'The Place of the Constitution Is Empty': Chinese Political Aesthetics of Commanding Constitutional Faith

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'*The document emblazoned with the Chinese characters the Constitution of the People's Republic of China (PRC), the constitution in its material form, was gingerly held and escorted by a military guard of honour onto the lectern at the centre of the podium of the Great Hall of the People in the First Session of China's 13th National People's Congress on 17 March, 2018.*' This is the snapshot of a video cap about the inauguration of the PRC's (new/amended) constitution, which was part of the so-called core leadership's constitutional oath-taking ceremony before the audience of the members of the National People's Congress for the first time in the PRC history. Watching that video, I cannot help but attempt an aesthetic read of the unsubstantiated Chinese political order in the light of Claude Lefort's famous 'empty place' thesis.

'In democracy,' Lefort once noted, 'the place of power is empty.' The empty place of power indicates the open and pluralist structure of political power in the disincarnated democracy, whereas the emptiness of democracy also opens itself to the sabotaging forces of totalitarianism and the like. To fill the void left in the wake of the dethroning of monarchs in democracies, the party, the movement, the *Führer*, and the concrete order of social institutions, among others, have been suggested as the stand-in. As the history of the twentieth century tells us, however, all of those experiments were of no avail except leading to disasters. The state of lawlessness once seemed to be the destiny of democratic emptiness. Defying the seeming fatalism haunting political modernity, constitutional democracy, grounded by a well-designed constitution and constitutional faith, has since offered a more hopeful answer to the question of the empty place of power in democracy. Lefort's empty place thesis cuts to the heart of the fragile nature of democracy, while alerting us to what needs to be done to better the project of political modernity: constitutional state-building.

On 4 December, 2012, the 30th anniversary of the coming into effect of the PRC Constitution of 1982, Chinese President Xi Jinping caught Chinese people and China observers off guard, unexpectedly stating, 'the life of the Constitution lies in its implementation, on which constitutional authority too rests'. Although the place of power has never been empty under the Chinese party-state regime, President Xi's historic emphasis on constitutional (vis-à-vis legal) authority stirred speculation for China's setting out for a constitutional dreamland. Instead of repudiating the anti-liberal character of the Chinese political order, enthusiastic comparatists have echoed Xi's 'constitution talk' with the intimations of the instantiation of political or authoritarian constitutionalism in China. Truly, Xi was far from heeding the Lefortian alert. Yet, with such constitution talk, Xi appeared to be taking China on the path towards constitutional state-building. Despite the infamous Southern Weekly Incident of 2013, attempts to 'constitutionalize' the Chinese political order through constitutional language by comparatists have since shown no signs of abating.

Whether the latest move to drop the presidential term limits in the PRC Constitution will dampen the enthusiasm about reading the Chinese regime in constitutional terms is too early to tell. It also remains to be seen whether, with the constitutional endorsement of Xi's supremacy, China is simply continuing on its path towards a constitutional order with Chinese

characteristics or reverting to its totalitarian past. Yet, the ritual induction of the PRC's constitution into the Great Hall of the People tells us the state of Chinese constitutional landscape: The place of the constitution in the PRC is empty.

Specifically, in studying the Chinese political order, it is not the documentarian constitution that governs the political functioning of the PRC. Nor is it the organic, socio-economic order that determines the political functioning of the PRC; otherwise cool-headed observers would not have been baffled or surprised by the sudden lifting of the presidential term limits when China continued to stay on the trajectory of uninterrupted growth. In other words, neither the legal constitution nor the political constitution really tells us what the PRC's 'absolute constitution,' an intriguing concept in Schmittian constitutional parlance, is. Put bluntly, the real constitution is elusive, while the Chinese political order seems to lie beyond description in constitutional terms.

Against this backdrop, Xi's historic taking oath of constitutional allegiance in public and the placement of the document emblazoned with the Constitution of the People's Republic of China in the empty podium (excluding the automaton-like guards as well as the leadership watching from the background) will not herald a new constitutional order but rather simply sets the stage for further political rituals. Left lying in the lectern, the Constitution of the People's Republic of China awaited the party/ state leaders putting a hand over it with the other punching the air one after another when they pledged their allegiance to the Constitution: to safeguard the Constitution's authority, fulfil their legal obligations, be loyal to the country and the people, be committed and honest in their duties, accept the people's supervision, and work for a great modern socialist country that is prosperous, strong, democratic, culturally advanced, harmonious, and beautiful.

As alluded to in those scenes, the place of the constitution is open to the whims of the core leadership, despite the placement of the documentarian constitution at the centre, entailing the Large-C Constitution being reduced to a placeholder. The Chinese variant of 'constitutionalism' is neither authoritarian nor political because the place of the constitution is empty. While Lefort's empty place thesis reminds us of the fragility of an unguarded democratic order and the importance of the constitutional design of democracy, the imagery of constitutional emptiness should draw constitutional comparatists' gaze to the reality of political anti-constitutionalism in China.

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