

Bing Shui*

Chinese Constitutional Performance Unveiled: Text Mining Insights in Civil Litigations

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Abstract: This article presents a comprehensive examination of the role of constitutions in private disputes, with a specific focus on the Chinese Constitution. Utilizing an extensive dataset of digitized court adjudications, this study delves into a relatively unexplored area, yielding crucial factual and legal insights. The research reveals that the Chinese Constitution significantly influences civil adjudications, both implicitly and explicitly. Furthermore, court judgments emerge as pivotal forces shaping public awareness of constitutional principles. These findings hold profound implications for comprehending the role of constitutions in contexts beyond democratic frameworks, particularly within the private sphere. The study underscores how the capitalist market in China empowers individuals to assert and safeguard private rights, consequently affording the Constitution a protective role in this realm. Concurrently, the existing regime has systematically eroded the Constitution's influence in public affairs, maintaining its symbolic and rhetorical role. Notably, the concept of judicial independence remains a sensitive subject in China, leading many civil courts to eschew constitutional provisions in favor of political expediency. This paradox underscores the necessity of establishing a reasonably independent judiciary as an integral facet of constitutionalism in such settings. In sum, this research challenges prevailing assumptions about constitutionalism's contours. It transcends the conventional focus on political authority, illustrating how empirical investigations into constitutional performance within civil litigation can illuminate the emergence of constitutionalism in the shadows of non-democratic systems. These findings offer valuable insights into the role of constitutions in private disputes and pave the way for further exploration within this evolving scholarly domain.

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*Corresponding author: **Bing Shui**, Professor at Faculty of Law, University of Macau, Taipa, Macao, E-mail: bingshui@um.edu.mo

Ultimately, this study advances our comprehension of constitutional realities and their far-reaching impacts on the legal landscape and society within contemporary China.

Keywords: constitutional realities; civil adjudications; Chinese constitution; constitutionalism; constitutional influence; text mining

1 Background and Objectives

The intricate and multifaceted nature of the Chinese Constitution has consistently captivated the attention of legal scholars, sparking rigorous debate and analysis. Within the realm of constitutional applicability, two primary perspectives have emerged. One perspective characterizes the Chinese Constitution as a ‘dead letter’¹ or mere ‘window dressing,’² arguing that it falls short of realizing the lofty ideals it espouses and carries minimal legal weight. In contrast, the opposing viewpoint maintains that the Constitution remains a dynamic and evolving document, adapting to reflect the latest political ideologies and government policies.³ While both viewpoints share the underlying assumption that the Chinese Constitution wields limited practical influence,⁴ the contentious nature of this issue stems from the lack of empirical evidence supporting these claims, rendering it a highly disputed subject within the realm of legal scholarship.⁵

The Chinese Constitution has been a contentious topic in legal discourse, primarily due to its perceived ineffectiveness in judicial implementation. Despite the absence of an independent constitutional review mechanism, legal scholars have noted instances of constitutional provisions being referenced in judicial rulings throughout the years, although the extent of their impact remains uncertain.⁶ A

1 Qianfan Zhang, ‘A Constitution Without Constitutionalism? The Paths of Constitutional Development in China’ (2010) 8 *International Journal of Constitutional Law* 952.

2 Thomas E. Kellogg, ‘Arguing Chinese Constitutionalism: The 2013 Constitutional Debate and the “Urgency” of Political Reform’ (2016) 11 *University of Pennsylvania Asian Law Review* 337.

3 Lin Chien-Chih, ‘Constitutions and Courts in Chinese Authoritarian Regimes: China and Pre-democratic Taiwan in Comparison’ (2016) 14 *International Journal of Constitutional Law* 369, 377.

4 Yan Lin and Tom Ginsburg, ‘Constitutional Interpretation in Lawmaking: China’s Invisible Constitutional Enforcement Mechanism’ (2015) 63 *American Journal of Comparative Law* 467.

5 It is noteworthy that numerous influential works delve into either the nature of the Chinese Constitution or the empirical legal study of the Chinese courts’ adjudications. However, the combination of scholarship in English addressing both topics seems to be uncommon. One exceptional contribution in this regard comes from Daniel Sprick, who investigated the function of the Chinese Constitution based on courts’ decisions. See Daniel Sprick, ‘Judicialization of the Chinese Constitution Revised: Empirical Evidence from Court Data’ (2019) 19(2) *China Review* 42.

6 Binwen Xing, ‘How Courts Are Quoting the Constitution’ (2015) 5 *China Law Review* (in Chinese).

pivotal moment in this context occurred in 2001, commonly referred to as China's equivalent of *Marbury v. Madison*. In this landmark case, the Supreme People's Court anchored its judgment in constitutional provisions in a civil lawsuit, only to reverse its decision in 2008 amid considerable controversy.⁷

Following this case, the Supreme People's Court deliberately introduced ambiguity surrounding the role of the Constitution in civil lawsuits, resulting in a perplexing stance on the applicability of constitutional provisions at the grassroots level of the judiciary.⁸ In 2016, the Supreme People's Court issued a directive that prohibited Chinese judges from explicitly grounding their decisions on specific constitutional provisions but permitted them to elucidate their rulings based on the reasoning found within the Constitution.⁹ Despite this regulatory framework, the actual influence of the Chinese Constitution on legal practice continues to be a matter of ongoing debate.

Amidst the ongoing debates surrounding the concept of 'constitutions without constitutionalism,'¹⁰ the Chinese experience offers a unique and compelling perspective on this intricate matter. While substantial research has delved into the performance of constitutions under authoritarian regimes,¹¹ there remains a notable scarcity of empirical evidence concerning their application in private disputes. The constitutional function can be broadly delineated into two overarching categories: the public sphere, where the Constitution operates as a bulwark against arbitrary state power, with public law occupying the central stage, and the private sphere, where the Constitution assumes a role in regulating individual interactions and ensuring strict adherence to the rule of law.¹² It is within this latter category that the

7 Robert J. Morris, 'China's *Marbury*: Qi Yuling v. Chen Xiaoyi-The Once and Future Trial of Both Education & Constitutionalization' (2009) 2 *Tsinghua China Law Review* 273, 275.

8 See Decision of the Supreme People's Court on Abolishing the Relevant Judicial Interpretations (the Seventh Batch) Promulgated before the End of 2007, 148 SUP. PEOPLE'S CT. GAZ., 2009, Issue 2.

9 See Notice of the Supreme People's Court on Issuing the Specifications for Preparing Civil Judgments by the People's Courts and the Style of Civil Litigation Documents (issued by Sup. People's Ct., June. 28, 2016, effective 1 August 2016).

10 See Tom Ginsburg and Sampser Alberto, *Constitutions in Authoritarian Regimes* (Cambridge University Press 2013) 1.

11 See Benjamin L. Liebman, 'China's courts: Restricted reform' in Christoph Antons, Roman Tomasic, *Law and society in East Asia* (Routledge 2017) 237–280. Yung-Yung Chang, 'The post-pandemic world: Between constitutionalized and authoritarian orders—China's narrative-power play in the pandemic era' (2021) 26 *Journal of Chinese political science* 27–65.

12 On Dicey's influential account, the general nature of the common law constitution is laid down in 'every system of government based on the exercise of persons in authority of wide, arbitrary, or discretionary powers of constrains'. See A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan & Co 1959) 188.

utilization of constitutional provisions in private disputes gains particular relevance and significance.¹³

While playing a pivotal role in the domain of jurisprudence, the impact of authoritarian constitutions on private disputes remains surprisingly underexplored. Despite numerous observations showcasing the transformation of authoritarian regimes into constitutional systems, the intricate process of this evolution is inadequately examined.¹⁴ This research endeavors to address this significant knowledge gap by focusing on elucidating the complex dynamics surrounding the role of the Chinese Constitution in the context of private legal conflicts. The primary objective of this study is to contribute to a deeper understanding of the interplay between authoritarian legal frameworks and private disputes, an area that has received insufficient scholarly attention.

The inquiry into the relevance and operational dynamics of the Chinese Constitution within the realm of private disputes represents a pivotal yet heretofore underexplored legal phenomenon. The primary objective of this article is to rectify this conspicuous gap in legal scholarship by undertaking a comprehensive retrospective analysis encompassing more than 1000 civil adjudications in China. This analysis will span the period from 1995 to 2015, a timeframe that precedes the introduction of the Supreme People's Court's 2016 regulation. While the precise impact of this recent regulatory development remains enigmatic, a historical examination of cases predating this regulation can serve as a valuable instrument for disentangling some of the prevailing ambiguities that shroud this intricate issue.

Sprick's recent study provides invaluable insights into the evolving phenomenon of constitutional judicialization in China. His argument for adopting a bottom-up perspective is compelling, as it underscores the need to observe the proactive role played by judges at the grassroots level in applying the Constitution.¹⁵ Sprick's work, in this regard, enhances and builds upon previous research by revealing the nuanced variations in constitutional interpretations at the local level between 2014 and 2016.

However, it is important to acknowledge that Sprick's study, while commendable in its contribution, may oversimplify the intricate landscape within China's civil courtrooms. It presents a valuable piece of the puzzle but does not offer a comprehensive and all-encompassing view of the multifaceted dynamics at play.

¹³ The now-classic response to Dicey's argument is Hart's claim that the foundation of common law constitution is principles of legality, namely 'congruence between judicial decisions and the enacted law'. See Hart, *Essays in Jurisprudence and Philosophy* (Clarendon 1983) 115.

¹⁴ Michael William Dowdle, 'Of Parliaments, Pragmatism, and the Dynamics of Constitutional Development: The Curious Case of China' (2021) 35 N. Y. U. J. Int'l L. & Pol. 1.

¹⁵ Daniel Sprick, 'Judicialization of the Chinese Constitution Revised: Empirical Evidence from Court Data' (2019) 19(2) *China Review*, 42.

The extent to which the Chinese Constitution is recognized as the legal foundation for judges' decisions, particularly in the aftermath of the *Marbury* case, remains a subject fraught with uncertainty. Equally obscure is the inquiry into whether different constitutional provisions assume distinct functions, and if so, in what specific types of civil adjudications they come into play. A critical and unanswered question lingers: who assigns greater value to the Constitution in the context of private disputes – the judges or the litigants? Moreover, the implications of litigants invoking constitutional provisions in the course of civil lawsuits remain shrouded in ambiguity.

It is against this backdrop of unresolved queries that this article endeavors to shed light on the practical application of the Chinese Constitution in civil adjudications. By conducting a meticulous examination of its role in this legal domain, we aspire to provide a more comprehensive and nuanced understanding of how the Constitution functions within the intricate framework of private disputes, addressing these pivotal and hitherto unexplored dimensions of its operation.

This article marks a pioneering effort in conducting a systematic examination of the application of the Chinese Constitution within the context of civil litigations. To accomplish this, our study employs a comprehensive multi-method approach, blending descriptive analysis, data mining, and doctrinal analysis. The corpus of cases under examination was meticulously gathered from the databases of *Lawyee (Beida Fayi)*¹⁶ and *Pkulaw (Beida Fabao)*,¹⁷ both esteemed commercial websites in China known for their legal resources. It is worth noting that the data retrieval process was an extensive endeavor, spanning over two years, to compile and scrutinize court judgments that intersect with the Chinese Constitution.

However, it is imperative to acknowledge the inherent limitations associated with self-retrieved data, with a particular emphasis on the challenge of selection bias.¹⁸ This bias can be attributed to two significant factors associated with the data sources under scrutiny. Firstly, the data collection for this research remains incomplete, mainly because a majority of Chinese courts began to publish their judgments online only after the year 2016.¹⁹ Secondly, the commercial databases used

16 'Lawyee' (Lawyee 北大法易) <<http://www.lawyee.net>> accessed 20 October 2020.

17 'Chinalawinfo' (Chinalawinfo 北大法律信息网) <<http://www.chinalawinfo.com.net>> accessed 20 October 2020.

18 A burgeoning body of literature has explored the publication of Chinese court documents on the internet platform. See 'Making Chinese Court Filings Public: Some Not-So-Foreign American Insights' (2020) 133 Harv. L. Rev. 1728. For more details, Yu Xiaohong and He haibo, 'Big Data Analytics: A Report on Publishing Court Opinions on China Judgement Online' (2016) 22(3) *China Review* 4; Björn Ahl and Daniel Spick, 'Toward Judicial Transparency in China: The New Public Access Database for Court Decisions' (2018) 32 *China Info* 3, 5–7.

19 See Supreme People's Court Provisions on Publishing Online Court Options by the People's Courts (issued 29 August 2016, effective 1 October 2016).

in this study have not publicly disclosed the methods by which they obtained court documents,²⁰ introducing the possibility of biases stemming from missing or incomplete data within these databases. As Liebman aptly reminds us, ‘the sheer volume of incomplete data currently available may impede efforts to swiftly address existing questions’ when dealing with large-scale data derived from Chinese courts.²¹

Given these inherent constraints, a pivotal analytical strategy adopted herein is to treat text as data and regard the text and underlying data of judicial decisions as the primary focus of our analysis. In order to mitigate the effects of selection bias, we have devised a text-based machine learning approach that transcends mere statistical description. Specifically, this study incorporates a decision-tree algorithm in conjunction with a meticulous close reading of select cases, aiming to yield findings that are not only less influenced by bias but also more robust and reliable.

It is important to underscore that the primary focus of this article diverges from discussions regarding why the Chinese Constitution lacks a dedicated judicial enforcement mechanism or how it may serve as an inspiration for societal improvement.²² Instead, our central aim revolves around delving into the multifaceted roles that the Constitution assumes in the realm of private disputes within an authoritarian regime. The contributions of this article are threefold. Firstly, it furnishes a richer and more nuanced understanding of the constitutional functions within the context of private disputes through a comprehensive large-scale case study that embraces methodological pluralism. Secondly, it furnishes evidence that a substantial proportion of judges refrain from explicitly invoking the Constitution in their written judgments, primarily due to judicial caution, thereby carrying profound theoretical implications. Thirdly, this article bridges the realms of theory and empirical evidence by employing a historical perspective to illustrate how non-domestic constitutions exert influence within the domain of private law.

To accomplish these objectives, the structure of this article unfolds as follows: The initial section provides a comprehensive descriptive analysis, serving as the foundation for assessing the extent of the Chinese Constitution’s impact on civil lawsuits spanning the past two decades. Section II proceeds to delve deeper, employing correlation analysis and machine learning tools to scrutinize a myriad of factors that have the potential to influence litigant outcomes. These factors encompass constitutional provisions, the nature of litigious claims, the approaches taken in

²⁰ See Rachel E. Stern, *Environmental Litigation in China: A Study in Political Ambivalence* (Cambridge University Press 2013) 124.

²¹ Benjamin I. Liebman et al., ‘Mass Digitization of Chinese Court Decisions: How to Use Text as Data in the Field of Chinese Law’ [2017] 21st Century China 10, Columbia Pub. Law, Research Paper No. 14–551.

²² Ginsburg and Alberto (n 10) 8.

citing constitutional provisions, and the hierarchy of courts involved in the adjudication process.

Section III of this article takes a qualitative approach; wherein representative cases are meticulously examined to offer insights into how judges and litigants have navigated the terrain of constitutional provisions within their legal argumentation. This section seeks to illustrate the practical dynamics at play in the application of the Constitution in the context of private disputes.

Finally, in Section IV, the article ventures into speculation regarding the future trajectory of the field of Chinese Constitutional law. It contends that the absence of judicial independence within the authoritarian regime will invariably lead to a phenomenon known as ‘constitutional avoidance,’ rendering the establishment of private constitutionalism unattainable. This argument underscores the intricate interplay between constitutional principles and authoritarian governance, highlighting the challenges and limitations in nurturing constitutional values within the Chinese legal landscape.

2 Examining the Impact of Constitution on Civil Litigations

In contemporary China, a juxtaposition of seemingly incongruous institutions – socialism and capitalism²³ – has given rise to two distinct yet interwoven spheres. While state authority is widely perceived to extend throughout various facets of China’s political landscape, including judicial independence,²⁴ the omnipresence of the one-party state,²⁵ the legislative processes,²⁶ and the safeguarding of human rights.²⁷ Meanwhile, private law driven by economic development holds equal sway, particularly in matters involving civil affairs such as divorce, contractual disputes,

23 To subsume the new economic elites (capitalists) under the rubric of ‘builders of socialism,’ for example, the Chinese Communist Party officially reformulated party theory and revised the Constitutional provisions in 2004. See Heike Holbig, ‘Ideology after the end of ideology. China and the quest for autocratic legitimation’ (2013) 20 *Democratizations* 67–68.

24 See Jerome Alan Cohen, ‘The Chinese Communist Party and “Judicial Independence”: 1949–1959’ (1969) 82 *Harvard Law Review* 967, 976–978.

25 See Xin He, ‘The Party’s Leadership as a Living Constitution in China’ (2012) 42 *Hong Kong Law Journal* 73, 76–84.

26 See Yan Lin and Tom Ginsburg, ‘Constitutional Interpretation in Lawmaking: China’s Invisible Constitutional Enforcement Mechanism’ (2015) 63 *American Journal of Comparative Law* 467, 470–471.

27 Sarah Biddulph, *The Stability Imperative: Human Rights and Law in China* (UBC Press 2015).

and tort liability.²⁸ This complex coexistence raises the fundamental query of how China's Constitution applies to disputes of a private nature. Despite its profound implications, both domestically and internationally, research pertaining to this issue has largely remained 'impressionistic rather than empirical.'²⁹

The advent of mass digitization within the Chinese judicial system has presented a unique opportunity to empirically document this issue.³⁰ However, until recently, considerable uncertainty shrouded the workings of China's civil courtrooms, pre-dating the regulatory measures imposed in 2016.³¹ In response to this ambiguity, the present article harnesses extensive datasets culled from Lawyee (*Beida Fayi*) and Pkulaw (*Beida Fabao*) spanning the period from 1995 to 2015. The objective is to delve into the pivotal inquiry of whether the courts invoked the Constitution in civil lawsuits during this temporal span.

2.1 Dataset Construction

In the process of constructing the dataset for this study, we harnessed the resources of two prominent open-access Chinese law case databases: Lawyee (*Beida Fayi*)³² and

28 According to China's judicial statistics in 2016, civil cases accounted for 89 % of the total lawsuits with a total of 10,763,889 cases. In contrast, administrative cases accounted for only 2 % with a total of 225,020 cases, and criminal cases accounted for 9 % with a total of 1,115,873 cases. See the Judicial Statistics 2016. People's Ct., 10 April 2017. SUP. PEOPLE'S CT. GAZ. 246 (in Chinese).

29 Taisu Zhang and Tom Ginsburg, 'China's Turn toward Law' (2019) 59 Va. J. Int'l L. 3.

30 The inception of mass digitization within the Chinese judicial system is widely attributed to the year 2016, marked by a significant modification in the interpretation issued by the Supreme People's Court (SPC) in 2013. The amendment mandated that 'all courts shall publish judgments on the internet under the principles of legality, comprehensiveness, timeliness, and standardization.' Notably, the official commencement of publishing judicial judgments on the internet dates back to 2013, when the SPC introduced its interpretation, emphasizing the requirement for courts to disclose judgments 'truthfully' as opposed to the amendment in 2016 of 'comprehensively'. See Provisions of the Supreme People's Court on the Issuance of Judgments on the Internet by the People's Courts (promulgated by Sup. People's Ct., 29 August 2013, effective 1 October 2016).

31 Thomas Kellogg, 'Constitutionalism with Chinese Characteristics? Constitutional Development and Civil Litigation in China' (2009) 7 INT'L J. CONST. L. 215, 234–245. While there has been a growing English-language literature emphasizing the marginalized position of Chinese courts in political and social life for decades, few observers have closely examined judicial behavior in Chinese courts. Kellogg's scholarship, with the exception of current studies, uses antidiscrimination litigations as an example to illustrate constitutional development in China. I argue that we still need more empirical findings to better understand the real-world situations of the Chinese Constitution.

32 'Lawyee' (*Lawyee* 北大法易) <<http://www.lawyee.net>> China Legal Resources Full Interactive Database, also known as *Lawyee* (北大法易), was developed in 2003 by Lawyee Technology Development Co. Ltd. Available from: <http://www.lawyee.org.libezproxy.umac.mo/PubPage/List?PageID=21>. accessed 20 October 2020.

Pkulaw (*Beida Fabao*).³³ These databases have consistently ranked as the top two in terms of accessibility and have made an extensive repository of judicial cases available online, numbering in the millions.

To ensure precision and relevance, our data selection criteria limited the inclusion to civil adjudications that transpired between January 1, 1995, and December 31, 2015, wherein the Chinese Constitution was expressly cited. Rigorous manual retrieval and scrutiny of the case documents were undertaken to confirm that the Constitution was invoked either as part of the written claim or court judgment. Cases that merely made reference to the Constitution (*xianfa* 宪法) without specifying particular provisions were meticulously excluded from the dataset. Following this meticulous identification process, a total of 1084 cases were initially gathered from the databases. Subsequently, we eliminated duplicate records, yielding a final sample of 1045 cases that constitute the basis for our analysis.³⁴

This comprehensive dataset serves as the cornerstone of our study, with the overarching objective of scrutinizing whether the courts invoked the Chinese Constitution in the context of civil lawsuits during the specified study period.

2.2 Descriptive Analysis

2.2.1 Civil Adjudications Applying Constitutional Provisions

An examination of the dataset through statistical analysis unveils a noteworthy pattern: among the 10 primary categories of civil actions outlined by the Supreme People's Court,³⁵ constitutional provisions have been invoked in nine distinct types of

33 'Chinalawinfo' (*Chinalawinfo* 北大法律信息网) <<http://chinalawinfo.com.net>> This database is created and maintained by Chinalawinfo Co., Ltd., established by Peking University in 1985. According to its official webpage, 'Chinalawinfo's mission is to serve each and every user with high-quality, low-cost and user-friendly products that contain the most complete, accurate, and up-to-date legal information.' Available from: <http://www.pkulaw.cn.libezproxy.umac.mo/Case/>. accessed 20 October 2020.

34 Before Chinese courts were required to upload judicial decisions online in 2016, the number of duplicated cases on both databases was relatively low. This could be partly attributed to competition between the databases, driving them to collect cases from courts respectively. Cases are about profit and market share, which could explain why both private databases did not publicly close their case sources. As for the business models of Pkulaw (*Beida Fabao*) as well as Lawyee (*Beida Fayi*), see Jian She and Guo Ye, 'An Introduction to the Legal Databases in China' (2008) 4 *Falü Wenxian Xinxì yu Yanjiu* 50–55 (in Chinese).

35 The Supreme People's Court on Issuing the Decision on Amending the Provisions on the Cause of Action of Civil Cases promulgated by Sup. People's Ct., 18 February 2011, effective 1 April. 2011. SUP. PEOPLE'S CT. GAZ. 177 (in Chinese).

Table 1: Categories of civil adjudication.

Claims	Frequency
Dispute on personality rights	66
Dispute on marriage, family and inheritance	54
Dispute on property rights	296
Dispute on contract and unjust enrichment	337
Dispute on maritime trading	2
Labor dispute	195
Dispute on corporation	10
Dispute on tort liability	74
Cases applicable to special procedure	11
Total	1045

civil cases.³⁶ The influence of these constitutional provisions extends across a wide spectrum of traditional civil relations, encompassing personal rights and property rights alike (Table 1).

Contract disputes emerge as the most prevalent category, constituting 32.2 % of the dataset, with a total of 337 cases. Within this category, various subtypes of cases arise, including sales contracts, leasing contracts, loan contracts, deposit contracts, service contracts, plantation contracts, and gas supply contracts.

Lawsuits involving personal rights disputes comprise 6.3 % of the dataset, totaling 66 cases. These cases revolve around litigation pertaining to the right to life, right to bodily integrity, right to health, right to one's name, right to reputation, and right to personal liberty. Marriage, family, and inheritance disputes represent 5.2 % of the dataset, encompassing 54 cases. These disputes traverse various segments of family law, encompassing matters such as divorce, equitable distribution of property during divorce proceedings, spousal maintenance, foster care, ademption of property, and inheritance disputes.

Property rights disputes account for the largest share, totaling 28.3 % of the dataset with 296 cases, manifesting the greatest diversity in the causes of action. This category spans a wide range of disputes, including compensation for the expropriation of contracted land, claims related to the rights of members within collective economic organizations, property protection claims, compensation for property

³⁶ Among the 10 types of civil claims, only one action, namely 'Dispute over Intellectual Property Right or Competition' (Zhishi Chanquan yu Jingzheng Jiufen), has not cited any constitutional provisions in the available documents. According to statistics, the number of civil cases related to intellectual property rights or competition was 136,534 in 2016, accounting for approximately 1.3 % of all civil lawsuits.

damage, the confirmation of usufructuary rights, resolution of disputes involving property encumbrances, neighborly disputes, the return of original objects, and cases involving shared ownership. Additionally, this category encompasses disputes concerning the confirmation of land management rights, ownership confirmation, restoration of property to its original state, the reclamation of occupied objects, and disputes over mining rights, listed in order of prevalence.

2.2.2 Constitutional Provisions in Civil Adjudications

This article employs contextual analysis to categorize Chinese constitutional provisions into two distinct groups, each serving a specific function: the protection of individual rights and the delineation of state power.³⁷ Specifically, the provisions housed within the second chapter of China's 1982 Constitution, addressing the Fundamental Rights and Duties of Citizens (Articles 33–56), are referred to as the 'cluster of human rights,' while other constitutional articles are classified as the 'cluster of state power.'

To investigate the correlation between constitutional provisions and civil adjudication, we conducted a correlation analysis of 1045 judgment documents. The results reveal a statistically significant correlation between the two factors, as evidenced by a chi-squared statistic (χ^2) ($1, N = 1045$) = 111.47, $p < 0.01$, and a Phi value (ϕ) of 0.33. Notably, the constitutional provisions identified in this study predominantly fall within the 'cluster of state power' (57.1%) and the 'cluster of human rights' (42.9%), underscoring the intricate balance between power dynamics and individual rights within the Chinese legal framework.

This analysis underscores the pivotal role played by constitutional law in shaping civil adjudication in China. It underscores the imperative for legal practitioners and scholars to comprehend the nuanced interplay between constitutional provisions and civil adjudication, particularly concerning the safeguarding of individual rights and the delineation of state power. As such, this study contributes to the ongoing scholarly discourse surrounding the intersection of constitutional law and civil adjudication in China, providing a robust foundation for future research in this domain.

37 The Constitution of the People's Republic of China, promulgated in 1982 and subsequently amended five times, comprises five distinct chapters, namely the Preamble, General Principles, the Fundamental Rights and Duties of Citizens, the Structure of the State, and the National Flag, National Anthem, National Emblem and the Capital. Chapter Two of the Constitution, by its tenor, pertains to the protection of individual rights, while Chapter Three sets out the contours of state power. To historically understand the political and ideological structure of the 1982 Constitution, see Zhiyong Zhai, 'The Making and Structure of the 1982 Constitution of China' (2016) 8 *Tsinghua China L. Rev.* 141.

Undoubtedly, the protection of human rights, especially regarding property claims, is intrinsically linked to constitutional provisions in civil disputes. This connection holds particular relevance in the context of China's rapid urbanization, which has engendered a surge in disputes, including those involving compensation for urban housing demolitions and the allocation of contractual-based rights to rural lands among collective members. As the nation continues its infrastructure development and property construction, rural and urban residents alike may encounter significant hurdles when asserting their claims against local governments, real estate developers, or collective communities. In such scenarios, invoking pertinent constitutional provisions becomes a crucial step in asserting constitutionally protected rights to private property in civil disputes. The ability to do so proves vital in effectively resolving property rights-related disputes.

Consequently, it comes as no surprise that constitutional regulations concerning land, predominantly found in Chapter One, 'General Principles'; Chapter Two, 'Fundamental Rights and Duties of Citizens'; and Chapter Three, 'The Structure of the State,' have garnered frequent citations in civil disputes. Of the 35 constitutional provisions cited in such cases, Article 10, affirming state ownership of urban land, emerges as the most frequently referenced provision, with 108 citations.³⁸ Furthermore, Article 13, emphasizing the state's obligation to protect private property owners' rights, features prominently with 55 citations.³⁹ Article 33, which establishes principles of equality and human rights, receives 40 citations,⁴⁰ and Article 9, outlining national ownership of natural resources, is cited 38 times. Lastly, Article 5, delineating principles of state governance according to laws, is cited 32 times.

In conclusion, as China's rapid urbanization continues, property rights disputes are poised to remain a commonplace occurrence. In these disputes, the ability to reference relevant constitutional provisions is indispensable for effectively asserting one's rights. Notably, constitutional regulations pertaining to land have emerged as the most frequently cited provisions in civil adjudications, with Article 10 being the most commonly referenced. Moving forward, it is imperative to further explore the diverse ways in which constitutional provisions can be employed to safeguard the rights of individuals entangled in property rights disputes.

38 Article 10 of the Constitution of the People's Republic of China is the most frequently invoked provision, serving as the bedrock for the country's land ownership system. The Article stipulates that urban land is owned by the state, while rural and suburban land belongs to collectives, with certain portions reserved for state ownership in accordance with the law.

39 Article 13 of the Constitution of the People's Republic of China has emerged as the second most cited provision in Chinese legal practice. The article affirms the inviolability of lawful private property and guarantees the protection of citizens' right to own and inherit private property.

40 Article 33 of the Constitution of the People's Republic of China emphasizes the fundamental principles of citizenship and equality before the law.

3 Analyzing Factors Influencing Litigant Outcomes

Within the realm of Chinese law, it has long been assumed that the Chinese government effectively confines judicial behavior through ideological constraints,⁴¹ a phenomenon often aptly likened to a ‘bird in a cage,’ as elucidated by Stanley Lubman.⁴² However, what remains surprisingly enigmatic is the extent to which these metaphorical caged birds have been permitted to soar in the realm of legal reality. Our understanding of the factors that sway litigant outcomes in this context has remained particularly limited.

This section employs two key indicators to scrutinize this intricate phenomenon. The first indicator assesses the rate of binding force, essentially determining whether cited constitutional provisions are acknowledged as the legal foundation for judicial decisions.⁴³ This metric serves as a valuable instrument for international audiences seeking to comprehend the extent of constitutional performance within the Chinese legal system. For instance, in a hypothetical scenario where litigants exclusively reference constitutional provisions, yet judges do not, the constitution risks being reduced to mere hollow political rhetoric, a concern voiced by some experts.⁴⁴ Conversely, in cases where judges consider constitutional provisions as substantive law with binding authority, the constitution assumes a substantive and influential role within the adjudicatory process.⁴⁵

The second indicator gauges the winning rate, measuring the extent to which cited constitutional provisions contribute to the successful outcome of a lawsuit. In a hypothetical scenario where the citation of constitutional provisions aids litigants in winning lawsuits or assists judges in rendering decisions in complex cases, the constitution transcends its role as mere window dressing or a caged bird.

41 See Mark Jia, ‘China’s Constitutional Entrepreneurs’ (2016) 64 *American Journal of Comparative Law* 467, 619.

42 Staley Lubman, *Bird in a Cage: Legal Reform in China after Mao* (Stanford University Press 1999).

43 In the context of Chinese law, the term ‘binding force’ in civil adjudications refers to the extent to which constitutional provisions are recognized as legally binding and serve as the legal basis for judicial decisions. It is important to note that in the Chinese legal system, constitutional provisions may have varying degrees of binding force depending on how they are cited and applied in the adjudication process. This concept differs significantly from the United States legal system’s understanding of binding force, which primarily pertains to the precedential authority of court decisions and the hierarchy of legal sources.

44 Stéphanie Balme and Michael W. Dowdle, *Introduction: Exploring for Constitutionalism in 21st China* in *Building Constitutionalism in China* (SpringerLink 2009) 8.

45 Sprick (n 15).

3.1 Binding-Force Rate

China's Civil Procedure Law outlines four avenues through which constitutional provisions can be integrated into litigation: (1) through a written complaint,⁴⁶ (2) via a written judgment, (3) through both a written complaint and a judgment,⁴⁷ and (4) through an appeal by the Procuratorate.⁴⁸ A typical civil adjudication encompasses five essential sections: 'Plaintiff's Complaint and Defendant's Plea,' 'Basic Facts of the Case,' 'Related Legal Rules,' 'Reason for the Adjudication,' and 'Results of the Adjudication.' However, a common practice in China's legal proceedings is for a court to support a plaintiff's claim while rejecting their legal rationale.⁴⁹ To qualify as a legal citation, constitutional provisions must find application within the 'Related Legal Rules' or 'Reason for the Adjudication' sections of the adjudication. This is in contrast to written complaints, where judges may disregard constitutional provisions cited by the plaintiff, as they lack binding authority.⁵⁰

Notably, an exception exists when the Procuratorate invokes the constitution. The Civil Procedure Law has established a supervisory system over civil actions, empowering higher-level procuratorates to challenge legally effective judgments or rulings. In cases where the constitution is cited in adjudication under the supervision of the Procuratorate's appeal, it carries binding authority. This underscores the court's accountability to higher authorities and underscores the significance of constitutional provisions in legal decision-making.

Diverse approaches to citing constitutional provisions in civil adjudications can yield varying impacts. Among the 1045 civil adjudications analyzed, the majority of constitutional citations (71.8 %) were discovered within written complaints, while a

⁴⁶ *Minshi Susong Fa* [Civil Procedure Law] (promulgated by the Standing Comm. Nat'l People's Cong., 31 August 2012, effective 1 January 2013) 2012 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 299 (China), art. 12.

⁴⁷ *Ibid* art. 152.

⁴⁸ *Ibid* art. 208.

⁴⁹ Fuyang Shi, Xiang Zhang, 'The Conflict between Grounds for Litigation and Decision: Making and Mode of Choice' (2009) 8 *Journal of Law Application* 68 (in Chinese).

⁵⁰ In instances where the prosecutor has appealed the file, citing constitutional provisions as reasons, three distinct types of civil disputes have been observed. These include disputes relating to compensation contracts and house demolition settlements (which implicate Article 12 and the protection of common property); disputes concerning personal rights (which implicate Article 49 and the protection of marriage, family, motherhood, and children); and disputes over corporate profit allocations (which implicate Article 5 and the principle that no organization or individual is privileged to be beyond the Constitution or the law). Through these appeals, the Constitution serves as a foundation for protecting both the individual rights of citizens and the equitable distribution of resources within the corporate sphere, emphasizing the importance of adherence to constitutional principles and the law in matters of civil dispute.

smaller portion (26.4 %) featured in written judgments. A mere 1.7 % of citations were identified in both complaints and judgments, and a mere 0.4 % appeared in Procuratorate appeals, indicating that litigants were more proactive in invoking constitutional provisions than judges.

Curiously, the data also shed light on a robust correlation between constitutional performance and the level of the court. The percentage of constitutional citations exhibited variance based on the court’s level, with 41.8 % of citations originating from lower courts, 49.5 % from intermediate courts, 8.6 % from higher courts, and a mere 0.1 % from the Supreme People’s Court. As illustrated in Table 2, high-level courts were statistically less inclined to incorporate the constitution as a legal basis for judicial decisions when compared to their low-level counterparts, aligning with Sprick’s contention that judges at lower court levels display a relatively more affirmative stance towards constitutional application. In high-level court adjudications, merely 8.8 % of citations led to binding authority, a substantial drop from the overall rate of 29.8 %.

3.2 Win Rate

Prior research has often overlooked a comprehensive statistical approach that considers both the outcome and the process of constitutional citation within Chinese courts. In the empirical evaluation of labor dispute adjudication by Chinese courts, Chan stands out as a significant scholar. His methodology involves the creation of a system designed to systematically determine the outcomes of labor dispute lawsuits, specifically identifying whether employers are victorious or defeated in these legal

Table 2: Binding result of Court’s level and citation approaches.

Courts’ level	Citing approaches				Proportion of binding – citing
	Complaint	Judgment	C. & J.	Appeal	
Low	298	136	1	2	31.8 %
Medium	353	145	19	0	31.7 %
High	83	7	0	1	8.8 %
Total	734	288	20	3	29.8 %

Non-binding
Citing with binding force

$\chi^2 (1, N = 1045) = 42.03, p < 0.01, \text{Phi value } (\phi) = 0.201.$

proceedings.⁵¹ Another recent study indicates that the outcome of litigation can be observed in the judicial review of eminent domain in China.⁵²

From a methodological perspective, determining the litigation outcome of cases, particularly private lawsuits with numerous legal claims issued by the plaintiff, presents challenges. Chinese judges do not explicitly declare the nominal winner of the lawsuit, which introduces ambiguity into the interpretation of written documents and creates a significant lack of transparency regarding outcomes.

To address this issue, this study aims to offer a comprehensive evaluation of the legal implications of citing the Constitution in lawsuit adjudication by constructing a set of observable variables. We have employed the following categories to encode the legal outcome of citing the Constitution:

- i. 'Proven Win': When the court accepts the claims based on constitutional provisions.
- ii. 'Presumed Win': In cases where there is no evidence to establish whether the constitutional claim was accepted or not, but the claimant is exempted from paying litigation fees.
- iii. 'Proven Lose': When the court rejects the constitutional claim.
- iv. 'Presumed Lose': In situations where there is no evidence to establish whether the constitutional claim was accepted or not, but the claimant is required to pay litigation fees.
- v. 'Unclear Outcome': Encompassing all other cases.

After meticulous examination and classification of each case based on the aforementioned encoding principles, the proportion of 'Proven Wins' stands at 17.99 % ($n = 188$), 'Presumed Wins' account for 17.8 % ($n = 186$), 'Proven Loses' constitute 23.19 %, 'Presumed Loses' encompass 38.95 %, and cases with an 'Unclear Outcome' make up 2.07 % of the dataset. The 'Winning Rate' represents the amalgamation of 'Proven Wins' and 'Presumed Wins,' totaling 35.79 % ($n = 374$).

Notably, despite an inherent limitation that prevents us from directly comparing claims based on the Constitution with other civil claims, it is remarkable that the 'Losing Rate' (62.14 %) surpasses the 'Winning Rate' (35.79 %) when constitutional provisions are invoked to support claims. In other words, the statistical analysis of the dataset indicates that the Constitution may not significantly enhance litigants' chances of prevailing in civil court proceedings.

51 Peter C. H. Chan, 'Are Chinese Courts Pro-labor or Pro-employer?' (2022) 43 U. Pa. J. Int'l L. 281.

52 Maowen Zheng and Shitong Qiao, 'Legal Doctrine and Judicial Review of Eminent Domain in China (2021) 46 Law & Soc. Inquiry 839, 845.

3.3 Interpretable Models via Machine Learning

Previous scholarly inquiries have generally overlooked the Constitution’s potential practical impact on litigation outcomes. Leveraging machine learning techniques can offer a more profound understanding of this understudied aspect. To comprehend the underlying factors influencing the litigation process, this study scrutinized eight variables for each adjudicated case:

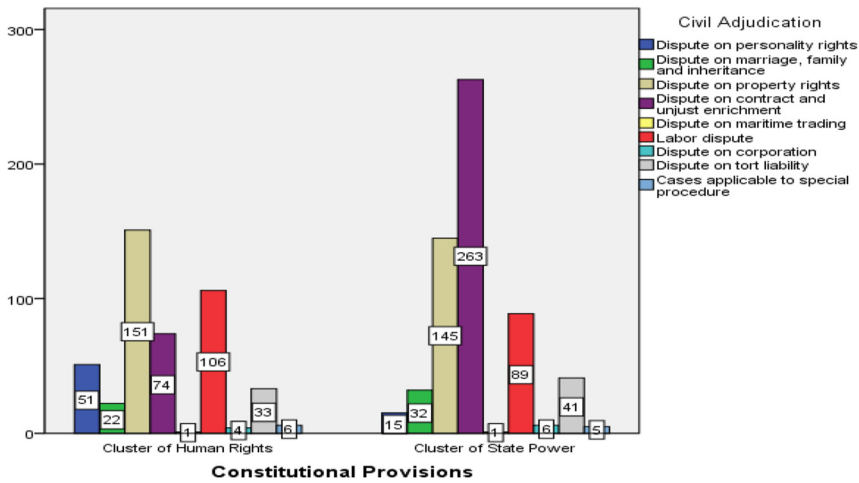


Figure 1: Crosstabulation of constitutional provisions & civil adjudication.

Litigation Outcomes, as defined in Section B.

Citation Approaches, characterized by the proportions of cases involving ‘citation only by a plaintiff’ and ‘citations by both a plaintiff and a court.’

Court’s Judgment, determined by the disposition stance of the court’s judgment.

Constitutional Provisions, categorized as either belonging to ‘the cluster of human rights’ or ‘the cluster of state power,’ as depicted in Figure 1.

Year, signifying the exact year of each case’s adjudication.

Civil Adjudication, as detailed in Table 1.

Court’s Level, identifying the tier to which the court belongs.

Region, denoting the geographical distribution of all retrieved cases at the province-level.

As Figure 2 illustrates, the correlation coefficient graph reveals that litigation outcomes exhibit a relatively strong correlation coefficient with citation approaches, approximately 0.32. This suggests that citation approaches play a pivotal role in determining litigation outcomes.

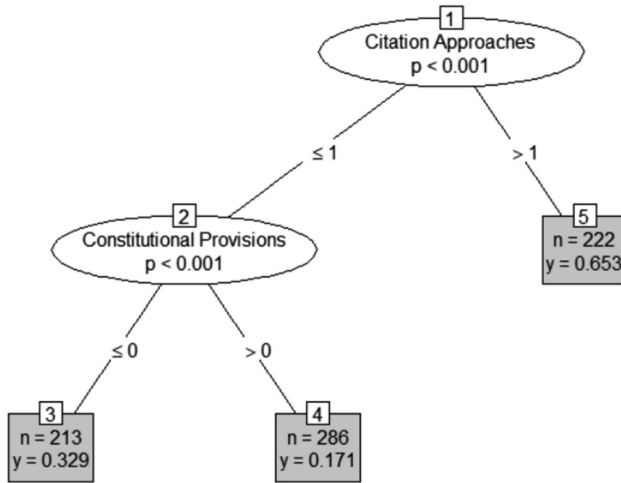


Figure 2: The correlation coefficient graph of litigation outcome.

Table 3: Correlation between binding force and win rate.

	Win	Lose
Citing with binding force	66 %	34 %
Citing with non-binding force	33 %	67 %

To elucidate this point further, let us consider a hypothetical scenario in which judges cite constitutional provisions with binding force. Table 3 provides insight into the statistical correlation between the binding-force rate and win rate.

These findings shed light on the intriguing puzzle surrounding China's constitutional performance in civil adjudications. Specifically, the data suggest that the more judges incorporate the Constitution as a basis for their judicial decisions, the higher the likelihood that litigants will prevail when invoking constitutional provisions. In summary, the Constitution's impact on civil lawsuits appears to hinge on the degree of attention and consideration it receives from the judges.

4 Qualitative Insights from Representative Cases

In constructing a comprehensive model of how the Chinese Constitution influences civil litigation, a meticulous examination of relevant cases is indispensable. Such an

approach allows us to gauge the practical impact of citing the Constitution in these cases and its broader implications for legal practice.

4.1 Interplay of Public and Private Law

Within China's civil law system, the line between public and private law blurs, contrasting with the clearer distinction in common law systems.⁵³ The extension of private law principles to human rights disputes between individuals underscores this shift. Before the advent of human rights legislation, constitutional principles played a pivotal role in safeguarding human rights, which traditionally fell under public law.⁵⁴ Several recent cases exemplify this evolution.

Instances include discrimination cases based on gender, height, geography, age, and hepatitis B status. A prominent 2014 case involved a company advertising a copywriting position exclusively for male candidates. A rejected female applicant filed a lawsuit, contending it infringed her right to equal employment – a constitutional human right. The court, affirming the constitutional primacy of this right over freedom of contract, ruled in favor of the plaintiff, awarding compensation for emotional distress.⁵⁵

The 2001 *Qi Yuling* case, a watershed moment, involved the Supreme People's Court invoking constitutional provisions to uphold the right to identity and education.⁵⁶ Though it garnered the moniker 'China's Marbury',⁵⁷ academic critique led to its withdrawal in 2008.⁵⁸ However, this withdrawal overlooks the Constitution's

53 Kit Barker and Jensen Darryn, *Private Law: Key encounters with Public Law* (Cambridge University Press 2013) 3.

54 See Tian Yin, 'A Re-criticism of Personality Right as an Independent Part' (2015) 6 *Journal of Comparative Law* 1, 5 (in Chinese).

55 Dispute over Personality Right Filed by Jing Guo against Oriental Cooking School, Xihu District, Hangzhou City [2014] Hangzhou Xihu Dist. People's Ct. (in Chinese).

56 *Qi Yuling v. Chen Xiaoqi*, Dispute over Infringement of a Citizen's Basic Right to receive Education Protected by the Constitution Through Infringement of Right of Name Dispute over Infringement of a Citizen's Basic Right to receive Education Protected by the Constitution Through Infringement of Right of Name [2001]SUP. PEOPLE'S CT. GAZ., 2001, Issue 5 (in Chinese).

57 See Robert J. Morris, 'China's Marbury: *Qi Yuling v. Chen Xiaoqi*-The Once and Future Trial of Both Education & Constitutionalization' (2009) 2 *Tsinghua China L. Rev.* 273, 275.

58 See 'Official Reply of the Supreme People's Court on Whether the Civil Liabilities Shall Be Borne for the Infringement upon a Citizen's Basic Right of Receiving Education' [2008] SUP. PEOPLE'S CT. GAZ., 2001, Issue 5. This judicial interpretation was repealed by the Supreme People's Court on 24 December 2008. See Decision of the Supreme People's Court on Abolishing the Relevant Judicial Interpretations (the Seventh Batch) Promulgated before the End of 2007, 148 SUP. PEOPLE'S CT. GAZ., 2009, Issue 2 (in Chinese).

protection of the right to education, asserting that it didn't infringe upon the constitutional framework.

4.2 Strengthening Private Law Mechanisms

While civil law experts advocate for systematic legislation to ensure clarity and coherence,⁵⁹ civil codes sometimes exhibit ambiguities.⁶⁰ To address these legal gaps, judges and litigants resort to constitutional provisions as methodological tools to fortify their legal arguments.

4.2.1 Constitutional Anchors in Contract Law

Constitutional provisions wield substantial influence in regulating agreement legality, primarily through equity control.⁶¹ Our dataset analysis highlights cases falling within this purview. For instance, a court invalidated an agreement holding an employee liable for any consequences resulting from injury, death, or accidents due to its infringement of constitutional protections for laborers.⁶² Regrettably, these judgments often reference the 'spirit of the Constitution' rather than specific constitutional articles applicable to labor disputes.

In contrast, judgments relating to the support of elderly parents explicitly cite relevant constitutional articles. Courts rely on Article 49, Item 3 of the Constitution to underscore the obligation of adult children to support and assist their parents,⁶³ prohibiting agreements to terminate relationships or forgo support.⁶⁴ Promises like 'providing elderly parents with food but no other assistance' also run afoul of constitutional obligations.⁶⁵

59 John Henry Merryman and Rogelio Pérez-Perdomo, *The Civil Law Tradition* (Stanford University Press 1969) 42.

60 Mark Jia, 'Chinese Common Law? Guiding Cases and Judicial Reform' (2016) HARV. L. REV. 2231.

61 Claus Wilhelm Canaris, *Grundrechte und Privatrecht* (Walter de Gruyter 1999) 768.

62 Case of Dispute over Labor Contract Filed by Qinghai Meng against Baoku Zhang, etc. [2015] Jilin Huinan People's Ct. (in Chinese).

63 In a separate case, the court expounded that the obligation to support the elderly and raise children is enshrined in the Constitution as well as ethical norms that are binding on all citizens and cannot be waived by private agreements between individuals. See Case of Dispute over Maintenance Fee Filed by Li against Ren [2014] Shandong Jiaozhou People's Ct. (in Chinese).

64 Case of Dispute over Maintenance Fee Filed by Du against his Offspring [2014] Liaoning Nianpiaoyou People's Ct. (in Chinese).

65 Dispute over Maintenance Fee Filed by Du against his Offspring [2014] Xinjiang Shihezi People's Ct. (in Chinese).

The Constitution's principle of gender equality (Article 48, Item 1) frequently features in civil adjudications, representing the 'longest revolution' among fundamental rights.⁶⁶ Courts invalidate decisions made in rural community representative conferences that discriminate against unmarried women over 28,⁶⁷ grant only 20 % of land compensation to women married outside their village,⁶⁸ or allocate half the treatment expenses to female children compared to male children.⁶⁹ These decisions violate women's equal rights and contravene the Constitution.

In divorce disputes, a court rejected a husband's claim of alienation of mutual affection stemming from the birth of a female child as it infringed upon women's equal rights.⁷⁰

4.2.2 Constitutional Foundations in Property Law

As previously discussed, constitutional provisions relating to natural resource ownership take center stage in Chinese civil adjudications, particularly in property rights disputes. A 2007 case involving disputes over usufruct rights centered on whether a rural collective could reclaim reserved land from a resident who had relocated from the village. This occurred before the publication and implementation of China's Property Law, rendering existing civil regulations inadequate as a basis for judgment. The court turned to Item 1 of Article 8 of the Constitution, mandating that the right-holder be a member of the collective economic organization. Consequently, when a villager relocates and loses their membership status in the collective economic organization, the reserved land must revert to the collective.⁷¹

Another common property law dispute revolves around neighbor relations. In one case, each plaintiff presented a Certificate of Land and House Property issued by the local government in 1950, based on the expired Land Law of 1947. The court declared these certificates legally ineffective and without binding force. This

66 Yinhe Li, *Women: The Longest Revolution* (China Women Publishing House 2004) 1 (in Chinese).

67 Dispute over Infringement of Rights of Member of Collective Economic Organization Filed by Fenglan Guo [2015] Hunan Xiangtan Interm. People's Ct. (in Chinese).

68 Dispute Overcompensation Allocation for Expropriation of Contracted Land Filed by Huaqiong Huang against Group 2 of Guanghua Shunjiang Village [2015] Sichuan Mianyang Interm. People's Ct. (in Chinese).

69 Dispute Overcompensation Allocation for Expropriation of Contracted Land Filed by Jie Wei against Villagers Committee of Xiazhu Village, Zhoutie Town, Yixing City [2015] Jiangsu Yixing People's Ct. (in Chinese).

70 Dispute over Divorce Filed by Wang against Hu [2015] Guizhou Duyun People's Ct. (in Chinese).

71 Dispute over Agricultural Land Contract Filed by Shiyong Peng, etc. against Villagers Groups of Dongyuan Village and Xiaojia Village, etc., Huibu Town, Fengxin County [2007] Jiangxi Fengxin People's Ct. (in Chinese).

alignment with Article 10 of the Constitution underscores collective ownership of rural lands.⁷²

4.2.3 Constitutional Tools in Tort Law

Within tort liability, constitutional provisions serve as methodological tools to foster coherence. Judges often employ teleological expansion, extending the applicability of laws and regulations beyond their literal meaning. For instance, in a traffic accident dispute where the victim, a rural resident over 65, lacked evidence of lost working hours, the legal status of compensating for such losses remained unclear. The court ultimately invoked Article 42 of the Constitution, which pertains to labor rights, to support the plaintiff's claim.⁷³

Teleological narrowing-down is another approach, limiting the scope of laws and regulations. In a case where a railway transport enterprise faced tort liability exemption under Article 58 of the Railway Law, the plaintiff, who had been injured by a train, cited Article 123 of the General Principles of Civil Law.⁷⁴ The defendant contended that the Railway Law granted immunity if the victim was grossly negligent. The court, however, asserted that when two legal documents conflict, precedence goes to the law formulated by the National People's Congress under Articles 62 and 67 of the Constitution.⁷⁵ Consequently, the Railway Law did not apply, and the plaintiff's claim was upheld.

In conclusion, constitutional provisions have played a crucial role in ensuring consistency in civil lawsuits, particularly in matters of property law. Nevertheless, the Supreme People's Court has abolished its decision to apply constitutional provisions to private disputes.

72 Dispute over Neighboring Relationship Between Mingyuan Sun, Fang Zhao and Zhengping Yuan [2015] Shanxi Datong Interm. People's Ct. (in Chinese).

73 Dispute over Responsibility of Automobile Accident Filed by China United Property Insurance Company Limited against Huanshun Li, etc. [2014] Henan Puyang Interm. People's Ct. (in Chinese). In a lower court in Henan province, Article 42 of the Constitution was invoked as a basis for judgment, whereby the expenses of lost working hours were calculated. See Dispute over Responsibility of Automobile Accident Filed by Dezhen Zhang against Zongjie Dong, etc. [2014] Henan Qingfeng People's Ct. (in Chinese).

74 In accordance with Article 58 of the Railway Law (1991), the personal injury or fatality that results from crossing the railway track at a level crossing or via a pedestrian crosswalk in violation of the relevant regulations, or from walking, sitting or lying on the railway track, shall be regarded as an injury or fatality caused by the fault of the aggrieved person himself. *Tielu Fa* [Railway Law] (promulgated by the Standing Comm. Nat'l People's Cong., Sep. 7, 1990, effective 5 January 1991) (China). art. 58.

75 Dispute over Responsibility for Victims of Labor Filed by Li against Jiang [2015] Hunan Hengyang People's Ct. (in Chinese).

5 Constitutional Reality: Implication for Constitutionalism

In tandem with the controversial Qi case, the Chinese government designated December 4th as ‘National Legal Publicity Day’⁷⁶ to commemorate the implementation of the current Chinese Constitution. Regrettably, this effort did not elevate the Constitution to a prominent position in everyday life. Out of tens of millions of civil lawsuits over two decades, only 1045 cases cited constitutional provisions. This statistical insignificance has fueled a debate among scholars regarding whether the Chinese Constitution should be regarded as ‘dead’ or ‘living.’⁷⁷ While some argue that the absence of a constitutional enforcement mechanism renders it ‘dead,’⁷⁸ others contend that it mirrors the most recent political thought and national policies, rendering it ‘living.’⁷⁹ Our empirical findings, however, suggest that neither perspective precisely characterizes the role of the Chinese Constitution in private relationships, holding broader implications for constitutionalism.

5.1 Implication: Why the Chinese Constitution Matters?

In contrast to some other civil law jurisdictions where constitutional law has seen privatization over the past three decades, leading to extreme models emphasizing procedural or substantive significance,⁸⁰ China’s constitutional reality presents a unique picture. Here, the relevance of constitutional norms in the legal system resides in a middle ground that bridges the public and private spheres. This distinction becomes essential in assessing how constitutional law matters in civil adjudications.

Fraenkel initially introduced the ‘dual state’ theory as a means to dissect the authoritarian system,⁸¹ which encompasses both the prerogative and normative

76 Notice on the Fourth Five-Year Plan of Promoting Education of Legal System in Citizens Issued by Central Propaganda Department and Ministry of Justice] 1020 ST. COUNCIL GAZ., 2001.

77 Qianfan Zhang, ‘A Constitution Without Constitutionalism? The Paths of Constitutional Development in China’ (2010) 8 Int. J. Const. L. 951.

78 Ibid at 952.

79 Lin Chien-Chih, ‘Constitutions and Courts in Chinese Authoritarian Regimes: China and Pre-democratic Taiwan in Comparison’ (2016) 14 INT. J. CONST. L. 369, 377.

80 It was in 1990 that Markesinis created the first viable definition of the ‘Constitutionalization of Private Law’ in history. See Basil Markesinis, ‘Comparative law. A subject in search of an audience’ (1990) 53(1) MOD. L. REV. 1, 7–15.

81 E. Fraenkel and J. Meierheinrich, *The Dual State: A Contribution To The Theory Of Dictatorship* (Oxford University Press 2018).

states. Over recent years, a plethora of insightful theories have surfaced, utilizing this conceptual framework to scrutinize the hybrid nature of the Chinese Constitution.⁸² These theories illuminate the intersection between authoritarian legality and state capitalism in contemporary China.⁸³ Fu provides an elaboration on the normative state, characterizing it as the ‘normal legal system.’ This system is tasked with ensuring that dispute resolution aligns with the principles of the rule of law, a critical front in the battle against authoritarian overreach.⁸⁴ Our empirical analysis, deeply rooted in a comprehensive digital dataset of Chinese adjudications, enriches the discourse. It confirms that the Constitution indeed serves as the ‘normal legal system,’ both in a *de jure* and *de facto* sense.

The *de jure* model signifies that judges explicitly consider the Constitution in their decisions, treating constitutional provisions as legally binding. As previously explored, this phenomenon is driven by the blurred boundary between public and private law, a characteristic more pronounced in the civil law system compared to the common law tradition.⁸⁵ This situation creates legal gaps necessitating judicial intervention, and China’s legal framework, in addressing private disputes related to human rights, extends the Constitution’s relevance. This development, marked by the Constitution’s generality and supremacy, has led to its consistent incorporation into civil adjudications, undermining any notion of excluding it from such cases.

However, an equally crucial aspect of this constitutional reality is the *de facto* model, in which litigants cite constitutional norms, despite their non-binding legal status, to underscore the reasonableness of their claims.⁸⁶ While these constitutional allegations lack legal force, they serve as powerful symbolic tools for litigants to assert the legality of their petitions.⁸⁷ Litigants believe that referencing constitutional provisions can strengthen their claims and weaken their opponents’ positions in court.⁸⁸

The *de facto* model reveals a paradox within China’s constitutional reality. Despite the absence of formal mechanisms for individuals to claim their constitutional rights, the promotion of constitutional awareness through political

⁸² Kathryn Hendley, ‘Legal Dualism as a Framework for Analyzing the Role of Law Under Authoritarianism’ (2022) 18 Ann. Rev. L. & Soc. Sci. 211.

⁸³ Susan H. Whiting, ‘Authoritarian Legality and State Capitalism in China’ (2023) 19 Ann. Rev. L. & Soc. Sci. 357.

⁸⁴ Hualing Fu, ‘Between the Prerogative and the Normative States: The Evolution Power to Detain in China’s Political-legal System’ (2022) 16 Law & Ethics Hum. Rts. 61.

⁸⁵ Kit Barker and Jensen Darryn (n 53) 3.

⁸⁶ Kevin O’Brien ‘Rightful Resistance Revisited’ (2013) 40 Journal of Peasant Studies 1051, 1062.

⁸⁷ Xinying Hu, *China’s New Underclass: Paid Domestic Labor* (Routledge 2013) 113.

⁸⁸ See Case of Dispute over Restoration of Original State Filed by Wei Han against Changzhou Weiyi House Demolition Co., Ltd [2015] Jiangsu Changzhou Interm. People’s Ct. (in Chinese).

mobilization over the past three decades has had a lasting impact. It presupposes that public familiarity with the Constitution will increasingly influence judicial practices.⁸⁹ While these constitutional allegations do not carry legal weight, they serve as peaceful demonstrations of discontent, especially in cases such as rural land disputes, which escalated as land values surged in the 1990s.⁹⁰ By employing the Constitution as a persuasive tool, litigants' risk little in courtrooms. This interpretation sheds new light on why the Chinese Constitution remains relevant in the private sphere, both *de jure* and *de facto*.

5.2 Extension: Constitution Without Constitutionalism?

Traditionally, the term 'constitution' pertained to laws governing the establishment and exercise of political authority.⁹¹ Classical constitutional theory considered a constitution without a public sphere unimaginable, making constitutionalism without the state inconceivable. However, this traditional formulation is overly restrictive, as the rule of law extends beyond public law. As Raz argues, argument that the rule of law concerns private citizens in their duty to obey the law and government agencies in the exercise of their powers suggests a broader applicability.⁹²

Constitutionalism, as a normative concept, often concentrates on constitutional details in comparative legal studies.⁹³ The prevailing view suggests that democracy and constitutionalism emerged together historically, deeming nondemocratic constitutions as 'a deficient form of constitutionalism.'⁹⁴ This perspective is pervasive in contemporary comparative legal studies. Extensive literature has explored constitutions in authoritarian contexts, offering insights into the concept of 'constitutions without constitutionalism.'⁹⁵ However, empirical research on constitutionalism

89 See Dayuan Han, Qiang Qin, 'The Constitutional Consciousness of Citizens and Its Change in the Social Transition: A 25 Years' Celebration for Current Constitution' (2008) 1 Journal of Henan Administrative Institute of Politics and Law 14, 16.

90 'Why Chinese Women are Denied Legal Land Rights' *The Economist* (10 August 2023), <<https://www.economist.com/china/2023/08/10/why-chinese-women-are-denied-legal-land-rights>> accessed 2 September 2023.

91 Lisa M. Austin and Dennis Klimchuk, *Private Law and the Rule of Law* (Oxford University Press 2014) 6–11.

92 Joseph Raz, 'The Rule of Law and Its Virtue' in Aileen Kavanagh and John Oberdiek (eds.), *Arguing About Law* (Routledge 2013) 184.

93 Mark Tushnet, 'Comparative Constitutional Law' in Mathias Reimann and Reinhard Zimmermann (eds.), *The Oxford Handbook of Comparative Law* (Oxford University Press 2006) 340.

94 Dieter Grimm, *Constitutionalism: Past, Present, and Future* (Oxford University Press 2016) 295.

95 Ginsburg and Alberto (n 10) 1.

encounters methodological challenges, such as limited data and causal complexity,⁹⁶ necessitating innovative perspectives.

In theory, constitutionalism can pervade the legal system, encompassing both public and private domains. Given the intricate ideological landscape in contemporary China, it becomes essential to examine the interaction between constitutional law and private law. While it may not be entirely accurate to assert that the Chinese Constitution thrives in the private sphere, characterizing it as ‘dead’ would be equally misleading.

The statistical findings of this study, however, do not conclusively support the hypothesis that authoritarian constitutionalism is compatible with the private sector. Constitutionalism’s narrow definition relates to a country’s commitment to upholding its constitutional promises,⁹⁷ rendering constitutional performance a reliable indicator of constitutionalism.⁹⁸ Judicial independence, a vital component for maintaining the rule of law and constitutionalism, also plays a pivotal role.⁹⁹ Although closely connected, constitutional performance and judicial independence are not synonymous.

As articulated by Liu, ‘authoritarianism maintains a love-hate relationship with law.’¹⁰⁰ The intricate relationship between authoritarianism and constitutionalism is akin to a nuanced interplay of affection and skepticism. Within the Chinese context, the party-state apparatus strategically deploys the Constitution as a fundamental instrument, wielded for the dual purposes of fostering economic growth and maintaining political order. Simultaneously, a discerning caution permeates this approach, rooted in the awareness of the potential constitutional realities that could undermine the entrenched authority of the party. This delicate equilibrium encapsulates the complex dynamics characterizing the symbiotic connection between the Chinese legal framework and the imperatives of authoritative governance. As discussed earlier, the Chinese justice system’s lack of independence restricts the

96 David S. Law, ‘Constitutions’ in Peter Cane and Herbert M. Kritzer (eds.), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2013) 391.

97 Mila Versteeg and Tom Ginsberg, ‘Measuring the Rule of Law: A Comparison on Indicators’ (2017) 42 *Law & Soc. Inquiry* 115–116.

98 Ernest Caldwell, ‘Horizontal Rights and Chinese Constitutionalism: Judicialization Through Labor Disputes’ (2012) 88 *Chi.-Kent L. Rev.* 63.

99 Randall Peerenboom’s book ‘Judicial Independence in China: Lessons for Global Rule of Law Promotion’ offers a comprehensive analysis of the concept of judicial independence in the Chinese legal system. The book examines the historical, political, and cultural factors that have influenced the development of the Chinese judiciary, and discusses the various challenges faced by judges in maintaining their independence. See Randall Peerenboom, *Judicial Independence in China: Lessons for Global Rule of Law Promotion* (Cambridge Peerenboom, *Judicial Independence in China: Lessons for Global Rule of Law Promotion* (Cambridge University Press 2009).

100 Zeming Liu, ‘Integrating The “Socialist Core Values” Into Legal Judgments: China’s New Model of Authoritarian Legality’ (2023) 62 *Colum. J. Transnat’l L.* 215.

influence of constitutional consciousness in civil disputes. This creates a vicious cycle, as judges may hesitate to invoke constitutional provisions due to the absence of judicial independence. Consequently, litigants may be reluctant to cite the Constitution in their cases, uncertain about the judges' responses. Moreover, political pressures may deter judges from referencing the Constitution, undermining constitutional performance. Textual analysis shows that most judges avoid mentioning the Constitution in their written judgments whenever possible.

Hence, despite evidence suggesting that the Constitution has an unexpected impact in areas like civil disputes, there is a considerable distance to cover before constitutionalism can be firmly rooted in the private sector in China.

6 Conclusions

This article offers a comprehensive examination of the influence of constitutions in private disputes, with a particular focus on the Constitution of China. Utilizing a vast dataset of digitized court adjudications, this study has ventured into a relatively uncharted territory, yielding significant empirical and legal insights. The research unequivocally demonstrates that the Chinese Constitution has exerted a substantial and tangible impact on civil adjudications, both in practice and in principle.

These findings hold profound implications for our understanding of the role of constitutions in non-democratic settings, especially within the private domain. The study reveals that the dynamics of the capitalist market in China have empowered individuals to assert and safeguard their private rights, consequently endowing the Constitution with a protective function in this context. Concurrently, the prevailing regime has systematically eroded the Constitution's enforceability in the public sphere, preserving its symbolic and rhetorical role. The reluctance to address judicial independence openly remains a defining feature of China's legal landscape, with many civil courts opting for political correctness over the application of constitutional provisions.¹⁰¹ This paradox underscores the imperative need for a reasonably independent judiciary as an indispensable element of constitutionalism in non-democratic environments.

In summation, this research challenges conventional paradigms in the study of constitutionalism. While traditional scholarship in constitutionalism has predominantly centered on the role of political authority, this study illustrates that empirical

101 For the discussion of the political responsibilities of Chinese courts, see Minhao Benjamin Chen and Zhiyu Li, 'Courts Without Separation of Powers: The Case of Judicial Suggestions in China' (2023) 64 *Harv. Int'l L. J.* 203.

analyses of constitutional efficacy in civil litigation can offer valuable insights into the emergence of constitutionalism within the confines of authoritarianism. These findings not only enrich our comprehension of the functions of constitutions in private disputes but also beckon further exploration and inquiry into this burgeoning field.