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The Chinese Constitution

A Study of Forty Years of Constitution-making in China

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PREFACE

Recent international events and modern inventions have convinced the world that human activities in one part of the world necessarily affect the other, that natural geographical barriers are no longer obstacles to closer relations, but on the contrary may serve as bridges to understanding among mankind. Indeed, the world has shrunk in size during this air-age and its inhabitants quickly realize the importance of understanding one another if a better human society is to be organized. Unfortunately, a country vast as China is, with an area of 4,516,934 square miles, and a fairly homogeneous population of over four hundred and fifty million whose culture, civilization, political institutions, economic life and social structure have displayed originality for forty centuries, has been dimly appreciated by the Western world.

Together with the decadent Manchu regime, China's progress has been held back by a series of foreign aggressions which has come to the climax of this present unprecedented war. But it is gratifying that in spite of all these hindrances, China has been able to struggle through the social, economic and political readjustments without parallel in human history just as she had, for many times during the past few centuries.

Among other reforms was the introduction of a constitutional government, that constituted China's political agenda, at the end of the Manchu reign. China's effort of introducing a constitutional democracy therefore finds its root in the early reforms and subsequently in the Revolution of 1911. Ever since the establishment of the Republic, China has been confronted with the dual problem of elevating herself to the plane of equality in the family of nations with the great powers, and of providing for her people a constitution. Impractical and utopian as the early constitutions were, nevertheless, the constitutional spirit of the Chinese people is found in these documents which were relatively new to them. In the decade following the conquest of political power by the Kuomintang party in 1927, fundamental political knowledge of the people has been first realized and put into effect. The late Dr. Sun

Yat-sen, Founder of the Republic, accordingly devised the *San Min Chu I* (The Three Principles of the People) upon which spirit the Organic Laws were based and China's Constitution is framed.

China's unquailed courage toward constitutionalism has shown promising results even in the midst of the present war, although many times it has been hampered by military emergencies. As late as September 12, 1943, the Central Executive Committee of the Kuomintang passed a resolution that within one year after the conclusion of the war, the Central Government will convene the People's Congress for the purpose of adopting a permanent Constitution of the Republic and to decide the date on which the Constitution will go into effect. President Chiang Kai-shek simultaneously promised that when this is done, the Kuomintang will become one of the several political parties in the nation, all of which will enjoy equal privileges and rights and fulfill equal obligations, receive equal treatment from the State under the principles of freedom of assembly, speech and press in accordance with law. In the midst of many unpleasant political vicissitudes it has been decided that the People's Congress will be called on November 12, 1945. When the program of local self-government has been completed, the people will then exercise the four political powers—election, initiative, recall and referendum—as devised by Dr. Sun Yat-sen. Indeed, China is emerging from the darkest of her ages to a free democratic country whose government will be of the people, by the people and for the people. It is hoped that the outside world will look upon the affairs of China with interest and provide for constructive aid wherever possible so that the next chapter of human history will be a happy and encouraging one.

No constitution can ever be successful unless the people and the government have faith and confidence in each other. This was the mistake during the past forty years of China's experience. It is of course important to frame a constitution with due regard to terminology and technicality but over-emphasis may lead to confusion. The provisions and form of a constitution may be academically perfect, but the success of a constitutional government depends upon the people as well as the government for it is the government which administers the powers conferred by the constitution and it is the people themselves who observe it. To guarantee this, nothing is more effective than to cultivate a spirit

of constitutionalism both in the government and in the people themselves. Evidently, this responsibility rests on the educators, cultural workers and religious leaders. For these people do not look to the constitution as a party doctrine but as the supreme law of the land which is to be observed and respected by the government as well as by the people. Thus, education fostered and administered by the people themselves is desired, for it is liberal education that gives the people the vitality of democracy and affords them initiative in many lines of progress. This does not mean however, that there should be no government or state-owned educational institutions, for both public and private institutions may be "subject to state supervision and amendable to the duty of carrying out the educational policies formulated by the state." (Art. 133) It means the government should guide and not control education. Thus, private universities and colleges and other cultural institutions should be encouraged and assisted by the government so that democracy may emerge from the people. Only in this way can a constitution be operated effectively. Furthermore, adequate freedom of religion should be guaranteed by the government. Insofar as such freedom does not impair on the security of the state, religion should be encouraged and assisted. It may be well assumed that once freedom of religion is well founded in a state, it will prove itself an asset to the welfare of the people as well as to the government through its various activities such as social welfare programs, educational centers and so forth. Such activities can cultivate a national morality which may help to "train the people for self-government and to increase their ability to earn a livelihood and thereby to build up a sound and healthy body of citizens." (Art. 131.)

The author records with pleasure certain facts that are unforgettable. This study was undertaken at the suggestion of the late Professor Herbert Wright, Head of the Department of Politics of the School of Social Science of the Catholic University of America. To him, thanks are due for many invaluable suggestions made during the progress of the work and for encouragement and assistance in preparing the manuscript for the press. Thanks are also due to Professor Wilfrid Parsons of the Catholic University and Professor William Crane Johnstone, Jr., of the George Washington University, for reading the manuscript and their criticisms.

To his brother, Dr. Pan Chao-ying, now his colleague at the School of Foreign Service of Georgetown University, Washington, D. C., the author wishes to thank him for his brotherly assistance in many respects in steering him through difficulties. On his recent trip to the United States, Dr. Pan was mindful enough to carry a good collection of constitutional materials from Chungking for the author's reference. Without these references, this work would be incomplete and a word of special thanks seems necessary. To his brother-in-law, Mr. Ho Jun-kung, the author wishes to express his gratitude for many years of continuous encouragement; even in the throes of Japanese occupation of Southern China, he managed to secure materials on recent Chinese constitutional problems for the author's perusal.

Sincere gratitude is due to the following distinguished educators for making possible the opportunity of pursuing graduate studies in the United States: His Excellency, Bishop Paul Yu-pin, Vicar Apostolic of Nanking and now concurrently Apostolic Administrator of Kiating; the late Bishop Joseph M. Corrigan, Rector of the Catholic University of America; his successor, Right Reverend Patrick J. McCormick; Dr. Roy J. Deferrari, Secretary General of the Catholic University; the Very Reverend William Murphy, S.J., President of Boston College, Chestnut Hill, Mass.; and the late Very Reverend John J. Dillon, O.P., President of Providence College, Providence, Rhode Island.

Finally, to the septuagenarian linguist of Providence, Rhode Island, Miss E. L. Virgin, the author wishes particularly to acknowledge the immeasurable help extended to him in various ways with constant motherly encouragement.

The Library of Congress and the Carnegie Endowment for International Peace have graciously afforded the author the facilities available generally to scholars. To all others whom the author consulted personally or through their works, sincere thanks are tendered.

This study appeared originally as a dissertation submitted to the Faculty of the School of Social Science of the Catholic University of America in partial fulfillment of the requirements for the degree of Doctor of Philosophy.

PAN WEI-TUNG

THE CHINESE CONSTITUTION

A Study of Forty Years of Constitution-making in China

DR. SUN YAT-SEN'S WILL

For forty years, I have devoted myself to the cause of National Revolution the aim of which is to secure for China a position of independence and equality among nations. The accumulated experience of these forty years has fully convinced me that to attain this goal it is necessary to awaken the mass of our own people and associate ourselves with those peoples of the world who treat us on a footing of equality in the common struggle.

The Revolution is not yet achieved. Let all my comrades follow my writings, "Plan for National Reconstruction," "Fundamentals of National Reconstruction," "Three Principles of the People," and the Manifesto issued by the First National Convention of the party, and work unceasingly for their consummation. Above all, the convocation of a People's Convention and the abolition of unequal treaties, which I have recently advocated, should be accomplished with the least possible delay. This is my will and behest.

Sun Wen

Signed, 11 March 1925.
Written on 20th day, 2d month,
14th year of the Chinese Republic
(20 February 1925).

CHAPTER I

Early Constitutional Movements

The clamor for a constitution in China did not begin with the Revolution of 1911 nor was such a demand an abrupt idea on the part of the Chinese people or Government. It began when the nation was in the throes of both foreign and domestic disturbances in which the political machine came to a standstill. The Dragon throne began to lose prestige as the map of China was changing color. The Sino-British Treaty of 1842 forced China to open five ports for trade and the island of Hongkong was ceded to the British Empire.[1] Other nations followed suit in the securing of extraterritorial rights and other privileges from the Chinese Empire. Niuchang, Tengchou, Taiwan, Chaochou, Chingchou, Chenchiang, Chiouchiang, Hankou and Chiangning were opened as the result of the four respective treaties signed in June 1858 with Great Britain, France, the United States of America and Russia at Tientsin.[2] Subsequently, the Treaty of Peking made Tientsin a commercial port and the Peninsula of Kowloon was leased to the British Empire. In 1885, as the result of the Sino-French War, Annam was taken by France.

The time came when the downfall of the Chinese Empire was predicted and the partition of its territory among the European countries was freely discussed. This was especially marked in 1894-1895, when China was defeated by Japan in the Sino-Japanese

[1] Mei Ju-ao, member of the Legislative *Yuan*, in his article, "Toward a Constitutional Government," observed: "The history of the constitutional movement in China dates back to the Opium War of 1841, or at least to the Sino-Japanese War of 1894 when the 'celestial' empire, hitherto so proud and so self-confident was forced to open her eyes to the painful truth that she had as yet many things to learn of western civilization, amongst which a constitutional government was one." *China: After Five Years of War* (New York, 1942), 14.

[2] These four treaties in *Treaties, Conventions between China and Foreign States,* I (2d ed., Shanghai and London, 1917).

War. Korea and Taiwan were lost to Japan, the ports of Shashih, Suchou and Hangchou were opened. "Spheres of influence" and the "scramble for concessions" were the order of the day. European powers began to seize with avidity valuable railroads and mining rights which meant virtually the extinguishing of China's political sovereignty.

In 1897, Germany, under the oft-used pretext that two German missionaries had been killed by mobs, promptly occupied Kiaochou Bay. The lease of the city was demanded for a period of ninety-nine years in addition to a heavy indemnity. Under the treaty which was signed on 6 March 1898 between the Chinese Empire and Germany,[3] China was to recognize Germany's "sphere of influence" in a greater part of the Shantung Peninsula. Russia, which had previously secured some franchises in Manchuria, succeeded, on 27 March 1898,[4] in leasing Port Arthur and Ta-lien-wan, while the Chinese Eastern Railway Company under Russian control was given the right to extend a branch line to Port Arthur.[5]

Britain lost no time in inducing China to sign a lease of Wei-hai-wei together with the adjacent waters on 1 July 1898.[6] In like manner, France had taken Kwang-chow Bay under a ninety-nine year lease.[7] Italy attempted to follow the example and obtain the right to develop the port of Sanmun. Meanwhile, Britain and Russia exerted influence over the commercial and industrial interests of the Chinese Empire between them, the former in the territory south of and the latter in the territory north of the Great Wall. China was on the verge of being disintegrated and partitioned by the foreign powers.[8]

Social reformers and patriots, like Li Hung-chang, Tso Chung-tang, Cheng Kuo-fan, Liang Ch'i-ch'iao and Kang Yu-wei, peti-

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[3] John Van Antwerp MacMurray (ed.), *Treaties and Agreements with and concerning China, 1894-1919* (2 vols., New York, 1921), I, 112 et seq.

[4] *Ibid.*, 119 et seq.

[5] *Ibid.*, 154 et seq.

[6] *Ibid.*, 152-3.

[7] *Ibid.*, 124-5.

[8] Cf. Westel W. Willoughby, *Foreign Rights and Interests in China* (2 vols., 2d ed., Baltimore, 1927), *passim.*

tioned the Imperial Government urging a complete reform, so that the Government might take the responsibility in facing the issue. They believed that one of the chief sources of the influence of other countries in world-leadership lay in the fact that they had a constitutional government. The immediate effect of these petitions was the realization of the Emperor Kuang Hsu himself of the dangerous situation of the country which was already on the verge of a revolution.[9] The Imperial Government, therefore, decreed that new methods of administration be introduced and that modernization of the country should be inaugurated immediately.[10] According to Ponce—

El Japon se servia de modele en todos aquellos planes reformistas. Todo lo que los japoneses habian llevado a feliz termino en su periodo de reconstitucion politica, economica y social iba a ser puesto en practica por los chinos, con las modificaciones necesarias en su adaptacion.[11]

Guseo likewise observed:

Le vittorie del Giappone sulla Russia nel 1904-1905, se ribadiono l'idea delle riforme militari mostrarono altresi le necessita d'una organizzazione amministrativa dell'Imero e d'un cambiamento di Governo, perche il Giappone doveva i suoi successi non solamente alle forze di terra e di mare, ma anche alla sua perfetta organizzazione amministrativa, politica ed economica. Era naturale adunque che la Cina, allo scopo di conservare la sua esistenza come Nazione e la integrita del suo territorio, tante volte minacciata, pensasse ad imitare il Giappone coll'introdurre tutte le riforme ch'esso aveva cosi utilmente adottate.[12]

The Government, however, did not take up any constructive measures for framing a Constitution. Those measures of reform which had been adopted by Emperor Kwang Hsu incurred the dis-

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[9] Mariano Ponce, *Sun Yat-sen: El fundador de la Republica de China* (Manila, 1912), 18.

[10] Wu Ching-hsiung and Huang Kung-chiao, *A Constitutional History of China* (in Chinese, 2 vols., 2d ed., Shanghai, 1937), I, 8.

[11] Ponce, *op. cit.*, 28.

[12] Marco Guseo, *Le Riforme Cinesi: Costituzione cinese, assemblea nazionale, abolizione della schiavitu* (Milan, 1911), 14.

pleasure of the Empress Dowager, who imprisoned the Emperor and persecuted the reformers supporting his policy. K'ang Yu-wei fled to Hongkong and his student, Liang Ch'i-ch'ao, sought asylum in Japan.

The so-called Hundred Days Reform of 1898 was brought to an end when the Boxer Rebellion arose. International troops occupied Peking and heavy indemnities were imposed by the allies. After this painful lesson, the Empress became aware of the precarious situation of the nation and subsequently, in December 1900, decreed that the very reform measures which she had previously opposed be revived. These so-called reform movements should be regarded as accidental rather than fundamental. The Manchu Government did not realize that the weakness of the nation lay in the inefficiency of the political system. Moreover, the introduction of a constitutional government was regarded as a slow process of eliminating the power of the Manchus and ultimately overthrowing the dynasty.

Nothing stimulated the reform movements in China more than the effect of the Russo-Japanese War of 1904-1905. The public believed that the greatest reason for Japan's success was its efficiency of government, which was credited largely to the Japanese Constitution. The Constitutionalists seized upon this opportunity to again present memorials to the Imperial Government petitioning for the introduction of a Constitution.[13] As a result of these petitions and the general upheaval in public opinion, the Empress, in June 1905, appointed a Special Commission of five high-ranking officials to go abroad visiting Austria, Belgium, England, France, Germany, Italy, Japan, Russia and the United States to study and report on the constitutions and political systems of these countries as a preliminary step for the introduction of a constitutional government into China.[14]

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[13] The petitioners included Sun Pao-ch'i, the then Chinese Minister to Paris, and the following viceroys of the various provinces and scholars: Sheng Chun-hsuan, Chang Chih-tung, Chou-fu, Li Hung-chang, Wen-hsiang, Liang Ch'i-ch'ao, K'ang Yu-wei and T'an Shih-tung.

[14] *The China Year Book, 1912* (London, 1912), 352; Wang Huang-fei, *Chinese Constitutional History* (in Chinese, Shanghai, 1938), 5. The Commissioners were: Tai Hung-t'zu, Hsu Shih-ch'ang, Tuan-fang, Duke Ts'ai-

In August of the same year another mission of three was sent to England, Germany and Japan for the purpose of studying the technical aspects of the different constitutions of other nations.[15] A special agency, the "Political Research Bureau," was formed in October 1905 to study and make recommendations for the modernization of the Chinese Government,[16] in order to moderate the acute feelings of the people toward the Government. It was modeled after the idea of the *Kensetchosajo* of Japan in 1883.

After the return of the Commissioners from abroad, the Imperial Government ordered the Constitutional Government Research Bureau to summon a national assembly in response to the people's desire, but this was never done. In their reports in the following year, the Commissioners were unanimously in favor of the eventual adoption of a Constitution for China and the convocation of a national assembly. Neither the Empress nor the degenerated Imperial Government were prepared for immediate action, although they agreed in principle. However, the Imperial decree of 1 September 1906 declared that—

it is necessary at present to make a careful investigation into the matter of constitutional government and prepare ourselves to imitate this government by constitution, in which the supreme control must be in the hands of the Throne, while the interests of the masses shall be given to the elect, advanced to such position by the suffrage of the masses.[17]

By the edict of 20 September 1907, a Provisional Assembly (*Tzechengyuan*)[18] having the same rights, privileges and attribu-

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chai and Shao-ying, the last two being replaced by Li Ch'eng-to and Shang Ch'eng because of injuries resulting from a bomb thrown by a reactionary at the Peking Station. See also Wu Ching-hsiung and Huang Kung-chiao, *op. cit.*, I, 11; Pan Ta-k'uei, *Principles of Chinese Constitutional History* (in Chinese, Shanghai, 1937), 7-8; Chu Yu-k'un, *An Outline of Chinese Constitution* (in Chinese, Shanghai, 1937), 41; Harold M. Vinacke, *Modern Constitutional Development in China* (London, 1920), 54.

[15] Wang Shih-chieh and Ch'ien Tuan-sheng, *Comparative Constitution* (3rd ed., 2 vols., Shanghai, 1940), II, 534. The three Commissioners were: Ta-shou, Yu-Shih-mei and Wang Ta-hsieh.

[16] Wu and Huang, *op. cit.*, I, 11; Wang and Ch'ien, *op. cit.*, II, 533-534.

[17] *The China Year Book, 1912*, 353.

[18] *Ibid.*, 377-383. An exposition of the text of regulations and laws governing the Provisional Assembly is in Guseo, *op. cit.*, 61-69.

tions of a parliament, to be presided over jointly by Prince Pu Lun, a Manchurian, and a Chinese Grand Secretary, Sun Chia-hai, was created. On 19 October, another edict was issued to establish the Provincial assemblies to serve as nurseries for the National Assembly.[19] This Provisional Assembly was unicameral, but contained the elements of two chambers: the representatives of certain privileged classes as the basis for the future Upper House and the representatives from the Provincial assemblies as the basis for the future Lower House. The total number of representatives was 200, 100 of whom were appointed by the Emperor[20] and the other 100 were sent from all the Provinces including Tibet, Mongolia, Turkestan and other sub-provinces. The Provisional Assembly was intended to be the foundation and forerunner of a bicameral National Assembly. Actually, it was a sort of Chamber of Deputies which was to function until 1916, when the true National Assembly was to open.[21] The eagerness of introducing a parliament into the Imperial system was demonstrated in the Provisional Assembly after a week of its convocation.

In August 1908, the "Constitutional Government Research Bureau," protegé of the Imperial reign, submitted the "Principles of Constitution"[22] and "Outlines of Parliamentary Procedure and Election Laws" to the Imperial Government. On 27 August, the "Principles of Constitution" was promulgated. In addition to the agitation of the reformers, this "Principles of Constitution" was motivated by the influence of the foreigners and especially by the young students who returned to China with their knowledge of constitutional government[23] acquired from European countries and from Japan. In a strict sense, this document may not be considered as a Constitution in modern constitution practice. It corresponds to the Constitution of the Japanese Empire[24] promulgated

[19] *The China Year Book, 1912,* 355; Ponce, *op. cit.*, 40.

[20] The Emperor appointed the first 100 on 9 May 1910. See Guseo, *op. cit.*, 69.

[21] *Ibid*, 22.

[22] See Appendix A.

[23] Guseo, *op. cit.*, 14. See also Hawkling L. Yen, *A Survey of Constitutional Development in China* (New York, 1911), 113-116.

[24] For text, see Herbert F. Wright (ed.), *The Constitution of the States at War, 1914-1918* (Washington, 1919), 351-358.

on 11 February 1889, which in turn was modeled on the Constitution of Prussia of 31 January 1850.[25] Under this pattern, the sovereign has complete power over the legislative, executive and judicial branches. Only in moderate terms will the National Assembly advise in the matter of making laws, the government officials assist in the executive work of government and the judges act in judicial matters in the sovereign's behalf. In short, it not only did not restrict the absolute power of the sovereign, but rather tended to perpetuate his authority.

A nine-year program from 1908 to 1917 was pronounced by the Imperial Court leading to a constitutional monarchy. It was to be the preliminary step toward the inauguration of a National Assembly. The nine-year program included:

First year: Opening of local self-government councils, enactment of self-government regulations, adjustment of finances and taking of a census.

Second year: Putting into force of local self-government electoral law, announcement of regulations for parliamentary representation, investigation of Provincial revenues, organization of courts of justice.

Third year: Convocation of parliamentary representation councils, promulgation of new criminal laws, experimental government budget, regulations for official recommendations and fees.

Fourth year: Promulgation of local court laws.

Fifth year: Issuance of new regulations for taxation and announcement of new government organizations.

Sixth year: Commencement of administrative justice, adoption of budget.

Seventh year: Preparation of accounts of government revenues and expenditures.

Eighth year: Fixing of Imperial Household expenditure, establishment of judicial bureau and issuance of statistics.

Ninth year: Announcement of the Imperial Constitutional and Imperial Household law, promulgation of election law.[26]

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[25] For text, see Edwin H. Zeydel (ed.), *Constitutions of the German Empire and the German States* (Washington, 1919), 225-237.

[26] *The China Year Book, 1912,* 361-363; Guseo, *op. cit.*, 51-61.

In 1908, both the old Empress Dowager and the imprisoned Emperor Kwang Hsu had died. The new Emperor was an infant and the administration had to be entrusted to the Regent, whose policy was nothing more than to coordinate with the bewildered Manchu princes and the palace officials. The people were not so much eager over the internal provisions of the "Principles of Constitution," but rather impatient to witness the dictated period of nine years when the Constitution was to go into effect. Petitions and memorials to open a full National Assembly at an earlier date, deputations coming to Peking one after another, telegrams from viceroys and governors of the several Provinces urging an immediate establishment of a constitutional government were received by the Imperial Court.[27] Realizing that "the prayers of the representatives of the people proceed from extreme sincerity,"[28] the Imperial Court contended that, if measures were taken too rapidly, three would be ground for a fear that the desire for dispatch would eventuate in nothing attained. Such, according to the Imperial command, would necessitate the careful examination of the pros and cons of the popular sentiment and it was felt that numerous issues would be involved.

But this failed to stem the ever-increasing popular trend toward a parliamentary system. By 14 October 1909, twenty-two Provincial assemblies had already been organized.[29] This, furthermore, gave additional impetus to the movement for an early convocation of the National Assembly and the adoption of a Constitution. More than fifty delegates from the several Provinces, each sending three, gathered together at Shanghai, who after a preliminary meeting proceeded to Peking under the title of "Parliamentary Petition League." Their first petition was flatly rejected by the Imperial Court early in Spring of the next year. In April of the same year, with undaunted spirit, the "Parliamentary Petition League," combined with other professional groups of the several Provinces and representatives of the overseas groups, again petitioned under the

[27] "Constitutional Changes in China," *American Journal of International Law*, 5 (1911), 201.

[28] Imperial Chinese Decree Convening the Parliament, November 4, 1910," *American Journal of International Law, Supp.*, 5 (1911), 40.

[29] Yen, *op. cit.*, 132.

new title "Parliamentary Petition Representative Corps." In September another petition took place, but this time was made through the Provisional Assembly (*Tzechengyuan*). The Prince Regent, declaring under pressure that it was an "experimental operation," finally decided that the date originally fixed for the establishment of the National Assembly be changed to 1913.[30] But he warned that such a task needed the cooperation of the entire nation.[31] Moreover, he agreed only that the establishment of the Cabinet should precede the inauguration of the National Assembly. There were others[32] who persisted in the immediate opening of the National Assembly, and it was believed that "even the Manchu nobles and Mongol princes who were supposed to be reactionary joined heartily. Newspapers throughout the country eulogized the action."[33]

Thus, in an Imperial decree issued on 9 May 1910, it was proclaimed that the opening of the National Assembly should take place on 3 October, and the members should meet earlier on 23 September in order to make all necessary preparations for the opening of the Provisional Assembly.[34] Accordingly, the Provisional Assembly met in October 1910 having about 200 members, half of whom were chosen by the provincial governments and the other half were appointed by the Crown from a list of eligibles elected by and from among seven groups of high dignitaries, mostly Manchu nobles.[35] In March 1911 the Imperial Court announced the new Cabinet which was composed of members of the Imperial family, with Prince Ching as Prime Minister. The representatives from the several Provinces vigorously protested on the ground that appointments as such were contrary to the prin-

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[30] "Imperial Chinese Decree Convening the Parliament, November 4, 1910," *op. cit.*, 40; *The China Year Book, 1912*, 376; Wu and Huang, *op. cit.*, I, 28-29.

[31] "Imperial Chinese Decree Convening the Parliament, November 4, 1910," *op. cit.*, 41.

[32] Such as T'ang Hua-lung of Hupei Province, T'an Yen-k'ai of Hunan Province and P'u Tien-chun.

[33] "Constitutional Changes in China," *op. cit.*, 201.

[34] Guseo, *op. cit.*, 69.

[35] "Constitutional Changes in China," *op. cit.*, 201.

ciple and spirit of constitutional monarchy. Their protest was ignored and it was further ordered that the—

> Board of the Interior, and the provincial viceroys and governors shall now firmly instruct and order the representatives of the provinces at once to disperse and return, each following his calling in peace, and quietly awaiting the arrangement of all details by the throne.[36]

The Provisional Assembly would not press further for an immediate National Assembly, provided a cabinet form of government was to be established, and would consider it satisfactory even to allow the Government to conduct itself on a single chamber basis.[37] Meanwhile, Dr. Sun Yat-sen and his followers were firmly convinced that the Manchu government had sunk into administrative demoralization[38] which could only be remedied by the overthrow of the dynasty and the establishment of a Republic. The revolutionists, conspiring with the Imperial troops, finally precipitated an insurrection in Wuchang in August 1911, which became a nation-wide revolution in the next two months.

When mutiny of the Imperial army took place at Lanchow, the Imperial Government made its last effort to save the dynasty by the promulgation of the so-called "Nineteen Articles,"[39] in which the Emperor renounced all his powers in the "Principles of Constitution" with the sole exceptions that the Emperor shall be sacred and inviolable and his ruling power shall remain perpetual. But it was too late. When the revolutionary army became successful, edicts were issued in response to the public condemnations and demands of the people containing apologies for past mistakes, granting of amnesty to political exiles, transferring the power to the Provisional Assembly to frame a Constitution and promising the appointment of a new and responsible cabinet in which no

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[36] "Imperial Chinese Decree Convening the Parliament, November 4, 1910," *op. cit.*, 4.

[37] "Constitutional Changes in China," *op. cit.*, 202.

[38] Arthur N. Holcombe, *The Chinese Revolution: A Phase in the Regeneration of a World Power* (Cambridge, 1930), 91-119, presents an excellent analysis of the downfall of the Manchu Government.

[39] See Appendix B.

members of the Imperial family should hold office. Subsequent edicts were issued granting an immediate National Assembly and giving assurance that amendments to the Constitution must be originated in the National Assembly.

The Emperor, in a self-denying tone, limited his power of command of the Imperial army and navy; in internal affairs he was to "observe special conditions to be decided by the National Assembly" (Art. 10). The power of concluding treaties was to be vested in the National Assembly and the budgeting power was no longer in the hands of the Emperor (Art. 14). Even the expenses of the Imperial Household and any increase or decrease therein shall be fixed by the National Assembly (Art. 15). In other words, the "Nineteen Articles" clipped off the absolute power of the Emperor and made him conscious of the Constitution and the laws prescribed by the National Assembly. He could now exercise only those powers that would be delegated to him by law or in accordance with the Constitution. The provisions in the document were basically British in that ministerial responsibility and the parliamentary system were emphasized. The only difference was that in England the constitutional provisions are not contained in a single instrument, while the "Nineteen Articles" were intended to be such, with the reservation that the National Assembly was permitted to develop future constitutional practices. Had the Imperial Government announced the "Nineteen Articles" ten years earlier, the Manchu dynasty might have been saved, even though it might have been for a short period, and China would have become a constitutional monarchy.

It must be remembered, however, that this document, although it may be considered as canons by which the Emperor and his subjects were to be bound, was not a constitution in its modern sense, but rather a statement of governmental principles having a contractual value. Similarly, the "Principles of Constitution" proclaimed in 1908 had not the effect of a constitution insofar as it was the sole product of the few powerful but degenerate Imperial officials and of the "Constitutional Government Research Bureau," which was the creation of the same degenerate officials, done neither with the consultation of the Provisional Assembly

nor with the general acquiescence of the people. In fact, even if it was done with the knowledge of the Provisional Assembly, its validity as a constitution was still extremely doubtful, for as has been pointed out, the Provisional Assembly did not actually meet until October 1910, the only one hundred or more members being the protegés of the corrupted Imperial Government who were appointed by the Emperor on 9 May 1910. The Provisional Assembly existed only in name when the "Principles of the Constitution" was proclaimed. Furthermore, it had even less contractual value than the "Nineteen Articles," for although it was duly promulgated by the Emperor, it remained a principle in effect.

In pursuance of Article 8 of the "Nineteen Articles" the Provisional Assembly elected Yuan Shih-k'ai, who in 1898 had ruthlessly terminated the experiment of the Hundred Days Reform under Emperor Kwang Hsu, as Prime Minister to head the Cabinet. As Yuan had received "the power of government" from the Emperor in the edicts of 12 February 1912, he immediately dispatched Tang Shao-yi to Shanghai to negotiate peace with the revolutionists. Dr. Wu Ting-fang, the revolutionary conferee, presented four proposals: (1) abolition of the Manchu Dynasty; (2) establishment of a republican government; (3) pensioning of the Imperial family; (4) generous treatment of the Manchus. The Throne then decided to yield to popular demand and the complete power was turned over to Yuan Shih-k'ai to negotiate with the revolutionists in the establishment of a Republican China.[40] The Cabinet had no definite policy except to persuade Yuan to take up the responsibility to save the country.[41]

Meanwhile the revolutionary government was gradually taking shape. On 25 September 1911 Representatives Lui-fan and Shen En-fu of Kiangsu Province, Tiao Tung-yu and Kao Erh-teng of

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[40] U. S. Department of State, *Papers Relating to the Foreign Relations of the United States, 1912* (Washington, 1919), 46 (hereafter cited as *U. S. Foreign Relations*); Paul Myron Anthony Linebarger, *Government in Republican China* (New York, 1938), 147; also see Ponce, *op. cit.*, 42-43; Vinacke, *op. cit.*, 111-112. Cf. Ao-Hsiang Chu (Louis Ngaosiang Tschou), *Le regime de capitulations et la Réforme constitutionelle en Chine* (London, 1915), 178.

[41] *U. S. Foreign Relations, 1912*, 52.

Chehkiang Province and others met at Shanghai, where five days later they decided to recognize Wuchang as the seat of the Central Military Government. On 4 October the representatives agreed to establish a temporary government at Wuchang, but unfortunately, when they arrived in the city, Hanyang, its sister city had been recaptured by the Imperial army. They therefore moved to Hankow and used a foreign firm as their temporary meeting-place. On 10 October the first meeting unanimously elected Tan Jen-feng as chairman of the meeting.

Within three days a General Plan for the organization of the Provisional Government containing twenty-one articles was completed by three members: Lui-fan, Ma Chun-wu and Wang Cheng-ting. It provided that within six months from the establishment of the Provisional Government, a "People's Meeting" or National Assembly should be held to discuss and decide upon a constitution. The General Plan further outlined the skeleton of the general organization of the government, which would be composed of the five ministries of Foreign Affairs, Home Affairs, Finance, Military and Communications. The organization of a Council of Representatives was also roughly included (*Ts'anyi-yuan*). A President was to be elected by the representatives of the military governors of the several Provinces, but each Province had only one vote. This General Plan was to remain in effect until the adoption of a Provisional Constitution. It will be noted that the general provisions as set forth in the General Plan later served as a basis for the Provisional Constitution.

From a constitutional viewpoint, the Plan has not the effect of a written constitution. It merely outlined the blueprint of the general organization of the Provisional Government. Because it was not a constitution, it made no mention of the sovereignty or the obligation and rights of the people and, because of the fact that it was drawn up within the space of only three days, technical inconsistencies and weak points were unavoidable. First, the election of the President by the representatives of the military governors did not quite agree with the spirit of a republican government, although it is admitted that the given conditions did not permit the use of popular vote or otherwise. Second, the Council of Representatives was made up of personal appointees of the

military governors, which transformed its nature and function as a supreme legislature to a quasi-executive-political organ. This simply meant that that body was not representative of the people. Third, the fact that the Council of Representatives did not turn out to be a real legislative body defeated the obvious intention of the provision that the President have power to ordain and establish a Central High Court with the consent of the Council of Representatives. Fourth, it was silent on the matter of limitation of the President's power by the State Councilors (*Kuomuyuan*) and it also failed to stipulate whether the dismissal of the ministers should require the approval of the Council of Representatives. Fifth, the stipulation of six months from the establishment of the Provisional Government the "People's Convention or National Assembly" would convene was apparently impossible of accomplishment.

However, this document was signed by twenty-two representatives from ten Provinces.[42] On 12 October 1911 the revolutionary army took Nanking and decided that it should be the seat of the Provisional Government. At the time of the drawing up of the General Plan Dr. Sun Yat-sen was in Chicago, but he arrived in Shanghai on 25 November, where four days later he was elected President of the Provisional Government. Dependencies such as Tibet, Turkestan and Mongolia also gave consent to his election. He took office on 1 January 1912 with a Cabinet whose members did not yet hold any specific portfolios.

The defects of the General Plan were felt when the instrument was actually put into practice. It soon became apparent that such a National Assembly could not be convened within the period specified. Meanwhile, the Imperial Government was still functioning in Peking *de jure* and was internationally recognized. The revolutionary Government, in order to gain recognition from the other nations, therefore, had to build up a strong government capable of fulfilling its duties both domestically and internationally. Thus, the drawing up of a Provisional Constitution was felt necessary.

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[42] Wu and Huang, *op. cit.*, I, 35-37.

But south of the Yangtze favored the continuance of Sun as Provisional President, but the North favored a limited monarchy with a Manchu on the throne as a figurehead. Yuan Shih-k'ai, who had come on the political scene by dint of his early contribution of military talents in the modernization of the Chinese army, was the contemplated figure. Sun's ambition, however, was probably more concerned in the securing of a Republic for China than in making himself President. He only wanted his revolutionary principles to be spread throughout China. A compromise was reached on 15 February 1912, when it was agreed that Sun should keep his Provisional Presidency until Yuan could be inaugurated as President of the Republic.

It was evident that the revolutionary Government still distrusted the Manchus and, in order to protect what had so far been achieved and to look forward to a strong Republic, at least a Provisional Constitution had to be made. Thus, the Council of Representatives met from 7 February through 8 March when the Provisional Constitution[43] was completed. On 10 March Yuan took office as Provisional President and the resignation of Sun and his Cabinet was accepted by the Assembly.[44] On 11 March 1912 the Provisional Constitution went into effect and replaced the General Plan from that date.[45] It was the contention of the National Assembly that within ten months after its promulgation, the Provisional President should convene a National Assembly (*Kuo-min-hui-yi*) to adopt a permanent constitution and elect a President. The authority of the State in the meantime was to be exercised by the Advisory Council, the Provisional President and the Cabinet.[46]

The Provisional Constitution is different from the General Plan in that the former adopted the ministerial responsibility system while the latter used the Presidential system.[47] It provided for a weak presidency, though in effect Yuan possessed greater power

[43] See Appendix C.

[44] *U. S. Foreign Relations, 1913* (Washington, 1920), 89.

[45] Wu and Huang, *op. cit.*, I, 40.

[46] *U. S. Foreign Relations, 1913*, 89.

[47] Art. 44 provides: "Members of the Cabinet shall assist the Provisional President in assuming responsibilities." See Appendix C.

than the French President. Article 45 requires members of the Cabinet to "countersign all bills introduced by the Provisional President and all laws and orders issued by him,"[48] and the appointment of the members requires the concurrence of the Advisory Council (Art. 34).[49] The only vital difference between the Presidency of China under the Provisional Constitution of 1912 and that of the French Republic was that under the French Constitution the President is or has been able to exercise his broad powers on the recommendation of his Ministers who are legally held responsible before the courts and politically responsible to the Parliament. It was believed that a weak presidency would prevent Yuan shih-k'ai from usurping constitutional powers.

But, since the Provisional Constitution provided that all bills introduced by the President had to be countersigned by members of the Cabinet who in turn had been confirmed by the Advisory Council, conflicts between the Provisional President and the Advisory Council were inevitable.[50] In discussing the lack of executive authority under the Provisional Constitution of China, Dr. Willoughby observed that—

> the fatal error was made of attempting to avoid the danger of executive autocracy, not by devising means for imposing political or legal responsibility upon the President for acts that he might commit, but by making it constitutionally impossible for him to take essential executive action without first obtaining the approval of the Parliament—which approval it was often impossible to obtain.[51]

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[48] See Appendix C.

[49] See Appendix C.

[50] When Yuan Shih-k'ai introduced the bill to organize a Constitutional Committee, the Advisory Council refused to pass the measures proposed by him. Yuan held that the appointment of a committee for the purpose of drafting a constitution would in no way violate the Constitution inasmuch as the National Assembly will in any event have to pass upon the work of the committee. Incidents of such nature were not uncommon. Yuan, therefore, resorted to various methods to overcome the obstruction. See *U. S. Foreign Relations, 1913*, 94-5.

[51] Westel W. Willoughby, *Constitutional Government in China* (Washington, 1922), 36.

As a result of this constitutional inflexibility, not only the President was unable to act with efficiency concerning executive matters, but the National Assembly likewise found itself unable to perform the duties laid upon it. Among other reasons, this lack of adequate executive power on the part of the chief executive finally led to the dissolution of the National Assembly and the abandonment of the Provisional Constitution by Yuan Shih-k'ai.

The Provisional Constitution, it is true, is the first document ever promulgated in China that had the elements of a modern constitution, although both politically and constitutionally many defects might be indicated.

Just as the Constitutions of many other countries, such as Belgium,[52] Chile,[53] Germany,[54] Mexico[55] and some Baltic countries[56] contain a provision that the sovereignty is vested in the people, so the Provisional Constitution of the Republic of China provides: "The sovereignty of the Chinese Republic is vested in the people" (Art. 2). This is significant, because, although China has always been a country that rates the people first in importance, such a clause has never been guaranteed to the people in the form of law before. Moreover, although, since the establishment of the Republic, subsequent Constitutions may have contained changes in the other provisions, this provision has remained substantially unchanged.

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[52] Article 25 of the Belgian Constitution of 1831 reads: "All powers emanate from the people." Wright, *op. cit.*, 44; Walter F. Dodd, *Modern Constitutions* (2 vols., Chicago, 1909), I, 171.

[53] Article 3 of the Chilean Constitution of 1833 reads: "Sovereignty resides essentially in the nation, which delegates its exercise to the authorities established by this constitution." Dodd, *op. cit.*, I, 229.

[54] Article 1 of the German Constitution of 11 August 1919 stipulated: "The political power emanates from the people." Howard L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1922), 176; B. Shiva Rao (ed.), *Select Constitutions of the World* (Madras, 1934), 208.

[55] Article 39 of the Mexican Constitution of 1857 provides: "The national sovereignty is vested essentially and originally in the people. All public power emanates from the people. . . ." Dodd, *op. cit.*, II, 49.

[56] Estonia and Lithuania. Article 1 of the Estonian Constitution of 1920 reads: "the power of the state is in the hands of the people." McBain and Rogers, *op. cit.*, 455. The Constitution of Turkey also has a similar provision.

It not only shows China's determination to recognize the sovereign power of the people, but it is also in keeping with traditional Chinese political thought for centuries. Therefore, "The sovereignty of the Chinese Republic is exercised by the Advisory Council, the Provisional President, the Cabinet and the Judiciary" (Art. 4). Those powers that are not specifically delegated to these agencies are reserved to the people.

The Provisional Constitution, however, does not define the word *citizen* as in the case of Article XIV, Section 1, of the Amendments to the Constitution of the United States,[57] or as in Article 69 of the Brazilian Constitution of 1871,[58] nevertheless it made the stipulation that "Citizens of the Chinese Republic are all equal, and there shall be no racial, class or religious distinctions" (Art. 5), which is also new to the history of the Chinese nation so far as formal law is concerned. It may also be emphasized that China, with her five main racial stocks (although more than ninety percent of the population is essentially Chinese the remaining ten percent being divided among the Mohammedans, the Manchus, the Mongols and the Tibetans) may eliminate many unforeseen complications in the future by this device of law as a means of social and political control over her minorities.

The rights of the people, including the right of *habeas corpus*, inviolability of residence and correspondence, freedom of speech, freedom of religion, freedom of press and assembly, the right of petitioning the Parliament, and of the executive officials, the right to institute proceedings before the judiciary and the right to trial and judgment by it are specifically guaranteed (Arts. 6-9). In the same manner, the citizens have the right to sue their officials in the administrative courts for violation of law or against their rights (Art. 10). Unfortunately, their right to vote and be voted for (Art. 12) became a dead letter. The limitation or modification of these rights may be justifiable only when "necessary for the promotion of public welfare, for the maintenance of public order or on account of extraordinary exigency," but such curtailment must be dealt with in accordance with law (Art. 15).

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[57] Wright, *op. cit.*, 621; Rao, *op. cit.*, 676.
[58] Wright, *op. cit.*, 77-78.

The legislative power of the Chinese Republic under the provisions of the Provisional Constitution was vested in the Advisory Council, composed of members elected from the Provinces, Inner and Outer Mongolia, Tibet and Chinghai (Arts. 16-18). Its powers of legislation (Art. 19) include the passing of budget, taxation, regulation of weights and measures, currency, borrowing money, conclusion of contracts affecting the National Treasury, ratification of treaties, confirmation of members of the Cabinet, ambassadors and other public ministers appointed by the President, concurrence in the declaration of war and the conclusion of peace, introduction of interpellations to members of the Cabinet and the insistence on their presence in the Council and the making of replies thereto, insistence on the government investigating into any alleged bribery and infringement of laws by public officials, impeachment of the Provisional President for high treason by a majority vote of three fourths of the quorum consisting of more than four fifths of the total number of the members. It also has the power to impeach members of the Cabinet for failure to perform their official duties or for violation of the law by majority votes of two thirds of the quorum consisting of over three fourths of the total number of the members. It may hold secret meetings only at the instigation of the members of the Cabinet or by the majority vote of its quorum (Art. 21). Matters passed by the Council were to be promulgated and executed by the President (Art. 22). Guaranties against arrests of the members while the Council is in session are assured (Art. 26). Outside of the Council, the members may not be held responsible for their speeches or votes made in the Council (Art. 25). The Council was empowered to make its own rules concerning procedures (Art. 27).

In view of the relative newness of the judicial and legislative system in China, the enumeration of these rights, powers and privileges of the government officials as well as of the individual private citizens is significant. It would remind the Government of its responsibility to protect them and the people to cooperate with their Government, even at the supreme expense of sacrificing their individual rights and freedom.

Finally, the Advisory Council was to decide the organization of the National Assembly, which was to be convened by the Pro-

visional President within ten months after the promulgation of the Constitution (Art. 53). Upon the date of the convocation of the National Assembly, the Advisory Council was to be automatically dissolved and its powers exercised by the National Assembly (Art. 28).

The Provisional President, as has been pointed out, actually possessed limited powers in that in many matters the concurrence of the Advisory Council was required. But curiously enough, the Provisional President "represents the Provisional Government as the fountain of all executive powers and for promulgating all laws" (Art. 30). At the same time he was the "commander-in-chief of the army and navy of the whole of China" (Art. 32), which power may be easily ill-used if not properly safeguarded, although in the matters of declaration of war and the conclusion of treaties the concurrence of the Advisory Council was needed (Art. 35). While the Provisional President could "appoint and remove civil and military officials" (Art. 34), the Advisory Council had power "to impeach members of the cabinet for failure to perform their official duties or for violation of the law, by majority votes of two thirds of the quorum consisting of over three fourths of the total number of the members" (Art. 19, par. 12). In brief, the relations between the executive and the legislative demonstrated a spirit of a parliamentary government in form, but could hardly fit into the pattern of Chinese politics.

As stated above, the Provisional President was required to convene a National Assembly within ten months after the promulgation of the Provisional Constitution (Art. 53). Towards the end of February 1913 Yuan Shih-k'ai received a memorial from many of the military governors containing a draft bill for the formation of a Committee for the purpose of drafting a constitution. It was proposed that the Committee should consist of eight representatives appointed by the National Assembly, six from the Cabinet, two each by the military governor of each province and one each by each Provincial Assembly.[59]

The bicameral National Assembly did not actually convene until 8 April 1913, almost fourteen months after the promulgation of

[59] *The China Year Book, 1914,* 540.

the Provisional Constitution, although the Parliamentary Election Law and the laws pertaining to its organization had been promulgated on 10 August 1912. Since the majority of both Houses was overwhelmingly Republican or Kuomintang members, the right of the executive to interfere in the drafting of the Constitution was immediately challenged and the bill was rejected without even the formality of a reference to the Committee of the National Assembly. Instead, the National Assembly, acting in accordance with the organic laws of the National Assembly promulgated on 10 August 1912, set up a Committee of the two Houses, each electing thirty members, to draft the Constitution.

From 10 July to 31 October 1913 this body met at the Temple of Heaven in Peking and completed a Constitution consisting of 113 Articles called the "Temple of Heaven Draft."[60] The outstanding characteristic of the "Temple of Heaven Draft" was that it was modeled upon the spirit of the French Constitution by making the Cabinet members responsible to the Lower House (*Chung Yi Yuan*) (Art. 81), thus rendering it possible for the Lower House to compel the Cabinet to resign by invoking Articles 43 and 82 providing for a vote of want of confidence in the Cabinet Ministers. On the other hand, if the Cabinet wished to dissolve the Lower House, the concurrence of two thirds or more of the members of the Upper House (*Ts'an Yi Yuan*) present was required. The same system is responsible for the instability of the French Cabinet, for the Lower House may pass a vote of lack of confidence in the Cabinet. Yuan was, therefore, not unreasonable in his insistence on the American system, which was unacceptable to the National Assembly.

The "Temple of Heaven Draft" does not provide for the organization and power of the several Provinces, with the only exception that it clearly defines that "the Chinese Republic (*Chung Hua Min Kuo*) shall forever be a consolidated Republic" (Art. 1). One of the fundamental elements of modern constitutions, sovereignty, was nowhere mentioned. But it was gratifying that the issue of education for the people was emphasized, though it

[60] See Appendix D.

was the *people* instead of the *Republic* who were to be obligated (Art. 19).

The struggle for additional power between the President and the National Assembly was early demonstrated in the President's proposal to the Assembly of amendments to the Provisional Constitution intended to remove restrictions hampering his activities. He contended that the power of the President to create offices, to appoint members of the Cabinet and other public ministers, to establish and ordain the administrative system should not require the confirmation of the Advisory Council, because such unnecessary formality would constitute a maze of confusion in governmental efficiency. Furthermore, in a cabinet system, the appointment or removal of these officials, especially cabinet ministers, should be the exclusive power of the President.

Besides, he continued, since the National Assembly has the power of impeachment of the members of the Cabinet (Art. 47), it would be superfluous to give the power of confirmation to the National Assembly in the appointment of them. In the matter of declaration of war, conclusion of peace and negotiation of treaties, the President should have absolute power, for matters of such nature would involve swift decisions and could hardly wait for a general debate in the National Assembly. He also favored that the President should have complete power over financial matters in the event of emergency plus the power of issuing executive orders when circumstances arise.[61] These were his basic principles for any Constitution. But the National Assembly flatly refuted his demand for amending the Provisional Constitution, since a Constitution was to be framed in the immediate future.

Both Yuan and the National Assembly were constantly aware of an eventual showdown between them. Thus, on the one hand, Yuan demanded immediate amendment to the Provisional Constitution to be based on his principles, while, on the other hand, he sent eight[62] of his immediate "braintrusters" to participate in the discussion of the Constitution Drafting Committee set up

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[61] Wang and Ch'ien, *op. cit.*, II, 559.

[62] They were: Shih-yu, Ku-ao, Jao Meng-jen, Li-yüan, Fang-chu, Ch'eng Shu-te, K'ung Chao-yen and Yu Chih-ch'ang.

jointly by the Assembly. But the Committee, abiding by its regulations, rejected their right of attendance. The Committee, realizing the gravity of situation, completed the "Temple of Heaven Draft" in a tense manner, but did not fail to lodge supreme authority in the legislature, thereby tying the hands of the President. Yuan, as it can be readily supposed, objected vigorously to the limitations put upon the executive, the supremacy of the legislature, the system of administrative law and administrative courts and the establishment of the permanent Committee of the National Assembly composed of twenty members of each House. He appealed to the country against the provisions of the document. Before the document could secure the approval of the National Assembly, he, on 25 October 1913, sent telegrams to the various viceroys and other high Provincial officials, condemning the Constitution Drafting Committee and its Kuomintang members for intentionally undermining the progress of the constitutional advancement of the country. On 4 November he dispatched another identical telegram to the Provinces to the same effect, but with more insidious terms.

The immediate effect of his appeal was to inflame some of the military leaders of the several Provinces, who even demanded the disbanding of the Kuomintang Party and the dismissal of the members of the National Assembly who were affiliated with the Party. Having won the support of the reactionary group, Yuan ordered the Kuomintang Party to be disbanded on the ground that it was a seditious organization and the credentials of the members of the National Assembly who were Kuomintang members to be withdrawn. Within ten days, over 480 members were deprived of their credentials, which only meant that the two Houses would never be able to secure a quorum. The "Temple of Heaven Draft" went at once into the waste basket as a result of Yuan's dissolution of the National Assembly and the dictatorship began. Yuan's ambition for the throne was further strengthened by the Four-Power Consortium of 26 April 1913, which he secured without parliamentary approval.[63]

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[63] Text in MacMurray, *op. cit.*, 1007-1015.

Not satisfied with the powers he had usurped, Yuan called an extraconstitutional body of his supporters, known as the Administrative Conference, on 26 December 1913. Its task was to share the responsibility of the President in formally completing the dissolution of the National Assembly and in amending the Provisional Constitution of 1912. On 10 January Yuan, acting on the recommendation of the Administrative Conference, formally dissolved the National Assembly by a Presidential decree and the government of the Republic was plunged into the abyss of lawlessness. Political purges followed the murder of Sung Chiao-jen, one of the ablest followers of Dr. Sun Yat-sen.

In order to complete its task of revising the Provisional Constitution, the Administrative Conference recommended that a separate body should be created to undertake the work. Thus, on 26 January 1914, the so-called Constitutional Compact Conference was established. It was supposed to be composed of two representatives from each Province, four from the city of Peking, eight from Inner Mongolia, Outer Mongolia, Tibet and Turkestan and four from the National Chamber of Commerce. Eligibility for participation in the Conference was restricted to (1) citizens who are or have been high officials; (2) citizens who have attained the degree of *Chu-jen* or higher graduates and who have a notable reputation; (3) college graduates or those with at least three years of college training; (4) those who possess immovable property valued at over $10,000 and at the same time have contributed something for the public welfare.[64]

These qualifications simply meant that the Conference was formed exclusively of the upper rank, who, if necessary, were government officials. What was more ridiculous was that the names of the would-be members of the Constitutional Compact Conference were already registered by the Government on the list and, even though they were duly elected, their names still had to be considered by a special committee of the Government, which practically meant Government appointees rather than elected representatives.

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[64] Wang and Ch'ien, *op. cit.*, II, 563-564; cf. Stanley K. Hornbeck, *Contemporary Politics in the Far East* (New York, 1919), 51.

On 18 March 1914 the Constitutional Compact Conference was inaugurated with Sun Yu-kun as Chairman and Shih-yu as Vice Chairman. Yuan, therefore, proposed that (1) the power over foreign relations, declaration of war, making of peace and negotiation of treaties should be in the hands of the President without interference by the legislature; (2) the President should possess the sole right to establish and regulate all offices and he alone should have the right to appoint members of the Cabinet, ministers and ambassadors without the concurrence of the Lower House; (3) there should be a Presidential system; (4) the Constitution should be framed by the President and the Council of State (*Ts'an Cheng Yuan*); (5) the deprivation or restoration of civil rights of the people should be determined by the President; (6) in case of emergency, the President should possess the power of issuing mandatory orders; and (7) the President should possess emergency financial power.[65]

Upon the recommendation of the President on these points, the Constitutional Compact Conference drafted the infamous "Constitutional Compact"[66] which was promulgated on 1 May 1914.

Just as the previous National Assemblies had obtained the lion's share of power for themselves, now Yuan Shih-k'ai virtually reversed the order by arming himself with the power of absolute veto,[67] which was by far greater than the veto power of the President of the United States.[68] He gave himself absolute control of

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[65] Wang and Ch'ien, *op. cit.*, 564-565.

[66] See Appendix E.

[67] Article 34 provides: "But if the President shall disapprove a bill duly passed in the National Assembly, he may return the bill to the National Assembly for reconsideration, with a statement of the reasons of his disapproval. Even in case that the former decision of the National Assembly be adhered to by a majority of two thirds or over of the members present, if the President still maintains that the bill would greatly endanger or harm either the internal administration of the State or its foreign relations or that there are great and important obstacles in the way of its execution, in such a case the President may, with the concurrence of the Council of State, withhold promulgation." See Appendix E.

[68] In the case of the President of the United States, he may return the bill with his objections to the House in which the bill is originated and, if, after such reconsideration, two thirds of the House shall agree to pass the bill

certain types of expenditures pertaining to executive matters[69] and his absolute power of declaration of war and conclusion of peace (Art. 22) was decidedly beyond challenge.

The approval of the Council of State was necessary in instances in which the President was called to act either in opposition to the National Assembly or without its consent. Thus, "The President, with the concurrence of the Council of State, may dissolve the National Assembly" (Art. 17) and "at a time of urgent necessity when the National Assembly can not be convoked, the President, with the concurrence of the Council of State, may issue emergency ordinances having the force of law" (Art. 20), while the President may, "with the concurrence of the Council of State, withhold promulgation" of any bill passed by the National Assembly (Art. 34). But it must be remembered that the Council of State's capacity was only to advise the President on "important matters of state" (Art. 49) and, because of the fact that the members were more or less political appointees, they usually supported the President in his acts.

The "New Constitutional Compact" marked a change in the matter of administration. Administrative affairs were to be conducted by the nine heads of the departments separately (Art. 40) instead of jointly, as had been the practice under the previous Constitutions. Although the Compact provided for a unicameral National Assembly (*Li Fa Yuan*) with limited powers (Art. 31),

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and if the same bill is approved by two thirds of the other House, the bill may become a law. (Art. I, Sec. 7, par. 2, of the U. S. Constitution.) To give the executive absolute veto power would be vesting in him an autocratic power. After all, it must be admitted that the purpose of giving him the veto power is to protect the executive power against the invasion by the legislature or against any hostile action of the legislature or to protect the Constitution against unconstitutional legislative action or injudicious legislation.

[69] Article 54 provides: "Estimates for the objects of expenditure specified below shall not be rejected or reduced except with the concurrence of the President: (1) Those appertaining to the legal obligations of the Government. (2) Such necessary expenditures as may have arisen as the effects of statutes. (3) Expenditures necessary to carry out treaties. (4) Expenditures necessary for the organization of the army and navy." See Appendix E.

the organization of which was to be prescribed by the Constitutional Compact Conference (Art. 30), it was never created. The Council of State continued to act in its stead. The fact that the Council of State was a tool of the President should be evident, since all the powers vested in it were counterchecked by the powers belonging to the President himself. For instance, the National Assembly had the power to impeach the President on charge of treason, but all dangers of being removed from office were saved by the fact that impeachment proceedings required the approval of a three-fourths majority of a four-fifths quorum of the National Assembly (Art. 31, i).

These provisions devised by Yuan were enough to show that he was a shrewd and practical politician. Furthermore, by sharing the responsibility with the National Assembly in the matter of making treaties which might involve any territorial change or increase the burdens of the people (Art. 25), he was able psychologically to conciliate the hard feelings of those who opposed him. By giving the National Assembly the impeachment power over himself, although it was evident its use would never materialize, he was able to please his supporters. Moreover, by the insertion of the nominal rights of the people (Arts. 4-10), he had, at least for a short while, succeeded in controlling the feelings of the people at large.

With all these factors well under control, he then made it possible for his supporters, "The Secretary of State, the Heads of the Departments and Special Delegates representing the President, . . . to sit and speak in the National Assembly" (Art. 42). The President may convoke the National Assembly and open, prorogue, prolong or close its sessions (Arts. 17 and 32). He may even dissolve it, with the concurrence of the Council of State (Art. 17). As a matter of fact, the rest of the provisions in connection with the power of the chief executive may be regarded as superfluous, if not for the sake of practical politics. In short, the "New Constitutional Compact" promulgated on 1 May 1914 was nothing more than a formally written agreement by which the President accepted certain limitations on his absolute authority over executive and, to a certain extent, legislative matters.

Both from the points of view of practice and theory of constitutional government, Yuan Shih-k'ai should have had the Constitution framed by a National Convention composed of non-appointed delegates from all the Provinces supplemented by professional representatives or other groups which might best represent and serve the people's interest under the given circumstances. It was improper to vest the power of framing a Constitution exclusively in an agent of the government, whether of the executive or the legislative branch, for constitutions made in such manner would only furnish pretexts for the militarists and radical politicians to arouse political disturbances. This, unfortunately, had been the experience in China's past history. Nor would it have been any less improper to have had it framed by a political party which might then be in power, for such would not only have been detrimental to the foundation of the nation, but also misrepresentative of the spirit of a republican government.

Meanwhile, the Council of State, like the previous Administrative Conference, the Constitutional Compact Conference, reflected the wishes of Yuan like a rubberstamp. On 28 December 1914 it was resolved that the Presidential Election Law of 5 October 1913[70] should be amended. The purpose of this move, of course, was to give perpetual power to the President. By this new Presidential Election Law,[71] the President would be given the term of

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[70] Text of *Presidential Election Law* of 5 October 1913, *The China Year Book, 1925*, 657-658.

[71] The Presidential Election Law of 1914 may be summed up as follows: (1) all Chinese citizens, who are 40 years of age and who enjoy full public rights, living in the country for 20 years or over, are eligible for election; (2) at the election, the President, representing the people, nominates three candidates, the names to be written by himself on a gold plate to be locked up in a casket with the keys kept by the President, the Secretary of State and the Chairman of the Council of State; (3) a Committee of ten is to be appointed to open the casket; (4) the names are then submitted by the President to the Electoral College consisting of fifty members of the Council of State and fifty members of the Legislature and the candidate who receives two thirds of the votes is considered to be elected; (5) if the required two thirds are not secured, then the names of the two candidates with the largest number of votes will again be submitted for ballot and the one securing the majority will be elected; (6) the President him-

office for a period of ten years, without, however, ineligibility for reelection. What could be more despotic than that the successor to the Presidential office may be nominated by the President himself, who, in addition to his three candidates, is himself also eligible for reelection?

Thus, the Provisional Constitution of 1912, the Parliamentary Election Laws of 1912 for both the Upper and Lower Houses[72] and the Presidential Election Law of 1913 were superseded by Yuan's subsequent legislative acts.[73] Yuan Shih-k'ai now was virtually made the Government of China.

The Republicans, however, were not unaware of Yuan's ambition, but their hands were tied after the dissolution of the National Assembly and many of the Kuomintang members were in exile. In August 1915, shortly after the presentation of Japan's Twenty-one Demands,[74] the *Chou An Hui* (Society for the Preservation of Peace) was formed by Yuan's followers under the guise of a learned society, in order to serve as Yuan's propaganda machine, thus paving the way for him to ascend the throne.[75]

The subject of monarchy *versus* republicanism was discussed all over the country under the auspices of the propaganda machine of Yuan Shih-k'ai and the desirability of China's return to monarchy was finally echoed by his American political adviser, Dr. Frank J. Goodnow, who wrote an article which was widely published in China. In part, Dr. Goodnow wrote:

It is of course not susceptible of doubt that a monarchy is better suited than a republic to China. China's history and traditions,

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self is eligible for reelection and may be voted for at the same time as the three candidates nominated by him; (7) the term of office of the President shall be ten years; (8) the President has the right to nominate three candidates for the post of Vice President, whose term of office will also be ten years, and the procedure for election will be the same as for the President. See *The China Year Book, 1916*, 434-435.

[72] Election Laws of Senate, 1912, in *The China Year Book, 1925*, 639-642. Election Law of House of Representatives, 1912, *ibid.*, 642-651.

[73] The various revised laws, *ibid.*, 675-694.

[74] *The Sino-Japanese Negotiations of 1915* (Washington, 1921), 2-8.

[75] Members of the *Chou An Hui* were Yang-to, Sun-Yu-kun, Yen-fu, Liu Shih-pei, Li Chih-ho and Hu-ying.

her social and economic conditions, her relations with foreign powers all make it probable that the country would develop that constitutional government which it must develop if it is to preserve its independence as a state, more easily as a monarchy than as a republic.[76]

Relying on Dr. Goodnow's reputation as a constitutional expert and under the instigation of Liang Shih-yi, the head of the Bank of China, Yuan once more urged the question of restoring the monarchy upon the Council of State, which suggested that the National Convention, provided for by the Constitutional Compact (Art. 61), should be authorized to pass upon the question. The *Chou An Hui,* however, requested the Council of State to organize another popular body with great powers before the convocation of the National Convention. The popular body under consideration was to decide upon the question whether a monarchy should be reestablished. Thus, on 6 October 1915 the Council of State passed the "Law on Organization of the Convention of Citizens' Representatives."[77] Two days later the President promulgated the law. This "Convention of Citizens' Representatives" was composed of 1,834 representatives from the Provinces and the special administrative areas. The votes were manipulated by high officials so that no ground was left to the voters to choose any alternative. On 11 December 1915, the Council of State announced that the votes were unanimously in favor of the restoration of the monarchy with Yuan Shih-k'ai as Emperor.[78] When Yuan declared the restoration of the monarchy, many Provinces led by Yunnan Province under Tsai Ao declared their independence in resistance to the Central Government. Yuan, seeing his wings were clipped and his power gone, in a last effort to save at least his presidency, renounced the throne the following March. But it was too late. He, in a self-denying manner, similar to that of the Emperor under the Imperial regime, announced: "It is the lack of virtue on my part and, therefore, I have no right to blame others. . . . "

[76] *Far Eastern Review,* 12 (1915), 105.

[77] *The China Year Book, 1916,* 483-484; text of the Law on Organization of the Convention of Citizens' Representatives, *ibid.,* 444-446.

[78] *The China Year Book, 1916,* 484-485.

The mere renunciation of his ambition did not stop the opposition to Yuan. In April 1916, Yunnan, Kweichow, Kwangsi, Kwangtung and Chekiang Provinces had seceded from the Central Government. The restoration came to an end with Yuan's death on 6 June 1916.

The collapse of Yuan's regime brought the country to a state of political confusion. It was a great mistake, indeed, on the part of the early constitutionalists to have expected a constitutional regime to operate smoothly and completely all of a sudden, because that—

> constitutional government is nothing more than a phrase to many of the Chinese has been demonstrated beyond question since the establishment of the Republic. The Republic itself has done a great deal to justify the Manchu desire to "make haste slowly."[79]

Acting under the public pressure and in accordance with the Presidential Election Law of 1913, Vice President Li Yuan-hung succeeded to the vacated Presidency. He proclaimed that, pending the formal adoption of a permanent Constitution for the Republic, the Provisional Constitution of 1912 was still in force. Accordingly, the National Assembly reconvened 1 August 1916. At the suggestion of Wu Chung-t'ze, the work of framing a Constitution was ordered to be continued, with the "Temple of Heaven Draft," however, as a basis. Problems as to whether Provincial governors should be popularly elected or appointed by the Central Government and what powers should belong to the Provinces were brought up in a heated debate.

The military governors were in favor of a decentralized government, which was opposed by the National Assembly. In protest, some of the more radical and ambitious military governors began to scandalize the Constitution and publicly denounced the National Assembly. These military governors were seeking personal ends and within a short period disintegration of Yuan Shih-k'ai's military-political regime began. Provinces seceded from the Peking Government one after another, which induced Li Yuan-hung to summon General Chang Hsun, a former pillar of

[79] Vinacke, *op. cit.*, 92-93.

the Manchu dynasty to Peking to meet the issue. Acting on his own accord, however, General Chang Hsun attempted to restore the Manchu dynasty by issuing an edict in the name of the young Emperor Hsuan Tung and at the same time announcing his assumption of the Throne. The National Assembly was once again dissolved. The attempted restoration by Chang Hsun met immediate opposition and soon came to an end, lasting only seven days until the Republican army marched to Peking. President Li Yuan-hung vacated the Presidency and Tuan Ch'i-jui assumed the office of Premiership.

Meanwhile, members of the old National Assembly, in protest against the illegal dissolution, betook themselves to Canton in the hope of continuing to function. Dr. Sun Yat-sen was elected generalissimo of the rebellious South. In 1918 a directorate of seven members (Dr. Sun Yat-sen, Dr. Wu Ting-fang, T'ang Shao-yi, Shen Chun-hsua, Lu Yung-ting, T'ang Chi-yao and Admiral Lin Pao-yi) was established at Canton to head the southern constitutional Government, which soon extended its jurisdiction over Kwangtung, Kwangsi, Yunnan, Kweichow and Szechuan Provinces and parts of Hunan, Kiangsi and Fukien Provinces. Dr. Sun was elected by the same group of members of the old National Assembly of 1913 as President of the Republic.

It was contended that Sun's election was of dubious validity, since a legal quorum of the National Assembly was necessary. Constitutionally, the legal quorum of the National Assembly was fixed at 580 and three fourths of this number was necessary. Sun received 213 votes out of 222 cast.[80] On the other hand, the acts of the National Assembly in Peking were equally of dubious validity, since, according to the Election Law, the terms of one third of the members of the Upper House would expire every two years. By this time the terms of one third of the members of the Upper House had already expired and the terms of all of the members of the Lower House should have been renewed by reelection. But the Northern Government deemed the reconvo-

[80] *The China Year Book, 1923*, 1013.

cation of the National Assembly necessary[81] and this point of constitutionality perhaps did not occur to it.

Both the Peking and Canton Governments were trying to claim the constitutionality of each National Assembly, but the arguments for each case seemed to be more political than constitutional.[82] The Government headed by Dr. Sun, it should be understood, was merely waging a political campaign in opposition to the North and was operating with the desire that the rest of the Provinces would join in the movement. At the same time, some Provinces even went so far as to draw up their own Constitutions in an attempt to declare independence of both the North and the South regimes. Indeed, China's political upheavals during this period and the ten years immediately following were most disturbing. The country was restored to some sort of normalcy in 1928 by General Chiang Kai-shek after the success of the Northern expedition.

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[81] Willoughby, *op. cit.*, 15-16.

[82] *Ibid.*, 18-27. Willoughby presents a very detailed discussion of the constitutionality of both the Peking and the Canton Governments.

CHAPTER II

CONSTITUTIONALISM *versus* MILITARY FEUDALISM

After the Restoration of Chang Hsun had come to an end, President Li Yuan-hung, under pressure and probably fearing the consequences of the rising militarists, abandoned the Presidency without a formal resignation. Feng Kuo-chang was elected Acting President to fill out the term of Li. Accordingly, a new National Assembly was elected under a new set of laws to function in Peking. The law concerning the election of the new National Assembly passed in February 1918 differed materially from that which was passed by the National Council in 1912. When the new National Assembly opened in August, the North was in favor of ex-Premier Hsu Shih-chang becoming President and on 4 September he was elected.

The new National Assembly under Hsu Shih-chang appointed a Committee of sixty, thirty from each House, to continue the drafting of a Constitution. This Constitution Drafting Committee decided not to use the Temple of Heaven Draft as the basis in the beginning, by appointing a new group of members to produce a new draft. From December 1918 to August 1919 twenty-six meetings were held by the Committee, which finally, on 12 August 1919, completed a draft consisting of 10[illegible] articles.[1] This draft proved to be very similar to the Temple of Heaven Draft with the exception that, whenever one third of its members were present, the National Assembly might pass laws (Art. 31), whereas the Temple of Heaven Draft provided (Art. 37) that the National Assembly could not make laws unless half of the total number of members were present. Furthermore, this new draft gave exclusive power to the President to dissolve the House of Representatives without the concurrence of the Senate (Art. 63). Besides the appointment of Premier and heads of departments, the President could appoint other State Councilors (Art. 67). This

[1] See Appendix F.

draft, like the Temple of Heaven Draft, was never brought before the National Assembly.

Meanwhile, Ts'ao K'un, of Chihli, one of the most capable warlords, was scheming for the Presidency. Ts'ao, during his earlier days, had aided Yuan Shih-k'ai in drilling his troops and had supported him against the Southern revolutionists. He even had worked with Tuan Ch'i-jui to prevent the restoration of the Manchu rule attempted by Chang Hsun in 1917. He therefore felt himself entitled to be elected President. In order to accomplish this, he cultivated the powers of the Chihli military clique and tried to gain the support of the National Assembly. While his subordinate, Wu Pei-fu, helped him to accomplish the first, he succeeded in the second by a wholesale bribery of the National Assembly.

In order to legalize his action, Ts'ao K'un drafted the Constitution of 10 October 1923.[2] It makes the National Assembly supreme by conferring the right of concurrence with regard to certain matters. This Constitution contains thirteen chapters and 141 articles. Unlike previous drafts, which were either too centralized or too diffused, this Constitution pays some attention to the fundamental problem of distinction of powers between the Central Government and the Provincial Governments. It has some traits of a federated system in that the powers of both the Central and the Provincial Governments are distinctly stipulated, but is unlike that of Canada, where the residual power, being unmentioned, belongs to the Central Government, or that of the United States, where the residual power is specifically reserved to the several States. According to Ts'ao K'un's draft, the Provincial self-government laws are to be "made by the Provincial Self-Government Law Conference composed of delegates elected by the Provincial Assembly, District Assemblies and legally constituted professional associations of the Province" (Art. 126). It was thought to be the best form of representative system for China under the circumstances, especially in its allowance of professional groups to participate in the matter of local laws.

The rights of citizens receive special consideration. "All persons who according to law belong to the nationality of the Repub-

[2] See Appendix G.

lic of China are citizens of the Republic of China" (Art. 4). Citizens are granted the freedom of assembly (Art. 10) and the freedom of speech, authorship and publication (Art. 11) and such freedom shall not be restricted except in accordance with law. "Any person under arrest may, in accordance with law, apply to the court by a 'Petition for Protection' to have his person delivered thereto and the case tried thereat" (Art. 6).[3] Although citizens "shall be equal before the law, without distinction of race, class or religion" (Art 5),[4] it is regrettable that no mention is made of equality of sex, as in the previous Constitution. While "the right of ownership of a citizen of the Republic is inviolable, . . . any necessary disposition for the public benefit may be made in accordance with law" (Art. 13), although no adequate compensation is indicated,[5] unless it is intended to be provided for in the law making such disposition.

The draft provides that "Any citizen of the Republic of China forty or more years old, in full enjoyment of civil rights, and resident in the country for ten years or more, shall be eligible as President" (Art. 72). Thus, although no mention is made in the Constitution concerning the naturalization of foreigners, it is to be presumed that any foreigner who has been naturalized, enjoys full civil rights and meets the age and resident requirement could constitutionally become the President of the Republic, because the Constitution (1) speaks of "all persons who according to law belong to the nationality of the Republic," (2) speaks of equality of citizens "without distinction of race, class or religion" and (3) does not provide that "No person except a natural born citizen shall be eligible for the office of President," as in the case of the Constitution of the United States.[6]

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[3] It was not until the Provisional Constitution of 1 June 1931 that the person arrested or detained on a criminal charge had the right of petition to be brought before the court for trial within twenty-four hours (Art. 8). See Appendix L. The Constitution of Greece of 1911 (Art. 5) contains a similar provision. Wright, *op. cit.*, 263. The Constitution of Denmark also makes a similar provision.

[4] Even in the Constitutional Compact of 1 May 1914 all citizens were looked upon as equal "before the law, irrespective of race, rank or religion" (Art. 4).

[5] This was remedied in Dr. John C. H. Wu's Draft Constitution of 1933.

[6] United States Constitution, Art. II, Sec. 1, par. 4. Wright, *op. cit.*, 614.

Under the Constitution of 1923 the President was to be assisted by the Cabinet Ministers (Art. 71). The term of the President was fixed at five years and, in case of reelection, he may hold office for a second term (Art. 74). Upon assuming office, he shall take the following oath:

I hereby solemnly swear that I will most faithfully observe the Constitution and perform the duties of the President. (Art. 75)

He shall promulgate all laws and supervise their execution (Art. 79). He, moreover, in pursuance of the authority delegated to him, may issue mandates for the execution of laws (Art. 80). By virtue of his authority as Commander-in-Chief, he may appoint or dismiss military officials and, as Chief Executive, civil officials (Art. 81). Although his power of declaration of war is subject to the approval of the National Assembly, nevertheless, in case of foreign aggression, he may request that approval after the declaration of war (Art. 84). But treaties of peace and those relating to legislative matters which have been concluded by him shall not be valid without the approval of the National Assembly (Art. 85). He may proclaim martial law (Art. 86) and, with the approval of the Highest Court of Justice, remit or reduce punishments and restore civil rights (Art. 87). With regard to a decision in an impeachment case, the restoration of civil rights must have the approval of the Senate (Art. 87).

In case of a disagreement on matters of policy, the President may suspend the session either of the Senate or of the House, but the suspension must not exceed ten days and no session shall be suspended more than twice (Art. 88).

The Cabinet, headed by the Premier, shall assist the President in executive matters. The Premier shall be appointed with the approval of the House of Representatives (Art. 94). The Cabinet Ministers shall be responsible to the House of Representatives and shall countersign all mandates issued by the President or other documents concerning state affairs (Art. 95). A Cabinet Minister may speak in both Houses and, for the purpose of making explanations of bills introduced by the Government, may depute delegates to act for him (Art. 96).

Just as the Justices of the Supreme Court of the United States are appointed by the President with the approval of the Senate, the President of the Highest Court of Justice in China, under the Constitution of 1923, was to be appointed by the President of the Republic with the approval of the Senate (Art. 98). However, the organization of the judiciary and the qualifications of judicial officials were to be prescribed by law. These judicial officials were not to be subject to any arbitrary reduction in salary or suspension of office or transference to another office except in accordance with law and they might be removed from office only when they shall have been convicted of a crime or subjected to disciplinary punishment (Art. 102).

The House of Representatives is given the power to impeach the President or Vice President, if they are guilty of treasonable acts (Art. 60), or a Cabinet Minister, if he is guilty of any act contrary to law (Art. 61), impeachment in either case to be by the vote of two thirds of the members present. While the Senate is given the sole right of trial in impeachment cases, the punishment to be inflicted for conviction beyond removal from office shall be determined only by a court of justice, the Highest Court of Justice in the case of the President or Vice President (Art. 63). Such an arrangement might involve a conflict of authority, inasmuch as the sole right of trial in impeachment belongs to the Senate, while, if the President or Vice President be found guilty, it would belong to the Highest Court of Justice to determine the punishment therefor. The fact that the Senate, acting as a trial court, could have no control over the nature or extent of the punishment to be inflicted on a convicted President or Vice President, might be a deterrent in securing the two-thirds vote necessary for a decision to convict. The provision with regard to a Cabinet Minister is somewhat different and parallels the provision of the Constitution of the United States (Art. I, Sec. 3, par. 6) regarding all cases of impeachment that "the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law,"[7] for it provides that, if the Cabinet Minister "is guilty of crime, he shall be delivered to a

[7] Wright, *op. cit.*, 609.

court of justice to be tried," even though he may have been removed from office and possibly deprived of his public rights as a result of conviction after impeachment.

The President may dissolve the House of Representatives with the consent of the Senate, provided that he forthwith order a new election and fix a date, within five months, for the convocation of the House to continue the session (Art. 89). This apparently was an imitation of the French Constitutional Law (Art. 5) of 25 February 1875, as amended 14 August 1884, to the effect that the "electoral college shall be assembled for new elections within the space of two months and the Chamber within the ten days following the close of the elections."[8] The motive of the framers was obviously to curb the dissolution power of the President and to make it more difficult for him to dissolve the House.

The National Assembly, under the Ts'ao K'un regime, was indeed powerful. Members of either House were protected by special provision that they might not be arrested or kept under surveillance without the permission of the House (Art. 69). However, an arrest might be made *in flagrante delicto*, although the House might ask for a suspension of judicial proceedings during the session and the surrender of the arrested member to the House. Furthermore, members of either House might address an interpellation to a Cabinet Minister or ask him to appear in the House to answer an interpellation (Art. 67). They were also empowered to receive petitions of citizens (Art. 66) and to request the Government to make investigations of the conduct of officials acting contrary to law or to duty (Art. 64).

Articles 23, 24 and 25 enumerate the various matters which come under the legislative or administrative jurisdiction of the Republic, the Provinces and the Districts. But—

> When any matter not specified in Articles 23, 24 and 25 arises, it shall be a matter of the Republic if by its nature it concerns the Republic, and of a Province if by its nature it concerns the Province. Any controversy arising in this connection shall be decided by the Highest Court of Justice. (Art. 26)

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[8] *Ibid.*, 194; Rao, *op. cit.*, 465 and 471.

Moreover—

A Provincial law conflicting with a national law shall be void. When doubt arises as to whether a Provincial law conflicts with a national law, interpretation shall lie with the Highest Court of Justice.

The foregoing provision in the matter of interpretation shall apply when a Provincial Self-government Law conflicts with a national law. (Art. 28)

Therefore the Highest Court of Justice has authority to pass upon conflicts between a national law and a provincial law, the highest provincial law and the Provincial Self-Government Law. Moreover, since "A law in conflict with the Constitution shall be void" (Art. 108), presumably the Highest Court of Justice also may declare a law of the Central Government void if it finds it in conflict with the Constitution.

On the other hand, "If there is any doubt about the meaning of the Constitution, interpretation shall be made by the Constitution Conference" (Art. 139). The power conferred on the Highest Court of Justice to pass on the constitutionality of laws and the power conferred on the Constitution Conference to "interpret" the meaning of the Constitution in case of doubt leaves in the air the ultimate decision on constitutionality. As Chen Wan-li phrases it—

Est-ce que notre constitution reconnait aux tribunaux judiciaires le droit de vérifier la constitutionalité des lois par le voie de l'interprétation? Ou bien reserve-t-elle a l'assemblée constituante seule le pouvoir d'interpréter la constitution? Sur ce point, notre constitution contient une certaine équivoque.[9]

On this point, the Constitution of 1923 seems to have made an attempt to combine the provisions of the German Constitution of 1871 with those of the United States Constitution of 1787. Under the German Imperial Constitution of 16 April 1871, the power of interpretation of the Constitution belonged to the legislature (Art. 78).[10] Under the doctrine of judicial review of legislation in the

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[9] Chen Wan-li, *Les développements des institutions politiques de la Chine* (Paris, 1926), 111.

[10] Zeydel, *op. cit.*, 27; Wright, *op. cit.*, 238; Dodd, *op. cit.*, I, 351.

United States the ultimate power of interpreting the Constitution rests in the Federal courts and particularly the Supreme Court of the United States (Art. III, Sec. II, par. 1).[11] After World War I the new German Constitution of 11 August 1919 vested the power of interpretation of the Constitution in the Supreme Judicial Court, unless another court of the Reich is competent (Art. 19).[12] The Austrian Constitution of 1 October 1920 created (Art. 147) a *Verfassungsgerichthof* (Supreme Constitutional Court) of which the President and Vice President and one half of the members were elected for life by the *Nationalrat* (National Council) and the other half of the members were elected by the *Bundesrat* (Federal Council).[13]

But the Constitution under the Ts'ao K'un regime followed neither of these forms exclusively. Apparently, the final word of interpreting a law involving the Constitution lay in the Constitution Conference. Since the latter body was composed of members of the National Assembly, the decision of constitutional questions was bound to be tied up with political considerations. If, then, China were to adopt that Constitution, it would seem appropriate to create some sort of organ, perhaps similar to that of Austria or of Germany, to pass upon questions of interpretation of the Constitution. Perhaps the best solution is that proposed by James Woo:

> La constitution de 1923 a su tirer également de la comparison des législations antérieures les renseignements qu'elle comportait en ce qui concerne l'établissement du mécanisme de revision constitutionnelle. Nous serions tentes de regretter que, dans ces articles 139 et 140, elle ait confié à la même autorité—l'Assemblée Constituante—deux pouvoirs distincts, mais entre lesquels il est difficile de maintenir une ligne de démarcation, et le pouvoir de la réviser. Nous pensons personnellement qu'il eut été préférable de tenir ces pouvoirs séparés, et de confier l'exercice du premier—comme aux Etats-Unis—à l'autorité judiciaire.[14]

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[11] Wright, *op. cit.*, 615.

[12] McBain and Rogers, *op. cit.*, 181; Rao, *op. cit.*, 212.

[13] McBain and Rogers, *op. cit.*, 290; Rao, *op. cit.*, 145.

[14] James Woo, *Le problème constitutionnelle chinois: La Constitution du 10 octobre 1923* (Paris, 1925), 83-84.

In brief, the Constitution of 1923 was largely modeled upon that of the French Republic with variations borrowed from the German and American Constitutions. The organization of the Central Government, both legislative and executive, the supremacy of the National Assembly and the responsibility of the Ministers are thoroughly French. But, although it was probably the best exhibit of the political ideas of the returned students from both Europe and the United States, yet it must be admitted that they were not practical about their task of building up China, by understanding the real issues and conditions of their own country. The introduction of purely Western governmental machinery and practice in China by these early constitutional reformers was idealistic rather than practical.

This Constitution was duly promulgated on 13 October 1923, but it was never put into operation and has always been considered illegal because of the manner in which it was brought into being. From the time when Yuan Shih-k'ai abolished the Provisional Constitution of 1912 until 1926 China's progress toward constitutionalism was at a standstill. Military feudalism prevailed; it was perhaps the darkest period in the constitutional history of China.

In 1924 Fengtien-Chihli military strife broke out, which resulted in the overthrow of the Chihli faction. Consequently, President Ts'ao K'un was ousted and was imprisoned until 1926. Tuan Ch'i-jui, leader of the Anfu clique, was made "Provisional Chief Executive of China," with the sanction of the two militarists, Chang Tso-lin and Feng Yu-hsiang. Tuan Ch'i-jui proceeded to produce a Draft Constitution consisting of 160 articles on 11 December 1925.[15] It contemplated a federal form of government. This draft was never brought up to the Parliament, since it was not in existence. However, juridically it resembled the Constitution of 1923, except that the lines of the federal system were more clearly drawn. The division of powers between the Central and

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[15] See Appendix I. Perhaps the best provision ever made in that Constitution was that school education may not become propaganda centers of party doctrine (Art. 152).

local governments is thoroughly expressed in Articles 6 and 7. Moreover, the provision (Art. 15) that—

> No Province or special area shall enter into any political alliance with or commit an act of aggression against another with military force. But, when the form of government of the Republic is in danger, the Provinces or special areas may unite and adopt concerted measures for its defence until the normal condition is restored—

clearly implied that the Provinces have some share in sovereignty. Thus, Provinces and special areas may each adopt its own constitution, provided that such constitution does not conflict with this Constitution (Art. 111). Provisions of such a nature should not exist in China's future constitution, since China has suffered enough from factional strife in the past. But laws enacted by a Province or special area must not be in conflict with the national laws (Art. 18) and the Senate was empowered to adjudicate any dispute arising between the Provinces and special areas or any other local divisions (Art. 46).

The President, under the proposed Constitution, was to be popularly elected. His powers were great and more or less followed the pattern of the United States.

The Preamble sponsored a republican form of government and proclaimed the Constitution to be observed forever. Article 156 repeated substantially the provision of Article 138 of the Constitution of 1923 that "The form of government shall not be the subject of amendment."[16]

While Dr. Sun's fortune in the south had been waxing and waning, the Government in the North under Tuan Ch'i-jui was able to sustain itself chiefly as the result of a series of Japanese loans concluded regardless of public opinion.[17] Meanwhile, in November 1924, after the establishment of the Tuan Ch'i-jui regime

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[16] Cf. the Revised Constitutional Law of France of 14 August 1884, Article 2, which reads: "The republican form of government shall not be made the subject of a proposed revision." Wright, *op. cit.*, 198; McBain and Rogers, *op. cit.*, 529; Rao, *op. cit.*, 471.

[17] H. G. W. Woodhead (ed.), *The China Year Book, 1921-22* (London, 1922), 850.

in the North and the fall of Wu P'ei-fu, Dr. Sun was invited to the North to consult with Tuan Ch'i-jui, Chang Tso-lin and Feng Yu-hsiang on the reorganization and unification of the government. At the same time Russian influence in the South was imminent. Communists were entrenching their power in the Kuomintang party. In 1924 the first Party Congress of the Kuomintang, held in Canton permitted the admittance of Communists to the Party provided they accept the General Principle of the Kuomintang party. This was a move to unify the home front. Unfortunately, Dr. Sun, arriving at Peking on 31 December, was taken ill and died on 12 March 1925. Tuan Ch'i-jui remained nominal head of the Northern Government, because the actual power was wielded by the militarists. The entire country was in the doldrums of political vicissitudes. It was not until 1927 when the Northern expedition came to an end and General Chiang Kai-shek organized the Nanking Government that normalcy was restored.

CHAPTER III

The Birth of a New Constitution

The doctrines of Sun Yat-sen have provided the theories upon which the Chinese Revolution was based and they form the extra-judicial constitution of the National Government of China. His works were composed of *The Program of National Reconstruction* (*Chien Kuo Fang Lüeh*), the *Fundamentals of National Reconstruction* (*Chien Kuo Ta Kang*), *The Three Principles of the People* (*San Min Chu I*) and the *Manifesto* of the first National Congress of the Kuomintang Party.[1] Sun's aim and revolutionary principles were to establish a new nationalist ideology in order to

[1] Cf. Hu Han-min, an ardent follower of Sun, *Tsung-li Ch'uan Chi* (The Complete Works of the Leader) (4 vols., Shanghai, 1930). Translations into other languages have been numerous. The most widely used are the following: Leonard Shih-dien Hsu, *Sun Yat-sen: His Political and Social Ideals* (Los Angeles, 1933); Frank W. Price, *San Min Chu I* (The Three Principles of the People) (Shanghai, 1930); Paul Myron Anthony Linebarger, *The Political Doctrines of Sun Yat-sen: An Exposition of the San Min Chu I* (Baltimore, 1937); Paschat M. d'Elia, S.J., *The Triple Demism of Sun Yat-sen* (Wuchang, 1931). Other works on Sun Yat-sen are: Karl Wittfogel, *Sun Yat-sen: Aufzeichnungen eines chineschen Revolutionara* (Vienna and Berlin, n.d); V. Vilenskii (Sibiriakov), *Sun Iat-sen: Otets Kitaiskoi Revoliutsii* (Moscow, 1925); P. C. Huang and W. P. Yuan, "The Alleged Influence of Maurice William on Sun Yat-sen," *T'ien Hsia Monthly*, 4 (November 1937), 349-376; Maurice William, *Sun Yat-sen vs. Communism* (Baltimore, 1932); Lyon Sharman, *Sun Yat-sen: His Life and Its Meaning* (New York, 1934); Tsui Shu-chin, "The Influence of the Canton-Moscow Entente upon Sun Yat-sen's Political Philosophy," *The Chinese Social and Political Science Review*, 18 (Peiping, 1934); Jair Hung, *Les idées économiques de Sun Yat-sen* (Toulouse, 1934); Tsiang Kuen, *Les origines économiques et politiques du socialisme de Sun Yat-sen* (Paris, 1933); Li Chao-wei, *Le souverainété nationale d'après la doctrine politique de Sun Yat-sen* (Dijon, 1934); Tai Chi-t'ao (Richard Wilhelm, tr.), *Die geistigen Grundlagen des Sunyatsenismus* (Berlin, 1931); Tsan Wan, *30. Jahre chinesische Revolution* (Berlin, 1927); Sun Yat-sen, *The International Development of China* (New York and London, 1929); Sun Yat-sen, *How China Was Made a Republic* (Shanghai, 1919). Other Chinese sources are too numerous to list here.

effectuate the purposes of China's regeneration. Typical of Chinese spirit, he emphasized the unification of the national spirit. In order to accomplish this end, it is necessary (1) to return to the ancient Chinese morality, (2) to return to the ancient Chinese political learning and (3) to adopt Western science.

According to the theory of Dr. Sun Yat-sen, democracy as applied to China is a living political institution. Its function not only should guarantee the political rights of the people, but also should safeguard the socio-economic life of the people. While admiring Western democracies, he never desired to import Western governmental machinery. In order to realize democracy, his *Three Principles of the People* was introduced and has been used by the revolutionists as a guide to the organization of the National Government.[2]

The first Principle is the principle of *Min Tzu Chu I* (Nationalism) which aims to make China a nation that will in every respect be free, independent and treated as an equal in the society of nations. The second is the principle of *Min Ch'uan Chu I* (Democracy) which aims to secure for China a republican and democratic form of government. The third is the principle of *Min Sheng Chu I* (Livelihood) which aims to make China an economically efficient nation by the limitation and regulation of capitalism, State control and ownership of important utilities and heavy industries. There must also be no unearned increment with regard to land ownership, but rather self-tillage is preferred. This is a sort of an intermediate policy between extreme socialism and individualism.

Thus, by acquiescence of the great majority of the Chinese people, his theories have been accepted as the "extra-juridical constitution" of the National Government of China.

Having understood the ideology that works behind the nation and acknowledging the fact that the Chinese people agree to the doctrines of Sun, one would easily see that why Dr. Sun, while accepting the principles of separation of powers, executive, judicial and legislative, as generally understood in the Western world, he

[2] Dr. Sun Fo, President of the Legislative *Yuan* in his recent book, *China's Future* (in Chinese, Chungking, 1942), presents an excellent exposition of the *San Min Chu I* in comparison with other Western ideologies.

thought that the government could best function in China by reserving the traditional examination and control system. According to Sun, it is absolutely essential to maintain the independence of both the examination and control powers of the government. Thus, in addition to executive, judicial and legislative powers, he put the examination and control powers on the same footing, calling them in group governmental powers. The Organic Laws of the National Government were based on this theory and subsequently the various drafts of Constitution later adopted.

According to Dr. Sun's *Fundamentals of National Reconstruction,* there should be three stages of the Revolution. The overthrow of the Manchu Empire to him did not mean the completion of the Revolution. The Revolution should go further into the daily life of the masses. Thus, the first stage includes the military rule, which means that the autocracy must be overthrown, the war lords must be exterminated and evil practices must be rooted out in preparation for the second stage, which is the political tutelage period.[3] This stage had to undertake such tasks as the education of the people in preparation for the introduction of self-government, subdivided into villages and rural districts, and exercise by the citizens of their rights of franchise in the election of the National Assembly, whose duty it was to adopt the Constitution and to establish a government in accordance with the provisions of the Constitution. After this has been completed, the country was to be graduated into the constitutional stage, in which the people were to exercise their political rights of suffrage, recall, referendum and initiative.

The first Organic Law was promulgated upon the formation of the National Government in Canton on 1 July 1925. This document consisted of only ten articles outlining the fundamentals of organization of the National Government. Because of its rudimentary nature, it has been revised and expanded seven times. The first revision took place on 10 March 1927, the second, on 4 February 1928, the third, on 4 October 1928, in which the five-power system of government was introduced for the first time.[4] The people were not unmindful of the introduction of the system;

[3] See Appendix J.
[4] See Appendix K.

public opinions were reflected everywhere.[5] Dr. Wang Chung-hui, shortly after the issuance of the Organic Law, made a great many constructive criticisms which the later revisions adopted.[6]

The proposal for the organization of the "Five-Power Government" was first made by the late Hu Han-min and Dr. Sun Fo after the successful Northern expedition. At the invitation of Chiang Kai-shek and Hu Han-min, Tai Chi-t'ao and Wang Chung-hui were assigned to make a thorough study of the system.[7]

The military stage came to a close in 1928 and the following year the stage of political tutelage began, which was to last for a period of six years. General Chiang Kai-shek proposed to the Central Executive Committee of the Kuomintang that there should be a Provisional Constitution for the Period of Political Tutelage. Thus Dr. Wang Chung-hui, the eminent jurist was empowered to draft a constitution in accordance with the bequeathed teachings of Dr. Sun Yat-sen. The People's Convention met in Nanking on 5 May 1931 for the purpose of (1) national unification; (2) cooperation of the entire nation with the Kuomintang in carrying out the task of national reconstruction; (3) enactment of a Provisional Constitution which will be obeyed by the entire people. After formally adopting the "Provisional Constitution of the Political Tutelage Period,"[8] the People's Convention set 1 June 1931 as the date for it to go into effect. Simultaneously many of the proposals concerning domestic industry and trade were decided to be handed over to the joint plenary session of the Central Executive and Central Control Committees of the Kuomintang which met on 20 May 1931 at Nanking.[9]

Opening with declarations that "The Republic of China shall be a unified republic forever" (Art. 3) and that "The sovereignty of the Republic of China is vested in the people as a whole" (Art. 2), as the previous Constitutions, the new Provisional Constitution avowed its aims of educating as quickly as possible the Chinese

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[5] A collection of articles on the Five-Power system is in Kung Hsien-heng, *A Study of the Five Power System* (in Chinese, Shanghai, 1930).

[6] *The China Year Book, 1929-30*, 1186-88.

[7] *Ibid.*, 1187.

[8] *United States Daily*, 20 May 1931, 2.

[9] See Appendix L.

people to a condition making them fit for self-government. Hereafter, all citizens of China shall be equal before the law, regardless of sex, race, religion or caste (Art. 6). For the first time the equality of sex was mentioned. The Constitution further provided that the districts (*hsien*) were to enjoy autonomy and the political rights (election, initiative, recall and referendum) were for the first time guaranteed to the people (Art. 7). No person may be arrested, detained, tried or punished, except in accordance with law, and persons arrested must be sent before competent courts within not more than twenty-four hours after arrest (Art. 8). No person except those in active military duty are to be tried in military courts (Art. 9). The residences of the citizens are not subject to forcible search, entry or stealing (Art. 10). Likewise liberty of speech and publications are not to be curtailed except in accordance with law (Art. 15).

The forming of occupational organizations as a means "to better the economic well-being and to promote closer cooperation between capital and labor," was permitted (Art. 39). A special provision concerning the protection of child and woman labor, by introducing a state-sponsored insurance system was stipulated (Arts. 41-42). This furnished for the first time the rudiment of a "new deal" for the Chinese people, but not until the Draft Constitution of 5 May 1936[10] was the general principle well defined. The state, while encouraging the conduct of private educational institutions, reserves the right to supervise them and to see that they apply the Three Principles of the People as the basic principles of education (Art. 49). A system of developing the economic welfare of the country in which "the state shall open and develop all coal, gold and iron mines; and shall also encourage and protect private mining enterprises" (Art. 35) was to be introduced. The government has the right to "control or regulate the production or sale as well as the market price of daily necessities of the people" (Art. 44), if it deems such is necessary. Strict supervision over all public and private educational enterprises by the state (Art. 49), with provisions for the enactment of laws under which all children were to receive free education (Art. 50). Illiterate

[10] See Appendix O.

adults were entitled to receive adult education if they so desired (Art. 51).

This Constitution provided for a centralized government, based on the principle of division of power outlined in the *Fundamentals of National Reconstruction* of Dr. Sun Yat-sen. The National Government shall exercise the supreme governing powers of the Republic (Art. 65), with reservations for the exercise of governing powers that are of a local nature. The Provincial Governments were permitted to attend to the administration of provincial affairs, only under direction of the National Government (Art. 78), since the organization of the Provincial Governments was to be determined by law under the National Government. Thus "all laws which are in conflict with this *Yüeh Fa* (Provisional Constitution) shall be null and void" (Art. 84). It is clear that the supremacy of the National Government was established as a result of the efforts of the Kuomintang in unifying the country and expressed in terms of law.

Because of the political instability of the country, then, these provisions, for the moment effective only upon paper, must be interpreted as aspirations rather than as codes of conduct. Nevertheless, it is to be admitted that the quality of the Constitution has been much improved in comparison with the previous ones. Other striking provisions included a labor-insuring system to furnish accident, sickness, disability insurance and old age pensions for workers were formulated.

This Provisional Constitution was to be the law of the land until it would be superseded by a permanent Constitution, when more than half of the Provinces have been adjudged sufficiently educated and qualified for self-government. During this political tutelage period, the National Congress of the Kuomintang was the supreme power in China, and the Central Executive Committee of the Kuomintang possessed the power to interpret the Provisional Constitution. While this Provisional Constitution was in force, the general organization of the government remained unchanged.[11]

The country was enjoying comparatively smooth sailing toward peaceful administration when the "Manchuria incident" occurred

[11] *New York Times*, 12 July 1931, 8.

in the same year. The immediate effect of this gave impetus to the constitutionalists to foster a constitutional government. At the same time, the growth of the national spirit produced consciousness of common aims and needs which could best be served by a strong and centralized government. Thus, many felt that a constitutional government instead of a party tutelage would be the best means of bringing about such a consolidation and unification.[12]

Since the unification of the country in 1927, the Chinese National Government has been working under two instruments, namely the Organic Law of 4 October 1928[13] and the Provisional Constitution of the National Government of the Political Tutelage Period, 1 June 1931.[14] The Organic Laws of the Chinese Government have undergone several revisions. The fourth revision took place on 17 November 1930, the fifth on 14 June 1931, the sixth on 26 December 1932, containing fifty-four articles. Under these Organic Laws, the President of the National Government has been treated as a titular head who does not assume actual political responsibility. Orders and mandates are signed by him, but they do not become effective until they are finally countersigned by the Presidents of the *Yuan* and the Ministers concerned. The determination of the National Government to inaugurate a constitutional government has found expression in the latest revision of the Organic Laws. On 10 September 1943, at a meeting of the Eleventh Plenary Session of the Fifth Central Executive Committee of the Kuomintang, Articles 8, 10, 11, 12, 14 and 15 of the Organic Law were revised as follows:

ART. 8. The National Government shall have under it the following five *Yuan* to exercise respectively the five political powers of administration, legislation, judiciary, examination and control: (1) the Executive *Yuan;* (2) the Legislative *Yuan;* (3) the Judicial *Yuan;* (4) the Examination *Yuan;* and (5) the Control *Yuan.* Each of the aforementioned *Yuan* may, according to law, issue orders.

[12] Mei Ju-ao, "Toward a Constitutional Government," in Chinese News Service, *China: After Five Years of War* (New York, 1942), 14-15. Mr. Mei is a member of the Legislative *Yuan.*

[13] See Appendix K.

[14] See Appendix L.

ART. 10. The National Government shall have a President and from twenty-four to thirty-six State Councilors appointed by the Central Executive Committee of the Kuomintang of China.

ART. 11. The President of the National Government shall be the Head of the Republic of China and shall represent the Republic of China in foreign relations.

ART. 12. The President of the National Government shall be the commander-in-chief of the land, naval and air forces.

ART. 13. The President of the National Government shall hold office for three years and he may be reappointed, provided, however, that after the enforcement of a permanent Constitution and upon the inauguration of the president elected he shall be relieved of his office. The State Councilors of the National Government shall hold office for the same duration. In case the President of the National Government is incapacitated by any cause, the President of the Executive *Yuan* shall act on his behalf.

ART. 14. All laws promulgated and all mandates issued by the National Government shall be signed by the President of the National Government according to law. Such laws promulgated and mandates issued shall be countersigned by President or Presidents of the *Yuan* concerned.

ART. 15. The Presidents and Vice Presidents of the five *Yuan* of the National Government shall be selected and appointed by the Central Executive Committee of the Kuomintang of China from among the State Councilors recommended by the President of the National Government. The President of the National Government shall be responsible to the Central Executive Committee of the Kuomintang of China and the Presidents of the five *Yuan* shall be responsible to the President of the National Government.[15]

According to the present Organic Law of the National Government, the President of the Republic is no longer a figure-head. He is the commander-in-chief of the land, naval and air forces. In foreign relations he represents the Republic of China.

After the Manchurian incident, a resolution was passed at the National Emergency Conference held in April 1942 at Sian to the effect that the Kuomintang should wind up its party rule as soon as possible. In the Third Plenary Session of the Fourth Central Executive Committee of the Kuomintang held in December of the same year, Dr. Sun Fo proposed that the party should

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[15] Chinese News Service, *Voice of China* (New York, 13 September 1943), 2.

endeavor to bring about local self-government within the shortest time in accordance with the *Fundamentals of National Reconstruction* of Dr. Sun Yat-sen and that, as soon as this should have been achieved, the People's Congress should be convened in order to adopt a permanent constitution for the country. The Kuomintang, accordingly, requested the Legislative *Yuan* to prepare a draft constitution.[16]

When Dr. Sun Fo assumed the presidency of the Legislative *Yuan* in January 1933, he appointed a Constitutional-Drafting Committee of forty-two with himself as Chairman and Dr. John C. H. Wu and Chang Chi-pen as Vice Chairmen. These jurists labored on the task and commissioned Dr. Wu to produce singlehandedly a draft based on the principles that the Committee set forth. This draft, consisting of 214 articles was published under his name with the authorization of the Committee in order to sound out public opinion regarding the constitution and to form a basis for the drafting of a permanent constitution.[17]

The Wu Draft was based on the *San Min Chu I* and its chapters are divided accordingly under the headings of Nationalism, Democracy and Livelihood. Part I contains general provisions and defines the Chinese Republic as a *San Min Chu I* Republic. Part II deals with the development and preservation of the Chinese nation. Part III deals with democracy, rights and duties of the people, People's Congress, system of central and local government. Part IV deals with the interpretation of the Constitution.

During the two and a half months that followed the publication of the Wu Draft, 281 articles containing opinions on the Draft were received by the Legislative *Yuan*. Dr. Sun Fo appointed a committee of three, Fu Ping-ch'ang, Lin Pin and Tao Li-hsien, to carefully analyze and classify these criticisms and opinions re-

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[16] Mei, *op. cit.*, 15. Also C. L. Hsia, "Background and Features of the Draft Constitution of China," *Information Bulletin*, 3 (Nanking, 1937), 200. Dr. Hsia was a member of the Legislative *Yuan* who helped to draw the 1936 Draft Constitution.

[17] A series of articles on the Wu Draft appeared in Yu Chung-chiu and Wu Ching-hsiung (ed.), *Selected Articles on the Constitution* (in Chinese, 2 vols., 2d ed., Shanghai, 1937). Cf. Paul M. A. Linebarger, *The China of Chiang Kai-shek* (Boston, 1941), 76.

ceived, which were later compiled into book form under the title, *The Compilation of Opinions on the First Draft of the Constitution*.[18]

With the John Wu draft and the public opinions evoked thereby, as a basis of discussion, a special Committee of Seven produced another draft consisting of 10 articles. It was published on 16 November 1933, and is generally known as the Preliminary Draft of the Constitution. The Constitutional Committee took over the matter and, after several months' study, a revised draft known as the First Draft consisting of 150 articles was produced on 23 February 1934. After the Draft had been revealed to the public for criticism, the Constitutional Drafting Committee was abolished. To continue the Committee's work, Dr. Sun Fo appointed a Committee of Thirty-six under the Chairmanship of Dr. Fu Ping-ch'ang. They felt that the task of drafting a constitution was not a mere academic achievement of a few scholars, but every citizen in the nation should participate in its making. Thus the work of the Committee was again prolonged, awaiting further criticisms evoked by the First Draft. Until the completion of the Revised First Draft, materials thus accumulated ran into several volumes, giving solid ground for the members to work on. The Revised First Draft contained 188 articles and was published on 9 July 1934.

This Revised First Draft was again submitted by the Committee of Thirty-six to the Legislative *Yuan* for general discussion. Dr. Wang Chung-hui, formerly Judge of the Permanent Court of International Justice at the Hague, also took part in the revision. The revision, known as the Legislative *Yuan* Draft[19] was passed by the Legislative *Yuan* on 16 October 1934, after three readings, and was sent to the National Government.[20] It was the first one passed by the Legislative *Yuan*, the previous drafts being the works of the Constitution Drafting Committee and special committees. It contained 178 articles.

The preamble begins by saying "By virtue of the mandate received from the whole body of citizens," etc. As in the previous

[18] Mei, *op. cit.*, 16.
[19] See Appendix N.
[20] Sun Fo, *op. cit.*, 185.

one (Political Tutelage Constitution, 1931), the Chinese Republic is a *San Min Chu I* Republic (Art. 1). The rights of the people are outlined as before, and provision was made for the organization and functions of the People's Congress. It regulates and apportions the number of delegates from each district, municipality, or area of equivalent status in the Provinces. The number of delegates from the border districts and from overseas Chinese groups was also to be fixed by it.

The Congress shall be convened once every two years, but the session shall last only one month, with the provision that it may be extended another month if necessary (Art. 31). The powers and functions of the Congress are to elect the President and Vice President of the Republic, the President of the Legislative *Yuan*, the President of the Censor *Yuan* (the Control *Yuan*), the members of the Legislative *Yuan* and the members of the Censor *Yuan*. Its powers may extend to the recall of the President and the Vice President of the Republic, the President of the Legislative *Yuan*, the President of the Judicial *Yuan*, the President of the Examination *Yuan*, the President of the Censor *Yuan*, the members of the Legislative *Yuan*, and the members of the Censor *Yuan*. The Congress may further initiate law, hold referenda on laws, amend the Constitution, and exercise such other powers as may be conferred by the Constitution (Art. 32). The power of the People's Congress is supreme, since the Presidents of the *Yuan* are responsible to it. Without the permission of the People's Congress, no delegate shall be arrested or detained during the session except when apprehended *in flagrante delicto* (Art. 34).

The head of the Central Government is the President of the Republic of China (Art. 36), who shall have the power to promulgate laws and issue mandates (Art. 37), command the armed forces of the country (Art. 38), declare war, negotiate peace and conclude treaties (Art. 39), grant amnesties (Art. 41), appoint and remove civil and military officials (Art. 42), but in the matter of promulgating laws and issuing mandates, the countersignature of the President of the *Yuan* concerned is required (Art. 37). In brief, he exercises the supreme executive power (Art. 44). Because the President is elected by the People's Congress, he is responsible to it (Art. 45).

Any Chinese citizen who has attained the age of forty is eligible for election to the Presidency of the Republic (Art. 46). But men in active military service, as before, are not permitted to run for this office unless they have first resigned or retired from service (Art. 47). Both the President and the Vice President are elected for a term of four years and may be elected for a second term (Art. 49).

The five-*Yuan* system is repeated in the Constitution and their functions, duties and powers are outlined. However, provision is made only for twenty Executive members in the Executive *Yuan*, who are to be appointed and removed by the President of the Republic (Art. 56). The Commissions and Ministries may exercise their respective powers (Art. 57); their Chairmen are also to be appointed among the Executive members and removed by the President of the Republic (Art. 58). The Executive *Yuan* is competent over these matters: statutory and budgetary bills to be submitted to the Legislative *Yuan;* bills concerning declaration of war and conclusion of peace; bills concerning important international affairs; matters submitted by the President and matters of common concern to the Ministries and Commissions (Art. 61).

The President of the Legislative *Yuan* and the entire number of members are responsible to the People's Congress (Art. 63). Both the President and the members of the Legislative *Yuan* shall hold office for four years (Arts. 66 and 69).[21] It is competent to decide on matters concerning legislation, budgets, declaration of a state of emergency, special pardons, declaration of war, negotiation of peace, conclusion of treaties and other important international matters affecting the state (Art. 64). The Legislative *Yuan,* after reconsidering a bill that has been withheld from promulgation by the President, may, by a vote of two thirds or more of its members present, cause the President to immediately promulgate the bill (Art. 71). Members of the Legislative *Yuan* shall not be held responsible for any opinion which may have been expressed within the *Yuan* concerning legislative matters and votes which they may have cast during the session (Art. 73).

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[21] The Organic Law of 1932 provides for a term of two years.

The Judicial *Yuan* is the supreme organ through which the Central Government exercises its judicial powers. It is competent to attend to all adjudications of civil, criminal and administrative suits and the discipline and punishment of public functionaries and judicial administration (Art. 77). The Judicial *Yuan* is headed by the President of the *Yuan,* who is appointed by the President with the advice and consent of the Legislative *Yuan*. He shall hold office for four years and is responsible to the People's Congress (Art. 78). Under the Judicial *Yuan* there is a Ministry of Judicial Administration and a Commission for Disciplinary Punishment of Public Functionaries (Art. 79). But the Chairman and members of these two subordinate organs shall be appointed and removed by the President of the Republic at the instance of the President of the Judicial *Yuan* (Art. 80). Matters concerning special pardons, remission of sentence and restoration of civil rights are to be submitted by the President of the Republic for action to the President of the Judicial *Yuan* (Art. 81). The Judicial *Yuan* is vested with the broad power to unify the interpretation of the statutes and ordinances (Art. 82). This power is similar to that which is being exercised by the Supreme Court of the United States. Judicial members shall have complete independence in the conduct of trials in all civil and criminal cases (Art. 83) and the various courts shall be established by law (Art. 85). In order to safeguard their security of independence of the other branches, the salary and office of the members of the Judicial *Yuan* are guaranteed by law (Art. 84).

The Examination *Yuan* is the highest organ through which the Central Government exercises its power of examination in the selection of its officials on a competitive basis (Art. 86). It may determine (Art. 90) the following qualifications concerning examination:

(1) For appointment as a public functionary.
(2) For candidacy to public office.
(3) For practice in specialized professions and as technical experts.

The President of the Examination *Yuan* shall be appointed by the President of the Republic with the advice and consent of the Legis-

lative *Yuan*. He shall hold office for a term of four years and shall be responsible to the People's Congress (Art. 87). In the Examination *Yuan* there shall be a Ministry of Public Service Registration and, when a public examination is held, an Examination Commission is to be established (Art. 88). Both the Minister of Public Service Registration and the Chairman of the Examination Commission are to be appointed by the President of the Republic at the instance of the Examination *Yuan* (Art. 89).

The Censor or Control *Yuan* is to be the highest censorial organ of the Central Government. It shall attend to impeachment cases and auditing and shall be responsible to the People's Congress (Art. 92). In the discharge of its censorial powers, it may interrogate the various *Yuan,* Ministries and Commissions (Art. 93). Members of the Censor *Yuan* shall be elected by the People's Congress for a term of four years, but they are first nominated by the delegates of the Provinces, Mongolia, Tibet and overseas Chinese citizens (Art. 96). All impeachment cases shall be brought up before the Commission of Disciplinary Punishment of Public Functionaries unless otherwise provided for by the Constitution; but impeachment against the President and Vice President of the Republic and the Presidents of the five *Yuan* shall be taken up by the People's Congress (Arts. 98-100). Just as the Legislative members are guaranteed their office and salary, the members of the Control *Yuan* are also protected from the invasion of the political department of the Government (Arts. 104 and 105). But they are not permitted to hold any other office concurrently (Art. 106).

The centralization of power of the government is expressed in the provisions contained in Article 108:

> In the Provinces, there shall be a Provincial Government which shall execute the laws and orders of the Central Government and supervise local self-government.

Here not only the supremacy of the National Government is well defined, but the division of powers between the Central and the various grades of governments is set clear. It is only natural then that the Provincial Governors are appointed by the Central Government (Art. 109).

With a slight deviation from the Provisional Constitution of 1931, this Draft Constitution makes it possible for service men to become eligible for Governorship, provided that they should have retired three years prior to their appointment (Art. 109). In each Province there shall be a Provincial Assembly, composed of members from various districts and municipalities to be elected by the Municipal Council. The powers and functions of the Provincial Assemblies correspond generally to those of the Legislative *Yuan* in regard to the Province (Arts. 110-112). The district is the unit of local self-government having jurisdiction over land, financial, cultural and cooperative enterprises, education, health, communications, census, police and public order (Arts. 115-116). The magistrate and other high district officials are to be elected by the citizens of the district, subject to the recall of the same. Similarly, the district council shall be elected by the citizens of the district in the General Meeting. Its functions and powers correspond much to those of the Provincial Assembly in regard to the affairs of the district concerned. From the district level, the citizens may exercise their power of initiative, referendum, election and recall. In the municipalities, unless specified by law, the provisions governing the self-government of the district shall apply *mutatis mutandis*.

The economic life of the people is also emphasized in accordance with the *Min Sheng Chu I* (Livelihood) of the Three Principles of Dr. Sun. It aims at the economic sufficiency and equality of the people by regulating the acquisition, distribution and development of land, the utilization for public benefit of subterranean minerals and natural resources and also the institution of a land-value-increment tax. The state then shall encourage, guide and protect the productive enterprise of the people and also foreign trade. But the state may at the same time regulate such enterprises when they are regarded as detrimental to the balanced development of the national economic life (Art. 135).

To improve labor conditions, relieve unemployment and increase productivity, the state shall enact and enforce labor laws and determine policies for the betterment of labor (Art. 138). Likewise, the state shall undertake the duty of improving farming, thereby

raising the living standard and efficiency of the farmers, by the employment of scientific farming (Art. 140). Furthermore, with the aim of developing a national spirit, cultivating a national morality and preparing the citizens for self-government and enabling them to earn a better livelihood, equal opportunity of education was guaranteed by the state (Arts. 143-144). In order to achieve this end, the public and private educational institutions are obliged to conform with the regulations and policies of the state (Art. 145). No less than thirty percent of the total amount of the provincial, district and municipal budgets respectively are to be appropriated for education. Moreover, the Central Government may subsidize the needy Provinces in matters of education and special funds for the same purpose are to be safeguarded by law (Art. 149). Teachers and administrative officers of educational institutions are also protected by provisions for adequate salaries and compensations plus retirement pensions (Art. 153).

Since the Central Government is supreme, the local governments are prohibited from collecting revenues and customs duties (Art. 160). Likewise, the armed forces are to be maintained, regulated and conscripted by the Central Government (Arts. 162-163). The President of the Republic shall have command of the armed forces, to be exercised in time of peace through the competent Ministry, but, in time of war, he shall appoint a commander-in-chief with the advice and consent of the Legislative *Yuan* (Art. 165). In spirit, this Draft remained substantially the same as the John Wu Draft. Instead of devising each fundamental principle of the *San Min Chu I* into chapters, as was the case in the John Wu Draft, it embodied the essence of the *San Min Chu I* within the articles. It was the foremost document ever produced since the founding of the Republic, for it not only takes care of the general rights and obligations between the Government and its people, it also touches on many points concerning the social and economic life of the nation.

Since the Kuomintang has been the party determining governmental policies, this Draft was submitted through the Central Government to the Central Political Council of the Kuomintang for consideration. Accordingly, it was referred to the Fifth Plenary

Session of the Fourth Central Executive Committee which met on 14 December 1934. It drew up certain norms and principles and referred the matter to the incoming Standing Committee of the Central Executive Committee. This Standing Committee, however, did not commit itself to revising the Legislative *Yuan* Draft but simply formulated some additional principles and instructions, which, together with the Draft, were returned to the Legislative *Yuan* for further study of the provisions. The instructions of the Standing Committee of the Kuomintang were:

1. The Draft Constitution of the *Chung Hua Min Kuo* (Chinese Republic) should be drafted in accordance with the Three Principles of the People of Dr. Sun Yat-sen, so as to establish a national state of the people, by the people and for the people.
2. It is necessary to scrutinize the precarious situation of the nation by establishing a system which would be able to achieve efficiency and centralization based on political experience.
3. The Central Government and the system of local self-governments should be defined and their organization should be defined by law.
4. For those provisions that should be included in the Constitution, but in actuality may not be enforced, or can not be executed uniformly throughout the country, the procedure of execution should be determined by law.
5. The Draft Constitution should not contain too many articles, and the words used therein should be clear and simple.[22]

The Legislative *Yuan*, upon receipt of the instructions from this Standing Committee, proceeded to revise the Draft once more.[23] While the Draft was under revision, it was suggested that a Committee possessing substantially the same prerogatives of the People's Congress should be stipulated in the Constitution to function during its adjournment. The reason for this suggestion was that the number of delegates to the People's Congress would be no less than 2,000 and it would be expensive and difficult to summon. The proposed Committee, it was suggested, would continue the functions of the Congress and might also exercise the four political

[22] Sun Fo, *op. cit.*, 186. Translation mine.
[23] *Ibid.*, 185.

powers—initiative, referendum, election and recall. Furthermore, it should consist of approximately 100 members, for it was contended that such a small number could be easily gathered. This was quickly rejected, because such a Committee would not be a competent organ to pass upon legislation and budgetary affairs.[24] Finally, at the completion of the revision, the document, consisting of 148 articles, known as the Legislative *Yuan* Revised Draft, was passed by the Legislative *Yuan* on 25 October 1935.

It was again submitted through the Central Government to the Central Political Council for consideration. When the Sixth Plenary Session of the Fourth Central Executive Committee met in November 1935, it decided to refer the Draft to the impending Fifth National Congress of the Kuomintang.[25] Accordingly, this National Congress of the Kuomintang met in November and, after due deliberation of the matter, empowered the incoming Fifth Central Executive Committee to decide the issue. In December, this Fifth Central Executive Committee met and appointed a Committee of Nineteen headed by Yeh Chu-tsang and Li Wen-fan to revise the Legislative *Yuan* Revised Draft, according to the various proposals passed by the National Congress. Twenty-three points[26] were recommended by this Committee of Nineteen which were adopted and, on 1 May 1936, the Final Draft was completed. It was proclaimed by the Central Government on 5 May known in China as the Double Fifth Constitution.[27]

It was originally intended to be submitted to the forthcoming People's Congress, which was supposed to convoke at the end of 1936.[28] But China's progress seemed to be an invitation to her

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[24] Dr. Sun Fo's speech on 8 October 1934 at a Memorial Service before high-ranking officials of the Central Government, *Central Daily News*, 9 October 1934.

[25] Sun Fo, *China's Future*, 186.

[26] Chu Yu-k'un, *Outline of Chinese Constitution* (in Chinese, Shanghai, 1937), 129-31.

[27] See Appendix O.

[28] In a speech delivered before the People's Political Council in April 1940, Dr. Sun Fo gave a concise resumé of the Draft Constitution of 5 May 1936. See Committee on Publicity of the Draft Constitution of the Legislative Yuan, A *Comprehensive Explanation of the Draft Constitution of the Republic of China* (in Chinese, Chungking, 1940), 161-66.

neighbor, Japan to attempt by every unscrupulous method to disintegrate China politically as well as territorially. A series of military operations had taken place since the "Manchurian incident" of 18 September 1931. The original plan of convening the People's Congress was shattered to pieces, however, when the first Japanese cannon rumbled over the famous Marco Polo Bridge twenty miles from Peiping.

CHAPTER IV

The Five-Power Constitution

As the national crisis grew tenser, the conviction of the Chinese people became stronger that the salvation of the nation lay in the *San Min Chu I*. They realized then, as they do now, that internal regeneration depends on China's external security. Thus, amidst the incessant crises in North China between 1931 and 1936, especially during the creation of the puppet regimes in East Hopei and North Chahar, the entire population was conscious of China's position. It was urged that, in order to save the country, the people must endeavor to bring about spiritual regeneration and material reconstruction. National consciousness had fully brought home again to them the conviction that China must be strongly unified and that this might be accomplished by the introduction of a permanent constitution. Thanks to the keen statesmanship of her leaders, China was able to produce a Constitution appropriate to her national needs.

Although the Final Draft of the Legislative *Yuan* was shelved when the war started, yet its importance must not be overlooked, for this document was to serve as a basis of discussion during the forthcoming People's Congress at the end of 1936. It would not only be binding on a people embracing one fifth of the population of the world, but the effect of its adoption would inevitably have repercussions upon world peace and thus upon the welfare of the entire human race. As Linebarger comments—

> Nowhere in China is there outright denial of a need for constitutional change. The need exists; the Double Five Draft 5 May 1936 Constitution is the government's answer.[1]

Since the various drafts of the Legislative *Yuan* had to be submitted to the Kuomintang for its concurrence, the Constitution

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[1] Paul M. A. Linebarger, *The China of Chiang K'ai-shek: A Political Survey* (Boston, 1941), 31.

was naturally permeated with the political teachings of the late leader, Dr. Sun. The Preamble reads:

By virtue of the mandate received from the whole body of citizens and in accordance with the bequeathed teachings of Dr. Sun, Founder of the Republic of China, the People's Congress of the Republic of China hereby ordains and enacts this Constitution and causes it to be promulgated throughout the land for faithful and perpetual observance by all.[2]

Again, Article 1 reads:

The Republic of China is a *San Min Chu I* Republic.

Another distinctive characteristic of the Constitution is its provision regarding the separation of the powers. In Dr. Sun's teachings the principle of Five-Power Government was everywhere emphasized. According to Dr. Sun, there are two kinds of power: the governing power and the political power. This is based on his doctrine of *Ch'uan* and *Neng,* which is well described by Tchang Chan-yuen as follows:

Cette méthode sépare les membres dans l'Etat comme dans la société en deux parties, l'une à la tête du pouvoir, mais non puissance, l'autre, au contraire, ayant la puissance, mais sans pouvoir; comme dans une société ordinaire, le membre qui a le pouvoir est le patron, celui qui a la puissance est le directeur de l'usine qui surveille les ouvriers au travail; le patron ne peut faire dela, mais il a le pouvoir de nonmer ou de révoquer le directeur. De meme dans l'Etat, le peuple a le pouvoir de nommer ou de révoquer les personnages composant le gouvernement, mais il ne peut administrer l'Etat lui-même; le gouvernement tout puissant peut tout administrer, mais il n'a pas le pouvoir.

Pour l'application de cette méthode sur la séparation du pouvoir et de la puissance, il faut construire une nouvelle machine politique, machine matérielle en quelque sorte, car nous l'avons vu dans la définition de la politique (*Tchian Tsé*); *"Thian"* "les affaires publiques" la grande force qui réunit toutes les affaires publiques s'appelle "pouvoir de gouverner" qu'on peut appeler aussi "pouvoir du peuple"; *"Tsé"* c'est administrer, la grande force qui réunit l'administration des affaires publiques s'appelle "pouvoir administratif" qu'on peut appeler aussi "pouvoir du gouverne-

[2] See Appendix O.

ment"; donc la politique comprend deux forces: le pouvoir de gouverner et le pouvoir administratif; l'une consiste à contrôler le gouvernement, l'autre à exercer le gouvernement lui-même. (Sun Yat-sen veut dire ici que la première force est le pouvoir, la deuxième la puissance.)

C'est comme une grande machine de 100,000 chevaux par exemple; telle est la force de la machine elle-meme; mais pour mettre cette force de la en mouvement ou arreter, il en faut une autre qui la dirige, c'est le frein; s'il n'y a point de frein, on ne saurait se servir de cette grande machine, puisqu'on ne pourrait la diriger; de meme le gouvernement dans la force de gouverner represente le pouvoir administratif; l'autre la force qui diriger ce gouvernement est le pouvoir de gouverner.[3]

To distinguish between these two powers, the power to govern and the power of government, Sun Yat-sen proposes a division of their exercise. To the statesmen belongs the power of government, comprising five powers, namely, the executive power, the legislative power, the judicial power, the power of control and the power of examination. To the people belongs the power to govern or political power with four rights, namely, the right of suffrage, the right of recall, the right of initiative and the right of referendum. It is upon this theory that the government is organized and the Draft Constitution drawn. In order to exercise the five governing powers, the Executive, Legislative, Judicial, Control and Examination *Yuan* are formed.

The Executive Yuan

The formation of the Executive *Yuan* may be traced back to the Second Central Executive Committee of the Kuomintang in its fifth Plenary Session, in which it passed the resolution to the effect that the five *Yuan*, as prescribed in Dr. Sun's *Fundamentals of National Reconstruction*,[4] should be established. But the Fourth Central Executive Committee revised the Organic Law at its Plenary Session on 26 December 1931.[5] Under this new set-up,

[3] Tcheng Chao-yuen, *L'évolution de la vie constitutionnelle de la Chine sous L'influence de Sun Yat-sen et de sa doctrine, 1885-1937* (Paris, 1937), 47-48.

[4] See Appendix H.

[5] See Appendix M.

the pattern bore considerable resemblance to a cabinet. The President of the Central Government is the titular head and, prior to the adoption of a permanent Constitution, the Executive *Yuan* is responsible to the Central Executive Committee of the Kuomintang. It is the highest organ through which the Central Government exercises its executive powers. Its President and Vice President, together with a number of state Councilors and heads of various Ministries and Commissions[6] are to be appointed and removed by the President of the Republic, to whom they are individually responsible. Functionally, these Ministers resemble the Cabinet of the United States. Within the Executive *Yuan* there is the Executive Council, composed of the President, the Vice President of the *Yuan* and the Executive members of the Executive *Yuan*. This Council is somewhat similar to a cabinet in other governments inasmuch as the Constitution contemplates a number of members better known to other countries as ministers without portfolio. The President and Vice President of the Executive *Yuan* may concurrently assume the office of a Minister or Chairman of a Commission.

The *Yuan* is charged with administrative duties. It may, however, discuss matters concerning legislation, budget, general amnesties to be introduced before the Legislative *Yuan*. Likewise, bills concerning declaration of war, negotiation of peace and conclusion of treaties and a state of emergency are submitted to the Legislative *Yuan*. It is also competent to settle questions, differences arising out of its various constituent ministries and commissions. Moreover, the Provincial Governments, the municipal governments and special municipalities are under the direct supervision of the Executive *Yuan*.

Even until the late revision of the Organic Law by the Central Executive Committee's Plenary Session on 10 September 1943,

[6] At present the Executive *Yuan* has eleven Ministries, four Commissions and two Administrations. They are: Interior, Foreign Affairs, Military Affairs, Finance, Education, Communications, Economic Affairs, Agriculture and Forestry, Social Affairs, Food, and Justice; Mongolian and Tibetan Affairs Commission, Overseas Chinese Affairs Commission, National Relief Commission, National Conservation Commission; National Health Administration, National Land Administration.

mandates and orders of the President of the Republic still have to be countersigned by the President of the Executive *Yuan* and the other Presidents of the various *Yuan* concerned. The President of the Executive *Yuan,* when issuing orders and acts affecting the general administrative matters, must also seek the countersignatures of the entire body of Ministers before they could become effective. But when the measure affects only one Ministry it only requires the countersignature of the Minister concerned. The organization of the Executive *Yuan* shall be determined by law.

The eminent jurist, Dr. Wang Chung-hui, comments:

> . . . the Executive Yuan is the sole directing and co-ordinating factor in the entire executive machinery, both at the seat of the National Government and in the provinces.
>
> In short, its *raison d'etre* is to insure the smooth working of the exective machinery so that the administrative measures and reconstruction plans of the Government may be realized throughout the land with maximum efficiency and minimum wastage. The stupendous character of this task becomes apparent when one visualizes the vast distances of China, the extreme heterogeneity of conditions prevailing in different provinces and the variety, magnitude, and complexity of the problems involved in China's progress toward modern statehood.[7]

THE LEGISLATIVE YUAN

Article 19 of the *Fundamentals of National Reconstruction*[8] provided that, at the beginning of the constitutional period, the Central Government should establish its five *Yuan* in order to exercise its governing powers. Article 32 of the Provisional Constitution of the Central Government for the Period of Political Tutelage of 1931[9] provided that "The National Government shall exercise the five governing powers, namely, executive, legislative, judicial, examination and supervisory." Again, Article 71 of the same Constitution provided that the Central Government shall

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[7] Wang Chung-hui, "Executive Yuan," *The Chinese Year Book* (1937 issue) (Shanghai, 1937), 152-53.

[8] See Appendix H.

[9] See Appendix L.

establish the said five *Yuan* and the various Ministries and Commissions. The Organic Law of 4 October 1928[10] further provided that "The Legislative *Yuan* shall be the highest legislative organ of the National Government" (Art. 25). Based on these provisions, the Legislative *Yuan* was established on 5 December 1928. It exercises the highest legislative power of the Central Government; but it can not enact laws independently of the other divisions of the government.[11] It decides on matters concerning legislation, budget, a state of emergency, special pardons, declaration of war, conclusion of peace, negotiation of treaties and other important international affairs. However, unlike the legislature of some countries, the Legislative *Yuan* is not a policy-making body. In treaty making, the Legislative *Yuan* is a deliberating body, rather than a negotiating body. In discharge of its duties, the Legislative *Yuan* may interrogate the various *Yuan,* Ministries and Commissions. This is somewhat similar to the investigation power of the legislature of the United States and other democracies. In amplifying the interrogation power of the Legislative *Yuan,* a Chinese jurist writes:

> It is true that members of the Legislative Yuan have the right to interrogate heads of the executive branch of the government. But it is doubtful whether the interrogation or interpellation will have the same serious consequence as interpellation in the French and Italian chambers. It may be also safely predicted that this right of interpellation will not be so freely exercised as in the British House of Commons.[12]

The President and Vice President and members of the Legislative *Yuan* shall be elected by the People's Congress for a term of three years. (Art. 31 of the Organic Law of 1932 gives only two years of office to the members, with the provision that they may be reappointed.) But the candidates need not be delegates themselves. Another feature concerning the members of the Legis-

[10] See Appendix K.

[11] Article 69 provides: "The Executive *Yuan,* Judicial *Yuan,* Examination *Yuan,* and Censor *Yuan* may submit to the Legislative *Yuan* measures concerning matters within their respective jurisdiction." See Appendix O.

[12] C. L. Hsia, "Background and Features of the Draft Constitution of China," *Information Bulletin,* vol. III, no. 10 (Nanking, 1937), 214.

lative *Yuan* is that they not only may hold other public offices, but they are prohibited from engaging in other businesses or professions (Art. 74). This is, perhaps, a precaution in the direction of avoiding favorable legislation concerning their particular interests, should the members engage in other businesses. But the wording of this provision should be a little more flexible, since members of the Legislative *Yuan* are denied all other professions and business. It may be justifiable that they be not allowed to engage in industries of a monopolistic type; however, it should at the same time make it possible for them to engage in technical fields, such as professors of universities, technical advisors to cultural institutions and other public welfare organizations.

The President of the Republic shall promulgate all measures presented by the Legislative *Yuan* within thirty days after their receipt (Art. 71). He may request the Legislative *Yuan* to reconsider the measure before its execution or promulgation, but, if the latter confirms the original measure by a vote of two thirds or more of the members present, the President shall immediately promulgate the measure, unless the bill is of great importance, as in the case of making of laws, conclusion of treaties, in which case he may refer it to the People's Congress (Art. 70).

Lastly, the Legislative *Yuan* enjoys practically all the powers and privileges generally possessed by legislatures in other countries. Members are accorded the usual privileges and immunities, as has been the practice since the parliamentary system in China began in its early stages. They may not be held responsible outside of the *Yuan* for opinions that they may have expressed and votes they may have cast and they may not be arrested nor detained except when apprehended in *flagrante delicto* (Arts. 72, 73).

THE JUDICIAL YUAN

The Judicial *Yuan* is the highest organ through which the Central Government exercises its judicial power. It attends to the adjudication of civil, criminal and administrative suits and judicial administration. But matters concerning special pardons, remission of sentence and restoration of civil rights shall be submitted to the President of the Republic by the President of the Judicial

Yuan in accordance with law. It has the special function of unifying the interpretation of statutes and ordinances. The term of office of the President and Vice President of the Judicial *Yuan* is fixed at three years; they are to be appointed by the President of the Republic, but are responsible to the People's Congress. Protection of the judicial members is assured by Article 81. They may not be removed from office unless they have been subjected to criminal or disciplinary punishment or declared an interdicted person. They may not be suspended or transferred or have their salaries reduced except in accordance with law. Finally, the organization of the Judicial *Yuan* and the various courts of justice shall be determined by law.[13]

THE EXAMINATION YUAN

China's traditional belief that government servants are best recruited by means of competitive examination may be traced back to the *Tang* and *Yu* eras (2260-2270 B.C.).[14] The old examination system proved to be a failure because it was conducted and based on the literary ability or achievements alone. Dr. Sun Yat-sen realized that such system should not exist unless the method and theory of it be entirely changed. But it is interesting to note that the system of control and examination has never been placed under the direct authority of the Emperor. Dr. Sun had always thought that the examination agency of the government should be separated from the other branches. In other countries, such as the

[13] As of June 1936, there were 398 courts in China: 1 Supreme Court, 23 high courts, 74 branch high courts, 222 district courts, 69 branch district courts and 9 subdivisional courts. Since 1935, in order to facilitate the enforcement of the system of three-grade courts, district courts have been reorganized and new branch high courts have been established. The Judicial *Yuan* is made up of four establishments: Supreme Court, Administrative Court, Commission for the Disciplinary Punishment of Public Functionaries, and the Ministry of Justice. See *China Year Book, 1936-37* (Shanghai, 1937), 293. Hsieh Kuan-Sheng, "Judicial Yuan," *The Chinese Year Book, 1937* (Shanghai, 1937), 180-227, with tables and statistics.

[14] An excellent presentation of the history of the examination system is in Chen Ta-chi, "Examination Yuan," *The Chinese Year Book, 1936-37* (Shanghai, 1936), 348-362.

United States, the civil service system is directly under the authority of the Executive. In living up to the traditional practice the Examination *Yuan* therefore is established independently of the other departments of the Chinese Governments so as to be free from unjustifiable interference, particularly of the Executive. According to the Draft Constitution of 5 May 1936, the Examination *Yuan* is the highest organ through which the Central Government exercises its examination powers in the recruitment of civil servants. Thus its function is to select civil candidates by examination and to register persons who are qualified for public service. The President and Vice President of the Examination *Yuan* are appointed for three years by the President of the Republic, but they are responsible only to the People's Congress. Like the other *Yuan,* the organization of the Examination *Yuan* shall be determined by law.[15]

THE CONTROL YUAN

The traditional practice of censorial control of the Government may be dated back to the Chou Dynasty (1012-225 B.C.) and the general foundation of its organization in the Tsin (255-206 B.C.) and Han (206 B.C.-219 A.D.).[16] Dr. Sun had always advocated that China should retain the practice of censorial control, exercised by a separate government agency. In other countries the power of impeachment is generally vested in the legislative branch. To him such power should be independent. It was not until 1 August 1925 that the Control *Yuan* was formally inaugurated under the Government of Sun Yat-sen, in Canton.[17]

The Control *Yuan* (the Censor *Yuan*) is the highest organ through which the Central Government exercises its censorial powers. Thus its chief function is to attend to impeachment,

[15] The Examination *Yuan* is composed of two main divisions: the Examination Commission and the Ministry of Personnel. Shih-Ying, "*Examination Yuan,*" *op. cit.*, 238-246. See also The Chinese Ministry of Information, *China Handbook, 1937-43* (New York, 1943), 95.

[16] E. C. Tang, "Control Yuan," *op. cit.*, 228.

[17] Chien Chih-shiu, "Control Yuan," *Chinese Year Book, 1936-1937* (2d is., Shanghai, 1936), 338.

discipline and punishment of public functionaries. Just as the Legislative *Yuan* is vested with the power to interrogate the various *Yuan,* Ministries, Commissions or Boards, in the discharge of its duties wherever necessary, the Control *Yuan* may also interrogate the other public functionaries. But when an impeachment is instituted against the President or Vice President of the Republic or the Presidents or Vice Presidents of the Executive *Yuan,* the Legislative *Yuan,* Judicial *Yuan,* Examination *Yuan* or Control *Yuan,* it shall be brought before the People's Congress to decide whether the impeached should be removed from office. In the case of an impeachment instituted against a public functionary in the Central or local government, the proposal of only one or more members and the endorsement, after due investigation, of five or more members is necessary. Impeachment against the President or Vice President of the various *Yuan,* the proposal of ten or more members and the endorsement, after investigation, of one half or more of the members of the entire *Yuan* are required.[18] The Control *Yuan* usually exercises the impeachment power except when a member of the Control *Yuan* is found guilty of violating law or of dereliction of duty. In such case, the impeachment will be instituted by the Legislative *Yuan* instead of by the Control *Yuan.*[19]

Since the members of the Control *Yuan* are elected by the People's Congress from candidates separately nominated by the delegates of the various provinces, whose discharge of duties requires impartiality, adequate protection and privileges are accorded to them. Thus members of the Control *Yuan* may not be held responsible outside of the *Yuan* for opinions they may have expressed or votes they may have cast while discharging their duties. They may not be arrested or detained except when apprehended in *flagrante delicto.* Yet in such a case, the permission of the Control *Yuan* is required. In order to safeguard the interest of the people, members of the Control *Yuan* are not permitted to hold concurrently any other public office or engage in any other busi-

[18] The Members of the Control *Yuan* numbered from 29 to 30.

[19] Article 29, Rules of Legislative Procedure. For details of its work, see *China Handbook,* 97-98.

ness or profession. They shall not be charged with neglect of duty except when they are proved to have received bribes, to have purposely failed to impeach officials who should have been impeached or to have knowingly proposed impeachment on false grounds.[20]

When a public official violates the law or abuses his office, any member of the Control *Yuan* may introduce an impeachment bill accompanied by relevant documentary statement and evidence which shall be examined by three other members of the Control *Yuan* to be designated by the President of the *Yuan*. When the majority of them agree on the charge, the person accused is to be punished. If the majority of the three deem the person is innocent and if the supervisory members who bring forth the charge disagree, the case may be reviewed by another five members appointed by the *Yuan*. But the President of the *Yuan* has no right to interfere with the final decision whatsoever.[21]

What makes the members powerful is that their impeachment charges may be solely based on their own information, or on information supplied by the people. In order to effectuate this, a special office is set up to receive such petitions and reports from the people. In serious cases which necessitate immediate redress, the *Yuan* may simultaneously send the impeachment charges to the proper disciplinary organs and notify the heads of government departments concerned to take immediate measures, such as correcting the conduct of the officials concerned or by temporarily removing them from office. If the responsible officials fail to take these measures, they will also be subject to punishment.

The Control *Yuan* may request the files and records kept by the other government agencies in which the official charged with crime functions. The courts are obligated to cooperate with the Control *Yuan* in the finding of evidences.

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[20] Chien, "Control Yuan," *op. cit.*, 340.

[21] Between July 1937 and August 1942, 433 persons were impeached in 255 cases. Petitions received from the people concerning alleged breaches of the law and dereliction of duty by public functionaries numbered 6,872 in the same period. See "Impeachment of Public Functionaries; Work of the Control Yuan," *China at War*, vol. X, no. 5 (May 1943), 23. Also *China Handbook*, 99.

The role of the Control *Yuan* has been increased in its importance since the war. Three additional powers have been added: accusing, proposing and inspecting.[22] When a supervisory member finds an official delinquent in his duties and if he deems it serious enough to bring forth a charge, he may send a written accusation to the President of the Control *Yuan*. If the President of the *Yuan* approves it, the accusation is sent to the immediate superior of the official accused requesting his dismissal. If the charge is a serious crime, adequate punishment will be provided for in accordance with law. The supervisory member, moreover, may propose certain measures in connection with the conduct of government officials and to inspect the government agencies with a view of increasing efficiency. However, it should be understood that these powers are persuasive rather than compulsory and therefore carry no legal force. The Control *Yuan,* it is to be emphasized, deals with the misdemeanors of and complaints against officials, rather than by analogy with the practice of *droit administratif* and the administrative tribunals in certain countries as in those of France or the United States.

Finally, the auditing power of the Control *Yuan* deals with the supervising and the execution of the budget, examining all orders for receipts and reimbursements, auditing final accounts and investigating illegal and disloyal behavior in connection with financial matters.

NATIONAL ECONOMIC LIFE

A careful examination of the pre-World War I constitutions of the various countries discloses that they were more political in nature than social in spirit. These constitutions mostly dealt with natural rights of the people and the general organization of the government. But after the World War, especially after the Soviet Constitution of 10 July 1918,[23] the world began to see to it that

[22] The *Yuan* has divided the country into 16 districts, each to be conducted by a supervisory commissioner. As of May 1943, 10 of such supervisory districts have been established. *China Handbook,* 97.

[23] Rao, *op. cit.,* 253-269.

the national economic life of the country and the social security of the people should be provided for in the constitution.

In the Draft Constitution of the Chinese Republic of 5 May 1936, a special chapter is devoted on the national economic life of the country based on the *Min Sheng Chu I* (Principle of Livelihood) of Dr. Sun Yat-sen.

Dr. Sun's theory of livelihood may be divided into two fundamental aspects: (1) equalization of land; (2) control of capital. The contention has been that inequality of economic organization lies in the fact that the ownership of land is controlled by the few. Consequently, the state should prescribe the law of land, the law for the utilization of land, the law of the taxation of land and the law for the taxation of the value of land. In order to achieve this end, private landowners are obliged to declare the value of the land to the Government, which shall tax it in accordance with the value so declared, with the option of buying it at that price in case the owner intentionally deceives the Government.

Following up this theory, private industries, whether of Chinese nationals or of foreign nationals, which are of a monopolistic nature or beyond the capacity of private individuals to develop, such as banking, railways and navigation, shall be undertaken by the state, so that the private-owned capital may not control the economic life of the people. Moreover, the poor peasants who have no land and those who have fallen into the status of mere tenants shall be given land by the state, so as to open up the power of production of land. Consequently, peasants who have no capital will be financed by the state with credit by the establishment of rural banks. The livelihood of the laborer class will be taken care of by the state; likewise, the sick, invalid and unemployed are to be adequately cared for by the state.

Dr. Sun thought that a country as vast as China and with all her traditional characteristics, economically is not able to accept the *laissez-faire* theory of freedom based on natural law, and that the class consciousness and regimentation of Communism should not take root in China. His Principle of Livelihood is the medium between extreme individualism and extreme socialism. Thus, "The economic system of the Republic of China shall be based upon

the *Min Sheng Chu I* and shall aim at national economic sufficiency and equality" (Art. 116) and the state may "regulate private wealth and enterprises when such wealth and enterprises are considered detrimental to the balanced development of national economic life" (Art. 121). It claims all subsoil natural resources, regardless of surface ownership (Art. 118).[24] In order to prevent unfair practices in industries, "All public utilities and enterprises of a monopolistic nature shall be operated by the state, except in case of necessity, when the state may especially permit private operation" (Art. 123). In the interest of the people, the state may enforce labor protective policies, improve rural economic and living conditions and increase farming efficiency by employment of scientific farming (Arts. 124-126).[25] To many, such provisions would open the road to totalitarianism, for private enterprise may be denied and liberty and democracy may be sacrificed.

It should be remembered that in China, as well as in many other countries, in fact in all societies, some common good can be effectuated only by joint action and therefore by the state. Inevitably, a great part of the capital going into the postwar reconstruction will have to be borrowed either by the state or by private corporations underwritten by the state, and the Chinese Government, therefore, will certainly have to take a greater responsibility in the economic field for the following reasons:

(1) Because of the vast size of the population involved, industrialization, accompanied by the modernization of agricultural methods, will have to proceed at a much more rapid speed.

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[24] Cf. Art. 155, par. 4, of the German Constitution of 11 August 1919, McBain and Rogers, *op. cit.*, 206; Rao, *op. cit.*, 237; and Art. 27, par. 4, of the Mexican Constitution of 31 January 1917, H. N. Branch (tr.), *The Mexican Constitution of 1917 Compared with the Constitution of 1857* (Washington, 1926), 17.

[25] On the general agricultural conditions in China, see Lo Wan-sen, *Probleme der Agrarkreditpolitik in China* (Würzburg, 1941); Han Wenton, *Le crédit agricole en Chine et les Amendements proposés* (Nancy, 1936); Chin Kuo-chun, *L'enseignement agricole et rural en Chine* (Paris, 1937); Rui Feng, *A Program of Chinese Agriculture* (New York, 1924); Tsai Piao-chao, *A Statistical Study of Crop Yields in Twelve Provinces in China* (New York, 1933); George B. Cressey, *China's Geographic Foundations: A Survey of the Land and Its People* (New York, 1934).

(2) The bigness and complexity of modern industry make it inevitable that it can not proceed with as little relations to the Government as it has in the past.

(3) It is easier for the Chinese Government to mobilize capital in larger amounts (as, for instance, by taxation, loans, bonds, etc.) in any large project, for, in the case of foreign investments, the private industrialist or banker will want some assurance that the capital invested will not be lost and, if political or economic conditions caused the loss, governmental guaranty would give greater assurance.

The Chinese Government would not regulate private industries, if they are not of a monopolistic nature. Similar trends are being developed in the United States and in Mexico, England and other European countries. Modern government, while accepting democracy, simply can not ignore economic inequalities. The Constitution does not deny individual initiative in economic activities, except that such activities must not be detrimental to the balanced economy of the nation. Within the realm of the *Min Sheng Chu I* the people are free to engage in all enterprises. The state stimulates and encourages private enterprises, because it realized that, after all, the ultimate aim of the *Min Sheng Chu I* is to raise the standard of living of the teeming millions and to bring the economic level of every citizen up to the maximum prosperity. Without an adequate economic base, national reconstruction will have no way to start. Future Chinese constitutional lawyers, therefore, should realize the conditions of their own country and, let us hope, when the war is over, the people will enjoy the protection of their interests under the supreme law of the land.[26]

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[26] The realization of this theory, however, is only putting the traditional belief of the people into practice. In fact, the sense of responsibility of striving for social welfare for the people has been demonstrated by the professed saying of the Chinese people and their earlier political thinkers: "feel responsibility for the hunger and drowning we see around us"; "To regard people as brothers and fellow-creatures as companions"; "A scholar should be ahead of the world in its sorrows and behind it in its joys." What Mencius said: "The people count for most, the state counts for less and the king least of all" and the many passages in the *Shih Chi* (The Book of History) essentially mean *vox populi, vox dei.*

EDUCATION

The importance of providing an equal opportunity of education for the Chinese people was first expressed in the Provisional Constitution of the National Government for the Political Tutelage Period of 1 June 1931,[27] although the Drafting Committee had made efforts to incorporate such provision without success because of the limited time available under the circumstances. In many other countries, provisions concerning education have been included in their constitutions. Prior to World War I, the French Constitution of 3 September 1791, establishing a limited monarchy, may be regarded as a forerunner in this respect. After the War, the first country to incorporate the provision on education in its Constitution was Germany.[28] Provisions concerning education were included in the Constitution of 17 July 1919 of Finland (Arts. 71-82),[29] the Constitution of 29 February 1920 of Czechoslovakia (Arts. 119-120),[30] the Constitution of 15 June 1920 of Estonia (Art. 12),[31] the Constitution of 17 November 1920 of Danzig (Arts. 100-107),[32] the Constitution of 17 March 1921 of Poland (Art. 94),[33] the Constitution of 28 June 1921 of Yugoslavia (Art. 16),[34] the Constitution of 1 August 1922 of Lithuania (Arts. 81-82 and 100)[35] and the constitutions of other states.[36]

China, in order to live up to the political principles of Dr. Sun, adapted the *San Min Chi I* as the underlying principle on which national education is to be based. Although there is no explicit statement to this effect in the Draft Constitution of 5 May 1936, yet its spirit is substantially the same. Thus—

> The educational aim of the Republic of China shall be to develop a national spirit, to cultivate a national morality, to train

[27] See Appendix L.
[28] Arts. 142-150, McBain and Rogers, *op. cit.*, 204-205; Rao, *op. cit.*, 235.
[29] McBain and Rogers, *op. cit.*, 482-483.
[30] *Ibid.*, 333.
[31] *Ibid.*, 456.
[32] *Ibid.*, 445-446.
[33] *Ibid.*, 418.
[34] *Ibid.*, 352.
[35] Malbone W. Graham, *New Governments of Eastern Europe* (New York, 1927), 731 and 733.
[36] Egypt, Greece, Portugal, Rumania, Spain and Turkey.

the people for self-government and to increase their ability to earn a livelihood, and thereby to build up a sound and healthy body of citizens.[37]

Provisions of such a nature incorporated in the constitutions of states have not been rare. The French Constitution of 1791 had such a provision. The German Constitution of 11 August 1919 provided (Art. 148):

> In all schools effort shall be made to develop moral education, civic sentiments, and personal and vocational efficiency in the spirit of the German national character and of international conciliation.[38]

The Chinese Constitution of 1936 guarantees every citizen of the Republic an equal opportunity of receiving education (Art. 132). Fifteen percent of the national peace-time budget and thirty percent of the provincial and district budgets shall be spent on education, respectively (Art. 137). Children between six and twelve years old shall receive elementary education free of tuition (Art. 134)[39] and persons over school age who have not received an elementary school education shall have the privilege of re-receiving supplementary education free of tuition if they so desire (Art. 135). This is altogether more important than any other article concerning education, because China's democratic future depends much on how well the people will be educated. Moreover, special consideration is given to the needy universities and technical schools[40] and localities, so as to afford the people an equal opportunity of receiving higher education. This will be a formidable task for postwar China to meet, yet this provision will strengthen China's democratized and class-less social structure.

LOCAL GOVERNMENT

The system of the Chinese Government may be divided into two main strata, the Central Government and the Provincial

[37] See Appendix O, Art. 131. The Sixth National Congress of the Kuomintang Party relinquished all party organizations within schools in May, 1945.

[38] McBain and Rogers, *op. cit.*, 205; Rao, *op. cit.*, 235.

[39] Cf. Art. 145 of the German Constitution of 1919, McBain and Rogers, *op. cit.*, 203; Rao, *op. cit.*, 234.

[40] Cf. Art. 82 of the Lithuanian Constitution of 1922, Graham, *op. cit.*, 731.

Governments. Thus, Article 98 of the Draft Constitution of 5 May 1936 provides that—

> In the Province, there shall be a Provincial Government which shall execute the laws and orders of the Central Government and supervise local self-government.

This simply means that the Provincial Governments are subordinate branches to the Central Government, having no sovereignty in themselves. The Governors are to be appointed for a term of three years and are removable by the Central Government. Provincial Assemblies are composed of representatives from each district or municipality to be elected by the district or municipal council. Members of the Provincial Assemblies shall hold office for a term of three years and are eligible for reelection (Art. 100).

The Draft Constitution defines that the district (*hsein*) is a unit of local self-government. When the political tutelage period ends, the districts will hold their primary elections. The test of the capability of self-government of the people begins with this unit. They may fully exercise their political rights, referendum, initiative, recall and election. Article 104 provides that—

> All matters which by nature should be dealt with locally shall be matter for local self-government.

It is necessary to point out that this provision does not mean the division of sovereign powers between the Central Government and the local governments. Unlike the Government of the United States, the Central Government of the Chinese Republic is supreme in every respect and there is no enumeration of powers to limit or restrict its action. In other words, the Constitution simply gives an equal opportunity to all citizens to exercise their political rights and practice local self-government.

In each district there shall be a district council whose members shall be directly elected by the citizens in the district general meeting. These members shall hold office for a term of three years with the provision that they may be reelected (Art. 106). The district government is headed by the district magistrate who shall be elected by the citizens of the district general meeting, shall hold office for three years and shall be eligible for reelection. The

magistrates must take their civil service examination under the supervision of the Examination *Yuan* of the Central Government. They shall be charged with the duty of administering the affairs of the district in accordance with the principles of self-government. Under the direction of the Provincial Governor, the magistrate shall execute matters assigned to him by both the Central and the Provincial Governments (Art. 109).

The Constitution lays special emphasis on the fact that any district law in conflict with the laws and ordinances of the Central Government shall be null and void. This provision, together with Article 98, definitely establishes the supremacy of the Central Government. In order to increase the efficiency of the local government, it is necessary to thoroughly revise a balanced plan for local self-government, especially the reorganization of those various grades of local self-government below the district government level.

The plan worked out by Generalissimo Chiang and promulgated on 19 September 1940, pertaining to the organization of the local self-government system which is now being adopted, seems to be a cogent one.[41] It retains the mechanism of self-defence through a system of strict regimentation. There is a tendency toward centralization of the local governmental powers by the Central Government mainly in the following ways: (1) The sending of special commissioners by the Executive and Control *Yuan* to inspect the various Provincial administrations, which in turn direct the district governments; (2) the sending of Kuomintang commissioners to the various Provinces for inspection purposes, to see whether they are keeping their work in line with the expectation of the Kuomintang; (3) most of the administrative officials of the lower administrative areas are members of the Kuomintang; (4) subsidies are often granted to the Provinces by the Central Government; and (5) Provincial Governors are responsible to the Central Government and the budgets, although they may be passed by the local authorities, must be authorized by the Central Government.

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[41] See Chapter V. See also Chien Tuan-sheng, "Wartime Local Government in China," *Pacific Affairs*, 16 (1943), 441-460.

Just as in the case of the provisions for the district governments, the municipalities also have municipal councils whose members are to be elected by the municipal general meeting. One third of the members shall retire and be replaced by election annually. The Mayor shall be directly elected by the citizens in the municipal general meeting for a term of three years, with a provision that he may be reelected. Candidates for the mayoralty are also required to take a civil service examination supervised by the Ministry of Public Service of the Central Government. The mayor is charged with the duty of administering the affairs of the municipality in accordance with the principles of municipal government and under the direction of the competent supervising authority and of executing matters assigned by the Central or Provincial Government (Art. 114). It seems superfluous to emphasize the importance of uniformity of local self-government in a country as vast as China. This local self-government system, if properly worked out, would be far more efficient than local government systems of many other countries, because each level of government is representative of the people.

THE PEOPLE'S CONGRESS

According to Article 32 of the Draft Constitution of 5 May 1936 the People's Congress has the following functions:

1. To elect the President and Vice President, the President and Vice President of the Legislative *Yuan,* the President and Vice President of the Censor *Yuan,* the members of the Legislative *Yuan* and the members of the Censor *Yuan.*
2. To recall the President and Vice President, the President and Vice President of the Legislative *Yuan,* the Judicial *Yuan,* the Examination *Yuan* or the Censor *Yuan,* the members of the Legislative *Yuan* or the Censor *Yuan.*
3. To initiate laws.
4. To hold referenda on laws.
5. To amend the Constitution.
6. To exercise such other powers as are conferred by the Constitution.[42]

[42] See Appendix O.

It shall be convened by the President once every three years, the session shall last only one month, unless circumstances demand an extension. Extraordinary sessions may be convened at the instance of two fifths or more of its members, or merely convened by the President (Art. 31).

The People's Congress may be said to be the repository of the sovereignty of the Chinese people, because it possesses the powers and functions of the people listed in Article 32. The delegates shall be elected for a term of six years by direct and secret suffrage on a regional basis of one from every district or municipality or area of an equivalent status. In case its population exceeds 300,000, one additional delegate shall be elected for every additional 500,000 people (Art. 27). Under the election law the total number of members was fixed at 1,200 to be elected by districts (subsequently it was increased to 1,400), professional groups and social methods in accordance with the locality concerned.[43] The Congress, in many respects, resembles the National Assembly of the German Reich under the Weimar Constitution in that the delegates of both institutions are composed of citizens directly and universally elected. As far as power and functions are concerned, the only differences are that the Chinese People's Congress elects the President, who is responsible to it, whereas the German National Assembly does not elect the President (he is elected by the People) and the President may even dissolve the National Assembly. The Chinese Congress may remove the President by exercising the recall power, while the German National Assembly may not do so without reference to the people. In this connection, the Supreme Soviet of the U.S.S.R.[44] resembles the Chinese People's Congress, as both institutions represent the entire electorate and may exercise all ultimate powers of sovereignty.

The People's Congress is endowed with the power to amend the Constitution, when an amendment is proposed by over one fourth of the delegates to the People's Congress and passed by at least two thirds of the delegates present at a meeting having a

[43] Yang Chi, *Essentials in Constitutional Government* (in Chinese, Hongkong, 1940), 15-36.

[44] Arts. 14, 30-32 and 34, *Constitution (Fundamental Law) of the Union of Soviet Socialist Republics* (Ogiz, 1938), 21, 33-35.

quorum of over three fourths of the entire Congress (Art. 147). Unlike the Constitution under the Ts'ao K'un regime, where the authority of interpretation of the Constitution is dubious, this Draft Constitution distinctly provides that "The Constitution shall be interpreted by the Judicial *Yuan*" (Art. 142).

In principle, the Draft Constitution of 1936 is based on the *San Min Chu I,* which is the supreme belief of the nation. It is a declaration which sums up the spirit and aspirations of the Chinese people. In substance, it is based on the *Fundamentals of National Reconstruction*[45] of Dr. Sun Yat-sen plus the national characteristics, political experience and, above all, the needs of the nation. It is not intended to be the perpetual constitution for China, for no constitution of any country can be made perpetual. When circumstances arise and the general conditions of the country have changed and the provisions no longer apply, it may be either amended by proper constitutional process or rewritten by the forthcoming People's Congress, which the newly elected President of the Republic, Chiang Kai-shek, has promised to inaugurate within this year. The task ahead is admittedly great, but there should be no doubt that, after the termination of this war when the Constitution will be finally adopted, China's pace of progress will be enormously improved and accelerated. As Liang Han-ts'ao, former Minister of Information, asserted in a statement to the press on 9 February 1944—

> We are attempting to reach a fully democratic system which is not exactly the same as the Western parliamentary system. This system is to us the ideal form of Constitution which we have been and are still working to attain. We have not reached this ideal at present and we consider our existing form of government as a preliminary experiment under Dr. Sun's theory. Our Government at present is an emergency government dictated by wartime conditions. . . . The Constitution is to be put into effect as soon as the obstacles in the way of our Revolution have been removed.[46]

It is hoped, however, that the Chinese people will not succumb to the idea that, once the Constitution is adopted, everything will

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[45] See Appendix H.

[46] Liang Han-ts'ao, "The Study of the Draft Constitution," *China at War,* vol. XII, no. 2 (February 1944), 63.

be worked out according to their ideals, for no constitution can be made to last forever and suitable for all purposes in spite of changing conditions. As Lord Bryce wrote—

> No constitution can be made to stand unsusceptible of change, because if it were, it would cease to be suitable to the conditions amid which it has to work, that is, to the actual forces which sway politics. And being unsuitable, it would be weak, not rooted in the nature of the State and in the respect of the citizens for whom it exists; and being weak, it would presently be overthrown.[47]

Indeed, the Chinese themselves must create a spirit of trust and confidence in themselves in the actual functioning of a constitutional government.

But inevitably, even when the present Draft Constitution is adopted, many tests will have to be met and, therefore, amendment will possibly be necessary. In countries where written constitutions are in force, such as the United States and France, one can see the extremes of their simplicity and complexity of revision. In the former case, the favorable legislative process of both the Federal and State Governments is required (Art. V)[48] for amendment and, in the latter case, a meeting of the National Assembly (joint session of the Chamber of Deputies and Senate) after both chambers have passed a resolution declaring the necessity of revision of the constitutional laws.[49] But the proposed Chinese Constitution, so far as can be seen, has avoided the two extremes by entrusting the task of amendment to the People's Congress, which requires only a higher majority of votes at a meeting where a higher quorum is present. Thus (Art. 147)—

> No amendment to the Constitution may be made unless it shall have been proposed by over one fourth of the delegates to the People's Congress and passed by at least two thirds of the dele-

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[47] James Bryce, *The American Commonwealth* (2d ed., 2 vols., London, 1891), I, 352.

[48] Wright, *op. cit.*, 617.

[49] Art. 8 of the Constitutional Law on the Organization of the Public Powers of 25 February 1875, *ibid.*, 194.

gates present at a meeting having a quorum of over three fourths of the entire Congress.

A proposed amendment to the Constitution shall be made public by the proposers one year before the assembling of the People's Congress.[50]

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[50] See Appendix O.

CHAPTER V

THE PEOPLE'S POLITICAL COUNCIL[1]

It is sometimes held that war necessarily destroys democracy and creates dictatorship, that democracy could function best in time of peace, while dictatorship would logically find its place in time of emergency. There are instances to be found in history in which war has produced democracy as well as dictatorship. The American Revolution of 1776 and the French Revolution of 1793-1801 fertilized the seed of democracy during a state of hostilities. Soviet and Nazi dictatorship, although not born immediately of war, may be considered as the aftermaths of hostilities. It is indeed difficult to justify the birth of democracy or dictatorship merely from war, but as a result of all forces and tendencies in social and political evolution. War may hasten the birth of democracy as well as dictatorship.

Chinese political experience during the past seven years has shown that war has facilitated the democratization process in political evolution. Before the outbreak of the Sino-Japanese War in July 1937, China was under the political tutelage of the Kuomintang or the National Party. Immediately after the war started, current political issues and the general sentiment of the people directed the attention of the National Government to the organization of a "People's Political Council," through which the will of the people might be represented in the execution of national policies, and resulted in a movement to end the period of political tutelage.

The first attempt to unite China politically was expressed in the formation of the Advisory Council of National Defence by in-

[1] This chapter does not pretend to give a full account of the People's Political Council, as it is impossible to keep abreast of the current developments. It attempts, rather, to show the significance and achievements under the present constitutional set-up toward democracy.

cluding the leaders of different parties among its members.[2] During the first six months of war, especially after the fall of Nanking in December, the need of a wider representation of the people in the government was felt.[3] Thus, at the close of the session of the Emergency National Congress of the Kuomintang held in Hankow on 29 March 1938, it was decided that, in view of the fact that major hostilities between China and Japan had prevented the inauguration of the People's Congress which was scheduled for 12 November 1937, it was necessary to organize a "People's Political Council," in order to unify the national strength, to utilize the best minds of the nation and finally to facilitate the formation and execution of national policies, thus giving the people a better opportunity to participate in the affairs of the state. The organic laws governing the People's Political Council were promulgated by the National Government on 12 April 1938 and were publicized by all newspapers throughout the country.[4]

The number of members was originally fixed at 150, of whom eighty-eight would represent all those Provinces and cities which are under the direct control of the National Government. Fifty others would be persons who enjoy a high standing among educational or economic circles or persons who have contributed such effort to the country and are widely recognized by the people.[5] The remaining twelve would be divided among Mongolia and Tibet and Overseas Chinese—six of this group from Overseas Chinese, four from Mongolia and two from Tibet.[6] The qualifications of the Councilors vary according to geographical areas. In all cases, a Councilor must be a citizen of the Republic of China and must have reached the age of thirty. He must not hold any government

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[2] Sun Keewong, "A Constitution for China," *Amerasia*, vol. IV, no. 4 (June 1940), 176.

[3] *Ibid.*, 177.

[4] *Kuomintang's New Political Stage* (in Chinese, 2d ed., Chungking, 1938), 44.

[5] This group of 50 was raised to 100 when it was felt that certain elements of articulate opinion were not represented. Accordingly, the total membership was enlarged to 200 on 21 June 1938. See Wang Shih-chieh, "The People's Political Council," *The Chinese Year Book, 1938-1939*, 346.

[6] *Kuomintang's New Political Stage*, 45.

position. Those from the various Provinces and cities other than Mongolia and Tibet must have had a three-year service in either governmental or private organizations, but the requirement that they should be a resident of the Province or city which they represent is not absolute.

While those who represent the Mongolian and Tibetan areas need not necessarily be native to those regions, they must either have enjoyed a high standing in those areas and have actually rendered their services to those communities or they must be familiar with the local political problems, conditions, and at the same time nationally renowned.

Overseas representatives must have completed a residential period of three years and have rendered services to the Overseas Chinese communities or they must be specialists in Overseas Chinese problems.

A three-year service experience must be possessed by those who represent the educational or economic circles or they must have been long devoted to political activities and thereby contributed to national welfare.[7]

It must be noted that, while these Councilors are supposed to represent the people geographically as well as politically, they are not directly voted for by the people whom they represent. The group of 88—later 100—was to be nominated by a joint meeting of the Provincial and municipal Kuomintang party, twice as many as the number of members to which each Province is entitled. The Supreme Defence Council also reserved the power to nominate the same number of candidates.[8] Candidates from Mongolia, Tibet and Overseas are to be nominated by the Mongolian and Tibetan Affairs Commission and the Overseas Chinese Affairs Commis-

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[7] *Ibid.*, 45-46.

[8] *Ibid.*, 46. For instance, the Province of Hunan, according to the rules at that time, was entitled to have four Councilors. The joint meeting of the Provincial and municipal Kuomintang party would nominate eight candidates. At the same time the Supreme Defence Council also nominates the same number of candidates, so that the total number of candidates would be sixteen. Every Councilor position has four candidates. Those areas now under Japanese control are to be represented by candidates nominated by the Supreme Defence Council.

sion, respectively, twice as many candidates as those respective areas are entitled to under existing rules. The intellectual group of fifty are to be nominated (twice the number of candidates) by the Supreme Defence Council.[9]

The names of the nominees are to be submitted through the Supreme Defence Council to the Central Executive Committee of the Kuomintang to be ready for recommendation to the Qualification Examination Committee of the People's Political Council for consideration. This Qualification Examination Committee is composed of nine members appointed by the Central Executive Committee of the Kuomintang, to which the members are to report after duly investigating the qualifications of the candidates. The last step is the selection of the legal or allotted number of candidates by the Central Executive Committee.[10] In case of Provinces or municipalities which are completely occupied by enemy forces, the Supreme Defence Council nominates two candidates for every seat available.

The merits of the People's Political Council can hardly be discussed without taking into consideration its main function and duties. According to the original statute of the organization of the Council (Art. 5), the People's Political Council has the right to pass resolutions on all important measures during the war period, diplomatic as well as domestic, proposed by the Government. However, these resolutions must be approved by the Supreme Defence Council before they are referred to the various departments of the Government concerned for legislation or for promulgation and enforcement. In time of crisis or extreme emergency, the President of the Supreme Defence Council may disregard the resolutions of the People's Political Council and take emergency measures in accordance with the statute governing the Supreme Defence Council.

The People's Political Council has the right to make proposals to the Government; to receive Government reports and to interpellate the Government (Art. 7). The Council is also empowered to organize investigation groups to carry out such tasks as are

[9] *Loc. cit.*
[10] *Ibid.*, 47.

entrusted by the Government. The Council may present the findings of such investigations to the Government with the request that they be acted upon. The term of office of the Councilors is one year with the provision that it could be lengthened to two years, if such is deemed necessary by the Government.[11]

Although the statutes for the People's Political Council provide for a Chief Speaker and a Vice Speaker, who are appointed by the Central Executive Committee of the Kuomintang, they do not specify whether the Chief Speakership and the Vice Speakership are to be selected from among the Councilors. The Council is to meet every three months and the length of session is ten days. Under extraordinary circumstances or if the Government deems necessary, the length of the session may be extended or extra sessions may be called. In all cases the Council can not call a meeting without half of the entire number of Councilors present. The heads of the various departments of the Government may attend council meetings, but shall have no voting power. When the Council is in recess, a resident committee of twenty-five Councilors, to be elected from presidium members and other Councilors, will have the right to receive Government reports, to facilitate the enforcement of approved measures and to check up accomplishments. It may also exercise the right of making recommendations and carrying out investigations so long as they do not exceed the rights of the entire Council. Other details governing the Council may be supplemented by a Government mandate.[12]

The People's Political Council first convened from 6 to 15 July 1938 in Hankow with 162 out of 200 Councilors present. The 200 Councilors, composed of fifty-nine educators, fifty-four civil servants, thirty-seven party workers, eleven business men, seven service men, six culturists, six journalists, five diplomats, five bankers, five social workers, four lawyers and one religious.[13] They represented all walks of life, all political parties and factions including twenty-eight provinces, five special municipalities, Mongolia and Tibet. It

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[11] *Loc. cit.*

[12] *Ibid.*, 48.

[13] *New York Herald Tribune*, 7 July 1938, 9. The *New York Herald Tribune* reported 147 Councilors present.

was perhaps the first time in Chinese history that practically all classes were represented in a political gathering. For one reason or the other, the Councilors from the peasantry and the ranks of labor were absent,[14] thus making the picture incomplete and rendering the meeting somewhat a typical middle-class gathering.

Wang Ching-wei (later head of the Nanking puppet regime, deceased), and Chang Po-ling were designated by the Central Executive Committee of the Kuomintang to be respectively Chief Speaker and Vice Speaker of the Council.[15] Paradoxically enough, Wang Ching-wei, speaking before the Council and the heads of the foreign diplomatic corps during this historic occasion, said that the mission of the Council was—

to solidify and unify the people in order to strengthen the national power of resistance and lay a firm foundation of democracy, so that China can immediately graduate into constitutionalism at the end of the war.[16]

Several months later, between the first and second sessions, Wang absconded. His act of betrayal was a great shock to the world, but has had little effect on the progress of the Council.

During his presence the Council adopted the "National Resistance and Reconstruction Program," which was originally a proclamation of the Emergency National Congress of the Kuomintang in April 1938. This program serves as a guide for the conduct of the Chinese Government in all matters pertaining to the works that ought to be done during and after the war. The essence of the program may be summed up as follows:

(1) To resist the invaders in accordance with Chinese Nationalism;
(2) To centralize all forces of the people in accordance with democratic principles;
(3) To construct a national economy in accordance with the national defence plan;

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[14] *The Chinese Year Book, 1938-39,* 346-55.
[15] *Ibid.,* 354.
[16] *New York Times,* 7 July 1938, 11.

(4) To cultivate the morality and knowledge of the people in accordance with the principles of science and method.[17]

It may be observed that the progress that China has made in all fields has been due partly to the actual execution of the program tending to rebuild China while the war of resistance is still in process.

The second important measure adopted by the First Council was the establishment of Provincial and county people's political councils. The National Government has been faithfully following the advice of the Council and has established people's political councils in all Provinces and municipalities and most counties. Of the 125 bills passed however, only nine were brought up by the Government; the rest were private bills.[18]

Structurally, the secretariat[19] of the Council handled most of the work. It was composed of a Secretary General and a Deputy Secretary General and several other secretaries who were important figures at the sessions. Both Secretaries General were appointed by the National Government.

The second session of the First Council met at Chungking from 27 October to 6 November 1938, when the seat of the National Government was moved inland after Hankow fell. At this second quarterly session, President Lin-sen urged "spiritual unity for eventual victory over Japanese."[20] Generalissimo Chiang Kai-shek sent a message asking the Council to use their best efforts to continue the spirit of the last session: "I am too busy at the front to come to this meeting. We depend on unity to win and eventually build a new China."[21] Due to disruption of communications,

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[17] *Kuomintang's New Political Stage*, 36. (Translation mine.)

[18] *The Chinese Year Book, 1940-41*, 354.

[19] Dr. Wang Shih-chieh was Secretary General and a Mr. Peng Hsueh-pei was Deputy Secretary General. Added to them were Sun Shiao-chun; Ku Shi-wu; Lo Hsia-tien; Meng Kwang-hou. Other secretaries may be drawn from the staff of the various departments concerned when occasions may arise.

[20] *New York Times*, 29 October 1938, 4.

[21] *Loc. cit.* Full text of Generalissimo Chiang's message in *Ta Kung Pao*, 29 October 1938, 5.

only eighty-six Councilors arrived at Chungking[22] on 26 October and not until 28 October did the number of registered Councilors reach 120.[23] The next day 131 were reported to have arrived.[24]

On 26 October Wang Ching-wei, Chang Po-ling, Chang Chun-mai, Bishop Paul Yu-pin and Kung Keng urged continued resistance to refute the rumor that the Government may negotiate peace with Japan.[25] As a result of their motion, the Council on 2 November adopted a resolution affirming its faith in Generalissimo Chiang and calling on the country to continue fighting the Japanese invaders "without thought of compromise or yielding," for it was felt that it was "better to be a piece of broken jade than a whole clay tile."[26] Coinciding with the conclusion of the session, the Communist Party issued a statement reaffirming its support of continued resistance under the leadership of Chiang.[27]

During the succeeding meetings, many high Government officials made reports to the Council.[28] It was reported that most of the resolutions passed during the first session were adopted by the Government and were being carried into effect. Those that could not be enforced within a short period of time were in the process of consideration.[29]

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[22] *Ta Kung Pao* (Hongkong), 27 October 1938, 3.

[23] *Ibid.*, 29 October 1938, 3.

[24] *Ibid.*, 30 October 1938, 3.

[25] *Ibid.*, 27 October 1938, 3.

[26] *New York Times*, 2 November 1938, 12.

[27] *Ibid.*, 9 November 1938, 21. The Communist Party at the inauguration of the People's Political Council in July 1938, in a statement appearing in the Communist paper, *New China Daily News*, pledged themselves to participate with wholehearted sincerity in the work of the Council. They admitted the Council was not fully representative, but characterized it as "a clear expression of the tendency toward democracy in China." *New York Times*, 6 July 1938, 12. The statement was made by Communist leaders, including Mao Tse-tung, Mme. Chou-En-lai, Wang Ming, Chen Pang-hsien, Tung Pi-wu, Lin Tzu-han and Wu Yu-chang.

[28] Dr. Wang Chung-hui reported on foreign affairs, Dr. W. H. Wong on economics, Dr. Chen Lih-fu on education, Chang Chia-au on communication and Dr. H. H. Kung on district and Provincial administration.

[29] *Ta Kung Pao*, 31 October 1938, 3.

Councilors were extraordinarily enthusiastic in the discussions.[30] The department heads, in order to "facilitate the exchange of ideas," invited some Councilors to conferences on different problems.[31] Mao Tse-tung, Communist Councilor, was expected to be present, but he telegraphed the Council that he was unable to attend.[32]

On the eighth day of the session, the Council passed a resolution to guarantee freedom of press. Tsou T'ao-fen, one of the "Seven Gentlemen" leaders of the National Salvation movement, suggested the censorship on original drafts of publications by the Government be lifted.[33] Many proposed the session should be prolonged two or three days in order to complete the discussion of unfinished business.[34] On 20 January 1939, Generalissimo Chiang was elected Speaker of the Council, while Chang Po-ling remained as its Vice Speaker.[35]

The third session was held from 12 to 21 February 1939 under the Speakership of Chiang, during which a number of resolutions on national policy was passed. The Council asked the Government to institute a democratic form of government in a resolution:

> If we can at the present moment lay the first cornerstone of democratic government by law, we may not only secure further sympathy and assistance of the democratic bloc, but we may also join the democracies' fight for world peace.[36]

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[30] Wang Tso-shih and Hu Ching-Yi were among the 66 persons who proposed to support Chiang's policy of continued resistance. *Ta Kung Pao*, 4 November 1938, 5. They were also among those who supported the "Program of National Resistance and Reconstruction." Other Councilors, such as Lo Lung-chi, Chen Hsiao-yu, Chu Fu-cheng, Shen Chun-ju and Chiang Hwan-yuan, also took active part during the meetings. Even the Tibetan Councilor, Hsi Yao Chia Ts'o, who had not spoken previously, gave a strong support to the government's policy of resistance and reconstruction. *Ta Kung Pao*, 2 November 1938, 3.

[31] *Ta Kung Pao*, 2 November 1938, 3.

[32] *Ibid.*, 3 November 1938, 3.

[33] *Ibid.*, 5 November 1938, 3.

[34] *Ibid.*, 6 November 1938, 3.

[35] *The Chinese Year Book, 1940-41*, 547.

[36] *New York Times*, 26 February 1939, 20.

The institution of a civil service system, a clear demarcation of the rights and duties of public functionaries and a stricter definition of the relations of Government organs were proposed. The strongest point made was the insistence that people must have more opportunities in politics and that Government actions should henceforth "be in accordance with existing laws."[37] The Council further maintained that, prior to the enforcement of constitutional rule, the Kuomintang should be responsible to the people and reorganize the government, if the people express dissatisfaction. Thus, in pursuance to this resolution, the establishment of an advisory Council to supervise the administration in accordance with the law was recommended.[38]

It has been the policy of the Government to follow through the legacy of Dr. Sun Yat-sen. His principles have been recognized by the country as the sole legitimate national plan of modernization. The Kuomintang as well as the minor parties all claim to execute his will. Thus, in the throes of Chinese politics, the three principles of Dr. Sun—the *Sun Min Chu I*—always claim a rightful place, not only in time of peace, but also, and perhaps much more vital, in time of emergency. In fact, it is the *sine qua non* for any party conciliation and adjustment. It may be well pointed out that the parties were in complete agreement and unity since the war started with Japan. When the Progress of Armed Resistance and National Reconstruction was pronounced by the Emergency Congress of the Kuomintang in April 1938, Carson Chang, leader of the State Socialist Party on 13 April wrote to Generalissimo Chiang and Wang Ching-wei that, while their party program did not go against the *San Min Chu I,* they advocated a reformed form of government, which they contended was in complete consonance with the Kuomintang's Program of Armed Resistance and National Reconstruction.

The reformed form of democratic government which we advocate is one which, while democratic in principle, precludes the possibility of any political party from entrenching itself in the seat of power. This type of government can operate in time of peace whether there are two or more or even no political parties. In

[37] *Loc. cit.*
[38] *Loc. cit.*

time of critical importance, this type of government is able to unify the nation quickly without distinctions of party or clique. We believe that such a political system is not incapable of being created.[39]

He emphasized that political principles of his party are in complete accord with Dr. Sun's racial, political and economic democracy, although they may differ in phraseology.[40] "I and my colleagues," he continued, "are ready to discuss them with government and Kuomintang leaders in a spirit of cordial cooperation."[41]

In answering to his point on freedom of speech, freedom of press and freedom of assembly, Generalissimo Chiang reemphasized:

As to freedom of speech, the freedom of press, and the freedom of assembly, these are clearly defined in Section 26 of the Program of Armed Resistance and National Reconstruction. This guarantee shall serve as the rallying point both for members of the Kuomintang and for non-members in their efforts to achieve national salvation.[42]

"Both as a preliminary step to the establishment of a Constitutional regime as envisaged by Dr. Sun, and as a satisfactory fulfillment of our demand for democratic government," the leader of the Chinese Youth Party, Tso-Shun-sheng, in his letter to the Generalissimo and Wang Ching-wei on 21 April 1938, declared:

We welcome this decision of creating the People's Political Council, to guarantee the freedom of speech, the freedom of press and the freedom of assembly.[43]

The formation of the People's Political Council was, therefore, an act agreed by all parties in pursuance of Dr. Sun's spirit of democracy and was further made clear to all in the words of Chiang, when he declared to the Council:

The historic mission of the Council is to pave way for a con-

[39] *The Chinese Year Book, 1938-39*, 342.
[40] *Ibid.*, 343.
[41] *Loc. cit.*
[42] *Loc. cit.*
[43] *Op. cit.*, 344.

stitutional form of government, and in particular to erect a base on which to build a genuine democracy.[44]

Since the Council is the people's institution, whose mission is not only to pave way for a constitutional form of government, but also to serve as a supplementary force to the Government, it is necessary to "mobilize the people's spirit and consolidate their views."[45] The convocation of the People's Political Council by the Emergency National Congress of the Kuomintang in 1938 was—

promoted by the hope that, through members of the Council, genuine public opinions would attain expression so that the Government could be aware of public woes and aspirations, and be guided in its administration by this knowledge.[46]

This frank expression would have clarified the minds of the people, if the authorities concerned had followed through the promise of the Government. However, one should not be too optimistic over the step the Government proposed to take, although no one should doubt its sincerity concerning such, because attendant circumstances seemed to be in favor of a moderate, rather than an immediate, plan toward constitutionalism. A permanent constitution, therefore, can not be expected from the Government in the immediate future, but something serving as an unwritten constitution is developing. It is probably the Government's plan to receive the counsel of the people through a national representative forum such as the People's Political Council, which will at the same time serve as a stepping stone to constitutionalism. Besides, as many will admit, the Kuomintang is not ready to relinquish its power in favor of a true democracy, though there may be explanations for the maintenance of its supremacy. For example, the Generalissimo, in explaining the difficulties, made the following statement:

Judging by the present conditions, not only have our programs for the period of political tutelage been hindered, but the work of the period of military rule has to be done all over again. To

[44] *The Chinese Year Book, 1940-41*, 458.
[45] *Ibid.*, 459.
[46] *Loc. cit.*

put it in another way, we must, first of all, crush the aggressor's military force, destroy all traitors and puppets and eradicate all influences detrimental to our nation and antagonistic to our revolutionary cause. We have to wait until our lost territories have been recovered and domestic disorders liquidated before we can have political tutelage and prepare ourselves for constitutionalism.[47]

Strictly speaking, therefore, China is still in the period of military government. Since the Government's policy has been the pacification of internal political problems and the complete defeat of the aggressor as the pre-requisite for constitutionalism, it is conceivable that any opposition in the nature of violence must first be liquidated. As a warning to the Communist party, Chiang declared:

For the preservation of the interests of the State and of the people we must fully exercise the authority of upright public opinion in condemning any violators of the laws and institutions of the State, especially when their actions should result in reducing our war strength under the cloak of freedom and democracy. At the same time the people must realize that military rule is essential to the prosecution of our war and political tutelage is prerequisite for national regeneration, and between them there is not the slightest room for hypocrisy or obstruction.[48]

At the fourth session, 9 to 18 September 1939, a host of important questions came up. Many prominent Councilors converged at the provisional capital in answer to the urgent issue of China's attitude toward the European war.[49] A resolution to further cultural relations with the United States, Great Britain, France and the Union of Soviet Socialist Republics was adopted.[50] The demand for immediate promulgation of a permanent Constitution was revived. The Council resolved that the Government select an early date for the election of the People's Congress and the inauguration of the "Constitutional Period." Seven proposals on the question were brought up by the Councilors who were members of the

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[47] *The Chinese Year Book, 1940-41,* 460. See also Chiang Kai-shek, *Resistance and Reconstruction: Messages during China's Six Years of War, 1937-1943* (New York, 1943), 87.

[48] *The Chinese Year Book, 1940-41,* 461.

[49] *New York Times,* 10 September 1939, 23.

[50] *Ibid.,* 19 September 1939, 20.

Communist Party, the third party, the National Salvationists, a group representing the Association for the Promotion of Vocational Education, and the Kuomintang Party. The Council sought a declaration by the National Government that "the political status of all citizens, with the exception only of traitors, should be equal in the eyes of the law."[51] Acceding to the request of the Council, Chiang appointed a Committee of Nineteen from among the Councilors to form a Constitutionalism Promotion Committee. The Committee was expanded and the number of members was increased to twenty-five.[52] Another resolution of prime importance was the asking of the Government to take steps to safeguard the people's rights of free speech, press and assembly.[53]

Indeed, many things have been accomplished during the progress of the war of resistance which might not have been even talked of heretofore. The consciousness of the nation was rapidly growing, a thing which no one can deny. Six weeks after the resolution of the People's Political Council demanding the establishment of a Constitutional Government, the Central Executive Committee, which was elected by the Fifth National Congress of the Kuomintang in 1935 and which assumed full power in making persevering efforts in the carrying out of Sun Yat-sen's three-point program of nationalism, democracy and socialism, held its Sixth Plenary Session in which it was decided that the oft-delayed Constitutional Convention be convoked on 12 November 1939 and the election of delegates be completed before the end of June. Stimulated by the resolution of the People's Political Council, the whole country was engaged in the discussion of the coming Constitution Convention that was scheduled on 12 November.

The last session of the People's Political Council spent a considerable amount of time in the adoption of the second "Three-Year Plan for National Resistance and Reconstruction"; the latter part of the session was spent in a discussion of the Draft Constitution prepared by the Legislative *Yuan*.

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[51] Sun Keewong, "A Constitution for China," 177.
[52] *Loc. cit.*
[53] *New York Times*, 19 September 1939, 20.

The new "Three-Year Plan for National Resistance and Reconstruction" also dealt with a program of local self-government. The new local self-government system, aiming both at strengthening the administrative machinery from the county down to the smallest unit and at the creation of a machinery of representation, went under way in March 1940.[54]

In the *Chia,* which is the smallest unit and is composed of from six to fifteen households, there will be two kinds of representative councils, one comprising the heads of the component households and the other all the adults in the *chia.* Six to sixteen *chia* make one *pao.* Each *pao* will have an assembly composed of one representative from each household in the unit. These assemblies will be rather large, averaging about 100 persons each. The *pao* executive as well as his deputy will be elected by the assembly. Six to fifteen *pao* form a *hsiang,* in the case of rural areas, and a *chen,* in the case of urban areas. They also will have representative assemblies, composed of two delegates from each component *pao.* The *pao* delegates are elected by *pao* assemblies. The administrative unit above *hsiang* and *chen* is the *county.* Chinese counties are divided into six classes according to area, population, economic condition, cultural level and transportation facilities. All Chinese citizens, irrespective of sex, who have lived in a county for more than six months or have established their domicile for over a year, are qualified to exercise their political rights—election, recall, initiative and referendum. No property qualification is required.

In each county there will be a county assembly composed of representatives elected by the *hsiang* and *chen* assemblies. In addition, professional groups may also send representatives to the county assembly, but their number must not exceed thirty percent of the total. In principle, the chairman of the county assembly is to be elected by the assembly representatives from among them-

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[54] Eighteen provinces, including Shangtung and one special municipality (Chungking), are already operating under the system. In Szechwan, the program had been more than fifty percent attained by June 1941. The full materialization of the program, which was placed on the "must" list of the Provinces concerned, was intended to be concluded by the end of 1942.

selves. A statute governing the organization of the county assembly is now under study by the Legislative *Yuan.*

As a rule, the county budget must be adopted by the county assembly before the magistrate submits it to the Provincial government for approval. Only in exceptional cases may he submit it to the Provincial government, for this new system is intended to let the people control the county budget. For the duration of the war, the county magistrate will not be elected by the county assembly, but will continue to be appointed by the National Government.

Several features stand out in the new system. First, there is representation in every grade of administrative unit from the smallest *chia* to the *pao, hsiang* and *chen* up to the county. It forms a hierarchy of indirect election. The *chia* chief is elected by the household heads. Each household sends a representative to the *pao* assembly which elects the *pao* chiefs. Each *pao* sends two representatives to the *hsiang* and *chen* assembly. Each *hsiang* and *chen* assembly, besides electing local officials, sends one representative to the county assembly.[55] The essential aim of this wide-scale creation of representative assemblies in all small administrative units within the county was primarily intended to educate the common people in a practical knowledge of self-government as a means of assisting them to the successful realization of political democracy. This argument was opposed by many who wished the Government to put the Constitution into immediate effect. A contemporary writer, a representative of this group, writes:

> The lack of political knowledge on the part of the people could not be the acceptable reason for the opposition of a constitutional government simply because a Constitution functions within the realm of regulating the state. It includes the rights and privileges of the people, the organization and function of the government which is to mean the protection of the people, the limitation on the government working within both the limitation and meaning of law. And they are both learning the practice of government in accordance with the instrument. If the people have not adequate knowledge, they still have the desire and demand for which they can exercise their rights and privileges. With regard to technical

[55] Unless otherwise indicated, the above is based on China Information Committee, *China: After Four Years of War* (Chungking, 1941), 41-43.

problems, they can select their representatives to act in their behalf. The Constitution belongs to the people and it is therefore impossible to maintain that, because of the fact of the people's lack of knowledge, their right and privilege of ruling the country should be denied. Moreover, in this modern age everybody is learning. No one is equipped with a knowledge for ruling the country at birth. Everyone is in constant search of knowledge. The same applies to the exercise of political power by the people. At least, no one should deny their opportunity to learn and practice.[56]

Arguing from the standpoint of the "National Resistance and Reconstruction Program," the same writer contends:

The enterprises of National Resistance and of Reconstruction are inseparable. The one has no priority of time over the other. The proclamation of the Constitution, the introduction of a Constitutional Government is the foundation of a "sure victory" and a "successful reconstruction."[57]

His main contention is that Resistance and Reconstruction are correlated with each other and that since they are correlated, both should function at the same time. Furthermore, he maintains, this is in accordance with the proclamation of the Sixth Plenary Session of the Central Executive Committee, when it declared:

The functions of National Resistance and National Reconstruction march abreast, as the aim of our reconstruction is to lay the foundation of a Constitutional Government.[58]

Public opinion on the question of the prospective Constitutional Convention versus the announcement by the National Government of the "Three-Year Plan for National Resistance and Reconstruction" or the "Three-Year Program of Local Self-government" was acute in the extreme. Even the officials who are members of the Kuomintang did not share one another's views. The *Central Daily News,* official Kuomintang organ in Chungking, declared on 14 September 1939 that, with the nation at war, no Constitution

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[56] Chou Ching-Wen, *A Study of the Problems in Constitutional Government in China* (in Chinese, Hongkong, 1940), 17. Translation mine.

[57] *Ibid.,* 10. Translation mine.

[58] *Ibid.,* 7. Translation mine.

is needed, because the people already have the Provisional Constitution and the People's Political Council. Other newspapers elsewhere maintained that the country is too immature to adopt a permanent Constitution, because in time of war even in more advanced democratic countries the rights and liberties guaranteed by their Constitutions are either suspended or restricted under national emergency. Still others contended that, although such desire of the people has been pressing, it is still not an appropriate time to adopt a national Constitution because the percentage of literacy is still low and, even though a Constitution should be given to them, they are not qualified to exercise their political powers, which would therefore be abused. Strict followers of Dr. Sun's teachings, moreover, insisted that any discussion of Constitutionalism without having first fulfilled the important mission of local self-government, as originally outlined in Dr. Sun Yat-sen's Fundamentals of National Reconstruction, would be ridiculous and futile.

Never before in the entire history of China did the people so energetically participate in the actual business of a government as has been evidenced by the favorable as well as unfavorable criticism of the Government and their contributions to it. Discussions of political questions and especially on the pending Constitution were held in organized public forums throughout the country. The spirit of democratization was overwhelming everywhere.

On 2 October the National Government issued a proclamation ordering that a Committee be established for the preparation of the coming People's Congress in November. This Committee was authorized to arrange the agenda for the Congress and to provide for the construction of the premises and lodging facilities for the delegates and the adequate protection of the delegates. The Committee was to be composed of seven to nine members chosen by the National Government including a Chairman and a Vice Chairman. The Secretary General, also chosen by the National Government, was to be responsible to the Chairman and Vice Chairman. Under the Secretary General were from four to six secretaries, who were to be responsible to him. As soon as the task of the

Committee is completed, the Committee would automatically go out of existence.[59]

The People's Congress, according to existing regulations, would have 1,681 delegates selected by five different methods. The first 665 delegates are to be elected on a regional basis, 380 others are to be sent by the different professions and trades, 155 others are to be selected by special methods depending on local conditions, 240 to be appointed by the National Government, totaling 1,440 delegates. In addition, all the members and reserve members of the Kuomintang Central Executive Committee and Central Supervisory Committee are *ex-officio* delegates having a number of 241.[60]

The 155 delegates to be elected by special methods, mostly by official designation, are distributed as follows: fourteen from Liaoning, thirteen from Kirin, nine from Heilungkiang and nine from Jehol, twenty-four from Mongolia, sixteen from Tibet, forty from overseas Chinese communities, and the thirty from the nation's land, naval and aerial forces and institutions of military education.[61]

According to the revised statute governing the People's Congress, passed by the Legislative *Yuan* on 31 April 1937, the Congress is to "adopt a permanent constitution and determine the date of its enforcement."[62] It must be adopted by more than two thirds of the delegates present at the meeting having a quorum of more than two thirds of the entire Congress. However, for ordinary sessions, only a majority quorum is necessary and resolutions may be carried by majority votes.

During the fifth session of the First Council, the Constitutionalism Promotion Committee appointed by Generalissimo Chiang dur-

[59] *The Young China* (San Francisco), 29 November 1940, 3. Also *Chinese Journal* (New York), 30 November 1940, 3.

[60] China Information Committee, Chungking, *News Release,* New Series, 22 April 1940, 417. Also *The Chinese Journal,* 15 November 1940, 4. The statutes of organization of the National Congress or People's Congress and the statutes of election of the delegates were proclaimed by the Chinese Government on 14 May 1936. Text (in Chinese) in Chu Yu-k'un, *An Outline of Chinese Constitution* (in Chinese, Shanghai, 1937), 296-330. The number of delegates was originally fixed at 1,200.

[61] *News Release,* 22 April 1940, 418.

[62] *Ibid.,* 417.

ing the fourth session, announced the revision of the draft of the proposed Constitution of 5 May 1936. The revision was completed on 30 March 1940 by the People's Political Council.[63] On 2 April the Constitutionalism Promotion Committee reported to the Council that amendments to the proposed Constitution were received from Councilors representing different interests. Lo Lung-chi, Lo Wen-kan, T'ao Meng-ho, Chou Ping-lin, Fu Ssu-nien, Chien Tuan-sheng, Chang Hsi-jo, Yang Chen-sheng and Jen Hung-chun were the ones who proposed to amend the Constitution of 1936 in order to present them to the People's Congress on 12 November together with the original draft of the 1936 Constitution. Tsou T'ao-fen, Sheng Chun-ju, Chang Shen-fu, Chang Yiu-yu, Han Yiu-tang, Sha Ch'ien-li, Ch'ien Chun-jui and Liao T'i gave their views on the original 1936 Constitution, while Tung Pi-wu, a member of the Communist Party, announced his views on the general organization of the People's Congress, its methods of electing delegates as well as the original Constitution. Other Councilors, such as Hu Chao-hsiang, Chu Fu-ch'eng, Li Chung-hsiang and Kan Lih-wu, also took an active part in the discussion.[64]

On 5 April Dr. Sun Fo, President of the Legislative *Yuan,* traced the constitutional developments since 1922, pointing out the important characteristics of the 1936 Constitution.[65] Chang Chün-mai, one of the members of the Constitutionalism Promotion Committee, explained at length the reasons for which the Constitution should be revised. In a rather sarcastic vein, he said:

> After having heard Dr. Sun Fo's speech in which he maintained that two years have been spent on the [1936] Constitution, how could we possibly amend it within ten days [i.e., the length of session of the People's Political Council]? But we are in need of it now and it is not to be delayed any longer. Yet we all agree on one single premise, which is the respect for Dr. Sun Yat-sen's legacy.[66]

[63] The complete text of the revised Constitution adopted by the People's Political Council in Yang Chi (ed.), *Essentials in Constitutional Government* (in Chinese, Hongkong, 1940), 46-59.

[64] Yang Chi, *op. cit.,* 60.

[65] Text of Dr. Sun Fo's speech on the development of the Chinese Constitution delivered before the People's Political Council on 5 April 1940 in *Ta Kung Pao,* 9 April 1940, 3; 10 April 1940, 4; 11 April 1940, 4.

[66] *Ta Kung Pao,* 12 April 1940, 4. Translation mine.

The revised draft, in the revision of which Chang Chün-mai took part, proposed the creation of a *Yi-Cheng-Hui,* an *ad interim* assembly with power to function after the adjournment of the People's Congress *sine die,* comprising from 150 to 200 members, as an intermediate organ between the People's Congress and the Government. The general contention for the creation of such an intermediate body was that the People's Congress, according to the original Draft Constitution of 5 May 1936, apart from extraordinary sessions, will meet once every three years and that its session would last only one month, although another month may be extended when necessary.[67] During the interval the people will have no control over the Government. Moreover, the number of delegates would probably exceed 2,000, a fact which may cause difficulties in the matter of convening and discussion and unwieldiness in the process of direct democracy. Unless there be a smaller intermediate organ in between the People's Congress and the Government, the People's Congress, empowered to exercise both direct and indirect political powers, would in no way be capable of exercising the indirect political powers.

On the other hand, the People's Assembly, whose members are elected from among the delegates to the People's Congress, will exercise freely on behalf of the People's Congress during its three year recess all such powers as the election and recall of officials, the initiation and referendum of laws, legislation concerning a state of emergency, special pardons, declaration of war, negotiation of peace and conclusion of treaties and the acceptance and rejection of budgetary and final estimates passed by the Legislative *Yuan.*[68] Furthermore, such organ would also be empowered to pass votes of confidence or non-confidence on the Executive *Yuan.* In such case, the President of the Executive *Yuan* will then have to resign and the President of the Republic will appoint a new President of the Executive *Yuan.* The complication of the procedure seems evident, since Article 41, Section 5, of the revised

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[67] Art. 31 of Constitution of 5 May 1936. See Appendix O.

[68] Yang Chi, *op. cit.,* 61-64.

Constitution by the Constitutionalism Promotion Committee of the People's Political Council provides that—

> If the President of the Republic disagrees with the resolution of the Assembly on issues of non-confidence on the President or Vice President of the Executive *Yuan,* he shall call an extra session of the People's Congress to pass on its final decision. If the People's Congress is in agreement with the Assembly, the same President or Vice President of the Executive *Yuan* shall resign; but if the People's Congress disagrees with the decision of the Assembly, a new election of the members of the Assembly shall be held and reconstitute the Assembly.[69]

It would be unfeasible and impractical to dissolve the Assembly merely because of a disagreement between the President of the Republic and the Assembly. It would also constitute a feeling of insecurity on the part of the members, although they are elected for a term of three years (Art. 39 of Revised Constitution). Moreover, because of the fact that, if they, by virtue of their devoted service, initiate a non-confidence vote, they must be always ready to surrender their posts. Such a provision may sound plausible as far as the theory of checks and balances is concerned, but in the long run it will create restlessness in the nation. It might have been the fear of the growing power of the Executive which moved the Councilors[70] to try to bring about equilibrium in this manner, but it should be evident enough that the means does not justify the end, which is the smooth functioning of government.

During this session, opinions on the floor on the question of creating the Assembly were vehement as well as divergent, so that by the time the session adjourned nothing concrete was decided and it was proposed that the issue be recommended to the Government for consideration. The entire fate was left to the coming People's Congress.[71]

Dr. Sun Fo, President of the Legislative *Yuan,* on 16 April

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[69] *Ibid.*, 51. Translation mine.

[70] Chang Chun-mai, Tso Shun-sheng, Lo Lung-chi, Wang Tso-shih and Chou Ping-lin.

[71] *Shing Wah Daily News* (Toronto, Canada), 27 May 1940, 1.

1940 told reporters on the question of the creation of the People's Assembly:

Those who believe that during the recess of the People's Congress the delegates should be given the opportunity of exercising political powers and considering initiation of laws, acceptance or rejection of budgetary and final estimates, legislation on a state of emergency, pardons, declaration of war, negotiation of peace, conclusion of treaties and so forth as political powers and government powers are inclined to advocate that such powers be vested in a People's Assembly. But they have overlooked that these powers in Europe and America are political powers, whereas under our system of five-power Constitutionalism they are governmental powers. Besides, the Legislative *Yuan,* which is empowered to exercise these governmental powers, derives its existence from the People's Congress and is therefore the legitimate agency to exercise these governmental powers in the people's behalf. Since the National Government has elected a competent government, why is it necessary to establish such duplicative organ in order to curb the power of the government? If the People's Congress can not trust the Government which it elects, how could it trust the Assembly which exists only during the recess of the Congress? It is conceivable that the establishment of a People's Assembly during the recess of the People's Congress is not only a violation of Dr. Sun Yat-sen's five-power system of government, but also an unnecessary measure.[72]

Sun Fo's main argument is that, different from European and American democracies, "political power" under Sun Yat-sen's definition means power enforced by the people; election, recall, initiative and referendum. These powers represent popular sovereignty. Whereas power exercised by the Government in behalf of the people is "governmental power," a power enabling the Government to administer national affairs, which include executive, legislative, judicial, examination and control.

Two days after the Council adjourned, Dr. Sun Fo on 12 April revealed his opinion to the Central News Agency to the same effect and it was widely printed throughout the country in all

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[72] Yang Chi, *op. cit.,* 106. The conversation between Dr. Sun Fo and the reporter was printed in *Ta-Kung Pao,* 16 April 1940. Translation mine.

the papers. The opinion was shared by another influential Councilor, Tao Pe-chun.[73]

Lo Lung-chi, a State Socialist, Professor of Politics at South Western Coalition University, was in favor of the creation of a People's Assembly. He put forth this argument:

(1) In Dr. Sun Yat-sen's legacy of doctrine, he did not say that budgetary and final estimate, declaration of war, negotiation of peace, pardons and conclusion of treaties were governmental powers. Accordingly, he did not favor the idea that indirect political powers of the people be exercised by the Government. The reason why Dr. Sun Yat-sen did not subscribe to the European system of parliamentary government, was that Parliament does not adequately exercise indirect political powers of the people (delegated powers) and he therefore adopted the system of direct powers.[74]

(2) According to Dr. Sun Yat-sen's interpretation of *pouvoir* and *puissance,* he used the following analogy: the people who possess the *pouvoir* may be compared to the owner of the car, the *puissance* of the Government to the chauffeur whose job is to listen to his "boss." The estimate and appropriation of money by the state is the power of using money by the "boss." The national policy of declaration of war or negotiation of peace is the destination to which the "boss" is going. How could the chauffeur wantonly use his "boss's" money or decide for his "boss" where he should go? Therefore the estimate of budget, appropriation of money, declaration of war and negotiation of peace are sovereign powers of the people. Basically, the powers belong to the people; therefore such powers should be exercised by the people, not by the Government. The principal theme is that indirect power of the people is political and could not be exercised by a "governmental power" agency such as the Legislative *Yuan.*

Moreover, these powers can not be adequately exercised by the People's Congress, because it meets only every three years, convenes only one month and has a body of close to 2,000 delegates.

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[73] *Shing Wah Daily News* (Toronto, Canada), 27 May 1940, 1.
[74] *Shing Wah Daily News,* 27 May 1940, 1.

Therefore, Lo Lung-chi and others maintained that an intermediate body should be set up in order to facilitate the actual employment of the indirect powers of the people.[75]

It should be understood that each of the sides of the argument, though each holds its political complexities, attempts to infer that its position is in harmony with the legacy of Dr. Sun Yat-sen's writings as well as the statutory provisions of the People's Congress and its methods of election. Apart from party politics, both sides hold some degree of merit, for, if a People's Assembly is set up, it will automatically take over the legislative functions of the Legislative *Yuan* through the exercise of the political powers of the people by the former. On the other hand, the Legislative *Yuan,* whose existence derives from the People's Congress and which is responsible to the same, would pass out of existence and be supplanted by the Assembly. This, from the constitutional point of view, would paralyze the present five-power system of government and the provisions concerning the Legislative *Yuan* under the 1936 Constitution would be scrapped.

No objection can be raised to the creation of a People's Assembly, if, in the first place, the people would agree to disregard the doctrine of Dr. Sun Yat-sen and his inspiration as setting forth the precise organization of a new form of government. This procedure will be entirely proper, if the people deem that the governmental system under present operation is undesirable and through the People's Congress proclaim a new Constitution setting forth a new form of government, whether it be presidential or monarchial, so long as the end of the government is the achievement of the common good and it is best suited to the conditions of the country. But if the 1936 Constitution and the present form of government are accepted as a valid basis of constitutional procedure, the argument of creating a People's Assembly will hold no ground.

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[75] *Loc. cit.* As a matter of fact, arguments to the same effect had early been suggested after the publication of the Revised First Draft containing 88 articles on 9 July 1934. See Sun Fo's speech 8 October 1934 at the memorial services before high-ranking officials of the Central Government, *Central Daily News,* 9 October 1934.

The Constitutional Convention of the United States of 1787 may be used as an example. The delegates to the Constitutional Convention, chosen by the several States, by tacit consent of the people under the Continental Congress were not satisfied with their old form of government and substituted for the Articles of Confederation the Constitution of the United States, as a result of which, the system of government was changed. Thus, with the sanction of the Chinese people, the People's Congress may legally redistribute the powers of government even to the extent of completely altering the present system.

The fundamental defect of the 1936 Constitution is the provision that the People's Congress be a short-lived body. If the "political powers" are to be exercised by the people, some adequate organism must be provided for the exercise of them. Otherwise, the government will remain unchecked and contradictions and frictions may always be expected.

The important thing confronts China today is not the mere formal act of introducing a Constitution. What is more vital is the direct settlement of political difficulties between political parties and cliques. The differences on constitutional technicalities between Government and people are only minor and secondary. If the parties hold their rigid principles and carry these to extremes, not only will the inauguration of a constitutional government be hampered, but the faith of the people in the Government will be greatly endangered. The People's Congress can not be construed as an omnipotent institution, if the parties themselves do not abandon the more rigid principles as their sole means of existence. Fundamentally, political parties have their own beliefs and principles, but they must not be misrepresented in the form of force.

Although the Communist Party, by its declaration in 1937, agreed to abandon the title of the Communist Army and submit to the jurisdiction of the Central Government, yet in fact certain serious effects have resulted from the fact that the pledge was not faithfully carried out. Moreover, party politics have tended to take the form of military clash, in spite of the existence of the conciliatory organ, the People's Political Council. The two major

parties, the Kuomintang and the Communist Party, have made good use of the Council in settling their fundamental problems. The residual discord has been due not so much to the insincerity of such settlement as to the fact that their conflicting interests have been so deeply rooted in the economic life of the country as to preclude their sudden abandonment without the greatest difficulty. However, there seem to be no real reason why this party difference could not be solved easily by political means, since it is for the most part a political question. As Dr. Sun Fo stated it—

> Such a solution will be found in the introduction of constitutional democratic government. The present Kuomintang and National Government, under the universally acclaimed leadership of President Chiang Kai-shek, demand of the Communists that they carry out their public professions, by merging their military forces as an integral part of the National Army of the Republic, and by unifying the local administrative organs they have set up in Yenan and other guerrilla areas as parts of the national administrative system. This means complete national unity, doing away with the anomalous situation of an *imperium in imperio,* as it is at the present time.[76]

As early as the end of 1938 minor frictions between the Communist Eighth Route Army and Government troops had existed in Honan, Southern Hopei and Shantung.[77] The blame could not be laid exclusively on either party, because both were responsible. While the Communists were consolidating their stands in many areas (fighting the Japanese was their major argument), certain

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[76] Dr. Sun Fo's message on the occasion of the nineteenth anniversary of the death of Dr. Sun Yat-sen. *China Monthly,* 5 (1944), 16-17.

[77] The *Hsin Chung* Pao in Yenan, center of the Communist area, published some extensive reports on the clashes on 9 and 13 June 1939. Excerpts from these in English may be found in Frederick V. Field, "Are Chinese Again Fighting Chinese?" *Amerasia,* vol. III, no. 7 (September 1939), 315-319. For a discussion of the Kuomintang-Communist situation, see Asiaticus, "The Fascist Axis vs. the United Front in China," *Amerasia,* vol. IV, no. 12 (February 1941), 543-546; also Anna Louise Strong, "The Kuomintang-Communist Crisis in China," *Amerasia,* vol. V, no. 1 (March 1941), 11-23. The strength of the Communists scattered in North China in the Shensi-Kansu-Ningshia border region and in guerrilla-operating areas of Shansi, Charhar, Hopei and Shantung.

high officials in the Kuomintang accelerated the momentum of the crisis, for they feared that the Communists, by taking advantage of the war situation and commanding the support of the lower masses, would out-power them. Political disturbances between the Kuomintang and the Communist Party were coming to a head, censorship[78] was tightened and the number of political arrests increased.[79]

After an intermittent warfare between Government and Communist troops, a group of Communists from Yenan flew to Chungking to open negotiations with Kuomintang officials. Chou En-lai, Communist Party leader, was on mission to Moscow, but expected to be carrying terms to eliminate further frictions.[80] This was to follow the People's Political Council's advice to end Kuomintang-Communist rift.[81] On 10 April 1940, at the close of the People's Political Council, Generalissimo Chiang appointed Chang Po-lin, Vice Speaker and outstanding liberal, to investigate and propose a solution for partisan differences. The previous party truce, reached not long before, was declared a success.[82] Unfortunately, fundamental differences remain unsettled. In the fall of 1940, the situation between the Central Government and Communist troops became more acute. Occasional clashes in Shangtung and Kiangsu Provinces were reported. On 19 October 1940, the new Fourth

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[78] On 1 November 1940 a new system of censorship was put into effect to curb the unrestricted growth of public opinion. See Hugh Deane, "Political Reaction in Kuomintang China," *Amerasia,* vol. V, no. 3 (July 1941). The *Hsin Hua Jih Pao,* at the time of the "forced" reduction of the Communist Eighth Route Army at Kweilin, capital of Kwangsi Province, announced that henceforth its size would be reduced from four to two pages. In a front-page box, the newspaper said: "We are compelled to reduce our volume because we are unable to print most of the materials that it is desired to print." *New York Times,* 4 February 1941, 5.

[79] For a more extensive description of censorship, suppression of publication, political arrests, etc., see Deane, *op. cit.,* 209-214. However, consciously or unconsciously, some facts have been exaggerated in these articles and the reader is therefore cautioned to make due allowance.

[80] *New York Times,* 5 April 1940, 6.

[81] *Ibid.,* 9 April 1940, 10.

[82] *Ibid.,* 11 April 1940, 10.

Army[83] was ordered to move out of Central China to the north bank of the Yellow River to take up its designated position against Japanese troops, but they refused to obey the order.[84]

In the middle of January 1941, General Yeh Ting, Commander of the new Fourth Army, was imprisoned by the Central Government and was awaiting court-martial for "defiance of military orders and a plot to stage a revolt against the High Command."[85] The Chungking Military Council, in its announcement on 17 January, said that General Yeh Ting was "ambitiously attempting to increase the number of his own troops" and had "lengthily prepared for revolt."[86] When he was ordered to move his troops across the Yangtze river, he requested a "mobilization fund" of 500,000 Chinese dollars and 500,000 rounds of ammunition, but delayed carrying out Chungking's order.[87] It was alleged that General Yeh Ting had formulated an "elaborated plan to control the China coast extending from Chekiang and Kiangsu Provinces in the South to Shangtung and Hopei in the North."[88] In spite of Chou En-lai's statement on 18 January 1941 claiming that further friction between the Central Government and the Communist armies would be avoided and that it was justifiable for the Government to disarm and disband the new Fourth Army and arrest its Commander,[89] the Communist Eighth Route Army again demanded to be transferred to the Yangtze Valley and also to be released from supervision of the Communists in Chungking.[90]

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[83] The new Fourth Army was organized in the autumn of 1939. It was originally a small force composed of scattered units of the former Red Army, but still receiving orders from the Communists.

[84] *London Times,* 20 January 1941, 3.

[85] *Contemporary China,* vol. III, no. 24 (April 17, 1944), 2.

[86] *New York Times,* 18 January 1941, 6.

[87] *Loc. cit.*

[88] *Loc. cit.*

[89] *New York Times,* 19 January 1941, 11.

[90] *Ibid.,* 21 January 1941, 14. The Communists claimed that they could fight the Japanese more effectively, if they were assigned to the Yangtze region. The main reason for their asking for transfer was, many believed, that they wanted to move from the impoverished regions in which they were operating and get settled in the rich Yangtze Valley. In its editorial of 22 January 1941, 20, the *New York Times* commented: "As to the

The Communists, it was believed, tendered twelve demands to Generalissimo Chiang protesting the systematic suppression of the Communists and styling such suppression as "undeclared war." The Communist demands, practically amounting to an ultimatum, included: cessation of attacks on Communist armies; revoking of the order disbanding the new Fourth Army; freeing of General Yeh Ting; payment of compensation to the victims; abolition of a blockade line maintained in the northwest against the Yenan district; punishment of General Ho Ying-chin, Minister of War (whom the Communists accused of being at one time pro-axis) and several subordinates (Hsiang Kuan Yun Shang and General Ku Chu-tung); arrest and court-martial of the pro-Japanese elements in Chungking; return of the ammunition to the new Fourth Army; release of all patriotic political criminals; stopping of one-party government; putting of the three principles of Dr. Sun Yat-sen into actual practice; and recall of all Government forces in Central China.[91] In addition, they outlined another set of "temporary conditions for settlement" more or less similar to the former twelve, but with more stringent demands even to the extent of asking for a legal status of their "special areas."[92] On 28 January 1941 Generalissimo Chiang gave assurance that his action in dissolving the new Fourth Army was solely to preserve military discipline and was not prompted by political considerations. In a report to high officials on political issues, Chiang said:

I exercised Christian forgiveness unto seventy times seven with the recalcitrant new Fourth Army. . . . But it continued to give

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Yangtze, a Chinese victory which would leave Communist forces in possession of the country's richest provinces would scarcely be palatable to the government unless it were first assured that those forces put loyalty to China ahead of adherence to Moscow. Chiang Kai-shek has no wish to exchange Japanese domination for control of Russia." For a detailed analysis of the more recent Communist situation in China see Max Eastman and J. B. Powell, "The Fate of the World is at Stake in China," *Reader's Digest* (June, 1945), 13-22.

[91] *The Shun Pao* (Shanghai), 10 March 1941, 3. A brief account also in Anna Louise Strong, "The Kuomintang-Communist Crisis in China," *Amerasia*, vol. V, no. 1 (March 1941), 11.

[92] *The Shun Pao*, 10 March 1941, 3.

false reports vilifying the Central Government and to take arbitrary action until it was apparent that if the new Fourth Army was unchecked it would cease to be worthy of the name of the nation.

In China today there is absolute unanimity of purpose among all armies and the peoples in resistance against Japan; hence, there is absolutely no ground for disagreement or civil war.[93]

During the March session of the People's Political Council in 1941, Chiang approved a plan of the Council to undertake arbitration of the disputes between the Communist and the Kuomintang in Chungking. The Council was to invite the Communists to attend the sessions, for it was "convinced the government is willing to discuss problems provided the subjects do not conflict with military orders, discipline, the national program of resistance to Japan or the reconstruction of the nation."[94]

Two hundred and one Councilors registered for the meeting, including Mao Tse-tung. Councilors from Manchuria, Nanking and Shanghai were present. Previously the auditorium of Chungking University had been used as the meeting place. For the first time the newly erected building, chiefly built for the coming People's Congress and accommodating over 2,000 persons, was used. Besides other influential Councilors, Wu Yi-fang, dean of Chinling Women's College, was presiding officer.[95] Twenty-three resolutions pertaining to current problems, local people's political councils,[96] currency, military service, etc., were passed on 5 March. On 7 March 172 attended, while on 1 March the number had risen to 193. All the Department heads gave substantial reports to the Council, all of which were concerned with the various aspects and accomplishments of the Government's program. Dr. Wang Chung-hui, Minister for Foreign Affairs, gave a detailed report on foreign relations with Soviet Russia, Great Britain and the United States for the past ten months. The Minister for Economics, Dr. W. H. Wong, reported on the development and

[93] *New York Times*, 29 January 1941, 4.

[94] *New York Herald Tribune*, 7 March 1941, 7; *New York Times*, 7 March 1941, 6.

[95] *The Shun Pao*, 5 March 1941, 3.

[96] *Ibid.*, 6 March 1941, 3.

facilitation of mining industry, canal transportation and agricultural adjustment. He pointed out that the importance of national economic development lies not in the fact of increase production, but that the proper and reasonable distribution should be emphasized. Questions from the floor were numerous but both Dr. Wang and Dr. Wong only agreed to answer them in written form.[97] The following day, *Ta Kung Pao* put out an editorial in Hongkong in part as follows:

> We believe the attitude of Government officials in relations with Councilors the more sincere the better, and they should not wrangle over phraseology, for such was the traditional universal defect of the so-called literati for thousands of years in China. In extraordinary times we are not even satisfied with our efficiency by merging two steps into one in our services to our country, where we can find the time to work on letters literatim?[98]

The Communist Councilors refused to attend the sessions. It was believed that the Communists, by their absence, hoped to gain certain political concessions from the Government.[99]

Councilors Shen Chün-ju, Huang Yen-pei and Tso Shun-sheng had tried to conciliate the Communist Councilors by persuading them to attend the Council meetings in the hope that some compromise might be reached. Interestingly, but rather unfortunately, the Communist Councilors sternly replied: "We don't want to be 'gypped' again." To this, the Conciliators replied, "Even though you'll be 'gypped,' let this be the last time." After long discussion and persuasion, their effort bore no fruit, for the Communist Councilors decided to "wait for instructions from the Central high command of the Communist Party."[100] The fundamental difference was that the Communist Councilors wanted a radical change in the general policy of the Government in the conduct of the People's Political Council and also a promise from it that further suppression of Communistic movements be stopped.

The next morning, 11 March 1941, the first session of the Council adjourned. The Communist paper, *Hsin Hua Jih Pao,*

[97] *The Chinese Journal,* 2 April 1941, 5.
[98] Quoted in *The China Daily News,* 2 May 1941, 5. Translation mine.
[99] *The New York Times,* 3 March 1941, 6.
[100] *The China Daily News,* 23 April 1941, 3. Translation mine.

carried a headline beginning: "Reasons for the absence of the Communist Councilors."[101] and the *Ta Kung Pao,* which often reflects official opinions, wrote an editorial appealing for military unity and for democracy in politics.[102]

Chou En-lai, representative of the Communist Party in Chungking, gave the following explanation as to why the Communists refused to attend the People's Political Council:

It [The People's Political Council] is not a representative body with delegates owing responsibility to their constituencies. . . . It is an assemblage of invited guests. It is no more than an advisory Council appointed by the Kuomintang. Within it the Communists would be permitted no freedom to express their opinions. From the New Fourth incident onwards the basis of Kuomintang-Communist cooperation had been shattered. After that incident we drew up a list of twelve points which we wished to have discussed at the Council's meetings. The Government refused to include these points in the agenda. How can we possibly attend a meeting where on the entrance gate there is a large placard saying, "One of our guests is a traitor."[103]

It must be remembered that earlier, on 6 March 1941, addressing the Council, Chiang charged the Communists had many times violated their pledge[104] to the Government in 1937 in which they had promised support of the "Three People's Principles" *San Min Chi I* of the Central Government. Chiang assured the Council that, despite his differences with the Communists, he was willing

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[101] *Loc. cit.* Translation mine.

[102] *Loc. cit.*

[103] Robert W. Barnett, "An Interview with Chou En-lai," *Amerasia,* vol. V, no. 3 (May 1941), 126.

[104] The Communist pledge of September 1937 may be summed up in four points:

(1) Abandonment of all movements for overthrowing the power of the Kuomintang in the Government and of the policy of confiscating lands of private land-owners;

(2) Recognition by the Communists of the necessity of following the Three Principles of Sun Yat-sen;

(3) Abandonment of the Chinese Soviet Government and establishment of democracy in China, unifying the power of government;

(4) Abandonment of the title of "Red Army" and submission to the control of the Military Council of the Central Government.

to accept the resolution approved by the Council for the settlement of Kuomintang-Communist differences.[105] In his explanation to the Council as to why the Communists' demands were rejected, Chiang outlined:

First, these military demands infer that the government should not suppress rebellious troops, and that otherwise the military authorities should be punished; furthermore that the losses suffered by the mutineers should be compensated.

Second, the political demands infer that outside the jurisdiction of the National Government special areas should be established with their specific political structures and that at the same time enforcement of lawful restrictions on public and private illegal activities should be curbed. In addition, they demanded recognition of the so-called "democratic rights in occupied territories"; should this be allowed to be developed it would bring about a great upheaval in which political authority would be grabbed, even in the presence of the enemy.

Third, the demands regarding party affairs infer that the Chinese Communist party should have special status and special privileges in the People's Political Council; the government should not extend to independent councilors and those representing other parties equal treatment with the Communists; otherwise, the latter would refuse to participate in the Council's deliberation.[106]

Summing up these three points, the Generalissimo continued by saying that "Militarily, it was the government's 'inherent policy' that the army should be nationalized," and that the National Revolutionary Army "belongs to the country and not to any one party." "Politically," he went on, "the government should be democratized. The national political authority is one, separatist authority cannot be any way different from the puppet regime of Manchukuo and Wang Ching-wei."[107] He warned that the People's

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[105] *New York Times,* 8 March 1941, 5; *The Shun Pao,* 10 March 1941, 3. Tung Pi-wu and Mme. Chou En-lai wrote a letter of appreciation to the People's Political Council, but insisted that the Communists would not attend the Council, unless the Government accepts the twelve points proposed by the Communists.

[106] *New York Times,* 23 March 1941, 6. A detailed account to the same effect was given by *The Shun Pao,* 10 March 1941, 3. For full text of Chiang's speech to the Council see *The Shun Pao,* 11 March 1941, 3-4.

[107] *New York Times,* 23 March 1941, 6.

Political Council would not remain a democratic forum and China would not be a nation, if the Communists' demands were accepted. In conclusion, he said:

> If henceforth they obey and stop attacking other army units our government would be lenient and let bygones be bygones and extend to them equal treatment.
>
> But should they disobey orders, violate discipline and obstruct armed resistance, as the former new Fourth Army did, the government in upholding the interest of the country and assuring final victory, cannot but suppress them in accordance with law in order to fulfill the government's supreme duty.[108]

The Government's stand was, it was subsequently reported, that, since the new Fourth Army "incurred chastisement not as Communists but as mutineers," the punishment by the Chungking Government did not imply any sort of political quarrel between the Kuomintang Government and the Communist party . . . and for the present at least, they are cooperating[109] in their resistance to the Japanese.

The Council elected a permanent advisory committee, the Standing Committee,[110] to act for it during the adjournment of the Council. Tung Pi-wu, Communist leader, was elected one of the twenty-five resident members of the Committee, although he did not attend the sessions. It was believed that this was a favorable move on the part of the Kuomintang to end friction between the Central Government and the Communists.[111]

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[108] *New York Times,* 23 March 1841, 6.

[109] *London Times,* 7 February 1941, 3.

[110] The members of the Standing Committee were: Chu Fu-cheng, Kung Keng, Hsi Yao Chia Ts'o, Chen Po-sheng, Huang Yen-pei, Lin Fu, Li Chung-jang, Teng Fei-huang, Hsu Shiao-yen, Fan Yu-sui, Chiang Yi-ping, Kan Lih-wu, Wang Chi-chiang, Tung Li Heng, Li Hsien-ken, Liu Cheh, Fu Ssu-nien, Sheng Chun-ju, Chang Lan, Liang Tso-ming, Tung Pi-wu, Liang Chiu-chih, Kao Hsi-ping and Tsou Tao-fen.

[111] *New York Times,* 11 March 1941, 6; *The Chinese Journal,* 1 March 1941, 5. Not until 18 May 1941 did General Chou En-lai, Communist representative in Chungking, announce that Communist troops were giving full support to the Central Government. See *New York Times,* 19 May 1941, 4. But occasional attacks by the Communist Eight Route Army on Government troops were still openly heard of in different zones, even as late as July 1941. See *New York Times,* 20 July 1941, 13.

The Council in a manifesto also urged the Communists to abandon differences with the Kuomintang for the sake of national unity. Acting in concert with the People's Political Council, the Central Government, in an effort to rebuild a united front with the Communists, asked the Hunan Provincial People's Political Council to appeal to Mao Tse-tung, Communist military leader, and Chu Teh, Communist political leader, requesting that they give support to Generalissimo Chiang. This approach, it was thought, would avoid further tension in its relations with the Communists.[112] Councilor Tung Pi-wu later was invited by the Standing Committee to pass his frank opinion on the Kuomintang-Communist crisis. As to the point of putting the army on a nationalized basis, he was in complete agreement with the Government, but insisted that political doings should be democratized.[113]

Disagreement as to the actual functioning of the government relative to the duties of the People's Political Council was still at a dear stake. At the beginning of the Second Council, Councilor Tsou T'ao-fen, one of the "seven Gentlemen," was reported to have resigned from the Standing Committee of the Council and left Chungking.[114] In his telegram of resignation to the National Government through the Standing Committee of the Council, he emphasized the resolution on protection of the freedom of the press passed by the first Council to the effect that his publication society, The Life Book Company, which had published over one thousand series of cultural or other books pertaining to armed resistance and reconstruction and had early gained recognition of the Central Government, was practically suspended by Government action. "My sixteen years of sheer hard work, and over fifty local branches of my publication society are now paralyzed. I feel my being Councilor is of no assistance under such difficult

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[112] *New York Times,* 23 February 1941, 14.

[113] *China Daily News,* 22 April 1941, 5.

[114] Liberal politicians who left earlier in the spring of 1941 during the "purge" by Kuomintang that followed the clash between the new Fourth Army and Government troops gathered in Hongkong and formed the so-called "Federation of Democratic Parties." They and some other following in Singapore charged that Kuomintang failed to establish democracy in China. See *New York Times,* 24 November 1941, 7.

circumstances in any measure and I resign with deep regret and shame." In assuring the government of his concerted effort in spite of his reverses, he continued: "I shall hereafter continue to support our Government, obey our leader and resist our enemy to the bitter end in the capacity of a private citizen."[115] The unrestricted freedom of speech, of press and of assembly has been suspended for the duration by the Government as an essential war measure. The people will undoubtedly recall that, at the outbreak of the war, they enjoyed more civil liberty than ever before. But the "Seven Gentlemen" patriots, leaders of the National Salvation Association, who were in prison since the fall of 1936, were released. Political exiles were allowed to return, pale liberals, leftists and Communists emerged from jails all over the country. Books, literature, poetry, short stories, novels and liberal magazines hitherto regarded as seditious and dangerous boomed the stores.

While party relations grew acrimonious, the 157th session of the National Government passed two important resolutions. Coupled with the postponement of the convocation of the People's Congress, the statutes governing the People's Political Council were to be revised.[116] The 118 Councilors representing cultural and economic circles were increased to 138, bringing the total number of councilors up to 240. Ninety of them were popularly elected from Provincial and municipal People's Political Councils showing some improvement of partial direct representation. It was hoped that this measure would serve in lieu of the People's Congress for the duration of the war. The effect of this alteration had decreased the number of Kuomintang Councilors, thus giving more opportunity to the other parties and groups in the participation in political affairs.

Whether the postponement of the People's Congress was advantageous or harmful can hardly be determined. But it seemed reasonable that, in time of political unrest and foreign war, it would not be safe to inaugurate the People's Congress for the adoption of the Constitution. For such an event would only furnish

[115] *China Daily News*, 18 April 1941, 3. Translation mine.

[116] The closing of the Burma Road in July 1940 was also a contributing factor in the Government's determination to devote its primary attention to the prosecution of the war.

an excellent opportunity for party strife and thus divert the concentrated power of the Central Government. If the inauguration of the People's Congress is construed as a vital factor contributive to victory, then it is justifiable and of course necessary for the Government to provide for every means to achieve such an end.

True, the issue of adopting a Constitution has been an age-long topic of discussion by both the people and the Government. The date of inaugurating a People's Congress was fixed no less than three times within a period of five years. The initiative was taken at the Third Plenary Session of the Fourth Meeting of the Central Executive Committee of the Kuomintang as early as December 1932, when it was decided that the People's Congress was to be inaugurated in March 1935. Subsequently, during the Fifth Meeting of the Kuomintang in November 1935, it was again decided that the People's Congress be convened within 1935 at which a Constitution would be adopted. Acting in consonance with the Kuomintang decision, on 2 December of the same year the First Plenary Session of the Central Executive Committee fixed the date for 12 November 1936. The last postponement was effected by the decision of the Central Government to postpone it until the end of 1937. Due to the Sino-Japanese war which started in July 1937, a further postponement occurred. It was only at the suggestion of the People's Political Council that the issue was again revived.

It should be realized that, although China has long desired a written permanent Constitution, the actual practices of the Government have, along the concept of modern constitutionalism, developed certain methods which have been most desired under the circumstances by the people. For over three decades the Government has been more realistic than theoretical in the actual management of government. Added to this is the fact that the accumulation of the ancient moral principles, philosophy, customs and usages have developed a more or less unwritten constitution, the fundamentals of which are deeply rooted in the conscience of the populace, although the power to exercise the various rights clearly rested in the hands of the governing few. This is undeniable. If there be any reason that could be justifiable for the postponement of the People's Congress and of the adoption of the

permanent Constitution, it is the principle of functionalism based on expediency.

There is ample reason to believe that, assuming that the People's Congress be held during this time of disturbances and the Constitution be put into effect, the workability of the instrument would be only transitory. The people will renew their demands and will never be satisfied with the result. At present, the Party in power is the Kuomintang, which carries the greatest share of responsibility in national resistance and reconstruction. Naturally, it has the duty to see that public measures are taken in the right direction and to the people's best interests. In the actual execution of these public measures, the Kuomintang is also inevitably acting according to its party platform or to the principles which it believes to be the best for the common good. Furthermore, if the Constitution is proclaimed, such an instrument would reflect in great part the Kuomintang interests. The other parties, which are comparatively immature, would denounce the Constitution as a mere tool of the Kuomintang. The Kuomintang itself should realize that such is not the desire of the people because of the mere fact that the Constitution would not be popularly made. Besides, a more adequate system of election has yet to be developed throughout the country in the electing of delegates to the Congress so that representation in a most real sense may be achieved. The attack on the Kuomintang as "one-party" government by the other parties and groups has been often and bitter enough. This, from their viewpoint, may be intolerable, but, in times of emergency, the Government is justified for all practical purposes in doing certain things which it may not do in time of peace. To avoid recurrences of "blank-paper-constitutions," the Government acted with propriety in ordering that the inauguration of the People's Congress be postponed until a later date.

There has been criticism of the result of the 1937 national election. The election of 1,440 delegates to the People's Congress was previously scheduled to be completed by June of 1940. Between the years 1936 and 1937 three fourths of the delegates had been duly elected.[117] Due to the war, the election was automatically

[117] Yang Chi, *Essentials in Constitutional Government*, 36. Report of the 1936-37 election of delegates.

shelved—when the Government proclaimed that the Congress be postponed. Proponents of a new election maintained that the delegates elected during 1936 and 1937 would no longer represent their localities, interests or professions because many of them have deserted from the Chinese Government and aligned themselves with the pro-Japanese puppet regime. Moreover, they contended that some delegates were elected through bribery because of the lack of complete knowledge on the part of the people concerning the People's Congress. Others contended that, although such allegations were true, the task of reelecting the delegates would not only be impossible in the conquered areas, but also would probably result in ruptures in the united front.

On the other hand, the number of delegates who became traitors is relatively few and their replacement could easily be supplied by proper procedures. Furthermore, according to them, Article 25 of the Reconstruction Program stipulated that, after the promulgation of the Constitution, the country would have a nation-wide election. From this standpoint, therefore, the nature of the People's Congress is only temporary, whose primary task it is to adopt the Constitution. As soon as this task is completed, the Government is charged with the sole important task of election. If things are done with the right spirit, a real representation of the people would be attained in due course.[118]

However, Chang Chun-mai, leader of the State Socialist Party, considered the entire issue of the adoption of the Constitution by the People's Congress as political, not juridical. He contended that the adoption of the United States Constitution and the adoption of the German Constitution both were achieved under serious difficulties, but were made possible by cooperation and conciliation. Such a task now devolves on the best minds and conciliatory spirit of the nation.[119]

Councilor Tso Shun-sheng, leader of the Young China Party, early in August 1940 during an interview with Generalissimo

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[118] An article by Councilor Chu Fu-cheng, in *National News Weekly*, 11 November 1939; reprinted in Yang Chi, *op. cit.*, 87-9.

[119] An article by Councilor Chang Chun-mai, in *Ta Kung Pao*, 29 November 1939, 2; reprinted in Yang Chi, *op. cit.*, 89-91.

Chiang made an effort to explain the political situation to the latter, saying:

> The reason why all the other parties are willing to cooperate with the Kuomintang is because they want to establish a democratic government and put the Constitution into effect and not for decoration purposes. So long as the organic laws of the People's Congress remain unchanged, the various parties are not willing to share the responsibilities and therefore would not participate in the movement. Moreover, public opinion believes that the People's Congress, emerging from under the existing unhealthy political construction of the middle and lower levels, could hardly have a better result than the People's Political Council.[120]

Obviously, party interests are controlling factors in the development toward constitutionalism. The future of Chinese constitutionalism depends much on the liquidation of all rigid party principles, irreconciliable in a many partied government. The country will hope that the "government-by-the-people" bill passed during the 17 to 26 November 1941 session of the People's Political Council calling for the election and convocation of a People's Congress immediately after the conclusion of the war will be truly given effect. The authors of this bill, Generalissimo Chiang and the late President Lin Sen, as well as the Kuomintang, though it is certainly a delicate matter, will have to translate it into a living reality. Only by doing so can the political powers be restored to the people and a popular elected government under Chinese constitutionalism be established.

No one can deny, in theory as well as in fact, that the People's Political Council is a stepping-stone to democracy. That the institution of a constitutional democracy will be the stumbling block of future China is obvious. But certainly the people, perhaps much more so than the Government, would not like to have the present function of the People's Political Council, which in time may certainly improve, pass away like the previous so-called "Political Council" under the Yuan Shih-kai regime, which recommended dissolution of the National Assembly and the calling of a Constitutional Council to frame a permanent Constitution. It must not be forgotten, moreover, as the left-wing Councilor, Tso Tao-

[120] *China Daily News*, 22 October 1940, 3. Translation mine.

fen, has reminded the Council in his 5 March 1941 telegram of resignation that resolutions of the Council were regarded by the Government as "scrap paper."[121]

A good Constitution can not safeguard the rights of the people unless that Constitution is framed and supported by the people. A Kuomintang Constitution or a many-party Constitution does not survive the spirit of Constitutionalism. In order to avoid unnecessary and wasteful effort, it is essential to carry out the two prerequisites for better government, that is, the full use of political tutelage and at the same time the fulfillment of the Program for National Resistance and Reconstruction. Only by doing such, and such alone, will the faith of the people be maintained and a better government be achieved. The realization of the basic organization of a good government and the sincere cooperation of all parties and cliques, professions or interests are needed in order to graduate the country into true constitutionalism.

The third Council[122] met from 23 to 31 October 1942, at which 204 Councilors were in attendance. President Lin Sen and the Generalissimo addressed the Council on the state of the nation. Lengthy reports were rendered by various Ministers, including General Ho Ying-chin, Minister of War, P. S. Foo, Vice Minister of Foreign Affairs, Dr. H. H. Kung, Minister of Finance, Chang Chia-ngau, Minister of Communications, and Dr. Hsu Kan, Minister of Food.[123]

Occupying the diplomatic gallery were United States Ambassador Clarence E. Gauss, British Ambassador Sir Horace Seymour, Netherlands Minister Baron von Vreugel Douglas, Australian Minister Sir Frederic Eggleston, Czechoslovak Minister Stanislaus Minovsky and the Soviet, Polish, Turkish and Belgian charges d'affaires. Both Chinese and foreign correspondents swarmed the press galllery. The Generalissimo himself submitted a price-control bill calling for the centralization of the machinery in the General Mobilization Committee and the creation of Provincial and municipal and county machinery. The controlling measures

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[121] *China Daily News*, 13 March 1941, 1.

[122] A brief report of this session in *China At War*, vol. IX, no. 6 (December 1942), 12-20.

[123] *Contemporary China*, vol. II, no. 13 (16 November 1942), 3.

included the imposition of price ceilings, the control of commodities, the promotion of production, the restriction of consumption, the improvement of transportation, the intensification of currency and credit control, the adjustment of taxes, the retrenchment of the national budget and the mobilization of manpower.[124]

Other important measures of importance may be summarized as follows: (1) drafting of a "Pacific Security System" as a basis of permanent world peace; (2) conclusion of new treaties on the basis of complete equality; (3) drafting of a comprehensive plan for inviting Allied capital and technical cooperation during the postwar reconstruction in China; (4) investigation of Japanese atrocities as a basis for the punishment of Japanese war criminals; (5) coordination of Government departments; (6) betterment of the life and training of soldiers and students; (7) immediate relief program for Honan and Hupei; (8) improvement of administrative personnel system; (9) subsidizing of medical expenses for public functionaries and teachers; (10) establishment of public health institutes in Mongolia and Tibet; (11) gradual introduction of state medicine; (12) early completion of the Paochi-Lanchow sector of the Lunghai Railway; (13) strict prohibition of food adulteration; (14) intensification of wartime savings campaign; (15) establishment of more public nurseries; (16) institution of relief program for returned overseas Chinese; (17) establishment of a National Northwest Library and establishment of more schools in Mongolia and Tibet; (18) establishment of a special organ to take charge of the development of the Northwest; (19) establishment of nurseries and factories to aid the women's mobilization program; (20) relief of Fukien fishermen; (21) increase in the appropriation for scientific and academic research; (22) promotion of cooperation between public-owned and private-owned industries; (23) absorption of floating capital and (24) compulsory purchase of government bonds.[125]

The measures thus far taken up by the Council are of the most urgent nature and importance. A semi-legislative organ as it is, the Council may not be viewed as a pure-governmental advisory body because, except in emergency, the Government is required to

[124] *Ibid.*, 4.
[125] *Loc. cit.*

submit all measures for its consideration before they are carried out. The approval by the Supreme Defence Council is still not final. The measures have yet to go through the ordinary ordinance-making process in order to become laws. But whatever help the Council might have given to the Government in the matter of policy-making, at least the articulate group-interests have shared their part, though representation may yet improve when conditions will permit. Indeed, the experimentation of practical democracy is in process. In the words of the Generalissimo at the closing session of the recent Council:

> Honorable members of this Council, these are the days in which the nation's hopes are high and in which at the same time the weight of our duties is constantly growing. I trust that you will all strive your utmost in that national service that is yours.[126]

The establishment of the People's Political Council by the Central Government marked a definite departure from the previous bogus parliaments under the various defunct regimes at the earlier stages of the Republic. It is by far the most representative one ever assembled in the history of China under the circumstances. The achievements of the People's Political Council during the war speak eloquently of the fact that the Council has opened the road for the Government as well as the people to enter the threshold of a Constitution and to march towards the democratic ideals set down by the late leader Dr. Sun Yat-sen, founder of the Chinese Republic.

On 12 November 1943, upon the recommendation of President Chiang Kai-shek, a Committee for the Establishment of Constitutional Government was inaugurated by the People's Political Council as a definite step toward the establishment of a constitutional government. This Committee, which is under the Supreme National Defence Council, is composed of members of the Kuomintang Central Executive and Central Supervisory Committees, members of the People's Political Council and experts.[127]

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[126] *Loc. cit.*

[127] "Committee for Establishment of Constitutional Government: Regulations for Its Organization and List of Members," *China at War,* vol. XI, no. 5 (November 1943), 69-71. See Appendix Q.

The purpose and function of this Committee is to bridge the gap between the Government and the people. The Government will submit materials concerning the Chinese Constitution to the Committee for its decentralized research and the people will send their opinions concerning the Constitution to the same Committee.[128]

According to latest reports, the number of Councilors will be increased from 240 to 290 by January 1945, the additional fifty to be chosen from those Provinces and cities which already have established local People's Political Councils.[129] The power of the People's Political Council will be increased and it will function with a more realistic basis.

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[128] *Hsin Pao* (New York), 24 December 1943, 4.
[129] *Ta Kung Pao* (New York), 14 October 1944, 7.

CHAPTER VI

Conclusion

Looking back into China's experience during the past four decades, it is easy to visualize that China, with all her prerequisites as a democratic nation for centuries, although the form of government had been monarchical rather than democratic, may easily be graduated into a constitutional democracy only when the people are given a chance to know their responsibility and duty toward it. It must be understood that China has been governed throughout all these ages not so much by formal law as by a sense of morality and reason.[1] In ethics as well as in politics, the teachings of Confucius (550-478 B. C.) and Mencius (372 B. C.), to the exclusion of theories of other schools, have dominated for the last twenty-three centuries. The self-government that China enjoyed even during monarchical days perhaps very little.[2] On the one hand, the people were not bothered by the Government so long as their legal share of taxes was paid and, on the other, the people did not care much about the ruler so long as he would not overstep his authority. He "ruled only so long as he had the mandate of heaven and this mandate was manifest in the contentment of the people."[3] Throughout China's ancient history, kings and

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[1] Bishop Paul Yu-pin, "The Chinese Catholic Movement," *The American Ecclesiastical Review,* 110 (1944), 83.

[2] Stanley K. Hornbeck, *China Today: Political* (Boston, 1927), 422, describes the Chinese political characteristics thus: "With an abundance of precept and maxim, there was little legislation and not much police regulation. The genius of the Chinese has not run to organization and administration. They have been the best governed great nation discoverable anywhere in history. The Chinese state was an enlargement of the family. Its political structure was designed for self-contained superiority."

[3] Yu-pin, *op. cit.,* 83-84. Quoting Mencius, Bishop Yu-pin points out: "'The people are the most important element in the country.' And the Book of History records: 'The wisdom of heaven is reflected by the wisdom of the people and the reward or punishment of heaven is based upon the judgment of the people.'"

emperors ousted and dynasties overthrown by the people had been numerous; insofar as that was endurable, the people were glad to endure, but, if the community was threatened by a tyrant, joint action to rebel against him or even to kill him was morally justifiable according to the Chinese political belief.[4]

[4] It is interesting to note that early Christian political ideas also had some implications that the killing of a tyrant was justifiable "for the liberation of his country." Wilfrid Parsons, S.J., "St. Thomas Aquinas and Popular Sovereignty," *Thought*, 16 (1941), 483. Thus, St. Thomas, in answering an objection against the obligation to obey rulers from the fact that Cicero praised those who murdered Caesar, said: "Cicero is speaking of a case where someone seized the dominion by violence, against the will of the people, the subjects, or through forced consent, and when there was no recourse to a superior by whom judgment can be had over the invader. In that case he who kills the tyrant for the liberation of his country is praised and received a reward." *Loc. cit.*

In his *De regimine principum*, I, vi, St. Thomas, while maintaining that tyrannicide is to be condemned, maintained that the redress to which the subjects of a tyrant have a just right must be sought, not by the individual, but by authority constituted by the people acting according to law, and he adds: "It must not be thought that such a multitude is acting unfaithfully in deposing the tyrant, even though it had previously subjected himself to him in perpetuity; because he himself has deserved that the covenant with his subjects should not be kept, since, in ruling the multitude, he did not act faithfully as the office of a king demands." St. Thomas Aquinas, *On the Governance of Rulers* (Eng. tr. by Gerald B. Phelan, rev. ed., London, 1938), 59.

However, John of Salisbury seems to have established the right of resistance to a tyrant. Among other commitments, the following is representative: "To kill a tyrant is not merely lawful, but right and just. For whosoever takes up the sword deserves to perish by the sword. And he is understood to take up the sword who usurps it by his own temerity and who does not receive the power of using it from God. Therefore the law rightly takes arms against him who disarms the laws, and the public power rages in fury against him who strives to bring to nought the public force. And while there are many acts which amount to *lèse majesté*, none is a graver crime than that which is aimed against the body of Justice herself. Tyranny therefore is not merely a public crime, but, if there could be such a thing, a crime more than public. And if in the crime of *lèse majesté* all men are admitted to be prosecutors, how much more should this be true in the case of the crime of subverting the laws which should rule even over emperors? Truly no one will avenge a public enemy, but rather whoever does not seek to bring him to punishment commits an offence against him.

Popular sovereignty has always been the traditional belief and teaching of the Chinese people. The works of Confucius, Mencius, Lao Tzu-Mo Tzu and numerous other political writers and philosophers and the Chinese Classics often reflected the thoughts of the Chinese people. Thus, Confucius, in counseling rulers, said: "Love what the people love and hate what the people hate." Similarly, Mencius says: "The people are the most important element in the nation," which in time became a proverb with the Chinese people. Moreover the old Chinese saying that the "King is the boat, the common people the water; the water can support the boat or capsize it," perhaps would help one to comprehend the Chinese concept of the relationship between the ruler and the people. In fact, Mencius once said:

He who outrages the benevolence proper to his nature is called a robber; he who outrages righteousness is called a ruffian. The robber and ruffian we call a mere fellow. I have heard of the cutting off of the fellow Chau the name of a tyrannical emperor, but I have not heard of the putting a sovereign to death, in his case.[5]

Traditionally, the emperor and his people were considered as composing one large family and the happiness and prosperity of the people were the criteria by which the emperor was to be judged. Should the emperor not administer for the common good of the people, he would be considered to have lost the mandate of heaven and cease to be emperor. As a result of this abuse of power, the emperor would be subject to removal or else the people would have the right to revolt against him. Thus, keeping up with this belief throughout all the Constitutions thus far proclaimed, the people are placed in the foremost chapters and their sovereignty recognized.

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self and the whole body of the earthly commonwealth." John Dickenson (tr.), *The Statesman's Book of John of Salisbury . . . the Policraticus* (New York, 1927), lxxiii-lxxiv. See also Joseph B. Pike (tr.), *Frivolities of Courtiers and Footprints of Philosophers . . . the Policraticus* (London, 1938), 211-212.

[5] James Legge (tr.), *The Chinese Classics* (2d ed., 7 vols., New York and London, 1893-1895), II, 255; also Stephen C. Y. Pan, *American Diplomacy concerning Manchuria* (Washington, 1938), 25.

The democratic spirit of the Chinese people and their relations with the ruler perhaps may be amplified in the folk song over four thousand years old:

> When the sun rises, I toil;
> When the sun sets, I rest;
> I dig wells for water;
> I till the fields for food;
> What has the king's power to do with me?

Moreover, even before China came into contact with the Western idea of democracy, children were already humming in their village schools everywhere such rhymes as:

> Prime Ministers and Generals do not belong to any class;
> Youths should exert themselves.

Thus, traditionally the Chinese people do not believe in class distinction, inheritance of class superiority, which was adequately expressed by Confucius: "Yu chiao wu lei," meaning "with education there is no class." Thus, throughout the centuries there has grown up a deep-rooted tradition that officials are not born of any special class. This, as time went by, developed into the competitive examination system in civil service, open to rich and poor,[6] and the censorial control of the government for centuries.

A Chinese Constitutional lawyer remarked:

China has no constitution, if by a constitution one means a written instrument ordained and established by the people as that of the United States of America, or one granted nominally by a king as that of Prussia; but if by a constitution one means a body of customs, traditions, precedents, as that of England, China has one. As the Christians cherish the Scriptures; the English, Magna Charta; and the Americans, the Constitution; so the Chinese cherish the Confucian Classics.[7]

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[6] Chuang Tzu (c. third and fourth century, B. C.), a Taoist philosopher, reformer and supporter of the doctrines of Lao Tzu (c. 600 B. C.) said: "'Come hither,' said Confucius to Yen Hui. 'Your family is poor and your position lowly. Why not go into official life.'" Herbert A. Giles, *Chuang Tzu, Mystic, Moralist, and Social Reformer* (London, 1889), 379.

[7] Hawkling L. Yen, *A Survey of Constitutional Development in China* (New York, 1911), 13.

In the recognition of the emperorship and the uniting of the people by the selection of Shun to succeed Yao ("Canon of Yao"),[8] may be considered as the first constitutional document of China. It established the precedent that merit and virtue should be the prerequisites for rulership. Another document, the "Canon of Shun" (2000 B. C.) which outlined the Chinese governmental organization, may be considered as having the rudimentary force of a written constitution. It provided for an emperor and nine departments: control of water and land, agriculture, education, justice, public works, forestry, religion, music and communications.

Thus, before the Chou dynasty (1122-255 B. C.), for almost nine hundred years, China was already living under a constitution and, under the Chou dynasty, documents such as "The Establishment of Government" and "The Officers of Chou" were produced providing for a constitutional form of government, although it may not be considered as a completely developed governmental organization such as we have today. Then in the *Chou Li* ("Rites of Chou") and the *Li Chi* ("Canon of Rites") other rudimentary governmental functions and canons governing public life may be found.

Without going into the details of these documents, they suffice to show that, so far as there is question of a "Constitution" in the sense of a document binding both the people and the Government China has had a Constitution, although the real initiative in Chinese constitutional development in the modern sense of the term did not come until 1908, when the "Principles of Constitution" was promulgated. Thus, again in the Western sense, the "Nineteen Articles" of 3 November 1911 may be deemed as China's Magna Charta, inasmuch as they formally limited the monarch's power.

Because of her premature attempt to introduce a popular government and the method employed was so relatively new, political disturbances often resulted.

Disorders and disasters followed one another in a vicious circle. The supreme laws of the State were manipulated by the politicians and warlords so as to cover up their own evil doings. In the name

[8] Legge, *op. cit.*, III, 17.

of democracy numerous barriers to democracy were set up and untold sins against democracy were committed.[9]

China's traditional political features are unique in themselves. A Constitution for China must first be able to serve the perfect machinery of government in consonance with the actual condition and needs of the country. One of the fundamental errors in China's effort of adopting a Constitution has been that the early reformers had forced Western ideas too much into the Chinese system. They failed to realize China's own political, social and economic problems. Thus, President Li Yuan-hung and his Cabinet had once declared:

> Parliament and President are in complete agreement over the adoption of a permanent Constitution for China similar to that of the United States.[10]

China's governmental machinery must be suited to the character and condition of the people for whom it is designed. In order to accomplish this end, their tradition, custom, ideology, social as well as economic conditions and even geography must be taken into consideration. A Constitution framed in this manner should be able to provide for the smooth functioning of government in China. It should only outline the general principles with adequate flexibility as the supreme law of the land binding on both the Government and the people. Although the guaranty of individual rights and freedom should be emphasized, in no degree should they infringe upon the welfare and common good of the nation. The most regrettable mistakes committed by the constitutionalists in the past have been either too severe limitation on the ruling class, thus affording them an incentive to usurp the powers that were not conferred on them, or too little emphasis has been put on the protection of individual rights. These must be corrected.

Under present conditions it is extremely desirable that the form of political organization be as simple as possible and that such form should, as far as may be, avoid opportunity for conflict

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[9] Chiang Kai-shek, *Resistance and Reconstruction: Messages during China's Six Years of War, 1937-1943* (New York, 1943), 88.

[10] Quoted in Robert McElroy, "The American Constitution and the Chinese Republic," *China Society Pamphlets,* II (New York, 1922), 5.

between the different parts of the political mechanism. This is because China lacks experience in a representative legislative assembly. It is not necessary to adopt the English Parliamentary system, nor is it wise to transplant the American Congressional system. At the early stage, such representative body should in large measure be consultative and advisory. The People's Political Council is the most ideal representative body that China has ever assembled. The five-power system introduced by the late leader, Dr. Sun Yat-sen, seems to be best suited to China's present conditions.

The Chinese people perhaps have enjoyed the most of individual freedom among other peoples of the world. They have been regarded as a peaceful nation simply because they respect the individual freedom of their neighbors. Unless unreasonable burdens are imposed upon them, as a result of which their individual rights and freedom are impaired, they would prefer not to have any relations with the ruler. But the age of a "self-contained" government in China has gone, and perhaps forever, with the international complexities that surround her. These individual freedoms may not be safeguarded, unless they are taken care of by joint action and spirit, that is, by the Government.

China is composed of 450,000,000 individual citizens. Freedom must be provided for each and every single citizen. Therefore, we must define the scope of freedom and must not allow any individual citizen, in the pursuit of freedom, to interfere with the freedom of others. Only the sort of freedom achieved thereby is real freedom.[11]

This elegant interpretation of freedom rightly reflects Chinese society and involves no point of conflict with modern political thought. Moreover, in order to promote freedom, special emphasis must be placed on the social security of the people, without which organized freedom would be the prey of arbitrary government regulation. The many past Constitutions proclaimed were either too westernized or purely academic achievements and therefore impractical. They were inevitably manipulated by ambitious politicians and self-gratifying warlords. Before the adoption of a Con-

[11] Chiang Kai-shek, *China's Destiny* (in Chinese, Chungking, 1943), 183. Translation mine.

stitution, there is yet much to be done politically and educationally. It is difficult to say how much China's Constitution would be modified when it is finally adopted. However, it is rather safe to say that it will more or less follow the same line as it has since the Provisional Constitution for the period of Political Tutelage of 1 June 1931.

In the words of Generalissimo Chiang Kai-shek concerning the Constitution—

> Since we are out to make of China a *San Min Chu I* Republic we must implicitly obey the spirit of Dr. Sun's principle of the People's Sovereignty and the Five-Power Constitution. In our adherence to the teachings of the Father of the Republic it is essential to grasp the real sense of the distinction between sovereignty and ability (*pouvoir and puissance*) and the creative quality of the Five-Power System, so that no conflict with the provisions of that system may occur. If it is held that objective conditions dictate that necessity of gradual completion and advance, *some temporary make-shifts will be admissible but under no circumstances whatever can there be the incorporation in the Constitution itself of any provisions modifying the application of the Three Principles or conflicting with the spirit of the Five-Power Constitution.*[12]

The Kuomintang Party, which has been faithfully carrying out Dr. Sun Yat-sen's program, has emphasized the responsibility of the present war of resistance as well as of the national reconstruction program. It also steers the Government toward constitutionalism. Had it not been for the Japanese invasion of China in 1937, its program would have been carried far ahead and at the same time the People's Congress would have convened and a permanent Constitution adopted. There have been some erroneous inferences that, since China, because of war conditions, has not been able to adopt a permanent Constitution, the Kuomintang will continue to remain in power and the political power will not be returned to the people for a long time to come. It is true that many trivial incidents can be cited to substantiate the charge that the Kuomintang is a dictatorial party and that its policies have been fascistic to some extent. But it must be remembered that, since China is as yet without a Constitution and the very existence of the nation

[12] Chiang, *Resistance and Reconstruction*, 181. Italics mine.

is at stake, there is nothing the Party could do except to strengthen the people's belief in the ultimate survival of the country by putting the country first and to dictate to the people whatever is necessary and proper. This is a transitional period. Yet, when it comes to more important measures, both the Kuomintang and the Government are instinctively sensitive to public opinion and the public will.

When the People's Congress is called this coming November, as President Chiang promised, the Kuomintang will be one of several political parties in the nation, all of which will be on equal footing, enjoying equal privileges and rights, fulfilling equal obligations, receiving equal treatment from the state under the principles of freedom of assembly, organization, speech and publication.

The parties must work within the framework of a constitutional democracy. As the Communist problem in China is an internal problem, it should be settled by political means alone. The people have already suffered enough and can not afford to spill an additional drop of blood which will be so precious for the reconstruction of the country. Until the people are reasonably well educated and capable of realizing their rights and duties as citizens, the Kuomintang should yield its power over military affairs to the proper authority in the Government. From then on, political parties should become aware that their prime duty is only to foster the fundamental principle of real democracy, namely, the sovereignty of the people, to serve and assist the Government in the promotion and achievement of the greatest common good. Only by such kind of government will the desire of the people be fulfilled according to modern political principles. Lest the Revolution of 1911 be meaningless and the sincerity of the early fathers of the Chinese Republic be made a mockery, popular sovereignty must be guaranteed, for without it there would be no personal liberty and the dignity of mankind would be thrown back to the dark ages of the past.

The general theory has been that, just as soon as the Constitution has been adopted, the political power would be restored to the people by the Kuomintang. But this is not true. It does not mean that, after the Constitution is adopted, the Kuomintang is automatically dissolved, for Dr. Sun did not intend that the Party

be dissolved after the task of its temporary dictatorship has been completed and China has won a stable democratic government. It means only that, within the framework of the Constitution, the people are allowed to express their will and make it effective. The political power will be restored to the people only on the understanding that they believe in the *San Min Chu I* in order to qualify themselves for exercising their political power of election, referendum, initiative and recall through the People's Congress.

To those who doubt China's future in the establishment of a democracy, it is necessary to quote the Generalissimo's speech addressed to the Third Session of the People's Political Council held in Chungking on its closing day, 21 February 1939, in part:

> When Dr. Sun Yat-sen advocated the *San Min Chu I* he made democracy the final aim of his *Min Chuan Chu I*. If a people cannot look after their own interests, manage their own public affairs, and take an active part in the government, they cannot build up a strong nation. The most powerful and at the same time stable nations in the world are founded on the will of the people, and the interests and policies of the government are identical with those of the people. The object of Dr. Sun's Principle of the People's Sovereignty is to create a nation in which the government is "of the people, by the people, and for the people."[18]

When the Constitution is adopted, the functions of the People's Political Council will be automatically absorbed by the People's Congress. However, it is still too early to speak of local self-government, even though a Constitution has been actually adopted. The realization of the program of local self-government depends on the effort of the promoters and in no less degree on the readiness of the people to accept it. Though obstacles may still be in the way for some time, when normalcy will be restored to China again, it should not take too long to make the people realize the basic principles of local self-government and finally constitutionalism.

China's adoption of constitutional government is significant from many viewpoints. First, it shows the destiny of her 450,000,000 liberty-loving people will be added to the rest of the democratic armies of the free world. Secondly, it will mean a great deal to

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[18] Chiang, *Resistance and Reconstruction*, 84-85.

and constitute an essential part of her national reconstruction during the postwar days. Thirdly, it will guarantee the individual rights and freedoms of her people by that instrument which must be deemed the supreme law of the land. Fourthly, the smooth functioning of government based on law will be achieved. Fifthly, it will end all problems of provincialism, unnecessary prejudices and political strifes. Lastly, it will obtain equality of status in the family of nations under international law.

The success or failure of the Constitution of China depends much on this political stability, both internally and externally. Internally, the Chinese have to undergo a thorough system of political education, whether it be a formal process through ordinary education with emphasis on civil training or through a system of harsh discipline under supervision of the Government. While absorbing as much as possible a scientific knowledge of the modern world, the Chinese must not forget their traditional principles of Chinese politics, ideologies, practices and other usages and customs, since these constitute a great measure of the fundamental political behavior of the people. Externally, China must be free from foreign control, both politically and economically. It is too evident to point out that China since her contact with the western world for a century has been suffering from a long chain of foreign invasions, exploitation and encroachment on her political independence and territorial integrity. Without complete freedom and independence constitutional government can never take root in China. While these factors have been China's greatest enemy toward progress, China's failure to achieve constitutional government must not be interpreted solely in the light of her incapability, but an equal share of responsibility must be charged to the Western powers, which have taken part in the impediment of China's progress. The outlook for the rehabilitation and reconstruction of China is favorable, since through all these years of war of resistance both her internal and external problems have in great measure been solved. The Chinese will be much more apprehensive of their political institutions than ever before. The outside world will witness that, once China is given the chance to develop herself, her traditional political ideas will be translated into a vigorous governmental machinery.

A Constitution for China must be able to provide for the building up of the national power of defence, developing the happiness of the whole mass of the people and strengthening the citizens' rights.[14] If any change should be made at all by the People's Congress concerning the Draft Constitution 25 May 1936, the following principles should be followed:

1. The Chinese Constitution should be made to suit the national conditions.
2. The Chinese Constitution should be made to meet the needs of our period.[15]

However, it must be emphasized that China's needs link up the early natural rights with the legislative rights such as social security, public assistance, education, farming facilities, labor and other problems which might involve the fundamental rights of the people. This is due to the fact that the modern age has rendered it necessary.

However, the people must be warned that—

The matter of introducing a constitutional government as compared with that of a military (tutelage) government is much more difficult. It would be a great error if the people believe that as soon as the constitution is proclaimed the benefits of a constitutional government are already present. For, before the inauguration of a constitutional government, not only the responsibility of the members of the Kuomintang would be doubly increased in the actual enforcement of the constitution but also the responsibility of the entire people would be much heavier than before. The success or failure of government during the period of political tutelage may be due to the responsibility of the Kuomintang, but the result of the constitutional government should be the responsibility of the entire nation, a responsibility which cannot be shirked.[16]

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[14] Chiang, *Resistance and Reconstruction*, 181.

[15] Sun Fo, *China's Future* (in Chinese, Chungking, 1942), 181. Translation mine.

[16] Sun Fo, "The Practice of Constitutional Government and the Consciousness of it on the part of the People," in Yu Chung-chiu, and Wu Ching-hisung (ed.), *A Collection of Essays on Constitution* (in Chinese, 2 vols., Shanghai, 1937), I, 3. Translation mine.

APPENDIX A

PRINCIPLES OF CONSTITUTION, 27 AUGUST 1908[1]

The Powers of the Sovereign

1. The Ta Ch'ing Emperor will rule supreme over the Ta Ch'ing Empire for one thousand generations in succession and be honored forever.

2. The sacred majesty of the sovereign may not be offended against.

3. Laws shall be made and promulgated by the sovereign and he has the power to determine what may be assigned to others for deliberation. (Laws which have been passed by the National Assembly shall not become operative until approved and promulgated by the sovereign.)

4. The sovereign has the power to convoke, to open and to close, to suspend and to extend the time of and to dissolve the National Assembly. (On the dissolution of the National Assembly the people shall be called upon to elect a new National Assembly. The members of the old National Assembly shall be classed with the common people. If any of them commit offenses, they shall be punished by the proper court according to circumstances.)

5. The sovereign has power to appoint all officials and fix their salaries and to degrade or promote them. (The power to use men rests with the Emperor. The National Assembly may not interfere with this.)

6. The sovereign has supreme command over the army and navy, with power to make all regulations concerning them. (The sovereign may dispatch armies and fix the number of soldiers. In this his power is absolute. The National Assembly may not interfere in military affairs.)

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[1] U. S. Department of State, *Papers Relating to the Foreign Relations of the United States, 1908* (Washington, 1912), 194-195. The words "the National Assembly" have been substituted throughout for the word "Parliament."

7. The sovereign has power to declare war and to make peace, to make treaties, to appoint and receive ambassadors. (Foreign relations will be controlled by the sovereign, without the advice of the National Assembly.)

8. The sovereign has the power to repressive measures and, in times of emergency, to deprive officials and people of their personal liberty.

9. The sovereign has the power to confer distinctions and to issue pardons. (Mercy is from above. Officials, below, may not arrogate it to themselves.)

10. The sovereign has supreme power over the administration of the laws and the appointment of judges, but he will act in accordance with the imperially sanctioned laws, and to make changes arbitrarily. (Power to administer the law rests with the sovereign. Judges are appointed by the sovereign to act for him in the administration of the laws. Changes will not be made by the sovereign arbitrarily, because the interests at stake in law cases are important, so that imperially settled laws must be treated as final to avoid confusion.)

11. The sovereign has powers to issue "imperial orders" or to cause them to be issued, but, in the matter of laws which have already received the imperial sanction, he will not change or abrogate laws which already received the imperial sanction without first obtaining the advice of the National Assembly and acting on its memorial. (Statutes proceed from the power of the sovereign to administer the laws. Imperial orders proceed from the power of the sovereign to carry on government. The two powers are distinguished. Therefore "imperial orders" must not be used to abrogate statutes of law.)

12. When the National Assembly is not in session, in case of urgent necessity, the sovereign may issue emergency orders to raise funds which may be necessary. But the next year, when the National Assembly meets, he shall refer such matters to the National Assembly.

13. The expenses of the Imperial Household shall be fixed by the sovereign and taken from the national treasury without reference to the National Assembly.

14. In the great ceremonies of the Imperial Household, the sovereign shall have supreme authority over the imperial clan and shall appoint ministers to settle such affairs. The National Assembly may not interfere.

Powers, Privileges and Duties of the Officers and People

1. All officers and people who have the qualifications prescribed by law are eligible for appointment as civil or military officials and members of the National Assembly.
2. Officers and people who keep within the law will have freedom of speech, of the press and of assembly.
3. Officers and people shall not be liable to arrest, restrictions or punishments except as prescribed by law.
4. Officers and people may appeal to the judiciary officials to judge their cases.
5. Officers and people can be judged only by those specially appointed to act as judges.
6. Officers and people shall not be disturbed without cause in their possession of property nor interfered with in their dwellings.
7. Officers and people have the obligation to pay taxes and render military service as the law may prescribe.
8. Officers and people shall continue to pay taxes at the rate now assessed until the law has been changed.
9. Officers and people have the duty of obedience to the law of the land.

APPENDIX B

"NINETEEN ARTICLES," 2 NOVEMBER 1911[1]

ARTICLE 1. The Ta-Ch'ing Dynasty shall reign forever.

ART. 2. The person of the Emperor shall be inviolable.

ART. 3. The power of the Emperor shall be limited by a Constitution.

ART. 4. The order of the succession shall be prescribed in the Constitution.

ART. 5. The Constitution shall be drawn up and adopted by the Provisional Assembly (*Tzechengyuan*) and promulgated by the Emperor.

ART. 6. The power of amending the Constitution belongs to the National Assembly.

ART. 7. The members of the Upper House shall be elected by the people from among those particularly eligible for the position.

ART. 8. The National Assembly shall elect and the Emperor shall appoint the Premier, who will recommend the other members of the Cabinet, these also being appointed by the Emperor. The Imperial Princes shall be ineligible as Premier, Cabinet Ministers or administrative heads of Provinces.

ART. 9. If the Premier, on being impeached by the National Assembly, does not dissolve the National Assembly, he must resign, but one Cabinet shall not be allowed to dissolve the National Assembly more than once.

ART. 10. The Emperor shall assume direct control of the army and navy, but, when the power is used with regard to internal affairs, he must observe special conditions to be decided by the National Assembly; otherwise he is prohibited from exercising such power.

ART. 11. Imperial decrees can not be made to replace the law except in the event of immediate necessity, in which case decrees

[1] This draft was adopted on 2 November 1911 and sanctioned by the Throne on 3 November 1911. *The China Year Book 1912*, xxiii-xxiv. The words "the National Assembly" have been substituted throughout for the word "Parliament."

in the nature of a law may be issued in accordance with special conditions, but only when they are in connection with the execution of a law or what has by law been delegated.

ART. 12. International treaties shall not be concluded without the consent of the National Assembly, but the conclusion of peace or a declaration of war may be made by the Emperor; if the National Assembly is not sitting, the approval of the National Assembly to be obtained afterwards.

ART. 13. Ordinances in connection with the administration shall be settled by Acts of the National Assembly.

ART. 14. In case the Budget fails to receive the approval of the National Assembly, the Government can not act upon the previous year's Budget nor may items of expenditure not provided for in the Budget be appended to it. Further, the Government shall not be allowed to adopt extraordinary financial measures outside the Budget.

ART. 15. The National Assembly shall fix the expenses of the Imperial Household and any increase or decrease therein.

ART. 16. Regulations in connection with the Imperial Family must not conflict with the Constitution.

ART. 17. The two houses shall establish the machinery of an administrative court.

ART. 18. The Emperor shall promulgate the decisions of the National Assembly.

ART. 19. The Provisional Assembly shall act upon Articles 8, 9, 10, 12, 13, 14, 15 and 18 until the opening of the National Assembly.

APPENDIX C

PROVISIONAL CONSTITUTION, 11 MARCH 1912[1]

CHAPTER I.—*General Provisions*

ARTICLE 1. The Republic of China is composed of the Chinese people.

ART. 2. The sovereignty of the Chinese Republic is vested in the people.

ART. 3. The territory of the Chinese Republic consists of 22 Provinces, Inner and Outer Mongolia, Tibet and Chinghai.

ART. 4. The sovereignty of the Chinese Republic is exercised by the Advisory Council, the Provisional President, the Cabinet and the Judiciary.

CHAPTER II.—*Citizens*

ART. 5. Citizens of the Chinese Republic are all equal and there shall be no racial, class or religious distinctions.

ART. 6. Citizens shall enjoy the following rights:

(1) The person of the citizens shall not be arrested, imprisoned, tried or punished except in accordance with law.

(2) The habitations of citizens shall not be entered or searched except in accordance with law.

(3) Citizens shall enjoy the right of the security of their property and the freedom of trade.

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[1] U. S. Department of State, *Papers Relating to the Foreign Relations of the United States, 1914* (Washington, 1922), 38-41. Also in Herbert F. Wright (ed.), *The Constitutions of the States at War, 1914-1918* (Washington, 1919), 106-110; this was originally translated from the *Peking Daily News* and published in *American Journal of International Law, Supp.*, 6 (1912), 149-154. The words "the National Assembly" have been substituted throughout for the word "Parliament." A French translation is in *Annuaire de législation étrangère*, 12 (1912), 598-602. Original Chinese text in *Chung Hua Min Kuo Hsien Fa Shih Liao* (*Constitutional Materials of the Republic of China*) (Shanghai, New China Constructive Institute, 1933).

(4) Citizens shall have the freedom of speech, of composition, of publication, of assembly and of association.
(5) Citizens shall have the right of the secrecy of their letters.
(6) Citizens shall have the liberty of residence and removal.
(7) Citizens shall have the freedom of religion.

ART. 7. Citizens shall have the right to petition the National Assembly.

ART. 8. Citizens shall have the right of petitioning the executive officials.

ART. 9. Citizens shall have the right to institute proceedings before the judiciary and to receive its trial and judgments.

ART. 10. Citizens shall have the right of suing officials in the administrative courts for violation of law or against their rights.

ART. 11. Citizens shall have the right of participating in civil examinations.

ART. 12. Citizens shall have the right to vote and to be voted for.

ART. 13. Citizens shall have the duty to pay taxes according to law.

ART. 14. Citizens shall have the duty to enlist as soldiers according to law.

ART. 15. The rights of citizens as provided in the present chapter shall be limited or modified by laws, provided such limitation or modification shall be deemed necessary for the promotion of public welfare, for the maintenance of public order or on account of extraordinary exigency.

CHAPTER III.—*The Advisory Council*

ART. 16. The legislative power of the Chinese Republic is exercised by the Advisory Council.

ART. 17. The Advisory Council shall be composed of members elected by the several districts as provided in Article 18.

ART. 18. The Provinces, Inner and Outer Mongolia, and Tibet shall each elect and depute five members to the Advisory Council, and Chinghai shall elect one member.

The election districts and methods of election shall be decided by the localities concerned.

During the meeting of the Advisory Council each member shall have one vote.

ART. 19. The Advisory Council shall have the following powers:

(1) To pass all bills.
(2) To pass the budgets of the Provisional Government.
(3) To pass laws of taxation, of currency and of weights and measures for the whole country.
(4) To pass measures for the calling of public loans and to conclude contracts affecting the National Treasury.
(5) To give consent to matters provided in Articles 34, 35 and 40.
(6) To reply to injuries from the Provisional Government.
(7) To receive and consider petitions of citizens.
(8) To make suggestions to the Government on legal or other matters.
(9) To introduce interpellations to members of the Cabinet and to insist on their being present in the Council in making replies thereto.
(10) To insist on the Government investigating into any alleged bribery and infringement of laws by officials.
(11) To impeach the Provisional President for high treason by a majority vote of three fourths of the quorum consisting of more than four fifths of the total number of the members.
(12) To impeach members of the Cabinet for failure to perform their official duties or for violation of the law, by majority votes of two thirds of the quorum consisting of over three fourths of the total number of the members.

ART. 20. The Advisory Council shall itself convoke, open and adjourn its own meetings.

ART. 21. The meetings of the Advisory Council shall be conducted publicly, but secret meetings may be held at the instigation of members of the Cabinet or by the majority vote of its quorum.

ART. 22. Matters passed by the Advisory Council shall be communicated to the Provisional President for promulgation and execution.

ART. 23. If the Provisional President should veto matters passed by the Advisory Council, he shall, within ten days after he received such resolutions, return the same with stated reasons to the Council for reconsideration. If the same matter should again be passed by a two thirds vote of the quorum of the Council, it shall be dealt with in accordance with Article 22.

ART. 24. The President of the Advisory Council shall be elected by ballots signed by the voting members and the one who receives more than one half of the total number of the votes cast shall be elected.

ART. 25. Members of the Advisory Council shall not, outside the Council hall, be responsible for their opinions expressed and votes cast in the Council.

ART. 26. Members of the Council shall not be arrested without the permission of the President of the Council except for crimes committed at the time of arrest and for crimes pertaining to civil and international warfare.

ART. 27. Procedures of the Advisory Council shall be decided by its own members.

ART. 28. The Advisory Council shall be dissolved on the day of the convocation of the National Assembly and its powers shall be exercised by the latter.

CHAPTER IV.—*The Provisional President and Vice President*

ART. 29. The Provisional President and Vice President shall be elected by the Advisory Council and he who receives two thirds of the total amount of votes cast by a sitting of the Council consisting of over three fourths of the total number of members shall be elected.

ART. 30. The Provisional President represents the Provisional Government as the fountain of all executive powers and for promulgating all laws.

ART. 31. The Provisional President may issue or cause to be issued orders for the execution of laws and of powers delegated to him by the laws.

ART. 32. The Provisional President shall be Commander-in-Chief of the army and navy of the whole of China.

ART. 33. The Provisional President shall ordain and establish the administrative system and official regulations, but he must first submit them to the Advisory Council for its approval.

ART. 34. The Provisional President shall appoint and remove civil and military officials, but in the appointment of members of the Cabinet, ambassadors and ministers he must have the concurrence of the Advisory Council.

ART. 35. The Provisional President shall have power, with the concurrence of the Advisory Council, to declare war and conclude treaties.

ART. 36. The Provisional President may, in accordance with law, declare a state of siege.

ART. 37. The Provisional President shall, representing the whole country, receive ambassadors and ministers of foreign countries.

ART. 38. The Provisional President may introduce bills into the Advisory Council.

ART. 39. The Provisional President may confer decorations and other insignia of honor.

ART. 40. The Provisional President may declare general amnesty, grant special pardon, commute a punishment and restore rights, but, in the case of a general amnesty, he must have the concurrence of the Advisory Council.

ART. 41. In case the Provisional President is impeached by the Advisory Council, he shall be tried by a special court consisting of nine judges, elected among the justices of the Supreme Court of the realm.

ART. 42. In case the Provisional President vacates his office for various reasons or is enabled to discharge the powers and duties of the said office, the Provisional Vice President shall take his place.

CHAPTER V.—*Members of the Cabinet*

ART. 43. The Premier and the Chiefs of the Government Departments shall be called Members of the Cabinet (literally, Secretaries of State Affairs).

ART. 44. Members of the Cabinet shall assist the Provisional President in assuming responsibilities.

ART. 45. Members of the Cabinet shall countersign all bills introduced by the Provisional President and all laws and orders issued by him.

ART. 46. Members of the Cabinet and their deputies may be present and speak in the Advisory Council.

ART. 47. After Members of the Cabinet have been impeached by the Advisory Council, the Provisional President may remove

them from office, but such removal shall be subject to the reconsideration of the Advisory Council.

CHAPTER VI.—*The Judiciary*

ART. 48. The Judiciary shall be composed of those judges appointed by the Provisional President, and the Chief of the Department of Justice. The organization of the courts and the qualifications of judges shall be determined by law.

ART. 49. The Judiciary shall try civil and criminal cases, but cases involving administrative affairs or arising from other particular causes shall be dealt with according to special laws.

ART. 50. The trial of cases in the law courts shall be conducted publicly, but those affecting public safety and order may be in camera.

ART. 51. Judges shall be independent and shall not be subject to the interference of higher officials.

ART. 52. Judges during their continuance in office shall not have their emoluments decreased and shall not be transferred to other offices, nor shall they be removed from office except when they are convicted of crimes or of offenses punishable according to law by removal from office.

Regulations for the punishment of judges shall be determined by law.

CHAPTER VII.—*Supplementary Articles*

ART. 53. Within ten months after the promulgation of this Provisional Constitution the Provisional President shall convene a National Assembly, the organization of which and the laws for the election of whose members shall be decided by the Advisory Council.

ART. 54. The Constitution of the Republic of China shall be adopted by the National Assembly, but before the promulgation of the Constitution the Provisional Constitution shall be as effective as the Constitution itself.

ART. 55. The Provisional Constitution may be amended by the assent of two thirds of the members of the Advisory Council or upon the application of the Provisional President and being passed by over three fourths of the quorum of the Council consisting of over four fifths of the total number of its members.

ART. 56. The present Provisional Constitution shall take effect on the date of its promulgation and the fundamental articles for the organization of the Provisional Government shall cease to be effective on the same date.[2]

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[2] Sealed by the Advisory Council, 11 March, 1st year of the Republic of China (1912).

APPENDIX D

TEMPLE OF HEAVEN DRAFT, 13 OCTOBER 1913[1]

[PREAMBLE]

To develop the national dignity, to consolidate the national dominion, to advance the interest of society and uphold the sacredness of humanity, the National Assembly met in joint session for passing the Constitution, which shall be promulgated to the whole country, to be universally observed and handed down unto the end of time.

CHAPTER I.—*The Form of Government*

ARTICLE 1. The Chinese Republic (*Chung Hua Min Kuo*) shall forever be a consolidated Republic.

CHAPTER II.—*National Territory*

ART. 2. The national territory of the Chinese Republic shall be in accordance with the dominion heretofore existing.

No change in national territory and its divisions can be made save in accordance with the law.

CHAPTER III.—*The Citizens*

ART. 3. Those who are of Chinese nationality according to law shall be called people of the Chinese Republic.

ART. 4. Among the people of the Chinese Republic there are no distinctions, but all shall be equal.

ART. 5. No people of the Chinese Republic shall be arrested, detained in confinement, tried or punished except in accordance with the law.

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[1] As read for the third time by the Constitution Drafting Committee. Revised from H. G. W. Woodhead (ed.), *The China Year Book, 1914* (London, 1914), 490-499.

When people have been detained in confinement, they may in accordance with the law send petitions for protection requesting the judicial court to summon them to court for an investigation of the cause of the matter.

ART. 6. The habitations of the people of the Chinese Republic shall not be entered or searched except in accordance with the law.

ART. 7. The people of the Chinese Republic shall have the right of secrecy of correspondence, which may not be violated except where provided by law.

ART. 8. The people of the Chinese Republic shall have the right of choice of residence and profession, which shall be unrestricted except in accordance with the law.

ART. 9. The people of the Chinese Republic shall have liberty to call meetings or organize societies, which shall be unrestricted except in accordance with the law.

ART. 10. The people of the Chinese Republic shall have freedom of speech, writing and publication, which shall be unrestricted except in accordance with the law.

ART. 11. The people of the Chinese Republic shall have liberty of religious worship, which shall be unrestricted except in accordance with the law.

ART. 12. The people of the Chinese Republic shall enjoy the inviolable right to the security of their property and any measures occasioned by the public interest shall be determined by law.

ART. 13. The people of the Chinese Republic shall have the right to institute actions in the judicial courts according to law.

ART. 14. The people of the Chinese Republic shall have the right to put in petitions or set forth complaints according to law.

ART. 15. The people of the Chinese Republic shall have the right to vote and be voted for according to law.

ART. 16. The people of the Chinese Republic shall have the right to hold official posts according to law.

ART. 17. The people of the Chinese Republic shall have the obligation of paying taxes according to law.

ART. 18. The people of the Chinese Republic shall have the obligation of military service according to law.

ART. 19. The people of the Chinese Republic shall have the obligation to undergo primary education according to law.

In the education of citizens, the doctrine of Confucius shall be adopted as the great principle for the regulation of persons.

CHAPTER IV.—*The National Assembly*

ART. 20. The legislative power of the Chinese Republic is exercised by the National Assembly.

ART. 21. The National Assembly shall consist of the Upper House (*Ts'an Yi Yuan*) and the Lower House (*Chung Yi Yuan*).

ART. 22. The Upper House shall be composed of Senators elected by the highest local assemblies fixed by law and other electoral bodies.

ART. 23. The Lower House shall be composed of Representatives elected by the various electoral districts in proportion to the population.

ART. 24. The elections of members in both houses shall be fixed by law.

ART. 25. In no case shall one person be a member of both houses simultaneously.

ART. 26. With the exception of a Cabinet Minister, no member of either house shall hold additionally any official post, civil or military.

ART. 27. The qualifications of members of either house shall be determined by the respective houses.

ART. 28. The term of office for a member of the Upper House shall be six years. One third of the members shall be reelected every two years.

ART. 29. The term of office for a member of the Lower House shall be three years.

ART. 30. Both houses shall each appoint a Speaker and a Vice Speaker, who shall be elected from among the members of the respective houses.

ART. 31. The National Assembly shall itself convene, open and close its session, but as to the extraordinary sessions, they shall be called by writs issued by the President.

ART. 32. The ordinary session of the National Assembly shall begin on the first day of the third month in each year.

ART. 33. The period for the ordinary session of the National Assembly shall be four months, which may be extended.

ART. 34. With regard to the summons for the convocation of an extraordinary session, it may be issued in any of the following circumstances:

(1) A request of more than one third of the members of each house.
(2) A request from the Committee of the National Assembly.
(3) Whenever the Government deems it necessary.

ART. 35. The opening and the closing of the National Assembly shall take place simultaneously in both houses.

If one house suspends its session, the other house shall do likewise at the same time.

When the Lower House is dissolved, the Upper House shall adjourn at the same time.

ART. 36. Discussions in the National Assembly shall be conducted by the houses separately.

ART. 37. Unless there be an attendance of half of the total number of members of either house, no sitting shall be held.

ART. 38. Any subject discussed in either house shall be decided by the votes of the majority of members attending the sitting, and the Speaker shall have a casting vote.

ART. 39. A decision of the National Assembly shall be the decision of both houses.

ART. 40. The sessions of both houses shall be held in public, but, on request of the Government or by decision of the houses, secret sessions may be held.

ART. 41. Should the Lower House consider that either the President or the Vice President has committed treason, he may be impeached by the decision of a majority of more than two thirds of the members present, more than two thirds of the total membership of the House being necessary to form a quorum.

ART. 42. Should the Lower House consider that Cabinet Ministers have violated the law, an impeachment may be instituted with the approval of two thirds of the members present.

ART. 43. The Lower House may pass a vote of want of confidence in the Cabinet Ministers.

ART. 44. The Upper House shall try the impeached President, Vice President or Cabinet Ministers.

With regard to the above trial, no judgment of guilt or violation of the law shall be passed without the approval of more than two thirds of the members present.

When a verdict of guilty is pronounced on the President or Vice President, he shall be deprived of his post, but the infliction of punishment shall be determined by the Supreme Court.

When a verdict of guilty is pronounced on a Cabinet Minister, he shall be deprived of his office and may forfeit his public rights. Should the above be an insufficient penalty for his offence, he shall be tried by a judicial court.

ART. 45. Both houses shall have the right to offer suggestions to the Government.

ART. 46. Both houses shall receive and consider the petitions of citizens.

ART. 47. Members of either house may introduce interpellations to the members of Cabinet and demand their attendance in the house to reply thereto.

ART. 48. Members of either house shall not, outside the house, be responsible for opinions expressed and votes cast in the house.

ART. 49. Except for flagrant offences members of either house shall not be arrested or detained in confinement without the permission of their respective houses or the Committee of the National Assembly.

When members of either house have been arrested on account of flagrant offences, the Government should report the cause to their respective houses or to the Committee of the National Assembly.

ART. 50. Annual allowances and other expenses of the members of both houses shall be fixed by law.

CHAPTER V.—*The Committee of the National Assembly*

ART. 51. Before the close of the ordinary annual session of the National Assembly each house shall elect twenty members to compose the Committee of the National Assembly.

ART. 52. Any subject discussed in the Committee of the National Assembly shall be decided by the votes of the two thirds of the members, two thirds of the total number of the Committee forming a quorum.

ART. 53. During the period of the adjournment of the ordinary session of the National Assembly, in addition to the rights and duties set forth in these articles, the Committee of the National Assembly shall receive and consider petitions, offer suggestions and address interpellations.

ART. 54. At the beginning of the ordinary session, the Committee of the National Assembly shall give a report of all its transactions.

CHAPTER VI.—*The President*

ART. 55. The administrative power of the Chinese Republic shall be vested in the president, and enforced by the assistance of the Cabinet Ministers.

ART. 56. A person of the Chinese Republic in the full enjoyment of public rights, of the age of forty or more and resident in China for at least ten years is eligible for election as President.

ART. 57. The President shall be elected by a National Convention for the election of the President, composed of the members of the National Assembly.

For the above election, an attendance of at least two thirds of the number of electors shall be requisite and the voting shall be performed by secret ballot. The person obtaining three fourths of the total votes will be elected, but should no definite result be obtained after the second ballot, the two candidates obtaining most votes in the second ballot shall be voted for, when the candidate receiving the majority of votes shall be elected.

ART. 58. The period of office of the President shall be five years and, if reelected, he may hold office for one more term.

Three months prior to the expiration of the term, the members of the National Assembly of the Republic shall themselves convene and organize the National Convention to elect the President for the next period.

ART. 59. When the President takes up his post he shall make an oath as follows:

I hereby solemnly swear that I will most faithfully obey the Constitution and discharge the duties of the President.

ART. 60. Should the post of the President become vacant, the Vice President shall succeed him until the expiration of the term of office of the President. Should the President be unable to discharge his duty for some cause, the Vice President shall act for him.

Should the Vice President vacate his post at the same time, the Cabinet shall officiate for the President, but at the same time the members of the National Assembly shall within three months convene themselves and organize a National Convention to elect a new President.

ART. 61. The President shall be relieved from his duty at the expiration of his term of office. If at the end of the period the new President has not yet been elected, or having been elected be unable to be inaugurated as President, and the Vice President is also unable to act as President, the Cabinet shall officiate for the President.

ART. 62. The election of the Vice President shall be according to the regulations fixed for the election of the President, and the election of the Vice President shall take place simultaneously with the election of the President. Should the post of Vice President become vacant, a new Vice President shall be elected.

ART. 63. The President shall promulgate laws and shall supervise and secure their enforcement.

ART. 64. The President may issue or publish orders for the execution of laws and of powers delegated to him by the law.

ART. 65. If, owing to the suddenness of a crisis, the President is precluded from summoning the National Assembly, he may, for the maintenance of public security and prevention of disaster, with the approval of the Committee of the National Assembly and with the liability of the Cabinet Ministers, promulgate mandates which shall have equal force with laws.

The above mandates shall be submitted to the National Assembly within seven days of the convocation of the next session, requesting recognition, and, if they be rejected by the National Assembly, they shall cease to be valid.

ART. 66. The President shall appoint and remove civil and military officials, with the exception of those specially fixed by the Constitution or laws.

ART. 67. The President shall be the Commander-in-Chief of the army and navy of the Republic.

The organization of the army and navy shall be fixed by law.

ART. 68. In foreign intercourse the President shall be the representative of the Republic.

ART. 69. The President may, with the concurrence of the National Assembly, declare war, but, with regard to defense against foreign invasion, he may request recognition of the National Assembly after the declaration of war.

ART. 70. The President may conclude treaties; but, with regard to treaties of peace and those affecting legislation, they shall not become valid, if the consent of the National Assembly is not obtained.

ART. 71. The President may proclaim martial law according to law; but if the National Assembly or the Committee of the National Assembly should consider that there is no such a necessity, he shall declare the withdrawal of the martial law.

ART. 72. The President may confer insignia of honor.

ART. 73. The President may, with the concurrence of the Supreme Court of Justice, grant pardons, commute punishment and restore rights; but, with regard to a verdict of impeachment, unless with the concurrence of the National Assembly, he shall not make any announcement of the restoration of rights.

ART. 74. The President may suspend the session of either the Lower House or the Upper House, but during any one session the suspension can not be done twice and on each occasion it should not exceed ten days.

ART. 75. With the concurrence of two thirds or more of the members of the Upper House present, the President may dissolve the Lower House, but there must not be a second dissolution during the period of the same session.

When the Lower House is dissolved by the President, another election shall take place immediately and the convocation of the house at a fixed date within five months shall be effected to continue the session.

ART. 76. With the exception of high treason, no criminal charges shall be brought against the President before he has vacated his office.

ART. 77. The salaries of the President and the Vice President shall be fixed by law.

CHAPTER VII.—*The Cabinet*

ART. 78. The Cabinet shall be composed of Cabinet Ministers.

ART. 79. The Premier and the Ministers shall be called Cabinet Ministers.

ART. 80. The appointment of the Premier shall first be approved by the Lower House.

Should a vacancy in the Premiership occur during the time of the adjournment of the National Assembly, the President may, with the concurrence of the Committee of the National Assembly, appoint an Acting Premier.

ART. 81. Cabinet Ministers shall assist the President in assuming responsibility towards the Lower House.

Without the countersignature of the Cabinet Ministers, the Orders of the President or dispatches in connection with state affairs shall not be valid.

ART. 82. When a vote of want of confidence in the Cabinet Ministers is passed, if the President does not dissolve the Lower House according to the provisions made in Article 75, he shall remove the Cabinet Ministers from office.

ART. 83. The Cabinet Minister shall be allowed to attend both houses and make speeches, but, in the case of introducing bills for the Government, delegates may be deputed to act for them.

CHAPTER VIII.—*Courts of Justice*

ART. 84. The judicial authority of the Chinese Republic shall be enforced by the courts of justice.

ART. 85. The organization of the courts of justice and the qualifications of judicial officials shall be fixed by law.

ART. 86. The judicature shall attend to and settle all civil, criminal, administrative and other cases, but this does not include those cases which have been specially fixed by the Constitution law.

ART. 87. The trial of cases in law courts shall be conducted

publicly, but those affecting the public peace and order of propriety may be held *in camera.*

ART. 88. The judicial officials shall be independent in the conducting of trials and none shall be allowed to interfere.

ART. 89. Except in accordance with law, judicial officials, during their continuation in office, shall not have their emoluments decreased nor be transferred to other offices nor be removed from office.

During his tenure of office no judicial official shall be deprived of his office, unless he is convicted of crime or for offences punishable by law. But the above does not include cases of reorganization of judicial officials.

The punishments and fines of the judicial officials shall be fixed by law.

CHAPTER IX.—*The Law*

ART. 90. The members of both houses and the Government may introduce bills, but if any bill is rejected by one house, it shall not be reintroduced during the same session.

ART. 91. Any bill which has been passed by the National Assembly shall be promulgated by the President within fifteen days after receipt of same.

ART. 92. Should the President disapprove of any bills passed by the National Assembly, he shall, within the period allowed for promulgation, state the reason of his disapproval and request reconsideration of same. If two thirds or more of the members of both houses present shall hold to the former decision, the bill shall be promulgated.

If a bill has not yet been submitted with a request of reconsideration and the period for promulgation has passed, it shall become law. But the above shall not apply to the case when the session of the National Assembly is adjourned or dissolved before the period for promulgation is ended.

ART. 93. The law shall not be altered or repealed except in accordance with law.

ART. 94. Any law that is in conflict with the Constitution shall have no force.

CHAPTER X.—*State Finance*

ART. 95. The introduction of new taxes and alterations in the rate of taxation shall be fixed by law.

ART. 96. Those taxes which are now in force and have not yet been altered by law shall be levied as heretofore.

ART. 97. The approval of the National Assembly must be obtained for national loans or the conclusion of agreements which tend to increase the burden of the National Treasury.

ART. 98. An estimate of the annual payments and annual receipts of the nation shall be compiled in advance in the form of a Budget by the Government, which shall submit same to the Lower House within fifteen days after the beginning of the session of the National Assembly.

Should the Upper House amend or reject the Budget passed by the Lower House, it should request the concurrence of the Lower House in its amendment or rejection and, if such concurrence is not obtained, the Budget shall be considered as passed.

ART. 99. In case of special provisions, the Government may fix in advance in the Budget the period over which they are to be spread and provide for the successive appropriations over this period.

ART. 100. In order to provide some margin for the shortage of the estimates of items left out in the Budget to provide for extraordinary expenses.

The sums expended under the above provisions shall be submitted in the next session to the Lower House for recognition.

ART. 101. Unless approved by the Government, the National Assembly shall have no right to abolish or curtail any of the following items:

(1) Items in connection with the obligations of the Government according to law.
(2) Items necessitated by the observance of treaties.
(3) Items legally fixed.
(4) Successive appropriations spread over a period.

ART. 102. The National Assembly shall not increase the annual expenses as set down in the Budget.

ART. 103. During the time when the fiscal year has begun and the Budget has not yet been passed, the monthly accounts of the Government shall be in the proportion of one twelfth of the amounts in the preceding year.

ART. 104. Should there be a foreign war, or should there be a suppression of internal rebellion when it is impossible to issue writs for summoning the National Assembly, the Government may, with the concurrence of the Committee of the National Assembly, adopt financial measures for the emergency, but it should request the recognition thereof by the Lower House within seven days from the beginning of the next session of the National Assembly.

ART. 105. Orders on the Treasury for payments on account of the annual expenditure of the Government should first be passed by the Audit Bureau.

ART. 106. The statement of the annual payments and annual receipts for each year should first be referred for investigation to the Audit Bureau and then the Government shall report same to the National Assembly.

If the statement be rejected by the Lower House, the Cabinet shall be held responsible.

ART. 107. The Audit Bureau shall be composed of auditors elected by the Upper House.

The term of office of the auditors shall be nine years, elections for one third of their number taking place every three years.

The election and the duties of the auditors shall be fixed by law.

ART. 108. There shall be a Chief of the Audit Bureau, who shall be elected by the auditors themselves.

The chief of the Audit Department may attend the sitting of both houses and report on the final financial statement and make speeches.

CHAPTER XI.—*Amendments to and Interpretation of the Constitution*

ART. 109. The National Assembly may bring up bills for the amendment of the National Constitution.

Unless such bills be approved by two thirds of the members of both houses present, they shall not be introduced.

Unless any such bill be countersigned by one fourth of the members of his house, no member of either house shall raise the question of the amendment of the National Constitution.

ART. 110. With regard to the amendment of the National Constitution, it shall be discussed and decided by the National Convention for the Constitution.

ART. 111. No proposal for a change of the form of government shall be eligible for discussion.

ART. 112. Should there be any doubt regarding the meaning of the text of the Constitution, it shall be interpreted by the National Convention for the Constitution.

ART. 113. The National Convention for the Constitution shall be composed of the members of the National Assembly.

Unless there be a quorum of two thirds of the total number of the members of the National Assembly, no National Convention can be held and, unless three fourths of the members present vote in favor, no amendment can be passed.

APPENDIX E

CONSTITUTIONAL COMPACT, 1 MAY 1914[1]

CHAPTER I.—*The Nation*

ARTICLE 1. The Chinese Republic (*Chung Hua Min Kuo*) is composed of the people of China.

ART. 2. The sovereignty of the Chinese Republic originates from the whole body of the people.

ART. 3. The territory of the Chinese Republic continues the same as that of the former Empire.

CHAPTER II.—*The Citizens*

ART. 4. Citizens of the Chinese Republic shall be equal before the law, irrespective of race, rank or religion.

ART. 5. Citizens shall enjoy the following rights:

(a) No citizens shall be arrested, imprisoned, tried or punished, except in accordance with statute.
(b) The habitation of any citizen shall not be forcibly entered into or searched, except in accordance with statute.
(c) Within the limits of the statutes, citizens shall have the right to own and enjoy property and to trade freely.
(d) Within the limits of the statutes, citizens shall have the rights of freedom of speech, of writing and publication, and of assembly and association.
(e) Within the limits of the statutes, citizens shall have the right of secrecy of correspondence.
(f) Within the limits of the statutes, citizens shall have the right of abode and of changing the same.

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[1] Revised from U. S. Department of State, *Papers Relating to the Foreign Relations of the United States, 1914* (Washington, 1922), 56-60; translated by Dr. Sao-ke Alfred Sze and T. Y. Lo, revised by Dr. Frank J. Goodnow and Dr. N. Ariga and printed in the *Peking Daily News*, 20 May 1914. The words "the National Assembly" have been substituted throughout for the word "Legislature."

(g) Within the limits of the statutes, citizens shall have the right of religious belief.

ART. 6. In accordance with the provisions of the statutes, citizens shall have the right of petitioning the National Assembly.

ART. 7. In accordance with the provisions of the statutes, citizens shall have the right to institute proceedings in the courts of law.

ART. 8. In accordance with the provisions of the statutes, citizens shall have the right of petitioning administrative officers and of lodging complaints with the Court of Censors and Administrative Justice.

ART. 9. In accordance with the provisions of law and ordinance, citizens shall have the right to attend the examinations for the appointment of officers and to enter the public service.

ART. 10. In accordance with the provisions of the statutes, citizens shall have the right to elect and to be elected.

ART. 11. In accordance with the provisions of the statutes, citizens are subject to the duty of paying taxes.

ART. 12. In accordance with the provisions of the statutes, citizens are subject to the duty of performing military service.

ART. 13. The provisions made in this chapter that are not in conflict with the law, ordinances and discipline of the Army and Navy shall be applicable to persons belonging to said services.

CHAPTER III.—*The President*

ART. 14. The President is the head of the Nation and combines in himself all powers of government.

ART. 15. The President shall represent the Chinese Republic.

ART. 16. The President shall be responsible to the whole Nation.

ART. 17. The President shall convoke the National Assembly and open, prorogue and close its sessions. The President, with the concurrence of the Council of State, may dissolve the National Assembly; in the case of dissolution, new members must be elected and the National Assembly convoked within six months from the date of dissolution.

ART. 18. The President may initiate legislation and shall lay the estimates before the National Assembly.

ART. 19. For the promotion of public welfare, for the execution of the statutes or in pursuance of authority granted by statute, the President may issue or cause to be issued ordinances; but no ordinance shall alter any statute.

ART. 20. In order to maintain peace and order or to avert extraordinary calamities, at a time of urgent necessity when the National Assembly can not be convoked, the President, with the concurrence of the Council of State, may issue emergency ordinances having the force of law; but such ordinances shall be submitted to the National Assembly for ratification at the beginning of its next session. Should the said emergency ordinances be rejected by the National Assembly, they shall thereafter be null and void.

ART. 21. The President shall prescribe and determine the organization of all offices and shall issue the regulations fixing the duties of officials.

The President shall appoint and dismiss civil and military officers.

ART. 22. The President shall declare war (and) conclude peace.

ART. 23. The President is the Commander-in-Chief of the Army and Navy and leads the land and sea forces of the Nation.

The President shall determine the organization and the strength of the Army and Navy.

ART. 24. The President shall receive foreign ambassadors and ministers.

ART. 25. The President makes treaties; but, should articles therein provide for any change of territory or increase the burdens of the citizens, the concurrence of the National Assembly shall be required.

ART. 26. The President may, in accordance with the provisions of the statute, declare a state of siege.

ART. 27. The President may confer titles of nobility, rank, orders and other marks of honor.

ART. 28. The President may grant general amnesty, special pardon, commutation of punishment and restoration of rights. In the case of general amnesty, the concurrence of the National Assembly shall be required.

ART. 29. When the President, for any cause, vacates his office or is unable to exercise the powers and functions connected therewith, the Vice President shall act in his stead.

CHAPTER IV.—*The National Assembly*

ART. 30. Statutes shall be enacted by the National Assembly composed of members elected by the people.

The organization of the National Assembly and the method of the election of its members shall be prescribed and determined by the Constitutional Compact Conference.

ART. 31. The competence of the National Assembly shall be as follows:

(a) To discuss and pass bills.
(b) To discuss and pass the estimates.
(c) To discuss and pass or approve measures relating to the assumption of public debts and to the contracting of other liabilities to the charge of the National Treasury.
(d) To reply to inquiries addressed to it by the President.
(e) To receive petitions from the people.
(f) To initiate legislation.
(g) To submit to the President suggestions and opinions relating to legislation and other matters.
(h) To raise questions in regard to administration over which doubts have arisen and to request the President to reply thereon. But the President may refuse to reply should he deem it necessary for the matter to be kept in secret.
(i) Should the President make an attempt against the State, the National Assembly may institute against him impeachment proceedings in the Supreme Court of Justice, if approved by a majority of three fourths or over of a quorum of four fifths or over of the total number of members of the National Assembly.

The exercise of the powers mentioned in clauses 1-8 of this article and Articles 20, 25, 28, 55 and 57 shall require the concurrence of a majority of the members present in the National Assembly.

ART. 32. The annual session of the National Assembly shall not exceed four months in duration, but may be prolonged should the President consider it necessary. The President may call an extraordinary session during the recess.

ART. 33. The deliberations of the National Assembly shall be public, but the members may sit behind closed doors at the request of the President or as a result of the decision of a majority of the members present.

ART. 34. Bills which have passed the National Assembly shall be promulgated and enforced by the President.

But if the President shall disapprove a bill duly passed in the National Assembly, he may return the bill to the National Assembly for reconsideration, with a statement of the reasons of his disapproval. Even in case that the former decision of the National Assembly be adhered to by a majority of two thirds or over of the members present, if the President still maintains that the bill would greatly endanger or harm either the internal administration of the State or its foreign relations or that there are great and important obstacles in the way of its execution, in such a case the President may, with the concurrence of the Council of State, withhold promulgation.

ART. 35. The Speaker and the Deputy Speaker of the National Assembly shall be elected from and among the members by a majority of the votes cast.

ART. 36. Members of the National Assembly shall not be held responsible, outside of the house, for their speeches, debates or for votes cast in the house.

ART. 37. Except when discovered in the commission of a crime or when involved in crimes connected with internal or external troubles, no member of the National Assembly shall be arrested during the session without the permission of the house.

ART. 38. The National Assembly shall prescribe its own rules and procedure.

CHAPTER V.—*The Administration*

ART. 39. The President is the chief of the Administration and shall be assisted by one Secretary of State.

ART. 40. The affairs of the Administration shall be separately

conducted by the Departments of Foreign Affairs, Interior, Finance, War, Navy, Justice, Education, Agriculture and Commerce, and Communications.

ART. 41. The Heads of the Departments shall manage the administration of their respective departments in accordance with laws and ordinances.

ART. 42. The Secretary of State, the Heads of the Departments and Special Delegates representing the President, shall be entitled to sit and speak in the National Assembly.

ART. 43. The Secretary of State and the Heads of the Departments may be impeached by the Censors and judged by the Court of Administrative Justice, should they violate the law.

CHAPTER VI.—*The Courts of Law*

ART. 44. The courts of law shall be composed of the law officers appointed by the President.

The organization of the courts of law and the qualification of the law officers shall be determined by statute.

ART. 45. The courts of law, in accordance with the provisions of the statute, shall try and judge all civil and criminal cases. But administrative law proceedings shall be tried and judged according to the law governing the same.

ART. 46. The procedure of impeachment cases in the Supreme Court of Justice, as provided for under clause 9 of Article 31, shall be determined separately by statute.

ART. 47. In the courts of law, trials shall be conducted and judgment shall be rendered publicly. When, however, it is considered that publicity may be prejudicial to peace and order or to the maintenance of public morality, secrecy may be observed.

ART. 48. During his term of office, no officer shall be reduced in salary nor transferred to another office nor deprived of his office except as a consequence of punishment according to statute or of disciplinary measures entailing dismissal.

CHAPTER VII.—*The Council of State*

ART. 49. The Council of State, when consulted by the President, shall deliberate upon important matters of state.

The organization of the Council of State shall be determined by the Constitutional Compact Conference.

CHAPTER VIII.—*Finance*

ART. 50. The imposition of new taxes and modification of rates of the existing taxes shall be made by statute. The taxes levied at present shall, unless changed by statute, be collected as in the past.

ART. 51. Annual receipts and expenditures of the State shall be dealt with in accordance with the provisions of the estimates passed by the National Assembly.

ART. 52. In order to meet special requirements, there may be included in the estimates appropriations to continue for a certain number of years as a Continuing Expenditure Fund.

ART. 53. In order to supply deficiencies in the estimates or to meet requirements unprovided for in the same, a Reserve Fund shall not be provided for in the estimates.

ART. 54. Estimates for the objects of expenditure specified below shall not be rejected or reduced except with the concurrence of the President:

(1) Those appertaining to the legal obligations of the Government.
(2) Such necessary expenditures as may have arisen as the effects of statutes.
(3) Expenditures necessary to carry out treaties.
(4) Expenditures necessary for the organization of the army and navy.

ART. 55. In case of international warfare or internal disturbance, or under extraordinary circumstances, when the National Assembly can not be convoked, the President, with the concurrence of the Council of State, may make urgent financial appropriations. But he shall request the National Legislature for ratification at the beginning of its next session.

ART. 56. If the new estimates have not been acted upon, the appropriations of the previous year shall continue in force. The same procedure shall be observed, should the adoption of the estimates be delayed after the fiscal year has already begun.

ART. 57. The final accounts of the receipts and expenditures of the State shall be audited every year by the Board of Audit and shall be reported by the President to the National Assembly for approval.

ART. 58. The organization of the Board of Audit shall be determined by the Constitutional Compact Conference.

CHAPTER IX.—*The Procedure for Drafting the Constitution*

ART. 59. The Constitution of the Chinese Republic shall be drafted by a Committee established for this purpose.

Members of this Committee shall be composed of ten persons elected by the Council of State.

ART. 60. The Draft of the Constitution of the Chinese Republic shall be examined and passed by the Council of State.

ART. 61. After the Constitution of the Chinese Republic has been examined and passed by the Council of State, it shall be submitted by the President to the National Convention for final adoption.

The organization of the National Convention shall be determined by the Constitutional Compact Conference.

ART. 62. The National Convention shall be convoked and dissolved by the President.

ART. 63. The Constitution of the Chung Hua Min Kuo shall be promulgated by the President.

CHAPTER X.—*Supplementary Articles*

ART. 64. Laws and ordinances in force before the enforcement of the Constitutional Compact, so far as they do not come into conflict with the same shall continue to be valid.

ART. 65. The Articles proclaimed on the twelfth day of the second month of the first year of the Republic, regarding the favorable treatment of the Ta Ch'ing Emperor after his abdication of the Throne, and the special treatment of the Ching Imperial Clan, as well as the special treatment of the Manchus, Mongols, Mohammedans and Tibetans, shall never be modified. The statute on the treatment of the Mongols, which is correlated with the foregoing Articles, shall continue to be effective unless changed by statute.

ART. 66. On the proposal of a majority of two thirds or over of the members of the National Assembly, or on the proposal of the

President, in either case if approved by a majority of three fourths or over of a quorum of four fifths or over of the total number of members of the National Assembly, the President shall convoke the Constitutional Compact Conference to amend the Constitutional Compact.

ART. 67. Before the National Assembly shall have been convoked, its powers and functions shall be assumed and discharged by the Council of State.

ART. 68. The Constitutional Compact of the Chinese Republic shall take effect as from the date of promulgation, on which day the Provisional Constitution, proclaimed on the eleventh day of the third month of the first year of the Republic, shall become null and void.

APPENDIX F

PEKING NEW PARLIAMENT DRAFT, 12 AUGUST 1919[1]

CHAPTER I.—*The Form of Government*

ARTICLE 1. The Republic of China (*Chung Hua Min Kuo*) shall forever be a unitary Republic.

CHAPTER II.—*National Territory*

ART. 2. The territory of the Chinese Republic and its outlying areas shall not be altered except in accordance with law.

CHAPTER III.—*The Citizen*

ART. 3. Those who are of the Chinese Republic nationality according to law shall be called people of the Chinese Republic.

ART. 4. The people of the Chinese Republic shall be equal before the law and there shall be no racial, class or religious distinctions.

ART. 5. The people of the Chinese Republic shall not be arrested, imprisoned, tried or punished except in accordance with law.

Whenever a person has been detained, he may in accordance with the law petition for protection, requesting the judicial court to summon him for a trial and investigation.

ART. 6. The residences of the people of the Chinese Republic shall not be entered or searched except in accordance with law.

ART. 7. The people of the Chinese Republic shall have the liberty of secrecy of correspondence, which shall not be violated except in accordance with law.

ART. 8. The people of the Chinese Republic shall have the liberty of choice of residence and profession, which may not be restricted except in accordance with law.

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[1] Passed by the Constitution Drafting Committee on 12 August 1919. This translation is by the author himself, with the technical assistance of Professor Herbert Wright, from Shen Te-chang (ed.), *Chung Hua Min Kuo Hsien Fa Shih Liao* (*Constitutional Materials of the Republic of China*) (Shanghai, New China Constructive Institute, 1933).

ART. 9. The people of the Chinese Republic shall have freedom of assembly and organization of societies, which may not be restricted except in accordance with law.

ART. 10. The people of the Chinese Republic shall have freedom of speech, writing and publication, which may not be restricted except in accordance with law.

ART. 11. The people of the Chinese Republic shall have freedom of religion, which may not be restricted except in accordance with law.

ART. 12. The right of property of the people of the Chinese Republic shall be inviolable, but may be modified in accordance with law whenever the public interest necessitates it.

ART. 13. The people of the Chinese Republic shall have the right to institute law suits, to enter complaints and to petition in accordance with law.

ART. 14. The people of the Chinese Republic shall have the right to vote and be voted for in accordance with law.

ART. 15. The people of the Chinese Republic hold public positions in accordance with law.

ART. 16. The people of the Chinese Republic shall have the obligation to pay taxes in accordance with law.

ART. 17. The people of the Chinese Republic shall have the obligation of military service in accordance with law.

ART. 18. The people of the Chinese Republic shall have the obligation to receive a national education. National education shall be based on the principles of Confucianism as a means of self-rectification.

CHAPTER IV.—*The National Assembly*

ART. 19. The legislative power of the Chinese Republic shall be exercised by the National Assembly.

ART. 20. The National Assembly of the Chinese Republic shall consist of the Senate (*Ts'an Yi Yuan*) and the House of Representatives (*Chung Yi Yuan*).

ART. 21. The Senate shall be composed of members elected by the local electoral conventions and the central electoral conventions.

ART. 22. The House of Representatives shall be composed of

members elected by the various electoral districts in proportion to the population.

ART. 23. The election of members in both houses shall be determined by law.

ART. 24. No member of the National Assembly shall hold office concurrently in both houses.

ART. 25. No member of either house of the National Assembly shall hold concurrently official positions.

ART. 26. The National Assembly shall convene, open and close its sessions on its own initiative.

ART. 27. The period for the ordinary session of the National Assembly shall be four months, but, when important business arises, it may be extended two months.

ART. 28. The ordinary session of the National Assembly meets on 1 March in each year, but extraordinary sessions may be convoked in either of the following circumstances:

(1) On request of more than one third of the members of each house.
(2) When the Government deems it necessary, the President shall convoke such session.

ART. 29. The opening and closing of the National Assembly shall take place simultaneously in both houses.

If one house adjourns, the other house shall at the same time suspend its session.

When the House of Representatives is prorogued, the Senate shall at the same time suspend its session.

ART. 30. Discussions of business in the National Assembly shall be conducted by the two houses separately.

A bill may not be introduced in both houses at the same time.

ART. 31. Unless more than one third of the total membership of each house is present, no discussion may be conducted.

ART. 32. Any subject discussed in either house shall be decided by the concurrence of half of the members present and, in case of a tie, it shall be decided by the Chairman.

ART. 33. Any subject discussed in either house shall be conducted in public, but, on request of the Government or by decision of the respective house, secret sessions may be held.

ART. 34. Both houses may exercise the following powers:

(1) To receive and consider petitions from the citizens.
(2) To offer suggestions to the Government.
(3) To make interpellations to the Government or request Ministers to appear in either house for interrogation.
(4) To request the Government to investigate and punish those officials who may have violated the laws or neglected their duties.

ART. 35. The impeachment of the President or the Vice President by the House of Representatives for treason requires the attendance of more than two thirds of the total membership and the concurrence of more than two thirds of the members present.

ART. 36. The impeachment of Ministers by the House of Representatives for violation of laws requires the attendance of a majority of the total membership and the concurrence of more than two thirds of the members present.

ART. 37. The House of Representatives may pass a vote of lack of confidence in the Ministers.

ART. 38. The trial of the impeached President or Vice President shall be conducted by the Senate, but no conviction may be decided without the concurrence of more than two thirds of the members present.

When the President or Vice President has been adjudged guilty by the Senate, he shall be removed from office and delivered to the Supreme Court for sentence.

ART. 39. The trial of an impeached Minister shall be conducted by the Senate, but no conviction may be decided without the concurrence of more than two thirds of the members present.

When the Senate has decided that a Minister has violated the law, he shall be removed from office by the President, but, if additional crimes are thereby involved, he shall be delivered to the regular courts for trial.

ART. 40. Members of both houses shall not be responsible, outside of the house, for opinions expressed and votes cast in the house.

ART. 41. Members of both houses shall not be arrested or confined during sessions without permission of their respective house,

except in case of treasonable acts connected with internal rebellion or foreign aggression.

When members of either house have been arrested on account of treasonable acts connected with internal rebellion or foreign aggression, the Government shall report the reason thereof to their respective house.

ART. 42. Salaries and other allowances for members of both houses shall be fixed by law.

CHAPTER V.—*The President*

ART. 43. The administrative power of the Chinese Republic shall be exercised by the President with the assistance of the members of the cabinet.

ART. 44. Persons of the Chinese Republic, who are in full enjoyment of public rights, are forty years of age or over and have been resident within the limits of the Republic for over ten years, shall be eligible for election as President.

ART. 45. The President shall be elected by an Electoral Committee chosen for that purpose by the National Assembly from among its membership.

The presence of more than two thirds of the total number of electors shall be required for the election and the voting shall be by secret ballot. The person obtaining three fourths of the total votes shall be elected, but, if no one is elected in two ballots, the two candidates

ART. 46. The term of office of the President shall be five years and, if reelected, he may hold office for one more term. Three months prior to the expiration of the term, the members of the National Assembly shall convene on their own initiative.

ART. 47. On assuming office the President shall take the following oath:

I hereby swear that I shall most faithfully observe the Constitution and discharge the duties of President.

ART. 48. Should the office of the President become vacant, the Vice President shall succeed him until the expiration of the term of office of the President.

Should the President be unable to discharge his duties for

any cause whatsoever, his duties shall be assumed by the Vice President.

Should the office of the Vice President become vacant at the same time, the Council of State shall act in his stead and at the same time the members of the National Assembly shall within three months convene on their own initiative and organize an Electoral Committee to elect a new President.

ART. 49. The President, on the expiration of his term, shall relinquish his office; if, at the expiration of his term, the new President shall not have been elected or, if elected, shall not have assumed office, and if the Vice President shall be unable to assume the office, his duties shall be assumed by the Council of State.

ART. 50. The Vice President shall be elected in accordance with the regulations governing the election of the President and he shall be elected at the same time as the President is elected. If the office of Vice President becomes vacant, his office shall be filled.

ART. 51. The President shall promulgate all laws and shall supervise and secure their enforcement.

ART. 52. The President, in the enforcement of laws or in the appointment of officials in accordance with law, may issue mandates and orders.

ART. 53. The President, jointly with the Ministers, may, for the maintenance of public security and the prevention of disaster, promulgate mandates, which shall have equal force with laws, provided the suddenness of the emergency shall have precluded the summoning of the National Assembly.

He shall, within seven days after the convening of the subsequent National Assembly, request its approval of the said mandates; if the National Assembly fails to give its approval, the mandates shall be null and void.

ART. 54. The President shall appoint and remove all officials in accordance with law.

The organization, regulation and salaries of officials shall be fixed by law.

ART. 55. The President shall be the Commander-in-Chief of the Republic, commanding the land and naval forces.

The organization of the land and naval forces shall be fixed by law.

ART. 56. The President shall be the representative of the Republic in relations with foreign countries.

ART. 57. The President, in declaring war against enemies, shall secure the concurrence of the National Assembly; in case of a foreign invasion, he may request the approval of the National Assembly after war has been declared.

ART. 58. The President shall conclude treaties, but treaties of peace and those affecting legislation shall not become valid without the approval of the National Assembly.

ART. 59. The President may, in accordance with law, proclaim martial law; but, if the National Assembly deems it unnecessary, it shall be rescinded.

ART. 60. The President may confer titles of honor.

ART. 61. The President may grant pardons, commute punishments and restore rights, but, with regard to a decision of impeachment or of treasonable acts, he may not restore rights or commute punishments without the concurrence of the Senate.

ART. 62. The President may suspend the sessions of either the House of Representatives or the Senate, but each session may not be suspended more than twice and each suspension may not exceed ten days.

ART. 63. The President may dissolve the House of Representatives, but may not dissolve it twice during the same session.

When the President dissolves the House of Representatives, he shall order a new election to be held within six months to continue the session.

ART. 64. The President, while in office, is not subject to indictment or suit, except in case of treasonable acts.

ART. 65. The salaries of the President and Vice President shall be fixed by law.

CHAPTER VI.—*The Council of State*

ART. 66. The Council of State shall be composed of the Ministers.

ART. 67. The Premier and the various heads of departments shall be called Ministers.

The President may, besides the above, appoint other persons as Ministers, but the number of these may not exceed two thirds of the heads of departments.

ART. 68. The appointment of the Premier must secure the concurrence of the House of Representatives.

Should a vacancy occur in the Premiership during the adjournment of the National Assembly, the President may appoint an Acting Premier, but he must, within seven days after the National Assembly is in session, submit the appointment to the House of Representatives for its concurrence.

ART. 69. The function of the Ministers is to assist the President in the administration of political affairs with joint responsibility to the House of Representatives.

The mandates and orders issued by the President and other documents relating to state affairs shall not be valid without the countersignature of the Ministers; but those concerning only one Minister may be countersigned by the Premier and the Minister concerned.

ART. 70. The Ministers may attend both houses and make speeches, but, in the explanation of Government bills, they may delegate other persons to act for them.

ART. 71. Whenever a Minister receives a vote of lack of confidence, the President, if he does not dissolve the House of Representatives in accordance with the provisions of Article 63, must dismiss the said Minister immediately.

CHAPTER VII.—*Courts of Law*

ART. 72. The judicial authority of the Chinese Republic shall be exercised by the courts of law.

ART. 73. The organization of the courts of law and the qualifications of judicial officials shall be fixed by law.

ART. 74. The courts of law shall receive and hear civil, criminal and other law suits in accordance with law, but administrative cases shall be handled by the Administrative Court (*Ping Cheng Yuan*).

The organization, functions and authority of the Administrative Court shall be fixed by law.

ART. 75. The trial of cases in the courts of law must be conducted in public, but, if it is detrimental to the public peace or affects public morals, it may be held *in camera.*

ART. 76. The judicial officials shall be independent in the conduct of trials and no one shall be allowed to interfere.

ART. 77. Judicial officials, during their tenure of office, shall not have their salaries decreased and shall not be suspended or transferred except in accordance with law.

During their tenure of office, judicial officials may not be removed from office unless convicted of crime or acts punishable by law.

The punishment of judicial officials shall be fixed by law.

CHAPTER VIII.—*The Law*

ART. 78. The members of both houses and the Government respectively may introduce bills, but, after a bill has been rejected by one house, it shall not be introduced again during the same session.

ART. 79. The passage of a law requires the concurrent action of both houses.

ART. 80. When the National Assembly has passed a law, it shall be promulgated by the President within fifteen days of its receipt by him.

ART. 81. Should a bill passed by the National Assembly be disapproved by the President, he shall, within the period allowed for promulgation, state the reason for his disapproval and request the reconsideration of the bill. If both houses separately, by a two thirds vote of the members present, maintain their former decision, the bill shall be duly promulgated.

Should a bill not be returned for reconsideration within the period allowed for promulgation, it shall automatically become a law. But this provision shall not be applicable, when the National Assembly is adjourned or the House of Representatives prorogued within the period allowed for promulgation.

ART. 82. A law shall not be amended or repealed except in accordance with law.

ART. 83. A law in conflict with the Constitution shall be invalid.

CHAPTER IX.—*Finance*

ART. 84. New taxes and alterations in the rate of taxation shall be fixed by law.

The present taxes, which have not been amended by law, shall continue to be levied.

ART. 85. The floating of national debts or the conclusion of contracts increasing the burden of the National Treasury shall obtain the approval of the National Assembly.

ART. 86. An estimate of the annual expenditures and annual income of the nation shall be compiled by the Government in the form of a budget, which shall be submitted to the House of Representatives within fifteen days of the convening of the National Assembly.

Should the Senate amend or reject the budget passed by the House of Representatives, it shall request the concurrence of the House of Representatives in the amendment or rejection and, if such concurrence is not obtained, the budget as originally passed shall prevail.

ART. 87. The Government, on account of extraordinary business, may make provision for continuation expenditures within the period covered by the budget.

ART. 88. The sums thus expended and not covered by the budget shall be submitted to the next session of the House of Representatives for its approval.

ART. 89. Except with the approval of the Government, the following items of expenditure shall not be abolished or decreased by the National Assembly:

(1) Laws pertaining to the obligations of the nation.
(2) Items necessary for the execution of treaties.
(3) Items fixed by law.
(4) Continuation expenditures.

ART. 90. The National Assembly may not increase the annual expenditures as set down in the budget.

ART. 91. When the fiscal year has begun and the budget has not yet been passed, the Government may follow the budget of the previous year.

ART. 92. In case of a foreign war or the suppression of an internal rebellion, when it is impossible to summon the National Assembly, the Government may adopt financial measures to meet the emergency, but it must request the approval thereof by the House of Representatives within seven days of the convening of the next session of the National Assembly.

ART. 93. Warrants for the payment of the annual expenditures of the nation shall be referred to the Bureau of Audit (*Shen Chi Yuan*) for investigation.

ART. 94. The statement of the annual expenditures and annual income of the nation shall be first referred to the Bureau of Audit for investigation and then reported to the National Assembly by the Government

Should the House of Representatives disapprove the statement, the Ministers shall be held responsible.

ART. 95. The budget passed by the National Assembly and its approval of continuation expenditures shall be proclaimed by the President upon their receipt.

ART. 96. The appointment of the chairman of the Bureau of Audit requires the concurrence of the Senate; the organization and functions of the said Bureau shall be fixed by law.

CHAPTER X.—*Amendments to and Interpretation of the Constitution*

ART. 97. Proposals for the amendment of the Constitution shall originate in the National Assembly.

Such proposals shall not be approved except with the concurrence of the two houses, by a two thirds vote of the members present.

Proposals for the amendment of the Constitution shall not be made by the members of either house, unless countersigned by one fourth of the members thereof.

ART. 98. Amendment of the Constitution shall be decided by a Constitutional Convention.

ART. 99. The Constitutional Convention shall be composed of members of the National Assembly.

No Constitutional Convention may be convened, unless two thirds of the members of the National Assembly are in attendance, and no amendments may be adopted, unless three fourths of the members thereof present approve.

ART. 100. The form of government shall not be the subject of discussion for amendment.

ART. 101. Whenever there is any doubt regarding the Constitu-

tion, the following personnel shall organize a Special Commission for its interpretation:

(1) The Chairman of the Senate.
(2) The Chairman of the House of Representatives.
(3) The Chairman of the Supreme Court (*Ta Li Yuan*).
(4) The Chairman of the Administrative Court.
(5) The Chairman of the Bureau of Audit.

The attendance and the number of persons required for a decision shall be in conformity with Article 99, Section 2, of the Constitution.

APPENDIX G

CONSTITUTION, 10 OCTOBER 1923[1]

[PREAMBLE]

We, the Constitution Conference of the Republic of China, in order to make manifest and foster the national dignity, stabilize the national boundaries, promote the general welfare and defend the principles of humanity, do make this Constitution and proclaim it to the whole country, to be observed by all and forever.

CHAPTER I.—*Form of Government*

ARTICLE 1. The Republic of China shall be a unified Republic forever.

CHAPTER II.—*Sovereignty*

ART. 2. The sovereignty of the Republic of China is vested in the people as a whole.

CHAPTER III.—*Territory*

ART. 3. The territory which originally belonged to the Republic shall be the territory of the Republic of China.

The territory and the division of it into areas shall not be altered except by law.

CHAPTER IV.—*Citizens*

ART. 4. All persons who according to law belong to the nationality of the Republic of China are citizens of the Republic of China.

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[1] Promulgated under the Ts'ao Kun regime. *Constitution and Supplementary Laws and Documents of the Republic of China* (Peking, The China Commission on Extraterritoriality, 1924), 15-48. The words "the National Assembly" have been substituted throughout for the word "Parliament."

ART. 5. Citizens of the Republic of China shall be equal before the law, without distinction of race, class or religion.

ART. 6. Citizens of the Republic of China shall not be arrested, imprisoned, tried or punished except in accordance with law.

Any citizen under arrest may, in accordance with law, apply to the court by a "Petition for Protection" to have his person delivered thereto and the cause tried thereat.

ART. 7. The residences of citizens of the Republic of China shall not be entered or searched except in accordance with law.

ART. 8. The secrecy of letters and correspondence of citizens of the Republic of China shall not be violated except in accordance with law.

ART. 9. A citizen of the Republic of China shall be free to choose his residence and occupation; such freedom shall not be restricted except in accordance with law.

ART. 10. A citizen of the Republic of China shall be free to assemble and to form societies; such freedom shall not be restricted except in accordance with law.

ART. 11. A citizen of the Republic of China shall be entitled to freedom of speech, authorship and publication; such freedom shall not be restricted except in accordance with law.

ART. 12. A citizen of the Republic of China shall be free to honor Confucius and to profess any religion; such freedom shall not be restricted except in accordance with law.

ART. 13. The right of ownership of a citizen of the Republic of China shall be inviolable; provided that any necessary disposition for the public benefit may be made in accordance with law.

ART. 14. Liberties of the citizens of the Republic of China other than those provided for in this Chapter are recognized; provided that such liberties are not contrary to the principles of Constitutional Government.

ART. 15. A citizen of the Republic of China shall have the right to institute and carry on legal proceedings in a court of justice in accordance with law.

ART. 16. A citizen of the Republic of China shall have the right to petition the National Assembly or the Administration in accordance with law.

ART. 17. A citizen of the Republic of China shall have the right to vote and to be candidate for election in accordance with law.

ART. 18. A citizen of the Republic of China shall have the right to hold office in the public service in accordance with law.

ART. 19. A citizen of the Republic of China shall have the duty to pay taxes in accordance with law.

ART. 20. A citizen of the Republic of China shall have the duty to undertake military service in accordance with law.

ART. 21. A citizen of the Republic of China shall have the duty to receive elementary education in accordance with law.

CHAPTER V.—*Public Powers*

ART. 22. Of the public powers of the Republic of China, those relating to the national affairs shall be exercised in accordance with the provisions of this Constitution; and those relating to local affairs, in accordance with the provisions of this Constitution and the Self-government Law of the Province.

ART. 23. The following matters shall be legislated upon and executed by the Republic:

1. Foreign relations.
2. National defense.
3. Nationality law.
4. Criminal, civil and commercial laws.
5. Prison system.
6. Weights and measures.
7. Currency and National banks.
8. Customs duty, salt tax, stamp tax, tobacco and wine taxes, and other consumption taxes and other taxes the rates of which shall be uniform throughout the country.
9. Posts, telegraphs and aviation.
10. National railways and Roads.
11. National property.
12. National debts.
13. Monopolies and licenses.
14. Examination, appointment, investigation and protection of the civil and military officials of the country.
15. Other matters which, according to the provisions of this Constitution, relate to the Republic.

ART. 24. The following matters shall be legislated upon by the Republic and shall be executed by the Republic or, under its order, by the local areas:

1. Agriculture, industry, mining and forestry.
2. The educational system.
3. The banking and exchange system.
4. Navigation and coast fisheries.
5. Irrigation and conservancy concerned with and waterways extending to two or more Provinces.
6. General regulations relating to municipalities.
7. Eminent domain.
8. The national census and statistics.
9. Immigration, emigration, reclamation and colonization.
10. The police system.
11. Public sanitation.
12. Relief work and administration of unemployed persons.
13. Preservation of such ancient books, objects and remains as are of historic, cultural or scientific interest.

A Province may enact local laws relating to the above subdivisions; provided that they shall not be contrary to the national laws. A Province may, pending legislation by the Republic, legislate upon the matters specified in subdivisions 1, 4, 10, 12 and 13.

ART. 25. The following matters shall be legislated upon by a Province and shall be executed by such Province or, under its order, by a District (*Hsien*):

1. Provincial education, industry and communications.
2. Management and disposal of Provincial properties.
3. Municipal affairs of the Province.
4. Provincial irrigation, conservancy and engineering works.
5. The land tax, title-deed tax and other Provincial taxes.
6. Provincial debts.
7. Provincial banks.
8. Provincial police and matters relating to public safety.
9. Provincial philanthropic work and work for public benefit.
10. Self-government of the lower grade.
11. Other matters assigned by National laws.

Where any of the matters above referred to concerns two or more Provinces, it may be undertaken by them jointly, unless it is otherwise provided by law. When the funds are insufficient, the deficit may, with the approval of the National Assembly, be made good from the national treasury.

ART. 26. When any matter not specified in Articles 23, 24 and 25 arises, it shall be a matter of the Republic if by its nature it concerns the Republic, and of a Province if by its nature it concerns the Province. Any controversy arising in this connection shall be decided by the Highest Court of Justice.

ART. 27. The Republic may, in order to obviate the following evils, or when necessary for the promotion of public welfare, restrict by law any Provincial tax and its method of collection:

1. Impairment of the national revenue or commerce.
2. Double taxes.
3. Excessive fees, or fees detrimental to communications, charged for the use of public roads or other means of communication.
4. Taxes imposed by the Provinces or other local areas, detrimental to goods imported therein, for the purpose of protecting their local products.
5. Duties imposed by the Provinces or other local areas for the transit of goods.

ART. 28. A Provincial law conflicting with a national law shall be void. When doubt arises as to whether a Provincial law conflicts with a national law, interpretation shall lie with the Highest Court of Justice.

The foregoing provision in the matter of interpretation shall apply when a Provincial Self-government Law conflicts with a national law.

ART. 29. In case of a deficit in the national budget or financial stringency, the Provinces may, with the approval of the National Assembly, be required to share the burden at rates increasing progressively with their annual revenues.

ART. 30. In the event of financial deficiency or extraordinary calamity, the locality concerned may, with the approval of the National Assembly, be subsidized by the national treasury.

ART. 31. Controversies between Provinces shall be decided by the Senate.

ART. 32. The organization of the national army shall be based upon a system of compulsory citizen service. The Provinces shall, in general, have no military duty other than that of the execution of matters provided by the law of military service.

Citizens liable for military service shall be recruited and trained for different periods in recruiting areas of the whole country; but the stationing of standing armies shall be restricted to the areas required for national defense.

The military expenses of the Republic shall not exceed one quarter of the national annual expenditure; provided that this provision shall not apply in case of war with any foreign country.

The strength of the national army shall be determined by the National Assembly.

ART. 33. No Province shall enter into any political alliance.

No province shall take any action detrimental to the interests of another Province or any other local area.

ART. 34. No Province shall keep any standing army or establish any military academy or arsenal.

ART. 35. If any Province fail to perform its duty as provided by a national law and refuse to obey after a warning by the Republic, the Republic may, with the national power, compel performance.

The aforesaid measure shall be stopped when it is disapproved by the National Assembly.

ART. 36. In the event of an invasion with military force by one Province of another, the Government may intervene in accordance with the provisions of the last preceding article.

ART. 37. In the event of a change of the form of government or the destruction of the fundamental organization under the Constitution, the Provinces shall, until the original condition is restored, adopt and carry out joint measures to maintain the organization provided by the Constitution.

ART. 38. The provisions of this Chapter relating to Provinces shall apply to localities where Districts, but not Provinces, have been established.

CHAPTER VI.—*The National Assembly*

ART. 39. The legislative power of the Republic of China shall be exercised by the National Assembly.

ART. 40. The National Assembly shall consist of a Senate and a House of Representatives.

ART. 41. The Senate shall be composed of members elected by the highest local assemblies and other legally constituted electoral bodies.

ART. 42. The House of Representatives shall be composed of members elected by the electoral districts, the number of members elected in a district being proportional to its population.

ART. 43. The election of members of both houses shall be regulated by law.

ART. 44. No person shall be a member of both houses simultaneously.

ART. 45. No member of either house shall concurrently hold office as a civil or military official.

ART. 46. Each house may examine the qualifications of its own members.

ART. 47. The term of office for a member of the Senate shall be six years. One third of the members shall be elected every two years.

ART. 48. The term of office for a member of the House of Representatives shall be three years.

ART. 49. Members referred to in Articles 47 and 48 shall, after the completion of a new election, not be relieved of their duties until the day before the opening of the session in accordance with law.

ART. 50. Each house shall have a Speaker and a Vice Speaker who shall be elected from among its own members.

ART. 51. Each house shall itself convene, open and close its session; provided that extraordinary sessions shall be called under any of the following circumstances:

1. Upon the joint notice of one third or more of the members of each house.
2. At the summons of the President.

ART. 52. The ordinary session of the National Assembly shall be opened on the first day of August in each year.

ART. 53. The period of the ordinary session shall be four months; such period may be extended, provided that the extension shall not exceed the period of an ordinary session.

ART. 54. The opening and closing of sessions shall take place simultaneously in both houses.

When one house is suspended, the other house shall simultaneously adjourn.

When the House of Representatives is dissolved, the Senate shall simultaneously adjourn.

ART. 55. Deliberations shall take place in the two houses separately.

No bill shall be introduced simultaneously in both houses.

ART. 56. No deliberation shall commence in either house unless more than half of its members are present.

ART. 57. Deliberations in either house shall be decided by the vote of more than half of the members present. In the event of a tie, the Speaker shall have a casting vote.

ART. 58. An identical decision of both houses shall be the decision of the National Assembly.

ART. 59. The sittings of the two houses shall be open to the public; provided that they may, at the request of the Government or by decision of the house, be closed to the public.

ART. 60. When the House of Representatives considers that the President or Vice President is guilty of any treasonable act, he may be impeached by the votes of two thirds of the members present; provided that two thirds of the members shall be present.

ART. 61. When the House of Representatives considers that a Cabinet Minister is guilty of any act contrary to law, he may be impeached by the votes of two thirds of the members present.

ART. 62. The House of Representatives may pass a vote of non-confidence against a Cabinet Minister.

ART. 63. An impeached President, Vice President or Cabinet Minister shall be tried by the Senate.

The decision that the person tried under the provisions of the above paragraph is guilty of a crime or has violated the law shall

not be pronounced without the concurrence of two thirds of the members present.

When the President or Vice President is adjudged guilty of a crime, he shall be removed from his office; but the punishment to be inflicted shall be determined by the Highest Court of Justice.

When a Cabinet Minister is adjudged to have violated the law, he shall be removed from his office and may also be deprived of his public rights. If he is guilty of a crime, he shall be delivered to a court of justice to be tried.

ART. 64. Each house may request the Government to institute an investigation in the matter of the conduct of an official acting contrary to law or to duty.

ART. 65. Each house may make proposals to the Government.

ART. 66. Each house may receive petitions of citizens.

ART. 67. Members of either house may address an interpellation to a Cabinet Minister or ask him to appear in the house to answer an interpellation.

ART. 68. Members of either house shall not be held responsible outside of the house for opinions expressed or for votes cast in the house.

ART. 69. A member of either house shall, during the session, not be arrested or kept under surveillance without the permission of the house except where taken *in flagrante delicto.*

When a member of either house is arrested *in flagrante delicto,* the Government shall at once report the cause to the house; but the house may, by its decision, ask for a suspension of judicial proceedings during the session and the surrender of the arrested member to the house.

ART. 70. The annual allowances of the members of both houses and the expenses shall be determined by law.

CHAPTER VII.—*President*

ART. 71. The executive power of the Republic of China shall be exercised by the President with the assistance of the Cabinet Ministers.

ART. 72. Any citizen of the Republic of China forty or more

years old, in full enjoyment of civil rights, and resident in the country for ten years or more, shall be eligible as President.[2]

ART. 73. The President shall be elected by a Presidential Electoral College composed of all the members of the National Assembly.

The election above referred to shall be held by secret ballot; provided always that two thirds of the electors shall be present. The person who obtains three fourths of the total votes shall be elected; provided that in the event of no one being elected after a second vote, a further vote shall be taken upon the two persons obtaining the highest numbers of votes in the second vote, and the one who obtains a majority vote shall be elected.

ART. 74. The term of office of the President shall be five years. In case of reelection, he may hold office for a second term.

Three months prior to the expiration of the term of office of the President, the members of the National Assembly shall themselves convene and organize a Presidential Electoral College for the election of a President for the following term.

ART. 75. When the President assumes office, he shall take oath as follows:

I hereby solemnly swear that I will most faithfully observe the Constitution and perform the duties of the President.

ART. 76. In the event of the office of the President becoming vacant, the Vice President shall succeed until the expiration of the term of office of the President.

In the event of the President being unable for any reason to perform his duties, the Vice President shall act in his place.

If the office of the Vice President is also vacant, the Cabinet shall act for the President. In such event, the members of the National Assembly shall themselves within three months convene and organize a Presidential Electoral College to elect the next President.

ART. 77. The President shall be relieved of his office at the expiration of his term of office. If at the time a new President

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[2] Articles 72-78 were proclaimed on 4 October of the 2nd year of the Republic.

has not yet been elected, or has been elected but has not assumed his office, and the new Vice President is also unable to act as President, the Cabinet shall act for him.

ART. 78. The election of the Vice President shall be held in accordance with the provisions relating to the election of the President and shall take place at the same time. In the event of the Vice Presidency becoming vacant, a new Vice President shall be elected.

ART. 79. The President shall promulgate laws and supervise and secure their execution.

ART. 80. The President may issue mandates for the execution of laws or in pursuance of the authority delegated to him by law.

ART. 81. The President shall appoint and dismiss civil and military officials; provided that this provision shall not apply where this constitution or the law otherwise provides.

ART. 82. The President shall be the Commander-in-Chief of the army and navy of the Republic and shall be in command thereof. The organization of the army and navy shall be prescribed by law.

ART. 83. The President shall be the representative of the Republic with regard to foreign powers.

ART. 84. The President may, with the approval of the National Assembly, declare war; provided that in the matter of defense against foreign invasion, he may request the approval of the National Assembly after the declaration of war.

ART. 85. The President may conclude treaties; provided that treaties of peace and those relating to legislative matters shall not be valid without the approval of the National Assembly.

ART. 86. The President may proclaim martial law in accordance with law; provided that, if the National Assembly considers that there is no such necessity, he shall forthwith proclaim the withdrawal of martial law.

ART. 87. The President may, with the approval of the highest court of justice, remit or reduce punishments and restore civil rights; provided that with regard to a decision in an impeachment case, no restoration of civil rights shall be declared without the approval of the Senate.

ART. 88. The President may suspend the session of the House of Representatives or the Senate; provided that no session shall be suspended more than twice and no suspension shall exceed ten days.

ART. 89. When a vote of non-confidence has been passed against a Cabinet Minister, the President shall either remove the Cabinet Minister from office or dissolve the House of Representatives; provided that the House of Representatives shall not be dissolved without the consent of the Senate.

During the tenure of office of the same Cabinet Minister or during the same session, no dissolution shall take place a second time.

When the President dissolves the House of Representatives, he shall forthwith order a new election and fix a date, within five months, for the convocation of the House to continue the session.

ART. 90. The President shall not, for any offense other than treason, be liable to criminal proceedings before he has vacated his office.

ART. 91. The annual salaries of the President and the Vice President shall be fixed by law.

CHAPTER VIII.—*Cabinet*

ART. 92. The Cabinet shall be composed of Cabinet Ministers.

ART. 93. The Premier and the Ministers of the various Ministries shall be Cabinet Ministers.

ART. 94. The Premier shall be appointed with the approval of the House of Representatives.

In the event of the Premiership becoming vacant when the National Assembly is not in session, the President may appoint an acting Premier; provided that the nomination of the next Premier shall, within seven days after the opening of the next session of the National Assembly, be submitted to the House of Representatives for approval.

ART. 95. The Cabinet Ministers shall assist the President and are responsible to the House of Representatives.

The mandates of the President and other documents concerning state affairs shall not be valid without the countersignature of a

Cabinet Minister; provided that this provision shall not apply to the appointment and dismissal of a Premier.

ART. 96. A Cabinet Minister may appear and speak in both houses; provided that he may, for the purpose of making explanations of bills introduced by the Government, depute delegates to act for him.

CHAPTER IX.—*Judiciary*

ART. 97. The judicial power of the Republic of China shall be exercised by courts of justice.

ART. 98. The organization of the judiciary and the qualifications for judicial officials shall be prescribed by law.

The President of the Highest Court of Justice shall be appointed with the approval of the Senate.

ART. 99. Courts of justice shall, in accordance with law, accept and deal with civil, criminal, administrative and all other cases; provided that this provision shall not apply where this Constitution of any law provides otherwise.

ART. 100. Trials in a court of justice shall be conducted in public; provided that they may be held in camera when it is considered necessary for public peace or public morals.

ART. 101. A judicial official shall try and decide cases independently; no person whatsoever shall interfere.

ART. 102. A judicial official shall not, during his tenure of office, be subjected to a reduction of salary, suspension from office or transference to another office otherwise than in accordance with law.

A judicial official shall not, during his tenure of office, be removed from his office unless he has been convicted of a crime or subjected to disciplinary punishment, provided that these provisions shall not apply in a case of an alteration in the organization of the judiciary or of the qualifications for entry thereto.

The disciplinary punishment of judicial officials shall be prescribed by law.

CHAPTER X.—*Law*

ART. 103. Members of the two houses and the Government may introduce bills; provided that if a bill is rejected by either house,

it shall not be reintroduced during the same session.

ART. 104. A bill passed by the National Assembly shall be promulgated by the President within fifteen days after its transmission to him.

ART. 105. If the President disapproves a bill passed by the National Assembly, he may, within the period for promulgation, state the reasons and request the National Assembly to reconsider. If the two houses adhere to their original decision, the bill shall be promulgated forthwith.

If a bill has not been submitted for reconsideration and the period for promulgation has expired, it shall forthwith become law; provided that this provision shall not apply when the session of the National Assembly is closed or the House of Representatives is dissolved before the expiration of the period for promulgation.

ART. 106. Law shall not be altered or repealed otherwise than by law.

ART. 107. When a resolution passed by the National Assembly is submitted for reconsideration, the provisions relating to bills shall apply.

ART. 108. A law in conflict with the Constitution shall be void.

CHAPTER XI.—*Finance*

ART. 109. The imposition of new taxes and alterations in the rates shall be made by law.

ART. 110. The approval of the National Assembly shall be obtained for the floating of national loans and the conclusion of agreements increasing the burdens of the national treasury.

ART. 111. The House of Representatives shall have the right to deliberate first on a financial bill directly affecting the burdens of the citizens.

ART. 112. A budget shall be made annually by the Government of the annual expenditures and revenues of the Republic. The budget shall be submitted first to the House of Representatives within fifteen days after the opening of the session of the National Assembly.

If the Senate amends or rejects a budget passed by the House of Representatives, the concurrence of the House of Representa-

tives shall be obtained; if no such concurrence is obtained, the bill as originally passed shall forthwith become the budget.

ART. 113. The Government may, for special undertakings, provide in the budget continuing expenditure funds for a previously fixed number of years.

ART. 114. The Government may provide a reserve fund to supply deficiencies in the budget or requirements unprovided for in the same.

Any defrayment made out of the reserve fund shall be submitted during the next session to the House of Representatives for subsequent approbation.

ART. 115. The following items of expenditure shall not be stricken off or reduced by the National Assembly without the concurrence of the Government:

1. Expenditures legally due from the Government as obligations.
2. Expenditures necessary to carry out treaties.
3. Expenditures made necessary by provisions of law.
4. Continuing expenditure funds.

ART. 116. The National Assembly shall not increase the expenditures in the budget.

ART. 117. After the commencement of a fiscal year and before the passing of the budget, the monthly expenditures of the Government shall be one twelfth of the amount allowed in the budget for the previous year.

ART. 118. The Government may adopt financial emergency measures on account of a war of defense against a foreign power, suppression of internal troubles, or relief for an extraordinary calamity when the urgency of the situation makes it impossible to summon the National Assembly; provided that such measures shall be submitted to the National Assembly for subsequent approbation within seven days after the opening of the next session.

ART. 119. An order for payment of an annual expenditure of the Republic shall first be referred to the Board of Audit for approval.

ART. 120. The final account of the annual expenditures and revenues of the Republic shall be verified and confirmed each year by the Board of Audit and reported by the Government to the National Assembly.

If the House of Representatives rejects such final account or a bill for subsequent approbation,[3] the Cabinet Minister concerned shall be responsible.

ART. 121. The organization of the Board of Audit and the qualifications of auditors shall be determined by law.

An auditor shall not, during his tenure of office, be subjected to a reduction of salary, a suspension of his functions or a transference of office except in accordance with law.

The disciplinary punishment of auditors shall be prescribed by law.

ART. 122. The President of the Board of Audit shall be elected by the Senate.

The President of the Board of Audit may, in any matter relating to the report of the account, appear and speak in the two houses.

ART. 123. A budget or a bill for subsequent approbation[4] shall, when it has been passed by the National Assembly, be promulgated by the President after its transmission to him.

CHAPTER XII.—*Local System*

ART. 124. Local areas are of two grades, the Provinces and the Districts.

ART. 125. A Province may, in accordance with the provisions of Article 22 of Chapter V of this Constitution, make Provincial Self-Government Law; provided that such law shall not conflict with the Constitution and the national laws.

ART. 126. The Provincial Self-Government Law shall be made by the Provincial Self-Government Law Conference composed of delegates elected by the Provincial Assembly, District Assemblies and legally constituted professional associations of the Province.

Each District shall elect one delegate. The number of delegates elected by the Provincial Assembly as those elected by the legally constituted professional associations shall not exceed one half of the total number of delegates elected by District Assemblies; pro-

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[3] Bill for subsequent approbation refers to Articles 114 and 118.

[4] Bill for subsequent approbation refers to Articles 114 and 118.

vided that candidates for election by Provincial Assemblies and District Assemblies shall not be limited to members of the respective Assemblies. The election shall be regulated by Provincial law.

ART. 127. The following provisions shall apply to all Provinces:

1. A Province shall have a Provincial Assembly which shall be a unicameral representative body. The members of such Assembly shall be elected by direct election.
2. A Province shall have a Provincial Administrative Council which shall administer all matters of Provincial Self-Government. Such Council shall be composed of from five to nine Councilmen directly elected by the citizens of the Province. Their term of office shall be four years. Before a direct election is possible, an electoral college may be organized in accordance with the provisions of the last preceding article to elect such members; provided that a person in military service shall not be eligible unless he has been relieved of office for at least one year.
3. A Provincial Administrative Council shall have a Chairman who shall be elected from among the Councilmen.
4. Citizens of the Republic of China who have resided in the Province for one year or more shall be equal before the law of the Province and be in full enjoyment of civil rights.

ART. 128. The following provisions shall apply to all Districts:

1. A District shall have a District Assembly which shall have legislative power over all matters of self-government in the District.
2. A District shall have a Magistrate who shall be directly elected by the citizens of the District, and shall, with the assistance of the District Council, administer all matters of District self-government; provided that this provision shall not apply before the judiciary shall have become independent and the system of self-government of the lower grade shall have become complete.
3. A District shall have the right to retain a portion of the Provincial taxes raised in the District; provided that such portion shall not exceed forty percent of the whole amount.

4. The Provincial Government shall not dispose of the property of the Districts or their self-government funds.
5. A District may, in case of a natural or any other calamity, or on account of shortage of funds for self-government, apply to the Provincial Administrative Council; and may, with the approval of the Provincial Assembly, receive subsidies from the Provincial treasury.
6. A District shall have the duty to enforce the national and Provincial laws and ordinances.

ART. 129. The separation of the Provincial and District taxes shall be determined by the Provincial Assembly.

ART. 130. A Province shall not enforce special laws against one or more Districts; provided that this provision shall not apply to laws concerning the general interests of the whole Province.

ART. 131. A District shall have full power to execute matters of self-government. The Province shall not interfere except in matters of disciplinary punishment prescribed by Provincial laws.

ART. 132. National administrative matters in a Province or a District may, as well as being executed by officials appointed by the Republic, be entrusted to the self-government organs of the Province or District.

ART. 133. If a self-government organ of a District or Province in the execution of any administrative matter of the Republic violates the law or ordinance, the Republic may, in accordance with law, inflict a disciplinary punishment upon it.

ART. 134. The provisions of this Constitution shall apply to areas where Districts, but not Provinces, have been established.

ART. 135. Inner and Outer Mongolia, Tibet and Chinghai may, in compliance with the common wish of the people of the area, be divided into two grades, the Province and the Districts, and be governed by the provisions of this Chapter; provided that, pending the establishment of the Province and Districts, their administrative systems shall be prescribed by law.

CHAPTER XIII.—*The Amendment, Interpretation and Validity of the Constitution*

ART. 136. The National Assembly may make proposals for an amendment to the Constitution.

Such proposals shall not be made without the concurrence of two thirds or more of the members present in each house.

The members of either house shall not make a motion for a proposal to amend the Constitution unless such motion is signed by one fourth of all the members of the house.

ART. 137. An amendment to the Constitution shall be made by the Constitution Conference.

ART. 138. The form of government shall not be the subject of amendment.

ART. 139. If there is any doubt about the meaning of the Constitution, interpretation shall be made by the Constitution Conference.

ART. 140. The Constitution Conference shall be composed of the members of the National Assembly.

The aforesaid Conference shall not commence to deliberate without the presence of two thirds of all the members, and shall not make any decision without the concurrence of three fourths of the members present; provided that in matters of interpretation, decisions may be made with the concurrence of two thirds of the members present.

ART. 141. The Constitution shall, under no circumstances, lose its validity otherwise than in accordance with the procedure of amendment prescribed by this Chapter.

APPENDIX H

THE FUNDAMENTALS OF NATIONAL RECONSTRUCTION, 12 APRIL 1924[1]

[ARTICLE] 1. The National Government's program for the reconstruction of China is based on the revolutionary principles known as *The Three Principles of the People* (*San Min Chu I*) and the Five-Power Constitution.

[ART.] 2. The first and foremost element of reconstruction is *Livelihood*. In order to meet the pressing needs of the people for food, clothing, shelter and roads, the Government should cooperate with the people to improve agriculture, in order to provide them with sufficient food; to develop the cotton industry, in order that they may have abundant material for clothing; to build houses on a large scale, in order that they may procure comfortable shelter; and to construct new roads and canals and repair the existing systems, so as to facilitate communications.

[ART.] 3. The next element of reconstruction is *Democracy*. To enable the people to be competent in their knowledge of politics, the Government should undertake to train and guide them, so that they may know how to exercise their rights of election, recall, initiative and referendum.

[ART.] 4. The third element of reconstruction is *Nationalism*. The Government should undertake to render assistance and protection to the racial minorities in the country (Manchus, Mongols, Tibetans, etc.), so that they may know how to exercise their right of self-determination and self-government, while resisting oppression and invasion from foreign countries. The Government should, at the same time, revise the treaties with foreign countries, in order to secure national independence and international equality.

[ART.] 5. The order of reconstruction is divided into three periods, viz.:

(a) Period of military operations;
(b) Period of political tutelage;
(c) Period of constitutional government.

[1] Min-Ch'ien T. Z. Tyau, *Two Years of Nationalist China* (Shanghai, 1930), 439-442.

[ART.] 6. During the period of military operations the entire country should be subject to military rule. To hasten the unification of the country, the Government should employ military force to conquer all opposition in the country and propagate the principles of the Party, so that the people may be enlightened.

[ART.] 7. The period of political tutelage in a Province should begin and military rule should cease as soon as order within the Province is completely restored.

[ART.] 8. During the period of political tutelage the Government should despatch trained officers qualified in the examinations to the different districts to assist the people in making preparations for local self-government. The attainment of local self-government depends on the completion of the census, the survey of the district, the organization of an efficient police force and the construction of roads throughout the district. Moreover, the people of the district must be able to fulfill their duties as citizens by exercising the four rights mentioned above and must pledge themselves to carry out the principles of the Revolution, before they are entitled to elect the chief officer of a district (*Hsien*) for the administration of its affairs and representatives of the district for the formation of its laws. By that time, the district will then be considered as fully self-governing.

[ART.] 9. The citizens of a fully self-governing district have a direct right to vote for the election of officers, a direct right of recall, a direct right of initiative and a direct right of referendum.

[ART.] 10. At the beginning of self-government it is imperative that a declaration be made of the value of private-owned land in the district, the procedure being to require the owners to make their own declaration at the local administration, so that the tax will be imposed according to the declared value, but the local government is entitled at any time to purchase the property at the declared value. Any increase in value as a result of improvement in the administration and progress of the community shall be set aside for the benefit of the whole community and the original owners are not allowed to keep it for themselves.

[ART.] 11. The annual revenue from land, the increase in land value, the produce from public land and the income from forests, rivers, mines and waterfalls shall be reserved for the local gov-

ernment and shall be devoted to the development of industries, care of the young, aged and poor, relief of public calamities, care of the sick and other public needs.

[ART.] 12. If a district does not possess sufficient capital to develop its natural resources or industries and commerce on a large scale and must seek the aid of outside capital, the Central Government should give the necessary financial assistance and the profits accruing therefrom shall be equally divided between the Central and the local governments.

[ART.] 13. The contribution of the districts toward the expenses of the Central Government shall be a certain percentage of their revenue. The percentage shall be fixed annually by the People's Representatives and shall not exceed 50 percent nor be less than 10 percent of the total receipts.

[ART.] 14. After self-government has been established, the people in each district shall be entitled to elect a representative for the formation of an assembly to participate in the political affairs of the nation.

[ART.] 15. All officials, to be elected or appointed locally or by the Central Government, shall be required to pass an examination to be held by the Central Government before they can be appointed.

[ART.] 16. As soon as all the districts within a Province are fully self-governing, constitutional government in that Province shall begin and the assembly of the People's Representatives may elect a provincial chief officer to supervise the administration of provincial self-government. As regards the administration of national affairs within the province, the provincial chief officer shall be subject to the guidance of the Central Government.

[ART.] 17. During the period of constitutional government the powers of the Central Government and those of the Provinces shall be evenly distributed. Affairs of a national character shall be reserved for the Central Government and those of a local character shall be reserved for the districts. The system is neither a centralization nor decentralization.

[ART.] 18. The district is the unit of self-government. The Province links up and provides means of cooperation between the Central Government and the local governments of the districts.

[ART.] 19. At the beginning of constitutional government the Central Government should complete the establishment of five

Yuan for the exercise of the five powers, the order being as follows: (1) Executive Yuan, (2) Legislative Yuan, (3) Judicial Yuan, (4) Examination Yuan and (5) Control Yuan.

[ART.] 20. The Executive Yuan shall at the outset consist of the following Ministries: (1) Ministry of Interior, (2) Ministry of Foreign Affairs, (3) Ministry of Military Affairs, (4) Ministry of Finance, (5) Ministry of Agriculture and Mining, (6) Ministry of Industry and Commerce, (7) Ministry of Education and (8) Ministry of Communications.

[ART.] 21. Before the promulgation of the Constitution, the presidents of all the Yuan shall be appointed or dismissed by the President, who shall supervise them.

[ART.] 22. The Draft Constitution shall be based on the present Fundamentals of National Reconstruction as well as the experiences gained during the periods of political tutelage and constitutional government, and shall be drawn up by the Legislative Yuan and published for the enlightenment of the people, so that, when the time arrives, it will be deliberated and adopted.

[ART.] 23. When more than one half of the Provinces in the country have reached the constitutional government stage, i.e., more than one half of the Provinces have local self-governments fully established in all their districts, there shall be a National Congress to decide on the adoption and promulgation of the Constitution.

[ART.] 24. As soon as the Constitution is promulgated, the administration of the Central Government shall be vested in the National Congress. In other words, the National Congress shall have the power to elect and recall officials of the Central Government as well as to initiate laws and veto laws promulgated by the Central Government.

[ART.] 25. On the day of the promulgation of the Constitution, constitutional government shall be considered as having been fully established and the people throughout the country shall hold a national election according to the Constitution. Three months after the election, the National Government shall resign and hand over its functions to a Government elected by the people and the program of national reconstruction will then be accomplished.[2]

[2] Signed by Sun Wen, 12th day, 4th month, 13th Year of the Republic (12 April 1924).

APPENDIX I

DRAFT CONSTITUTION, 11 DECEMBER 1925[1]

PREAMBLE

The Representatives of the National Convention of the Republic of China, here assembled for the consolidation of national unity, stabilization of social order, maintenance of peace, promotion of happiness, as well as for establishing the firm foundation of the state and enhancing the glory of the nation, do hereby make this Constitution and proclaim it to be observed by all and forever.

PART I.—GENERAL PROVISIONS

CHAPTER I.—*Form of Government and Sovereignty*

ARTICLE 1. The Republic of China shall be a democratic republic forever.

ART. 2. The sovereignty of the Republic of China emanates from the people as a whole and is to be exercised in accordance with the provisions of this Constitution.

CHAPTER II.—*Territory, National Capital and Flag*

ART. 3. The territory of the Republic of China consists of the Provinces: Chihli, Fengtien, Kirin, Heilungkiang, Kiangsu, Anhwei, Kiangsi, Chekiang, Fukien, Hupeh, Hunan, Shantung, Honan, Shansi, Shensi, Kansu, Sinkiang, Szechwan, Kwangtung, Kwangsi, Yunnan and Kweichow; the special administrative areas: Chingchao (Peking), Jehol, Suiyuan, Chahar, Sikiang (Szechwan borders); and Mongolia, Tibet and Chinghai.

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[1] Adopted by the National Constitution Drafting Commission under the Tuan Ch'i-jui regime. H. G. W. Woodhead (ed.), *The China Year Book, 1926-7* (Tientsin, 1927), 1234-1248. The words "the National Assembly" have been substituted throughout for the word "Parliament."

No alteration of the territory shall be made except in accordance with the procedure for the amendment of the Constitution. If geographical, historical or economic considerations necessitate any alteration in the existing territorial divisions above-mentioned, it shall be decided by national law with the consent of the highest local assembly of the locality in question; when the consent of such assembly can not be obtained, the consent of the lower local assembly of the locality directly interested may be sufficient for the purpose.

ART. 4. Peking shall be the national capital of the Republic of China.

ART. 5. The national flag of the Republic of China shall consist of the red, yellow, blue, white and black colors.

National coat of arms as well as military and commercial ensigns shall be prescribed by law.

CHAPTER III.—*Division of Power between the National and Local Governments*

ART. 6.—The Republic shall have power over the following matters:

1. Foreign relations.
2. National defense.
3. Military service.
4. Laws of nationality, immigration, emigration and extradition.
5. Civil and commercial laws as well as other civil and commercial regulations concerning the whole Republic.
6. Criminal law and other regulations relating to criminal matters.
7. Judicial procedure, the execution of justice, civil registration, prisons and the mutual assistance of different courts.
8. Laws relating to organization of the judiciary.
9. Police law.
10. The system of official appointments and disciplinary rules therefor.
11. Selection and appointment of national officials as well as their investigation and protection from arbitrary removal.

12. Weights and measures.
13. Currency and national banks.
14. Customs duty, salt tax, stamp duty, tobacco and wine duties and other national taxes.
15. Posts, telegraphs, telephones and aviation.
16. Railways and national roads.
17. Irrigation, river conservancy and navigation in two or more provinces or areas.
18. National debt.
19. State property.
20. Monopolies and special charters.
21. Labor legislation.
22. The law of expropriation.
23. Protection of the families and dependents of soldiers in time of war.
24. Other matters which may be prescribed by this Constitution as belonging to the Republic.

ART. 7. The Republic shall have legislative power over the following matters:

1. The educational system.
2. Banking, stock exchange and insurance system.
3. The national census and statistics.
4. Ocean navigation and fishery.
5. Laws relating to organization of professional associations.
6. Colonization and reclamation.
7. Public health.
8. Preservation of ancient books, objects, and remains of historic and scientific interest.

ART. 8. The provinces and special areas shall have power over the following matters:

1. Schools and colleges in the Provinces or special areas.
2. The system for appointments for officials of the Provinces or special areas and disciplinary rules therefor.
3. The system of local government subordinate to the district (*hsien*).
4. Properties of the Provinces or special areas.

5. Mining, agriculture, forestry and other industries.
6. Irrigation, conservancy and navigation within the Provinces or special areas.
7. Public roads and other means of communication within the Provinces or special areas.
8. Telephone service within the Provinces or special areas.
9. Public debts of the Provinces or special areas.
10. Banks of the Provinces or special areas.
11. The land tax, title-deed tax and other local taxes.
12. Militia.
13. Maintenance of peace and order and policing of the Provinces or special areas.
14. Sanitation and charities.
15. Prevention of flood, relief of distress and relief of the poor.
16. Other matters which may be prescribed by this Constitution as belonging to the Provinces or special areas.

When prosecution of any of the above-mentioned undertakings involves foreign capital, the Republic may impose restriction thereon or forbid it by law.

ART. 9. The legislation of matters not specified in Articles 6, 7 and 8 shall be exercised by the Provinces or special areas, if by its very nature it concerns the Republic, or by the Provinces or special areas, if by its very nature it concerns a Province or special areas. Any dispute arising in this connection shall be decided by the Grand Tribunal for the Adjudication of State Cases.

CHAPTER IV.—*Relations between the National and Local Governments*

ART. 10. The Republic may exercise its legislative power over any matter which requires the issue of uniform legislation for the whole country in order to promote the general welfare or to maintain public order.

ART. 11. In case of a deficit in the national budget or of financial emergency, the Republic may, upon the decision of the National Assembly, distribute the burden among the Provinces and special areas in proportion to their respective annual revenues.

ART. 12. In the event of extraordinary calamity or financial deficiency the Province or special area concerned may, upon the

decision of the National Assembly, receive assistance from the National Treasury.

ART. 13. The Republic may by law impose restriction on local legislation in order to obviate the following evils:

1. Injury to national revenue or commerce.
2. Levying of excessive charges on the use of inter-provincial or inter-area communications.
3. Imposition of transit dues or import duties.
4. Unfair competition for promoting exports.

ART. 14. The Republic may, when national defense or public benefit of the whole country so requires, upon the decision of the National Assembly, nationalize any property owned by the Provinces or special areas, but the consent of the local assembly concerned shall be obtained.

ART. 15. No Province or special area shall enter into any political alliance with or commit an act of aggression against another with military force. But, when the form of government of the Republic is in danger, the Provinces or special areas may unite and adopt concerted measures for its defense until the normal condition is restored.

ART. 16. When a Province or special area fails to perform its duty as provided by this Constitution, the National Government may adopt measures to compel performance.

ART. 17. When national administration is to be exercised by the local authority, the expenses therefor shall be paid by the national treasury.

ART. 18. Laws enacted by a Province or special area shall not be in conflict with the national laws.

ART. 19. The provisions of this chapter shall also apply to Mongolia and Tibet.

PART II.—NATIONAL GOVERNMENT ORGANS

CHAPTER V.—*The National Assembly of the Republic*

ART. 20. The legislative power of the Republic of China shall be exercised by the National Assembly.

ART. 21. The National Assembly shall consist of two chambers as follows:

1. The House of Representatives.
2. The Senate.

ART. 22. The House of Representatives shall be composed of members directly elected by the electors of the electoral districts.

Any person who has an elementary education shall be qualified as an elector.

Regulations relating to the registration of electors, the division of electoral districts and the election of members shall be determined by law.

ART. 23. The total number of members of the House of Representatives shall not be less than three hundred or more than four hundred.

The number of seats as provided in the preceding paragraph shall be distributed among the electoral districts in proportion to the number of population to be determined by law after each general census.

ART. 24. The term of office of a member of the House of Representatives shall be three years. He may, however, be recalled by his own constituency upon the initiative of one tenth and with the consent of more than one half of the electors.

The members of the House of Representatives shall retire when their term expires. The newly elected members shall assemble at the national capital within two months after the expiration of the members' term of office.

ART. 25. The House of Representatives shall have a President and two Vice Presidents, who shall be elected from among the members of the house.

ART. 26. The House of Representatives shall commence its sessions on the first day of March in each year. The period of an ordinary session shall be four months, but may be extended for another two months upon a resolution of the House.

ART. 27. The House of Representatives may be convened by the President of the House for an extraordinary session under any of the following circumstances.

1. When one third or more of the members of the House request it;
2. When the Senate requests it;
3. When the Standing Committee or the Government deems necessary.

ART. 28. The Senate shall be composed of the following members:

1. Three elected from each of the provinces.
2. One elected from each of the special areas.
3. Two each elected from Inner Mongolia, Outer Mongolia, Northern Tibet and Southern Tibet; and one from Chinghai.
4. One elected from each of the special cities created by law.
5. Four elected from the electoral college of the overseas Chinese. The election of above-mentioned members and the organization of electoral bodies therefor shall be determined by law.

ART. 29. The term of office of a member of the Senate shall be four years.

ART. 30. The Vice President of the Republic shall be the President of the Senate.

There shall be two Vice Presidents of the Senate who shall be elected from among its members.

ART. 31. The Senate shall sit throughout the year.

ART. 32. Except as otherwise provided, no proceedings shall commence in either house unless more than one third of its entire membership is present and no decision shall be taken unless more than one half of the members present concur. In the event of a tie, the President of the house shall have the casting vote.

ART. 33. The sittings of both houses shall be opened to the public, but may, at the request of the Government or by a resolution of the house, be closed to the public.

ART. 34. The House of Representatives may pass a vote of non-confidence against the Premier, or a Cabinet Minister, by a simple majority vote, provided that there is an attendance of over two thirds of its entire membership. But the President of the Republic may request the house to reconsider its decision.

If, however, by a majority of two thirds of the members present out of an attendance of more than two thirds of its entire membership the former decision is sustained, the President of the Republic, unless he chooses to dissolve the House of Representatives according to the provisions of Article 77, shall dismiss the Premier or the Cabinet Minister, as the case may be.

ART. 35. When the House of Representatives considers that the President of the Republic is guilty of a treasonable act, he may be impeached by a majority vote of two thirds of its entire membership out of an attendance of three fourths of its entire membership.

ART. 36. When the House of Representatives considers that the Premier or Cabinet Minister is guilty of an illegal act, he may be impeached by a majority of two thirds of the members present out of an attendance of three fourths of its entire membership.

ART. 37. The House of Representatives may, upon the adjournment of its ordinary session, in order to exercise its power provided in Articles 27, 49, 50, 51, 55 (second paragraph), 67, 102 (second paragraph) and 105 of this Constitution, institute a Standing Committee, to be composed of thirty members elected from among the members of the house, which shall continue the sittings until the house reassembles.

The deliberations of the above-mentioned Standing Committee shall be decided by a majority vote of two thirds of the members present out of an attendance of more than one half of its entire membership. If a decision of the Committee is not subsequently approved by the House of Representatives, it shall cease to have legal effect.

ART. 38. A bill which has been passed by the Senate shall be sent to the House of Representatives by the Government; if the Government dissents from the bill, it may at the same time submit its views thereon.

Should the aforesaid bill be rejected by the House of Representatives and be repassed by the Senate by a majority of one half of its entire membership, the Government shall again send it to the House of Representatives for reconsideration. But if it is again rejected by a majority of one half of the entire membership of the house, the same shall be abandoned and not brought up again within one year.

ART. 39. When the Government submits a bill to the House of Representatives it shall have been passed by the Senate.

When the Government is dissatisfied with the decision of the Senate in regard to the aforesaid bill, the same may be submitted to the House of Representatives in its original form, but it shall be accompanied by a statement of the rejection or amendment proposed by the Senate.

ART. 40. A bill which has been passed by the House of Representatives shall be promulgated by the President of the Republic within twenty days of its presentation.

ART. 41. When the President of the Republic disapproves of a bill passed by the House of Representatives, he may, within the period prescribed for its promulgation, state the reasons and request the House to reconsider its decision. If, however, a majority of the entire membership of the House sustains the enactment, the President of the Republic shall forthwith promulgate it.

ART. 42. When the Senate dissents from a bill, other than the budget, passed by the House of Representatives, the former may, within ten days, state the reasons for rejecting or amending it and request the Government to send it to the House of Representatives for reconsideration. If, however, a majority of the entire membership of the House sustains the original decision, the President of the Republic shall forthwith promulgate it.

ART. 43. No law shall be altered or repealed except by due legislative procedure.

ART. 44. The Government shall from time to time report to the Senate on the following matters:

1. Mandates of appointments authorized by law.
2. Important foreign affairs.
3. Schemes for the administration of communications.

ART. 45. When the President of the Republic is impeached, he shall be tried by the Senate.

The trial shall be conducted before a court of seven judges, who shall be elected from among the members of the Senate with the whole Senate sitting as a jury. No judgment shall be pronounced unless over two thirds of the entire number of jurors are present and over two thirds of those present concur.

When the President of the Republic is adjudged guilty, he shall be removed from office and also made to bear the responsibility of his crime.

ART. 46. The Senate shall adjudicate a dispute arising between the Provinces and special areas or any other local divisions.

ART. 47. The two houses of the National Assembly shall hold a joint session for any of the following purposes:

1. To propose an amendment to the Constitution.
2. To bear witness to the taking of oath by the President of the Republic on his assumption of office or to give assent to his resignation.
3. To pass a bill for the removal of the national capital.
4. To sanction a declaration of war or conclusion of peace or confirm the same subsequently.

ART. 48. Either house may by resolution request the Government to institute investigation against a public official who has violated the law or failed to perform his duty.

ART. 49. Either house may receive a petition from a citizen of the Republic.

ART. 50. Either house may address an interpellation to the Premier or a Cabinet Minister and request his appearance before the house.

ART. 51. Either house may make a recommendation to the Government.

ART. 52. No person shall be a member of both houses at the same time.

ART. 53. No member of either house shall concurrently hold any civil or military office. This rule, however, shall not apply to a Cabinet Minister.

ART. 54. No member of either house shall be held responsible outside of the house for opinions expressed or votes cast in the house.

ART. 55. No member of either house shall, during the session, be arrested or kept under surveillance without the permission of the house, unless he has committed a seditious or treasonable act or been taken *in flagrante delicto*.

The above shall apply also in the case of a member of the Standing Committee.

ART. 56. The annual allowance for the members of either house shall be determined by law.

CHAPTER VI.—*The Government of the Republic*

ART. 57. The executive power of the Republic of China shall be exercised by the President of the Republic, with the advice and assistance of the Premier and the Cabinet Ministers.

ART. 58. Any citizen of the Republic of China who is in full enjoyment of civil rights, above forty years of age and has been a resident in the country for more than ten years may be elected as the President of the Republic.

ART. 59. The President of the Republic shall be elected by presidential electors, one elected from each district by the electors therein, who shall assemble in the national capital and elect the President.

The election shall be by secret ballot when two thirds of the entire body of electors are present and any person obtaining three fourths of the total votes cast shall be declared elected. In the event of none being elected after the second ballot, a further vote shall be taken between the two persons obtaining the highest number of votes in the second ballot and the one who obtains a majority vote shall be declared elected.

The election of presidential electors shall be determined by law.

In the case of localities where the district has not been established, the provision regarding districts shall also apply to the existing local administrative divisions.

ART. 60. The President's term of office shall be five years. In the event of reelection he may continue for another term.

The election of the presidential electors shall be held six months prior to the expiration of the President's term of office. Within three months after their election, the presidential electors shall assemble themselves in the national capital and elect the new President.

ART. 61. When the President of the Republic assumes office, he shall take an oath as follows:

I hereby solemnly swear that I will most faithfully observe and

maintain the Constitution of the Republic and fulfill the duties imposed by my office as the President of the Republic.

ART. 62. When the President resigns or vacates his office, the Vice President shall succeed him for the rest of the term.

When the President is unable for any reason to perform his duties, the Vice President shall act in his place.

When the Vice President vacates his office at the same time, the Premier shall act for the President. In such event, a new presidential election shall be held according to law within six months after the occurrence of the vacancy.

ART. 63. The President shall be relieved of office at the expiration of his term of office.

If at that time the new President has not yet been elected or, though elected, he has not yet assumed office, and the new Vice President is also unable to act, then the Premier shall act for him.

ART. 64. The election of the Vice President shall be held at the same time as the election of the President and according to the same procedure.

The Vice President shall be relieved of office at the same time as the President at the expiration of the latter's term of office.

ART. 65. The President shall promulgate laws and supervise as well as secure their execution.

ART. 66. The President may issue mandates for the execution of laws or in pursuance of the authority delegated to him by law.

ART. 67. The President may, with the consent of the Standing Committee of the House of Representatives, issue ordinances having the effect of law, for the maintenance of public order or preventing an extraordinary calamity, when the House of Representatives is unable to hold its sessions.

Such ordinances shall be submitted to the House of Representatives for confirmation within seven days after the opening of its session.

ART. 68. The President may determine the system of official appointments and disciplinary rules therefor, but such system of official appointments shall first be approved by the Senate.

ART. 69. The President shall appoint and remove all civil and military officers; but when the Constitution or the law provides otherwise, the same shall apply.

ART. 70. The President shall be the Commander-in-Chief of the army and navy of the Republic and shall have supreme command over them.

ART. 71. The President shall represent the Republic in foreign relations.

ART. 72. The President may, with the consent of the National Assembly, declare war and conclude peace. If, however, the declaration of war were made in defense of the country against a foreign attack, he may request the National Assembly to confirm the same.

ART. 73. The President may conclude treaties; but in regard to treaties of peace and those involving matters of legislation, the consent of the House of Representatives shall first be obtained.

ART. 74. The President may proclaim and cancel martial law in accordance with law.

ART. 75. The President may bestow honors and dignities.

ART. 76. The President may proclaim amnesty, pardon, reduction of punishment or restoration of civil rights. In the case of an amnesty, the consent of the Supreme Court of Justice shall first be obtained.

ART. 77. The President may, with the consent of the Senate, dissolve the House of Representatives. There shall, however, be no second dissolution for the same cause.

When the House of Representatives has been dissolved, a new election shall be held in accordance with the provisions governing such election upon the expiration of the members' terms of office.

ART. 78. The President shall not be liable to criminal proceedings until he vacates his office.

ART. 79. The annual salaries of the President and the Vice President shall be fixed by law.

ART. 80. The Cabinet shall be composed of the Premier and the Cabinet Ministers.

The Premier shall preside over the meetings of the Cabinet.

The President may attend and also convene the meetings of the Cabinet.

ART. 81. The Premier and the Cabinet Ministers recommended by him shall be appointed and removed by the President.

The Cabinet Office shall be under the control of the Premier and each ministry concerned shall be under the control of a Cabinet Minister. Ministers without portfolio may be appointed provided that their number shall not exceed one half of the Cabinet Ministers in charge of the ministries.

ART. 82. The Premier shall formulate the policies of the Government under the direction of the President of the Republic.

When the Premier resigns, the Cabinet Ministers shall resign simultaneously.

ART. 83. The Premier and Cabinet Ministers shall countersign the presidential mandates and other state documents.

ART. 84. The Premier and Cabinet Ministers may attend and address either house of the National Assembly.

CHAPTER VII.—*The Judiciary of the Republic*

ART. 85. The judicial power of the Republic of China shall be exercised by courts of justice.

ART. 86. The courts of justice shall accept and deal with civil, criminal and administrative as well as all other cases in accordance with law.

Persons in military or naval service shall be subject to the jurisdiction of ordinary courts of justice, unless they commit an offense against the military law, in which case they shall be tried by a military tribunal.

Civilians committing an offense against the military law, in time of peace, shall be tried by the ordinary courts of justice.

ART. 87. The organization of the judiciary and the qualifications of judicial officials shall be determined by law.

ART. 88. Trials in the courts of justice shall be conducted in public, except in cases where a public trial shall be considered harmful to public peace or morality.

ART. 89. Judicial officials shall be independent in performing their duty of adjudication and they shall not be interfered with by any person.

ART. 90. A judicial official shall not be subjected to reduction of salary, suspension from office or transfer to another office, otherwise than in accordance with law.

ART. 91. A judicial official shall not be removed from office unless he has been convicted of a crime or subjected to disciplinary punishment.

The age of retirement for judicial officials and disciplinary rules therefor shall be prescribed by law.

ART. 92. The salaries of judicial officials shall be fixed by law.

ART. 93. A Grand Tribunal for the Adjudication of State Cases shall be organized, whenever necessary, to decide upon the following matters:

1. Interpretation of the Constitution when a question arises whether a law is in conflict with the Constitution and when there is a doubt concerning the precise meaning of a provision in the Constitution.
2. Disputes between the National Government and the Provinces, special areas or other local divisions in regard to questions of competence.
3. Matters relating to the impeachment of the Premier and Cabinet Ministers.

ART 94. The Grand Tribunal for the Adjudication of State Cases shall be composed of the following:

1. The President of the Supreme Court of Justice.
2. Four persons elected by the Supreme Court of Justice.
3. Four persons elected by the Senate.

The method of procedure of the Grand Tribunal for the Adjudication of State Cases shall be prescribed by law.

ART. 95. The Grand Tribunal for the Adjudication of State Cases shall be presided over by the President of the Supreme Court of Justice; and no decision shall be taken without the concurrence of two thirds of its entire membership.

CHAPTER VIII.—*Financial System*

ART. 96. The imposition of taxes shall be prescribed by law.

No alteration in the rates of taxes shall be made except by law.

ART. 97. The issue of national loans and the conclusion of agreements which will result in increasing the burdens of the

national treasury shall be decided by the House of Representatives.

ART. 98. The annual revenues and expenditures of the Republic shall be managed by the national treasury.

ART. 99. A budget shall be made of the annual revenues and expenditures of the Republic by the Government and submitted to the House of Representatives for approval within two months before the beginning of the financial year.

ART. 100. The House of Representatives shall not add to the items of annual expenditure in the budget.

ART. 101. The Government may, in the case of special undertakings, provide in the budget for certain continuation expenditures over a definite number of years.

ART. 102. The Government may provide in the budget a reserve fund for the purpose of meeting possible deficits or emergency expenditures. Such fund, however, shall not exceed one tenth of the total expenditure for the current year.

Any payment out of the reserve fund shall be made with the consent of the House of Representatives. When the House of Representatives is not in session, the Government may, with the consent of the Standing Committee of the house, make payment out of the fund, but it shall secure confirmation thereof by the house within twenty days after the opening of its next session.

When the House of Representatives is dissolved, the Government shall report to the Senate the reason for making such payment out of the reserve fund and, when the new House of Representatives assembles, the Government shall, within twenty days after the opening of its session, secure its confirmation thereof.

ART. 103. National Assembly shall not strike off or cut down the following items of expenditure:

1. Expenditure arising from the legal obligations of the Republic.
2. Expenditure necessitated by the treaty obligations of the Republic.
3. Expenditure necessitated by the provisions of law.
4. Continuation expenditure.

ART. 104. If the budget is not passed before the commencement of the financial year, the Government may make a provi-

sional monthly expenditure of one twelfth of the total expenditure of the previous budget.

ART. 105. In case of war, civil commotion or extraordinary calamity, when the urgency of the situation makes it impossible to convene the House of Representatives, the Government may, with the consent of the Standing Committee, adopt emergency financial measures; but such measures shall be submitted to the house for confirmation within seven days after the opening of its next session.

ART. 106. Orders of payment for any expenditure shall be referred to the Board of Audit for examination and verification.

ART. 107. The final statement of annual revenue and expenditure shall be sent by the Government to the Board of Audit for examination and verification within three months after the end of the financial year and shall be submitted by that Board to the House of Representatives for approval.

If the House of Representatives rejects such final statement, the Cabinet Minister concerned shall be held responsible.

ART. 108. The President of the Board of Audit shall be appointed by the President of the Republic with the consent of the House of Representatives.

The President of the Board of Audit shall be responsible to the House of Representatives.

The President of the Board of Audit shall not be removed from office except by a resolution of a majority of the entire membership of the House of Representatives.

ART. 109. Members of the Board of Audit shall not, during their tenure of office, be subjected to a reduction of salary, suspension from office or transfer to another office except in accordance with law.

Disciplinary regulations for the members of the Board of Audit shall be prescribed by law.

ART. 110. The organization of the Board of Audit and the qualifications of the President as well as the members of the Board shall be prescribed by law.

PART III.—THE LOCAL GOVERNMENT SYSTEM

CHAPTER IX.—*Provinces and Special Areas*

ART. 111. Provinces and special areas may each adopt its own constitution, provided that such constitution shall not conflict with this Constitution.

Until a Province or special area shall have adopted or put into effect its own constitution, its local government system shall be prescribed by the national law.

ART. 112. The constitution of a Province or special area shall be decided by its lower local self-governing bodies by the votes of all electors of the Province or special area concerned.

The procedure governing the drafting, deliberation, enactment and voting of the constitution of a Province or special area shall be determined by the Province or special area concerned.

ART. 113. The district of a Province or special area shall be a self-governing body and at the same time an administrative division.

ART. 114. In Provinces or special areas where the district organization has not yet been established, the self-government system of a district may also be applied to the existing territorial division without altering its name.

ART. 115. The legislative power of a Province of special area shall be exercised by its assembly.

The organization of such assembly shall be determined in outline form by the constitution of the Province or special area, as the case may be.

ART. 116. A Province shall have a governor who shall be chosen from among two candidates elected by the Province and recommended to the President of the Republic for appointment. The procedure for such election shall be prescribed by the provincial constitution; but no person in military service shall be elected, unless he has retired from the service for more than a year.

The term of office for the governor of a Province shall be four years. He shall not be removed from office except by a resolution of the provincial assembly.

The provisions of this article shall also be applied to the chief administrative officer of a special area.

ART. 117. All citizens of the Republic of China residing in a Province or special area for a year or more shall enjoy fully all civil rights before the law of the Province or special area concerned; but their names shall not be on the list of electors of two constituencies.

The above rule shall apply equally to the case of citizens residing in different localities of a Province or special area.

CHAPTER X.—*Mongolia and Tibet*

ART. 118. When the Province or special area, in which the various Banners of Inner Mongolia form a part, establishes a constitution of its own, each Banner shall have the same right of participation in the constitution-making as a district in accordance with the provisions of Articles 112 and 114 of this Constitution.

ART. 119. Each of such Banners shall also have the same right as a district in sending members to the assembly of the Province or special area, of which these Banners form a part.

ART. 120. The provisions of Articles 118 and 119 shall apply also to the relations between Chinghai and Kansu.

ART. 121. Outer Mongolia, Inner Tibet and Outer Tibet may each adopt its own constitution, but such constitution shall not conflict with this Constitution.

The adoption of such constitution shall be done by a constitution convention composed of representatives elected by the highest local assembly and the assemblies of the subordinate administrative divisions.

ART. 122. Until Outer Mongolia, Inner Tibet and Outer Tibet shall each have adopted or put into force a constitution of its own, the chief administrative officer thereof shall prepare and submit to the National Government for approval a provisional local government system for the administration of these territories.

ART. 123. Outer Mongolia, Inner Tibet and Outer Tibet shall each have a supreme local assembly, which shall be composed of members elected by the different localities and which shall have legislative power in regard to matters of local self-government.

ART. 124. The chief administrative officers of Outer Mongolia,

Inner Tibet and Outer Tibet shall be appointed by the President of the Republic.

When such chief administrative officers are to be elected by a popular vote in accordance with the provisions of the constitutions of these territories, the persons so elected shall still be appointed by the President.

ART. 125. The subordinate administrative divisions of Outer Mongolia and Inner Mongolia, Inner Tibet and Outer Tibet shall each have a local assembly which shall be composed of members elected from the divisions and which shall have legislative power in regard to matters of self-government within the divisions.

ART. 126. Whether the office of Jassak of the Banner organization in Outer Mongolia and Inner Mongolia shall be hereditary or elective shall be determined by their respective constitutions. In the case of an elective system being adopted, the elected Jassak shall be recommended by the chief administrative officer of the locality concerned to the President of the Republic for appointment.

The law governing the appointment of officials of the subordinate administrative divisions of Inner Tibet and Outer Tibet shall be determined by their respective constitutions.

ART. 127. The existing peerage and titles of Outer Mongolia and Inner Mongolia, Inner Tibet and Outer Tibet and the Mohammedan districts shall be maintained.

ART. 128. For the execution of the matters enumerated in Articles 7 and 8 of this Constitution, Outer Mongolia and Inner Tibet and Outer Tibet may request the National Government for assistance or the National Government itself may render assistance with the consent of the territories concerned.

PART IV.—THE CITIZEN

CHAPTER XI.—*Rights and Duties*

ART. 129. All persons who according to law belong to the nationality of the Republic of China shall be citizens of the Republic of China.

ART. 130. Citizens of the Republic of China shall be equal before the law, without distinction of race, class or religion.

ART. 131. Citizens of the Republic of China shall have the liberty of person and shall not be arrested, imprisoned or punished except in accordance with law.

When a citizen is under arrest, any one who is related to him may, in accordance with law, apply to a court of justice to have the arrested person delivered thereto and the cause tried thereby.

ART. 132. The liberty of the citizens of the Republic of China to have peace and security in their homes and houses shall not be violated, except where the same shall be subject to search or investigation according to law.

ART. 133. Citizens of the Republic of China shall be free to profess any religion; such freedom shall not be restricted except in accordance with law.

ART. 134. Citizens of the Republic of China shall be free to choose their residence and occupation; such freedom shall not be restricted except in accordance with law.

ART. 135. Citizens of the Republic of China shall have the liberty of speech, writing and publication, which shall not be restricted except in accordance with law.

ART. 136. Citizens of the Republic of China shall be free to assemble and to form societies; such freedom shall not be restricted by any obligation to ask permission from any authority; but in the event of the assembly or society acting against the law or endangering public peace and order, the same shall be prohibited.

ART. 137. The right of citizens of the Republic of China to secrecy of letters, telegrams and telephones shall not be violated, except where the law has special provisions therefor.

ART. 138. The right of citizens of the Republic of China to own property shall not be violated except in accordance with law.

Suitable compensation shall be given for any necessary dispossession of private property for public benefit, unless the law has special provisions therefor.

ART. 139. Citizens of the Republic of China shall have the right to vote and to be elected to public office in accordance with law.

ART. 140. Citizens of the Republic of China shall have the right to institute legal proceedings in a court of justice.

ART. 141. Citizens of the Republic of China shall have the right to petition the National Assembly.

Citizens of the Republic of China shall have the right to initiate a bill in the National Assembly in the interests of the community at large, if the same has been approved by the highest local self-governing body or professional association.

The procedure of such initiation shall be prescribed by law.

ART. 142. Citizens of the Republic of China shall have the right to petition or complain against any administrative department.

ART. 143. Citizens of the Republic of China shall have the duty to pay taxes in accordance with law.

ART. 144. Citizens of the Republic of China shall have the duty to undertake military service in accordance with law.

ART. 145. Citizens of the Republic of China shall have the duty to receive education in accordance with law.

CHAPTER XII.—*Economic Life*

ART. 146. The organization of national economic life shall conform to the principle of justice to the end that all may obtain a decent livelihood. Within this limit, the economic liberty of the individual shall be guaranteed.

ART. 147. The national legislation relating to private properties, private contracts and enterprises shall conform to the following principles:

1. The Republic may, in order to protect the livelihood of the farming population, to promote reclamation and colonization and to prevent misuse or absorption of land, restrict the right of ownership and use of land.
2. The Republic may impose a progressive tax on the lands which shall increase in value independent of any greater application of labor or capital; but when such augmentation of value is due to the general increase of prices, the foregoing rule shall not apply.
3. Large-scale enterprises for the utilization of natural resources shall in principle be owned by the Republic or by the community; enterprises by special charter or of a monopolistic character may be subjected to restriction or expropriation by the Republic or local governments.

4. In the case of inheritance of property, the Republic may impose restriction according to the value and the degree of consanguinity. The ratio of taxation thereon shall be progressive.
5. Usury and excessive rent for the use of immovable property shall be prohibited.

ART. 148. Citizens shall have the duty of so pursuing their intellectual or physical activity as not to violate the public morality.

Those who are not able to earn a living owing to old age, infirmity or other disabilities shall be given relief by the National or local governments.

Those who are able to work but are unemployed through no fault of their own shall be given opportunity or other assistance by the National or local governments.

ART. 149. The Republic shall encourage authorship, inventions, fine arts, designs and other forms of intellectual activity.

CHAPTER XIII.—*Education*

ART. 150. The educational system of the Republic shall, as its aim, lay emphasis on the development of moral character and technical efficiency as well as the inculcation of the spirit of democracy.

ART. 151. School education shall not be burdened with religious rites or subject to the control of a religious teacher.

ART. 152. School education shall not be made the center of propaganda for the doctrines of any party or faction.

ART. 153. All citizens shall receive elementary education and be exempt from payment of fees.

The period of elementary education, the imposition of educational tax and the favorable treatment of elementary school teachers shall be determined by law.

ART. 154. The national and local expenditures on education shall not be less than two tenths of the entire administrative expenditure.

Government property or local public property may be appropriated as school property or for the purposes of educational reserve

funds as well as the encouragement of learning; the same shall not be used for any other purposes.

When a local government is unable to raise sufficient revenue for educational purposes it may request aid from the National Government.

ART. 155. The National and local governments shall provide suitable opportunity for those, in poor circumstances, who are considered well deserving by the schools concerned to obtain further education in intermediate and higher schools.

PART V.—SUPPLEMENTARY RULES

CHAPTER XIV.—*Amendment of the Constitution*

ART. 156. A bill for the amendment of the Constitution shall be initiated in accordance with the following procedure:

1. If it is proposed by the National Assembly, it shall be signed by over two thirds of the entire membership of each house respectively;
2. If it is proposed by the highest local assemblies, it shall be signed by a majority of such assemblies in the whole Republic;
3. If it is proposed by the President of the Republic, it shall have the concurrence of over two thirds of the entire membership of the National Assembly, or a majority of the highest local assemblies.

The form of government shall not be made the subject of amendment.

ART. 157. A bill for the amendment of the Constitution shall be decided by a National Convention.

ART. 158. The National Convention shall be composed of the following members:

1. Elected from among the members of the local-assemblies: ten from each province; five each from Inner Mongolia and Outer Mongolia; and three each from Inner Tibet and Outer Tibet.

2. Fifty elected from among the members of the House of Representatives.
3. Thirty elected from among the members of the Senate.
4. The President of the House of Representatives.

ART. 159. The National Convention shall be convened by the President of the Republic within two months after a bill proposing an amendment to the Constitution has been established.

ART. 160. The President of the House of Representatives shall be the chairman of the National Convention; no session shall be held without an attendance of three fifths of its total membership and no decision shall be taken without the concurrence of two thirds of the members present.

APPENDIX J

PROGRAM OF POLITICAL TUTELAGE, 3 OCTOBER 1928[1]

[PREAMBLE]

The Kuomintang, seeking the realization of Tsungli's Three People's Principles, enacts this Program for the Period of Political Tutelage, during which, in accordance with *The Program of National Reconstruction,*[2] the people will receive training in the exercise of their political powers until the commencement of constitutional government and the complete attainment of democracy by the entire people.

ARTICLE 1. With the Republic of China entering upon its Period of Political Tutelage, the National Congress of the Kuomintang will, in the place of the People's Congress, lead the people in exercising their political powers.

ART. 2. When the Kuomintang National Congress is in recess, it entrusts the governing power to its Central Executive Committee which will exercise it in its place.

ART. 3. The people should receive training gradually to exercise their four powers of election, recall, initiative and referendum in accordance with Tsungli's stipulations in *The Program of National Reconstruction,* in order to lay the foundation for a constitutional government.

ART. 4. The exercise of the five administrative powers, executive, legislative, judicial, examination and control, is to be entrusted to the National Government, in order to lay the foundation for a popularly elected government.

ART. 5. The task of directing and supervising the National Gov-

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[1] Adopted by the Standing Committee of the Kuomintang Central Executive Committee on 3 October 1928. Chinese Ministry of Information, *China Handbook, 1937-1943; A Comprehensive Survey of Major Developments in China in Six Years of War* (New York, 1943), 116.

[2] See Appendix H.

ernment in administering important national affairs is to be undertaken by the Political Committee of the Kuomintang Central Executive Committee.

ART. 6. The revision and interpretation of the Organic Law of the National Government is to be decided by the Political Committee of the Kuomintang Central Executive Committee.

APPENDIX K

ORGANIC LAW OF THE NATIONAL GOVERNMENT, 4 OCTOBER 1928[1]

[PREAMBLE]

The Kuomintang of China, in order to establish the Republic of China on the basis of *The Three Principles of the People* and the Constitution of Five Powers, which form the underlying principle of the Revolution, having conquered all opposition by military force and having now brought the Revolution from the military stage to the educative stage, deem it necessary to construct a framework for the Constitution of Five Powers with a view to developing the ability of the people to exercise political power, so that constitutional government may soon come into existence and political power be restored to the people; and, further, in virtue of the responsibilities hitherto entrusted to the party for the guidance and supervision of the Government, do hereby ordain and promulgate the following Organic Law of the National Government:

CHAPTER I.—*The National Government*

ARTICLE 1. The National Government shall exercise all the governing powers of the Republic of China.

ART. 2. The National Government shall have the supreme command of the land, naval and air forces.

ART. 3. The National Government shall have the power to declare war, to negotiate peace and to conclude treaties.

ART. 4. The National Government shall exercise the power of granting amnesties, pardons, reprieves and restitution of civic rights.

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[1] Promulgated at Nanking, 4 October 1928. *Organic Law of the National Government of the Republic of China* (Shanghai, 1928), 1-8. French translation of other regulations and bylaws made in pursuance of the Organic Law in Robert Jobez, *Organisation du gouvernement nationaliste d'apres les textes legislatifs* (Sienhsien, 1928).

ART. 5. The National Government shall be composed of the following Yuan: the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Examination Yuan and the Control Yuan.

ART. 6. There shall be a President and from twelve to sixteen State Councilors of the National Government.

ART. 7. The Presidents and Vice Presidents of the five Yuan shall be appointed from among the State Councilors of the National Government.

ART. 8. The President of the National Government shall represent the National Government in receiving foreign diplomatic representatives and in officiating or participating in State functions.

ART. 9. The President of the National Government shall concurrently be the Commander-in-Chief of the land, naval and air forces of the Republic of China.

ART. 10. In case the President of the National Government is unable to discharge his duties from any cause whatsoever, the President of the Executive Yuan shall act in his place.

ART. 11. The National Government shall conduct national affairs through the State Council.

ART. 12. All matters which can not be settled between two or more of the Yuan shall be referred to the State Council for decision.

ART. 13. All laws promulgated and all mandates issued by virtue of a decision of the State Council shall be signed by the President of the National Government and countersigned by the President of the five Yuan.

ART. 14. Each of the five Yuan may, according to law, issue orders.

CHAPTER II.—*The Executive Yuan*

ART. 15. The Executive Yuan shall be the highest organ of the National Government.

ART. 16. The Executive Yuan shall have a President and a Vice President.

In case the President is unable to discharge his duties from any cause whatsoever, the Vice President shall act in his place.

ART. 17. The Executive Yuan shall establish Ministries to which shall be entrusted the various executive duties.

The Executive Yuan may appoint Commissions to take charge of specified executive matters.

ART. 18. The Ministries of the Executive Yuan shall each have a Minister, a Political Vice Minister and an Administrative Vice Minister and the various Commissions shall each have a Chairman and a Vice Chairman, all of whom shall be appointed or removed by the National Government at the instance of the President of the said Yuan.

ART. 19. The Ministers and the Chairmen of the various Commissions of the Executive Yuan may, when necessary, attend the meetings of the State Council and of the Legislative Yuan.

ART. 20. The Executive Yuan may introduce in the Legislative Yuan bills on matters within its own competence.

ART. 21. Meetings of the Executive Yuan shall be attended by the President, the Vice President, the Ministers of the various Ministries and the Chairmen of the various Commissions and presided over by the President of the said Yuan.

ART. 22. The following matters shall be decided at the meetings of the Executive Yuan:

(1) Bills on legislative matters shall be introduced in the Legislative Yuan.
(2) Budgets to be submitted to the Legislative Yuan.
(3) Amnesties to be submitted to the Legislative Yuan.
(4) Declarations of war, negotiations for peace, conclusion of treaties and other important international matters to be submitted to the Legislative Yuan.
(5) The appointment or dismissal of administrative officials of or above the rank of Third Class (*Chien Jen*).
(6) All matters which can not be settled between the various Ministries and Commissions of the Executive Yuan.
(7) All matters which, according to law or in the opinion of the President of the Yuan, shall be decided at the meetings of the said Yuan.

ART. 23. The various Ministries and Commissions of the Executive Yuan may, according to law, issue orders.

ART. 24. The organization of the Executive Yuan and of the various Ministries and Commissions shall be determined by law.

CHAPTER III.—*The Legislative Yuan*

ART. 25. The Legislative Yuan shall be the highest legislative organ of the National Government.

The Legislative Yuan shall have the power to decide upon the following: legislation, budgets, amnesties, declarations of war, negotiations for peace, conclusion of treaties and other important international affairs.

ART. 26. The Legislative Yuan shall have a President and a Vice President.

In case the President is unable to discharge his duties from any cause whatsoever, the Vice President shall act in his place.

ART. 27. The Legislative Yuan shall be composed of from forty-nine to ninety-nine members, who shall be appointed by the National Government at the instance of the President of the said Yuan.

ART. 28. The term of office of the members of the Legislative Yuan shall be two years.

ART. 29. The members of the Legislative Yuan shall not concurrently be non-political administrative officials of the various organs of the Central or local governments.

ART. 30. The President of the Legislative Yuan shall preside at all meetings of the Legislative Yuan.

ART. 31. All resolutions passed by the Legislative Yuan shall be decided upon and promulgated by the State Council.

ART. 32. The organization of the Legislative Yuan shall be determined by law.

CHAPTER IV.—*The Judicial Yuan*

ART. 33. The Judicial Yuan shall be the highest judicial organ of the National Government and shall take charge of judicial trials, judicial administration, disciplinary punishment of officials and trial of administrative cases.

The granting of pardons and reprieves and the restitution of civic rights shall be submitted by the Government for approval and action.

ART. 34. The Judicial Yuan shall have a President and a Vice President.

In case the President is unable to discharge his duties from any cause whatsoever, the Vice President shall act in his place.

ART. 35. The Judicial Yuan may introduce in the Legislative Yuan bills on matters within its own competence.

ART. 36. The organization of the Judicial Yuan shall be determined by law.

CHAPTER V.—*The Examination Yuan*

ART. 37. The Examination Yuan shall be the highest examination organ of the National Government and shall take charge of examinations and determine the qualifications for public service. All public functionaries shall be appointed only after having, according to law, passed an examination and their qualifications for public service having been determined by the Examination Yuan.

ART. 38. The Examination Yuan shall have a President and a Vice President.

In case the President is unable to discharge his duties from any cause whatsoever, the Vice President shall act in his place.

ART. 39. The Examination Yuan may introduce in the Legislative Yuan bills on matters within its own competence.

ART. 40. The organization of the Examination Yuan shall be determined by law.

CHAPTER VI.—*The Control Yuan*

ART. 41. The Control Yuan shall be the highest supervisory organ of the National Government and shall, according to law, exercise the following powers:

(1) Impeachment.
(2) Auditing.

ART. 42. The Control Yuan shall have a President and a Vice President.

In case the President is unable to discharge his duties from any cause whatsoever, the Vice President shall act in his place.

ART. 43. The Control Yuan shall be composed of from nineteen to twenty-nine members, who shall be appointed by the National Government at the instance of the President of the said Yuan.

The security of tenure of office of the members of the Control Yuan shall be determined by law.

ART. 44. All meetings of the Control Yuan shall be attended by the members of the Control Yuan and presided over by the President of the said Yuan.

ART. 45. The members of the Control Yuan shall not concurrently hold any office in any of the organs of the Central or local governments.

ART. 46. The Control Yuan shall have the power to introduce in the Legislative Yuan bills on matters within its own competence.

ART. 47. The organization of the Control Yuan shall be determined by law.

CHAPTER VII.—*Additional Article*

ART. 48. The present law shall come into force on the day of its promulgation.

APPENDIX L

PROVISIONAL CONSTITUTION OF THE POLITICAL TUTELAGE PERIOD, 1 JUNE 1931[1]

PREAMBLE

The National Government, in order to rebuild the Republic of China on the basis of *The Three Principles of the People* and the Constitution of Five Powers, which forms the underlying principle of the Revolution, having now brought the Revolution from the Military to the Political Tutelage Period, deems it necessary to promulgate a Provisional Constitution (*Yueh Fa*) for general observance, so that the realization of constitutional government may be accelerated and political power restored to a popularly-elected Government and, further, in pursuance of the Last Will of our late Leader, has called at the national capital the National People's Convention (*Kuo Min Hui I*).

The said National People's Convention do hereby enact and ordain the following Provisional Constitution for enforcement during the Political Tutelage Period:

[CHAPTER] I.—*General Principles*

ARTICLE 1. The territory of the Republic of China consists of the various Provinces and Mongolia and Tibet.

ART. 2. The sovereignty of the Republic of China is vested in the people as a whole.

All persons who, according to law, enjoy the nationality of the Republic of China shall be citizens (*Kuo Min*) of the Republic of China.

ART. 3. The Republic of China shall be a unified Republic forever.

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[1] Promulgated at Nanking, 1 June 1931. H. G. W. Woodhead (ed.), *The China Year Book, 1935* (Shanghai, 1935), 63-66. The matter in brackets has been inserted

ART. 4. The national flag of the Republic of China shall have a red background with a blue sky and white sun in the upper left corner.

ART. 5. Nanking shall be the national capital of the Republic of China.

[CHAPTER] II.—*Rights and Duties of the People*

ART. 6. All citizens of the Republic of China shall be equal before the law, irrespective of sex, race, religion or caste.

ART. 7. Citizens of the Republic of China shall, according to the stipulation of Article 8 of *The Fundamentals of National Reconstruction,* enjoy in all completely autonomous districts (*Hsien*) the rights of election, initiative, recall and referendum as provided by Article 9 of *The Outline of National Reconstruction.*

ART. 8. Except in accordance with law, no person shall be arrested, detained, tried or punished.

When a person is arrested or detained on a criminal charge, the organ responsible for his [or her] arrest or detention shall send him [or her] to the competent court for trial not later than 24 hours. The party concerned may himself petition, or some other person may petition on his behalf, that he be brought [before the court] for trial within 24 hours.

ART. 9. Except in accordance with law, no person other than those in active military service shall be subject to trial by a military court.

ART. 10. Except in accordance with law, no private houses of the people shall be subject to forcible entry, search or sealing.

ART. 11. All persons shall have liberty of conscience.

ART. 12. All persons shall be free to choose and change their residence; such freedom shall not be denied or restricted except in accordance with law.

ART. 13. All persons shall have the right to the privacy of correspondence and telegraphic communications; such freedom shall not be denied or restricted except in accordance with law.

ART. 14. All persons shall have the freedom of assembly and formation of associations; such freedom shall not be denied or restricted except in accordance with law.

ART. 15. All persons shall have the liberty of speech and publication; such liberty shall not be denied or restricted except in accordance with law.

ART. 16. Except in accordance with law, no private property shall be sealed or confiscated.

ART. 17. The exercise of the right of ownership by any private owner of property, insofar as it does not conflict with the public interest, shall be protected by law.

ART. 18. Where public interest necessitates, the property of the people may be expropriated in accordance with law.

ART. 19. All persons shall have the right to inherit property in accordance with law.

ART. 20. All persons shall have the right of petition [to the Government].

ART. 21. All persons shall have the right to institute judicial proceedings in the courts of pustice, in accordance with law.

ART. 22. All persons shall have the right to submit petitions and institute administrative proceedings [in the Administrative Court] in accordance with law [for the redress of wrongs done by Government administrative organs].

ART. 23. All persons shall have the right to compete in civil service examinations in accordance with law.

ART. 24. All persons may, according to law, hold public posts.

ART. 25. All persons shall have the duty of paying taxes in accordance with law.

ART. 26. All persons shall have the duty of performing military service and compulsory labor [for the State] in accordance with law.

ART. 27. All persons shall have the duty to obey the measures adopted by Government organs in performance of their duties according to law.

[CHAPTER] III.—*Essentials of Political Tutelage*

ART. 28. The political policies and programs during the Period of Political Tutelage shall be in accordance with the "Fundamentals of National Reconstruction."

ART. 29. The system of district autonomy shall be enforced in accordance with the provisions of the "Outline of National Re-

construction" and the "Law Governing the Institution of District Autonomy."

ART. 30. During the Period of Political Tutelage, the National Congress of Kuomintang delegates (*Kuo Min Tang Ch'uan Kuo Tai Piao Ta Hui*) shall exercise the governing powers on behalf of the National People's Congress (*Kuo Min Ta Hui*). During the Period of Political Tutelage, the National Congress of Kuomintang delegates, the Central Executive Committee of the Kuomintang shall exercise the said powers.

ART. 31. The National Government shall train and guide [the citizens] in the exercise of the four political rights of election, initiative, recall and referendum.

ART. 32. The National Government shall exercise the five governing powers, namely, executive, legislative, judicial, examination and supervisory.

[CHAPTER] IV.—*People's Livelihood*

ART. 33. In order to develop the people's economic welfare, the State (*Kuo Chia*) shall afford every encouragement and protection to the productive enterprises of the people.

ART. 34. In order to develop rural economy, to improve the living conditions of farmers and to promote the well-being of peasants, the State shall take active steps for the carrying out of the following measures:

(1) Reclamation of all waste land in the country and development of farm irrigation;
(2) Establishment of agricultural banks and encouragement of cooperative enterprises in the rural communities;
(3) Enforcement of the [public] granary system for the prevention of famine and other calamities and replenishment of the people's food supplies;
(4) Development of agricultural education with special emphasis on scientific experiments, extensive development of agricultural enterprises and increase of agricultural produce;
(5) Encouragement of road-building in the rural villages to facilitate the transportation of agricultural products.

ART. 35. The State shall open and develop all coal, gold and iron

mines; and shall also encourage and protect private mining enterprises.

ART. 36. The State shall undertake and inaugurate State shipping enterprises; and shall also encourage and protect private shipping enterprises.

ART. 37. All persons shall be free to choose their profession or occupation. But when it is contrary to the public interest, the State may, by law, restrict or deny such freedom.

ART. 38. All persons shall be free to make contracts; such freedom, insofar as it is not in conflict with the public interest or with good morals, shall be protected by law.

ART. 39. In order to better the economic well-being and to promote closer cooperation between capital and labor, the people may form occupational organizations in accordance with law.

ART. 40. Both capital and labor shall develop productive enterprises in accordance with the principle of cooperation and mutual benefit.

ART. 41. In order to improve the living conditions of labor, the State shall put into effect various laws for the protection of labor and shall afford special protection to child and women workers in respect to their age and health.

ART. 42. In order to safeguard and relieve peasants as well as workers, who shall be unable to work on account of accidents, sickness, disability or old age, the State shall put into effect a labor insurance system.

ART. 43. In order to promote the economic interests of the people, the State shall encourage and promote various cooperative enterprises.

ART. 44. The State may control or regulate the production or sale as well as the market price of daily necessities of the people.

ART. 45. Laws shall be enacted for the prohibition of usury and exorbitant rents for the use of immovable properties.

ART. 46. The State shall give appropriate relief to those members of the national forces who are disabled in the course of active service.

[CHAPTER] V.—*Education of the Citizens*

ART. 47. *The Three Principles of the People* shall be the basic principles of education in the Republic of China.

ART. 48. Both sexes shall have equal opportunity for education.

ART. 49. All public and private educational institutions in the country shall be subject to the supervision of the State and shall also be responsible for the carrying out of the educational policies adopted by the State.

ART. 50. All children of school age shall receive free education. Details shall be separately provided by law.

ART. 51. Those who have not had free education [in their youth] shall receive special adult education. Details shall be separately provided by law.

ART. 52. The Central and local governments shall provide adequate funds for necessary educational expenses and shall also safeguard the security of funds which are by law specially set apart [for educational purposes].

ART. 53. The State shall give encouragement or grants to private educational institutions which have achieved particularly satisfactory results.

ART. 54. Encouragement and grants shall be given for the education of overseas Chinese.

ART. 55. The State shall encourage and safeguard members of the administrative or teaching staffs of schools who hold satisfactory records and have been long in service.

ART. 56. All public and private educational institutions in the country shall establish scholarships and prizes for the encouragement of deserving, but needy students.

ART. 57. The State shall encourage and protect research and discoveries in science and the arts.

ART. 58. The State shall protect and preserve historic remains and ancient relics which have historical, cultural or artistic value.

[CHAPTER] VI.—*Division of Power between the Central and Local Governments*

ART. 59. The principle of equilibrium shall be adopted in the divisions of power between the Central and local governments, as stipulated in Article 17 of *The Fundamentals of National Reconstruction.*[2]

ART. 60. The various local governments may, within their respective spheres of authority, enact and ordain local laws and

[2] See Appendix H.

regulations. Where such laws and regulations are in conflict with those promulgated by the Central Government, they shall be null and void.

ART. 61. The demarcation between Central and local revenues shall be separately determined by law.

ART. 62. The Central Government may by law restrict any local tax, when—

(1) It is contrary to public interest;
(2) It encroaches upon the source of Central revenue;
(3) It constitutes overlapping taxation;
(4) It is detrimental to communications;
(5) It is unjustifiably imposed upon goods imported from other localities for the sole benefit of the locality concerned;
(6) It is in the nature of a transit duty on commodities in circulation among various localities.

ART. 63. The power of granting patents and monopolies is vested in the Central Government.

ART. 64. When one of the Provinces reaches the period of constitutionalism, the division of power between the Central and the local governments shall be defined in detail by law in accordance with *The Fundamentals of National Reconstruction.*[2]

[CHAPTER] VII.—*Organization of the Governments*

ART. 65. The National Government shall exercise all the governing powers of the Republic of China.

ART. 66. The National Government shall have supreme command over the land, naval and air forces.

ART. 67. The National Government shall have the power to declare war, to negotiate peace and to conclude treaties.

ART. 68. The National Government shall exercise the power of granting amnesties, pardons, reprieves and restitutions of civic rights.

ART. 69. The National Government shall exercise the power of conferring medals and decorations of honor.

ART. 70. The National Government shall compile and publish a budget and financial statement of the national revenues and expenditures for each fiscal year.

ART. 71. The National Government shall be composed of the five Yuan: the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Examination Yuan and the Control Yuan, as well as various Ministries and Commissions.

ART. 72. The National Government shall have a President and an appropriate number of State Councilors, who shall be selected and appointed by the Central Executive Committee of the Kuomintang. The number of State Councilors shall be separately determined by law.

ART. 73. The President of the National Government shall represent the nation both internally and internationally.

ART. 74. The Presidents of the five Yuan and the heads of the various Ministries and Commissions shall be appointed or dismissed in accordance with law by the National Government at the instance of the President of the National Government.

ART. 75. All laws shall be promulgated and mandates issued upon the signature of the President of the National Government according to law.

ART. 76. The various Yuan, Ministries or Commissions shall, according to law, issue orders.

ART. 77. The organization of the National Government and of the various Yuan, Ministries and Commissions shall be separately determined by law.

SECTION 2.—The Local Governments

ART. 78. In each Province, a Provincial Government shall be established, which shall attend to the administration of provincial affairs under the direction of the National Government. Its organization shall be separately determined by law.

ART. 79. When, as stipulated in Article 16 of *The Fundamentals of National Reconstruction,*[3] a Province reaches the period of constitutionalism, the [Provincial] Assembly of People's Delegates may elect a Provincial Governor (*Sheng Chang*).

ART. 80. The system of local government in Mongolia and Tibet shall be determined separately by law in the light of the local conditions.

[3] See Appendix H.

ART. 81. In each district (*Hsien*), a district government shall be established, which shall attend to the administration of district affairs under the direction of the Provincial Government. Its organization shall be separately determined by law.

ART. 82. In each of the districts, a District Autonomy Preparatory Committee shall be organized to carry out the preparations as provided in Article 8 of *The Fundamentals of National Reconstruction.* Its organization shall be separately determined by law.

ART. 83. Municipalities may be established in localities where industry and commerce, population or other special conditions warrant. The organization of such municipalities shall be separately determined by law.

[CHAPTER] VIII.—*Annex*

ART. 84. All laws which are in conflict with this Provisional Constitution shall be null and void.

ART. 85. The power of interpreting this Provisional Constitution shall be exercised by the Central Executive Committee of the Kuomintang of China.

ART. 86. A draft of the Permanent Constitution (*Hsien Fa*) shall be prepared by the Legislative Yuan on the basis of *The Fundamentals of National Reconstruction* as well as the achievements during the Political Tutelage and Constitutional Periods. The said draft shall be duly made known to the people at large in preparation for its adoption and enforcement at the opportune moment.

ART. 87. When a majority of the Provinces in the country reach the period of constitutionalism, that is, when district autonomy has been completely instituted throughout each of such Provinces, then the National Government shall immediately summon a National People's Congress (*Kou Min Ta Hui*) to decide upon the adoption and promulgation of the Permanent Constitution.

ART. 88. The present Provisional Constitution shall be enacted by the National People's Convention (*Kuo Min Hui I*) and forwarded to the National Government for promulgation.

ART. 89. The present Provisional Constitution shall come into force from the date of promulgation.

APPENDIX M

REVISED ORGANIC LAW OF THE NATIONAL GOVERNMENT, 29 DECEMBER 1931[1]

[CHAPTER] I.—*General Provisions*

ARTICLE 1. The National Government, in pursuance of Article 77 of the Provisional Constitution (*Yueh Fa*) of the Political Tutelage Period, do hereby enact and ordain the following Organic Law of the National Government of the Republic of China.

[CHAPTER] II.—*The National Government*

ART. 2. The National Government shall exercise the governing powers of the Republic of China.

ART. 3. The National Government shall have the supreme command of the land, naval and air forces.

ART. 4. The National Government shall have the power to declare war, to negotiate peace and to conclude treaties.

ART. 5. The National Government shall promulgate laws and issue mandates.

ART. 6. The National Government shall exercise the power of granting amnesties, pardons, reprieves and restitution of civic rights.

ART. 7. The National Government shall exercise the power of conferring medals and decorations of honor.

ART. 8. The National Government shall entrust to the following five Yuan the independent exercise of the five powers of administration, legislation, judiciary, examination and control: the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Examination Yuan and the Control Yuan.

Each of the aforementioned Yuan may, according to law, issue orders.

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[1] Promulgated on 29 December 1931 and further revised by mandate dated 27 December 1932. *The China Year Book, 1935,* 66-68.

ART. 9. The National Government may, when deemed necessary, set up subordinate organs to be controlled directly by the National Government. The organization of such organs shall be determined by law.

ART. 10. The National Government shall have a President and from twenty-four to thirty-six State Councilors and each Yuan shall have a President and Vice President, who shall be selected and appointed by the Central Executive Committee of the Kuomintang of China.

ART. 11. The President of the National Government shall be the head of the Republic of China and shall represent the National Government both internally and externally, but he shall have no actual political responsibility.

ART. 12. The President of the National Government shall not hold any Government post concurrently.

ART. 13. The President of the National Government shall hold office for two years and he may be reappointed for another term, provided, however, that, upon the promulgation of a Permanent Constitution (*Hsien Fa*), a new election shall be held according to law.

ART. 14. All mandates of the National Government and orders for the mobilization of military forces shall be issued upon the signature of the President of the National Government, but they shall not become effective unless countersigned by the Presidents of the Yuan and the heads of the Ministries concerned.

ART. 15. Pending the promulgation of a Permanent Constitution, the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Examination Yuan and the Control Yuan shall each be responsible to the Central Executive Committee of the Kuomintang of China.

[CHAPTER] III.—*The State Council*

ART. 16. The State Council shall be composed of the President of the National Government and the State Councilors.

ART. 17. All matters which can not be settled between two or more of the Yuan shall be referred to the meetings of the State Council for decision.

ART. 18. The regulations governing the meetings of the State Council shall be separately drawn up.

[CHAPTER] IV.—*The Executive Yuan*

ART. 19. The Executive Yuan shall be the highest executive organ of the National Government.

ART. 20. The Executive Yuan shall establish Ministries, to which shall be entrusted the various executive duties.

The Executive Yuan may appoint Commissions to take charge of specified executive matters.

ART. 21. The Ministries of the Executive Yuan shall each have a Minister, a Political Vice Minister and an Administrative Vice Minister and the various Commissions shall each have a Chairman, a Vice Chairman and several members.

The Ministers of the various Ministries and the Chairmen of the various Commissions shall be appointed or removed, according to law, by the President of the National Government at the instance of the President of the Executive Yuan.

The Political Vice Ministers and the Administrative Vice Ministers of the various Ministries and the Vice Chairmen as well as the members of the various Commissions shall be appointed or removed, according to law, by the President of the National Government at the instance of the President of the Executive Yuan.

ART. 22. In case the President of the Executive Yuan is unable to discharge his duties from any cause whatsoever, the Vice President of the said Yuan shall act in his place.

ART. 23. The meetings of the Executive Yuan shall be attended by the President and the Vice President of the Executive Yuan, the Ministers of the various Ministries and the Chairmen of the various Commissions and presided over by the President of the said Yuan.

ART. 24. The following matters shall be decided at the meetings of the Executive Yuan:

(1) Bills on legislative matters to be introduced in the Legislative Yuan.
(2) Budgets to be submitted to the Legislative Yuan.

(3) Amnesties to be submitted to the Legislative Yuan.
(4) Declaration of war and negotiation of peace to be submitted to the Legislative Yuan.
(5) The appointment or dismissal of administrative and judicial officials of or above the rank of Third Class (*Chien Jen*).
(6) All matters which can not be settled between the various Ministries and Commissions of the Executive Yuan.
(7) All matters which, according to law or in the opinion of the President of the Executive Yuan, should be decided at the meetings of the said Yuan.

ART. 25. All orders and acts of disposition of the Executive Yuan, in order to be effective, shall be countersigned, in respect of those affecting general administrative affairs, by the entire body of Ministers and, in respect of those affecting only one Ministry, by the Minister concerned.

ART. 26. The organization of the Executive Yuan shall be determined by law.

[CHAPTER] V.—*The Legislative Yuan*

ART. 27. The Legislative Yuan shall be the highest legislative organ of the National Government.

The Legislative Yuan shall have the power to decide upon the following: legislation, budgets, amnesties, declaration of war, negotiation for peace and other important international affairs.

ART. 28. In case the President of the Legislative Yuan is unable to discharge his duties from any cause whatsoever, the Vice President of the said Yuan shall act in his place.

ART. 29. The Presidents of the various Yuan and the Ministers of the various Ministries may attend the meetings of the Legislative Yuan to offer explanations.

ART. 30. The Legislative Yuan shall be composed of from forty-nine to ninety-nine legislative members, who shall be appointed and removed, according to law, by the President of the National Government at the instance of the President of the Legislative Yuan.

ART. 31. The legislative members of the Legislative Yuan shall hold office for two years and shall be eligible for reappointment.

ART. 32. The legislative members of the Legislative Yuan shall not hold any concurrent Government posts.

ART. 33. The President of the Legislative Yuan shall preside over the meetings of the Legislative Yuan.

ART. 34. The organization of the Legislative Yuan shall be determined by law.

[CHAPTER] VI.—*The Judicial Yuan*

ART. 35. The Judicial Yuan shall be the highest judicial organ of the National Government.

The granting of pardons and reprieves and the restitution of civic rights shall be signed by the President of the National Government at the instance, according to law, of the President of the Judicial Yuan.

ART. 36. The Judicial Yuan shall establish a Supreme Court, an Administrative Court and a Commission for the Disciplinary Punishment of Public Functionaries.

ART. 37. The President of the Judicial Yuan shall act concurrently as the President of the Supreme Court and the Vice President of the Judicial Yuan shall act concurrently as Chairman of the Commission for the Disciplinary Punishment of Public Functionaries.

ART. 38. The President of the Judicial Yuan may, when deemed necessary, in regard to the trials at the Administrative Court and the Commission for the Disciplinary Punishment of Public Functionaries, personally conduct and dispose of such trials.

ART. 39. In case the President of the Judicial Yuan is unable to discharge his duties from any cause whatsoever, the Vice President of the said Yuan shall act in his place.

ART. 40. The Judicial Yuan may introduce in the Legislative Yuan bills on matters within its own competence.

ART. 41. The organization of the Judicial Yuan shall be determined by law.

[CHAPTER] VII.—*The Examination Yuan*

ART. 42. The Examination Yuan shall be the highest examination organ of the National Government and shall exercise, according to law, the powers of examination and the determination of qualifications for public service.

ART. 43. In case the President of the Examination Yuan is unable to discharge his duties from any cause whatsoever, the Vice President of the said Yuan shall act in his place.

ART. 44. The Examination Yuan may introduce in the Legislative Yuan bills on matters within its own competence.

ART. 45. The organization of the Examination Yuan shall be determined by law.

[CHAPTER] VIII.—*The Control Yuan*

ART. 46. The Control Yuan shall be the highest supervisory organ of the National Government and shall, according to law, exercise the following powers:

(1) Impeachment.
(2) Auditing.

ART. 47. In case the President of the Control Yuan is unable to discharge his duties from any cause whatsoever, the Vice President of the said Yuan shall act in his place.

ART. 48. The Control Yuan shall be composed of from twenty-nine to forty-nine supervisory members, who shall be appointed and removed, according to law, by the President of the National Government at the instance of the President of the Control Yuan.

ART. 49. The security of tenure of office of the supervisory members of the Control Yuan shall be determined by law.

ART. 50. All meetings of the Control Yuan shall be attended by the supervisory members of the Control Yuan and presided over by the President of the said Yuan.

ART. 51. The supervisory members of the Control Yuan shall not hold any concurrent public offices.

ART. 52. The Control Yuan may introduce in the Legislative Yuan bills on matters within its own competence.

ART. 53. The organization of the Control Yuan shall be determined by law.

[CHAPTER] IX.—*Additional Article*

ART. 54. The present law shall come into force on the day of its promulgation.

APPENDIX N

REVISED DRAFT OF CONSTITUTION, 16 OCTOBER 1934[1]

[PREAMBLE]

By virtue of the mandate received from the whole body of citizens and in accordance with the bequeathed teachings of Dr. Sun, Founder of the Republic of China, the People's Congress of the Republic of China hereby ordains and enacts this Constitution and causes it to be promulgated throughout the land for faithful and perpetual observance by all.

[CHAPTER] I.—*General Provisions*

ARTICLE 1. The Republic of China is a *Three Principles of the People* (*San Min Chu I*) Republic.

ART. 2. The sovereignty of the Republic of China is vested in the whole body of citizens.

ART. 3. Persons having acquired the nationality of the Republic of China are citizens of the Republic of China.

ART. 4. The territory of the Republic of China consists of areas originally constituting Kiangsu, Chekiang, Anhwei, Kiangsi, Hupeh, Hunan, Szechwan, Hsikang, Hopei, Shantung, Shansi, Honan, Shensi, Kansu, Chinghai, Fukien, Kwangtung, Kwangsi, Yunnan, Kweichow, Liaoning, Kirin, Heilungkiang, Jehol, Chahar, Suiyuan, Ninghsia, Sinkiang, Mongolia and Tibet.

The territory of the Republic of China shall not be altered except by resolution of the People's Congress.

ART. 5. All races of the Republic of China are component parts of the Chinese nation and shall be equal.

ART. 6. The national flag of the Republic of China shall have a red background with a blue sky and white sun in the upper left corner.

[1] Adopted by the 74th Meeting of the Legislative Yuan, 16 October 1934. H. G. W. Woodhead (ed.), *The China Year Book, 1935* (Shanghai, 1935), 68-75.

ART. 7. The national capital of the Republic of China shall be at Nanking.

[CHAPTER] II.—*Rights and Duties of the Citizens*

ART. 8. All citizens of the Republic of China shall be equal before the law.

ART. 9. Every citizen shall have the liberty of the person; except in accordance with law, no one may be arrested, detained, tried or punished.

When a citizen is arrested or detained on suspicion of having committed a criminal act, the authority responsible for such action shall immediately inform the citizen himself and his relatives of the cause of his arrest or detention and shall, within a period of twenty-four hours, send him to a competent court for trial. The citizen so arrested or detained, or any one else, may also petition the court to demand from the authority responsible for such action the surrender, within twenty-four hours, of his person to the court for trial.

The court shall not reject such a petition; nor shall the responsible authority refuse to execute such a writ as mentioned in the preceding paragraph.

ART. 10. With the exception of those in active military service, no one may be subject to military jurisdiction.

ART. 11. Every citizen shall have the freedom of domicile; no private abode may be forcibly entered, searched or sealed except in accordance with law.

ART. 12. Every citizen shall have the freedom to change his residence; such freedom shall not be restricted except in accordance with law.

ART. 13. Every citizen shall have the freedom of speech, writing and publication; such freedom shall not be restricted except in accordance with law.

ART. 14. Every citizen shall have the freedom of secrecy of correspondence; such freedom shall not be restricted except in accordance with law.

ART. 15. Every citizen shall have the freedom of religious belief; such freedom shall not be restricted except in accordance with law.

ART. 16. Every citizen shall have the freedom of assembly and forming associations; such freedom shall not be restricted except in accordance with law.

ART. 17. No private property shall be requisitioned, expropriated, sealed or confiscated except in accordance with law.

ART. 18. Every citizen shall have the right to present petitions, lodge complaints and institute legal proceedings in accordance with law.

ART. 19. Every citizen shall have the right to exercise, in accordance with law, the powers of election, recall, initiative and referendum.

ART. 20. Every citizen shall have the right to compete, in accordance with law, in state examinations.

ART. 21. Every citizen shall, in accordance with law, be amenable to the duty of paying taxes.

ART. 22. Every citizen shall, in accordance with law, be amenable to the duty of performing military service.

ART. 23. Every citizen shall, in accordance with law, be amenable to the duty of rendering public service.

ART. 24. All other liberties and rights of the citizens which are not detrimental to public peace and order or public welfare shall be guaranteed by the Constitution.

ART. 25. Only laws imperative for safeguarding national security, averting a national crisis, maintaining public peace and order or promoting public interest may restrict the citizens' liberties and rights.

ART. 26. Any public functionary who illegally infringes upon any private liberty or right, shall, besides being subject to disciplinary punishment, be responsible under criminal and civil law. The injured person may also, in accordance with law, claim indemnity from the state for damages sustained.

[CHAPTER] III.—*The People's Congress*

ART. 27. The People's Congress shall be constituted of delegates elected as follows:

1. Each district, municipality or area of an equivalent status shall elect one delegate, but, in case its population exceeds

300,000, one additional delegate shall be elected for every additional 500,000 people. The status of areas to be equivalent to a district or municipality shall be defined by law.

2. The number of delegates to be elected from Mongolia and Tibet shall be determined by law.
3. The number of delegates to be elected from Chinese citizens residing abroad shall be determined by law.

ART. 28. Delegates to the People's Congress shall be elected by universal, equal and direct suffrage and by secret ballots.

ART. 29. Citizens of the Republic of China having attained the age of twenty years shall, in accordance with law, have the right to elect delegates. Citizens having attained the age of twenty-five years shall, in accordance with law, have the right to be elected delegates.

ART. 30. The term of office of delegates to the People's Congress shall be four years.

When a delegate is found guilty of violation of a law or neglect of his duty, his constituency shall recall him in accordance with law.

ART. 31. The People's Congress shall be convened once every two years. Its session shall last one month, but may be extended another month when necessary.

Extraordinary sessions of the People's Congress may be convened at the instance of one fourth or more of its members.

ART. 32. The powers and functions of the People's Congress shall be as follows:

1. To elect the President and Vice President of the Republic, the President of the Legislative Yuan, the President of the Censor Yuan, the members of the Legislative Yuan and the members of the Censor Yuan.
2. To recall the President and Vice President of the Republic, the President of the Legislative Yuan, the President of the Judicial Yuan, the President of the Examination Yuan, the President of the Censor Yuan, the members of the Legislative Yuan and the members of the Censor Yuan.
3. To initiate laws.
4. To hold referenda on laws.

5. To amend the Constitution.

6. To exercise such other powers as are conferred by the Constitution.

ART. 33. Delegates to the People's Congress shall not be held responsible outside of the Congress for the opinions they may express and the votes they may cast during the session of the Congress.

ART. 34. Without the permission of the People's Congress, no delegate shall be arrested or detained during the session except when apprehended *in flagrante delicto.*

ART. 35. The organization of the People's Congress and the election as well as recall of its delegates shall be determined by law.

[CHAPTER] IV.—*The Central Government*

SECTION 1.—The President

ART. 36. The President is the head of the state and represents the Republic of China in foreign relations.

ART. 37. The President shall, in accordance with law, promulgate laws and issue mandates with the countersignature of the President of the Yuan concerned.

ART. 38. The President shall, in accordance with law, command the land, naval and air forces of the whole country.

ART. 39. The President shall, in accordance with law, exercise the power of declaring war, negotiating peace and concluding treaties.

ART. 40. The President shall, in accordance with law, declare and terminate a state of emergency.

ART. 41. The President, shall in accordance with law, exercise the power of granting amnesties, special pardons, remission of sentences and restoration of civil rights.

ART. 42. The President shall, in accordance with law, appoint and remove civil and military officials.

ART. 43. The President shall, in accordance with law, confer honors and award decorations.

ART. 44. The President shall exercise the supreme executive power.

ART. 46. Citizens of the Republic of China, having attained the age of forty years, may be elected President or Vice President of the Republic.

ART. 47. No soldier shall be elected President or Vice President until he has retired from active military service.

ART. 48. The election of the President and Vice President shall be determined by law.

ART. 49. The President and Vice President shall hold office for a term of four years and may be reelected for a second term.

ART. 50. The President shall, on the day of his inauguration, take the following oath:

I do solemnly and sincerely swear before the people that I will observe the Constitution, faithfully perform my duties, promote the welfare of the people, safeguard the security of the state and be loyal to the trust of the people. Should I break my oath, I will submit myself to the most severe punishment the law may provide.

ART. 51. In case the President is incapacitated by any cause, the Vice President shall discharge the duties of his office. In case both the President and the Vice President are incapacitated, the President of the Executive Yuan shall discharge the duties of the President's office.

ART. 52. The President shall retire from office on the day his term expires. If by that time a new President has not been inaugurated, the President of the Executive Yuan shall discharge the duties of the President's office.

ART. 53. The period for the President of the Executive Yuan to discharge the duties of the President's office shall not exceed six months.

ART. 54. Except in case of an offense against the internal or external security of the state, the President shall not be liable to criminal prosecution until he has been recalled or has retired from office.

SECTION 2.—The Executive Yuan

ART. 55. The Executive Yuan is the highest organ through which the Central Government exercises its executive powers.

ART. 56. In the Executive Yuan, there shall be a President and

twenty executive members to be appointed and removed by the President of the Republic.

ART. 57. In the Executive Yuan, there shall be various ministries and commissions which shall separately exercise their respective powers.

ART. 58. The Ministers of the various ministries and the Chairmen of the various commissions shall be appointed by the President of the Republic from among the executive members.

ART. 59. The President of the Executive Yuan, the executive members, the Ministers of the various ministries and the Chairmen of the various commissions shall be individually responsible to the President of the Republic.

ART. 60. In the Executive Yuan, there shall be executive meetings composed of the President of the Republic, the President of the Executive Yuan and the executive members to be presided over by the President of the Republic. In case the President of the Republic is unable to be present, the President of the Executive Yuan shall preside.

ART. 61. The following matters shall be decided at an executive meeting:

1. Statutory and budgetary bills to be submitted to the Legislative Yuan.
2. Bills concerning a state of emergency and special pardons to be submitted to the Legislative Yuan.
3. Bills concerning declaration of war, negotiation of peace, conclusion of treaties and other important international affairs to be proposed in the Legislative Yuan.
4. Matters of common concern to the various ministries and commissions.
5. Matters submitted by the President of the Republic.
6. Matters submitted by the President of the Executive Yuan, the executive members, the various ministries and commissions.

ART. 62. The organization of the Executive Yuan shall be determined by law.

SECTION 3.—The Legislative Yuan

ART. 63. The Legislative Yuan is the highest organ through which the Central Government exercises its legislative powers. It shall be responsible to the People's Congress.

ART. 64. The Legislative Yuan shall have the power to decide on measures concerning legislation, budgets, a state of emergency, special pardons, declaration of war, negotiation of peace, conclusion of treaties and other important international affairs.

ART. 65. In the discharge of its duties the Legislative Yuan may interrogate the various Yuan, ministries and commissions.

ART. 66. In the Legislative Yuan, there shall be a President who shall hold office for a term of four years and may be eligible for reelection.

ART. 67. When the President of the Legislative Yuan vacates office on any cause during the adjournment of the People's Congress, an Acting President shall be elected by and from among the members of the Legislative Yuan.

ART. 68. Members of the Legislative Yuan shall be elected in accordance with the following provisions:

1. Delegates accredited by the various Provinces, Mongolia, Tibet and citizens residing abroad to the People's Congress shall separately hold a preliminary election to nominate their respective candidates and submit a list thereof to the Congress for election. The candidates need not be delegates to the People's Congress. The respective number of candidates shall be apportioned as follows:

   (a) A Province with a population of less than 5,000,000 shall nominate three candidates. A Province with a population of more than 5,000,000 but less than 10,000,000 shall nominate four candidates. A Province with a population of more than 10,000,000 but less than 15,000,000 shall nominate five candidates. A Province with a population of more than 15,000,000 but less than 20,000,000 shall nominate six candidates. A Province with a population of more than 20,000,000 but less than 25,000,000 shall nominate seven candidates. A Province with a population of more than 25,000,000 but less

than 30,000,000 shall nominate eight candidates. A Province with a population of more than 30,000,000 but less than 35,000,000 shall nominate nine candidates. A Province with a population of more than 35,000,000 shall nominate ten candidates.

(b) Mongolia and Tibet shall each nominate six candidates.

(c) Citizens residing abroad shall nominate six candidates.

2. The President of the Legislative Yuan shall nominate persons having special knowledge and experience as candidates and submit a list thereof to the People's Congress for election. But the number thus nominated shall not exceed one third of the total number elected in accordance with the preceding paragraph.

ART. 69. Members of the Legislative Yuan shall hold office for a term of four years and may be eligible for reelection.

ART. 70. The Executive Yuan, Judicial Yuan, Examination Yuan and Censor Yuan may submit to the Legislative Yuan measures concerning matters within their respective jurisdiction.

ART. 71. The President of the Republic may, before promulgation or execution of a legislative measure adopted by the Legislative Yuan, request the said Yuan to reconsider it.

If the Legislative Yuan, after reconsideration, decides to confirm the original measure so referred to it in accordance with the preceding paragraph by a vote of two thirds or more of its members present, the President of the Republic shall immediately promulgate or execute the said measure.

ART. 72. The President of the Republic shall promulgate a measure presented by the Legislative Yuan for promulgation within thirty days after its receipt.

ART. 73. Members of the Legislative Yuan shall not be held responsible for the opinions they may express and the votes they may cast during the session.

ART. 74. Without the permission of the Legislative Yuan, no member may be arrested or detained except when apprehended *in flagrante delicto.*

ART. 75. No member of the Legislative Yuan may concurrently hold any other public office or engage in any business or profession.

ART. 76. The election of members of the Legislative Yuan and

the organization of the Legislative Yuan shall be determined by law.

SECTION 4.—The Judicial Yuan

ART. 77. The Judicial Yuan is the highest organ through which the Central Government exercises its judicial powers. It shall attend to the adjudication of civil, criminal and administrative suits, the discipline and punishment of public functionaries and judicial administration.

ART. 78. In the Judicial Yuan, there shall be a President who shall hold office for a term of four years. He shall be appointed by the President of the Republic with the advice and consent of the Legislative Yuan.

The President of the Judicial Yuan shall be responsible to the People's Congress.

ART. 79. In the Judicial Yuan, there shall be a Commission for Disciplinary Punishment of Public Functionaries and a Ministry of Judicial Administration (Ministry of Justice).

ART. 80. The Chairman and members of the Commission for Disciplinary Punishment of Public Functionaries and the Minister of Judicial Administration shall be appointed by the President of the Republic at the instance of the President of the Judicial Yuan.

ART. 81. Matters concerning special pardons, remission of sentence and restoration of civil rights shall be submitted to the President of the Republic for action by the President of the Judicial Yuan in accordance with law.

ART. 82. The Judicial Yuan shall have the power to unify the interpretation of statutes and ordinances.

ART. 83. Judicial officials shall, in accordance with law, have perfect independence in the conduct of trials.

ART. 84. No judicial official may be removed from office unless he has been subject to criminal or disciplinary punishment or declared an interdicted person; nor may a judicial official be suspended or transferred, or have his salary reduced except in accordance with law.

ART. 85. The organization of the Judicial Yuan and the various courts of justice shall be determined by law.

SECTION 5.—The Examination Yuan

ART. 86. The Examination Yuan is the highest organ through which the Central Government exercises its examination powers. It shall attend to the selection of civil service candidates by examination and to the registration of persons qualified for public service.

ART. 87. In the Examination Yuan, there shall be a President who shall hold office for a term of four years, to be appointed by the President of the Republic with the advice and consent of the Legislative Yuan.

The President of the Examination Yuan shall be responsible to the People's Congress.

ART. 88. In the Examination Yuan, there shall be a Ministry of Public Service Registration. When a public examination is held, there shall be an Examinations Commission.

ART. 89. The Minister of Public Service Registration shall be appointed and removed by the President of the Republic at the instance of the President of the Examination Yuan in accordance with law.

The Chairman and members of the Examinations Commission shall be appointed by the President of the Republic at the instance of the President of the Examination Yuan in accordance with law.

ART. 90. The Examination Yuan shall, in accordance with law, by examination and registration determine the following qualifications.

1. For appointment as a public functionary.
2. For candidacy to public office.
3. For practice in specialized professions and as technical experts.

ART. 91. The organization of the Examination Yuan shall be determined by law.

SECTION 6.—The Censor Yuan

ART. 92. The Censor Yuan is the highest organ through which the Central Government exercises censorial powers. It shall attend to impeachment and auditing and be responsible to the People's Congress.

ART. 93. In the discharge of its censorial powers, the Censor Yuan may, in accordance with law, interrogate the various Yuan, ministries and commissions.

ART. 94. In the Censor Yuan, there shall be a President who shall hold office for a term of four years and may be eligible for reelection.

ART. 95. If the Censor Yuan vacates office for any cause during the adjournment of the People's Congress, an Acting President shall be elected by and from among the members of the Censor Yuan.

ART. 96. Members of the Censor Yuan shall be elected by the People's Congress from candidates separately nominated by the delegates of the various Provinces, Mongolia, Tibet and Chinese citizens residing abroad. Each group of delegates shall nominate not more than two candidates. The candidates need not necessarily be delegates to the Congress.

ART. 97. Members of the Censor Yuan shall hold office for a term of four years and may be eligible for reelection.

ART. 98. When the Censor Yuan finds a public functionary in the Central or local government guilty of violation of a law or neglect of his duty, an impeachment may be instituted upon the proposal of one or more members and the endorsement, after due investigation, of five or more members. Impeachment against the President or Vice President of the Republic, the President of the Executive Yuan, Legislative Yuan, Judicial Yuan, Examination Yuan or Censor Yuan may be instituted only upon the proposal of ten or more members and the endorsement, after due investigation, of one half or more of the members of the entire Yuan.

ART. 99. Unless otherwise provided for by the Constitution, all impeachment cases shall be brought before the Commission for Disciplinary Punishment of Public Functionaries.

When a judgment on an impeachment case has been delivered by the Commission for Disciplinary Punishment of Public Functionaries, the order for the dismissal of the impeached from office or some other disciplinary punishment shall be executed by the President of the Republic or the competent officer.

ART. 100. When an impeachment is instituted against the President or Vice President of the Republic or the President of the

Executive Yuan, Legislative Yuan, Judicial Yuan, Examination Yuan or Censor Yuan in accordance with Article 98, it shall be brought before the People's Congress. During the adjournment of the People's Congress, the delegates shall be requested to convene, in accordance with law, an extraordinary session to decide whether the impeached shall be removed from office.

ART. 101. In the Censor Yuan, there shall be an Audit Commission which shall attend to the auditing and examination of accounts.

ART. 102. The Chairman and members of the Audit Commission shall be appointed and removed by the President of the Republic at the instance of the President of the Censor Yuan in accordance with law.

ART. 103. Reports on auditing and investigation of accounts submitted by the Auditing Commission shall, after examination at the Censor Yuan meeting, be made public in accordance with law.

ART. 104. Members of the Censor Yuan shall not be held responsible outside of the said Yuan for the opinions they may express and the votes they may cast while discharging their duties.

ART. 105. Without the permission of the Censor Yuan, no member of the Censor Yuan may be arrested or detained except when apprehended *in flagrante delicto.*

ART. 106. No member of the Censor Yuan may concurrently hold any other public office or engage in any business or profession.

ART. 107. The election of the members of the Censor Yuan and the organization of the Censor Yuan shall be determined by law.

[CHAPTER] V.—*The Provinces*

ART. 108. In the Province, there shall be a Provincial Government which shall execute the laws and orders of the Central Government and supervise local self-government.

ART. 109. In the Provincial Government, there shall be a Governor who shall hold office for a term of three years. He shall be appointed and removed by the Central Government.

No soldier may be appointed Governor of a Province until three

years have elapsed after his retirement from active military service.

ART. 110. In the Province, there shall be a Provincial Assembly which shall be composed of one member from each district or municipality to be elected by the district or municipal councils. Members of the Provincial Assembly shall hold office for a term of three years and may be eligible for reelection.

ART. 111. The Provincial Assembly shall convene once every year. Its session shall last one month. In case of necessity, extraordinary sessions may be convened.

ART. 112. The powers and functions of the Provincial Assembly shall be as follows:

1. To pass a provincial budget to be submitted to the Central Government.
2. To submit to the Legislative Yuan measures concerning legislation on provincial affairs.
3. To enact provincial statutes and regulations in accordance with authority to be delegated by law.
4. To propose to the Executive Yuan reform measures in provincial administration.
5. To submit to the Censor Yuan impeachment of public functionaries in the service of the Provincial Government.
6. To decide on measures submitted by the Governor.
7. To propose measures to the Governor.

ART. 113. The organization of the Provincial Government and the Provincial Assembly as well as the election and recall of the members of the Provincial Assembly shall be determined by law.

ART. 114. The government of areas not yet established as Provinces shall be determined by law.

[CHAPTER] VI.—*The Districts*

ART. 115. The district is a unit of local self-government.

ART. 116. The district self-government shall have jurisdiction over the following:

1. The taking and registration of district population census.
2. Land administration in the district.
3. District financial administration.

4. Communications, irrigation and other engineering constructions in the district.
5. Public and cooperative enterprises in the district.
6. Policing and public order in the district.
7. Educational and cultural enterprises in the district.
8. Health administration in the district.
9. Protective and relief work in the district.
10. Custody and administration of public property in the district.
11. Preservation of natural scenic attractions and historic relics in the district.
12. Other matters concerning district self-government.

ART. 117. Citizens of the district shall, in accordance with law, exercise the powers of initiative and referendum in matters concerning district self-government, as well as the powers of election and recall of the District Magistrate and other elective officials in the service of district self-government.

ART. 118. In the district, there shall be a District Council the members of which shall be directly elected by the citizens in public assembly. Members of the District Council shall hold office for a term of three years and may be eligible for reelection.

ART. 119. The District Council shall meet semiannually. Its session shall last one month. In case of necessity, extraordinary sessions may be convened.

ART. 120. The powers and functions of the District Council shall be as follows:

1. To pass the district budget and supervise its execution.
2. To decide on the levy of district taxes and the signing of contracts which increase the financial burden of the district treasury.
3. To decide on the management and disposal of district-owned property.
4. To audit district accounts.
5. To enact district regulations.
6. To propose to the district government reform measures in district administration.
7. To consider matters submitted by the District Magistrate.
8. To interrogate the District Magistrate.

ART. 121. District laws and regulations which are in conflict with the laws and ordinances of the Central or Provincial Government shall be null and void.

ART. 122. In the district, there shall be a District Government, with a District Magistrate who shall be elected by the citizens in public assembly. The Magistrate shall hold office for a term of three years and may be eligible for reelection.

Only those persons found qualified in the examinations held by the Central Government or adjudged qualified by the Ministry of Public Service Registration may be candidates for the office of District Magistrate.

ART. 123. The District Magistrate shall administer the affairs of the district in accordance with the principles of self-government and, under the direction of the Provincial Governor, execute matters assigned by the Central and Provincial Governments.

ART. 124. The organization of the District Council and District Government as well as the election and recall of the District Magistrate and the members of the District Council shall be determined by law.

[CHAPTER] VII.—*The Municipalities*

ART. 125. Unless otherwise provided by law, the provisions governing self-government and administration of the district shall apply *mutatis mutandis* to the municipality.

ART. 126. In the municipality, there shall be a Municipal Council the members of which shall be directly elected by the citizens in public assembly. One third of the members shall retire and be replaced by election annually.

ART. 127. In the municipality, there shall be a Municipal Government with a Mayor to be directly elected by the citizens in public assembly. He shall hold office for a term of three years and may be eligible for reelection.

Only those persons found qualified in the public examination held by the Central Government or adjudged qualified by the Ministry of Public Service Registration may be candidates for the office of Mayor.

ART. 128. The Mayor shall administer the affairs of the municipality in accordance with the principles of municipal self-govern-

ment and, under the direction of the competent supervising authority, execute matters assigned by the Central or Provincial Government.

ART. 129. The organization of the Municipal Council and Municipal Government as well as the election and recall of the members of the Municipal Council and the Mayor shall be determined by law.

[CHAPTER] VIII.—*National Economic Life*

ART. 130. The economic system of the Republic of China shall be based upon the Principle of Livelihood (*Min Sheng Chu I*) and shall aim at national economic sufficiency and equality.

ART. 131. The land within the territorial limits of the Republic of China belongs to the people as a whole. Any part thereof the ownership of which has been lawfully acquired by an individual or individuals shall be protected by, and subject to the restrictions of, law.

The state may, in accordance with law, tax or expropriate private land on the basis of the value declared by the owner or passed by the Government.

Every landowner is amenable to the duty of utilizing his land to the fullest extent.

ART. 132. All subterranean minerals and natural forces which are economically utilizable for public benefit belong to the state and shall not be affected by private ownership of the land.

ART. 133. The unearned increment shall be taxed by means of a land-value-increment tax and devoted to public benefit.

ART. 134. In readjusting the distribution of land, the state shall be guided by the principle of aiding and protecting the landowning farmers and the landutilizing owners.

ART. 135. The state may, in accordance with law, regulate private wealth and enterprises when such wealth and enterprises are considered detrimental to the balanced development of national economic life.

ART. 136. The state shall encourage, guide and protect the citizens' productive enterprises and the nation's foreign trade.

ART. 137. All public utilities and enterprises of a monopolistic

nature shall be operated by the state; except, in case of necessity, when the state may specially permit private operation.

The private enterprises mentioned in the preceding paragraph may, in case of emergency for national defense, be temporarily managed by the state. The state may also, in accordance with law, take them over for permanent operation upon payment of due compensation.

ART. 138. In order to improve the workers' living conditions, increase their productive ability and relieve unemployment, the state shall enforce labor protective policies.

Women and children shall be afforded special protection in accordance with their age and physical conditions.

ART. 139. Labor and capital shall, in accordance with the principles of mutul help and cooperation, develop together productive enterprises.

ART. 140. In order to promote agricultural development and the welfare of the farming populace, the state shall improve rural economic and living conditions and increase farming efficiency by employment of scientific farming.

The state may regulate the production and distribution of agricultural products in both kind and quantity.

ART. 141. The state shall accord due relief or compensation to those who suffer disablement or loss of life in the performance of military or public services.

ART. 142. The state shall give suitable relief to the aged, feeble or disabled who are incapable of earning a living.

[CHAPTER] IX.—*Education*

ART. 143. The educational aim of the Republic of China shall be to develop a national spirit, to cultivate a national morality, to train the people for self-government and to increase their ability to earn a livelihood, and thereby to build up a sound and healthy body of citizens.

ART. 144. Every citizen of the Republic of China shall have an equal opportunity to receive education.

ART. 145. All public and private educational institutions in the country shall be subject to state supervision and amenable to the duty of carrying out the educational policies formulated by the state.

ART. 146. Children between twelve and six years old are of school age and shall receive elementary education free of tuition. Detailed provisions shall be provided by law.

ART. 147. All persons over school age who have not received an elementary education shall receive supplementary education free of tuition. Detailed provisions shall be provided by law.

ART. 148. In establishing universities and technical schools, the state shall give special consideration to the needs of the respective localities so as to afford the people thereof an equal opportunity to receive higher education, thereby hastening a balanced national cultural development.

ART. 149. Educational appropriations shall constitute no less than fifteen percent of the total amount of the budget of the Central Government and no less than thirty percent of the total amount of the provincial, district and municipal budgets respectively.

Educational endowment funds independently set aside in accordance with law shall be safeguarded.

Educational expenditures in needy Provinces shall be subsidized by the Central Treasury.

ART. 150. Private educational institutions with a high record of achievement shall be encouraged or subsidized.

ART. 151. Education for Chinese citizens residing abroad shall be encouraged or subsidized.

ART. 152. Every public or private educational institution in the country shall establish a number of free scholarships and prizes to be awarded, by way of encouragement, to students who achieve high scholastic attainments and show good conduct but are unable to receive further education.

ART. 153. Teachers and administrative officers of educational institutions having good records and long service shall be encouraged and have their interests protected. Their annual increases of salary for merit and also pensions shall be determined by law.

ART. 154. Academic or technical research, inventions and discoveries shall be encouraged and protected.

ART. 155. Ancient relics and remains of historical, cultural and artistic value shall be protected and preserved by the state.

[CHAPTER] X.—*Finance*

ART. 156. The division of revenues and expenditures between the various grades of government and the grant of subsidies or mutual financial assistance between them shall be determined by law.

ART. 157. The various grades of government shall once every fiscal year each prepare a general budget and a general statement of accounts stating their respective annual revenues and expenditures. The scope of the budget and the procedure for making the budget stating the accounts shall be determined by law.

The budget and statement of accounts for public enterprises operated by the various grades of government may be made in accordance with the regulations governing such budgets and statements of accounts; but the net profit and loss of such enterprises shall, in accordance with law, be incorporated in the general budget and statement of accounts of the government operating them.

For constructive plans spread over a long period, the various grades of government may, in accordance with law, appropriate continuous expenditure for a number of years, but such appropriations shall be incorporated in the general budget.

The general budget of any grade of government shall not be valid unless made in accordance with the procedure prescribed by law.

ART. 158. The amount of expenditures authorized in the budget shall be the maximum limit of expenditures, which shall not be altered or exceeded except when additional expenditures are authorized in accordance with the procedure of budget making.

The various grades of government may ask for an extraordinary budget on account of any of the following conditions:

1. Emergency plans for national defense or protection.
2. Great calamities.
3. Urgent important constructive works.

ART. 159. While the following powers pertain to the Legislative Yuan in the case of the Central Government, they may be exercised by the legally designated organ, if, in accordance with law, such matters may be effected independently by a Province, district or municipality:

1. To impose or alter the rate of taxes and levies, fines, penalties, or other imposts of a compulsory nature.

2. To raise public loans, dispose of public property or conclude contracts which increase the burden of the public treasury.
3. To establish or cancel public enterprises, monopolies, franchises or any other profit-making enterprise.
4. To grant or cancel monopolies, franchises or any other special privileges.

Unless specially authorized by law, the government of a Province, district or municipality shall not raise foreign loans or directly utilize foreign capital.

ART. 160. Within the territorial limits of the Republic of China all goods shall be permitted to circulate freely. They shall not be seized or detained except in accordance with law.

Customs duty is a Central Government revenue. It shall be collected only once when the goods enter or leave the country.

The various grades of government shall not collect any dues on goods in transit within the country, with the exception of tolls levied for the purpose of improving the waterways and roads on vessels and vehicles making use of them.

The right to impose taxes and levies on goods belongs to the Central Government and shall not be exercised except in accordance with law.

ART. 161. In the financial organization of all Government offices, the independence of the disbursing, accounting and auditing departments shall be separately maintained. Detailed provisions shall be provided by law.

[CHAPTER] XI.—*Military Forces*

ART. 162. The armed forces of the Republic of China are maintained for national defense. They shall be under the control of the Central Government. Their duty shall be to safeguard national sovereignty, protect the state's territory, resist foreign invasion and obey law and others.

ART. 163. The armed forces shall be raised principally by conscription.

The obligation of citizens to participate in national defense shall be determined by law.

ART. 164. The organization of land, sea and air forces shall be determined by law.

ART. 165. The supreme command of the land, sea and air forces by the President of the Republic shall be exercised, in time of peace, through the competent ministry or ministries and, in time of foreign invasion or war, through a Commander-in-Chief appointed by the President of the Republic with the advice and consent of the Legislative Yuan. As soon as hostilities are terminated, the Commander-in-Chief shall immediately vacate office.

ART. 166. In the event of a foreign nation declaring war on the country or attacking the country without previous declaration, the President of the Republic may first issue an order of mobilization and defense and declare a state of emergency, but shall, in accordance with law, request ratification thereof.

ART. 167. The entire country shall, in accordance with the needs of national defense, be divided into garrison areas. Details shall be determined by law.

No military commander of a garrison area may be permanently posted at a provincial capital.

ART. 168. The armed forces shall be stationed in different areas for national defense. They shall not be transferred or made use of except by order of the Central Government or at the request of a provincial, district or municipal government for assistance in the event of an emergency.

Actions taken in cases of emergency mentioned in the foregoing paragraph shall be immediately reported to the Central Government by the provincial, district or municipal government and by the military commander of the garrison area concerned.

ART. 169. Military expenditures shall be paid out of the Central Treasury. The amount of expenditure and number of officers and men shall be definitely specified in the budget.

The military commissariat shall be independent of the commander and administered by the Central Treasury in accordance with law.

ART. 170. No provincial, district or municipal government may raise armed forces or establish military schools or arsenals.

Matters concerning protection and public order in the Province, districts and municipalities shall be determined by law.

ART. 171. No soldier in active service may interfere with or express opinions on politics.

ART. 172. No soldier in active service may concurrently hold an administrative office.

ART. 173. The jurisdiction of military tribunals and the organization thereof shall be determined by law.

[CHAPTER] XII.—*Annex*

ART. 174. The term "law" as used in the Constitution means whatever may be passed by the Legislative Yuan and promulgated by the President of the Republic as law.

ART. 175. Laws in conflict with the Constitution shall be null and void.

Administrative orders in conflict with the Constitution or statutes shall be null and void.

ART. 176. The Constitution shall be interpreted by the Judicial Yuan.

ART. 177. No amendment to the Constitution may be made unless it shall have been proposed by over one fourth of the delegates to the People's Congress and passed by at least two thirds of the delegates present at a meeting having a quorum of over three fourths of the entire Congress.

A proposed amendment to the Constitution shall be made public by the proposer or proposers one year before the assembling of the People's Congress.

ART. 178. This Constitution shall come into force on the day of promulgation.

APPENDIX O

DRAFT CONSTITUTION, 5 MAY 1936[1]

[PREAMBLE]

By virtue of the mandate received from the whole body of citizens and in accordance with the bequeathed teachings of Dr. Sun, Founder of the Republic of China, the People's Congress of the Republic of China hereby ordains and enacts this Constitution and causes it to be promulgated throughout the land for faithful and perpetual observance by all.

CHAPTER I.—*General Provisions*

ART. 1. The Republic of China is a *San Min Chu I* Republic.

ART. 2. The sovereignty of the Republic of China is vested in the whole body of citizens.

ART. 3. Persons having acquired the nationality of the Republic of China are citizens of the Republic of China.

ART. 4. The territory of the Republic of China consists of areas originally constituting Kiangsu, Chekiang, Anhwei, Kiangsi, Hupei, Hunan, Szechuan, Hsikang, Hopei, Shantung, Shansi, Honan, Shensi, Kansu, Chinghai, Fukien, Kwangtung, Kwangsi, Yunnan, Kweichow, Liaoning, Kirin, Heilungkiang, Jehol, Chahar, Suiyuan, Ningsia, Sinkiang, Mongolia and Tibet.

The territory of the Republic of China shall not be altered except by resolution of the People's Congress.

ART. 5. All races of the Republic of China are component parts of the Chinese Nation and shall be equal.

ART. 6. The national flag of the Republic of China shall have a red background with a blue sky and white sun in the upper left corner.

[1] Passed by the Legislative Yuan, 2 May 1936; promulgated by the National Government, 5 May 1936. Legislative Yuan, *Draft of the Constitution of the Republic of China* (in Chinese, English, French and Italian, Nanking, 1936), 2-52.

ART. 7. The national capital of the Republic of China shall be at Nanking.

CHAPTER II.—*Rights and Duties of the Citizens*

ART. 8. All citizens of the Republic of China shall be equal before the law.

ART. 9. Every citizen shall have the liberty of the person; except in accordance with law, no one may be arrested, detained, tried or punished.

When a citizen is arrested or detained on suspicion of having committed a criminal act, the authority responsible for such action shall immediately inform the citizen himself and his relatives of the cause for his arrest or detention and shall, within a period of twenty-four hours, send him to a competent court for trial. The citizen so arrested or detained, or any one else, may also petition the court to demand from the authority responsible for such action the surrender, within twenty-four hours, of his person to the court for trial.

The court shall not reject such a petition: nor shall the responsible authority refuse to execute such a writ as mentioned in the preceding paragraph.

ART. 10. With the exception of those in active military service, no one may be subject to military jurisdiction.

ART. 11. Every citizen shall have the freedom of domicile; no private abode may be forcibly entered, searched or sealed except in accordance with law.

ART. 12. Every citizen shall have the freedom to change his residence; such freedom shall not be restricted except in accordance with law.

ART. 13. Every citizen shall have the freedom of speech, writing and publication; such freedom shall not be restricted except in accordance with law.

ART. 14. Every citizen shall have the freedom of secrecy of correspondence; such freedom shall not be restricted except in accordance with law.

ART. 15. Every citizen shall have the freedom of religious belief; such freedom shall not be restricted except in accordance with law.

ART. 16. Every citizen shall have the freedom of assembly and forming associations; such freedom shall not be restricted except in accordance with law.

ART. 17. No private property shall be requisitioned, expropriated, sealed or confiscated except in accordance with law.

ART. 18. Every citizen shall have the right to present petitions, lodge complaints and institute legal proceedings in accordance with law.

ART. 19. Every citizen shall have the right to exercise, in accordance with law, the powers of election, recall, initiative and referendum.

ART. 20. Every citizen shall have the right to compete, in accordance with law, in state examinations.

ART. 21. Every citizen shall, in accordance with law, be amenable to the duty of paying taxes.

ART. 22. Every citizen shall, in accordance with law, be amenable to the duty of performing military and labor service.

ART. 23. Every citizen shall, in accordance with law, be amenable to the duty of rendering public service.

ART. 24. All other liberties and rights of the citizens which are not detrimental to public peace and order or public welfare shall be guaranteed by the Constitution. Such liberties and rights shall not be restricted except in accordance with law.

ART. 25. Only laws imperative for safeguarding national security, averting a national crisis, maintaining public peace and order or promoting public interest may restrict the citizens' liberties and rights.

ART. 26. Any public functionary who illegally infringes upon any private liberty or right, shall, besides being subject to disciplinary punishment, be responsible under criminal and civil law. The injured person may also, in accordance with law, claim indemnity from the state for damages sustained.

CHAPTER III.—*The People's Congress*

ART. 27. The People's Congress shall be constituted of delegates elected as follows:

1. Each district, municipality or area of an equivalent status shall elect one delegate, but in case its population exceeds

300,000, one additional delegate shall be elected for every additional 500,000 people.

The status of areas to be equivalent to a district or municipality shall be defined by law.

2. The number of delegates to be elected from Mongolia and Tibet shall be determined by law.
3. The number of delegates to be elected by Chinese citizens residing abroad shall be determined by law.

ART. 28. Delegates to the People's Congress shall be elected by universal, equal and direct suffrage and by secret ballot.

ART. 29. Citizens of the Republic of China having attained the age of twenty years shall, in accordance with law, have the right to elect delegates. Citizens having attained the age of twenty-five years shall, in accordance with law, have the right to be elected delegates.

ART. 30. The term of office of delegates to the People's Congress shall be six years.

When a delegate is found guilty of violation of a law or neglect of his duty, his constituency shall recall him in accordance with law.

ART. 31. The People's Congress shall be convened by the President once every three years. Its sessions shall last one month, but may be extended another month when necessary.

Extraordinary sessions of the People's Congress may be convened at the instance of two fifths or more of its members.

The President may convene extraordinary sessions of the People's Congress.

The People's Congress shall meet at the seat of the Central Government.

ART. 32. The powers and functions of the People's Congress shall be as follows:

1. To elect the President and Vice President, the President and Vice President of the Legislative Yuan, the President and Vice President of the Censor Yuan, the members of the Legislative Yuan and the members of the Censor Yuan.
2. To recall the President and Vice President, the President and Vice President of the Legislative Yuan, the Judicial Yuan,

the Examination Yuan or the Censor Yuan, the members of the Legislative Yuan or the Censor Yuan.

3. To initiate laws.
4. To hold referenda on laws.
5. To amend the Constitution.
6. To exercise such other powers as are conferred by the Constitution.

ART. 33. Delegates to the People's Congress shall not be held responsible outside of the Congress for opinions they may express and votes they may cast during the session of the Congress.

ART. 34. Without the permission of the People's Congress, no delegate shall be arrested or detained during the session except when apprehended *in flagrante delicto*.

ART. 35. The organization of the People's Congress, the election as well as recall of its delegates and the procedure for the exercise of its powers and functions shall be determined by law.

CHAPTER IV.—*The Central Government*

SECTION 1.—The President

ART. 36. The President is the head of the state and represents the Republic of China in foreign relations.

ART. 37. The President shall command the land, sea and air forces of the whole country.

ART. 38. The President shall, in accordance with law, promulgate laws and issue mandates with the countersignature of the President of the Yuan concerned.

ART. 39. The President shall, in accordance with law, exercise the power of declaring war, negotiating peace and concluding treaties.

ART. 40. The President shall, in accordance with law, declare and terminate a state of emergency.

ART. 41. The President shall, in accordance with law, exercise the power of granting amnesties, special pardons, remission of sentences and restoration of civil rights.

ART. 42. The President shall, in accordance with law, appoint and remove civil and military officials.

ART. 43. The President shall, in accordance with law, confer honors and award decorations.

ART. 44. In the event of national emergency or great national economic crisis which calls for urgent measures, the President may, by a resolution of the Executive Council, issue emergency orders to cope with the situation, provided that such orders shall be submitted to the Legislative Yuan for confirmation three months after their issuance.

ART. 45. The President may convene a meeting of the Presidents of the five Yuan to discuss matters concerning two or more than two Yuan and such matters as the President may wish to consult them.

ART. 46. The President shall be responsible to the People's Congress.

ART. 47. Citizens of the Republic of China, having attained the age of forty years, may be elected President or Vice President of the Republic.

ART. 48. The election of the President and Vice President shall be provided for by law.

ART. 49. The President and Vice President shall hold office for a term of six years and may be reelected for a second term.

ART. 50. The President shall, on the day of his inauguration, take the following oath:

I do solemnly and sincerely swear before the people that I will observe the Constitution, faithfully perform my duties, promote the welfare of the people, safeguard the security of the state and be loyal to the trust of the people. Should I break my oath, I will submit myself to the most severe punishment the law may provide.

ART. 51. When the President vacates his office, the Vice President shall succeed him for the remainder of his term of office.

In case the President is incapacitated by any cause, the Vice President shall discharge the duties of his office. In case both the President and the Vice President are incapacitated, the President of the Executive Yuan shall discharge the duties of the President's office.

ART. 52. The President shall retire from office on the day his term expires. If by that time a new President has not been in-

augurated, the President of the Executive Yuan shall discharge the duties of the President's office.

ART. 53. The period for the President of the Executive Yuan to discharge the duties of the President's office shall not exceed six months.

ART. 54. Except in case of an offense against the internal or external security of the state, the President shall not be liable to criminal prosecution until he has been recalled or has retired from office.

SECTION 2.—The Executive Yuan

ART. 55. The Executive Yuan is the highest organ through which the Central Government exercises its executive powers.

ART. 56. In the Executive Yuan, there shall be a President, a Vice President and a number of Executive Members to be appointed and removed by the President.

Of the Executive Members specified in the preceding paragraph, the number without portfolio shall not exceed one half of the number with portfolio as provided under paragraph one of Article 58.

ART. 57. In the Executive Yuan, there shall be various Ministries and Commissions which shall separately exercise their respective executive powers.

ART. 58. The Ministers of the various Ministries and the Chairmen of the various Commissions shall be appointed by the President from among the Executive Members.

The President and Vice President of the Executive Yuan may concurrently be a Minister or a Commission Chairman mentioned in the preceding paragraph.

ART. 59. The President and Vice President of the Executive Yuan, the Executive Members, the Ministers of the various Ministries and the Chairmen of the various Commissions shall be individually responsible to the President.

ART. 60. In the Executive Yuan there shall be an Executive Council composed of the President and Vice President of the Executive Yuan and the Executive Members to be presided over by the President of the Executive Yuan.

ART. 61. The following matters shall be decided by an Executive Council:

1. Statutory and budgetary bills to be submitted to the Legislative Yuan.
2. Bills concerning a state of emergency and amnesties to be submitted to the Legislative Yuan.
3. Bills concerning declaration of war, negotiation of peace, conclusion of treaties and other important international affairs to be submitted to the Legislative Yuan.
4. Matters of common concern to the various Ministries and Commissions.
5. Matters referred by the President or the President of the Executive Yuan.
6. Matters submitted by the Vice President of the Executive Yuan, the Executive Members, the various Ministries and Commissions.

ART. 62. The organization of the Executive Yuan shall be determined by law.

SECTION 3.—The Legislative Yuan

ART. 63. The Legislative Yuan is the highest organ through which the Central Government exercises its legislative powers. It shall be responsible to the People's Congress.

ART. 64. The Legislative Yuan shall have the power to decide on measures concerning legislations, budgets, a state of emergency, amnesties, declaration of war, negotiation of peace, conclusion of treaties and other important international affairs.

ART. 65. In the discharge of its duties the Legislative Yuan may interrogate the various Yuan, Ministries and Commissions.

ART. 66. In the Legislative Yuan, there shall be a President and a Vice President, who shall hold office for a term of three years and may be eligible for reelection.

ART. 67. Members of the Legislative Yuan shall be elected by delegates of the various Provinces, Mongolia, Tibet and citizens residing abroad to the People's Congress, who shall separately hold a preliminary election to nominate their respective candidates ac-

cording to the quota provided in the succeeding paragraphs and submit a list thereof to the Congress. The candidates need not be delegates to the People's Congress.

1. A Province with a population of less than 5,000,000 shall nominate four candidates. A Province with a population of more than 5,000,000, but less than 10,000,000, shall nominate six candidates. A Province with a population of more than 10,000,000, but less than 15,000,000, shall nominate eight candidates. A Province with a population of more than 15,000,000, but less than 20,000,000, shall nominate ten candidates. A Province with a population of more than 20,000,000, but less than 25,000,000, shall nominate twelve candidates. A Province with a population of more than 25,000,000, but less than 30,000,000, shall nominate fourteen candidates. A Province with a population of more than 30,000,000 shall nominate sixteen candidates.
2. Mongolia and Tibet shall each nominate eight candidates.
3. Citizens residing abroad shall nominate eight candidates.

ART. 68. Members of the Legislative Yuan shall hold office for a term of three years and may be eligible for reelection.

ART. 69. The Executive Yuan, Judicial Yuan, Examination Yuan and Censor Yuan may submit to the Legislative Yuan measures concerning matters within their respective jurisdiction.

ART. 70. The President may, before promulgation or execution of a measure adopted by the Legislative Yuan, request the said Yuan to reconsider it.

If the Legislative Yuan, after reconsideration, decides to confirm the original measure so referred to it in accordance with the preceding paragraph by a vote of two thirds or more of its members present, the President shall immediately promulgate or execute the said measure. But in case of bills concerning the making of law or conclusion of treaties, the President may refer them to the People's Congress for final decision.

ART. 71. The President shall promulgate a measure presented by the Legislative Yuan for promulgation within thirty days after its receipt.

ART. 72. Members of the Legislative Yuan shall not be held responsible outside of the said Yuan for opinions they may express and votes they may cast during the session.

ART. 73. Without the permission of the Legislative Yuan, no member may be arrested or detained except when apprehended *in flagrante delicto.*

ART. 74. No member of the Legislative Yuan may concurrently hold any other public office or engage in any business or profession.

ART. 75. The election of members of the Legislative Yuan and the organization of the Legislative Yuan shall be determined by law.

SECTION 4.—The Judicial Yuan

ART. 76. The Judicial Yuan is the highest organ through which the Central Government exercises its judicial powers. It shall attend to the adjudication of civil, criminal and administrative suits and judicial administration.

ART. 77. In the Judicial Yuan, there shall be a President and a Vice President who shall hold office for a term of three years to be appointed by the President.

The President of the Judicial Yuan shall be responsible to the People's Congress.

ART. 78. Matters concerning special pardons, remission of sentence and restoration of civil rights shall be submitted to the President for action by the President of the Judicial Yuan in accordance with law.

ART. 79. The Judicial Yuan shall have the power to unify the interpretation of statutes and ordinances.

ART. 80. Judicial officials shall, in accordance with law, have perfect independence in the conduct of trials.

ART. 81. No judicial official may be removed from office, unless he has been subject to criminal or disciplinary punishment or declared an interdicted person; nor may a judicial official be suspended or transferred or have his salary reduced except in accordance with law.

ART. 82. The organization of the Judicial Yuan and the various courts of justice shall be determined by law.

SECTION 5.—The Examination Yuan

ART. 83. The Examination Yuan is the highest organ through which the Central Government exercises its examination powers. It shall attend to the selection of civil service candidates by examination and to the registration of persons qualified for public service.

ART. 84. In the Examination Yuan there shall be a President and a Vice President who shall hold office for a term of three years, to be appointed by the President.

The President of the Examination Yuan shall be responsible to the People's Congress.

ART. 85. The Examination Yuan shall, in accordance with law, by examination and registration, determine the following qualifications:

1. For appointment as a public functionary.
2. For candidacy to public office.
3. For practice in specialized professions and as technical experts.

ART. 86. The organization of the Examination Yuan shall be determined by law.

SECTION 6.—The Censor Yuan

ART. 87. The Censor Yuan is the highest organ through which the Central Government exercises its censorial powers. It shall attend to impeachment, discipline and punishment of public funtionaries and auditing and be responsible to the People's Congress.

ART. 88. In the discharge of its censorial powers, the Censor Yuan may, in accordance with law, interrogate the various Yuan, Ministries and Commissions.

ART. 89. In the Censor Yuan, there shall be a President and a Vice President, who shall hold office for a term of three years and may be eligible for reelection.

ART. 90. Members of the Censor Yuan shall be elected by the People's Congress from candidates separately nominated by the

delegates of the various Provinces, Mongolia, Tibet and Chinese citizens residing abroad. Each group of delegates shall nominate not more than two candidates. The candidates need not necessarily be delegates to the Congress.

ART. 91. Members of the Censor Yuan shall hold office for a term of three years and may be eligible for reelection.

ART. 92. When the Censor Yuan finds a public functionary in the Central of local government guilty of violation of a law or neglect of his duty, an impeachment may be instituted upon the proposal of one or more members and the endorsement, after due investigation, of five or more members. Impeachment against the President or Vice President, the President or Vice President of the Executive Yuan, Legislative Yuan, Judicial Yuan, Examination Yuan or Censor Yuan may be instituted only upon the proposal of ten or more members and the endorsement, after due investigation, of one half or more of the members of the entire Yuan.

ART. 93. When an impeachment is instituted against the President or Vice President or the President or Vice President of the Executive Yuan, Legislative Yuan, Judicial Yuan, Examination Yuan or Censor Yuan in accordance with the preceding article, it shall be brought before the People's Congress. During the adjournment of the People's Congress, the delegates shall be requested to convene in accordance with law an extraordinary session to decide whether the impeached shall be removed from office.

ART. 94. Members of the Censor Yuan shall not be held responsible outside of the said Yuan for opinions they may express and votes they may cast while discharging their duties.

ART. 95. Without the permission of the Censor Yuan, no member of the Censor Yuan may be arrested or detained except when apprehended *in flagrante delicto.*

ART. 96. No member of the Censor Yuan may concurrently hold any other public office or engage in any business or profession.

ART. 97. The election of the members of the Censor Yuan and the organization of the Censor Yuan shall be determined by law.

CHAPTER V.—*The System of Local Government*

SECTION 1.—The Province

ART. 98. In the Province, there shall be a Provincial Government which shall execute the laws and orders of the Central Government and supervise local self-government.

ART. 99. In the Provincial Government there shall be a Governor who shall hold office for a term of three years. He shall be appointed and removed by the Central Government.

ART. 100. In the Province, there shall be a Provincial Assembly which shall be composed of one member from each district or municipality to be elected by the district or municipal council. Members of the Provincial Assembly shall hold office for a term of three years and may be eligible for reelection.

ART. 101. The organization of the Provincial Government and the Provincial Assembly and its power and functions as well as the election and recall of the members of the Provincial Assembly shall be determined by law.

ART. 102. The government of areas not yet established as Provinces shall be determined by law.

SECTION 2.—The District

ART. 103. The district is a unit of local self-government.

ART. 104. All matters which by nature should be dealt with locally shall be matter for local self-government.

Matters for local self-government shall be determined by law.

ART. 105. Citizens of the district shall, in accordance with law, exercise the powers of initiative and referendum in matters concerning district self-government, as well as the powers of election and recall of the District Magistrate and other elective officials in the service of district self-government.

ART. 106. In the district, there shall be a District Council, the members of which shall be directly elected by the citizens in the District General Meeting. Members of the District Council shall hold office for a term of three years and may be eligible for reelection.

ART. 107. District laws and regulations which are in conflict

with the laws and ordinances of the Central or Provincial Government shall be null and void.

ART. 108. In the district, there shall be a District Government with a District Magistrate, who shall be elected by the citizens in the District General Meeting. The Magistrate shall hold office for a term of three years and may be eligible for reelection.

Only those persons found qualified in public examinations held by the Central Government or adjudged qualified by the Ministry of Public Service Registration may be candidates for the office of District Magistrate.

ART. 109. The District Magistrate shall administer the affairs of the district in accordance with the principles of self-government and, under the direction of the Provincial Governor, execute matters assigned by the Central and Provincial Governments.

ART. 110. The organization and powers and functions of the District Council and District Government as well as the election and recall of the District Magistrate and the members of the District Council shall be determined by law.

SECTION 3.—The Municipality

ART. 111. Subject to the provisions under this section, the provisions governing self-government of the district shall apply *mutatis mutandis* to the municipality.

ART. 112. In the municipality, there shall be a Municipal Council, the members of which shall be directly elected by the citizens in the Municipal General Meeting. One third of the members shall retire and be replaced by election annually.

ART. 113. In the Municipality, there shall be Municipal Government with a Mayor to be directly elected by the citizens in the Municipal General Meeting. He shall hold office for a term of three years and may be eligible for reelection.

Only those persons found qualified in public examinations held by the Central Government or adjudged qualified by the Ministry of Public Service Registration may be candidates for the office of Mayor.

ART. 114. The Mayor shall administer the affairs of the municipality in accordance with the principles of municipal self-

government and, under direction of the competent supervising authority, execute matters assigned by the Central or Provincial Government.

ART. 115. The organization and powers and functions of the Municipal Council and Municipal Government as well as the election and recall of the members of the Municipal Council and Mayor shall be determined by law.

CHAPTER VI.—*National Economic Life*

ART. 116. The economic system of the Republic of China shall be based upon the Principle of Livelihood (*Min Sheng Chu I*) and shall aim at national economic sufficiency and equality.

ART. 117. The land within the territorial limits of the Republic of China belongs to the people as a whole. Any part thereof, the ownership of which has been lawfully acquired by an individual or individuals, shall be protected by, and subject to the restrictions of, law.

The state may, in accordance with law, tax or expropriate private land on the basis of the value declared by the owner or assessed by the Government.

Every land-owner is amenable to the duty of utilizing his land to the fullest extent.

ART. 118. All subterranean minerals and natural forces, which are economically utilizable for public benefit, belong to the state and shall not be effected by private ownership of the land.

ART. 119. The unearned increment shall be taxed by means of a land-value-increment tax and devoted to public benefit.

ART. 120. In readjusting the distribution of land, the state shall be guided by the principle of aiding and protecting the land-owning farmers and the land-utilizing owners.

ART. 121. The state may, in accordance with law, regulate private wealth and enterprises, when such wealth and enterprises are considered detrimental to the balanced development of national economic life.

ART. 122. The state shall encourage, guide and protect the citizens' productive enterprises and the nation's foreign trade.

ART. 123. All public utilities and enterprises of a monopolistic nature shall be operated by the state, except in case of necessity, when the state may specially permit private operation.

The private enterprises mentioned in the preceding paragraph may, in case of emergency for national defense, be temporarily managed by the state. The state may also, in accordance with law, take them over for permanent operation upon payment of due compensation.

ART. 124. In order to improve the workers' living conditions, increase their productive ability and relieve unemployment, the state shall enforce labor productive policies.

Women and children shall be afforded special protection in accordance with their age and physical condition.

ART. 125. Labor and capital shall, in accordance with the principles of mutual help and cooperation, develop together productive enterprises.

ART. 126. In order to promote agricultural development and the welfare of the farming population, the state shall improve rural economic and living conditions and increase farming efficiency by employment of scientific farming.

The state may regulate the production and distribution of agricultural products in both kind and quantity.

ART. 127. The state shall accord due relief or compensation to those who suffer disability or loss of life in the performance of military, labor or public services.

ART. 128. The state shall give suitable relief to the aged, feeble or disabled, who are incapable of earning a living.

ART. 129. While the following powers appertain to the Legislative Yuan in the case of the Central Government, they may be exercised by the legally designated organ, if, in accordance with law, such matters may be effected independently by a Province, district or municipality:

1. To impose or alter the rate of taxes and levies, fines, penalties or other imposts of a compulsory nature.
2. To raise public loans, dispose of public property or conclude contracts which increase the burden of the public treasury.

3. To establish or cancel public enterprises, monopolies, franchises or any other profit-making enterprises.
4. To grant or cancel monopolies, franchises or any other special privileges.

Unless specially authorized by law, the government of a Province, district or municipality shall not raise foreign loans or directly utilize foreign capital.

ART. 130. Within the territorial limits of the Republic of China all goods shall be permitted to circulate freely. They shall not be seized or detained except in accordance with law.

Customs duty is a Central Government revenue. It shall be collected only once, when the goods enter or leave the country.

The various grades of government shall not collect any dues on goods in transit within the country.

The right to impose taxes and levies on goods belongs to the Central Government and shall be exercised except in accordance with law.

CHAPTER VII.—*Education*

ART. 131. The educational aim of the Republic of China shall be to develop a national spirit, to cultivate a national morality, to train the people for self-government and to increase their ability to earn a livelihood and thereby to build up a sound and healthy body of citizens.

ART. 132. Every citizen of the Republic of China shall have an equal opportunity to receive education.

ART. 133. All public and private education institutions in the county shall be subject to state supervision and amenable to the duty of carrying out the educational policies formulated by the state.

ART. 134. Children between six and twelve years old are of school age and shall receive elementary education free of tuition.

ART. 135. All persons over school age who have not received an elementary education shall receive supplementary education free of tuition.

ART. 136. In establishing universities and technical schools, the state shall give special consideration to the needs of the respective

localities so as to afford the people thereof an equal opportunity to receive higher education, thereby hastening a balanced national cultural development.

ART. 137. Educational appropriations shall constitute no less than fifteen percent of the total amount of the budget of the Central Government and no less than thirty percent of the total amount of the provincial, district and municipal budgets respectively. Educational endowment funds independently set aside in accordance with law shall be safeguarded.

Educational expenditures in needy Provinces shall be subsidized by the central treasury.

ART. 138. The state shall accord encouragement or subsidy to the following enterprises or persons:

1. Private educational enterprises within the country with a high record of achievement.
2. Educational enterprises for Chinese citizens residing abroad.
3. Those who have made discoveries and inventions in academic or technical knowledge.
4. Those who have served in educational institutions with good records and long service.
5. Students of high scholastic attainments and good conduct who are unable to receive further education.

CHAPTER VIII.—*Application and Amendment of the Constitution*

ART. 139. The term "law" as used in the Constitution means whatever may be passed by the Legislative Yuan and promulgated by the President as law.

ART. 140. Laws in conflict with the Constitution shall be null and void.

In matters concerning whether or not any law is in conflict with the Constitution, the Censor Yuan shall, within six months of the enforcement of such law, request an interpretation by the Judicial Yuan. Detailed provisions shall be determined by law.

ART. 141. Administrative orders in conflict with the Constitution or statutes shall be null and void.

ART. 142. The Constitution shall be interpreted by the Judicial Yuan.

ART. 143. Before the number of Provinces and areas with complete local self-government reaches more than half of the total, members of the Legislative Yuan and of the Censor Yuan shall be elected or appointed in accordance with the following provisions:

1. In the case of the members of the Legislative Yuan, delegates of the various Provinces, Mongolia, Tibet and citizens residing abroad to the People's Congress shall separately hold a preliminary election to nominate one half of the number of their respective candidates as provided by Article 67 and submit them to the People's Congress for election. The President of the Legislative Yuan shall nominate the remaining half and submit them to the President for appointment.
2. In the case of the members of the Censor Yuan, delegates of the various Provinces, Mongolia, Tibet and citizens residing abroad to the People's Congress shall separately hold a preliminary election to nominate one half of the number of their respective candidates as provided in Article 90 and submit them to the People's Congress for election. The President of the Censor Yuan shall nominate the remaining half and submit them to the President for appointment.

ART. 144. In districts where local self-government has not yet been completed, the magistrates shall be appointed and removed by the Central Government.

The provisions of the preceding paragraph shall apply *mutatis mutandis* to municipalities where local self-government has not been completed.

ART. 145. The procedure for hastening local self-government shall be determined by law.

ART. 146. The powers and functions of the First People's Congress shall be exercised by the Constitution-making People's Congress.[2]

ART. 147. No amendment to the Constitution may be made, unless it shall have been proposed by over one fourth of the delegates to the People's Congress and passed by at least two thirds of the delegates present at a meeting having a quorum of over three fourths of the entire Congress.

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[2] This article was omitted in the text issued 30 April 1937.

A proposed amendment to the Constitution shall be made public by the proposer or proposers one year before the assembling of the People's Congress.

ART. 148. Whenever it is found necessary that any matter provided in this Constitution requires separate procedure for its enforcement, it shall be determined by law.

APPENDIX P

ORGANIC LAW OF THE PEOPLE'S POLITICAL COUNCIL, 16 MARCH 1942[1]

ARTICLE 1. The National Government, in order to utilize the best minds in national affairs and to rally all elements in the country in time of war, shall specially form a People's Political Council.

ART. 2. Citizens of the Chinese Republic, of either sex and above 30 years of age and fulfilling either one of the four conditions listed below, may become members of the People's Political Council.

ART. 3. The People's Political Council shall have altogether 240 members, whose allocation shall be as follows:

Group A. One hundred and sixty-four members shall be chosen from among those who have served with distinction for more than three years in any Government organ, public body or private institution in the various Provinces and municipalities (such as come under the direct control of the Executive Yuan); the number of councilors the various Provinces and municipalities may each send to the People's Political Council shall be in accordance with the attached table; the councilors from the various Provinces and municipalities shall not be confined to those having domicile in the respective areas.

Group B. Eight (five for Mongolia and three for Tibet) members shall be chosen from among those who have served with distinction for more than three years in any Government organ, public body or private institution in Mongolia and Tibet, or those who have an intimate knowledge of the political and social conditions in these two places and have a high reputation.

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[1] Chinese Ministry of Information, *China Handbook, 1937-1943: A Comprehensive Survey of Major Developments in China in Six Years of War* (New York, 1943), 110-112. (By permission of the Macmillan Company.)

Group C. Eight members shall be chosen from among those who have worked with distinction for more than three years in overseas Chinese communities, or those who have an intimate knowledge of the livelihood conditions and have a high reputation.

Group D. Sixty members shall be chosen from among those who have served with distinction for more than three years in important cultural or economic organizations, or those who have a high reputation for devotion to national affairs.

ART. 4. The selection of members of the People's Political Council shall be in accordance with the following procedure:

(1) Group A councilors shall be elected by the provisional representative councils in the various Provinces and municipalities; unsigned ballots shall be used and those winning a greater number of votes are elected. Election by correspondence may be used when the National Government summons the People's Political Council, if the next session of the provisional people's assemblies in the various Provinces and municipalities is so distant that the election can not be completed before the convocation of the People's Political Council.

(2) In the case of Group A councilors from Provinces and municipalities where provisional representative councils have not yet been formed, the Party offices in these regions shall nominate twice as many candidates as their allocated number of councilors, and submit the names to the Supreme National Defense Council for selection by the Kuomintang Central Executive Committee.

(3) In the case of Group B and Group C councilors, the Mongolian and Tibetan Affairs Commission and the Overseas Chinese Affairs Commission shall, respectively, nominate twice as many candidates as their allocated number of councilors, and submit the names to the Supreme National Defense Council for selection by the Kuomintang Central Executive Committee.

(4) In the case of Group D councilors, the Supreme National Defense Council shall nominate twice as many candidates as

the allocated number of councilors, and submit the names to the Kuomintang Central Executive Committee for selection.

ART. 5. The Supreme National Defense Council shall appoint a People's Political Council Membership Qualification Examination Committee of from nine to eleven members and shall designate one of the members to serve as chairman. The Committee shall examine the following matters:

(1) If the qualifications of any councilor chosen in accordance with provision No. 1 of Article 4 are found not in conformity with its stipulations, the Committee may petition the Supreme National Defense Council to cancel his councilorship and pass the seat thus vacated to the one who won the next largest number of votes in the particular Province or municipality.
(2) If the qualifications of candidates nominated in accordance with provision Nos. 2, 3 and 4 of Article 4 are found not in conformity with its stipulations, the Committee may petition the Supreme National Defense Council to cancel their status as candidates.

ART. 6. During the war of resistance, the Government shall be required all of its important measures regarding domestic and foreign affairs to the People's Political Council for consideration before putting them into execution. Resolutions adopted, after their approval by the Supreme National Defense Council, shall be handed, according to their nature, to the Government organs concerned to be made into laws, or to become the subject matter of Government mandates for general enforcement. In case of emergency or special circumstances, the chairman of the Supreme National Defense Council may, in accordance with the statute governing the organization of the Supreme National Defense Council, issue such ordinances as are necessary to meet the situation without being subject to the restrictions embodied in the first two provisions of this Article.

ART. 7. The People's Political Council may make proposals to the Government.

ART. 8. The People's Political Council shall have the right to

listen to administrative reports by the Government and to interpellate the Government.

ART. 9. The People's Political Council may form investigation committees to investigate such matters as are entrusted to it by the Government. The People's Political Council may submit the result of its investigation to the Government for consideration and action.

ART. 10. The tenure of office of members of the People's Political Council shall be one year. It may be prolonged whenever the Government deems it necessary.

ART. 11. The People's Political Council shall meet once every six months, each session lasting for ten days. Whenever it deems it necessary, the Government may prolong the period of a session or summon an extraordinary session.

ART. 12. During its recess, the People's Political Council shall form a Resident Committee of twenty-five members, to be chosen by members of the presidium and members of the Council from among themselves. The functions of the Resident Committee shall be as follows:

(1) To receive various kinds of reports from the Government.
(2) To hasten the enforcement of the Council's resolutions by the Government and from time to time to investigate into the conditions of enforcement.
(3) To exercise the rights of making proposals and conducting investigations on behalf of the Council so long as it does not exceed the scope set by resolutions of the Council.

ART. 13. The People's Political Council may hold meetings when more than half of its members are in attendance.

ART. 14. The Presidents of the various Yuan and heads of the various ministries and commissions may attend meetings of the People's Political Council, but they shall not take part in the voting.

ART. 15. Those holding Government posts are not eligible to be members of the People's Political Council. This, however, does not apply to those working in local organs of self-government and educational and academic institutions. Present members of the provisional representative councils in the Provinces and municipalities are not eligible to be members of the People's Political Council.

ART. 16. The People's Political Council shall have a presidium to be formed of from five to seven persons elected by the Council. The members of the presidium do not have to be members of the People's Political Council. When the People's Political Council or its Resident Committee meets, members of the presidium shall choose one of their members to act as chairman.

ART. 17. These Regulations may be revised by Government mandates whenever necessary.

ART. 18. These Regulations shall go into force on the date of their promulgation.

ALLOCATION OF MEMBERS OF THE PEOPLE'S POLITICAL COUNCIL

Group A. Eight councilors each from Szechwan, Hunan, Chekiang, Kiangsu, Kwangtung, Anhwei, Hopei, Shantung, Honan, Hupeh and Kiangsi; six councilors each from Shensi, Fukien, Kwangsi and Yunnan; four councilors each from Kweichow, Shansi, Kansu, Liaoning and Kirin; three councilors each from Chahar, Suiyuan, Sinkiang, Shanghai and Chungking; two councilors each from Chinghai, Sikiang, Ningsia, Heilungkiang, Jehol, Nanking and Peiping; one councilor each from Tientsin, Tsingtao and Sian.

Group B. Eight councilors (five for Mongolia and three for Tibet).

Group C. Eight councilors (for overseas Chinese).

Group D. Sixty councilors.

APPENDIX Q

REGULATIONS FOR THE ORGANIZATION OF THE COMMITTEE FOR THE ESTABLISHMENT OF CONSTITUTIONAL GOVERNMENT, 19 OCTOBER 1943[1]

[ARTICLE] 1. With a view to realizing constitutional government, the Supreme National Defense Council has decided to establish a Committee for the Establishment of Constitutional Government (hereinafter called the Committee).

[ART.] 2. With the exception of the members *ex officio* as mentioned in Article 4, the Supreme National Defense Council shall appoint from 35 to 49 out of the following personnel as members of the Committee, namely:

(1) Members of the Central Executive and Supervisory Committees of the Kuomintang;
(2) Members of the People's Political Council; and
(3) Persons well versed in political affairs and constitutional government.[2]

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[1] As announced by the Supreme National Defense Council, 19 October 1943. *China at War,* 11 (1943), 69-70.

[2] The members announced by President Chiang Kai-shek as chairman of the Supreme National Defense Council are as follows:

A. *Ex officio members* (presidium of the People's Political Council):
Dr. Chang Po-ling; Dr. Wu Yi-fang; Dr. Wang Chung-hui; Mo Teh-hui, formerly managing director, Chinese Eastern Railway; Dr. Wang Shih-chieh, formerly Minister of Information; Li Huang, and Kiang Yung.

B. Appointed members:
(1) From the Kuomintang Central Executive and Supervisory Committees:
Dr. H. H. Kung, Vice President, Executive Yuan, and Minister of Finance; Dr. Sun Fo, President, Legislative Yuan; General Wu Te-chen, Secretary General, Central Kuomintang; Chen Pu-lei, Secretary of Generalissimo Chiang Kai-shek; Chang Li-shang, Secretary General, Executive Yuan; General Chang

[ART.] 3. The chairman of the Supreme National Defense Council shall be the chairman of the Committee.

[ART.] 4. Members of the presidium of the People's Political Council shall be *ex officio* members of the Committee.

[ART.] 5. The Committee shall have from nine to eleven standing members to be appointed by the chairman. Three of them shall be responsible for calling meetings.

[ART.] 6. The functions of the Committee will be as follows:

(1) to submit to the Government proposals concerning constitutional government;
(2) to investigate into the working of the various local organs of public opinion and report findings to the Government;
(3) to probe the manners and circumstances in which all laws

Chun, Governor of Szechwan; General Hsiung Shih-hui, formerly Chief, Chinese Military Mission to the United States, now Secretary General, Central Planning Board; Dr. Chu Chia-hua, Chairman, Academia Sinica, and Vice President, Examination Yuan; Chang Tao-fan, Minister of Social Affairs; Liang Han-tsao, Minister of Information; Hung Lan-yu, Vice Minister of Social Affairs; and Dr. Wu Ching-hsiung, member of the Legislative Yuan.

(2) From the People's Political Council:
Dr. Chang Chun-mai (Carson Chang); Chu Fu-cheng; Huang Yen-pei, Hu Lin; Shao Chun-en; Wang Yun-wu; Kiang Heng-yuan; Tso Shun-sheng; Chen Chi-tien; Hsu Hsiao-yen; Li Chung-hsiang; Chou Ping-lin; Chien Tuan-sheng; Tung Pi-wu; Chiang I-ping (Eugene Y. B. Kiang); Fu Ssu-nien; Chien Kung-lai; Sah Meng-wu; Ta Pu-sheng; Hsi Yao Chia Tso; Li Yung-hsin; Liang Shang-tung; and Kung Keng.

(3) Experts:
Wu Shang-ying; Lin Ping; Huang Yu-chang; Lou Tung-sun; Wang Chao-shih; Liang Shu-ming; Chou En-lai; Yen Shu-tang; Chang Chih-kang; Hsiao Kung-chuan; and Dr. Chiang Mon-lin.

C. Standing members:
Dr. Sun Fo; Dr. Chang Chun-mai (Carson Chang); Dr. Wang Shih-chieh; Wang Yun-wu; Mo Teh-hui; Huang Yen-pei; Chu Fu-cheng; Tso Shuh-sheng; Tung Pi-wu; Fu Ssu-nien; and General Wu Te-chen.

D. Conveners:
Dr. Sun Fo; Dr. Wang Shih-chieh; and Huang Yen-pei.

relating to constitutional government are being enforced and report findings to the Government;

(4) to organize, as a liaison organ between the Government and public organizations, matters concerning constitutional government and other political questions; and

(5) to examine and discuss all matters concerning the enforcement of constitutional government according to the instructions of the Government.

The Committee may entrust members of the Central Executive and Supervisory Committees of the Kuomintang and members of the People's Political Council with the task of discharging any of the aforesaid functions in places where they are stationed:

[ART.] 7. All important proposals should be submitted to the Government offices concerned through the chairman of the Committee, whereas other proposals should be taken up with the Government offices concerned by the standing members of the Committee.

[ART.] 8. The Committee shall meet every other month while standing members shall meet once every month. When it is deemed necessary, an extraordinary meeting should be called. The Chairman of the Committee shall preside over the meeting. In the absence of the chairman, one of the attending members shall be elected to preside over the meeting.

[ART.] 9. The Secretary General and Deputy Secretary General of the People's Poltical Council shall serve as secretary general and deputy secretary general of the Committee. The number of secretaries, executive secretaries and clerks may be appointed when necessary. These posts shall be filled up by the personnel from the secretariat of the Supreme National Defense Council.

[ART.] 10. By-laws of the Committee shall be drawn up by the standing members of the Committee.

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