

# Supervision and Restriction of Public Powers and Adjustment of the National Political Power System of China

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It is one of the important objectives of the reform of the national political power system of China to realize the supervision and restriction of public powers. Based on the study of the Marxist ideas on the supervision and restriction of power and reference to the Western theories of check and balance of power as well as conclusion of the constructional practice of the socialist national political power, it is pointed out that the supervision and restriction of public powers should be regarded as one of the important objectives of the reform of the political system to promote the political development of China. It is the emphasis of further adjusting the national political power to establish the pattern of checking power by power, strengthening the

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functions of checking power by rights and perfecting the regulation of checking power by responsibilities as well as set up the effective supervision and restriction of public powers.

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As one of the basic concepts of politics, power “minimally refers to the capability of a doer or institution influencing the attitudes or behavior of other doers or institutions.” In the whole system of power, the public power is the political power in the national vision of power. The theory of politics thinks that it is the requirement of the modernization of politics and the process of development of political civilization as well to change from the traditional political system to the modern political one. The content of the reform of the political system includes not only the integration and adjustment of the mutual relations between the ruling party and the public powers but also the integration and adjustment of the relations between the public powers in order to keep the mutual balance between the public powers and the justness and legality of exercising the public powers.

The supervision and restriction of the public powers is one of the important principles of the modern political life and the necessary basis and condition of a nation making tracks for the political modernization. The reform of the political system cannot be separated from the absorption and reference of the achievements of the world political civilizations; therefore, it is of great importance to the reform and development of the political system of China to thoroughly understand the Marxist ideas on the supervision and restriction of power and make an in-depth study and rational reference of the Western theories of check and balance of power.

## 1. Origin and Practice of the Theories of Check and Balance of Power of the Bourgeois Countries

The allocation of the public powers belongs to the problem of division or distribution of state powers, also called the one of the structure of the state powers by some scholars, which involves the two aspects of the macroscopic political power and the microscopic bureaucratic system that a country implements. Such problems are produced with the appearance of countries, which are the topic that the countries at all times and all over the world have been continuously searching for. In history, both the organizational forms of political power of the slavery and feudal countries belong to the system of high centralization of power. As the ruling class, neither the class of slave owners nor the landlord class can truly realize the necessity of scientifically divide the state powers. And there have always been serious defects in the system of high centralization of power. The first is the emphasis of the unity of powers and denial of the division of powers, which greatly limits the initiative, enthusiasm and creativity of the organs of state power. The second is the strict hierarchy and patriarchal clan system, in which officials take responsibilities for the superior and no responsibility for the inferior, and no one can demur once the imperial edict of the emperor is promulgated and the repression on humanity reaches the limit. The third is that the state powers are unified in the monarch alone and depend on the personal character and capabilities of the monarch, which inevitably brings disasters to the nation and the people.<sup>±2×</sup>

The research into the development of the idea of separation of powers and check and balance of power can be traced to the earliest ancient Greek period. According to the political system of the Athens city-state, Aristotle (384 B. C. 322 B. C.), the most famous thinker at that time ever presented that “each political system should have three elements --- the functions of discussion of official business, administration and judgment”<sup>±3×</sup>, which can be called the sprouting of the idea of separation of powers. Polybius (200 B. C. unknown), the ancient Greek historian developed this idea and presented the idea of

check and balance of power, laying a theoretic foundation for the idea of separation of powers and check and balance of power. British Libume John (about 1614-1657), on behalf of the rising bourgeoisie, presented the opinion of sharing power with landlords and big aristocrats. Based on the previous achievements, Locke (1632-1704), a British politician, presented the opinion of separation and check and balance of legislative, administrative and diplomatic powers. Montesquieu (1689-1755), a French politician, who systematically illustrated the idea of separation of three powers in his works *Study on the Spirit of Law*, not only alleged to divide the state powers into the legislative, administrative and judicial powers but also explicitly presented the idea of check and balance of power; therefore, the modern Western theory of separation of powers and check and balance of power was established. Montesquieu regarded the political freedom as the choice of value of the ideal political system of government, thinking that the principle of separation of three powers and check and balance of power must be carried out if the political freedom of citizens is realized. “The political freedom is established by a certain separation of three powers.” ±4× “Freedom will not exist any longer when the legislative and administrative powers are centralized on a person or the same organ, because people are afraid that the emperor and the parliament will formulate brutal laws and cruelly enforce these laws.” ±5× “If the judicial and legislative powers are combined into one, the arbitrary power will be imposed on the lives and freedom of citizens, because the judge is the legislator. If the judicial and administrative powers are combined into one, the judge will hold the power of oppressors.” ±6× The core substance of these arguments lies in that the political freedom must be assured by the separation of powers and check and balance of power.

Montesquieu's theory on the separation of three powers fundamentally denied the system of concentration of power which had existed for thousands of years in the ancient slave society and the feudal society, reflected the political and economic appeal of the early French bourgeoisie, provided a form of practice for the political ruling of bourgeoisie and also developed the theory of

allocation of human powers, and its ultimate purpose was to protect and realize the interests of bourgeoisie. Introduced by this theory, the Western bourgeois countries regard the separation of powers and check and balance of power as a principle and implement it into their political practice. As a social political phenomenon, the system of separation of powers and check and balance of power that the bourgeois countries establish, which has been passed for over 200 years, is still applied until now. The rationality of the principle of separation of powers and check and balance of power lies in that it can form the system and framework in political practice, which has the possibility of checking the erosion and autocracy of the public powers. Therefore, these theories are not only applied to France but also have become a common principle of democratic system of the bourgeois countries, which not only have been of revolutionary importance in the process of seizing the political power of the bourgeoisie but also have played an important role in maintaining the bourgeois ruling.

In history, the U. S. first implemented the principle of separation of powers and check and balance of power into the political practice. The U. S. Constitution of 1787 regulated the relation of separation and check and balance of the legislative, administrative and judicial powers. After this, although there is the separation of three powers in the bourgeois countries, which is not completely the same with the one of the U. S., the separation of powers and check and balance of power is a common phenomenon in the political systems of the bourgeois countries. Although the principle of separation of powers and check and balance of power of the bourgeois countries is not completely represented in the practical operation, the phenomenon of unbalance of powers still exists, from which a typical example is that the power of the U. S. President is obviously much bigger than the other two powers.

The mechanism of separation of powers and check and balance of power has gone through the development and perfection of over 200 years, which has played an active role in the consolidation of the political power of the bourgeois countries, economic growth and social stability. In the meanwhile, there are

obvious historical limitations in the theory of separation of three powers, which are mainly represented in the following aspects. The first is that the division of the levels of state powers is ignored when the division of the functions of state powers is emphasized. The second is that only the separation and check and balance of three powers is emphasized and no adequate attention is paid to the supervision of powers. The third is that great importance is attached to the division of the functions of powers, but the requirement of unity of powers determined by the national unity is ignored. The fourth is that the roles of the separation of three powers are partially emphasized, but the existence and roles of the dominant supreme power are excluded in theory.

The features of the socialist economy, politics and culture of China determine that China cannot copy the system of separation of three powers of the bourgeois countries. However, based on the disciplinary and rational factors existing in the system of separation of three powers of the bourgeois countries, it cannot be simply and completely denied. The tenor of the objective research on the theory of separation of three powers is to emphasize that the political freedom must be assured by the separation of powers and check and balance of power. Without restrictions on power, the political freedom will be destroyed. Both the separation of power and check and balance of power should be carried out if the restrictions on power are realized. Both the separation of powers and check and balance of power are aimed at realizing the restrictions on power. It is not important whether it is the separation of three powers or “four or five powers”, and the separation of powers in form is finally aimed at restricting power by limiting the bound of power.

## 2. Marxist Ideas on the Supervision and Restriction of Power

The founders of Marxism made an in-depth research on the theory of check and balance of power of the bourgeois countries, and on the basis of scientifically refining its kernel, formed the Marxist ideas on the supervision and restriction of power, and made great contributions to the scientific

allocation of human powers in theory and in practice. Marx and Engels overcame the limitations of conditions of the times and affirmed the active importance of the check and balance of power many times while they disclosed the law of the inevitability of the death of capitalism and the necessity of the victory of the proletariat. Commenting on the system of separation of powers of the bourgeois countries, Engels ever said: "in those countries with the separation of various powers realized, the judicial and the administrative powers are completely independent. So is it in France, Britain and the U. S. The combination of these two powers will necessarily result in the unresolved chaos, whose necessary result will be to let a person act as the chief of police bureau, scout and judge. However, the judicial power is directly owned by the citizens who realize the power through their own jurors, which has been early proved not only in principle itself but also in history." ±7× Marx's recognition of the Heison Constitution in 1831 further proved the classical Marxist writers' affirmation of the rational factors of the idea of check and balance of power. Marx pointed out: "no constitution has made such strict restrictions on the limits of authority of the enforcement organs, making the government subordinate to the legislative organ to the greater extent, and has entitled the judicial organ to such a wide power of supervision. The superior court is entitled to make the final decision of all the problems related to the system of appointment and dismiss. The house of representatives selects a standing council from councilors and formed the agency similar to the Supreme Court of Athens, exercising the supervision of the activities of the government and submitting the officials in breach of the constitution to the court for judgment. There is no exception even if the inferior violate the constitution when they are carrying out the orders of the superior." ±8× When the Paris Commune, as the first proletarian political power in the world, came into being in 1871, Marx and Engels acutely noticed the political value of the supervision of power through the research on the Paris Commune, explicitly stipulated the form of political power of the new society after the victory of the proletarian revolution and gave high praises of a series of regulations of the Commune

putting its own work in the supervision of the mass of people, thinking that it represents the fundamental difference of a proletarian country from a bourgeois country.<sup>±9</sup>× In directing the movements of the working class and the construction of political party of the working class, Marx and Engels illustrated the democratic supervision in the party, and the cooperation and supervision between parties as well as the importance and measures of the supervision of public opinion, which are of great directing value to the construction of the political power system of a proletarian country.

Lenin also had in-depth thoughts on the supervision and restriction of powers and illustrated a series of important ideas on the essence, principles, system and modes of the supervision and restriction of powers. On the basis of clearly dividing the departments of the party and the functions of the government, Lenin persisted in perfecting the leadership of the party, implementing the strict supervision in the party, restructuring the procuratorate of workers and peasants, forming the resultant force of the supervision of the party and the government and paying attention to the judicial supervision and the supervision of public opinion. Focusing on the problem of the supervision and restriction of public powers, and on the basis of inheriting and developing the theory of the supervision and restriction of power of Marx and Engels, Lenin made an in-depth research on the aspects of institutionalization and operability, which made new contributions to enriching the Marxist national theories and played important theoretic directing role in the establishment of the first socialist country in the world. Lenin regarded the supervision of power as the important component of the socialist national political power and as one of the important national functions, pointing out: “without the implementation of the all-round national counting and supervision, the political power and the freedom of laborers will not be maintained, and it is inevitable to become the capitalist oppressions again.”<sup>±10</sup>× At the early period of the establishment of the soviet political power, Lenin unswervingly advocated to develop the management and supervision of participation of the masses of people, bringing the supervision of power into



the category of democratic politics, pointing out: "can any institution or council of representatives be regarded as the truly democratic one really representing the will of the people only when the voters' right of recall of representatives is acknowledged and exercised." ±11× Lenin emphasized that the assurance of the supervision and restriction of power in the system should make the position of the power-supervising institutions equal to that of the supervised institutions, thinking "it is necessary to establish a supervisory committee parallel to the central committee to strengthen the supervision." ±12× The power-supervising institution should exercise the central direct leadership but not the "double" leadership and "advise to deny the 'double' leadership, stipulating that the local supervisory agencies are under the central leadership." ±13× Lenin not only attached great importance to the core problem of the power-supervising system but presented explicit opinions on the functions of the power-supervising institutions, pointing out that the supervisory power, the right of inspection, the right to address questions, the right of suggestion, the right of correction, the veto power, the right of recall and the right of disposing as well as the right to impose sanctions should be given. Lenin's idea of the supervision and restriction of power has played an important directing role in the construction of the political power system of the socialist countries.

In the practice of building up a socialism with Chinese characteristics, the members of the Communist Party of China persist in the integration of Marxism, Leninism and the national situation of China, continuously sum up the experience and lessons of the construction of the national political power and have formed the theory of the socialist supervision and restriction of power with Chinese characteristics, making new contributions to developing and perfecting the Marxist theory of the construction of the national political power and accumulating fresh experience for the consolidation of the people's democratic political power and the construction of the political power of the socialist countries.

### 3. Supervision and Restriction of Public Powers and Adjustment of the National Political Power System of China

The supervision of power in politics refers to the arrangement of systems and process of behavior of the people with real powers controlling the entrusted and exercising the powers according to their own will and interests after they entrust their powers with others. The restriction of power in politics refers to that it is difficult for the single exercising of the power to achieve the objectives of exercising powers when a power is not supported by other powers and at the same time the existence and exercising of any power can also constitute a containment of other powers. Through this analysis, it can be seen that the common ground of the supervision and restriction of power lies in that they belong to the category of the power-controlling mechanism. The difference of the supervision of power from the restriction of power lies in the control of the power owners and entrusting party in the supervisory system of the entrusted and exercisers of the power and the latter has no rights of reversing containment and control. In the prerequisite of separation of powers of the system of restriction, different subjects exercise powers respectively, and they form the relations of impeding and balancing between each other. Such a restriction is not unilateral but bi-directional and multi-directional.<sup>14</sup>

The establishment of the representative mechanism representing the fundamental interests of the most masses of people of China is determined by the properties and tenets of the ruling Communist Party of China. In the practice of the revolutions and construction of China, the Party persists in coming into power for the people and the construction of the national democratic politics, and attaches importance to preventing and objecting to the erosion of the public powers, and continuously carries out the research on the theories and practice of the socialist democratic supervision with Chinese characteristics under the direction of Marxism and Leninism, and has achieved important results and effects in the aspects of the democratic supervision in the ruling party, the mutual supervision between the ruling

party and the parties participating in the government and political affairs, the supervision of the ruling party on the operation of the political power, the supervision of the representative institutions, the administrative supervision, the judicial supervision and the supervision of the political consultative conferences as well as the supervision of public opinion, etc., and has basically established the supervisory system of public powers with Chinese characteristics. In this process, it has always been emphasized that the promotion of the reform of the political system and political development of China cannot copy the mode of separation of powers and check and balance of power of the Western capitalist countries.

However, because the framework of the political system of the People's Republic of China was basically defined in the times of revolution and war as well as the period of the socialist reconstruction, its features are to emphasize the concentration of powers and make inadequate research on the rationality of the allocation of powers, focus on giving prominence to functions of the class of the national political power and ignore its functions of management, and confuse the bound of functions between the ruling party and the national organizations of political power. Due to the influences of the long-term "leftist" mistakes in politics and the planning economic system, in the one hand the features of the original political system are further strengthened, and in the other one the political system of the Western countries is mostly denied in class and no active reference is taken from the perspective of searching for the law and the theory of check and balance of power regarded as specific to the proletarian is completely denied. Some disadvantages in the political life of China, such as the "rule by the voice of one man alone", the "patriarchal system" and the abuse of powers, etc. were produced with the original systems and cannot be corrected for a long term, which has brought about great losses to the interests of the country and the people. The 3rd plenary meeting of the 11th session of the CPC brought order out of chaos, and with the issue of Deng Xiaopin's Reform of the System of Leadership of the CPC and the Country as the important symbol, the reform of the political system of China has been

gradually developed, and the research of the academic circle on the supervision and restriction of power has become deeper and deeper. After the tasks to establish the democratic politics with Chinese characteristics and the targets of the reform of the political system in the near future and in the long term were presented in the 13th session of the CPC, the deployment of actively promoting the reform of the political system was presented in the 14th session of the CPC and the construction of the socialist democracy and legal system have been greatly developed. The overall requirements of promoting the reform of the political system were further made clear in the 15th session of the CPC. Especially in the 16th session of the CPC, in the height of building up the socialist political civilization, in addition that the reform and perfection of the mode of leadership and the ruling mode of the Party and the tasks of improving the ruling capabilities and levels of the Party were presented, the direction of the reform of the political system was made clear, pointing out that “the supervision and restriction of power should be strengthened”, and “the operating mechanism of powers with rational structure, scientific allocation, strict procedure and effective restriction should be established and the supervision of powers should be strengthened in the decision-making and enforcing links and it is assured that the powers given by the people are used for the benefits of the people.” All these show the new recognitions and requirements of exploration of the ruling law of the CPC. The reform of the political system of China should be in the framework of the reform and perfection of the mode of leadership and the ruling mode of the Party, actively absorbing the excellent achievements of human political civilizations and deeply searching for the law of the political activities of realization of the effective supervision and restriction of public powers

The reform of the political system requires the rational allocation of public powers, and the disciplinary application of public powers must be assured by the mechanism of the supervision and restriction of powers. On the modern political conditions, and with the establishment of perfection of the socialist economic system of China, the research on the ruling law, the promotion of the

reform of the political system, the perfection of the mechanism of the supervision and restriction of powers have become an urgent task facing the ruling CPC. At present, the establishment of the pattern of supervising power by rights, the strengthening of the functions of supervising power by power and the perfection of the system of supervising power by responsibilities should be the working point of further adjusting the political power system of China.

The pattern of supervising power by power should be established. The system of the people's congress is one of the fundamental political systems of China, which represents the unity of the people's will and the principle of the sovereignty by the people. The strengthening of the supervisory functions must strengthen the supervisory functions of the people's congress on the government. The first is to perfect the electoral system. China now implements the principle of the simultaneous use of the direct electoral system and the indirect electoral system. In the situation where there is no high degree of informatization and inadequate degree of knowing the inside story of citizens, the indirect election cannot fully reflect the will of voters. If it is assured that the people can elect their own deputies according to their own will in order to really and fully reflect the will and requirements of the people, the current electoral system needs improving to develop to the direct election. Although in the current situation of China, it is still unrealistic to implement the direct election all over the country, this should be defined as the long-term target. The second is to subdivide the supervisory power. As far as the implementation of the supervisory power of the people's congress is concerned, not only the perfection in the rules should be pursued, but the distribution in the arrangement of systems should be emphasized. In a sense, the perfection and completion of various systems is more important than the supplement of laws and principles. The third is that the authority of the organs of state power should be maintained. An important political decision, once it is approved and affirmed by the legal procedure of the national people's congress and its standing committee, will obtain the common binding force on the whole society, and any other social organizations or individuals must carry out activities in

the range regulated by the political decisions, and anyone in breach should undertake relevant responsibilities. Therefore, all the functions of the people's congress and its standing committee should be further perfected, the legislative and legal supervision should be strengthened, and especially during the closing of the people's congress the standing committee of the people's congress should truly exercise its legal powers, which can carry out the frequent and effective supervision on the government and its employees and correct the mistakes in time. The fourth is that the relations between the supervisory, administrative and judicial institutions should be reconstructed, with the position of the supervisory institutions improved, making the mutual balance and restriction between their powers established and be responsible for the people's congress together. The structure of powers can both realize the restriction of powers and be adaptable to the principle of "combination of legislative and executive powers" of the Paris Commune and at the same time have the fundamental difference from the Western mode of separation of three powers. The functions of supervising power by rights should be strengthened. China is still in the primary phase of socialism, there is a big gap between the situation of the democratic development and the high democracy in principle, and some phenomena such as the abuse of powers, the profanity of the public opinion and the abuse of power for personal gains, etc. still happen sometimes, which damage the interests and emotions of the masses of the people. The position of the owners of the people determines that the powers of the people cannot be violated, and can the position of the people as the subject of the political powers be represented, only when the people fully exercise the democratic rights entitled to by the constitution. Therefore, in the situation where not everyone can directly participate in the national management, the supervision of power by rights must be carried out. The prerequisite of supervising power by rights is to strengthen the functions of supervision and restriction of rights, which further needs the construction of various supervisory systems relevant to public powers, including the system of the people's congress, the system of reporting offences to the authorities of the mass and the system of appraisal

through democratic discussions as well as the hearing system, etc., in the prerequisite of further promoting the construction of the ruling party itself and perfecting the supervisory system in the ruling party. The construction of the legal system should be strengthened. The legal system is the affirmation and assurance of democracy. Without the sound and perfect legal system, the democratic rights cannot be maintained fully, and the people cannot effectively prevent the behavior of repressing the democracy and infringing on the legal interests of citizens. Chairman Mao Zedong ever profoundly said: "can the government be afraid of getting loose, only when the people are entitled to supervise the government; can the people and the government die, only when everyone takes the responsibilities." ±15×

The system of supervising power by responsibilities should be perfected. Powers corresponds with responsibilities. Han Fei, one of the famous thinkers in ancient China, described the relations between powers and responsibilities in his works *Five Moths*, pointing out that the emperors in the times of Yao and Yu had great responsibilities, although the life was very hard, and were required to set an example when doing anything in anywhere, so the people were not reluctant to leave powers. In a sense, the assorting of powers with responsibilities is the representation and requirement of the modern democratic politics, which is the effective procedure of realizing justness. It is the important content of realizing the supervision and restriction of powers to establish a complete set of regular and feasible system of responsibility. The political system of China explicitly requires that the people's deputies should be responsible for the people and the government be responsible for the people's congress, and all the rights belong to the people. However, the abstract and non-concrete responsibility is equal to no responsibility. In the economic area, the close integration of the system of responsibility, responsibilities, rights and interests should be implemented, which promotes the economic development. In the meanwhile, in the political area, the construction of the system of responsibility must be strengthened, with the system of responsibility implemented. Without the explicit political

responsibilities as the matching measures, it is senseless to realize the supervision and restriction of powers. Therefore, a set of self-contained and systematic political system of responsibility should be established and the range, bound and responsibilities in which the rights are exercised must be explicitly regulated in the law.



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