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CHINA'S DRAFT CONSTITUTION

Generalissimo Chiang K'ai-shek formally inaugurated a Committee for the Establishment of Constitutional Government on 12 November 1943. Set up under the Supreme National Defense Council, the highest organ of the present Chinese Central Government, the Committee is designed to promote "study" of the draft constitution of 1936, conduct investigations of public opinion, and make recommendations concerning the "problem of constitutional government." On 1 January the Committee launched a campaign for nationwide consideration of the draft constitution. A great deal of comment on the subject by prominent officials and discussion groups has been published, while numerous editorials and special articles have appeared in the press. This program, its intent, and its results bear directly on the kind of government China will have after the war.

Officially encouraged study of the constitution accords with the principles of Sun Yat-sen, revered Revolutionary leader, who called for a period of "political tutelage" in preparation for democratic constitutionalism in China. The Kuomintang, the triumphant Chinese Revolutionary party, assumed exclusive control of governing powers on behalf of the Chinese people as soon as military operations ended in 1928. The entire Central Government, including the Supreme National Defense Council, is still responsible to the Kuomintang. Chiang K'ai-shek, as leader of both party and Government, as well as President of the Republic in a time of national emergency, wields extraordinarily broad discretionary powers under a system of government that does not at present pretend to be responsible to any higher authority than a single political party.

Nevertheless, the Kuomintang maintains that its intention is the establishment of constitutional government. The National Government on 5 May 1936 promulgated the latest draft constitution, said to be chiefly the handiwork of Sun Fo, son of Sun Yat-sen. A People's Congress was scheduled to meet in November 1937 to consider the draft and adopt it as the permanent constitution of China. The beginning of the war in July 1937 prevented the convention of a People's Congress at that time. None has actually met since, although an abortive effort was made to convene in 1940. Consideration of this unenacted document is the proclaimed purpose of the present study campaign, and the Kuomintang has promised that a People's Congress will meet within one year of the end of the war to establish the draft of 1936 as the fundamental law of the land. At that time the period of political tutelage would be declared at an end.

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The legal instrument upon which China's constitutional future appears to depend has as its most ostentatiously democratic feature a section on the "Rights and Duties of Citizens." A Chinese Bill of Rights, it "guarantees" freedom from arbitrary arrest, freedom of speech, and religion. However, each of the seventeen articles of this section is qualified by the phrase, "except in accordance with law." In other words, constitutional provisions for the sanctity of personal liberties can be set aside by the passage of an ordinary bill.

The law-making body which can thus curtail the "guaranteed" rights is the Legislative *Yüan* (Branch), acting in conjunction with the President of the Republic. Laws can be promulgated and orders issued by the latter with the counter-signature of the President of either the Legislative or the Executive *Yüan*. The President of the Republic appoints and removes the President and senior officials of the Executive *Yüan*. While the constitution provides that legislative matters shall be referred by the Executive to the Legislative *Yüan*, there is no explicit check by either branch on resolutions of the other. As a result the executive power is almost entirely unhampered by the rest of the government. An executive order could become effective solely by virtue of the signatures of the President of the Republic and his appointee, the President of the Executive *Yüan*. Moreover, with the signature of the President of the Legislative *Yüan*, the President of the Republic could set aside constitutional "guarantees."

The element of democracy in the draft constitution clearly depends upon the democratic character of the People's Congress, to which all the governmental branches, including the Presidency of the Republic, are ultimately responsible. The People's Congress, according to present specifications, will be an unwieldy body of about 1700 delegates. Scheduled to meet for one month every three years, it can not possibly exercise any genuine legislative function or constant check on executive excesses. Its greatest power would lie in the right to elect the President and Vice-President of the Republic and all the members of the Legislative and Control (censorial organ of government for impeachment and auditing) *Yüan*. The real contribution which the Congress might make to democratic rule in China would be the selection of administrative officials representative of popular opinion.

However, the entire Congress itself is not to be popularly elected, 240 of the delegates being chosen by the present National Government and 250 odd members and reserve members of the Kuomintang's Central Executive Committee and Central Supervisory Committee automatically becoming delegates. Of the 1200 delegates popularly elected, 950 have already been selected. These members were elected prior to 1937 during a period of extreme political reaction unfavorable to liberal or minority party activities. Some of the members have died and been replaced; some have gone over to the puppets. Critics of the Kuomintang claim that none of the minority (non-Kuomintang) parties are as yet represented. A Central Government spokesman has stated that only 250 delegates remain to be elected after the war. At the first full meeting of the new

Committee for the Establishment of Constitutional Government, a suggestion in favor of a new election for all members of the Congress was said to have been made but was summarily dismissed by Kuomintang conservatives as dangerous to the "sovereignty of the nation."

The reaction to the current program for study of this proposed constitutional government has in general reflected the political views of the commentators. Kuomintang officials and the Government-controlled newspapers have emphasized that the constitution is irrevocably based on the "Three People's Principles" of Sun Yat-sen, usually translated as "Nationalism, Democracy, and People's Livelihood." They asserted that all people who do not act or hold opinions contrary to the "Three People's Principles" will have complete freedom of expression and political organization. They have also declared that Chinese democracy must not be confused with Western democracy, and that personal freedom must inevitably be restricted even under the constitution. The *China Times*, organ of Finance Minister H. H. K'ung, and Kuomintang Minister of Information Liang Han-tsao took this general line.

Sun Fo, reported to be spokesman for a liberal element in the present Government, suggested in private conversation that some changes in the constitution would be desirable—especially the holding of People's Congress sessions oftener than one month every three years, and the local election of provincial governors in place of appointment by the central authorities. However, Sun made no public statements that did not agree with the ordinary Kuomintang position as described by Liang, the Information Minister.

Discussion of the draft constitution from opposition and independent quarters has been frankly critical. Roundtable discussions reported in *Hsin Hua Jih Pao* (Communist) and editorial comment in *Ta Kung Pao* (Independent) noted with disapproval the ill-defined division of powers among the President of the Government (Republic), the Executive *Yüan* and the Legislative *Yüan*, the result of which would evidently be the superiority of the executive branch. Although the critics did not mention it, the fact that one man, Chiang, is now President of the Republic as well as of the present Executive *Yüan*, probably made the danger of too much power in the executive seem especially real to the liberal critics. The second major point emphasized by independent comment concerned the necessity for stronger safeguards for "human liberties" than those in the constitution, which permit the government to pass laws overriding the constitutional provisions.

The orthodox view of Kuomintang leaders concerning the program for study of the constitution is that they are fulfilling the responsibility of "political tutelage." In launching the Committee in November, Chiang K'ai-shek suggested that it "should make known to the people the significance of the draft constitution . . . as the people are still ignorant of the spirit and significance." This legitimate educational function is unquestionably one of the considerations behind the great publicity campaign.

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However, one of the liberal critics of the Kuomintang, Chang Hsi-jou (member of the faculty of National Southwestern Associated University at Kunming), declared that public study of the draft was instigated by the Generalissimo solely for the propaganda purpose of convincing the Western powers that democratic processes were at work in China. Chang felt that there was no ground for optimism about the present study, because previous liberal attempts to make constructive criticisms and revisions of the constitution had met with solid rebuffs from the Kuomintang and the Generalissimo himself. This point of view received some support from the fact that, although Kuomintang spokesmen had declared that there were no restrictions on the expression of public opinion concerning the constitution, *Ta Kung Pao's* editorial comments met with reprimands from the party Ministry of Information and Chang Hsi-jou's lecture condemning the present conduct of the Kuomintang as well as the provisions of the constitution was followed by a Kuomintang request for a copy of his speech.

Independent observers in China are convinced that there are no indications of Kuomintang relaxation of control over the functions of government by allowing free discussion of the form constitutional government should take. Nor do they think that independent or minority groups will be permitted to participate actively in the constitutional period of Chinese government. The Kuomintang refused minority party demands that all of their outstanding leaders be elected to the Committee for the Establishment of Constitutional Government, over which the Kuomintang enjoys complete control. The minorities do have a few representatives at the meetings, but their role will obviously be restricted by their small numbers, and their purpose is merely to keep the parties informed about the activities of the Committee. Judging from the present provisions for election of the People's Congress, projected as the final governmental representative of the popular sovereignty of China, the Kuomintang will continue to exercise strict control over the election of delegates and consequently near-complete control over the post-war Congress. Accordingly, the Committee for the Establishment of Constitutional Government and the campaign for study of the constitution seems unlikely to affect present Kuomintang control of China.