National People's Congress or, when the National People's Congress is not in session, to its Standing Committee.

SECTION 4. THE CENTRAL MILITARY COMMISSION

Article 93. The Central Military Commission of the People's Republic of China directs the armed forces of the country. The Central Military Commission is composed of the following: The Chairman; The Vice-Chairmen; and Members. The Chairman of the Central Military Commission has overall responsibility for the commission. The term of office of the Central Military Commission is the same as that of the National People's Congress.

Article 94. The Chairman of the Central Military Commission is responsible to the National People's Congress and its Standing Committee.

SECTION 5. THE LOCAL PEOPLE'S CONGRESS AND THE LOCAL PEOPLE'S GOVERNMENTS AT DIFFERENT LEVELS

Article 95. People's congresses and people's governments are established in provinces, municipalities directly under the Central Government, counties, cities, municipal districts, townships, nationality townships and towns. The organization of local people's congresses and local people's governments at different levels is prescribed by law. Organs of self-government

are established in autonomous regions, autonomous prefectures and autonomous counties. The organization and working procedures of organs of self-government are prescribed by law in accordance with the basic principles laid down in Sections V and VI of Chapter Three of the Constitution.

Article 96. Local people's congresses at different levels are local organs of state power. Local people's congresses at and above the county level establish standing committees.

Article 97. Deputies to the people's congresses of provinces, municipalities directly under the Central Government, and cities divided into districts are elected by the people's congresses at the next lower level; deputies to the people's congresses of counties, cities not divided into districts, municipal districts, townships, nationality townships and towns are elected directly by their constituencies. The number of deputies to local people's congresses at different levels and the manner of their election are prescribed by law.

Article 98. The term of office of the people's congresses of provinces, municipalities directly under the Central Government and cities divided into districts is five years. The term of office of the people's congresses of counties, cities not divided into districts, municipal districts, townships, nationality townships and towns is three years.

Article 99. Local people's congresses at different levels ensure the observance and implementation of the Constitution, the statutes and the administrative rules and regulations in their respective administrative areas. Within the limits of their authority as prescribed by law, they adopt and issue resolutions and examine and decide on plans for local economic and cultural development and for development of public services. Local people's congresses at and above the county level examine and approve the plans for economic and social development and the budgets of their respective administrative areas, and examine and approve reports on their implementation. They have the power to alter or annul inappropriate decisions of their own standing committees. The people's congresses of nationality townships may, within the limits of their authority as prescribed by law, take specific measures suited to the peculiarities of the nationalities concerned.

Article 100. The people's congresses of provinces and municipalities directly under the Central Government, and their standing committees, may adopt local regulations, which must not contravene the Constitution, the statutes and the administrative rules and regulations, and they shall report such local regulations to the Standing Committee of the National People's Congress for the record.

Article 101. At their respective levels, local people's congresses elect, and have the power to recall, governors and deputy governors, or mayors and deputy mayors, or heads and deputy heads of counties, districts, townships and towns. Local people's congresses at and above the

county level elect, and have the power to recall, presidents of people's courts and chief procurators of people's procuratorates at the corresponding level. The election or recall of chief procurators of people's procuratorates shall be reported to the chief procurators of the people's procuratorates at the next higher level for submission to the standing committees of the people's congresses at the corresponding level for approval.

Article 102. Deputies to the people's congresses of provinces, municipalities, directly under the Central Government and cities divided into districts are subject to supervision by the units which elected them; deputies to the people's congresses of counties, cities not divided into districts, municipal districts, townships, nationality townships and towns are subject to supervision by their constituencies. The electoral units and constituencies which elect deputies to local people's congresses at different levels have the power, according to procedures prescribed by law, to recall deputies whom they elected.

Article 103. The standing committee of a local people's congress at and above the county level is composed of a chairman, vice-chairmen and members, and is responsible, and reports on its work, to the people's congress at the corresponding level. The local people's congress at and above the county level elects, and has the power to recall, anyone on the standing committee of the people's congress at the corresponding level. No one on the standing committee of a local people's congress at and above the county level shall hold any post in state administrative, judicial and procuratorial organs.

Article 104. The standing committee of a local people's congress at and above the county level discusses and decides on major issues in all fields of work in its administrative area; supervises the work of the people's government, people's court and people's procuratorate at the corresponding level; annuls inappropriate decisions and orders of the people's government at the corresponding level; annuls inappropriate resolutions of the people's congress at the next lower level; decides on the appointment and removal of functionaries of state organs within its jurisdiction as prescribed by law; and, when the people's congress at the corresponding level is not in session, recalls individual deputies to the people's congress at the next higher level and elects individual deputies to fill vacancies in that people's congress.

Article 105. Local people's governments at different levels are the executive bodies of local organs of state power as well as the local organs of state administration at the corresponding level. Local people's governments at different levels practice the system of overall responsibility by governors, mayors, county heads, district heads, township heads and town heads.

Article 106. The term of office of local people's governments at different levels is the same as that of the people's congresses at the corresponding level.

Article 107. Local people's governments at and above the county level, within the limits of their

authority as prescribed by law, conduct the administrative work concerning the economy, education, science, culture, public health, physical culture, urban and rural development, finance, civil affairs, public security, nationalities affairs, judicial administration, supervision and family planning in their respective administrative areas; issue decisions and orders; appoint, remove and train administrative functionaries, appraise their work and reward or punish them. People's governments of townships, nationality townships and towns carry out the resolutions of the people's congress at the corresponding level as well as the decisions and orders of the state administrative organs at the next higher level and conduct administrative work in their respective administrative areas. People's governments of provinces and municipalities directly under the Central Government decide on the establishment and geographic division of townships, nationality townships and towns.

Article 108. Local people's governments at and above the county level direct the work of their subordinate departments and of people's governments at lower levels, and have the power to alter or annul inappropriate decisions of their subordinate departments and people's governments at lower levels.

Article 109. Auditing bodies are established by local people's governments at and above the county level. Local auditing bodies at different levels independently exercise their power to supervise through auditing in accordance with the law and are responsible to the people's government at the corresponding level and to the auditing body at the next higher level.

Article 110. Local people's governments at different levels are responsible, and report on their work, to people's congresses at the corresponding level. Local people's governments at and above the county level are responsible, and report on their work, to the standing committee of the people's congress at the corresponding level when the congress is not in session. Local people's governments at different levels are responsible, and report on their work, to the state administrative organs at the next higher level. Local people's governments at different levels throughout the country are state administrative organs under the unified leadership of the State Council and are subordinate to it.

Article 111. The residents' committees and villagers' committees established among urban and rural residents on the basis of their place of residence are mass organizations of self-management at the grass-roots level. The chairman, vice-chairmen and members of each residents' or villagers' committee are elected by the residents. The relationship between the residents' and villagers' committees and the grass-roots organs of state power is prescribed by law. The residents' and villagers' committees establish committees for people's mediation, public security, public health and other matters in order to manage public affairs and social services in their areas, mediate civil disputes, help maintain public order and convey residents' opinions and demands and make suggestions to the people's government.

SECTION 6. THE ORGANS OF SELF-GOVERNMENT OF NATIONAL AUTONOMOUS AREAS

Article 112. The organs of self-government of national autonomous areas are the people's congresses and people's governments of autonomous regions, autonomous prefectures and autonomous counties.

Article 113. In the people's congress of an autonomous region, prefecture or county, in addition to the deputies of the nationality or nationalities exercising regional autonomy in the administrative area, the other nationalities inhabiting the area are also entitled to appropriate representation. The chairmanship and vice-chairmanships of the standing committee of the people's congress of an autonomous region, prefecture or county shall include a citizen or citizens of the nationality or nationalities exercising regional autonomy in the area concerned.

Article 114. The administrative head of an autonomous region, prefecture or county shall be a citizen of the nationality, or of one of the nationalities, exercising regional autonomy in the area concerned.

Article 115. The organs of self-government of autonomous regions, prefectures and counties exercise the functions and powers of local organs of state as specified in Section V of Chapter Three of the Constitution. At the same time, they exercise the right of autonomy within the limits of their authority as prescribed by the Constitution, the law of regional national autonomy and other laws, and implement the laws and policies of the state in the light of the existing local situation.

Article 116. People's congresses of national autonomous areas have the power to enact autonomy regulations and specific regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities in the areas concerned. The autonomy regulations and specific regulations of autonomous regions shall be submitted to the Standing Committee of the National People's Congress for approval before they go into effect. Those of autonomous prefectures and counties shall be submitted to the standing committees of the people's congresses of provinces or autonomous regions for approval before they go into effect, and they shall be reported to the Standing Committee of the National People's Congress for the record.

Article 117. The organs of self-government of the national autonomous areas have the power of autonomy in administering the finances of their areas. All revenues accruing to the national autonomous areas under the financial system of the state shall be managed and used independently by the organs of self-government of those areas.

Article 118. The organs of self-government of the national autonomous areas independently arrange for and administer local economic development under the guidance of state plans. In developing natural resources and building enterprises in the national autonomous areas, the state shall give due consideration to the interests of those areas.

Article 119. The organs of self-government of the national autonomous areas independently administer educational, scientific, cultural, public health and physical culture affairs in their respective areas, sort out and protect the cultural legacy of the nationalities and work for the development and prosperity of their cultures.

Article 120. The organs of self-government of the national autonomous areas may, in accordance with the military system of the state and concrete local needs and with the approval of the State Council, organize local public security forces for the maintenance of public order.

Article 121. In performing their functions, the organs of self-government of the national autonomous areas, in accordance with the autonomy regulations of the respective areas, employ the spoken and written language or languages in common use in the locality.

Article 122. The state gives financial, material and technical assistance to the minority nationalities to accelerate their economic and cultural development. The state helps the national autonomous areas train large numbers of cadres at different levels and specialized personnel and skilled workers of different professions and trades from among the nationality or nationalities in those areas.

SECTION 7. THE PEOPLE'S COURT AND THE PEOPLE'S PROCURATORATES

Article 123. The people's courts in the People's Republic of China are the judicial organs of the state.

Article 124. The People's Republic of China establishes the Supreme People's Court and the local people's courts at different levels, military courts and other special people's courts. The term of office of the President of the Supreme People's Court is the same as that of the National People's Congress; he shall serve no more than two consecutive terms. The organization of people's courts is prescribed by law.

Article 125. All cases handled by the people's courts, except for those involving special circumstances as specified by law, shall be heard in public. The accused has the right of defence.

Article 126. The people's courts shall, in accordance with the law, exercise judicial power independently and are not subject to interference by administrative organs, public organizations

or individuals.

Article 127. The Supreme People's Court is the highest judicial organ. The Supreme People's Court supervises the administration of justice by the local people's courts at different levels and by the special people's courts; people's courts at higher levels supervise the administration of justice by those at lower levels.

Article 128. The Supreme People's Court is responsible to the National People's Congress and its Standing Committee. Local people's courts at different levels are responsible to the organs of state power which created them.

Article 129. The people's procuratorates of the People's Republic of China are state organs for legal supervision.

Article 130. The People's Republic of China establishes the Supreme People's Procuratorate and the local people's procuratorates at different levels, military procuratorates and other special people's procuratorates. The term of office of the Procurator-General of the Supreme People's Procuratorate is the same as that of the National People's Congress; he shall serve no more than two consecutive terms. The organization of people's procuratorates is prescribed by law.

Article 131. People's procuratorates shall, in accordance with the law, exercise procuratorial power independently and are not subject to interference by administrative organs, public organizations or individuals.

Article 132. The Supreme People's Procuratorate is the highest procuratorial organ. The Supreme People's Procuratorate directs the work of the local people's procuratorates at different levels and of the special people's procuratorates; people's procuratorates at higher levels direct the work of those at lower levels.

Article 133. The Supreme People's Procuratorate is responsible to the National People's Congress and its Standing Committee. Local people's procuratorates at different levels are responsible to the organs of state power at the corresponding levels which created them and to the people's procuratorates at the higher level. Article 134. Citizens of all nationalities have the right to use the spoken and written languages of their own nationalities in court proceedings. The people's courts and people's procuratorates should provide translation for any party to the court proceedings who is not familiar with the spoken or written languages in common use in the locality. In an area where people of a minority nationality live in a compact community or where a number of nationalities live together, hearings should be conducted in the language or languages in common use in the locality; indictments, judgments, notices and other documents should be written, according to actual needs, in the language or languages in common use in the locality.

Article 135. The people's courts, people's procuratorates and public security organs shall, in handling criminal cases, divide their functions, each taking responsibility for its own work, and they shall co- ordinate their efforts and check each other to ensure correct and effective enforcement of law.

CHAPTER IV. THE NATIONAL FLAG, THE NATIONAL EMBLEM AND THE CAPITAL

Article 136. The national flag of the People's Republic of China is a red flag with five stars.

Article 137. The national emblem of the People's Republic of China is Tian'anmen in the centre illuminated by five stars and encircled by ears of grain and a cogwheel.

Article 138. The capital of the People's Republic of China is Beijing.

AMENDMENTS TO THE CONSTITUTION

AMENDMENT ONE

(Approved on April 12, 1988, by the 7th NPC at its 1st Session)

1. Article 11 of the Constitution shall include a new paragraph which reads: "The State permits the private sector of the economy to exist and develop within the limits prescribed by law. The private sector of the economy is a complement to the socialist public economy. The State protects the lawful rights and interests of the private sector of the economy, and exercises guidance, supervision and control over the private sector of the economy."

2. The fourth paragraph of Article 10 of the Constitution, which provides that "no organization or individual may appropriate, buy, sell or lease land or otherwise engage in the transfer of land by unlawful means," shall be amended as: "no organization or individual may appropriate, buy, sell or otherwise engage in the transfer of land by unlawful means. The right to the use of land may be transferred according to law."

AMENDMENT TWO

(Approved on March 29, 1993, by the 8th NPC at its 1st Session)

3. The last two sentences of the seventh paragraph of the Preamble which reads "The basic task of the nation in the years to come is to concentrate its effort on socialist modernization. Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship and follow the socialist road, steadily improve socialist

institutions, develop socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernize industry, agriculture, national defense and science and technology step by step to turn China into a socialist country with a high level of culture and democracy," shall be amended as: "China is at the primary stage of socialism. The basic task of the nation is, according to the theory of building socialism with Chinese characteristics, to concentrate its effort on socialist modernization. Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship and follow the socialist road, persevere in reform and opening to the outside, steadily improve socialist institutions, develop socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernize industry, agriculture, national defense and science and technology step by step to turn China into a socialist country with prosperity and power, democracy and culture."

4. At the end of the tenth paragraph of the Preamble, add "The system of multi-party cooperation and political consultation led by the Communist Party of China will exist and develop in China for a long time to come."

5. Article 7 which reads "The State economy is the sector of socialist economy under ownership by the whole people; it is the leading force in the national economy. The State ensures the consolidation and growth of the State economy," shall be changed to: "The State-owned economy, that is, the socialist economy under ownership by the whole people, is the leading force in the national economy. The State ensures the consolidation and growth of the State-owned economy."

6. The first item of Article 8 which reads "Rural people's communes, agricultural producers' cooperatives, and other forms of cooperative economy such as producers', supply and marketing, credit and consumers' cooperatives, belong to the sector of socialist economy under collective ownership by the working people. Working people who are members of rural economic collectives have the right, within the limits prescribed by law, to farm plots of cropland and hilly land allotted for private use, engage in household sideline production and raise privately-owned livestock," shall be amended as: "Rural household-based contract responsibility system with remuneration linked to output, and other forms of cooperative economy such as producers', supply and marketing, credit and consumers' cooperatives, belong to the sector of socialist economy under collective ownership by the working people. Working people who are members of rural economic collectives have the right, within the limits prescribed by law, to farm plots of cropland and hilly land allotted for private use, engage in household sideline production and raise privately-owned livestock."

7. Article 15 which reads "The State practices economic planning on the basis of socialist public ownership. It ensures the proportionate and coordinated growth of the national economy through

overall balancing by economic planning and the supplementary role of regulation by the market.

Disturbance of the orderly functioning of the social economy or disruption of the State economic plan by any organization or individual is prohibited," shall be changed to: "The state has put into practice a socialist market economy. The State strengthens formulating economic laws, improves macro adjustment and control and forbids according to law any units or individuals from interfering with the social economic order."

8. Article 16 which reads "State enterprises have decision-making power in operation and management within the limits prescribed by law, on condition that they submit to unified leadership by the State and fulfill and their obligations under the State plan.

State enterprises practice democratic management through congresses of workers and staff and in other ways in accordance with the law," shall be revised as: "Stated-owned enterprises have decision-making power in operation and management within the limits prescribed by law. State-owned enterprises practice democratic management through congresses of workers and staff and in other ways in accordance with the law."

9. Article 17 which reads "Collective economic organizations have decision-making power in conducting independent economic activities, on condition that they accept the guidance of the State plan and abide by the relevant laws.

Collective economic organizations practice democratic management in accordance with the law, with the entire body of their workers electing or removing their managerial personnel and deciding on major issues concerning operation and management", shall be amended as: "Collective economic organizations have decision-making power in conducting independent economic activities, on condition that they abide by the relevant laws. Collective economic organizations practice democratic management, elect or remove their managerial personnel and decide on major issue concerning operation and management according to law."

10. The their item of Article 42 which reads "Work is the glorious duty of every able-bodied citizen. All working people in State enterprises and in urban and rural economic collectives should perform their tasks with an attitude consonant with their status as masters of the country. The State promotes socialist labor emulation, and commends and rewards model and advanced workers. The state encourages citizens to take part in voluntary labor," shall be amended as: "Work is the glorious duty of every able-bodied citizen. All working people in State-owned enterprises and in urban and rural economic collectives should perform their tasks with an attitude consonant with their status as masters of the country. The State promotes socialist labor emulation, and commends and rewards model and advanced workers. The State encourages citizens to take part in voluntary labor."

11. Article 98 which reads "The term of office of the people's congresses of provinces, municipalities directly under the Central Government and cities divided into districts is five years. The term of office of the people's congresses of countries, cities not divided into districts, municipal districts, townships, nationality townships and towns is three years," shall be revised as: "The term of office of the people's congresses of provinces, municipalities directly under the Central Government, counties, cities and municipal districts is five years. The term of office of the people's congresses of townships, nationality townships and towns is three years."

AMENDMENT THREE

(Approved on March 15, 1999, by the 9th NPC at its 2nd Session)

The original text of paragraph seven in the Preamble of the Constitution is: "Both the victory of China's new-democratic revolution and the successes of its socialist cause have been achieved by the Chinese people of all nationalities under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, and by upholding truth, correcting errors and overcoming numerous difficulties and hardships. China is currently in the primary stage of socialism. The basic task of the nation is to concentrate its effort on socialist modernization in accordance with the theory of building socialism with Chinese characteristics. Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship, follow the socialist road, persist in reform and opening-up, steadily improve socialist institutions, develop socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernize industry, agriculture, national defense and science and technology step by step to turn China into a powerful and prosperous socialist country with a high level of culture and democracy."

It is revised into: "Both the victory of China's new-democratic revolution and the successes of its socialist cause have been achieved by the Chinese people of all nationalities under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, and by upholding truth, correcting errors and overcoming numerous difficulties and hardships. China will stay in the primary stage of socialism for a long period of time. The basic task of the nation is to concentrate its efforts on socialist modernization by following the road of building socialism with Chinese characteristics. Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism, Mao Zedong Thought and Deng Xiaoping Theory, the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship, follow the socialist road, persist in reform and opening-up, steadily improve socialist institutions, develop a socialist market economy, advance socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernize industry, agriculture, national defense and science and technology step by step to turn China into a powerful and prosperous socialist country with a high level of culture and democracy."

One section is added to Article Five of the Constitution as the first section: "The People's Republic of China practices ruling the country in accordance with the law and building a socialist country of law."

The original text of Article Six of the Constitution is: "The basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people." "The system of socialist public ownership supersedes the system of exploitation of man by man; it applies the principle of 'from each according to his ability, to each according to his work'."

It is revised into: "The basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people. The system of socialist public ownership supersedes the system of exploitation of man by man; it applies the principle of 'from each according to his ability, to each according to his work'." "During the primary stage of socialism, the State adheres to the basic economic system with the public ownership remaining dominant and diverse sectors of the economy developing side by side, and to the distribution system with the distribution according to work remaining dominant and the coexistence of a variety of modes of distribution."

The original text of the first section in Article Eight of the Constitution is: "The rural household-based output-related contracted responsibility system and other forms of the cooperative economy such as producers', supply and marketing, credit and consumers' cooperatives belong to the sector of the socialist economy under collective ownership by the working people. Working people who are members of rural economic collectives have the right, within the limits prescribed by law, to farm plots of cropland and hilly land allotted for private use, engage in household sideline production and raise privately owned livestock."

It is revised into: "Rural collective economic organizations practice the double-tier management system that combines unified and separate operations on the basis of the household-based output-related contracted responsibility system. Various forms of the cooperative economy in rural areas such as producers', supply and marketing, credit and consumers' cooperatives belong to the sector of the socialist economy under collective ownership by the working people."

Working people who are members of rural economic collectives have the right, within the limits prescribed by law, to farm plots of cropland and hilly land allotted for private use, engage in household sideline production and raise privately owned livestock."

The original text of Article 11 of the Constitution is: "The individual economy of urban and rural working people, operating within the limits prescribed by law, is a complement to the

socialist public economy. The State protects the lawful rights and interests of the individual economy." "The State guides, helps and supervises the individual economy by exercising administrative control." "The State permits the private economy to exist and develop within the limits prescribed by law. The private economy is a complement to the socialist public economy. The State protects the lawful rights and interests of the private economy, and guides, supervises and administers the private economy."

It is revised into: "Individual, private and other non-public economies that exist within the limits prescribed by law are major components of the socialist market economy." "The State protects the lawful rights and interests of individual and private economies, and guides, supervises and administers individual and private economies."

The original text of Article 28 of the Constitution is: "The State maintains public order and suppresses treasonable and other counter-revolutionary activities; it penalizes actions that endanger public security and disrupt the socialist economy and other criminal activities, and punishes and reforms criminals."

It is revised into: "The State maintains public order and suppresses treasonable and other criminal activities that endanger State security; it penalizes actions that endanger public security and disrupt the socialist economy and other criminal activities, and punishes and reforms criminals." (Update in 1999)

II. ORGANIC LAW OF THE VILLAGERS COMMITTEES OF THE PEOPLE'S REPUBLIC OF CHINA

ORDER OF THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF CHINA
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The Organic Law of the Villagers Committees of the People's Republic of China, revised and adopted by the Standing Committee of the Ninth National People's Congress of the People's Republic of China at its 5th Meeting held on November 4, 1998, is hereby promulgated and shall go into effect as of the date of promulgation.

Jiang Zemin President of the People's Republic of China November 4, 1998

ORGANIC LAW OF THE VILLAGERS COMMITTEES OF THE PEOPLE'S REPUBLIC OF CHINA

(Adopted at the 5th Meeting of the Standing Committee of the Ninth National People's Congress on November 4, 1998)

Article 1 This Law is enacted in accordance with the Constitution with a view to ensuring self-government by the villagers in the countryside, who will administer their own affairs according to law, developing democracy at the grassroots level in the countryside, and promoting the building of a socialist countryside which is materially and ethically advanced.

Article 2 The villagers committee is the primary mass organization of self-government, in which the villagers manage their own affairs, educate themselves and serve their own needs and in which election is conducted, decision adopted, administration maintained and supervision exercised by democratic means.

The villagers committee shall manage the public affairs and public welfare undertakings of the village, mediate disputes among the villagers, help maintain public order, and convey the villagers' opinions and demands and make suggestions to the people's government.

Article 3 The primary organization of the Communist Party of China in the countryside shall carry out its work in accordance with the Constitution of the Communist Party of China, playing its role as a leading nucleus; and, in accordance with the Constitution and laws, support the villagers and ensure that they carry out self-government activities and exercise their democratic rights directly.

Article 4 The people's government of a township, a nationality township or a town shall guide, support and help the villagers committees in their work, but may not interfere with the affairs that lawfully fall within the scope of the villagers self-government.

The villagers committees, on their part, shall assist the said people's government in its work.

Article 5 The villagers committee shall support the villagers and assist them in their efforts to set up various forms of co-operative and other economic undertakings in accordance with law, provide services and coordination for production in the village, and promote the development of rural production and construction and the socialist market economy.

The villagers committee shall respect the decision-making power of the collective economic organizations in conducting their economic activities independently according to law, safeguard the dual operation system characterized by the combination of centralized operation with decentralized operation on the basis of operation by households under a contract, and ensure the lawful property right and other lawful rights and interests of the collective economic

organizations, villagers, households operating under a contract, associated households, and partnerships.

The villagers committee shall, in accordance with the provisions of laws, administer the affairs concerning the land and other property owned collectively by the peasants of the village and disseminate knowledge among the villagers about rational utilization of the natural resources and protection and improvement of the ecological environment.

Article 6 The villagers committee shall publicize the Constitution, laws, regulations and State policies among the villagers; help them understand the importance of performing their obligation as proscribed by law and cherishing public property and encourage them to do so; safeguard the villagers' lawful rights and interests; develop culture and education, and disseminate scientific and technological knowledge among the villagers; promote unity and mutual assistance between villages; and carry out various forms of activities for the building of advanced socialist ethics.

Article 7 In a village where people from more than one ethnic group live, the villagers committee shall help the villagers understand the importance of enhancing unity, mutual respect and mutual assistance among the ethnic groups and give them guidance in this respect.

Article 8 The villagers committee shall be established on the basis of the residential areas of the villagers and the size of the population and on the principle of facilitating self-government by the masses.

The establishment or dissolution of a villagers committee or a readjustment in the area governed by it shall be proposed by the people's government of a township, a nationality township or a town and submitted to a people's government at the county level for approval after it is discussed and agreed to by a villagers assembly.

Article 9 A villagers committee shall be composed of three to seven members, including the chairman, the vice-chairman (vice-chairmen) and the members.

The members of a villagers committee shall include an appropriate number of women. In a village where people from more than one ethnic group live, they shall include a member or members from the ethnic group or groups with a smaller population.

Members of a villagers committee shall not be divorced from production but may be provided with appropriate subsidies, where necessary.

Article 10 A villagers committee may, on the basis of the residential areas of the villagers, establish a number of villagers groups, the leaders of which shall be elected at the meetings of

the groups.

Article 11 The chairman, vice-chairman (vice-chairmen) and members of a villagers committee shall be elected directly by the villagers. No organization or individual may designate, appoint or replace any member of a villagers committee.

The term of office for a villagers committee is three years; a new committee shall be elected at the expiration of the three years without delay.

Members of a villagers committee may continue to hold office when reelected.

Article 12 Any villager who has reached the age of 18 shall have the right to elect and stand for election, regardless of his ethnic status, race, sex, occupation, family background, religious belief, education, property status and length of residence, with the exception of persons who have been deprived of political rights in accordance with law.

The name list of the villagers who have the right to elect and stand for election shall be made public 20 days prior to the date of election.

Article 13 Election of a villagers committee shall be presided over by a villagers electoral committee. Members of the electoral committee shall be elected by a villagers assembly or by all the villagers groups.

Article 14 For election of a villagers committee, the villagers who have the right to elect in the village shall nominate candidates directly. The number of candidates shall be greater than the number of persons to be elected.

The election of a villagers committee shall be valid if more than half of the villagers who have the right to elect cast their votes; a candidate shall be elected only if he wins more than half of the votes cast by the villagers.

The election shall be by secret ballot and open vote-counting; the outcome of the election shall be announced on the spot. During election, booths shall be installed for voters to write their ballots in private.

Specific electoral measures shall be prescribed by the standing committees of the people's congresses of provinces, autonomous regions and municipalities directly under the Central Government.

Article 15 If a person, by threatening, bribing, forging ballots or other illegitimate means, interferes with the villagers in the exercise of their rights to elect and to stand for election, thus disrupting the election of a villagers committee, the villagers shall have the right to report against

him to the people's congress, the people's government of the township, nationality township or town, or to the standing committee of the people's congress and the people's government at the county level or the competent department under the latter, which shall be responsible for investigating the matter and handling it in accordance with law. If a person is elected by threatening, bribing, forging ballots or other illegitimate means, his election shall be invalid.

Article 16 A group of at least one-fifth of the villagers who have the right to elect in the village may propose the removal from office of members of the villagers committee. In the proposal, the reasons for the removal shall be stated. The member of the villagers committee proposed to be removed from office shall have the right to present a statement in his own defence. The villagers committee shall convene a villagers assembly without delay, at which the proposal for the removal shall be voted. The removal from office of a member of the villagers committee shall be adopted by a simple majority vote of the villagers who have the right to elect.

Article 17 A villagers assembly shall be composed of villagers at or above the age of 18 in a village.

The villagers assembly shall be convened with a simple majority participation of the villagers at or above the age of 18 or with the participation of the representatives from at least two-thirds of the households in the village, and every decision shall be adopted by a simple majority vote of the villagers present. When necessary, representatives of the enterprises, institutions and mass organizations located in the village may be invited to attend the villagers assembly without the right to vote.

Article 18 The villagers committee shall be responsible to the villagers assembly and report on its work to the latter. The villagers assembly shall deliberate on the work report of the villagers committee every year and appraise the performance of its members.

The villagers assembly shall be convened by the villagers committee. When proposed by one-tenth of the villagers, the villagers assembly shall be convened.

Article 19 When the following matters that involve the interests of the villagers arise, the villagers committee shall refer them to the villagers assembly for decision through discussion before dealing with them:

- (1) measures for pooling funds for the township, and the percentage of the funds raised by the village to be retained and used by it;
- (2) the number of persons who enjoy subsidies for work delayed and the rates for such subsidies;

- (3) use of the profits gained by the collective economic organizations of the village;
- (4) proposals for raising funds for running schools, building roads and managing other public welfare undertakings in the village;
- (5) decision on projects to be launched by the collective economic organizations of the village and the contracts proposed for the projects as well as contracts proposed for building public welfare undertakings in the village;
- (6) villagers' proposals for operation under a contract;
- (7) proposals for the use of house sites; and
- (8) other matters that involve the interests of the villagers and on which the villagers assembly considers it necessary to make decisions through discussion.

Article 20 A villagers assembly may formulate and revise the villagers charter of self-government, rules and regulations for the village and villagers pledges, and submit them to the people's government of the township, nationality township or town for the record.

No villagers charter of self-government, rules and regulations for the village, villagers pledges or matters decided through discussion by a villagers assembly or by representatives of villagers may contravene the Constitution, laws, regulations, or State policies, or contain such contents as infringing upon villagers' rights of the person, their democratic rights or lawful property rights.

Article 21 In a village with a larger population or with the inhabitants scattered here and there, villagers representatives may be elected, and the villagers committee shall convene a meeting of the villagers representatives to decide on matters through discussion with the authorization of the villagers assembly. One villagers representative shall be elected by every five to fifteen households, or a certain number of villagers representatives shall be elected by all the villagers groups.

Article 22 The villagers committee shall apply the system of open administration of village affairs.

The villagers committee shall accept supervision by the villagers through publicizing the following matters without delay, of which the matters involving financial affairs shall be publicized every six months at least:

- (1) matters decided on through discussion by the villagers assembly as provided for in Article 19 of this Law, and implementation of the decisions;

- (2) plans for implementing the State policy for family planning;
- (3) handing out of relief funds and goods; and
- (4) collection of charges for the supply of water and electricity, and other matters that involve the interests of the villagers and that all the villagers are concerned about.

The villagers committee shall guarantee the truthfulness of what is publicized and subject itself to inquiry by the villagers.

Where a villagers committee fails to publicize the matters as is required to without delay or if the matters it publicizes are not true to facts, the villagers shall have the right to report the matter to the people's government of the township, nationality township or town or the people's government at the county level and the competent departments under it, which shall be responsible for investigation and verification and order that the matters be publicized; where unlawful acts are verified through investigation, the members concerned shall bear the responsibility according to law.

Article 23 The villagers committee and its members shall observe the Constitution, laws, regulations and State policies, and they shall be impartial in handling affairs, honest in performing their duties and warmhearted in serving the villagers.

Article 24 In making decisions, a villagers committee shall apply the principle whereby the minority is subordinate to the majority.

In its work the villagers committee shall adhere to the mass line, give full play to democracy, carefully heed dissenting opinions, and unremittingly exercise persuasion; it may not resort to coercion, commandism or retaliation.

Article 25 A villagers committee shall, when necessary, establish sub-committees for people's mediation, public security, public health, etc. Members of the villagers committee may concurrently be members of the sub-committees. The villagers committee of a village with a small population may dispense with the sub-committees; instead, members of the villagers committee shall have a division of responsibilities with respect to people's mediation, public security, public health, etc.

Article 26 A villagers committee shall assist the relevant departments in giving ideological education and help to and exercising supervision over the villagers who have been deprived of political rights in accordance with law.

Article 27 Members of government departments, public organizations, units of the armed forces, and enterprises and institutions owned by the whole people, which are located in the countryside,

shall not join organizations of the villagers committees; members of collectively-owned entities that are not run by the villages may choose not to join the organizations of the villagers committees. However, all of them shall abide by the rules and regulations for the villages and the villagers pledges related to them. When the villagers committees, villagers assemblies or villagers representatives of the villages, where these units are located, discuss and deal with problems related to the units, they shall solve the problems through consultation with them.

Article 28 The local people's congresses at all levels and the standing committees of the local people's congresses at or above the county level shall see that this Law is implemented within their administrative regions and guarantee that the villagers exercise their right of self-government in accordance with law.

Article 29 The standing committees of the people's congresses of provinces, autonomous regions and municipalities directly under the Central Government may, in accordance with this Law and in light of the conditions in their own administrative regions, formulate measures for the implementation of this Law.

Article 30 This Law shall go into effect as of the date of promulgation. The Organic Law of the Villagers Committees of the People's Republic of China (for Trial Implementation) shall be annulled at the same time.