

BOOK REVIEW

Experimentalist Constitutions: Subnational Policy Innovations in China, India, and the United States

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Comparative constitutional law is a thriving field of legal scholarship, and Chinese law is not doing badly either, at least if measured against the rest of comparative law. What is not thriving, however, is the intersection of the two. Scholarly attitudes toward China within the field of comparative constitutional law tend to range from benign neglect to deliberate aversion, the idea being apparently that authoritarian states have nothing worthy of the name “constitutional law” and liberal democracies therefore have nothing to learn from studying them. As Yueduan Wang’s book *Experimentalist Constitutions* demonstrates, this neglect represents a loss for the fields of constitutional law and Chinese law alike, and constitutional law has much to gain from the study of China and authoritarian regimes more generally.

Experimentalist Constitutions, billed as the first comparative study of constitutional structure and policy experimentation, explores whether and how the constitutional rules pertaining to central–local relations and regime type shape a country’s ability to successfully harness subnational governments as laboratories of policy experimentation. The normative premise – highly conventional in US constitutional law circles – is that policy experimentation is desirable, and therefore so too are constitutional structures that foster it: ideally, subnational governments should have the incentive and the ability to innovate, and successful innovations should spread broadly. The methodology is qualitative and uses as its case studies the United States, India and China. At least on paper, these three countries run the gamut along the two dimensions of constitutional structure in question, ranging from decentralized and democratic (the US) to centralized and democratic (India) to centralized and authoritarian (China).

“On paper” is a critical qualification. One of the most interesting takeaways is the extent to which these three countries, despite their radically different constitutional texts and regime types, have converged in practice on a “mixed approach” to central–local relations: over time, the US has proven more centralist, and India and China more localist, than their constitutions alone would suggest. In the US, even an activist Supreme Court bent on originalism and federalism has at most slowed rather than reversed the centralization of power in the federal government. Conversely, the Indian constitutional scheme contemplated a strong central government, but states have acquired more fiscal autonomy over time. Likewise, China is formally unitary but by many measures more fiscally decentralized than the US. It becomes apparent that there is no sharp dichotomy between federal and unitary systems, or even between democratic and authoritarian systems, when it comes to the working balance of power between national and subnational governments.

What explains this commonality? Wang hints at an answer: their adoption of a mixed approach reflects their status as “mega-nations” that must contend with “vast regional diversity and growing interregional connectedness.” This explanation, although mentioned only in passing, raises big-picture questions for comparative law and constitutional law alike. When and why do fundamentally different

allocations of power on paper ultimately yield similar allocations of power in practice? To what extent does constitutional design actually determine a country's practices and institutions in the long term? To what extent, instead, do countries facing similar challenges ultimately arrive for functional reasons at broadly similar solutions over time? In other words, do similar functional demands lead to similar constitutional law?

The bulk of the analysis examines the impact of the two constitutional structure variables (regime type and central–local relations) on subnational experimentation along four dimensions: incentives to experiment, experimental priorities, capacity to experiment, and diffusion of experiments. Neither democracy nor authoritarianism, Wang argues, is inherently more conducive to successful experimentation, once all of these dimensions are taken into account. Nor are federal systems as opposed to unitary systems. For example, Beijing's power over the selection and promotion of local officials discourages experimentation that is out of step with Beijing's priorities, but it is also a potent tool for mitigating free rider problems that might otherwise inhibit experimentation, and for ensuring the diffusion of successful innovations.

Wang concludes, instead, that “the functioning of subnational laboratories – democratic or authoritarian – is determined largely by the *interaction* between constitutional arrangements and partisan/factional politics” (emphasis added). With respect to politics, what matters is the outcome of political competition at the central and local levels and, in particular, whether the outcomes at both levels are aligned. In multi-party democracies like India and the US, this competition is electoral and interparty in character, and the outcome can be described in the familiar language of unified or divided government. In one-party authoritarian regimes like China, this competition is instead factional and intraparty in character, and Wang devises a three-part typology of scenarios to suit.

In a “coordinated” scenario, the faction that dominates the central government also “includes a substantial number of subnational leaders” who are given leeway to experiment and whose successes are in turn diffused by their central patrons. In a “muted” scenario, the dominant central faction lacks local allies and thus has “little incentive to empower subnational units or to support their policy innovations.” A “fragmented” scenario occurs in the absence of a clearly dominant central faction, with the result that the centre is unlikely to thwart experiments in the first place but by the same token cannot propagate successful experiments broadly either.

But does China actually require a distinctive analytical framework? Or is the underlying logic across the three cases even more similar than the analysis suggests? Consider the “muted” and “fragmented” scenarios. Are these two scenarios distinct from the political dynamics seen in India and the US? Indeed, are they distinct even from each other? Both describe permutations of divided government, and both produce the same outcome as divided government produces in democratic regimes: whether it is because the national and subnational governments are divided against each other, or instead because the national government is divided against itself, the conditions for successful experimentation are not met. Whether the Tuanpai and the Shanghai Gang are at loggerheads, or the White House and the Senate are controlled by different parties, the analysis and the result are the same. In all three countries, the prospects for promoting and diffusing successful policy experiments depend on whether political competition produces divided government and, if so, what kind of division. When political control is divided *vertically* between the central and local governments, a unified centre can frustrate experimentation at the local level; when political control is divided *horizontally* within the central government, successful local experiments may occur, but their diffusion may be piecemeal at best.

Experimentalist Constitutions stands as a sensible and all-too-rare rebuttal of the widespread assumption among constitutional law scholars that the deep dissimilarities between their usual (Western, liberal and democratic) case studies and China preclude meaningful comparison or learning. On the contrary, it is precisely the magnitude of these differences that enables us to identify fundamental, recurring mechanisms and dynamics that depend little, if at all, on basic constitutional structure and might even be universal. What insights could be more profound?