

## Article

# China's Unwritten Constitution: Ideological Implications of a "Non-ideological" Approach

Heike Holbig

### Summary

Since the promulgation of China's present constitution in 1982, liberal approaches have been dominating debates in Chinese constitutional jurisprudence as well as political and legal dialogues between the Chinese and Western governments. More recently, however, the liberal mainstream seems to be challenged by new strands of a "Sinicized Marxist" or "political constitutionalism" criticizing the Chinese constitution for being subject to Western ideological hegemony. This article focuses on the work of Jiang Shigong, a law professor at Peking University who has been lauded by Western scholars for his sophisticated distinction between "written" and "unwritten constitutions" to capture the "real" constitutional and political rules by which Chinese politics functions. It will be shown how, in the name of a supposedly "non-ideological" approach, his analysis of China's "unwritten" constitution and political rules actually bears strong ideological implications. Reading between the lines of Jiang Shigong's argumentation, it appears not only to justify the Chinese Communist Party's leadership as the "absolute constitution" behind China's political regime, but also to contribute to a slow but steady crowding out of liberal voices in Chinese jurisprudence and political science.

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### The Chinese constitution under a new party leadership

All over the world, but particularly in the Chinese context of a communist party regime which exerts strict controls on historiography, political anniversaries open windows of opportunity for protest and calls for reform in a most predictable, institutionalized manner. This predictability was manifest, for example, when shortly after the 18th National Congress of the Chinese Communist Party (CCP) in mid-November 2012, some 120 liberal intellectuals came together at a hotel in Beijing to discuss a "reform-consensus proposal" drafted by Peking University law professor Zhang Qianfan. Amongst other demands, this document called for constitutional government, the protection of democratic freedoms anchored in