

cardinals into his draft. Some may contend that the reverence for parents calls for no constitutional encouragement, but if we were to be frank with ourselves, the spirit which has held the family system intact and thereby the nation together is in danger of fast extinction. China for four thousand years has been a great nation because of her traditional virtues of which filial piety stands out pre-eminent and the disregard of which has been largely responsible for the moral disintegration of this generation. If Prohibition were worthy of a constitutional amendment in America, shall we hesitate to grant an equal importance to the respect for parents which is the fountain of all human relationships?

While we have endeavored to examine certain parts of Dr. Wu's draft in the light of precedents, we are far from the belief that it need be patterned after any other constitution at all. Only too often are we prone to emulate the examples set by the occident, and only too readily have we ignored the special conditions in our country which demand special treatment. A constitution which is to govern China must be a Chinese constitution. It may resemble that of another country, and yet it may not. The sole test is its serviceability to China, and China alone. Incapable of meeting this test, even the best compilation from the best constitutions of the world will be worthless indeed.

## Constitutional Developments In China

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IN THE short period of less than three decades, from the closing years of the Tsing Dynasty down to the present, there have been not less than a dozen fundamental laws by which China has been governed; not to mention others, both national and provincial in their scope, which were drafted but not put into effect. All these laws may be divided into three groups, representing three distinct periods; namely, the monarchical period, the parliamentary period and the party dictatorship period. If we set as the aim of a constitutional movement the establishment of a government "of the people, by the people, and for the people," these instruments have been decidedly barren in positive achievements. Yet, remembering that the Chinese revolution did not stop with the overthrow of the Manchu dynasty and has even now by no means completed its course, these constitutions and attempts at constitution making may very well be compared to the milestones along the way we have trodden, and a study of them, especially on the eve of adding another such mark, cannot fail to be profitable.

China's constitutional movement started at the beginning of the century, when contact with foreign powers had again and again not only exposed her weakness but also demonstrated, what is really more important, the principal cause of it, namely, her archaic political machinery accentuated by incapability and corruption at the top. Schemes of reform finally were directed toward the adoption of a constitutional government. In 1909 the Law of the Principles of the Constitution was promulgated. It was largely modelled after the Japanese constitution, establishing, according to its preamble, a constitutional monarchy but with all the powers of the government centered in the hands of the emperor. It was to be carried out in full after a preparatory period of ten years.

The proposed reform however came too late. Though there were people who still believed in the retention of the monarchy under perhaps a more liberal constitution, the revolutionary movement under the leadership of Dr. Sun Yat-sen aiming at the overthrow of the Manchu dynasty was fast spreading and finally culminated in the outbreak at Wuchang in 1911. Hoping to stem this poli-

tical storm, the Constitution of Nineteen Principles was promulgated. According to this law, though the monarchy was retained, a cabinet system of government responsible to an elective national assembly patterned after the English system was to be set up. But the demand of the time was the establishment of a republic. Nothing short of it, no matter how drastic the change from the old government could be entertained. However, it was according to this law that Yuan Shih-kai was made prime minister who, failing to save the monarchy through negotiations with the revolutionary forces, ultimately recommended the abdication of the Manchu emperor.

Thus ended the Manchu dynasty. But the revolution that overthrew it was not a racial revolution. The monarchy was simply the first obstacle to the regeneration of China. Had its reigning family been of Chinese stock, it would have met the same fate. Thus as late as 1925 Dr. Sun Yat-sen declared in his will that "the revolution is not yet finished."

Immediately following the outbreak of revolution at Wuchang, two thirds (later increased to seventeen) of the eighteen provinces of China Proper declared independence. A congress was then called of representatives from these provinces who formulated the Law of the Organization of the Provisional Government. It adopted the presidential system of government with a single chamber legislature known as the Senate, composed of three representatives from each province. Without going into details we may describe it as having in the main followed the scheme of the American Federal Constitution. In accordance with this law a provisional government was organized in Nanking with Dr. Sun Yat-sen as the first provisional president.

Upon the unification of China through the abdication of the Manchu emperor. Dr. Sun Yat-sen resigned his presidency and the senate elected Yuan Shih-kai in his stead. In the meantime the senate had completed the Provisional Constitution of the Republic of China which was promulgated by President Sun on March 11, 1912. The main features of the Provisional Constitution are the incorporation of a bill of rights of the people and the

adoption of the cabinet form of government copied more or less after the French system. Various reasons were given for this radical change in the allocation of powers, but it was generally believed to be for the purpose of curbing the masterful spirit of Yuan Shih-kai.

However, constitutional provisions are never sufficient to keep an ambitious leader within bounds. Friction soon developed among the president, the cabinet and the senate. Before long Yuan Shih-kai was able to establish in fact a presidential system of government which was the cause of, but survived, what is generally known as the Second Revolution.

In April 1913, the national assembly composed of a Senate representing the provinces and territories of the republic and a house of representatives representing the people at large met in Peking. In July it created a constitution-drafting commission which held its meetings in the historic Temple of Heaven; hence the name for the draft finally adopted. In October, the law for the election of the President was passed by the national assembly and later Yuan Shih-kai was accordingly elected as first president of the republic.

A word is necessary here regarding the situation of the political parties in order to understand subsequent political developments and constitutional issues. Dr. Sun Yat-sen's original revolutionary party known as Tung Meng Hui, combined with the Unified Republican Party, had by this time become the Kuomintang or People's Party. It opposed Yuan Shih-kai in his efforts toward concentrating all powers of government in his hands. Its members constituted a clear majority in the National Assembly. In favor of Yuan were the Republican, Democratic, and Unified Parties which amalgamated later to form the Progressive Party. After the second revolution, outstanding members of the Kuomintang in the National Assembly were driven away or even killed and the strength of the party of opposition was thus greatly lessened though still sufficient to block the president's schemes.

After securing the presidency, Yuan Shih-kai wanted a constitution to his liking. Failing to influence the opinion of the Constitution Drafting Commission, he proposed revision of the Provisional Constitution which was also rejected by the National Assembly. Yuan then ordered the dissolution of the Kuomintang and dismissed all its members from the National Assembly. As a result both branches of the legislature failed to have sufficient members left to form a quorum. Thereupon Yuan called what was known as the Political Council, through whose recommendation he dissolved the National Assembly and created the Provisional Constitution Convention which formulated the New Provisional Constitution promulgated by Yuan Shih-kai on the first of May, 1914.

The Temple of Heaven Draft Constitution showed many evidences of compromise between conflicting political ideas and interests, but it was triumphant in maintaining the spirit of the Provisional Constitution in its stand for a cabinet system of government. The New

Provisional Constitution entirely changed this spirit and adopted a presidential system of government. In fact it went further. What was really established was practically a perpetual personal dictatorship.

Upon the failure of Yuan Shih-kai to establish a monarchy, the republic was restored and the old Provisional Constitution was revived. The National Assembly met again in August, 1916, and immediately resumed the work of constitution making. Though adopting the Temple of Heaven Draft Constitution as the basis of discussion, it introduced some new issues among which the most important and the most hotly debated was the question of the division of powers between the central and local governments. But before any results could be reached, the National Assembly was again dissolved by President Li Yuan-hung under the compulsion of unruly military leaders who finally brought about a *coup d'etat* and overthrew the government.

Upon the restoration of the government under the leadership of Tuan Chi-jui who, however, favored the dissolution of the National Assembly, Dr. Sun Yat-sen established a military government at Canton to uphold the Provisional Constitution which had been violated by the dissolution of the National Assembly. The political upheavals and military strifes that transpired subsequently both in the North and in the South need not concern us here. Suffice it to say that the disruptive forces were operating at their worst and China was torn, as it were, into not two or three, but numerous pieces.

Disgusted with this chaos and weary of the road to unification, certain political leaders advocated and advanced the principle of federation which was received with great enthusiasm.

It was hoped that the unification of the country could be achieved through a scheme of federated autonomous provinces. In accordance with this new hope, various provinces, notably Hunan and Chekiang, undertook to draw up their constitutions. Excepting where the provincial constitutions would be void if in conflict with the national constitution, the provinces were to become practically independent states in the exercise of their sovereign powers. In 1922 a federal constitution for the country was drafted by well-known scholars under the auspices of the National Affairs Convention sponsored by National Federation of Chambers of Commerce and Educational Associations. Though they brought no results, these attempts were significant in that they represented activities of constitution making not through central government organs and that they reflected opinions and desires of the day concerning one of our most important constitutional problems, namely, the proper relation between the central and local governments.

Following the second dissolution of the National Assembly, a new one was convened in 1917 by the Peking Government which was dominated at that time by the so-called Anfu Clique. Its contribution to constitution-making was the formulation of what is known as the Eighth Year Draft Constitution. It followed the main lines of, though in some respects made improvements upon,

the Temple of Heaven Draft. But before it could be made into law, politico-military developments, which brought the Chih clique under the leadership of Wu Pei-fu and Tsoo Kun into power, cut short the life of the New National Assembly and brought back the old one which met for the third time at Peking in August 1922. The work on the constitution, left unfinished before, was resumed. Finally the task was completed and the product known as the Twelfth Year Constitution was promulgated on October 10, 1923.

As compared with earlier drafts, the Twelfth Year Constitution has two chief points of difference. First, it has a chapter on state powers, specifying the powers to be exercised respectively by the central and local governments. Secondly, it has a chapter on the system and organization of local governments which are divided into provincial and *hsien* or district governments. In line with the crop of new constitution adopted in Europe after the Great War of 1914, it was proposed to include a chapter on economic problems and one on education which were, however, not finally incorporated.

With the downfall of Wu Pei-fu in 1924, Tuan Chi-jui was asked to take the reins of government as the provisional chief executive. It is to be pointed out that all previous governments, except of course the brief monarchical government under Yuan Shih-kai, claimed more or less connection with the Provisional Constitution. The provisional chief executive's government, however, was candidly a break in the constitutional link. In order to give it a legal standing and to carry on the work of the establishment of a constitution it must therefore first of all devise some way to create an appropriate organ to do the work. The actual procedure selected was the convocation of a Political Rehabilitation Convention purporting to include all groups and interests, and a People's Representatives Convention, though the latter never came into being. A Constitution Drafting Commission appointed by the government was able to furnish a draft before the degeneration and ultimate downfall of the government into a military dictatorship by Chang Tso-ling. As far as this draft constitution is concerned, it follows the fundamental structure of the Twelfth Year Constitution. But there are some important changes and innovations, such as the election of the president by the people instead of by the National Assembly, amendment of the constitution by joint action of central and local legislative organs, provisions for the people to exercise the right of initiative and the right of recall of representatives to the National Assembly, and the organization of a national affairs court to interpret the constitution, to hear impeachment cases and to settle conflicts of power between central and local governments.

This ends our review of the constitutional development under the parliamentary period. Though showing sufficient strength in the beginning to overcome Yuan Shih-kai's challenge, the parliamentary system of government soon lost its virility and finally became bankrupt. But this does not mean that the period is without signi-

ficance. China cannot afford to forget the experience gained in this period from the struggle between the cabinet and presidential system of government. Perhaps what is even more important is the recognition of the importance of local governments as distinguished from the central government. And this is important not simply from the point of view of the development of a well-balanced political system, but largely because of the realization of the necessity of the work of reconstruction of a nature properly within the sphere of local governments. Another important development of this period consists in the attempts to establish federalism. As a measure to give more scope and power to the local governments it is certainly a sound principle. But as the parliamentary system of government had no way of rejuvenating itself, for the work of the regeneration of China, we had therefore yet to look from another direction.

Turning to the government of the South, important developments began to appear after the establishment of an understanding with Soviet Russia. In 1924 the First National Convention of Delegates of the Kuomintang was called, in which the admission of communists to the party, the reorganization of the Party along the lines of the Russian Communist Party, and the establishment of a dictatorship by the party in the government of the country were decided upon. After the death of Dr. Sun Yat-sen in the following year the government at Canton was reorganized to be known as the Nationalist Government. It was created by, and responsible to, the party; for the members of the Central Political and Administrative Councils, the highest organs of the government, were to be appointed and removed by the Central Executive Committee of the party, or if this Committee were not in session, by its Standing Committee. This commission form of government extended to all provincial governments.

It was also at this time that the greater part of Dr. Sun Yat-sen's revolutionary methods and political philosophy was expounded in detail. Of the four works which he enjoined his comrades to follow by his will for the completion of the tasks of revolution, only the "Plans for National Reconstruction" had been published previously in 1918. Now in 1924 "San Min Chu I" or the "Three Principles of the People," the "Outline of National Reconstruction" and the Manifesto of the First National Convention of the Kuomintang were given to the world. The "Three Principles of the People" gives direction and content to the revolution. China, according to these principles, is not simply to become a modern state like the other powers. She is to be regenerated in such a way that the realization of the principle of nationalism will not stop at making her an equal to any world power but will extend to aiding all weaker and smaller peoples; the realization of the principle of democracy will not simply mean the establishment of a popular government but also a government directed by the politically able or experts; and the realization of the principle of livelihood will not be satisfied with the enhancement of production and growth

of wealth but will aim particularly at the promotion of the general welfare and the elimination of great economic disparities.

The process by which these principles are to be achieved is divided according to the "Outline of National Reconstruction" into three periods. The first is the period of military operations in which force is to be employed for the establishment of order; the second is the period of political tutelage in which the people are to be trained in the art of self-government, but with the government controlled by the Party leaders; the third is the period of constitutional government in which sovereignty will be returned to the people. In the period of constitutional government, the government is to operate under a five-power constitution. Besides the organs for the exercise of executive, legislative and judicial powers, there shall be an examination *yuan* or department for the examination of public officers and the determination of qualifications for the offices in the public service, and a control *yuan* or department for the exercise of supervisory power through the impeachment of public officers and the auditing of public accounts.

After the reorganization of the Nationalist Government at Canton, the Northern Punitive Expedition was launched in 1926, with General Chiang Kai-shek as the commander-in-chief. With amazing rapidity the expedition was pushed to the Yangtze Valley. Upon the fall of Hankow and Wuchang the seat of the Nationalist Government was moved from Canton to Hankow. But the Hankow government was soon dominated by the left wing of the Kuomintang and communists whose radical policies caused great dissensions within the party. The moderates advocated the policy of getting rid of the communists and started the party "purification" movement, which ended in the establishment of a separate nationalist government at Nanking. Later, the leaders of the Nanking and Hankow governments effected a reconciliation which had as one of its results the consolidation of the government, with Nanking as the capital.

The northern expedition was then resumed until the capture of Peking, when China was unified to a degree that was possible under the circumstances. Thus ended the period of military operations. Accordingly in October, 1928, a set of general principles governing the period of political tutelage was adopted by the Central Executive Committee of the Kuomintang in which the dictatorship by the party was reiterated and the five-power constitution was adopted.

In June 1929, the Central Executive Committee of Kuomintang, in the manifesto adopted by its second plenary session, declared that the tutelage or educative period shall terminate in 1935. In order to facilitate the training of the people in the exercise of political powers, a provisional constitution of the tutelage period was promulgated on the June 1, 1931. The chief problems dealt with in that instrument are the rights and duties of citizens, guiding principles of the tutelage period; people's livelihood, people's education, and powers and organization of central and local governments.

Later, the third plenary session of the above-mentioned Committee decided to convene a national people's convention in 1935 when the constitution of the republic shall be adopted and in pursuance of this plan, the Legislative Yuan is entrusted with the task of the preparation of a draft.

This in brief is the constitutional development of the party dictatorship period up to the present. The importance of Dr. Sun Yat-sen's teachings to the future of China need no reiteration. The "Three Principles of the People" aims at the establishment not only of a political democracy but a social democracy as well. For anyone who is at all acquainted with the tendencies of the modern world the wisdom and desirability of this policy can hardly be doubted. The merit of his theory of the five-power constitution lies in the fact that in incorporating the examining and supervisory powers into the governing powers two of China's long-tried political methods have been utilized to correct the well-known defects of modern popular governments. Another contribution of this period is the experience of the commission form of government though its suitability to conditions in China is rather questionable.

From the above review of our constitutional developments, one can readily see that though after thirty years of growth we are still in a formative stage. Our revolution, as it works out, is a slow and long-drawn out process. It has more to learn than to teach and more to create than to destroy. Through bitter experience and repeated disappointments we learn where to begin the work of the political regeneration of China. It is a long way from thinking that the task before us could be accomplished, as the first reformers thought, by mere changes in governmental offices to the plan contained in Dr. Sun Yat-sen's "Outline of National Reconstruction." His plan, in brief, is a gigantic program founded upon the meeting of the economic needs of the people and the training of people for self-government with the smallest administrative districts or *hsien* as units.

The cause of the failure of all of our earlier constitutions is attributable to their failure of their makers in not understanding the nature of this task, or, realizing it, without having made the proper provisions. Through this mistake they attempted to build upon foundations of sand.

Now we are again engaged in constitution making. What kind of constitution shall we make? More explicitly, we are to follow the teachings of Dr. Sun Yat-sen. But it is necessary that we distinguish the fundamental from the incidental and the spirit from the form of his teachings. And if we look to the West for reference, we must remember the nature of our task. While others need checks and balances for the exercise of governmental power, we need the direction of that power. While others need only to formulate the rights and duties of the people, we need to create conditions so that these rights and duties can be enjoyed and fulfilled. In short, our task is one of laying down the foundations for a future edifice, and we must have an instrument that is suitable to it.