

The Construction of Mistake-tolerant Democracy Based on the Practical Right “Right to Trial and Error”

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The law “Trial and Error Ordinance” enacted in 2006 and spreading throughout China especially since 2016 is the best starting point for China’s democratization, because Chinese government officials cannot be confronted with their new challenges directly without the right to trial and error. This study has tried to build a new democratic theory, mistake-tolerant democracy based on the right to trial and error with Chinese characteristics and Western value to guide Chinese democratized way. The right theory of mistake-tolerant democracy is the new right paradigm, “the right to trial and error as an original right and mutual empowerment theory” proposed by the combination of the state of nature and the scientific method of trial and error rather than natural right theory and social contract theory. Mistake-tolerant democracy emphasizes that the people have the equal right to trial and error as an original right, and the officials’ right to trial and error are granted from the people and should empower the corresponding rights to them, which is the meaning of mutual empowerment theory.

Keywords: liberal democracy, right to trial and error, right to be wrong, right to be in error, Trial and Error Ordinance, state of nature, mistake-tolerant democracy

Introduction

In the past 100 years since the May 4 Movement of 1919, most China’s leaders, Yat-sen SUN (1986) and Zedong MAO (1969), realized that democracy could help China independent and prosperous. But until the beginning of the 21st century, China’s reform and opening-up has not made progress in political democratization according to Western scholars’ (Shirk, 1993) point of view, although economic modernization has achieved great success. Moreover, Comrade Xiaoping DENG (1991) said, “Without democracy there can be no socialism and no socialist modernization”. China’s scholars (YU, 1999) have noted that the revolutionary changes in China’s ideology and economic system also lead to a great improvement of political development, as neglected by liberal democracy. Secretary Jinping XI (Chinese Dream, 2013) described a splendid future for China, “Young people should dare to dream, work assiduously to fulfill the dreams and contribute to the revitalization of the nation”. Keping YU (2014) emphasized, “The Chinese dream is the realization of the great revival of the Chinese nation. There is a lot included in this great revival, and an indispensable part of it is a high level of democracy and the rule of law”. Obviously, Chinese Communist Party as the only ruling party cannot trust Western democratized road and liberal democracy with multiparty alternation in power. In the past four decades, Chinese government and academic circles still want to master the right to democratic discourse to reach common consensus in the native land and guide international opinion. So for Chinese scholars (YU,

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1999), the biggest problem also asked by Western scholars is how to build a new democratic theory with Chinese characteristics and Western values to guide China's democratized road, if China cannot accept Western democratic value. In the beginning of 21st century, several Chinese scholars have tried their best to put forward new democratic theories, such as harmonious democracy (Peng et al., 2010), which cannot be further developed. The reason why most of Chinese scholars fail is that they do not have the ability to rebuild the theory of human rights, which is the precondition of reconstructing the democratic theory. Daniel A. Bell (2009) suggested that the severe challenges for democratic theorists be how to combine political theories with Confucian and Eastern tradition.

Democracy is the core of Chinese dream, but how can China find a reasonable and peaceful way to become a democratic state? If the best starting point to realizing it is to carry out the multiparty system and the right to liberty, then we may be waiting for another century for China's democratization. So does the best starting point different from the western democracy exist in China? The Chinese democratization should at least be based on her practice in the past 70 years and traditional culture. The problem is whether China has the opportunity to create her own democratic theory after losing the right to discourse in the democratic field for about 100 years since 1919 to guide her democratic practices. Here we have noticed that in China, a special law "Trial and Error Ordinance" was made in Shenzhen (XIN, 2006), Shanghai, and Shunde¹, and the right to trial and error (or right to be wrong, or right to be in error) entitled to the government officers in the innovative field in Shunde of Guangdong province was firstly proposed in the "Trial and Error Ordinance". Mistake-tolerant mechanism built according to "Trial and Error Ordinance" has spread throughout all the country especially since 2013. In this study, I focus the relationship between "Trial and Error Ordinance" and Democracy, i.e., between the right to trial and error and the right to life, liberty, and property. Firstly, this article introduces the background that "Trial and Error Ordinance" was enacted for promoting China's Reform and Opening-up; secondly, I propose the new right paradigm, the right to trial and error as an original right and mutual empowerment theory secondly; thirdly, mistake-tolerant democracy is constructed based on the new right paradigm. The Chinese political future in the field of democracy will be discussed in the conclusion.

Background: A Special Law "Trial and Error Ordinance" in China's Reform

In the autumn of 2005, Shenzhen legal reforms (XIN, 2006) ushered in new development opportunities. On September 12-13, Premier Jiabao WEN inspected Shenzhen, convened and presided over Special Economic Zone Working Forum. He pointed out that under the new historical conditions, Shenzhen Special Economic Zone (Shenzhen SEZ) was to take innovation as the lifeblood and soul of development and continued to be the model area of building socialism with Chinese characteristics. Premier WEN's remarks were regarded by the public opinion as a prelude to a new round of the reform. On November 17, 2005, the draft of "Shenzhen SEZ Reforms Innovative Promoting Regulation", which was called by outsiders as "Trial and Error Ordinance", was submitted to the Third Meeting of the Fourth Shenzhen Municipal People's Congress Standing Committee for its deliberation. In this draft, the relevant provisions of "three cases of reform and innovation exempted from blame" were of particularly noteworthy: (1) the formulation and implementation procedures of reform innovative programs meet related requirements; (2) the individual and his work unit are not for personal gains; (3) the individual does not maliciously collude with other units or individuals to damage the public interest. On

¹ Retrieved from <http://dangjian.people.com.cn/n/2013/0509/c117092-21416509.htm>

March 14, 2006, the Fifth Meeting of the Fourth Shenzhen Municipal People's Congress Standing Committee adopted the ordinance, which entered into force on July 1, 2006. On June 6, 2008, the Shenzhen Municipal Committee discussed and adopted some opinions of Shenzhen Municipal Party Committee and Municipal Government on upholding of reform and opening-up to promote the scientific development of socialism with Chinese characteristics and strive to build a model city. This reform outline includes nine aspects, in which construction of a democratic and legal system tops the list. On April 8, 2013, Shanghai, following the practice of Shenzhen "Trial and Error Ordinance", stipulated "Decision on promoting reform and innovation" to further strengthen the "mistake-tolerant mechanism". On May 7, 2013, Shunde of Guangdong Province allowed government officials the right to trial and error. On March 5, 2016, Premier Keqiang LI (FANG, 2016) emphasized the importance of constructing mistake-tolerant mechanism in his government report to promote the process of the reform and opening-up, and at the end of 2017, all the Chinese provinces have enacted the special law "Trial and Error Ordinance" and some officials being prosecuted resort to the ordinance for the protection of themselves, although many people and scholars objected it violently.

Since the practice of "Trial and Error Ordinance" in Shenzhen, Shanghai, and Shunde, a lot of controversy arose. Opponents (TANG & LU, 2015) believed the ordinance had provided a breeding ground for official corruption, and supporters considered reform and innovation required a culture of tolerance, and the enactment of the ordinance was in line with the trend of the times. It is worthy of consideration that among many controversies on it, few scholars consider from the global process of democratization perspective the significance of the issue of "Trial and Error Ordinance" in Shenzhen, Shanghai, and Shunde to construct democratic politics with Chinese characteristics. The reason for this dilemma is that the current democratic theories, such as electoral democracy, elitist democracy, pluralistic democracy, deliberative democracy, and liberal democracy, cannot explain the relationship between "Trial and Error Ordinance" and the process of democratization deeply.

Right to Trial and Error or Right to Be Wrong

In the theory of liberalism, liberty is the key concept of it, rather than the right to trial and error or right to be wrong. But the importance of the right to be wrong has been realized gradually, and is usually concerned with the concept of liberty or freedom. Harry Weinberger (1917) regarded, "The greatest right in the world is the right to be wrong". The Commission on Freedom of the Press (A General Report on Mass Communication, 1947) said, "The right to liberty includes the right to be in error. Liberty is experimental, and experiment implies trial and error". The U. S. Supreme Court (Stern, 1998) created "a right to be wrong" for the media in the case of *New York Times v. Sullivan* and proposed the defamation standard of "actual malice", i.e., "knowing that they were false, or with reckless disregard of whether they were false or not. In short, the statements would have to be more than negligently wrong. They would have to be lies". John Diefenbaker (1958), the 13th Prime Minister of Canada, regarded, "Freedom is the right to be wrong, not the right to do wrong". The Germany Court (Mertens, 1979) pointed out that the evaluation of the consequences of the "German Codetermination Act of 1976" is so complex that the legislature should have a right to be wrong in its prognosis as long as it has followed proper modes of evaluation. Robert A. Roessel Jr. (1968) as American educationist said, "The right to be wrong and the right to be right are essential American prerogatives—privileges of democracy". Robert didn't answer the relationship between the right to be wrong and freedom, but he emphasized, "This freedom that comes with the right to be wrong or right gives our country its eminence". Douglas G. Houser (1992) et al.

described how the insurance company employed the right to be wrong as the shield to refuse reasonably but incorrectly to pay the compensation, “As to any first-party action, under whatever theory, the insurer’s shield is its right to be wrong, i.e., reasonably, even if incorrectly, to have denied coverage”. Steve Fuller argued (2000) that governance of science depends on the fundamental principle of the open society as the republicanism: the right to be wrong. Kevin Seamus Hasson (2005) proposed the solution of cultural war between religions respects every person’s freedom, even if we regard that they are wrong, as means that your opponents have the right to be wrong in the field of religion. The Supreme Court of Canada (Jobb, 2010) established the template for a new defamation defense on the citizen and star cases: responsible communication on matters of public interest. The defense makes it possible to defeat a libel claim even if the proven facts fall short of perfection, if it was in the public interest to publish the information. In effect, as one Supreme Court judge noted during argument, it grants the media “the right to be wrong”. Although the right to be wrong can be accepted gradually, David Oderberg (2000) et al. still doubted the legitimacy of the right to be wrong as a human right. In conclusion, most of scholars would like to accept the idea that the right to liberty or freedom has included the right to be wrong, as is realized recently. In China, Zhan GUO (1988) firstly proposed the concept of the right to trial and error considering realistic problems in China’s reform and opening-up, “The person who is engaged in creative exploration unlike repetitive specific actions should have the right to trial and error”.

According to GUO’s definition, the right to liberty or freedom is equal to “the right to trial and error” or “the right to be wrong” in the innovative field, because the method of trial and error in the innovative field always works when a person exercises the right to liberty to solve the problem. In the non-innovative field, the right to liberty is not equal to the right to trial and error, because it is not necessary to try and err in the non-innovative field; otherwise, persons should be blamed or even punished according to the law. The right to liberty as the core of liberalism in the innovative field should be distinguished from that in the non-innovative field, but actually most scholars in liberalism don’t realized it. John Rawls (1999) criticized utilitarianism that the goods is prior to the right, and the legitimacy of right to liberty lies in contributing to utility. John Rawls argues that the right is prior to the goods. But the connotation and extension of goods and rights—the right to life, liberty in the non-innovative field, and property, etc.—can be defined by the activities of trial and error. Who has the right to engaging the activities of trial and error to define rights and the goods? It means who has the right to trial and error to clarify the connotation and extension of other rights and goods. Here we do not care the answer, but have found the right to trial and error is prior to other rights and all the goods. We argue that the right to trial and error or right to be wrong be prior to all the other rights and the goods in any political theory. Furthermore, without the conceptual difference of liberty between innovative and non-innovative field, many scholars have misunderstood the meaning of the right to trial and error, as will be discussed later.

Defects of Liberal Democracy: not Realizing Right to Trial and Error as an Original Right

Democratic theories are becoming increasingly rich, and at the same time, controversy around the democratic concept is becoming the most outstanding issue. Keith Graham (1986) pointed out that before the 18th century, everyone had known the clear idea of democracy, but few people supported it. Now the situation was reversed. Everyone supported it, but in the end the concept of democracy was no longer so clear. Michael G. Roskin et al. (2013) held that no other words had more meaning than democracy in all of the vocabulary of political science probably. Jean-Paul Gagnon et al. (2014) have listed 507 theories of democracy by databases. What’s more, what democratic theorists have to inquire is whether there exists something in common between

the understanding of democracy in the era of Plato and Pericles and the meaning of democracy endowed or owned after 2500 years. The answer to this question for most Western democratic theorists (Dahl, 1989) is majority rule, political equality, and universal participation, but our research has shown that their generalizations to democratic characters are incomplete.

It is noted that many scholars neglected the importance of “right to trial and error”, which is based on the scientific approach “trial and error” to construct democratic theory. Certainly, scholars were fully aware of the value of “trial and error”. John Stuart Mill (1989) stated that humans could make continuous progress through learning from mistakes. In his view, the human beings may get truth from mistakes, and produce a more clear and vivid knowledge in the conflict of truth and mistake. Karl Popper (1972) systematically has expounded the relationship between the growth of knowledge and the method of trial and error. He provided a simplified problem-solving schema to illustrate the development of knowledge, i.e., “ P_1 —TT—EE— P_2 ”. P_1 is a shared problem-situation; TT is a tentative and imaginative solution to the problem. EE is error-elimination; and P_2 is the resulting problem-situation. Popper even believed that animals and even plants were solving their problems with the way of trial and error. American physicist John Wheeler (1997) has highly praised the scientific method of trial and error. He said that I thought many of us were willing to put trial and error as the fundamental method, which is the first universal concept. We should have such a belief that the best way to make progress makes mistakes as quickly as possible, and learn from them. Hayek (2011) linked human progress closely with mistakes. He believes that the mankind can neither predict nor deliberately shape its own future. Its advances consist in finding out where it has been wrong. In general, humanists, philosophers of science, and physicists agree that the method of trial and error is the basic method for human beings to understand nature and society.

Liberal democracy and liberalism as the philosophical foundation of it have not studied the relationship between the right to trial and error and all the other rights. The second defect of liberalism is that it cannot explain the whole history of the human beings, which means that its explanation still needs to be improved. Can we build a new right theory which can explain the whole history of the mankind? The key is how to understand the state of nature as the beginning point in the theory of Thomas Hobbes (1996) and John Locke (1980), etc. But they didn't realize the importance of integrating the method of trial and error with the state of nature. We can explore the deeper relationship between the right to trial and error and the other basic rights through doing a thought experiment based on people's activities in the times of ignorance. At that era, Human beings kept in a state of ignorance when they explored nature and society, and they didn't know the modern concept, such as the right to life, liberty to speech or property. They just wanted to survive and were engaged in all kinds of activities in nature, which mean starting the activities of trial and error. The first priority to human beings is protecting themselves from harm, and this is the common instinct of human beings and animals, but they didn't know the concept of the right to life. People needed to get food from nature. They didn't know what kind of things can be eaten, and this kind of attempt is full of danger like kids putting all things into their mouth, which is the only way for them looking for food, because the basic method to explore nature is trial and error. In the process of their reaching food, sharp spines might puncture fingers and cause the feeling of pain, then people formed the concept of “pain”. The food people picked up might be toxic or non-toxic and eating poisonous food might cause belly painful or deadly. Similarly, other concepts such as cold, hot, acid, sweet, bitter, spicy, and so on are all formed in the activities of trial and error. This is because before trying, nobody will know that these feelings are harmful to people and then amend them in the new round activities of trial and error.

In the ignorant state, an isolated individual or atomic person could not be self sufficient. If people wanted to survive in the nature, they needed to observe others' activities of trial and error and reduce or even avoid similar activities which might lead to his own hurt. Therefore, society is very important for individual's existence. Without society, there is no individual. A solitary person full of fear would be hurt or even die for the next activities of trial and error without any contribution to others' survival, which has been neglected in Hobbes, Locke, and Rousseau's state of nature. In their theory, they supposed that the human beings had enough knowledge without using the method of trial and error to explore nature or society when they were born. It is true for Adam and Eve who have comprehensive knowledge from God and could manage the Garden of Eden successfully. But when both of them was expelled from it, trial and error became more and more important for the human beings, because the way of spreading knowledge from one generation to another was destroyed by the flood and different languages in the Bible. Moreover, knowledge in the Garden of Eden was at least partly different from it on the earth. Hobbes and Locke did not realize the relationship between knowledge and "trial and error" explained by Karl Popper (1972) in detail. Especially most of the human beings would like to disobey God's words, and have tried to create their own ideas and laws by trial and error. So the conclusion is that both of theists or atheists have to face the ignorant state in which all the ideas of the people in the scientific or social fields were formed through the activities of trial and error, and corrected in the latter activities of it. In the field of politics, the concepts of the right to life, property and so on are also created in the activities of trial and error. In the age of ignorance, every person could practice the activities of trial and error according to their own mind, and nobody can monopolize it. Everyone has the qualification of practicing trial and error, so everyone has the equal right to trial and error. Through it, people tried to define the concepts of life and death, freedom and slavery, equality and discrimination and so on. At that age, everyone had the equal right to trial and error to explore and define the meaning of life and property respectively, and we could image that many concepts were abandoned during the human history. All the human concepts are originated from activities of trial and error, so we can regard that anyone who controls the right to trial and error or be wrong can decide the meaning of all kinds of rights. i.e., the right to be wrong or trial and error as an original right, and the right to life, liberty to speech and property etc. are subordinate rights which are decided by the right to trial and error. Because different individual has different ability to exercise trial and error, and in the human history, some strong people organized themselves together and robbed others of the right to trial and error to protect their own right to life, liberty, and property. Some people whose right to trial and error was robbed cannot protect their subordinate right. In the feudal society, the emperor has the strongest right to trial and error, so he can protect his right to life and property more efficiently than others. In democratic society, every people have the equal right to trial and error, and they have the most opportunity to protect their subordinate rights. So we can say the history of human beings is the process of fighting for or obtaining the original right, the right to trial and error, by majority or minority in a manner of violence represented by Hobbes or peace described by Locke. In the state of nature defined by Hobbes and Locke, equality and liberty means the equal right to trial and error in the innovative fields.

Then, how can we build the relationship between the right to trial and error and the right to property in detail? The first person who linked trial and error and the right to property is James Madison. He argued the different ability of trial and error with self-love resulted in the existence of the right to property. Madison, Hamilton, and Jay (2001) said,

As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will be a reciprocal influence on each other; and the former will be object to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. (p. 43)

But Madison has failed to recognize the existence of the right to trial and error as an original right. The interpretation based on the right to trial and error is that in human society, everyone has an equal right to trial and error, but their ability is different. In the process of trial and error, people find that the food is scarce, so they produced the selfish or self-love idea. According to Madison, self-love combined with the different ability of trial and error produced the idea of the right to property. On account of the equal right to trial and error and the different ability of trial and error, everyone owns a share of property, but the quantity is different. Thus, the right to property is not nature, but is generated because of the combination of the different ability of trial and error and self-love by individuals who own equal right to trial and error. Moreover, the establishment of the right to property has to be tested in practice eventually, "which is more suitable for the development of society with the right to property or not?" If the practice shows public property can play a more important role in promoting the development of the society and meeting the needs of the people, the right to property for person might not exist. Human history has shown that protecting the right to property properly is very necessary. If the property is completely in the hands of a few hands, and this has imperiled the entire society, the government granted from the people should intervene and redistribute properties by reasonable tariff.

Based on the above analysis, in the ignorant era, human beings formed the concept through the activities of trial and error, and revised the original idea in the next ones. Everyone is entitled to the right to trial and error, and it will not be monopolized. But trial and error means paying the price, and sometimes including the cost of life. Based on the long-term practice of trial and error, people gradually realized the importance of respect for each others' life, liberty in non-innovative fields, and property, thus formed the right to life, liberty, and property and enacted the law to protect them. To sum up, the right to trial and error is not only the motive power of development of right to life, property and other rights, but also belongs to the original right in the position of mummy; the right to life, liberty in the non-innovative fields, property right and other rights belong to subordinate rights in the position of baby. In a sense, through rich experiences of trial and error practice, people understood how to limit the human to abuse the right to trial and error. They cannot hurt other people's subordinate rights when they exercise it. If we realize that everyone has the equal right to trial and error, even if the other rights do not exist, the individual's right to life and other rights will be derived in practice. If we only recognize the right to life and property rights but ignore the more basic original right "the right to trial and error", the ruler can modify a new standard and easily violate individual rights to life and property in the context of the new problem, and does not take any responsibility. In the special situation, it is necessary to give up a person's right to trial and error, and the right to life, liberty in the non-innovative fields, property and all the other rights will either lost security. For example, in order to protect the whole society or country from foreign aggression, the soldiers must obey the commander's orders, which means that the soldiers will no longer have the right to trial and error, because it is in the hands of commander. Commanders who own the right to trial and error can exercise soldiers' lives and liberty in non-innovative field to try, so it is important for commanders to perform the right to trial and error reasonably.

In a sense, people who have the right to trial and error have an opportunity to make a correct result in the area of innovation, which is adapted to humanities and natural sciences. If people only have the right to be right instead of the right to trial and error, they can do nothing in the end. It is reasonable for us to regard the right to trial and error as a fundamental right for existing. However, in the entire process of western democratic theory development, such as Thomas Hobbes, John Locke, Jean-Jacques Rousseau, Montesquieu, Thomas Paine, John S. Mill, pragmatism representative John Dewey, Joseph A. Schumpeter, pluralist democracy theorists Robert Dahl, Jürgen Habermas, and Arnold Kaufman et al. did not realize the importance of the right to trial and error as an original right for the construction of democratic theory. The reason is that most democratic theorists had not recognized the impact of the basic scientific method of trial and error on human activities and thus did not integrate trial and error with the state of nature.

For instance, Friedrich A. Hayek (2011) used the words of “coercion and arbitrary” to define the state of liberty or freedom,

We are concerned in this book with that condition of men in which coercion of some by others is reduced as much as is possible in society. This state we shall describe throughout as a state of liberty or freedom. (p. 57)

The state in which a man is not subject to coercion by the arbitrary will of another or others is often also distinguished as ‘individual’ or ‘personal’ freedom. (p. 58)

The time-honored phrase by which this freedom has often been described is therefore “independence of the arbitrary will of another. (p. 59)

The problem is that how we can know the connotation and extension of coercion and arbitrary. If we cannot know their meaning in advance, we have to define them by the activities of trial and error. Then, who has the qualification or the right to trial and error to define them? Hayek could not avoid discussing the right to trial and error when he tried to define the concept of liberty or freedom. Moreover, Hayek (2011) cannot accept the following situation,

It is very probable that there are people who do not value the liberty with which we are concerned, who cannot see that they derive great benefits from it, and who will be ready to give it up to gain other advantages; it may even be true that the necessity to act according to one’s own, plans and decisions may be felt by them to be more of a burden than an advantage. (p. 68)

I argue that it is reasonable to transfer (not give up) the liberty (the right to trial and error) in innovative circumstances to professional persons, because it is possible for the people to be hurt or even die to perform the liberty (the right to trial and error) without any coercion, especially when they are in a state of ignorance to explore the nature. Here we can adopt ABC or JaJa’s model (proposed by Professor Macleans Geo-JaJas) to understand the democratic society in which everyone has the equal right to trial an error or be wrong. There are three persons, “A, B, and C”, in a state, who have the equal right to trial and error. But a different person has a different ability to solve the problem. A and B would like to transfer their right to trial and error (the right to liberty in the innovative field) to the more intelligent C by vote in order to save materials and obtain extra profits for their benefits, as cannot be accepted by Friedrich A. Hayek. C who has the right to trial and error granted from A and B should empower corresponding rights, the right to supervision, education, speech, and criticism, etc. for the people to prevent C from abusing the right to trial and error, an original right for his own benefit. This process is called mutual empowerment theory. Based on the analysis above, we have concluded the new right paradigm “the right to trial and error as an original right” and “mutual empowerment theory”

rather than natural right theory and social contract theory to explain the relationship among individual, society, and state.

Constructing a New Democratic Theory “Mistake-tolerant Democracy”

Before constructing a new democratic theory based on the original right “the right to trial and error”, we need to reach a consensus. Firstly, since history is a process of competition of controlling the right to trial and error, what kind of way to get it is legal or illegal? The human history has provided rich practices for that. The long feudal history has shown that the concept of the equal right to trial and error is difficult to be implemented. In the feudal society, the right to trial and error had long been monopolized by the emperors and their supporters, and the theory of “divine right of kings” provided them with the right to trial and error as a legal reason. Few wise kings could exercise the right to trial and error reasonably. If the people were governed by tyrant or stupid kings, the right to trial and error as the original right would be abused without any limit, and then the people’s subordinate rights, such as the rights to life, liberty in non-innovative fields, and property which should be guaranteed in the democratic society did not exist. The reason why Chinese feudal dynasties could not ever walk out of “Dynastic Cycle”² was that the legitimacy of kings’ right to trial and error did not be solved. In the Chinese history, the situation was always that few people joined up to deprive the right to trial and error of most people. Even in the ancient Greek polis, the right to trial and error could still be controlled in few people’s hands, but it was better than the monarchy. Moreover, why have the rights to life, liberty in the non-innovative field, and property been controlled by the minority? Why did most of people not have the corresponding right? The reason is that the right of “trial and error” is in the hands of the minority. These few people who have owned the right to trial and error can easily exercise the people’s lives to do some experiments, and the people who have lost the right to trial and error cannot guarantee their subordinate rights. Whether the people who lost their original right can guarantee their subordinate rights didn’t depend on themselves, but on the monarch who owned the original right, right to trial and error. If they want to protect their rights, they must have owned the trial right. Therefore, first of all, people should recapture the original right from the monarch. However, the dynasties have frequently changed in Chinese history, and the people’s right to trial and error still cannot be guaranteed so that the Chinese history had not overcome the Dynastic Cycle. So far, we have realized that everyone has the equal right to trial and error and it is a legal way for political elites to own it partly through the people’s authorization; Secondly, as the history is a process of doing trial and error, the previous trial and error has provided plenty of activities for later generations to avoid similar damages.

Then, what kind of society or state is more satisfactory? Since the right to trial and error is the original right, an ideal state is bound to respect every individual’s original right and guarantee the equal right for him. At the same time, a society or a country full of vitality must recognize that the different individual has the different ability of trial and error, which means some problems are solved by collective trial and error, while others are required to be solved by a small number of professionals. Because some individuals spent the lower cost in a certain area, while others did more. In order to save resources, the right to trial and error in the

² Dynastic cycle is an important political theory in Chinese history. According to this theory, each dynasty rises to a political, cultural, and economic peak and then, because of moral corruption, declines, loses the Mandate of Heaven, and falls, only to be replaced by a new dynasty. The cycle then repeats under a surface pattern of repetitive motifs. Retrieved from https://en.wikipedia.org/wiki/Dynastic_cycle

professional fields should be transferred to some persons with excellent expertise for an effective society, as described in JaJa's model. So the leader's right to trial and error is granted from people's authorization, and they should empower them the subordinate rights to supervise whether he has exercised the granted original right to trial and error reasonably. The process above is called mutual empowerment theory rather than traditional social contract theory. Obviously we should advocate a political culture of tolerance, because everyone has to make mistakes in innovative fields. In this ideal society, everyone has the equal right to trial and error, and the leader's right to trial and error is granted by people, exercised for people, and supervised by people. In the early activities of trial and error, the human beings have recognized the importance of the subordinate right. We do not need to retry and err in these areas, but should protect them in the law.

The new democratic theory constructed on the basis of the right to trial and error will be referred to as mistake-tolerant democracy in this study. Construction of mistake-tolerant democratic theory is based on two pillars: the right to trial and error as an original right and mutual empowerment theory rather than natural right theory and social contract theory. The state power stems from the authorized right to trial and error by the people to political elites in the field of innovation, and in other words, the political elites are the representatives of the people to exercise the right to trial and error. So, what kind of rights will people get when they grant the right to trial and error to political elites? What's the different relationship between political elites and the people from the fields of innovation to non-innovation? Those are the questions that mistake-tolerant democracy theory needs to explore. The process of mutual empowerment between the people and the political elite in the theory of mistake-tolerant democracy is divided into two parts: The first part is the process that how people entrust their right to trial and error in innovative field to political elites; the second part is that how the political elites exercise their duty of criticism, self-criticism, and correct the mistake. The two parts mainly contains the following eight basic questions: (1) How will people authorize the right to trial and error in innovative field to the political elite? (2) Whether will people authorize all the right to trial and error to the political elite? (3) How can the people and government protect the political elite's right to trial and error? (4) What is the principle of the political elite to reduce the number of trial and error, improve the quality of trial and error, and make less mistakes? (5) Can people understand them better when the political elites perform their obligation of criticism and self-criticism to them? (6) When the political elites exercise criticism and self-criticism to people, will they evade the crucial point or analyze the important error? (7) How can the political elites guarantee the implied mistakes effectively retrieved and corrected? and (8) How can the people deal with the relationship between the right to trial and error and accountability? The above eight basic questions must be answered in any democratic society.

The first question relates to the emergence of the political elites. This is usually answered as "general election system" in western countries, but is it the only choice? Up to now general election system is the best way to authorize the right to trial and error to the political elites. The second question involves the limits of government administration. If people authorize the right to trial and error in all fields to the political elites, the government power should be unlimited. On the contrary, it should be a limited government. For the limited one, we need to draw a distinction between public field and personal field, and protect them by law. The third question is concerned about the way of protecting the political elite's right to trial and error. What kind of mistakes can be entirely exempted? What kind of mistakes brings punishment while still maintaining one's post? And what kind of mistakes removes one from his office? All these issues need further researching. The practice of "Trial and Error Ordinance" in Shenzhen (2006), Shanghai (2013), and Shunde (2013) is to protect the

political elite's right to trial and error. The Western answer to the fourth question is to comply with the principle of separation of the three powers and the balance of rights as well as multiparty competitive manner in order to achieve the goal of error correction and prevent the corruption of power. These principles are closely related to the Western traditional culture, because the Western traditional feudal society is a decentralized society, and civil society is quite well developed. The reason why the medieval university could stay academic freedom and academic autonomy was associated with its tradition of decentralization. Certainly, the design of principle of separation of the three powers and the balance of rights itself was by the way of trial and error. For other cultures, the answer to the fourth is still open. The fifth question is about whether people can trust the political elite or not. In the nation based on mistake-tolerant democracy, one of the functions of education is to help people understand mistakes made by the political elites. Therefore, it is the government's duty to popularize education and improve people's qualities. The sixth question is related to the importance of errors. This requires the educated have possessed a good critical consciousness, and the critical spirit is the core of culture. The seventh question demands the government share mistakes from top to bottom, which requires ensuring all kinds of information open to people and letting people analyze and criticize the activities of the government. The eighth question requires the political elites to be good at learning from mistakes, and to be evaluated by the people and the appropriate agencies. Logically, when the concept of nation first appeared in human history, the public issues people faced in the national level all belonged to the innovative field, which needs to be solved by trial and error. After solving problems in the field of innovation, people formed a set of reasonable procedures and institution. So, the problem in the field of innovation was transferred into the field of non-innovation, and then the political elites had no longer owned the right to trial and error. Instead, they gained the qualification to solve these questions in a correct way. If they cannot solve the problem correctly, they will be blamed or even punished in the field of non-innovation.

From the above eight questions, we can conclude that in the activities of trial and error made by the political elite, he must empower the people corresponding rights, such as the right to education, criticism, supervision, freedom of expression, equality, and other rights. The person who supervises and criticizes the political elite with the right to trial and error is to inspect whether he puts into force the original right in a reasonable way. The right to trial and error authorized to them allows them to make mistakes in the field of innovation but prevents them from making low-level mistakes. This study would like to call the mutual empowerment process between the political elite and people in the innovative field as the first empowerment. Thus, the more people are educated, the more the quality of the democratized process is contributed. After solving the problems in the field of innovation and forming a set of certain legal provision, system, and procedures, the political elites have no right to trial and error when they exercise their power in this field of non-innovation. In the field of non-innovation, people have all the right in the field of the first empowerment, but they exercise the right to supervision, criticism, and other rights to prevent the abuse of power by the political elites. People do not allow the political elites to exercise the method of trial and error in the non-innovative fields, and if they make mistakes, they will have to accept the accountability or even punishment. We will call the mutual empowerment process in non-innovation field between the political elites and people as the second empowerment. Therefore, the right to trial and error is confined to the field of innovation, but accountability is confined to the field of innovation and non-innovation. If the political elites exercise the right to trial and error in lower-level, they would be inquired and even punished.

In all, people's rights to education, supervision, equality, freedom of expression etc. and culture characteristic of criticism are the inherent requirement of mistake-tolerant democracy, or the obligation of the political elite who owns the right to trial and error and performs the criticism and self-criticism. Then, mistake-tolerant democracy makes political, educational, cultural system, and other systems integrated organically, which shows that it is not enough to focus on the political level when democracy is built, because it is a social systematic engineering. Therefore, we will define the mistake-tolerant democracy as follows:

In modern nation-state, people authorize their right to trial and error as an original right to the political elite by election, in order to obtain corresponding profit and subordinate rights, such as right to life, education, and criticism etc. In the process of managing state affairs, the political elite's right to trial and error should be protected by the law and perform their obligation of criticism, self-criticism and must ensure that mistakes can be effectively shared, corrected and searched at the systematic level and thus perfect the governmental organization itself.

To practice mistake-tolerant democracy, the system of "non-party, one party, two parties or multiparty" can be implemented, and the way of democratization "two-party or multiparty system" that Western countries have initiated is not the only but main way.

Conclusion: China's Democratized Way

Western media (Fish, 2017) have criticized that China lacks free and fair election, uncensored media, or independent judiciary. But liberal democracy hasn't noted that China has another democratized way. The best starting point different from the Western democracy for China is the mistake-tolerant mechanism, the core of which has been represented by "Trial and Error Ordinance" according to mistake-tolerant democracy. The ordinance is spreading from provinces to villages gradually since 2006 and will be performed in all government sectors in the near future. Mistake-tolerant mechanism has emphasized the right to trial and error granted to government officials, but it has not mentioned who has authorized officials the right to trial and error. Of course, the officials' right to trial and error should be granted from the people by vote, which should be declared by the government. In view of the right to trial and error as an original right, the officials should empower corresponding rights to the people. Mistake-tolerant democracy requires that the officials' right to trial and error be protected by law—"Trial and Error Ordinance". It means that the officials can exercise it, even though the people with the right to criticism empowered by the officials can criticize them. The problem is whether officials can exercise the right to trial and error in a reasonable way in the innovative fields. Officials do not care about the people's criticism if they solve the problem reasonably and procedurally, and all the information of the government should be open to the people in order to let them criticize it effectively. Up to now, there are many cases (Lü et al., 2016) that officers charged by local people have employed the ordinance to protect themselves, as never happened in the past 40 years. But we still do not know whether mayors or provincial governors exercise the right to trial and error, and how the people can criticize them. So China's democratized process can proceed further if mayors, provincial governors, or secretary empower subordinate rights to the people when they perform the right to trial and error, which has not been realized nowadays. From the innovative to the non-innovative field, the officials has the right to be right without the right to trial and error and the people have the same subordinate rights of which function is different. In the non-innovative field, the people can criticize the leader and do not allow him to try and err. If the leader makes mistakes, he will be blamed or even punished.

What's more, "Trial and Error Ordinance" can be accepted by liberalism, because the right to liberty is separated into the right to trial and error in the innovative fields and the right to liberty in the non-innovative fields. According to the new right paradigm, the right to trial and error as an original right and mutual empowerment theory, "Trial and Error Ordinance" is prior to the other laws, because they are originated from it. Constitution has been made based on the activities of trial and error, and should be modified in the future ones. For China's reform and opening-up, Comrade Xiaoping DENG (Naughton, 2007) has emphasized to solve the economic problems by crossing the river by groping for stepping-stones, which means solving the problem by the method of trial and error. "Trial and Error Ordinance" enacted in Shenzhen in 2006 was originated from "crossing the river by groping for stepping-stones". Under this background, a new democratic theory, mistake-tolerant democracy with Chinese characteristics and Western value was proposed. Mistake-tolerant democracy is based on the new rights paradigm, "the right to trial and error as an original right and mutual empowerment theory" proposed by the combination of the state of nature and the scientific method of trial and error rather than natural right theory and social contract theory. Here we notice that the difference of liberty in the innovative and non-innovative field is necessary and important, which also explain why liberalism and liberal democracy cannot guide Chinese democratization. Western scholars such as Hayek etc. misunderstood the concept of liberty and created a huge gap between Chinese and Western cultures.

The Chinese people and government are not familiar with the right to liberty, which can explain why she cannot accept liberal democracy. But she can accept the right to trial and error that is actually equal to the right to liberty in the innovative field. So we argue that "Trial and Error Ordinance" is the best starting point for Chinese democratization. But we must realize that if the government with the right to trial and error refuses or cannot protect the people's subordinate rights, violating the human rights will be protected by the law without obeying the principle of mutual empowerment theory.

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