Setting constitutional boundaries on institutional reforms in China*

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China has experienced dramatic social transformation over the past 40 years of reform and opening up. While achieving tremendous economic achievements, China is also facing a series of challenges due to the complexity of social governance. Advancement among state institutions reform of China since 2014 is part of the aforementioned social transformation process. The institutional reform involves changes in the powers of the legislature, executive and judicial organs, which promotes the formation of a new state organ system and directly leads to the 2018 constitutional amendment. The issue of constitutional limits for the reform of state institutions has aroused widespread concern in academia. The Constitution contains various regulatory bases for institutional reforms. Some of the reforms are clearly bound by the Constitution, some are restricted by its general provisions, and some transcend the framework of power distribution defined in the Constitution. In practice, institutional reforms involve three strategies in response to the Constitution. First, compliance with the Constitution. Second, deviation from the Constitution and promotion of constitutional amendments. Third, deviation from the Constitution with avoidance of constitutional adjustment. This article holds the view that over the course of social transformation, reforms have to remain current while improving the Constitution. Nevertheless, the Constitution that provides the authoritative structure and stable expectation for the state and its citizens shall not be neglected. Any major systemic reform with regard to the Constitution must adhere to formal constitutionality as the primary foundation.

Keywords: institutional reforms, constitutional amendment, formal constitutionality, institutional transformation.

Since 2014, China has begun a new round of institutional reforms in a comprehensive and systemic manner[1]. The ongoing institutional reforms involve modifications to the judicial system, the national supervisory system, the national security system, the national legislative system, the audit system, and so on. In general, these institutional modifications have ceased to be restricted to reforms that target the internal management mechanism of any single state agency. Instead, institutional reforms are comprised of major adjustments made to the overall power distribution among different types of state agencies, and the subordination among the state agencies at different levels. Some re-

[1] 《中共中央关于全面深化改革若干重大问题的决定》（2013年11月中共十八届三中全会通过） [Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform is a prelude to a new round of institutional reforms in China. (Adopted at the 3rd Session of the Standing Committee of the 12th National People's Congress in November 2013)].

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form measures in the Constitution have already had material impact on the basic structure of state power. Efforts are being made to deepen these reforms, as the power distribution among state agencies is undergoing radical changes. Two important questions arise in this context: how can success in reforming state agencies be ensured in accordance with the Constitution; and how can the constitutional text be made to respond positively to practical needs from the state institutional reform through interpretation and modification? These represent the major theoretical and practical issues inherent in constitutional research, and the ongoing institutional reforms have attracted widespread attention from constitutional scholars[2]. The conflict of "deviation and amendment" between the Constitution and its reform is highlighted by these institutional reforms.

In March 2018, China's current constitution was amended for the fifth time. The number of constitutional amendments has reached fifty-two. Among the twenty-one new amendments, seven are made to the Preamble and General Principle, while the remaining fourteen are all concerned with institutional reforms. Constitutional amendments partly answered and addressed the issue of the constitutional basis for institutional reform. However, with regard to the ongoing changes directed at state agencies, closer consideration of the relationship between the Constitution and the reforms is required.

This article starts with an analysis of the constitutional basis for reforms to different types of state agencies and the boundaries set by the Constitution for those reforms before and after the Amendments to the Constitution of the People's Republic of China (2018) were enacted. Then, based on the summary of the institutional reforms in practice, this paper provides an analysis of three response strategies devised by the reformers for the constitutional text. Finally, based on the analysis of the first two parts, the paper offers support for state adherence to the foundation of formal constitutionality and the promotion of institutional reforms within the framework of the Constitution and its laws, so as to maintain the authority and stability of the Constitution over the course of institutional reform enforcement.

1. Institutional reforms and their constitutional regulatory bases

Prior to the current constitution being amended in March 2018, Article 3 stipulated that, "All administrative, judicial and procuratorial agencies at the state level are established by the People's Congresses to which they are held accountable and by which they are supervised". The structure of state power under the system of the People's Congress was established by the 1954 Constitution of the People's Republic of China and inherited by the 1982 Constitution of the People's Republic of China[3]. After more than half a century of smooth operation, the structure of power distribution has undergone adjustment. After amendment was made in 2018, the term "supervisory" was added to Article 3, "All administrative, supervisory, judicial, and procuratorial agencies at the

[2] For example, in November 2016, the Department of Politics and Law of the Party School of the Central Committee of the CPC hosted an academic seminar on "Implementation of the Constitution, Judicial Reform and Modernization of National Governance"; In January 2017, the Institute of Law of the Chinese Academy of Social Sciences held an academic seminar on "Reform of the State Supervisory System"; In February 2017, the editorial department of Global Law Review hosted a seminar on "Reform of the Supervisory System and the Rule of Law"; In April 2017, the China Institute of Constitutional Law hosted a seminar on "Constitutional Basis for the Reform of the State Supervisory System"; In May 2018, the China University of Political Science and Law hosted a seminar on "The National Institutional Reform and the Development of Public Law".

[3] See: 朱福惠. "五四宪法"与国家机构体系的形成与创新//中国法学. 2014. № 4.页48 [*Zhu Fuhui*. The 1954 Constitution and Formation and Innovation of National Institution System // China Legal Science. 2004. No. 4. P. 48].

state level are established by the People's Congress to which they are held accountable and by which they are supervised". In Chapter III titled "the Structure of the State", the original 79 articles in seven sections have been amended to 84 articles in eight sections, with the addition of a section titled "Supervisory Commissions". After the amendment to the Constitution, reforms, such as the one to the national supervisory system, have provided the basis for constitutional norms. However, in practice, institutional reforms have encountered a scenario where the constitutionality of those reforms was required before and after the amendment was made to the Constitution in 2018.

1.1. The plan for reform is clearly inconsistent with the Constitution. The reform to the national supervisory system was initiated at the end of 2016. The relevant functions performed by the agencies responsible for the investigation and handling of corruption and bribery, dereliction of duty, and prevention of abuse-of-power crimes, such as the supervisory department (or bureau) of the People's government, the bureau of corruption prevention and procuratorate (prosecutor general), are uniformly assigned to the supervisory commissions established by the People's Congress at the corresponding levels. The application of the relevant provisions of the Administrative Supervision Law of the People's Republic of China, the Criminal Procedure Law of the People's Republic of China, the Organic Law of the People's Procuratorates of the People's Republic of China, Public Procurators Law of the People's Republic of China, and Organization Law of the People's Republic of China for Local People's Congresses at All Levels and Local People's Governments at All Levels has been superseded on a temporary basis in the pilot areas[4]. According to the pilot plan, reform to the state supervisory system will transform the power structure and put in place a new structure of state institutions[5].

One of the core reforms to the national supervisory system is the transfer of power from administrative supervision as exercised by the government to a newly-established supervisory commission. Despite the absence of regulation of this supervisory commission in the Constitution of the People's Republic of China (1982), the notion of "jian cha" is referred to in two places, namely, in Article 89 on the functions and powers of the State Council and in Article 107 on administrative work undertaken by local governments. "Supervision" is referred to as part of the administrative work performed by the government[6]. In the current constitution, the notion of "jian du" is mentioned in seventeen places[7]. The terms "jian cha" and "jian du" are both translated into English as "supervision". Despite only minor differences in the Chinese context, there is a clear

[4] 《全国人民代表大会常务委员会关于在北京市、山西省、浙江省开展国家监察体制改革试点工作的决定》（2016年12月十二届全国人大常委会第二十五次会议通过）[Decision of the Standing Committee of the National People's Congress on Carrying out the Pilot Program of Reforming the National Supervision Mechanism in Beijing Municipality, Shanxi Province, and Zhejiang Province. (Adopted at the 25th Session of the Standing Committee of the Twelfth National People's Congress on December 25, 2016)].

[5] 马怀德. 《国家监察法》的立法思路与立法重点//环球法律评论. 2017. № 2.页 9 [*Ma Huaide*. Legislative Ideas and Key Points of the State Supervision Law // Global Law Review. 2017. Vol. 39, No. 2. P. 9].

[6] Article 89 of the Constitution of the People's Republic of China regulates, "The State Council exercises the following functions and powers: <…> (8) to direct and administer civil affairs, public security, judicial administration, supervision, and other related matters"; Article 107 regulates, "Local people's governments at or above the county level, within the limits of their authority as prescribed by law, conduct 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 or remove administrative functionaries, train them, appraise their performance and reward or punish them".

[7] They are People's supervision (Paragraph 2 of Article 3 and Paragraph 2 of Article 27), the National People's Congress Supervision (Paragraph 3 of Article 3, Paragraph 2 of Article 62, Paragraphs 1 and 2 of Article 67, and Article 104), market supervision, (Paragraph 2 of Article 11), election supervision (Article 77 and Article 102), the audit supervision (Paragraphs 1 and 2 of Article 691, and Article 109), the internal

distinction in the common literal interpretation[8] and in the practical effect of reform on the Constitution. The implication of "jian du" is broader, and it encompasses all kinds of power control, such as investigation, supervision, and restriction. In comparison, the application of "jian cha" is more clearly defined, referring exclusively to administrative supervision. Prior to the 2018 amendment, the Constitution restricted the term "jian cha" to the concept of administrative authority of the state council and local governments, which implies a constitutional intention of equating "jian cha" with "administrative supervision".

This conforms to the establishment of state agencies in China. The Common Program of the Chinese People's Political Consultative Conference was launched on September 27, 1949. Article 19 stated that,

> People's supervisory agencies shall be established in the People's Governments at county and municipal levels or above to scrutinize the performance of duties by the state agencies at various levels and by public organizations of all types and to propose that disciplinary action be taken against the state agencies and public organizations that violate the law or commit negligence in the performance of their duties.

The Organization Law of the People's Government of the People's Republic of China published on the same day stated that the Government Administration Council is responsible for establishing the People's Supervisory Commission. The Organic Law of the State Council of the People's Republic of China, as adopted at the Second Session of the First National People's Congress (NPC) of the People's Republic of China on September 1954, stipulated the establishment of the State Council and replaced the People's Supervisory Commission of the Government Administration Council with the Ministry of Supervision of the State Council. The Sixth NPC passed a resolution to restore the state administrative supervision system on December 2, 1986. The Ministry of Supervision was officially set up on July 1, 1987[9]. It can be seen from above, the term "jian cha (supervision)" refers to the power of supervision exercised internally by the administrative bodies. It has been a long-standing political practice in China to make reference to the agencies dedicated to conducting administrative supervision as supervisory bodies. In this regard, the constitutional text prior to the amendment is considered to be consistent with the political practice in China.

From the pilot reform plan that is developed for the supervisory system to the comprehensive enforcement of the reform, a comparison between the content of the reform and the relevant provisions of the Constitution of the People's Republic of China clearly shows that the reform plan is contradictory to the constitutional norms, whether semantically, from the interpretive perspective of the Constitution, or factually, from the actual distribution of powers among the state agencies. Due to the strong normative force, these relevant constitutional provisions are inevitably targeted for constitutional amendment following the comprehensive enforcement of the pilot reform plan. Therefore, the Amendments to the Constitution of the People's Republic of China (2018) are actually reflective of this.

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supervision of the People's courts (Article 104), the legal supervision of the People's procuratorates (Article 129).

[8] Cihai defines "jian cha" as: to supervise the work of state organs and staff at all levels and accuse the authorities or staff who violate laws or are derelict; "jian du" is interpreted as: to supervise a person who does supervisory work.

[9] See: 纪亚光. 我国国家行政监察制度的历史演进//中国政党干部论坛.2017. № 2.页28 [*Ji Yaguang.* The Historical Development of China's National Administrative Supervision System // Chinese Cadres Tribune. 2017. No. 2. P. 28].

1.2. The constitutionality of the reform plan needs to be judged authoritatively by constitutional interpretation. At the start of 2014, the Second Session of the Central Reform Leading Group decided for the Opinions on Deepening Reforms to the Judicial System and Social System and Its Division of Implementation. This document set out the objective and principles for facilitating in-depth reform to the judicial system, and it finalized a road-map and timetable for reforms. Fundamental and systemic measures of judicial system reform are aimed at improving the classified management of judicial personnel, strengthening the judicial responsibility system, improving job security for judicial personnel, and ensuring uniform management of personnel and property across local courts and prosecutors below the provincial level. The reform to the judicial system has been implemented across the country after five provinces and one city were designated as the pilot areas. Based on the requirements of the reform, a series of amendments were made to the Organic Law of the People's Courts of the People's Republic of China, the Organic Law of the People's Procuratorates of the People's Republic of China, the Administrative Litigation Law of the People's Republic of China, the Civil Procedure Law of the People's Republic of China, the Criminal Procedure Law of the People's Republic of China, Judges Law of the People' s Republic of China, and Public Procurators Law of the People's Republic of China between 2017 and 2019. In doing so, the aims of the reforms are realized from a legal perspective.

The reform to the judicial system has transformed the way in which judges and prosecutors are selected and appointed. The committee for selection and appointment of judges and prosecutors is set up for all provinces and the disciplinary committee is clearly obliged for the selection and promotion of judges and prosecutors based on merit, in addition to giving disciplinary opinions on serious breach of discipline and law. Despite the benefit of the committee being able to unify personnel management, it will likely result in conflicts with constitutional norms. Since the amendment of 2018, Article 101 Paragraph 2 stipulates that,

> Local People's Congress at or above the county level are granted the power to appoint and remove the chairmen of supervisory commissions, the presidents of People's courts, and the prosecutor-general of the People's procuratorates at the same level. The appointment or removal of chief prosecutors of the People's procuratorates is required to be reported to the chief prosecutor of the People's procuratorates at the next higher level and to be approved by the standing committees of the People's Congresses at the same level.

The Constitution grants authority for ordinary legislation to appoint or absolve the personnel of local courts and procuratorates other than the presidents and chief prosecutors. Current Judges Law of the People's Republic of China and Public Procurators Law of the People's Republic of China state that the appointment or removal of the vice-presidents, deputy chief prosecutors, judges, and procurators ought to be made by the standing committees of the People's Congresses at the same levels as recommended by the presidents of those courts (or the chief prosecutors of those procuratorates)[10].

[10] Article 11 of the Judges Law of the People's Republic of China regulates, "The presidents of the local People's Courts at various levels shall be elected or removed by the local People's Congress at various levels. The vice-presidents, members of the judicial committees, chief judges and associate chief judges of divisions and judges shall be appointed or removed by the standing committees of the People's Congresses at the corresponding levels upon the suggestions of the presidents of those courts". Article 11 of Public Procurators Law of the People's Republic of China regulates, "The chief procurators of the local People's Procuratorates at various levels shall be elected or removed by the local People's Congress at the corresponding levels. The deputy chief procurators, members of the procuratorial committees and procurators shall be appointed or removed by the standing committees of the People's Congresses at the corresponding levels upon the recommendation of the chief procurators of those procuratorates". "The

The Judges Law of the People's Republic of China (2019) which will take effect[11] specifies that,

> The appointment or removal of the presidents of the intermediate People's courts set up in prefectures of the provinces or autonomous regions or set up in the municipalities directly under the Central Government shall be decided by the standing committees of the People's Congresses of the provinces, autonomous regions or municipalities directly under the Central Government on the basis of the nominations made by the respective councils of chairmen. The vice-presidents, members of the judicial committees, chief judges and associate chief judges of divisions, and judges shall be appointed or removed by the standing committees of the People's Congresses of the provinces, autonomous regions or municipalities directly under the Central Government upon the recommendations of the presidents of the higher People's courts.

It addresses the existing appointment problem of courts across administrative divisions. It is difficult to ascertain whether the appointment or removal of presidents of courts and procurators by People's Congresses at the same level complies with the amendment of laws. This conclusion is to be explained from a constitutional perspective by the authorities, particularly since the NPC standing committee did not do so when the reforms were carried out. Reform to the judicial system requires explanation as to whether the creation of courts across administrative divisions is in conflict with the establishment of courts as set forth in the Constitution and the requirement that "The standing committees of local People's Congresses at or above the county level have the power to supervise the work of the People's government, the People's court and the People's procuratorate at the corresponding levels"[12]. Therefore, the implication of the articles of the Constitution lack clarity, which lessens the significance of the regulatory roles performed by the Constitution on institutional reforms.

1.3. The reform plan does not violate principles stipulated in the Constitution. The Third Session of the Twelfth NPC modified and enacted the Legislation Law of the People's Republic of China on March 15, 2015. Its Article 72 states,

> The People's Congress and its standing committee of a districted city may, according to the city's specific circumstances and actual needs, develop local regulations on urban and rural development and administration, environmental protection, and historical culture protection, among others, provided that they do not contravene the Constitution, laws, administrative regulations, and the local regulations of the province or autonomous region where the city is located, unless a law provides otherwise for the development of local regulations by a districted city.

Generically, districted cities are granted legislative power. Such a reform process is known as the extension of local legislative power, which demonstrates democratization and localization of legal power.

Following the amendment made to the Constitution in 2018, Article 99 states,

> Local People's Congresses at varying levels ensure the compliance and enforcement of the Constitution and the law as well as the administrative rules and regulations in their respec-

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appointment or removal of the chief procurators of the local People's Procuratorates at the various levels must be reported to the chief procurators of the People's Procuratorates at the next higher level, who shall submit the matter to the standing committee of the People's Congress at the level for approval".

[11] 《中华人民共和国法官法》《中华人民共和国检察官法》2019年4月23日由全国人大常委会修订通过，自2019年10月1日起施行 [The Judges Law of the People's Republic of China and the Public Procurators Law of the People's Republic of China were revised and adopted at the 10th Session of the Standing Committee of the Thirteenth National People's Congress of the People's Republic of China on April 23, 2019 and shall come into force on October 1, 2019].

[12] See: 翟国强. 跨行政区划人民法院如何设立？——一个宪法解释学的视角//法商研究. 2016. № 5. 页3–9 [*Zhai Guoqiang.* How to Set up People's Court across Administrative Division? — From the Constitutional Interpretation Perspective // The ZUEL Law Journal. 2016. No. 5. P. 3–9].

tive administrative areas. Within the scope of their authority as stipulated by law, they adopt and publish resolutions, in addition to reviewing and making decisions on the plans for local economic growth, cultural preservation, and public services improvement.

Article 100 specifies that, "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 and the law and administrative rules and regulations, and they shall report such local regulations to the Standing Committee of the NPC for the record". The Constitution fails to provide clarity as to whether local People's Congresses and their standing committees below the provincial level are authorized to exercise legal power, with the exception of a provision stating that they are responsible for ensuring law enforcement, which actually allows substantial flexibility in the distribution of legislative power to local governments. Therefore, the fact that the Legislation Law of the People's Republic of China (2000) allowed the capital cities and the comparatively larger cities (determined by the State Council) to exercise legislative power is not in conflict with the Constitution. When the amendment was made to the Legislation Law of the People's Republic of China (2000) in 2015, granting districted cities with legislative power, it was in compliance with the principle required by the Constitution. In sum, reforms are likely to cause neither direct nor indirect contradiction of the constitutional provisions since the flexibility for reform is allowed by the principle provisions of the Constitution. Reforms are mainly manifested in the institutionalization and concretization of the principle provisions of the Constitution.

1.4. The content of reforms is an adjustment which is not specified in the Constitution. Back in November 2013, the Third Plenary Session of the Eighteenth Central Committee of the Communist Party of China (CPC) suggested putting in place a national security council. In January 2014, the Political Bureau of the CPC Central Committee made the decision to establish the Central National Security Council. Meanwhile, Xi Jinping was appointed chairman of the Central National Security Council; Li Keqiang and Zhang Dejiang were appointed vice-chairmen; and a number of standing committee members and committee members were appointed. Whether the National Security Council is a newly-established state agency, how it relates to other state agencies, and whether it should be included in the Constitution was never made clear by either party's public documents or the NPC. Nevertheless, there is an academic viewpoint that the National Security Council ought to be mentioned clearly in the Constitution. As Ma Ling explains,

> Based on the nature and status of the National Security Council, it needs to be set up under the direct leadership of the President of the People's Republic of China. Here, one significant constitutional issue is involved, that is, there is a necessity for appropriate adjustments to be made to the existing constitutional provisions of the system of the President of the state. In this case, it is recommended to incorporate the associated contents of the National Security Council into the Constitution in the form of a constitutional amendment[13].

As interpreted by Zhu Fuhui, "The President is once again the central figure of exercising state power by constitutional practices. For instance, the President acts as the chairman of the Central Military Commission and the National Security Council. The constant innovation of practices is conducive to making the state institutional system legitimate"[14]. Putting the National Security Council in place is closely associated with the actual power of the President.

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[13] 马岭. 从宪政视角看国家安全委员会的设置//云南大学学报法学版. 2015. № 1. 页2 [*Ma Ling*. A Constitutional Perspective on the Establishment of the National Security Council // Journal of Yunnan University (Law Edition). 2015. No. 1. P. 2].

[14] 朱福惠. "五四宪法"与国家机构体系的形成与创新//中国法学. 2014. № 4. 页57 [Ibid. P. 57].

This was also the case with the reform enforced to the state supervisory system prior to the amendment made to the Constitution. Not only did the reform set up a new state agency, the supervisory commission, it also contrasted it with the government, people's courts, and procuratorates. The reform also required the supervisory commission to collaborate with the Party commission for disciplinary inspection, as a new state agency and a new form of the union with the party, thus wholly departing from the existing provisions of the Constitution. The new state agency is certain to have impact on the function and power distribution of original state agencies and to the relationships among different state agencies. If the supervisory commission is incorporated into the Constitution, it is sure to necessitate many constitutional adjustments[15]. When the Constitution was subjected to amendment in 2018, the supervisory commission was added to the Constitution as a whole section, in confirmation of the prior academic judgment.

If the National Security Council is incorporated into the Constitution, it has a possibility to cause changes to the function performed and to the power exercised by the President, impacting the President's authority[16]. For this type of state institutional reform, normalizing the Constitution is largely manifested in sustaining the basic power relations within the institutional framework of the People's Congress. The Constitution ensures that power distribution among state agencies is coordinated by conforming to its principle norms.

2. Institutional reforms have three strategies in response to the Constitution

Some scholars mention China's existing constitution as a "reforming constitution". They take the view that not only does the process of reform strengthen the existing constitution, it also ensures that reforms and opening-up policies maintain both constitutional legality and legitimacy through the political constitution structure. As Gao Quanxi argues,

> The tolerance of the 'reforming Constitution' for reforms demonstrates that reforms constantly break from the current constitution or breach some of the specific provisions in the Constitution. The 'reforming Constitution' is accomplished by unconstitutional practice as well as the subsequent procedural constitutional amendment[17].

The relationship displayed between reforms and the Constitution is also described by other scholars as "trial reforms and responsive changes made to the Constitution"[18]. Despite this, as stated by Jiang Guohua,

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[15] 郑磊. 国家监察体制改革的修宪论纲//环球法律评论. 2017. № 2. 页136 [*Zheng Lei*. The Outline of Amending the Constitution for the Reform of the State Supervision System // Global Law Review. 2017. Vol. 39, No. 2. P. 136].

[16] See: 马岭. 从宪政视角看国家安全委员会的设置//云南大学学报（法学版）. 2015. № 1.页2–6 [*Ma Ling*. A Constitutional Perspective on the Establishment of the National Security Council // Journal of Yunnan University (Law Edition). 2015. No. 1. P. 2–6]; 马岭. 国家安全委员会的法律地位探讨//上海政法学院学报. 2014 . № 6. 页1–8 [*Ma Ling.* Discussion of the Legal Status of the National Security Council // Journal of Shanghai University of Political Science & Law. 2015. No. 1. P. 1–8]; 从文胜. 成立国家安全委员会的宪法思考//国防法制. 2014. № 11. 页64–68 [*Cong Wensheng.* Constitutional Considerations on the Establishment of the National Security Council // National Defense. 2014. No. 11. P. 64–68].

[17] 高全喜. 革命、改革与宪制：“八二宪法”及其演进逻辑//中外法学. 2012. № 5. 页914 [*Gao Quanxi*. Revolution, Reform and Constitution: the 1982 Constitution and its development logic // Peking University Law Journal. 2012. No. 5. P. 914].

[18] 江国华. 实质合宪论：中国宪法三十年演化路径的检视//中国法学. 2013. № 4. 页183 [*Jiang Guohua*. Substantive Constitutionalism: A Review of the Development of China's Constitution in the Past Thirty Years // China Legal Science. 2013. No. 4. P. 183].

> From practice to rule, that is, from reform to amendment of law, constitutional amendment always fails to keep pace with social reform, suggesting that social reform is usually enforced with no constitutional provisions taken into account[19].

When devising the plan for institutional reforms, policymakers have a full understanding of the restrictions imposed by the constitutional text, and they target responses, for instance, the systemic amendment made to the Constitution's section on state structure at the start of 2018. Such phenomena are indicative of changes to the way the state is reformed in the new era. Nevertheless, the consequence of this constitutional response strategy remains worthy of discussion and in-depth evaluation. Institutional reforms encompass three response strategies to the constitutional text. First, the plan for institutional reforms is in conformance to the Constitution. The reforms regard the Constitution fundamental and are designed to prevent contradictions to its requirements. However, when the implication of the Constitution lacks clarity and the NPC standing committee fails to offer a clear interpretation, it is reasonable to apply prudence in reform enforcement. Second, the innovative reform signifies the intention to amend the Constitution. The reform measures clearly alter the state power structure in compliance with requirements set out by the Constitution. The policymakers may intend to alter the Constitution and advance the reform in line with the power mechanisms as specified by the Constitution. Third, for the sake of continued enforcement, the reform measures that transcend the power distribution of the Constitution avert constitutional adjustments. The partial reform measures have exceeded the scope of power distribution in the existing Constitution, yet there is still no clear attitude on whether or how pertinent restrictions are imposed by the Constitution. Different response strategies of various constitutional reform plans will lead to different impacts on the construction of democracy and the rule of law.

2.1. The plan of reforms shall avoid conflicts with the relevant provisions of the Constitution. Reforms are supposed to take provisions of the Constitution as foundational. However, when there is no clarity to the implication of the Constitution, and the NPC standing committee has yet to offer a clear interpretation, the reforms must be implemented prudently. In the ongoing institutional reforms, the extension of local legislative power and reforms to the audit system are all implemented within the framework of their respective organizations and mechanisms without contradicting the Constitution. From 2014 onwards, the pilot reform to the judicial system has been initiated across the country. Despite concentration at the local level, the reform exerts a potential effect on the stability of the constitutional framework because of the adjustment made to its horizontal and vertical association with People's congresses, courts, and procuratorates. For the professionalization of the judiciary to be promoted, efforts must be made to overcome the localization of the judiciary and to maintain judicial justice to the highest degree. Meanwhile, the reform to the judicial system is required to improve the selection of judges and prosecutors and to facilitate the establishment of People's courts across administrative divisions and special People's courts. However, such reform changes the requirements in the Constitution about appointing and removing judges and prosecutors, as well as NPC's supervision of courts and procuratorates. Nevertheless, the judicial system reform is initially planned for implementation under the context of the existing constitutional and legal framework. Policymakers intend to avert contradictions to the Constitution and to laws. For example, the Pilot Implementation Plan of the Judicial System Reform of the Court System in Jilin Province stated,

[19] Ibid. P. 190.

> We shall implement pilot reforms within the existing legal framework and, when necessary, contribute opinions and make suggestions on the legal authorization or the law amendment based on the reform process. Before obtaining legal authorization or the law amendment, we ought to strictly abide by existing laws and ensure that all pilot reforms observe judicial rules, and that they are enforced in line with the law and in an orderly manner.

Despite this, setting up People's courts and special People's courts across administrative divisions in the reform of the judicial system is unlikely to prevent contradictions to the provisions of the Constitution. Article 3 of the Constitution of the People's Republic of China (1982) stated that, "All administrative, judicial and procuratorial organs of the State are created by the People's Congresses to which they are held accountable to and by which they are supervised". The term "creation" indicates the source and flow relationships among People's Congresses and other state agencies. Nevertheless, other forms of creation in the Constitution and other laws are not as clear. Zhai Guoqiang indicated, "after the formulation of relevant organic laws, the modes of creation refer to the election and appointment"[20]. Article 101 Paragraph 2 of the Constitution of the People's Republic of China (1982) stipulated that, "Local People's Congresses at or above the county level elect are authorized to recall the chairmen of supervisory commissions, presidents of people's courts, and procurators-general of people's procuratorates at the corresponding level". Does the requirement of "the corresponding level" only mean that the People's Congress can only elect the presidents of courts and the chief procurators of procuratorates at an equal administrative division level? Differing explanations will play a decisive role in the constitutionality of the ongoing reform to the unified provincial management of personnel and property and to the establishment of courts across administrative divisions. As interpreted by scholar Zhai Guoqiang, "with regard to constitutional limits in the judicial reform, China's constitution fails to regulate that all the people's courts shall be set up directly by People's Congresses, or specify the rank of the people's courts at various local levels. In addition to the intermediate and higher People's courts, the establishment of other types of local courts is not in conflict with the Constitution"[21]. Nevertheless, not everyone agrees with this[22]. As a matter of fact, the problem is that the NPC and its standing committee have yet to offer an authoritative clarification. The Judges Law of the People's Republic of China (2019) specifies that the appointment of the president and vice president of courts be established across administrative divisions. This can be viewed as an explanation of this issue from a legal perspective to some extent.

2.2. The innovation of reform implies the intention of constitutional amendment. Apparently, some of the reform measures alter the state power structure required by the Constitution. Policymakers clearly intend to make amendments to the Constitution and to advance reform in line with the mechanisms of power designed in the Constitution. In 2016, the Central Committee of the CPC approved Carrying out the Pilot Program of Reforming the National Supervision Mechanism to be rolled out in Beijing Municipality, Shanxi Province, and Zhejiang Province. Despite having no clear suggestion as to how to revise the Constitution, it clearly states:

> As a significant political system reform in relation to the overall situation, the reform enforced to the supervisory system represents the top-level design of the national supervisory

[20] 翟国强. 跨行政区划人民法院如何设立——一个宪法解释学的视角//法商研究. 2016. № 5. 页6 [*Zhai Guoqiang.* How to Set up People's Court...] P. 6.

[21] Ibid.

[22] See: 刘树德. 法院设置的宪法表达//人民法院报. 22/11/2013 [*Liu Shude.* Constitutional Expression on the Establishment of the Courts // People's Court Daily. November 22, 2013].

system. The objective of deepening the reform to the national supervisory system is to establish a national anti-corruption agency under the unified leadership of the party.

The national supervisory system gives priority to organizational and institutional innovation; consolidates anti-corruption resources and forces; widens the scope of supervision and diversifies the means of supervision in order to achieve full coverage of supervision over public officials who are authorized to exercise public power; and puts in place a centralized, unified, authoritative, and efficient supervisory system. The nature and purpose of the reform, such as significant reform of the political system in relation to innovation and the overall organizational and institutional situation, indicate that the policymakers initiating the reform have paid close attention to the potential impact made by the reform measures on the Constitution and laws and are fully prepared both politically and legally. As indicated by Professor Ma Huaide,

> The reform has reinforced the constitutional status of the supervisory agency significantly and provided it with new constitutional attributes, which require confirmation by revising the Constitution. Moreover, when cracking down on abuse-of-power crimes, such as corruption and malfeasance, in the process of conducting supervision, investigation, and disposition, the supervisory commission needs to adhere to Article 135 of the Constitution of the People's Republic of China (1982), that is, 'The people's courts, the people's procuratorates and the public security organs shall, in handling criminal cases, divide their functions, each taking responsibility for its own work, and they shall coordinate their efforts and check each other to ensure the correct and effective enforcement of the law.' Their relations shall be clarified by amending the Constitution[23].

Undoubtedly the Constitution needs to be amended when the supervisory commission is set up. The question remains as to when to make the amendment and how to cope with the lack of constitutional basis beforehand. Different response strategies tend to exert different effects. Based on the practices of constitutional amendment in China, as argued by Wang Zhaoguo, "Amending the relevant provisions in the Constitution if one social system has been validated as mature in practice, has the need to be governed by the Constitution and has to be altered. No amendment of articles that are not of much value to amend, or articles that can be clarified by the constitutional interpretation"[24]. It is the political choice of the institutional reform that the Constitution text lags behind reform practices in a certain period of time. However, the era when the Constitution is completely disregarded has passed. For example, the existing pilot reform to the supervisory system was approved by the NPC standing committee under the framework of the Constitution. The Central Committee of the CPC rolled out Carrying out the Pilot Program of Reforming the National Supervision Mechanism in Beijing Municipality, Shanxi Province, and Zhejiang Province in November 7, 2016. Subsequently, the Decision on Carrying out the Pilot Program to Reform the National Supervision Mechanism in Beijing Municipality, Shanxi Province, and Zhejiang Province was passed at the 25th Session of the Standing Committee of the Twelfth NPC on December 25, 2016. The Decision was the first to clarify the background of the mandate,

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[23] 马怀德. 《国家监察法》的立法思路与立法重点//环球法律评论. 2017. № 2.页10 [*Ma Huaide*. Legislative Ideas and Key Points... P. 10].

[24] 王兆国. 关于《中华人民共和国宪法修正案（草案）》的说明——2004年3月8日在第十届全国人民代表大会第二次会议上 [*Wang Zhaoguo*. A Statement on the Draft Amendment of the Constitution of the People's Republic of China (At the 2nd Session of the 10th National People's Congress on March 8, 2004)] Available at: http://www.npc.gov.cn/zgrdw/npc/oldarchives/zht/zgrdw/common/zw.jsp@label=wxzlk&id=329508&pdmc=1504.htm (accessed: 25.05.2020).

In accordance with the Scheme for the Pilot Program of Reforming the National Supervision Mechanism in Beijing Municipality, Shanxi Province, and Zhejiang Province as determined by the CPC Central Committee, in order to seek and acquire experience in the promotion of the reform to the national supervision mechanism across the country, it is decided at the 25th Session of the Standing Committee of the Twelfth NPC that the pilot program of reforming the national supervision mechanism is scheduled to be rolled out in Beijing Municipality, Shanxi Province, and Zhejiang Province.

Qin Qianhong suggests that translating the political decisions of the party into the legal decisions of the NPC provides legal legitimacy for the reform to the state supervisory system to a certain extent[25]. This transformation is indicative of the reformers' improvement in respecting the rule of law[26]. Although scholars, such as Qin Qianhong, indicated major defects[27], existing institutional reforms have achieved substantial progress in comparison to the institutional reform enforced in the early stages of reform and opening up. The combination of the NPC authorization and the pilot reform has become the standard mode under the dual context of deepening reform and law-based governance. It is also reflective of the trend for reform which makes a gradual shift from "crossing the river by feeling the stones" to "implementing reform in an orderly manner" and "having legal basis in major reforms"[28].

2.3. Some reform content goes beyond the constitutional framework but temporarily avoids constitutional adjustment. Some of the reform requirements go beyond issues covered by the framework of constitutional power distribution, so they may transcend the norms of the Constitution text. Nevertheless, the implicit power conflicts are certain to have a persistent impact on the enforcement of the Constitution. For example, one of the major measures taken in the supervisory system reform is that the party's disciplinary inspection agencies collaborate with the supervision commission. In reality, the director and the deputy director roles of the supervisory commission in the pilot areas are simultaneously held by the secretary and the deputy secretary of the committees for discipline inspection. Members are selected from the provincial-level commission for discipline inspection, the supervision department, procuratorates, the anti-corruption bureau, and other departments. Collaboration between party's discipline inspection commission and the supervision commission is characterized as "one group of people, two departments".

As stated by China's Constitution (1982) in the preamble, the leadership of the CPC makes no other provisions in the text of the Constitution to express the separation of the party from the government. Therefore, the institution of power being generated by cooperation between the party's organ and the government has transcended the scope of the state institutional system and its power relations, which is designed by the Constitution. The constitutional text provides no legal basis to address constitutional conflicts arising from that co-operation. The Decision made by the Standing Committee of the National People's Congress on Carrying out the Pilot Program to Reform the National Supervision Mechanism in Beijing Municipality, Shanxi Province, and Zhejiang Province failed to address the issue of co-operation. Therefore, as a major reform measure, co-

[25] 秦前红. 全国人大常委会授权与全国人大授权之关系探讨//中国法律评论. 2017. № 2. 页24 [*Qin Qianhong*. Discussion on the Relationship between the Authorization of the NPC Standing Committee and the NPC // China Law Review. 2017. No. 2. P. 24].

[26] See: 姚建宗. 中国语境中的法律实践概念//中国社会科学. 2014. № 6. 页157 [*Yao Jianzong*. The Concept of Legal Practice in Chinese Context // Social Sciences in China. 2014. No. 6. P. 157].

[27] 秦前红. 全国人大常委会授权与全国人大授权之关系探讨//中国法律评论. 2017. № 2. 页27 [*Qin Qianhong*. Discussion on the Relationship…] P. 27.

[28] 阿计. 人大授权改革：既要授权，也要监督//公民导刊. 2015. № 11. 页44 [*A Ji.* Authorizing the Reform by the NPC Requires Both Authorization and Supervision // Citizen's Guide. 2015. No. 11. P. 44].

operation avoids the norms explicit in the text of the Constitution. The failure to provide a normative basis for the co-operation of the party's organ with the government administration reveals that the Constitution's provisions on the allocation and operational mode of state powers remain incomprehensive. How to ensure that all contents of the reform are on track with the Constitution and the rule of law, while preventing any excessive impact of the reforms on the Constitution requires further theoretical research and practical verification.

3. Institutional reforms should conform to the mode of formal constitutionality

The institutional reforms in China demonstrate respect for the Constitution, but they are not restricted by the text of the Constitution. The path for reform even circumvents the Constitution, which appears to validate professor Gao Quanxi's viewpoint that, "The constitutional reform has yet to be thoroughly completed during transformation, with a long way to go"[29]. Under the context of the increasing authority of the Constitution and constantly perfecting the socialist legal system with Chinese characteristics, any institutional reform failing to abide by the Constitution and laws will result in certain damage to the legal order of the state, and in turn, will undermine the credibility and effectiveness of the reform. Over the course of social transformation, reforms have to stay current, while improving the Constitution. Nevertheless, the Constitution that provides the authoritative structure and stable expectation for the state and its citizens shall not be neglected. Any major systemic reform with regard to the Constitution must adhere to formal constitutionality as the primary foundation.

3.1. Following the rule of law's requirement for formal constitutionality. Formal constitutionality is viewed as a concept corresponding to substantive constitutionality. In the typology research of jurisprudence, the two concepts, the formal rule of law and the substantive rule of law, correspond to formal constitutionality and substantive constitutionality in the Constitution. Based on jurisprudence research, Chen Jinzhao indicated that the rule of law features formal thought, and the formal and procedural nature of law is aimed at ensuring judicial justice[30]. It is widely recognized that formal rule of law has superiority to substantive rule of law. In theory, constitutional scholars classify constitutionality into two types for comparative study. First, substantive constitutionality represents a theory that is premised on value rationality and practice. Second, the theory of formal constitutionalism is, in essence, a theory premised on formal rationality and norms[31]. The restrictions imposed by substantive constitutionality attract widespread criticism from scholars as well[32]. As for formal constitutionality, the requirements on the normative effect of the constitutional text are higher. Based on the basic viewpoint of formal constitutionality, the constitutional text is the only criterion for determining whether an act is compliant with constitutionality, which needs explanation through the mechanism of constitutional interpretation. The reform measures exceeding the definition of the interpretation must be rejected or justified by constitutional amend-

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[29] 高全喜. 革命、改革与宪制："八二宪法"及其演进逻辑//中外法学. 2012. № 5. 页926 [*Gao Quanxi.* Revolution, Reform and Constitution: the 1982 Constitution and its development logic // Peking University Law Journal. 2012. No. 5. P. 926].

[30] 陈金钊. 实质法治思维路径的风险及其矫正//清华法学. 2012. № 4. 页67 [*Chen Jinzhao*. The Risk and Correction of Substantive Legal Thinking // Tsinghua Law Review. 2012. No. 4. P. 67].

[31] 江国华. 实质合宪论：中国宪法三十年演化路径的检视//中国法学. 2013. № 4. 页180 [*Jiang Guohua*. Substantive Constitutionalism. P. 180].

[32] Ibid. P. 190.

ment. In the long process of constitutional amendment, the mechanism for constitutional power operation can be applied to create institutional space for reform.

From the perspective of formal constitutionality, an act must be constrained by the Constitution, and if it goes beyond the constitutional interpretation of the relevant text, it transcends the limits of the Constitution. Nevertheless, breaking beyond the boundaries of the Constitution should not be regarded entirely as an absolute breach of the Constitution. Otherwise the Constitution would be excessively rigid and lose its adaptability to social changes. In fact, when first developing the Constitution, policymakers envisaged such circumstances where the text would be surpassed by social development, where the text overlooks the norms of certain social relations, where the obsolete system is transformed into a new system, where the long-standing constitutional view changes to a new perspective, and so on. Therefore, all constitutions are designed with procedures for constitutional amendment to ensure its long-term applicability.

Apart from that, before and during amendment made to the Constitution, there remain mechanisms that allow certain necessary reforms to avoid any constitutional judgment for the time being. For example, the NPC and its standing committee authorize the reform to be enforced using the legislative power or the decisive power on the vital items, thus setting up a relatively closed "special constitutional zone" for the reform. As a prominent contemporary American critical jurist, Mark Tushnet stated in Why the Constitution Matters, "The Constitution matters because it provides the structure through which we act politically to get our representatives to enact statutes that will become part of the Constitution outside the Constitution"[33]. The structure mentioned by Tushnet refers to the political structure where state power operates, and the so-called Constitution outside of the Constitution refers to other legislation and systems fundamentally crucial to the development of the state and society[34]. It is revealed that when there is the need for the reform to break through the norms of the Constitution, it is not necessary to scrap the Constitution or enforce reform by violating it. Instead, seeking support from the power operation mode of constitutionality to make institutional space for reforms is regarded as the institutional setting for modern legal structure.

China's existing constitution has been revised five times with 52 amendments having been published, indicating that the text is quite fitting in society. Being viewed as the fundamental law of the socialist legal system with Chinese characteristics, the Constitution deserves respect to the highest degree. The so-called formal constitutionality requires no conformance to all the requirements of the Constitution, but endorses amendment strictly in line with the rules and procedures specified in the Constitution, and it bans institutional reforms that fail to comply with the Constitution. Formal constitutionality is opposed to the ex-post confirmation mode of responsive constitutional amendment. As interpreted by Jiang Guohua, "The fragmented results of the tentative reform are capable of being filtered, selected, and integrated into the constitutional track, thus obtaining universal significance"[35]. Formal constitutionality requires that when exceeding the current legal system, the systemic reform should be enforced in line with the procedural rules of the Constitution, with the Constitution being eventually amended.

3.2. Adhering to the concept of prudent institutional reforms. The implicit institutional ethics of the institutional reform mode with formal constitutionality as the foundation represent the concept of prudent institutional reform. One of the most

[33] *Tushnet M.* Why the Constitution Matters. Yale University Press, 2010. P. 8.

[34] Ibid. P. 6.

[35] 江国华. 实质合宪论：中国宪法三十年演化路径的检视//中国法学. 2013. № 4. 页181 [*Jiang Guohua*. Substantive Constitutionalism. P. 181].

prominent functions performed by the Constitution is to ensure that any institutional reform with long-term influence is carried out after careful and adequately democratic consultation by setting democratic procedures and legal boundaries for exercising state power, thus ensuring the stability of the country as a whole and the predictability of future life. Prudent institutional reforms are the requirement of the rule of law and the institutional guarantee offered by the Constitution for future development. Pressing reform should also abide by prudent institutional reform.

The concept of prudent institutional reforms involves three standards. First, institutional reforms should adhere to the democratic consultation procedures within the institutional framework of the People's Congresses. The system of People's Congresses is viewed as a constitutionalized and legalized framework of power operation. It provides the institutional basis for the legitimacy of reforms that adjust relations between the power distribution structure and pluralistic social interests. Second, institutional reform must fully respect and be compliant with other relevant constitutional and statutory procedures. Seemingly, this action often increases the cost of reform; the initiation of the procedure to amend the Constitution or the law; the proposal and deliberation of the draft; the strict voting and adoption; and other factors are costly in terms of time, mobilization expenses, and effect on the balance of pluralistic interests. From a long-term perspective, however, the political, economic, and social risks of radical reform measures can be prevented by maintaining full respect for the rule of law. Third, institutional reform should fully respect the wishes and interests of the general public. On the surface, institutional reforms address the issue of redistribution of state power. The immediate purpose is to meet the institutional objectives of power supervision, judicial justice, and democratic legislation. However, the ultimate purpose is to establish a more reasonable power structure to practice popular sovereignty. Without the premise of human rights, reform is unrealistic. Therefore, institutional reforms ought to take the will of the people and the protection of human rights as the standards for the success of the reform.

3.3. Insisting on coordination and unity of the structure of state power allocation. Over the course of institutional reformation, there have been multiple overlapping reform plans and constant revision in advancement of those plans. For example, the reform to the supervisory system that was initiated at the end of 2016 made certain changes to the reforms of the judicial system that had already begun in 2014, manifested in the major adjustment made to the power distribution of the procuratorial organ. Therefore, that reform had to be planned all over again. In fact, institutional reforms have encompassed the main areas of state power distribution. Despite this, the overall reform blueprint has yet to be fully demonstrated. In this context, we should especially adhere to the coordination and unity of the structure of state power distribution as required by the Constitution. Clarifying the nature of the power of the newly established state agencies is conducive to theoretically preparing for deployment of modern mechanisms of state power restriction, thus giving comprehensive consideration and reasonable adjustment to the relationships among state agencies within the framework of the People's Congress system.

After making amendment to the Constitution, the supervisory commission has a duty as the supervisory agency of the state. The Supervision Law of the People's Republic of China (2018) defines the supervisory commission that, "Supervisory commissions at all levels are the specialized organs responsible for exercising state supervisory functions. They shall, in accordance with this Law, conduct supervision of public officials exercising public power, investigate duty-related violations and crimes, build integrity and carry out the anti-corruption work, and maintain the dignity of the Constitution and the law". As stipulated by the Constitution and the supervision law, "Supervisory

commissions shall independently exercise the supervisory power in accordance with the law, free from interference by any administrative organ, public organization or individual". Supervisory organs are clearly not legislative, administrative, or judicial. The establishment of the supervisory commission has changed the institutional framework of "the government, people's court, and people's procuratorate", which has long been established in China. However, will it make changes to the modern system of power distribution among legislative, executive, and judicial powers when it is unclear whether the power of the newly established supervisory commission is legislative, executive, judicial, or a new kind of power altogether.

The answer to this question will play a crucial role in the relationship among the supervision commission and other state organs, with regard to the power limitations of the supervision commission, the organizational structure inside the supervision commission, and the way the supervisory power is exercised by the supervision commission in particular. When the reform to the supervisory system first began, Wang Qishan, as leader of the central leading group for the pilot program for reform of the national supervision mechanism, described the supervision commission as an organ of supervision and law-enforcement. He indicated that the supervisory commission is, in essence, an anti-corruption agency and as a supervision and law-enforcement organ, it works in concert with the discipline inspection commission to achieve full supervision coverage over all public officials authorized to exercise public power. The pilot program is unlikely to determine the nature of the supervisory commission's power based simply on how the supervision and law-enforcement agencies are defined.

In theory, the power granted to the supervisory commission, as a supervision and law-enforcement agency, should be executive in nature. It is comprised primarily of the relevant functions performed by departments which responsible for investigating and handling, and preventing corruption, bribery, dereliction of duty, and other service crimes. There is no dispute that administrative supervisory power is classified as administrative power. At present, what influences the theoretical and practical scholars to make a clear judgment with regard to the nature of the power granted to the supervisory commission is the nature of corruption and bribery, dereliction of duty, prevention of duty crimes, and especially the power of investigation as exercised by procuratorates. As procuratorates represent the judicial organs in China, this type of power is often viewed as judicial power. Nevertheless, the scope of the functions and jurisdiction of state organs and the nature of specific powers are not wholly unified. As Xiong Qiuhong states, "The investigation power of duty crimes, like other investigation powers, is classified as an administrative power in essence. The subject of exercising investigation power is mainly comprised of the police, the prosecutors, or the officers of anti-corruption agencies. The agencies which are granted the investigation power are different from the courts granted the judicial power"[36]. Distributing the investigative power for investigating corruption and bribery crimes from the procuratorate to the supervisory commission would not directly grant the supervisory commission judicial organ status. Moreover, there have been theoretical debates surrounding the nature of procuratorial power in the legal field. As claimed by Wan Yi, "There are four representative viewpoints, namely, the theory of administrative power, the theory of judicial power, the theory of dual attributes of executive power and judicial power, and the theory of legal supervision"[37]. Of the four viewpoints, the dominant academic tendency is to view

[36] 熊秋红. 监察体制改革中职务犯罪侦查权比较研究//环球法律评论. 2017. № 2. 页56 [*Xiong Qiuhong*. Comparative Study on Investigating Power of Duty Crime in the Reform of Supervision System // Global Law Review. 2012. Vol. 39, No. 2. P. 56].

[37] 万毅. 检察权若干基本理论问题研究//政法论坛. 2008. № 3. 页92 [*Wan Yi.* Research on Some Basic Theoretical Problems of Procuratorial Power // Tribune of Political Science and Law. 2008. No. 3. P. 92].

the functions and powers performed by the procuratorate, in order to investigate and crackdown on corruption and bribery, dereliction of duty, and to prevent duty crimes, as administrative powers[38].

With clear understanding of the nature of the supervisory commission's administrative powers, specific systems of reform to the state supervisory system can avoid breaching the state power relations within the framework of the People's Congress system.

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[38] 龙宗智. 论检察权的性质与检察机关的改革//法学. 1999. № 10. 页5 [*Long Zongzhi*. On the Nature of Procuratorial Power and the Reform of Procuratorial Organs // Law Science. 1999. No. 10. P. 5]; 谢鹏程. 论检察权的性质//法学. 2000. № 2. 页14 [*Xie Pengcheng*. On the Nature of Procuratorial Power // Law Science. 2000. No. 2. P. 14]; 陈冬. 监察委员会的设置与检察权的重构//首都师范大学学报（社会科学版）. 2017. № 2. 页62 [Chen Dong. Control Commission Setup vs. Procuratorial Power Reconstruction // Journal of Capital Normal University (Social Sciences Edition). 2017. No. 2. P. 62].

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Установление конституционных ограничений для институциональных реформ в Китае*

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С 2014 г. в Китае начался новый этап всеобъемлющих и системных институциональных реформ. Проводимые реформы включают изменения в судебной системе, национальной системе надзора, системе национальной безопасности, национальной законодательной системе, системе аудита и т. д. В целом эти институциональные изменения перестали ограничиваться реформами, нацеленными на внутренний механизм управления каким-либо одним государственным учреждением. Вместо этого серьезно корректируются общее распределение полномочий между различными типами государственных органов и подчинение государственных органов на различных уровнях. Организационная структура и распределение полномочий государственных учреждений претерпели серьезные кадровые изменения. Конституция содержит различные нормативные основания для проведения институциональных реформ. Некоторые реформы четко связаны Конституцией, некоторые ограничены ее общими положениями, а некоторые выходят за рамки распределения власти, определенного Конституцией. На практике институциональные реформы включают в себя три стратегии реагирования на Конституцию: соблюдение Конституции; отклонение от Конституции и продвижение конституционных поправок; отклонение от Конституции с уклонением от конституционной корректировки. По мнению автора статьи, в ходе социальных преобразований реформы должны оставаться актуальными, одновременно совершенствуя Конституцию. Тем не менее нельзя пренебрегать Конституцией, которая обеспечивает авторитетную структуру и стабильные ожидания для государства и его граждан. Любая крупная системная реформа в отношении Конституции должна основываться на формальной конституционности в качестве главного основания.

Ключевые слова: государственные институциональные реформы, конституционная поправка, формальный конституционализм, институциональная трансформация.

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