

**The Chinese Constitution: A Study of Forty Years of Constitution-making in China.**

By Pan Wei-Tung. (The Catholic University of America, Studies in Politics, Government and International Law, Vol. III.) Washington: The Catholic University of America Press, 1945. Pp. xi, 327. \$3.50.

Doctor Pan's study consists mainly of a brief history of the modern constitutions of China,<sup>1</sup> followed by a series of appendixes which contain the various drafts of principles of constitution, draft constitutions and the organic laws under which the National Government of the Republic has operated,<sup>2</sup> a bibliography,<sup>3</sup> and an index.

Chapter i, "Early Constitutional Movements," begins with a very brief account of foreign aggression in the nineteenth century and some slight reference to the ideas of constitutional reform prior to 1904-5. No attempt is made by reference or description to acquaint the reader with the old forms of government which prevailed in China up to the Revolution of 1911. The real beginning of the essay is an account of the preliminary moves toward a constitution for China which were made during the last few years of the Manchu regime. Two outlines of constitutional principles were drafted during those years.

The "Principles of Constitution" was submitted to the Imperial Government by a special commission in 1908. After a program leading to constitutional monarchy had been started but was coming to an end with the outbreak of revolution in October, 1911, a draft of "Nineteen Articles" was promulgated in November of that year. This statement of an intention to shift to a constitutional monarchy came too late. The revolutionists were already formally instituting a new regime.

The first statement of governmental organization drawn up by the revolutionists was a "General Plan" for the organization of a provisional government in October, 1911. Under this plan the military governors appointed members of a council of representatives. The latter in turn drew up the "Provisional Constitution of March, 1912." In that document, as in most of those of the first years of the Republic, the constitution-makers did not face the facts of Chinese politics but drew up a theoretically perfect plan based on European models. The first provisional constitution included a weak presidency.

During the next few years a National Assembly, overwhelmingly Kuomintang in character, attempted to organize a republican regime on paper while the actual power was held by the military leader, Yuan Shih-k'ai, who aimed at complete dictatorship and at becoming an emperor. With the collapse of central authority after Yuan's death, two principal governments, one at Peking and one at Canton, each claimed constitutional authority. Meanwhile, in some provinces the local authorities manifested their autonomy by drawing up individual provincial constitutions.

Chapter ii, "Constitutionalism vs. Military Feudalism," continues the story of constitution-making during the period when the Peking government was dominated by militarists and the followers of Sun Yat-sen were gathering to establish a new republican government in the south. The "Peking New Preliminary Draft of 1919" was followed by Ts'ao Kun's draft "Constitution of 10 October, 1923." The author summarizes the work of these early constitution-writers in the following statement: "The

<sup>1</sup> Pp. 1-144.

<sup>2</sup> Pp. 145-313.

<sup>3</sup> Pp. 314-22.

introduction of purely western governmental machinery and practice in China by these early constitutional reformers was idealistic rather than practical."<sup>4</sup>

The present government of China bases its ideology on the doctrines of Sun Yat-sen. In Chapter iii, "The Birth of a New Constitution," Dr. Pan shows that these doctrines "form the extra-judicial constitution of the National Government of China"<sup>5</sup> and provide a program of attaining constitutional government through two preliminary stages of military rule and political tutelage.

The Kuomintang government has operated under an "Organic Law" which was first promulgated at Canton in 1925 and became effective in 1927. This has subsequently been revised and expanded seven times. Meanwhile, a "Provisional Constitution of the Political Tutelage Period" was promulgated in 1931.

"This Provisional Constitution was to be the law of the land until it would be superseded by a permanent Constitution, when more than one-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."<sup>6</sup> Thus the author summarizes the Kuomintang control of the National Government. But he does not mention the significance of the one-party system thus established.

During the year immediately preceding the Japanese invasion of China, under the leadership of Dr. Sun Fo, progress was made in the direction of drafting a permanent constitution. Such a constitution was to be adopted after local self-government had been achieved and the people considered ready for a termination of the period of political tutelage.

Drafting was carried on by several committees and resulted in what is known as the "Legislative *Yuan* Draft" of 1934. Based on this "Legislative *Yuan* Draft" a final draft known as the "Double Fifth Constitution" was proclaimed on May 5, 1936, and was intended to be submitted to the People's Congress which was to meet at the end of 1936.

Chapter iv, "The Five Power Constitution," is devoted to a discussion of the draft of May 5, 1936. In this Dr. Pan discusses the basic principle of Sun Yat-sen, whereby the political power of the people, as the fundamental authority in the Chinese state, is differentiated from the administrative or governing power of the officials organized as a government. This basic idea is carried out through the institution of a People's Congress which is comparable to the Supreme Soviet of the U.S.S.R. As provided for in the 1936 draft constitution this People's Congress is a large unwieldy body of some 1,400 members which is to convene once in three years for one month only. Elected by direct and secret suffrage for a period of six years, the Congress has powers of electing the President, Vice-President, head of the Control or Censor *Yuan*, and the members of the Legislative *Yuan*. Other powers include: recall of high officials, initiative, referendum, and amendment of the constitution.

In addition to the Executive *Yuan* with the President of the Central Government as its "titular head," the organization includes: the Legislative *Yuan*, a non-policy-making and restricted legislative body; the Judicial *Yuan*, appointed by the President;

<sup>4</sup> P. 42.

<sup>5</sup> P. 45.

<sup>6</sup> P. 50.

plus two branches of government which only in China are ranked among the five equal divisions of government. These are the Examination *Yuan* appointed for three years by the President to exercise examining powers in the recruitment of civil servants; and the Control *Yuan* with its chief function being "to attend to impeachment, discipline and punishment of public functionaries."<sup>7</sup>

Education has been traditionally of great importance to the government in China. The aim of the Republic according to the 1936 constitution is "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. 131). But this constitution goes further than to state a general purpose. It includes various detailed regulations even concerning such matters as local budgets and age limits for elementary school education.

The centralized character of government under the 1936 constitution is defined by the statement that "Provincial Governments are subordinate branches to the Central Government, having no sovereignty in themselves."<sup>8</sup> Governors are appointed for a term of three years and are removable by the Central Government. In each district and municipality, councils and magistrates are to be elected by the citizens in a general district meeting. Magistrates, however, must pass a civil service examination before being eligible for election. Dr. Pan sees nothing wrong in this tendency towards complete centralization and extols the emphasis upon uniformity of local self-government and the desirability of a system which "would be far more efficient than local government systems of many other countries."<sup>9</sup> He makes no comparison between this trend in Chinese government and other systems involving more direct popular participation in local government, nor does he indicate any appreciation of the values of governments which may respond to the peculiar preferences of various localities and which in so doing give evidence of a more democratic procedure.

Chapter v, "The People's Political Council," is devoted to a history of the wartime assembly which was specially organized "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."<sup>10</sup> This Council was chosen by the Central Executive Committee of the Kuomintang from among candidates nominated by local branches of the party and by the party's Supreme Defense Council. Thus this body was another evidence of one-party government in China. But, on the other hand, it was also a step in the direction of representative government to a degree that previous assemblies had not been. "It was perhaps the first time in Chinese history that practically all classes were represented in a political gathering."<sup>11</sup>

A new revision of a draft constitution was completed in March, 1940, and was the subject of lively debate in the People's Political Council, especially on the matter of the inclusion of a "People's Assembly" in the governmental structure and the relation of such an assembly to the Legislative *Yuan*.

In his final chapter Dr. Pan brings in reference to the old traditional ideology of the Confucian scholars. This might better have been placed in the introduction. Statements

<sup>7</sup> Pp. 72-73.

<sup>8</sup> P. 81.

<sup>9</sup> P. 83.

<sup>10</sup> P. 89.

<sup>11</sup> Pp. 92-93.

concerning "popular sovereignty" as "the traditional belief and teaching of the Chinese people," and concerning the state as "one large family," and citation of the ancient classics as evidence of "a constitutional form of government" before 255 B.C.<sup>12</sup> show a conservative belief in Chinese traditionalism and would seem to indicate that the author does not thoroughly appreciate the significance of such terms as "popular sovereignty" as they are applied in the West.

Dr. Pan rightly states that "China's governmental machinery must be suited to the character and condition of the people for whom it is designed."<sup>13</sup> But his arguments are not convincing that the Kuomintang policy of Sun Fo and Chiang K'ai-shek, which he attempts to justify, is the best and only one for China.

Nevertheless, Dr. Pan's work includes details of history, forms, and current problems of constitutional evolution in China which make it of great value for the student of government and constitutional law.

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<sup>12</sup> Pp. 133-37.

<sup>13</sup> P. 138.

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