

Abstract of thesis entitled

**Federal Frontiers: the Constitution of Hunan Province in
1920s Republican China**

Submitted by

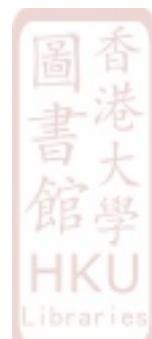
Michael J. West

for the degree of Doctor of Philosophy
at The University of Hong Kong
in April 2018

This thesis complements a recent body of scholarship revisiting constitutional developments in early Republican China, a period which has hitherto been portrayed as the ‘dark era’ before Nationalism and Communism. Making use of previously unused archival materials from Changsha, Taipei and London, this dissertation focuses on the 1922 Constitution of Hunan. China’s first provincial constitution, Hunan’s constitution was an ahistorical, radical palimpsest bearing the impressions of the US and Swiss constitutions with a separation of powers, direct democracy and no less than eleven provisions for provincial referenda. The thesis explores the origins of constitutionalism in Hunan, with its proud history of autonomy that became the spearhead of China’s federal movement; and analyses how the constitution was drafted, promulgated and functioned.

In counterpoint to Marxist scholarship, it is argued that the constitutional experiment in Hunan in the 1920s should not be regarded as a failure. Indeed, the ultimate reason that constitutionalism in Hunan did not endure for longer is not because it was, or perhaps more pointedly even *is*, inherently incompatible with the Chinese polity – rather federalism has been a perennial theme in Chinese history as much as the dynastic cycles that arguably are the exception to the rule – instead this thesis argues that constitutionalism stalled primarily due to external influences particularly the expansionist logic of militarism rather than any internal dynamics inherent in the constitution. While exploring legal factors including flaws in the text of the constitution document, which was unilaterally drafted, provided for a powerful Provincial Parliament and critically lacked institutional mechanisms for mediating between Changsha and Beijing, this thesis argues that on balance such factors were marginal in comparison with the overriding cause of “failure” of Hunan’s constitution which was the external invasion and forcible termination thereof by the KMT.

Hunan’s constitutional movement emphatically did not seek independence. On the contrary, together with Zhejiang and Guangdong, it was part of a wider United Provinces Autonomy Movement, which at its height included 14 provinces in total



covering over half of China's land mass. The movement envisioned building a federal Republic in three phases: after individual provinces drafted and administered their own constitutions, they would form a confederation before holding a constitutional convention in Shanghai to draft a national constitution. While other provinces were beset by militarism, foreign intervention or factional infighting, Hunan was self-sufficient – with a landlocked, continental geography – and war-weary as the constant battleground between the North and the South. Under Governor General Zhao Hengti, who brandished the constitution as his legitimising shield, Hunan was able to extricate itself from civil turmoil for four years and pursue an impressive programme of economic development as local elites negotiated their power struggles through the medium of the constitution. In the end, it was Zhao's disastrous intervention in neighbouring Hubei province in violation of the 'Monroe Doctrine' of non-interference that proved fatal for Hunan's Constitution.

The findings of this research show that although eventually Nationalism prevailed, China enjoyed a constitutional moment in the 1920s when even 'warlords' sought to cloak themselves in the legitimising robes of constitutionalism and in turn were partially fettered by the rules of the constitutions they promoted.



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BA Oxon; MPhil Oxon; GDL BPP; PCLL CityU

A thesis submitted in partial fulfilment of the requirements for
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at the University of Hong Kong

April, 2018



Dedication

I wish to dedicate this to my mother, Patricia Caroline Hamilton-West, who to the present, has been the single greatest influence in my life as well as to all of my friends, family and colleagues without whom this would not have been possible.



Declaration

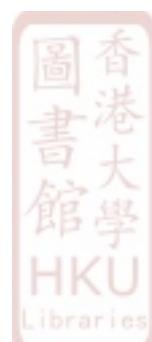
I declare that this thesis represents my own work, except where due acknowledgement is made, and that it has not been previously included in a thesis, dissertation or report submitted to this University or to any other institution for a degree, diploma or other qualifications.

Signed:

A handwritten signature in blue ink, appearing to read "Julia".

ACKNOWLEDGEMENTS

The list of people to whom I owe a debt of gratitude for contributing to this thesis is very long and please accept my sincerest apologies if I am so remiss as not to mention you specifically. My gratitude must firstly be extended to my supervisor, Professor Fu Hualing, for his sterling advice in encouraging me to take this research beyond the mere study of constitutional law. I have greatly benefited from his sharp intellectual insights and constructive comments and I am thankful for his patience in guiding this research to its final conclusion as well as for his extraordinary generosity in introducing me to contacts in Changsha and for helping to locate sources of funding when I had to scrape the barrel of subsistence. I am indebted to Professor Albert Chen of the University of Hong Kong ("HKU"), Dr. Barak Kushner of the University of Cambridge and Dr. Michael Ng of HKU for their painstakingly, detailed criticism and feedback and the stimulating, fruitful discussion they presided over during the final *viva voce*. I would like to thank the Hong Kong PhD Fellowship Program for funding the first three years of my research in Hong Kong, friends and colleagues from the Faculty of Law of HKU, Academia Sinica in Taipei and the Central Southern University in Changsha, especially Professor Liu Jihu. I am also extremely grateful to friends and mentors from my *alma mater*, including Professor Rana Mitter who initially turned my head to Chinese History as an impressionable undergraduate at Oxford and for his introduction to Professor Frank Dikötter of HKU, whose thought-provoking writing on the Republican period sowed the seeds of this study; as well as to Professor Albert Chen for his rigorous and systematic introduction to China's Legal History; and to Professor Michael Davison for allowing me to audit his lively course on comparative constitutional law in East Asia. I wish to express special appreciation to Dr. Humphrey Ko with whom I had many inspiring discussions and debates over the years for enlightening me in many aspects of Chinese history. The search for materials in China inevitably necessitated the assistance and advice of many people. In this respect I should like to thank Dr Fan I-chun of Academica Sinica, Professor He Junzhi of Fudan and Sun Yat-sen Universities, Dr. Mark Elvin, David Helliwell of the Bodleian Library in Oxford, Professor Robert Bickers of the University of Bristol, the staff of the National



Archives at Kew, the staff of Academica Sinica's Institute of Modern History in Taipei, Professor Steve Tsang of SOAS, Dr. Chang Chihyun of Shanghai Jiaotong University, Dr. Aurelio Insisa of HKU, as well as the comments, counsel and support of my friends and contemporaries in Oxford, Bristol, London, Beijing, Hong Kong and beyond. These include but are not limited to Peter Cai Yuan, Henry Makeham, Lincoln Tsui, Isabella Jackson, Benjamin White, Nicholas Martin, Chen Taichang, Nicholas Sawczuk and Andrea Granic, Valentina Chen, Cai Cheng, Hou Yan-po and Jason Buhi. A special thank you to Patricia Hamilton-West for proofreading this thesis at the eleventh hour. Finally, I am eternally grateful for the constant support of my family without which none of this could have been possible and to St John's College at HKU for putting a roof over my head and food in my stomach. To all these people I owe a debt of eternal gratitude. Any mistakes, omissions or other shortcomings in this dissertation remain, of course, my own.



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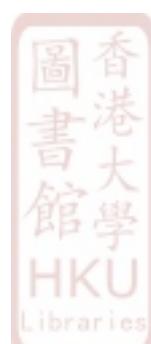
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ABBREVIATIONS

CCP	Chinese Communist Party
CP	County Parliament
DGB	<i>Da Gongbao</i>
HPA	<i>Hunan Provincial Archives (Changsha)</i>
IMH	Institute of Modern History, Academica Sinica
KMT	The Nationalist Party (<i>Guomindang</i>)
NCH	<i>The North China Herald</i>
PLA	People's Liberation Army
PP	Provincial Parliament
PRC	People's Republic of China
ROC	Republic of China
TNA	The National Archives (London, Kew)
UPAM	United Provinces Autonomy Movement



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INTRODUCTION

Chinese Legal History

An unexplored frontier or the DMZ?

The future of China is as a developed economy in which the people are prosperous; the future of China is as a proper democracy with a *rule of law* and justice; the future of China is as a more open and tolerant, civilized and harmonious country; the future of China is in sustained peace and daring to take on responsibility.¹

Thus spoke former Chinese Premier, Wen Jiabao (温家宝), in the opening remarks of his address to the Royal Society during an official visit to the UK in June 2011. Nowadays it is a common rhetorical trope of politicians, including those belonging to the Chinese Communist Party (CCP) elite², to pay lip service to the fundamental importance of the ‘rule of law’ to any modern society. At the same time, a country’s legal system is often taken for granted without regard to its historical origins.

This is perhaps not surprising for history and law rarely make for comfortable bedfellows. Lawyers criticise the historian’s supposed weak grasp of legal concepts, knowledge of cases and a perceived lack of attention to detail. Historians retort that history written by lawyers rarely transcends an arid, encyclopaedic list of laws, statutes and dates; and this bare bones approach, without the flesh and blood of living, breathing history, ignores the fact that the development of law in general and constitutional, public law especially is a process of dynamic, non-linear and contested evolution. Researching Chinese legal history is not without its challenges as it requires solid language skills in addition to a grasp of both law

¹ This is the author’s translation of the Chinese Premier’s original remarks as reported by chinanews.com: “未来的中国，将是一个经济发达、人民富裕的国家；未来的中国，将是一个充分实现民主法治、公平正义的国家；未来的中国，将是一个更加开放包容、文明和谐的国家；未来的中国，将是一个坚持和平发展、勇于担当的国家。”

² This should be qualified by the tightening of censorship under Xi Jinping’s government in recent years, under which the mere word ‘constitutionalism’ has been frequently censored:
http://blog.sina.com.cn/s/blog_c59497eb0101dfev.html (this article was originally published by the Tea Leaf Nation, but was itself taken down only to be reposted on the social media website Sina.com); also see:
<http://foreignpolicy.com/2016/05/19/meet-the-chinese-internet-trolls-pumping-488-million-posts-harvard-stanford-ucsd-research/>.

and history. Moreover, to venture into the frontier of legal history is to risk being caught in the crossfire of the two camps.

Yet the historical development of constitutional governance is a subject of great contemporary relevance to modern China. Indeed were the CCP a law-abiding, constitutional organisation, the events that took place in 1989 in Tiananmen Square could not have happened as a majority of the Politburo, China's supreme decision making body, had voted against the declaration of martial law and it was only after this decision was unconstitutionally overridden by a small group of retired Party elders that the People's Liberation Army (PLA) was authorised to use lethal force to suppress the demonstrators.³

Figure 0.1 A younger Wen Jiabao (centre right), flanking Zhao Ziyang (趙紫陽), during the General Secretary of the Chinese Communist Party's emotional farewell address to the students in Tiananmen Square

Source: www.news.backchina.com

³ *The Tiananmen Papers*, Andrew J Nathan and E. Perry Link, eds. (New York: Public Affairs, 2001), p. xx.

The Study of Late Qing and Republican Chinese Law: ‘Three Generations’ of Scholarship

However, to this day even the politically less sensitive periods of late Qing and early Republic legal history remain rarely trodden territory. Research into a very conceptual realm such as law is hard and requires specific training. Research into the realm of modern Chinese law is harder because of the barrier of the legal language, which may be very specific or abstract. Research into late imperial and early Republican law is more difficult still because it requires a command of Classical Chinese and as such is not for the faint hearted researcher. This may explain the lack of work in the field. However, Western scholarly work can be divided into three waves corresponding to the three consecutive generations in which scholars wrote with a different collective emphasis.

The first generation of scholarship from the mid-1950s to the late 1960s comprised mainly work by ‘leading authorities’ and, with little detailed analysis, painted a broad brush picture of late Qing and early Republic laws. These scholars held similar views to ‘eminent general historians’ such as John K. Fairbank who argued broadly that “China developed little or no civil law to protect the citizen”.⁴ The ‘leading authorities’ that held such views about late Qing Chinese law include such scholars as Jerome Alan Cohen who wrote in the 1960s according to the received view that Chinese law was mainly penal by nature.⁵

The second generation from the late 1960s to the mid-1980s consisted of scholars who were specialists normally trained in both law and Chinese history. Their work concentrated on the statutory imperial code and its intricate, top-down procedures of application. Pioneering research was carried out by Derk Bodde.⁶ Western historical work relating to late Qing Chinese law by scholars contemporary to Bodde include: Thomas Metzger,⁷ Jonathan Ocko,⁸ John R. Watt,⁹ Fu-mei Chang Chen,¹⁰ Randle Edwards,¹¹ and

⁴ John Fairbank and Edwin Reischauer, *East Asia: The Great Tradition* (Boston: Houghton Mifflin, 1960), 84.

⁵ Jerome Cohen, *The Criminal Process in the People's Republic of China, 1949-1963: An Introduction* (Cambridge: Harvard University Press, 1968), 5-7; and Jerome Cohen, “Chinese Mediation on the Eve of Modernization,” *California Law Review* 54 (1966): 1212; Jerome Cohen, “Due Process?” in Ross Terrill, *The China Difference* (New York: Harper & Row, 1979). Also see: William C. Jones, “Theft in the Qing Code,” *The American Journal of Comparative Law*, 30:3 (Summer 1982): 499-521.

⁶ Derk Bodde and Clarence Morris, *Law in Imperial China: Exemplified by 190 Ch'ing Dynasty Cases*, Harvard Studies in East Asian Law (Cambridge, Mass.: Harvard University Press, 1967).

⁷ Thomas A. Metzger, *The Internal Organization of Ch'ing Bureaucracy: Legal, Normative, and Communication Aspects* (Cambridge, Mass.: Harvard University Press, 1973).

⁸ Jonathan K. Ocko, *Bureaucratic Reform in Provincial China: Ting Jih-Ch'ang in Restoration Kiangsu, 1867-1870* (Cambridge, Mass.: Harvard University Press, 1983); Jonathan K. Ocko, “Justice on Appeal: The Capital

Alison Conner.¹²

In this vein, much second-generation scholarship converged on the Great Qing Legal Code or Qing Code (*da qing lüli*, 大清律例). This was the legal code of the Qing dynasty. The code was based on the Ming legal system, which was preserved by and large by the Manchus. Compared with the Ming code, which had no more than several hundred statutes and sub-statutes, the Qing code contained 1,907 statutes as a result of over 30 periods of revision between 1644 and 1912 and it was the last legal code of imperial China. The code was regarded as a model of precision and clarity in terms of its drafting and structure, but it was undeniably in form exclusively a criminal code with no separate civil code.¹³ This was one of the first works translated into English; the translation, known as *Fundamental Laws of China*, was completed by Sir George Thomas Staunton in 1810.¹⁴ It was the first time that the Qing Code had been translated into a European language; a French translation was published in 1812 and second translation was published by Guy Boulais in 1924. Perhaps the most authoritative is the translation of the Qing Code published in 1993 by the late William C. Jones, one of the second generation of Harvard-trained legal specialists in the history of Chinese law.¹⁵ This translation, *The Great Qing Code*, supersedes all previous English and French translations. It is based on the text of the code in the modern, punctuated edition of *du lizi yi* (讀例存疑), a commentary on the code and its sub-statutes published in 1905 by one of the last presidents of the Board of Punishments, Xue Yunsheng (薛允升, 1820-1901).¹⁶

From the late-1980s research by a third generation of social historians led by Philip Huang at the University of California, Los Angeles (UCLA) began to hold sway. The opening up of Chinese archives to foreign researchers initiated a Kuhnian paradigm shift in the field

Appeals System in Ch'ing China" in *Law and the State in Traditional East Asia: Six Studies on the Sources of East Asian Law*, ed. by Brian E. McKnight (Honolulu: University of Hawaii Press, 1987).

⁹ John R. Watt, *The District Magistrate in Late Imperial China* (New York: Columbia University Press, 1972).

¹⁰ Fu-mei Chang Chen, "The Influence of Shen Chih-ch'i's Chi Chu Commentary upon Ch'ing Judicial Decisions" in Jerome Alan Cohen, *Essays on China's Legal Tradition*, ed. by Randle Edwards and Fu-mei Chang Chen (Princeton: Princeton University Press, 1980), 170; Fu-mei Chang Chen, 'On Analogy in Ch'ing Law', *Harvard Journal of Asiatic Studies*, 30 (1970), 212-224;

¹¹ Randle Edwards, "Ch'ing Legal Jurisdiction over Foreigners," in *Essays on China's Legal Tradition*, 222.

¹² Alison Conner, *The Law of Evidence During the Ch'ing Dynasty* (Ann Arbor: UMI Dissertation Services, 2000).

¹³ Derk Bodde, "Basic concepts of Chinese law: The genesis and evolution of legal thought in traditional China" in *Essays on Chinese Civilisation*, ed. by Charles Le Blanc and Dorothy Borei (Princeton: Princeton University Press), 1981.

¹⁴ 'Ta Tsing Leu Lee', (Being the Fundamental Laws and a Selection from the Supplementary Statutes of the Penal Code of China), trans. by George T. Staunton (London: 1810).

¹⁵ *The Great Qing Code*, William C. Jones, trans. (Oxford: Clarendon Press, 1994).

¹⁶ Endymion Wilkinson, *Chinese History: A Manual* (Cambridge, Mass.; London: Harvard University Press, 2000), 946.

of Chinese legal history. Making use of the local magistrate case of Ba County (巴县) in Sichuan Province, these researchers have begun to move beyond the previous generation of legal specialists to focus on codified law towards a much wider and more nuanced understanding of the complex ways in which China's legal system mediated state-society relations, influenced cultural beliefs and practices and shaped the nature of the Chinese socio-political system as a whole. In so doing Huang et al. claim to have 'discovered' 'civil law' in China and have focussed discussion beyond the vertical legal relationship enshrined in the Qing Code between citizens and the Emperor to broader horizontal legal relations between the Chinese people.¹⁷

Despite the advances made by Philip Huang et al., in contrast to the second generation of legal specialists many are essentially social historians who apply a Weberian sociological perspective to analyse the law in its societal context. This departure from the more legalistic approach of the second generation of scholars provided a timely corrective, but is not without problems, not least the Eurocentric assumptions that concepts such as 'civil law' even meant anything to a Chinese under the imperial and early Republican legal systems. This is not to suggest that customs and practices did not exist for the handling of disputes between imperial subjects, although indubitably these were not explicitly codified, but that a greater degree of legal precision and rigour is required in the discussion of Chinese legal history. It has been suggested that 'law' and 'history' are brought into a relationship of "adjacency, but are nonetheless, held in a state of tension". All legal historians situate themselves in this zone of 'binary identity', which is "a zone of indeterminacy in which the lines of demarcation between the discourses of law and history shift, blur and often disappear altogether".¹⁸ If the second generation of Chinese legal historians situated themselves more in narrating the law, then the 'revisionist' third wave is self-evidently situated in the narrating of social history. Thus, the theoretical framework of my research aims to combine research techniques from both schools, while framing my analysis in more legalistic terms in order to capitalise on the methodological advantages whilst responding to the critique of both sides of this debate.

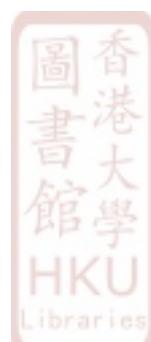
¹⁷ An example might be *Contract and Property in Early Modern China*, ed. by Madeleine Zelin, Johnathan Ocko and Robert Gardella (Stanford, Calif.: Stanford University Press, 2004); also see Matthew Sommer, "The Field of Qing Legal History," in Zhang Haihui et al., eds., *A Scholarly Review of Chinese Studies in North America*, Association for Asian Studies, 2013, 113-132; Yasuhiko Karasawa, Bradly W. Reed, and Matthew Sommer, "Qing County Archives in Sichuan: An Update from the Field," *Late Imperial China* 26:2 (December 2005): 114-128; and Madeleine Zelin, "The Rights of Tenants in Mid-Qing Sichuan: A Study of Land-Related Lawsuits in the Baxian Archives," *Journal of Asian Studies* 45 (1986), 499.

¹⁸ William P. MacNeil, "Living on: Borderlines? Law/History", *Law and Critique*, 6 (1995), 167-191.

The Thesis of this Dissertation

If a fleeting case has been made here for the wider significance of researching Chinese legal history, the discussion below will introduce in more detail the research topic of this dissertation in the context of the existing literature. Borrowing the techniques of all three generations of legal historians, this dissertation aims to shed light on a little remembered episode in the history of early Republican China, namely the birth, life and death of the 1922 Constitution of Hunan, China's first provincial constitution. In interpreting the 'failure' of constitutionalism in Hunan, this thesis *argues* that instead of failure the success of constitutionalism and the role of legal factors in accounting for these achievements have been significantly overlooked in the sparse body of research hitherto conducted on the subject by Communist and Nationalist historians alike; who have both sought to portray the early Republic as a period of unmitigated darkness and chaos, if only to justify their own brands of centralized authoritarianism in the interlude that followed. Moreover, contrary to a central tenet of the writings of Marxist historians of the period, this thesis finds that the failure of the kind of arrangements of federalism that have taken root in countries like the United States of America in 1920s Hunan was due to a poisonous contemporary cocktail of militarism and ideology in the early Republic; in other words there is *no* evidence to support the essentially political argument made by some Marxist historians today that this 'failure' is attributable to the tendentious proposition that such forms of political organisation are inherently incompatible with effective governance in China, a debate indeed more suited to the arenas of modern political science, futurology and raw politics.

For present purposes, the introductory chapter will proceed to review the history of constitutionalism in China more generally, before focusing on constitutionalism in Hunan in particular with a discussion of the existing literature on the federal movement in China in the 1920s and the staunch tradition of political exceptionalism in Hunan; finally, the chapter will conclude by introducing the sources that are used in this dissertation, elaborating on the argument and outlining the chapter-structure of the thesis.



Constitutions and China

Figure 0.2 The drafters of the eponymous Temple of Heaven constitution, a 1913 draft constitution of the Republic of China assembled outside of the Temple of Heaven in Beijing.

Source: www.gutenberg.org

The ‘founding father’ of the Republic of China, Dr Sun Yat-sen, is reputed to have once mused that the future of China was a lot like building a railroad, which naturally raises the question should the Chinese use the first locomotive ever invented or the most efficient, latest state-of-the-art model?¹⁹ Persuasive though this rhetorical flourish is, it is out of tune with the conventional wisdom of modern political science, which holds that constitutions require an embedded constitutional culture if not necessarily full-blown liberal democracy for constitutional politics to take root.²⁰

Constitutional politics need not always be codified in the form of a written document, as Walter Bagehot noted in his search for ‘the Great Ghost’, which today is described as Britain’s ‘unwritten constitution’. Nor is the UK *sui generis* in this respect, for Israel’s democracy also functions without a constitution. However, without exception, constitutions do require functioning institutions for as De Montesquieu understood only power can serve to

¹⁹ Quotation adapted from Michael Gasster, *Chinese Intellectuals and the Revolution of 1911: The Birth of Modern Chinese Radicalism*, Far Eastern and Russian Institute Publications on Asia, no. 19 (Seattle: University of Washington Press, 1969), 138.

²⁰ See, for example, Vernon Bogdanor, *Constitutions in Democratic Politics* (Aldershot: Gower, 1988), 3-7.

check power.²¹ Thus, constitutional politics are most frequently found in the context of the classic separation of powers in a parliamentary liberal democracy.

Moreover, there must be some kind of mechanism for constitutional evolution for as a society's values shift over time the constitution must be able to adapt to reflect these changes. This could be in the guise of a formal amendment process or through the Supreme Court's role in interpreting the constitution, as for example in the United States where it is the ultimate arbiter of the constitution's meaning, even if the founding fathers did not actually envisage it playing this role at the time of drafting. Thus the US Supreme Court was described by Woodrow Wilson as 'a continuous [constitutional] convention'.

The above exposition may suggest that, transplanted from abroad, the conditions for constitutionalism in China in the 1920s were far from hospitable. However, such an interpretation is at odds with a strong contemporary current of intellectual thought that - having witnessed the transformation of Japan wrought by the Meiji Restoration where the Meiji Constitution (明治憲法) played a key modernising role - believed China could emulate this process. This conviction was shared by Western jurists and constitutional advisors such as W.W. Willoughby, a professor of political science at John Hopkins University, who asserted that, "The political troubles with which the Chinese have been afflicted have been due not so much to a general lack of capacity to maintain a self-governing or representative scheme of political control as that they have been attempting to govern themselves under an essentially defective constitution."²²

Modelled on the Prussian constitution under which the Kaiser retained vast power and influence, and promulgated in 1889, the Japanese constitution in turn inspired constitutional reformers in China. In the aftermath of China's defeat in the 1894-5 war with Japan, the arch-reformer within the imperial bureaucracy, Kang Youwei (康有為), regarded the Meiji Constitution as the key to Japan's strength. Kang was in awe of the Kenseito cabinet of Okuma and Itagaki and during his visits to Japan he enjoyed the hospitality of parts of the Japanese elite, including Prince Konoe and Count Okuma. The Okuma Doctrine further fostered this cross-cultural fertilisation, holding that since Japan had long been a beneficiary of Chinese culture, it should now do as much as possible to hold the West at bay to provide China with the time and space it needed to modernise. Even the least enthusiastic reformers, the Manchus, dispatched two commissions to study foreign constitutions in 1905 and 1907,

²¹ Charles-Louis de Secondat, Baron de Montesquieu, *The Spirit of Laws*, Thomas Nugent, trans., updated edn, 2 vols (London: Printed for P. Dodesley, R. Owen, 1794), book XI, ch 4, 163).

²² W.W. Willoughby, *Constitutional Government in China: Present Conditions and Prospects* (Washington D.C., 1922), 33.

which upon return advised that the only suitable models for China were those of Japan and Germany. Thus constitutionalism arrived in China, refracted through the kaleidoscopic lens of Japanese modernisation.²³

If relatively little has been written about provincial constitutionalism, the vicissitudes of constitutionalism at the national level have been extensively documented. Even more general references such as Jonathan Spence's classic textbook, *The Search for Modern China*, describe in detail the struggle for the 1912 Provisional Constitution of the Republic of China and the elections for the National Assembly in which an electorate of 40mn Chinese voted for 30,000 Provincial Assembly (PA) members, who in turn elected members of the National Assembly who then finally elected a president. The bicameral Republican parliament comprised a Senate with 274 members serving six-year terms and seats allocated on the basis of 10 per province with the remainder representing overseas Chinese; as well as a House of Representatives composed of 596 members serving three-year terms and allotted on a roughly proportional basis of one delegate for 800,000 people. Just as universal suffrage did not exist in most Western nations at that time, in the early Republic the franchise was limited to males over 21 with an elementary-school graduation certificate and property with a total value of more than \$500, or paying taxes of at least \$2. Illiterates, opium smokers, the bankrupt and those of 'unsound mind' were not allowed to vote.²⁴ Notwithstanding its imperfections the Provisional Constitution represented a high tide mark for Republican ideals. This electorate equated to 10% of China's population, a figure which was not achieved by Japan until 1928 and in India until 1935.²⁵

Despite the revolutionary Kuomintang (KMT) party winning a clear victory in China's first national elections in January 1913 with 269/596 seats in the House and 123/274 in the Senate, its victorious leader Song Jiaoren (宋教仁) was assassinated when he was shot twice at close range at the train station in Shanghai on his way to Beijing to form a government on March 20. The trail of the assassination led back to the office of the Provisional President Yuan Shikai (袁世凱), Sun Yatsen's main rival.²⁶

Yuan Shikai weathered this storm and after two unsuccessful attempts, he finally succeeded in forcing Parliament to elect him President on a five-year term in 1914. He then

²³ For further information see *The Cambridge History of China*, ed by John King Fairbank and Denis Crispin Twitchett, 15 vols (Cambridge: Cambridge University Press, 1978-2009), xi (1980), 339-403.

²⁴ Jonathan D Spence, *The Search for Modern China*, 2nd edn (New York: Norton, 1999), 275-6.

²⁵ John H Fincher, *Chinese Democracy: The Self-Government Movement in Local, Provincial and National Politics, 1905-1914* (London: Croom Helm, 1981).

²⁶ Spence, *The Search for Modern China*.

proceeded to ban the KMT as a seditious organisation and Parliament was dissolved in January 1914 with Sun Yatsen fleeing to Japan not long after. Yuan told the *Times*' Peking correspondent G.E. Morrison that "Parliament was an unworkable body, 800 men! 200 were good, 200 were passive and 400 were useless."²⁷

Much has been written about the tragedy of Yuan Shikai's imperial ambitions and his 'Great Betrayal' of the Republic.²⁸ Moreover, there is almost a kind of nostalgia which mythologises a missed opportunity for a corporate constitutional government combining the popular support and ideological appeal of Sun Yatsen with the military superiority of Yuan Shikai's Beiyang Army. Notwithstanding Yuan's hunger for power, it is worth remembering that as a traditional Confucian scholar educated in the classics for the imperial examinations, Yuan Shikai was not ideologically inclined towards constitutionalism. Nor as it turns out were many of his constitutionalist contemporaries, who turned out to be only ambivalent Republicans with a skin-deep loyalty to this newly introduced, foreign form of governance. The Republic's father, Sun Yatsen, later infamously abandoned constitutionalism in favour of a militaristic and Leninist blend of Nationalism. Perhaps an instructive comparison is Chiang Ching-kuo (蔣經國), son of Chiang Kai-shek and heir to the Republic of China on the island of Taiwan, who finally set in train the democratisation of the Republic of China in the 1980s when he faced political unpopularity and ageing; but also critically Ching-kuo had the benefit of half a century of hindsight, an education steeped in political science and exposure to Western culture through the relationship between Taiwan and the United States.

Yuan Shikai died of uremia in June 1916, humiliated after he was forced to abandon his attempts to restore the monarchy and install himself as Emperor. The period that ensued was chaotic and in the following twelve years there were ten heads of state, forty-five cabinets, five legislatures, and seven constitutions or basic laws, not counting the rival heads of state, cabinets, parliaments and constitutions in Guangdong.²⁹ After Yuan's death, his power base, the fissiparous Beiyang clique (北洋派), decayed into the Zhili (直系) Fengtian (奉系) and Anhui (皖系) factions between which infighting was endemic. As a guide to this

²⁷ Quoted in Cyril Pearl, *Morrison of Peking* (Sydney: Angus and Robertson, 1967), 289.

²⁸ For example see: Jerome Ch'en, *Yuan Shih-Kai, 1859-1916: Brutus Assumes the Purple* (London: George Allen & Unwin, 1961); Ernest P Young, *The Presidency of Yuan Shih-K'ai: Liberalism and Dictatorship*, Michigan Studies on China (Ann Arbor: University of Michigan Press, 1977).

²⁹ Andrew J Nathan, *Peking Politics, 1918-1923: Factionalism and the Failure Of Constitutionalism*, Michigan Studies on China (Berkeley, Calif: University of California Press, 1976), 25.

complicated political context I have compiled a rough chronology in tabular format (Table 0.1).³⁰

Table 0.1
A Chronology of the Beijing governments

President	Prime Minister
Sun Yat-sen 孫中山 (Provisional President 29 December, President 1 January 1912 to 12 February 1912)	
Yuan Shikai 袁世凱 (Provisional President; President, 10 March 1912 to 6 June, 1916)	
Li Yuanhong 黎元洪 (7 June 1916 to 2 July 1917)	
Feng Guozhang 馮國璋 (1 August 1917 to 10 October 1918)	
Xu Shichang 徐世昌 (10 October 1918 to 2 June 1922)	Qian Nengxun 錢能訓 (10 October 1918 to 13 June 1919)
	Gong Xinzhan 許心湛 (13 June to 24 September 1919)
	Jin Yunpeng 靳雲鵬 (24 September 1919 to 14 May 1920)
	Zhou Ziqi 周自齊 (9 April to 12 June 1922)
Li Yuanhong 黎元洪 (11 June 1922 to 13 June 1923)	Yan Huiqing 顏惠慶 (11 June 1915 to 5 August 1922)
	Tang Shaoyi 唐紹儀 (did not take office)
	Wang Chonghui 王寵惠 (19 September to 29 November 1922) ‘Able Men Cabinet’
	Wang Daxie 汪大燮 (29 November to 11 December 1922)
	Wang Zhengting 王正廷 (11 December 1922 to 4 January 1923)
	Zhang Shaozeng 張紹曾 (4 January to 6 June 1923)
Gao Lingwei 高凌霨 (14 June to 10 October 1923)	
Cao Kun 曹錕 (10 October 1923 to 3 November 1924)	

³⁰ Compiled from Ch'ien Tuan-sheng, *The Government and Politics of China, 1912-1949*, Paperback ed (Stanford: Stanford University Press, 1950); Li, Chien-nung, *The Political History of China, 1840-1928* (Princeton, N.J: D. Van Nostrand Co, 1956); and Nathan, *Peking Politics*. N.B. Information on the Prime Ministers is incomplete.

Huang Fu 黃郛 (2 November to 23 November 1924) Regency Cabinet	
Duan Qirui 段祺瑞 (24 November 1924 to 20 April 1926) Provisional Chief Executive	
Yan Huiqing 顏惠慶, Du Xigui 杜錫珪, Wellington Koo 顧維鈞 (13 May 1926 to 17 June 1927) Regency Cabinets	
Zhang Zuolin 張作霖 (18 June 1927 to 3 June 1928)	

Ch'ien Tuan-sheng (錢端升), a Chinese intellectual who witnessed much of the torrid politics of the Beiyang era firsthand, and who later studied his PhD at Harvard under John Fairbank, analysed five constitutions in the Republican era and concluded, “In substance, the republic was a farce, almost throughout the period. Events of this period demonstrated that a republic cannot be achieved merely by enacting republican constitutions and laws. Something more fundamental is needed.”³¹ Of all the constitutions the 1912 Provisional Constitution (*linshi yuefa*, 臨時約法) was the most totemic as it captured the zeitgeist of the period encapsulating a hunger for reform and symbolising the hope of the new Republic. As the fortunes of different cliques ebbed and flowed in Beijing and new constitutions were drafted, periodical attempts were made to restore the Provisional Constitution. Perhaps the ultimate debasement of the Republic occurred when the ‘pigtail general’ Cao Kun bought the Presidency for a price of Mex. \$13,560,000 with photographs of the 5,000 yuan cheques used to bribe politicians to vote for him appearing in wide circulation in the local press.³² Ironically in light of the inauspicious circumstances of its birth the 1923 Cao Kun constitution was regarded by many, including Ch'ien, as the best drafted of all the Republican constitutions.³³ Ch'ien was not alone in his disillusionment as many foreign advisors became disaffected by their attempts to engineer Chinese society through constitutions. Frank J. Goodnow, a political scientist from Columbia University and advisor to Yuan Shikai, lamented, “The Chinese wanted me to teach them politics. But I was not a politician. I was just interested in the scientific and theoretical side of administrative law.”³⁴

³¹Ch'ien Tuan-sheng, *The Government and Politics of China*, 56.

³²Nathan, *Peking Politics*, 220.

³³ Ch'ien Tuan-sheng, *The Government and Politics of China* , 70.

³⁴ Frank Johnson Goodnow, *Principles of Constitutional Government*, Harper's Citizens Series (New York: Harper & brothers, 1916).

Finally, there is quite a rich and growing Chinese language literature on constitutionalism in the early Republic. PRC scholars continue to be heavily influenced by Marxist perspectives, arguing that constitutionalism was a stepping-stone to Leninist state-socialism with Chinese characteristics, an interlude that ended in failure because it is unsuited to China's unique conditions.³⁵ In contrast to the strong residual ideological bias of mainland work, Taiwanese scholars have produced far more solid research under the auspices of the Institute of Modern History of the Academia Sinica when it was headed by Chang Yufa (張玉法). These include works by Chang Pengyuan (張朋園) and Chang Yufa. For example, Chang Pengyuan focused upon the relationship between the constitutionalists and the 1911 revolution, arguing that the constitutionalists were enthusiastic patriots striving to save their country. In general, Taiwanese scholarship from the 1980s preceding that on the mainland is comparatively objective and offers both breadth and depth of analysis.³⁶ Publishing in English, Hong Kong University's Professor Albert Chen has written a macro-history surveying the evolution of China's legal system over the best part of 5,000 years. Chen concludes that China has moved into the orbit of the Romano-Germanic family of Civil Law legal systems, observing, "Is it not ironic that after taking a zigzag path since the Communist Revolution began in China, Chinese law - four decades after the victory of the revolution - has finally settled on a direction parallel to that which it was moving during the late Qing and early Republican period in the first four decades of this century?"³⁷ Despite this thoughtful reflection, however, there is relatively little attention to China's legal history during the early Republican period in the work. Having thus located a potential lacuna in the literature, the following section will situate constitutionalism within the context of the movement for regional autonomy that flourished in the early Republic.

³⁵ For example see Yan Quan, *Shibai de yichan: Zhonghua shoujie guohui zhixian 1913-23 (The Legacy of Failure: the First Republican Parliament's Constitution-Making 1913-23)* (Guangxi shifan daxue chubanshe, 2007); Zhang Ruili, *Yihui zhengzhi yu jindai Zhongguo zhengzhi bianqian (Parliamentary Politics and Political Changes in Modern China)* (Beijing: Zhongguo shehuikexue chubanshe, 2009); Xue Heng, *Minguo Yihui Zhidu Yanjiu 1911-1924. (The Republican Parliamentary system 1911-24)* (Beijing: Zhongguo shehui-kexue-xueyuan, 2008).

³⁶ Chang Yufa, *Qingji de lixian tuanti (Late Qing Constitutionalist Groups)* (Academica Sinica, Institute of Modern History, 1971); *Lixianpai yu xinhai geming (The Constitutionalists and the Xinhai Revolution)* (Salt Lake City, Utah: The Genealogical Society of Utah, 1982); Chang Pengyuan, *Liang Qichao yu qingji geming (Liang Qichao and the Late Qing Revolution)*, 2nd edn (Taipei, Academica Sinica, Institute of Modern History, 1999). Also see Jing Zhiren *Zhongguo lixian shi (A History of Chinese Constitutionalism)* (Taibei: Liangjing Press, 1984).

³⁷ Chen, Hung-yee, *An Introduction to the Legal System of the People's Republic of China*, 3rd ed. (Hong Kong: Lexis/Nexis, 2004), 51-2.

The Federal Movement in China

Relations between the centre and the locality have been a perennial conundrum central to China's expansive history. The Cambridge academic and Royal Academy fellow Joseph Needham, in the first volume of his seven-part magnum opus *Science and Civilisation in China*, vividly described its provincial structure as 'a geo-political muscular system hidden by a sub-cutaneous fat and the skin of constitutional and military history'.³⁸

Marxist ideology has traditionally tarred the federal movement in the Republican period with the brush of warlordism if only to justify its own central authoritarianism. For example, according to Zhang Jicai (张继才):

The federal movement, which was an important ingredient of the United Provincial Autonomy Movement, was the product of ever-growing campaigns and the result of the unusual political situation in 1922. The bourgeois federal party was the founder and the politicians and local warlords were the supporters of it. They held some state conferences to promote the campaign. However, the campaign was nothing but a flash in the pan... Therefore, it was inevitable for it to come to failure.³⁹

In equal measure, particularly after the KMT victory in 1926-7, Nationalist historians have contributed to this narrative of a dark age in Chinese history between 1913 and 1927, or from 1912 to 1949 in the case of the Communists. However, more recently historians like Edmund Fung have tried to correct this lop-sided historiography by drawing attention to constitutionalism, the '*third force*' alongside Nationalism and Communism.⁴⁰ Arthur Waldron debunked the myth of the 'warlord', a term which was heavily influenced by Soviet Marxist ideology; more precisely much anti-warlord propaganda of 1920s owes a dubious debt to the work of the Russian cartoonist Boris Efimov.⁴¹

³⁸ Joseph Needham, *Science and Civilisation in China*, 7 vols (Cambridge: Cambridge University Press, 1954), i,115.

³⁹ An English translation, provided by the CNKI database, of the abstract of a journal article by Zhang Jicai, 'Lun 20 shiji 20 niandai de liansheng yundong' ('On United Provincial Autonomy Movement in the Early 1920s'), *Linyi shifan xueyuan xuebao* (*Journal of Linyi Teachers College*), 2002.

⁴⁰ Edmund S. K Fung, *In Search of Chinese Democracy: Civil Opposition in Nationalist China, 1929-1949*, Cambridge Modern China Series (Cambridge: Cambridge University Press, 2000).

⁴¹ Arthur Waldron, "The Warlord: Twentieth-Century Chinese Understandings of Violence, Militarism, and Imperialism", *The American Historical Review*, 96 (1991). See also Arthur Waldron, "Warlordism Versus Federalism: The Revival of a Debate?" *The China Quarterly*, 121 (1990), 116-128.

In China, federalism is often regarded as a synonym for disunity, infighting and factional chaos and with the exception of the French academic Jean Chesneaux there have been few thoroughgoing Western studies of the federal movement in the early Republic.⁴² Writing over four decades ago, Chesneaux charted the rise and fall of federal movements (*liansheng zizhi yundong*, 連省自治運動), beginning with the New Policy (*xin zheng*, 新政) reforms which led in 1908 to the establishment of Provincial Assemblies controlled by local gentry. This initiative aimed to assuage anti-Qing sentiment in the twilight of China's last dynasty. Mark Elvin's unpublished DPhil thesis described the germination of the seeds of constitutionalism in Shanghai's 'gentry democracy' from 1905 to 1914 as the behaviour of politicians and officials serving on the Chinese City Council was increasingly constrained by written rules and regulations and the perceived will of the people.⁴³ In the preface to a biography of his father Chen Jiongming, Leslie Chen argues: The federalist movement in 1920s China was not, as Sun Yat-sen declared, "an efficacious charm for the militarists in their seizure of territories; nor was it, as Nationalist and Communist historians have maintained, an abortive episode of regional militarism in the warlord era."⁴⁴ While at times verging on hagiography, Leslie Chen nevertheless has a point when he observes:

The defamation of Chen Jiongming by Nationalist and Communist historians was part of a larger effort to discredit federalism, a political philosophy enormously popular in China in the early 1920s. Sun Yat-sen and his successor Chiang Kai-shek learned well that their lessons on propaganda from the Soviet advisors they acquired in 1924. They quickly declared all their opponents, Chen included, to be self-seeking warlords, and they derided federalism as a militarist's excuse for consolidating ill-gotten territorial gains. That Chinese historiography has stuck to this line is hardly surprising. Under both the Nationalists and the Communists, Chinese scholars put their lives in danger if they queried the official history. But it is unfortunate that foreign scholars as well have

⁴² Jean Chesneaux, "Le Mouvement Fédéraliste En Chine, 1920-3", *Revue Historique* (Presses Universitaires De France), 1966. The Taiwanese scholar Li Dajia has since written an updated, descriptive account of the federal movement in early Republican China. See: Li Dajia *Minguo chunian de liansheng zizhi yundong* (*The United Provinces Self-Governance Movement in the Early Republic*) (Taipei: Hongwen guan Press, 1986).

⁴³ John Mark Dutton Elvin, "The Gentry Democracy in Shanghai, 1905-1914" (unpublished doctoral thesis, University of Cambridge, 1968).

⁴⁴ Chen, Leslie H. Dingyan. *Chen Jiongming and the Federalist Movement: Regional Leadership and Nation Building in Early Republican China*. Michigan Monographs in Chinese Studies 86. Ann Arbor: Center for Chinese Studies, the University of Michigan, 1999. xiii.

rarely probed the founding myth created in the Nationalist and Communist histiography.⁴⁵

The federal movement was spearheaded by eminent politicians and intellectuals, including Sun Yat-sen, Liang Qichao (梁啟超), Li Chien-nung (李劍農), Hu Shi (胡適), Chen Jiongming (陳炯明) and Mao Zedong. As the print media thrived in an unprecedented ‘age of openness’ during the early Republican era, Westernised thinkers promoted their federal ideas through magazines and periodicals such as *Eastern Miscellany (Dongfang Zazhi, 東方雜誌)*, *Pacific (Taipingyang, 太平洋)* and *Reform (Gaizao, 改造)*.⁴⁶ One article in a special edition of *Pacific* provocatively posed and answered the question, “How can the country be saved?... By a federation of autonomous provinces.”⁴⁷ A gathering of eight civic bodies in Shanghai in 1921 called itself a Conference on the State of the Nation, tasking itself with the drafting of a model federal constitution. Subsequently Guangdong, Hubei, Hunan, Zhejiang and Yunnan provinces all drafted and promulgated provincial constitutions.⁴⁸ However, ultimately the movement was eclipsed by Chiang Kai-shek’s Northern Expedition - the KMT’s military conquest of South and Central China.

In his seminal work, Chesneaux essentially argued that provincial constitutionalism was caught between the Scylla of Nationalist unification campaigns and the Charybdis of local militarism, with warlords eager to exploit the federal movement to further their own political ambitions by augmenting provincial autonomy if not necessarily clamouring for outright independence. Chesneaux is not wrong to emphasise the *realpolitik* of the period but in so doing he has overlooked the legal and constitutional dimensions of the federal interlude in Republican history. The aim of this thesis is to fill this one of many lacunae in the literature on China’s legal history, but before expounding on the topic the following section explores why constitutionalism took root so readily in 1920s Hunan.

⁴⁵ Ibid: 2.

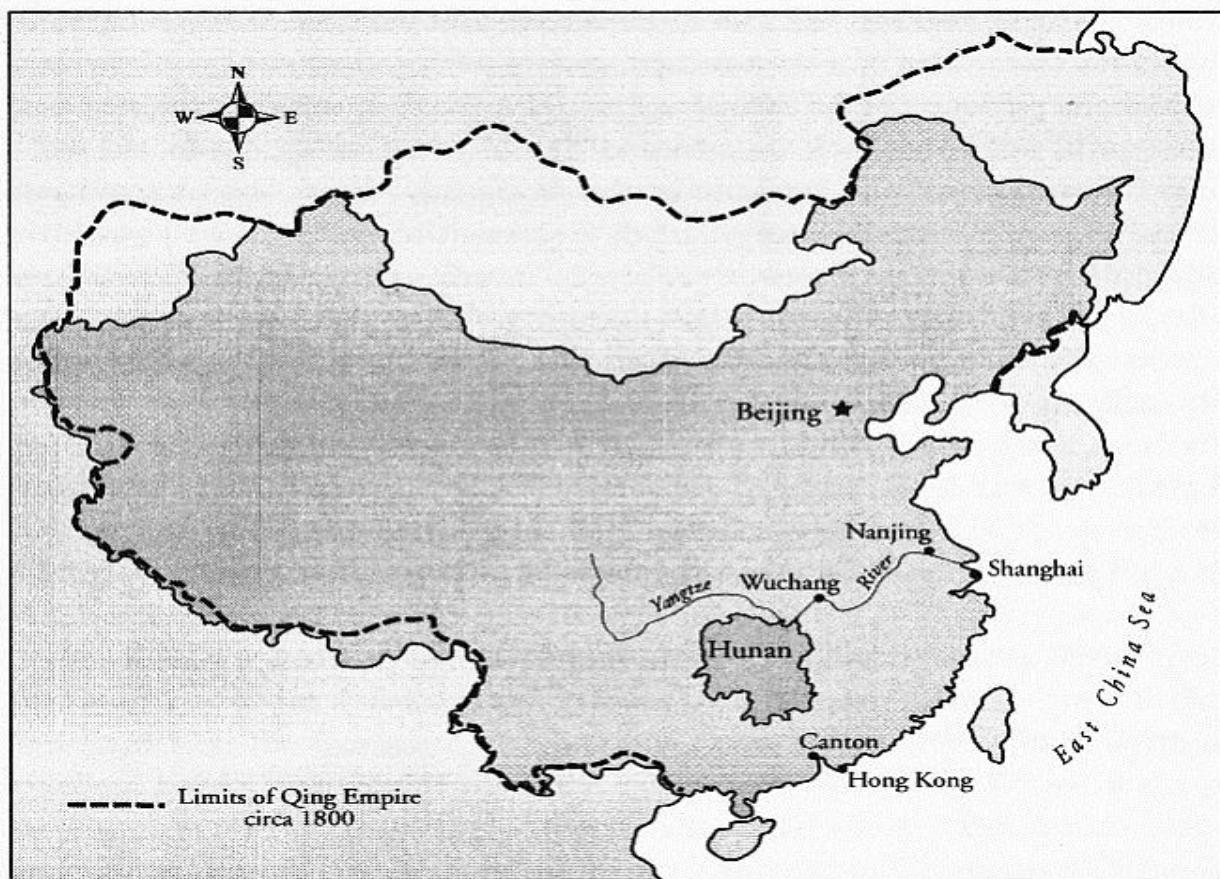
⁴⁶ Frank Dikötter, *The Age of Openness: China Before Mao* (Hong Kong: Hong Kong University Press, 2008).

⁴⁷ Quoted in *Modern China's Search for a Political Form*, Joseph Gray, ed. (London: Issued under the auspices of the Royal Institute of, 1969), 124.

⁴⁸ Li Dajia, *Minguo chunian de liansheng zizhi yundong (The United Provinces Self-Governance Movement in the Early Republic)* (Taibei, hongwen guan, 1986).

The Hunan Spirit

Hunan has been described as “three-tenths hill, six-tenths water, and one-tenth plain”.⁴⁹ The province’s geography and climate provided a fertile breeding ground for the revolutionary sentiments that fuelled the federal movement. Hunan was economically self-sufficient. The ‘home of fish and rice’ (*yumi zhi xiang*, 魚米之鄉), Hunan prospered from its location on the Yangtze river network as a conduit for trade between Guangdong and Northern China. So the saying went, “when it was harvest in Hunan and Guangdong, there was plenty for all under heaven” (*huguang shu, tianxia zu*, 湖廣熟天下足). In addition to being a rice-basket, this inland province was also rich in minerals.



⁴⁹ Milton T. Stauffer, *The Christian Occupation of China* (San Francisco, China Materials Center, 1979), 90.

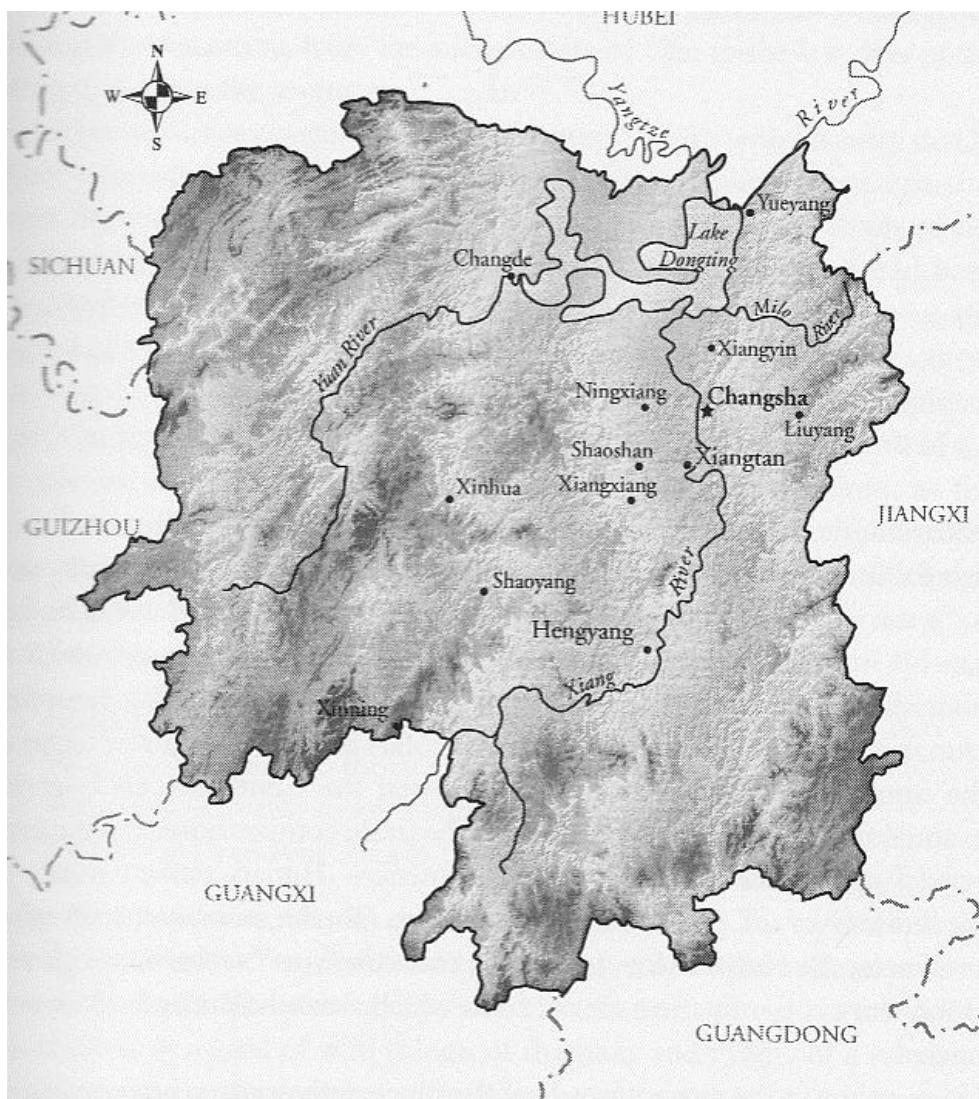


Figure 0.3 Hunan, the Geography of federalism

Source: Platt, *Provincial Patriots*

Alongside Hunan's self-contained geography, the historical roots of the movement for provincial autonomy run particularly deep in a province which has had a tradition of punching above its weight on the national stage of Chinese politics. Alongside the incumbent Taiwanese president Ma Ying-jeou (馬英九), it is not a coincidence that so many other influential figures in modern Chinese history have come from Hunan, including Chairman Mao (毛泽东), General Peng Dehuai (彭德怀), Mao's successor Hua Guofeng (华国锋), Liu Shaoqi (刘少奇), the military governor of Sichuan and Yunnan Cai E and KMT Prime Minister Song Jiaoren, whose assassination at the hands of Yuan Shikai presaged the demise of the Provisional Constitution of the Republic of China. Statistically, the disproportionate

influence of the Hunanese in Chinese politics is illustrated by the fact that, at a time when the province had a population of thirty million out of China's total population of 400mn, 43 of the 89 Chinese students who left Shanghai to study abroad in France on 17 March 1919 were Hunanese; of a total of 4,937 cadets graduating in the top four classes of the Whampoa military academy, 1,324 were from Hunan; in 1945, 60% of the People's Liberation Army's (PLA) marshals were Hunanese; as were four of the twelve members of the CCP Central Committee.⁵⁰

Traditionally, however, the Hunanese played only minor roles in Chinese history. Candidates from the province infamously were the worst performers in the imperial Confucian civil service examinations for centuries. This changed when Zeng Guofan (曾國藩) was permitted by the desperate Qing dynasty to raise an army based on personal ties between the soldiers and officers for the purpose of suppressing the Taiping rebellion, which had rumbled on in Southern China for 14 years from 1850 claiming over 20mn lives. The success of the Hunan Army (*xiangjun*, 湘軍) gave birth to a popular saying in Chinese folklore *wu xiang bu cheng jun* (無湘不成軍, ‘without the Hunanese there is no army’) and propelled Zeng Guofan, his family and associates into high office within the bureaucracy, several of whom were governors and governor-generals. Stephen Platt's intellectual history, *Provincial Patriots*, traces how Zeng sought to consolidate Hunanese influence within the bureaucracy by reviving, reinterpreting and building a cult of personality around the Hunanese hermit scholar and Ming loyalist Wang Fuzhi (王夫之, 1619-92)⁵¹. Money and prestige were ploughed back into the old academies (*shuyuan*, 書院), including Yuelu (岳麓), Shigu (石鼓) and Chengnan (城南), which in turn contributed to a further swelling of provincial pride.

Figure 0.4 Zeng Guofan- the archetype of Hunanese military prowess

Source: www.zhoubao.minghui.org

⁵⁰ Yangwen Zheng, :Hunan: Laboratory of Reform and Land of Revolution: Hunanese in the Making of Modern China”, *Modern Asian Studies*, 42 (2008), 1113-1136.

⁵¹ For more on the cult of Wang Fuzhi see Stephen R Platt, *Provincial Patriots: The Hunanese and Modern China* (Cambridge, Mass: Harvard University Press, 2007).

More pithily, Yangwen Zheng argues that ‘three political theatres’ galvanised the Hunanese into reform and revolution. After the Taiping Rebellion first propelled the Hunanese onto the national political stage, the second theatre was the defeat of the Hunan braves during the Sino-Japanese war of 1895, which inspired Western-educated reformers like Tan Sitong (譚嗣同), a Hunanese with extensive ties to the Cantonese reformers Kang Youwei and Liang Qichao, to set-up many of the schools and newspapers that were influential in the 100 days reform. Tan was captured and executed after the Empress Dowager’s 1899 coup, but many other Hunanese escaped to Japan, participating in the Tong Menghui (同盟會) and Whampoa military academy (黃埔軍校). Of the Revolutionary Alliance brokered by Sun Yat-sen in Tokyo in 1905, 263 of the 863 members were Hunanese, with other influential factions including Chinese from Hubei, Zhejiang, Anhui and Guangdong.⁵²

Zheng’s ‘third theatre’ is the 1911 Nationalist Revolution and the rise of communism. In 1903 the old Yuelu academy was turned into Hunan University and the Chengnan academy became the Hunan Number One Normal School. Its headmaster Yang Changji (楊昌濟) had a profound effect on a young Mao Zedong, who was exhorted to organise travel study groups in the pursuit of learning from the real world instead of books. Mao walked to five counties in Northeast Hunan to inspect peasant conditions and also visited factories in Changsha where he talked to the workers, inspiring the grassroots activism that was a recurring theme throughout his life. Mao married Yang’s daughter, Yang Kaihui (杨开慧), a graduate of Zhounan Girls Middle School, an institution founded by Japanese-educated Hunanese. Mao also used the Changsha edition of the *Da Gong Bao* (長沙大公報) newspaper, the mouthpiece of the Hunanese intellectuals founded in 1915 by Liu Renxi for the purpose of criticising the imperial ambitions of Yuan Shikai, to propagate his political views. However, whereas a fairly dense literature exists in relation to the role Hunanese have played on the national political stage during the early Republic, much less has been written about the Hunanese *in* Hunan.

⁵² Bergere, Marie-Claire. *Sun Yat-Sen*. Translated by Janet Lloyd. 1st ed. Stanford University Press, 2000, 143.

Dissertation Outline

Neither can it be a surprise that as the federal movement gained momentum in the brave new Republic of China, Hunan became the cradle of constitutionalism incubating China's first provincial constitution. Moreover, of the numerous Southern provinces later to adopt their own constitutions Hunan was the only one to actually be administered in accordance with the provisions of its constitution.⁵³ In 1921 a committee of 13 specialists, including the prolific jurist Wang Cheng-t'ing (王正廷) who participated in the drafting of the 1912 Provisional Constitution of the newly-born Republic of China in addition to several other provincial constitutions, and the Hunanese editor-in-chief of the journal *Pacific Li Chien-nung*, was selected by the civil governor of Hunan, Lin Zhiyu (林芝宇), for the purpose of drawing up a constitution. The Constitution of Hunan was duly promulgated on 1 January 1922. It contained 141 articles grouped under 13 headings, including the rights and duties of its citizens, the functions and powers of the provincial and central governments, the PA, governor, cabinet and legislation.⁵⁴ The constitution defined the competence of the provincial government very widely in relation to the central government in the financial (Art. 70)⁵⁵, economic (Art. 82)⁵⁶ and military (Art. 89)⁵⁷ spheres. Notably, the imprint of American and Swiss constitutions is clearly visible on the document, which contains reference to an independent judiciary, procedures for impeachment and recall of elected representatives and the governor and confers on citizens the rights of initiation and petition.

Despite its position in the vanguard of the federal movement of the early Republic the literature on federalism and constitutionalism in Hunan *per se* is very sparse. Few Chinese scholars and no Westerners have examined in detail the functioning of Hunan's constitution, perhaps precisely because its vision was that of a China very different from the top-down,

⁵³ Li Chien-nung, *Zhongguo jinbainian zhengzhishi 1840~1926 (The Political History of China 1840-1928)*, centenary edition (Wuhan: Wuhan daxue chubanshe, 2006), 405. For an account of the farcical manipulation of the provincial constitution, which on paper was a highly democratic document, by militarists in Zhejiang see: R. Keith Schoppa, 'Province and Nation: The Chekiang Provincial Autonomy Movement, 1917-1927', *The Journal of Asian Studies*, 36 (1977), 661-674.

⁵⁴ *Hunan shengxian liufa quanwen (The Complete Text of the Six Laws of the Constitution of Hunan)*. Minguo Beijing zhengfu zhixian shiliao er bian (Beijing: xianzhuang shuju, 2008), 1-18.

⁵⁵ 'The provisional bank will play the part of provincial treasury and will have control of the revenue and expenses of the province.' (*author's translation*)

⁵⁶ 'The goods of the province will not be mortgaged or sold without the consent of the province; the natural resources of the province, whether public or private property, will not be sold to people not possessing Chinese citizenship.' (*Ibid.*)

⁵⁷ 'The citizens of the province will maintain order and peace in the province; no troops from outside the province will be authorized to be stationed there or to pass through without the authorization of the governor and the approval of the provincial assembly.' (*Ibid.*)

monolithic, centralised authoritarian state envisaged by both the Nationalists and Communists and which still exists to this day. Writing from a Marxist perspective, a former librarian at the Shaoshan Mao Zedong Memorial Hall (*Shaoshan mao Zedong jiniantang*, 韶山毛泽东纪念堂), Liu Jianqiang (刘建强), argues that “the failure of the federal system advocated by the movement for Hunanese autonomy provided a historic point of reference for the structure and shape of the Chinese polity. The explanation for the failure of provincial self-governance is several-fold and it clearly demonstrates that a federation is not suitable for China.”⁵⁸ Liu described federalism as a ‘Bourgeois’ import from the West; and the subtext of his work is that the federal interlude was a stepping-stone in a linear and determined process of China’s historical evolution to a system of ‘Socialism with Chinese Characteristics’. In contrast, Taiwanese scholarship is also sparse, but generally objective in line with the exhaustive, factual descriptions of the *kaozheng* (考證) tradition of Chinese and Japanese scholarship. The only article written specifically about the constitution of Hunan is by Chang Pengyuan, but most of Chang’s extensive writing on Hunan is from the perspective of exploring the phenomenon of Hunanese exceptionalism in relation to national Chinese politics.⁵⁹

Thus the aim of this dissertation is to fill a gaping hole in the literature identified above and to analyse the federal movement in Hunan by looking at a range of primary sources, including contemporary newspapers and journal articles, documents of the local and national governments, courts and those of the provincial parliament, the diaries and private correspondence of prominent politicians and lawyers such as Tan Yankai (譚延闔) and Wang Zhengting, and accounts from foreign consular officials and missionaries based in Changsha. My argument is that Hunan’s federal movement was one for autonomy and *not* independence. In seeking to explain the ‘failure’ of constitutional governance in Hunan, beyond the traditional bogey men of warlordism and militarism I analyse legal factors such as shortcomings in the constitutional drafting process, flaws in the document of the constitution itself and the absence of viable institutions, in particular a functioning Supreme Court to adjudicate in disputes between the central and provincial governments. Moreover, on balance I argue that instead of a failure such a bald experiment in constitutional governance by the

⁵⁸ Author’s translation. See: Liu Jianqiang, *hunan zizhi yundong shilun* (A History of Hunan’s Federal Movement) (Xiangtan, Xiangtan University Press, 2008), 6.

⁵⁹ Chang Pengyuan, ‘Hunan sheng xianfa zhi zhiding yu yunzuo 1920-1925’ (The Drafting and Implementation of the Provincial Constitution of Hunan) in *Zhongguo jindai xiandai shilunji* (An Anthology of Theories on Modern Chinese History), ed. by Zhonghua wenhua fuxing yundong tuixing weiyuanhui (Taiwan, shangwu yinshuguan, 1986), vol. xxiii (21), 393-440.

standards of the time can be regarded in many ways as a success. In outline, the first chapter traces the historical roots of Hunanese federalism to the PA established during the New Policy Reforms in the twilight of the Qing dynasty. Chapter two explores the drafting and promulgation of the constitution and analyses the constitutional document itself. Chapter three examines the implementation and reality of constitutional governance in Hunan, concluding with its premature death in 1926. The fourth chapter will explore the role of Hunanese constitutionalism in the context of the wider federal movement in 1920s Republican China at the national level. Chapter 5 will compare and contrast constitutionalism in Hunan with that which existed in other provinces, including Guangdong and Zhejiang. Finally, the sixth chapter will consider the question of why the federal movement was not more successful, its legacy and possible implications for modern China.

CHAPTER 1

The Roots of Hunanese Constitutionalism

1839-1920

This chapter traces constitutional reforms in Hunan back to the impact of contacts with Western civilisation after the rude awakening of the Opium Wars, through to the humiliating defeat of the Sino-Japanese war of 1894-5 and the Boxer Rebellion of 1901. The New Policy reforms that ensued gave birth to Provincial Assemblies, a vehicle by which local gentry elites wrested control of China from the moribund Qing dynasty, thereby propelling prominent local landed-gentry elites like Tan Yankai to power in Hunan. Control of the province sea-sawed back and forth between central and local governments as successive Beijing administrations ebbed and flowed, buffeted by the turbulence of the early Republic. It was in no small part in response to the brutal excesses of a series of military governors sent by Beijing to reinstall central control that federal ideas transplanted from the West began to take root in Hunan. During a nadir of central control at the dawn of the second decade of the twentieth century, the federal movement in Hunan began to flourish.

A Protracted Labour

The reform impulse flickered intermittently in the wake of a series of humiliating encounters with the West dating back to the Opium Wars. However, hitherto the aloof intransigence of the Manchu dynasty ensured that for half a century all attempts to implement political reforms had expired as damp squibs. Then, as the Japanese inflicted a crushing defeat on China in the war of 1894-5, culminating in the Treaty of Shimonoseki which abandoned China's territorial claims towards Korea and ceded Taiwan to Japan, a critical mass of reformers seemed to be building up around the young Guangxu Emperor. They included Qing officials such as Kang Youwei as well as youthful scholars like Liang Qichao, who were inspired by the Meiji Restoration and interpreted the Japanese victory as the triumph of constitutionalism over despotism. A fuse had been lit at the start of the 'Hundred Days'



Reforms (維新變法) between June and September 1898.¹ Although, like its predecessors this movement was snuffed out abruptly when Guangxu's aunt, the Empress Dowager, launched a coup, it sowed the intellectual seeds of constitutionalism in China which two decades later were to blossom into a campaign for provincial autonomy. Thus, from the ashes of the abortive Hundred Days Reforms emerged a grouping of constitutionalists and revolutionaries who advocated federalism as part of the solution to China's woes, which they deemed to be a pragmatic recognition of China's size and diversity as well as a means of self-strengthening to avoid the ignominious fate of this continental-sized country, in the words of a popular contemporary metaphor, being 'carved up like a melon'.

In the 1840s Wei Yuan (魏源) was one of the first writers to be influenced by Western political systems of governance. Wei analysed the US federal system and concluded that the strength of the West lay not merely in guns, but was more profoundly rooted in the political system.² At the founding of the subversive organisation Xingzhonghui (興中會) in 1894, the revolutionary Sun Yat-sen envisaged establishing China as a federal state along the lines of the US model.³ Less radical reformers such as Liang Qichao argued in a letter to the then civil and military governor (*dufu*, 督撫) of Hunan, Chen Baozhen (陳寶箴), that one or two centrally located provinces should declare their independence first and reform themselves as an example to the nation.⁴ In 1903 Liang visited the USA and witnessed first-hand the operation of its federal system. Although he was critical of some aspects, he believed a federation was the key to America's longevity, famously writing “蓋小房非持大樓而始存立，大樓實持小房育而存立者也”.⁵ In the aftermath of the failure of the 100 Days Reforms, having fled to Japan with succour from the British, the imperial and imperious official Kang Youwei mused:

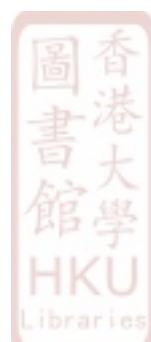
¹ *The Cambridge History of China*, vol. 11, 339-403

² Wei Yuan, *Haiguo tuzhi: shi yi zhi chang ji yi zhi yi* (An Illustrated Gazette of Overseas States: Learning from the Foreigners' Advanced Technologies to Subdue the Barbarians) (1843-52; Reprint. Zhengzhoushi: Zhengzhou guji chubanshe, 1999).

³ *Sun Zhongshan quanji* (The Complete Works of Sun Yat-sen), vol. 1 (Taipei, Zhonghua shuju, 1981), 172-3.

⁴ *Wuxu bianfa* (The 100 Days Reforms), vol. 2, ed. by Zhongguo shixuehui zhubian (Shanghai, renmin chubanshe: 1961), 533, 535.

⁵ “A room does not need a building to exist; but, in fact, without the room there can be no building” in Liang Qichao, *xin dalu youji* (Travels in a New Continent), (Hunan, renmin chubanshe: 1981), 158-9.



自治之制盛则民治昌，自治之制不盛则民生瘁…以地方自治为立国之本… 最切中国当今之急务也…且夫自治之制，天理也，自然之势也，无论如何专制之国，不能钳绝废之也。⁶

Figure 1.1: Wei Yuan - an early proponent of the US federal model

Source: <http://tupian.hudong.com>

The Institutional Shoots

After the fiasco of the Hundred Days Reforms, an associate of Kang Youwei's, Tan Sitong, the scholar Xiong Xiling (熊希齡) and Liang Qichao took the lead in setting up the Southern Study Society (*Nanxuehui*, 南學會) in February 1898. This organisation, despite having no formal powers, nevertheless was poised to play an important role in lobbying for and influencing the formulation of imperial reforms. However, the organisation was immediately denounced by the head of the Yuelu Academy as betraying the traditions of Classical Chinese education and the Changsha branch of the Southern Study Society was driven out of Hunan. Like the many heads of a Hydra, only three months after the disbandment of the Southern Study Society another organisation sprung up in its place, the *baoweiju* (保衛局), set up by

⁶ "If the movement for self-governance prevails, the people will flourish; if self-governance does not prevail the people will be shattered... self-governance is the root of the nation... and most fits today's pressing priorities; self-governance is the will of Heaven, a force of nature. However tyrannical, no nation can stamp it out." Author's translation from gongmin zizhi pian (An Article on Self-Governance of the People) in Xinmin congbao, 1902, repr. in *Kang Youwei yujindai wenhua* (*Kang Youwei and Modern Culture*), ed. by Fang Zhiqin and Wang Jie (Kaifeng, Henan daxue chubanshe: 2006), p. 141.

Huang Zunxian (黃遵憲) who had served as a minister in the Chinese legation in Japan and was an eye-witness to the maelstrom of change wrought by Meiji.

The ignominy of reparations following the Boxer Rebellion in 1901 lent a fresh impetus to constitutional reforms and an Office for the Preparation of the Provincial Assembly (*ziyiju choubeichu*, 諮議局籌備處) was established in Hunan in 1907. Its major task was the allocation of assembly members to prefectures and counties. However, in the absence of a census, it was decided to distribute seats according to 5% of the number of candidates sitting the imperial examinations (*keju*, 科舉). At the last count Hunan had 1,641 candidates, on the basis of which 82 seats were allocated to its PA (*ziyiju*, 諮議局). The franchise was limited to wealthy and educated elites and imperial officials. In total, 100,487 men were considered eligible to vote, which equated to 0.42% of the population; this in turn amounted to one representative per 1,225 members of the population. Assembly members consisted mainly of low-level literati and officials: of the 82 members, 76 were scholars sitting the provincial exam in the capital (*gongming* 功名), though relatively few were high level degree-holders, i.e. *jinshi* 進士 and *juren* 舉人.⁷ Bribery was apparently rare, not least because an election was an alien concept to reticent members of the gentry who did not see any immediate political gain to be had through participation.⁸

At the age of 30, Tan Yankai was elected leader of the fledgling Hunan PA. Born in the Hunanese town of Chaling (茶陵) in 1879, Tan was the son of the former governor-general of Guangdong and Guangxi ('the two Guangs'), the heir to a fortune of about a million taels and the first Hunanese *huiyuan* (會元)⁹ for 200 years. Tan was a classically-trained gentry scholar who, when his passion for horse-riding and archery allowed, spent his time as editor of the history records at the Hanlin Imperial Academy (翰林院).¹⁰ Against this backdrop, a momentum appeared to be gathering behind the self-governance movement. The poignant death of Yang Yulin (楊毓麟), a KMT member and author of *A New Hunan* (Xin Hunan, 新湖南) and *The Theory of Self-Governance in Hunan* (*Hunan zizhi lun*, 湖南自治論) who drowned himself in England's River Mersey upon learning of the failure of an uprising

⁷ Chang Pengyuan, *hunan xiandaihua de zaoqi jinzhan 1860-1916 (The Early Progress of Modernisation in Hunan 1860-1916)* (Changsha, yuelu shushe, 2002), 151-2. NB Under the imperial examination system used for millennia to select China's *de facto* civil service, a *jinshi* was a national graduate of the palace examinations, whereas a *juren* was a provincial degree holder.

⁸ Chang Pengyuan, *The Early Progress*.

⁹ A *huiyuan* was a scholar scoring first place in the imperial examinations.

¹⁰ *A Biographical Dictionary of Republican China*, Vol. 3, ed. by Richard C. Howard and Howard L. Boorman (New York: Columbia University Press, 1970), 220-223.

in Guangdong in 1909, caught the zeitgeist and provided a popular façade to drape over the emerging institutional edifice of constitutionalism.¹¹



Figure 1.2 Tan Yankai - the late Qing gentry scholar-official

Source: www.mh.sinica.edu.tw

A Movement Eclipsed

On 15 March 1913 the Provincial Parliament of Hunan was established (省議會, PP) which expanded representation to 108 delegates and relaxed the franchise to encompass 9.5% of the population, an increase of 21 times over the PA.¹² The KMT, which had transformed itself from the banned society set up by Sun Yat-sen into a national political party, took 90 of the 108 seats in the Hunan provincial elections and on the back of this and other sweeping successes was propelled to power in the national parliament.¹³ Seemingly on the cusp of momentous change, five days later the party's leader Song Jiaoren was assassinated, most probably at the behest of Yuan Shikai.

¹¹ See Yang Yulin ji (*The Works of Yang Yulin*) (Changsha, Yuelu shushe, 2001), 62-3.

¹² Chang Pengyuan, *The Early Progress*.

¹³ Ibid.

Yuan moved quickly to declare the KMT a seditious organisation and to dissolve the national parliament provoking a ‘War for the Protection of the Constitution’ (*huxian zhazheng*, 護憲戰爭). Tan Yankai stalled for two months before finally joining Sun Yat-sen, earning him the moniker ‘畏公’ (‘the cowardly duke’), and declaring the independence of Hunan. When Sun’s forces were quickly routed, Tan retracted the declaration, but after the defeat he was summoned to Beijing, together with his lieutenant General Zhao Hengti (趙恆惕), and sentenced to four years’ imprisonment, although with the intervention of powerful allies in the central government including the Premier Xiong Xiling and Vice-President Li Yuanhong both were pardoned on 12 December 1913. Despite this, retribution from Beijing arrived swiftly in the form of Tang Xiangming (湯鄉銘), a naval officer from Hubei who ruled Hunan with an iron fist and, according to Communist accounts, executed over 10,000 civilians and KMT supporters, rapidly earning him an infamous reputation as ‘Tang the butcher’ (*Tang tufu*, 湯屠夫).¹⁴

The backlash against Yuan Shikai’s attempt to restore the monarchy and install himself as emperor left Tang vulnerable; then finally, with the death of his patron, the butcher’s power base evaporated and soon after on 4 July 1916 Tang Xiangming fled Changsha.¹⁵ The Beiyang regime considered a number of replacement candidates before finally settling on Tan Yankai as a compromise. When Tan was appointed as joint civilian and military governor (督軍兼省長) by Li Yuanhong in August 1916 he had learnt some of the lessons of his first term as governor and had since tried to consolidate his military power by enlisting the services of Zhao Hengti. Tan garnered popular support by popularising the slogan ‘Hunan for the Hunanese’ (*Xiangren zhi Xiang*, 湘人之湘). However, a Confucian scholar-official, not a militarist, Tan lacked the survival skills requisite in an age of militarism; his second term was equally short and he fled to Shanghai within a year. This marked another low ebb for proponents of self-governance as Duan Qirui’s maxim of armed reunification (*wuli tongyi*, 武力統一) began to hold sway in Beijing.

¹⁴ *Xin minzhuzhuyi geming shiqi* (New Democracy in the Revolutionary Period), ed. by Zhonggong Hunan shengwei dangshiwei (Hunan chubanshe, 1991), 12.

¹⁵ *Hunan jin 150 nian shishi rizhi, 1840-1990* (A Chronology of 150 Years of Modern History in Hunan, 1840-1990), Tian Fulong et al., ed. (Beijing, Zhongguo wenshi chubanshe, 1993).

Figure 1.3 Big Brother - Butcher Tang staring out from a ceramic ornament

Source: www.findart.com.cn

In the interceding months and years the seat of power in Hunan sea-sawed back and forth between the North and the South. For brevity's sake, the table below (Table 1.1) summarises this tangled history and demonstrates that after 1911 Hunan had no less than 13 governors in 16 years.¹⁶ In addition to Butcher Tang, other particularly reviled governors during the period included Fu Liangzuo (傅良佐) and Zhang Jingyao (張敬堯). Both were sent by Beijing to rest back control of this strategically important province, which for the Beiyang clique was the gateway to conquering the two Guangs, and for the Guangdong regime was a springboard for launching its Northern Expedition; and both resorted to crude brutality to govern. In this way, as a key battleground in the civil war Hunan had been ravaged for over a decade. A young Mao Zedong wrote to the Peking government accusing Zhang Jingyao of 'ten major crimes', including recklessly printing money, looting mineral resources, mass production of opium, desecrating education, suppressing public opinion, increasing the salt tax, extortion and fraudulent elections.¹⁷ It is thus not by accident that a province with an intense sense of pride and a regional identity, which saw its historical

¹⁶ Table from Angus W McDonald, *The Urban Origins of Rural Revolution: Elites and the Masses in Hunan Province, China, 1911-1927* (Berkeley: University of California Press, 1978), 21.

¹⁷ Mao Zedong, *Mao Zedong zaoqi wengao* (*The Early Writings of Mao Zedong*), Zhonggong Hunan shengwei, ed. (Changsha, Hunan chubanshe, 1990). For an excellent English translation see *Mao's Road to Power: Revolutionary Writings 1912-1949*, Stuart R Schram, ed. (Armonk, N.Y: Sharpe, 1992), 476-481.

mission as the saviour of the nation, incubated and became a laboratory for radical ideas of self-governance.

Table 1.1
Hunan's Military Governors, 1913-27

Name	Term of Office	Education	Power Base
Jiao Dafeng	22-31 Oct. 1911		New Army, secret societies
Tan Yankai	31 Oct. 1911-Oct. 1913	Private Confucian	Hunanese Gentry
Tang Xiangming	Oct. 1913-July 1916	French naval training	Beijing government
Zeng Jiwu	July 1916	Baoding and Japanese Officers Academy	Guangxi/Hunan
Cheng Qian	July 1916	Japanese Officers Academy, Cavalry	Guangxi/Hunan
Liu Renxi	July-Aug. 1916	Private, Confucian	Hunanese Gentry
Tan Yankai	Aug. 1916-Aug. 1917		Hunanese Gentry
Fu Liangzuo	Aug. 1917-Nov. 1917	Japanese Officers Academy, Artillery	Beijing government
Tan Yankai	Dec. 1917-Mar. 1918		
Zhang Jingyao	Mar. 1918- July 1920	Baoding	Beijing government
Tan Yankai	July-Nov. 1920		Hunanese Gentry
Zhao Hengti	Nov. 1920-Mar. 1926	Japanese Officers Academy	Hunanese Military/Gentry
Tang Shengzhi	Mar. 1926-Nov. 1927	Baoding	Hunanese Military/KMT

Source: Adapted from Angus W McDonald, *The Urban Origins of Rural Revolution: Elites and the Masses in Hunan Province, China, 1911-1927* (Berkeley: University of California Press, 1978), 21.



Re-emergence and Flourishing

The hiatus that followed the expulsion of Zhang Jingyao on 11 June 1920 provided a long-awaited opportunity for advocates of self-governance, who lost no time in ratcheting up their campaign with vocal support from the literati and a thriving Republican press.¹⁸ The campaign hardware had already been installed by Liu Renxi (劉人熙) on 1 September 1915 when he resigned his government posts following the arrival of Tang Xiangming to establish a daily newspaper, the *Changsha Da Gong Bao* (長沙大公報, henceforth *DGB*) which he used to attack Yuan Shikai and rally the politically-minded Hunanese elite, especially businessmen and educators, against the threat of centralisation. When Tang fled, the newspaper could hardly have been more sympathetic to the cause of self-government as it was edited by the ardent provincialist, Long Jiangong (龍兼公), who had been on its staff since Liu founded it.¹⁹ In fact the newspaper had played a strident role in the campaign to expel Zhang (*qu Zhang*, 驅張), as evidenced by Mao's aforementioned article enumerating Zhang's 'ten major crimes'.

Communists, Nationalists and Constitutionalists all participated in the drive for federal autonomy. In March 1920 as leading spokesmen for the community of Hunanese exiles, Peng Huang (彭璜) and Mao Zedong jointly established an Association for Promoting Reform in Hunan (*Hunan gaizao cucheng hui*, 湖南改造促成會), which was initially based in Peng's residence in the French concession in Shanghai. They drew up a manifesto (*Hunan jianshe wenti tiaojian shangque*, 湖南建設問題條件商榷) that advocated the abolition of military governors, reducing Hunan's army to one division, cutting military expenditure to 1/12 of the provincial budget, setting up private banks, reducing taxes and safeguarding rights of association and a free press.²⁰ The intellectual Hu Shi argued that China was a state that was least suited to central control, the inevitable result of which was a weak and ineffective polity (*bianchangmoji*, 鞭長莫及).²¹ This argument has more recently been made in

¹⁸ Tian Fulong et al., *A Chronology*, 79.

¹⁹ Chang Pengyuan, *An Anthology*, 394-9

²⁰ *Shen Bao*, 'Hunan jianshe wenti tiaojian shangque' ('The Debate About the Conditions for the Construction of Hunan'), 14 June 1920.

²¹ Zhou Donghua, 'Ive lun 1920-1923 nian de 'liansheng zizhi' sichao' ('A Short Intellectual History of the 'United Provincial Autonomy Movement''), *beijing xingzheng xueyuan xuebao* (*Journal of the Beijing Institute of Administration*), 2001 (3).

revisionist historiographies of Chinese political science based on a longue durée interpretation of Chinese history not dissimilar to that of Hu Shi in the early Republic.²²

After the expulsion of Zhang Jingyao with military assistance from Zhao Hengti, Tan began what was to be his third and final term as governor of Hunan on June 14.²³ On the issue of self-governance Tan was hesitant and before the Zhili-Anfu war broke out he even opposed the movement.²⁴ Finally, under pressure from the Hunanese gentry, manifestly when Zhou Zhenlin (週震鱗) drafted a declaration of self-governance in the form of a telegram that he demanded Tan Yuankai send to the Beiyang government, ten days later Tan changed his mind and cabled what came to be known as the ‘Ma memo’ (*madian*, 祀電), a Classical reference to an ancient ceremony in which soldiers camped out with their horses on the top of a hill as a vigil in the hope of beseeching the Emperor to change his mind.²⁵ The telegram was published the same day, July 22 1920, in the *DGB* as an ‘urgent message’ (‘*yaodian*’, ‘要點’).²⁶ The next day Mao Zedong, riding on the wave of popular euphoria, wrote a letter that was published on the same day in *Shenbao* arguing that for the following 20 years Hunan should cut all ties with the rest of China like ‘Taoyuan’²⁷ (*hua hunan wei taoyuan*, 划湖南為桃源).²⁸

Just as a head of steam was beginning to build behind the self-governance movement, there was an intervention from a Hunanese elder statesman, the scholar Xiong Xiling, who had risen through the ranks of the central government to become the Premier of ‘the Cabinet of all the talents’ in 1913-14. Xiong invited Liang Qichao to draw up a set of guidelines for drafting the Basic Law of Hunan. Liang’s guidelines were subsequently published in *DGB* in a very clear rule-explanation format. The article demonstrates a relatively sophisticated grasp of constitutionalism that aimed to strike a clear balance between the central and local

²² For revisionist historiographies of Chinese political science and warfare, see Victoria Hui’s PhD thesis that was publishing as a monograph contrasting historical records for the number of wars involving great powers in early modern Europe with (1495-1815), namely 89, with those in Ancient China (656-221BC) which were around 256. See: Hui, Victoria Tin-bor. *War and State Formation in Ancient China and Early Modern Europe*. (New York: Cambridge University Press, 2005), 239-249.

²³ Tian Fulong et al., *A Chronology*, 79.

²⁴ This is supported by collections of letters from Zhao Hengti to Tan Yankai found in microfilm at Academia Sinica and Academia Historica: ‘Zhao Hengti, Zhao hengti zhi tan yankai han’ (Collection of Letters from Zhao Hengti to Tan Yankai) (Library of Modern History, Microfilm Collection, Taipei), MC00128, 33,59, 130.

²⁵ *Tan yankai riji* (*The Diaries of Tan Yankai, 1895-1930*) in *Scripta Sinica* (hanji dianzi wenxian ziliaoku), 66 vols (Academica Sinica, Institute of Modern History, 2007), 22/07/1920. N.B. The diary is written in calligraphy; for a sample please see Appendix I.

²⁶ *Dagongbao* (*Changsha*), ed. by Li Baoyi (*Changsha*, 1987).

²⁷ A classical allusion to a fourth-century utopian community that isolated itself from the rest of China and, by implication from the world, in order that its citizens could live an idyllic existence in blissful ignorance of the woes that afflicted a country which had been torn apart by civil strife into a number of feudal states.

²⁸ *Mao Zedong zaoqi wengao*, 488-90.

governments. For example, according to Rule 1, the Provincial Governor (*Shengzhang*, 省長) was to be proposed by the PP, county parliaments (CP) and educational and business associations, who elected three candidates from which the national president (*Dazongtong*, 大总统) selected one. According to Rule 2, the PP must appeal to the national president to impeach the Provincial Governor, who then refers the matter to a provincial referendum. Rule 22 stipulated that the provincial government must collect taxes on behalf of the central government. The document is littered with references to US, Swiss and German constitutions in explanation sections.²⁹

Xiong Xiling sent a copy of the article to Tan Yankai, who appears to have tried to recapture the political momentum behind the nascent autonomy movement by organising his own self-governance meeting in September 1920, although he only issued invitations to members of the PP and military.³⁰ This marked the opening exchange in a long-running and passionate struggle to define the nature of Hunan's self-governance, namely whether it was to be by the people (*minzhi*, 民治) or by the gentry (*guanzhi*, 官治). This is one of the focal points of Marxists historians' analysis of this period,³¹ although more recently some scholars from the mainland have pointed out that in point of fact this episode was in large part a bitter struggle between the literati, as distinct from the 'nebulous' catch-all 'the people', and the gentry.³² A landmark piece entitled 'A "Monroe Doctrine" for Hunan' (*Hunan 'menluozhuyi'*, 湖南《門羅主義》) was published in *DGB* on September 5. Written by Long Jiangong the article called for a policy of non-interference, that is to say that Hunan would not interfere in the affairs of other provinces and in turn they should not interfere with the affairs of Hunan.³³ This keynote article inaugurated a regular series on 'the problem of establishing Hunan' (*Hunan jianshe wenti*, 湖南建設問題). Not one to miss a rolling bandwagon, Mao published

²⁹ 'Xiong fenghuang duiyu xiangsheng zizhi zhi jianyi' (Xiong Fenghuang's Recommendations for the Self-Government of Hunan) in *Dagongbao (Changsha)*, Li Baoyi, ed. (Changsha, 1987), 29/08/1920 and 30/08/1920.

³⁰ The journalist Wang Wuwei (王無為) describes this as 'fake' (*maopai*, 冒牌) self-governance existing merely in name (*youningwushi*, 有名無實), quipping that nowhere in the world is a dog capable of giving birth to a tiger ("世界上没有狗能生虎的事实, 南自治的起点, 既不由人民发动, 将来的自治法当然就是大狗生出来的小狗。"). Quote from Wang Wuwei, *Hunan zizhi yundong shi* (*The History of Hunan's Self-Governance Movement*) (Shanghai, taidong tushuju, 1920), 27-28.

³¹ See for example: Liu Jianqiang, 'Hunan shengxian yu jindai Hunan zhengzhi xiandaihua' (The Hunan Constitution and the Modernisation of Hunan), *Zhongwai qiyejia* (*The International Entrepreneur*), 2010(12); Xiong Xinglin, 'Hunan zizhi yundong pinshu' ('An Assessment of the Hunan Self-Governance Movement'), *Jindaishi yanjiu* (*Modern History Studies*), 1990(3); Mo Hongqing, 'Minguo chunian 'Hunan shengxianfa' tanxi' ('An Exploration of the 'Hunan Constitution' in the Early Republic'), *Xiangtan lunan* (*Hunan Forum*), 2008(1).

³² Ma Jun, 'you guanshen zhixian, gongmin zhixian dao xuezhe zhixian' ('Drafting the Constitution: from the Gentry to the People to the Scholars') *Faxue pinglun* (*Law Review*), 2008(4).

³³ *Dagongbao (Changsha)*, 05/09/1920.

his own article ‘Absolutely support the Monroe Doctrine for Hunan’ (*Juedui zancheng ‘hunan menluozhuyi*’, 純對贊成《湖南門羅主義》).³⁴ Mao’s article the previous week calling for a ‘Republic of Hunan’ (*Hunan gongheguo*, 湖南共和國), which in practice equated to a tract advocating Hunanese independence, was severely criticised by Mao’s mentor Peng Huang and in the Republican Daily (*Minguo ribao*, 民國日報) by Wang Wuwei for being too radical and extreme to the detriment of the self-governance movement.³⁵

As idealists clamoured for self-governance governor Tan played for time, calculating his next move. In his contemporary account of the movement Wang Wuwei describes Tan as dithering and looking two ways (*shoushuliangduan*, 首鼠兩端) on this key issue.³⁶ This is borne out by evidence from Tan Yankai’s diaries that have been recently been digitised by Academica Sinica. A year later on 27 October 1921 Tan appears to be coming round to the idea, writing that because China is in turmoil due to infighting with disparate groups pursuing their own self-interests, “my heart is with self-governance” (*wu xin zizhi*, 吾心自治).³⁷ Given the prominence of the self-governance movement at a time when Tan was at the helm of the provincial government, it is perhaps telling how few references to or discussion of this subject there are in the diaries. In the three other references, Tan is evidently flip-flopping: on 19 June 1922, he says only that Zhang Bingwen (張秉文) came to his house to discuss self-governance;³⁸ then, on 3 September 1922 Tan writes cryptically that he does not approve of self-governance, nor does he oppose it;³⁹ finally, on 5 September 1922 Tan seems to have had enough and laments that Zhang Bingwen dropped round yet again to deliver another long, rambling lecture on the topic.⁴⁰

Tan Yankai’s stonewalling and apparent indifference to the ideas of Hunan’s scholars, students and other representatives of what might be described an embryonic civil society in the summer of 1920 culminated in a demonstration of 20,000 people including representatives of 40 different organisations, symbolically timed to coincide with the Republic of China’s Independence Day on 10 October. The protestors gathered at 6 am before marching through the streets, disrupting traffic, to present a petition to the governor in his office (*dujunshu*, 督軍署). The 4,000-character petition, signed by 377 people including

³⁴ *Dagongbao (Changsha)*, 06/09/1920.

³⁵ Wang Wuwei, *Hunan’s Self-Governance Movement*, 33.

³⁶ Wang Wuwei, *Hunan’s Self-Governance Movement*, 19.

³⁷ *Tan yankai riji*, 27/10/1921.

³⁸ *Tan yankai riji*, 19/06/1922.

³⁹ *Tan yankai riji*, 03/09/1922.

⁴⁰ *Tan yankai riji*, 05/09/1922.

Long, Mao and Peng and published the previous day in *DGB*, was read aloud by Peng Huang. While recognising the legitimacy of the Republic of China and conceding that Tan's was a 'radical' government because it had overthrown the regime of Zhang Jingyao, he expressed concerns about the gentry stitching up the constitution (*baoban xianfa*, 包辦憲法) and called for direct elections to the provincial parliament, universal enfranchisement, and all within the space of three months. Tan appeared briefly to receive the petition and promised to take into account the will of the people, before promptly proceeding not to do anything at all.⁴¹

Only after further pressure was mounted did Tan Yankai resolve to break the deadlock by calling for an international conference under the auspices of the Education Association (*jiaoyuhui*, 教育會). Convened between 27 October and 20 November, luminaries of the federal movement in China were invited to the conference, including Cai Yuanpei (蔡元培), Zhang Taiyan (章太炎), Zhang Dongsun (張東蓀), Tao Xingzhi (陶行知) and Li Shicen (李石岑) together with internationally renowned philosophers and educationalists such as Bertrand Russell and John Dewey, both of whom were on lecture tours in China at the time. Tan received his guests by way of a grand, traffic-stopping opening ceremony. Cai Yuanpei gave the opening address and suggested that China should adopt the American federal system, but that the drafting should be done by experts such as the Cantonese jurist Wang Chonghui (王寵惠).⁴² When it was Zhang Taiyan's turn to speak, as a passionate supporter of the federal movement who toyed with the radical idea of having a system of provincial militias in place of a national army⁴³, his Zhejiang accent was so thick that the *DGB* journalist only understood what Zhang had said after the latter had supplied a copy of his speech for the reporter to read.⁴⁴

Dewey also suggested China could adopt the American federal model, firstly by drafting a provisional constitution; then once teething problems have been ironed out the constitution could be amended and redrafted; but beyond that he declined to comment professing that he was merely an educational specialist.⁴⁵ Dewey and Russell met for the first time in their lives in Changsha at a farewell banquet hosted by Tan Yankai. Russell recalls

⁴¹ *Dagongbao (Changsha)*, 05/10/1920, 06/10/1920.

⁴² 'Zuowan baojie huanying geren dayanjiang' (Last Night's Welcoming Speech for the Press), *Dagongbao (Changsha)*, 02/11/1920.

⁴³ 'Zhang Taiyan zhi Tang Migeng dian' (A Telegram from Zhang Taiyan to Tang Migeng), *Shenbao*, 09/06/1920.

⁴⁴ 'Zhang Taiyan zhi Tan dujun shu' (A Letter from Zhang Taiyan to Governor Tan), *Dagongbao (Changsha)*, 09/08/1920.

⁴⁵ For copies of speeches and further details on Dewey's two years in China see Barry C Keenan, *The Dewey Experiment in China: Educational Reform and Political Power in the Early Republic*, Harvard East Asian Monographs, 81 (Cambridge, Mass: Council on East Asian Studies, Harvard, 1977).

Dewey politely asking Tan about the prospects for coeducation in China to which “he gave a statesman like reply, saying that the matter should receive his best consideration, but he feared the time was not ripe in Hunan”.⁴⁶ Tan wrote in his diary on 26 October that Dewey’s speech was “very average and full of hackneyed clichés”. He seemed more interested in Russell, “an expert on Russian history... but unfortunately the translator was poor.”⁴⁷ Clearly of most interest and relevance to Tan was an event attended by Dewey, Russell and their respective wives, in which Zhao Yuanren (趙元任) sung a Western classical melody to an arrangement with Chinese words; it was “clear, sing-song and sonorous, all in all very nice.”⁴⁸ Ironically, barely a week after the closure of the conference, Tan Yankai’s lieutenant General Zhao Hengti deposed Tan and seized power.

Figure 1.4: John Dewey

Source: www.tc.columbia.edu

Figure 1.5: Bertrand Russell and his mistress in China

Source: www.personal.kent.edu

Summary

This chapter has examined the origins of constitutionalism in Hunan, which we have seen was moulded from a fierce Hunanese identity and a prominent tradition of involvement in national politics, then forged in the crucible of civil strife after 1911 into a tool to resist the encroachments of the Beiyang militarists on the one hand and Sun Yat-sen’s Guangdong

⁴⁶ Bertrand Russell, *The Problem of China* (London: G. Allen & Unwin ltd, 1922), 171.

⁴⁷ *Tan yankai riji*, 26/10/1920 .

⁴⁸ *Tan yankai riji*, 27/10/1920 .

regime on the other; moreover, emphatically the goal of Hunan's constitutionalists was not a separate, independent state. The second chapter will presently turn to the drafting, revision and promulgation of the Constitution of Hunan under Zhao Hengti, together with an analysis of the document of the constitution itself.

CHAPTER 2

Made in the Republic of Hunan

Drafting China's First Provincial Constitution, 1921

The abrupt toppling of Tan Yankai just after the triumph of his constitutional conference was, upon reflection, the breaking of a storm that had been brewing since Tan's return to power. Upon resuming the governorship of Hunan, Tan had promised to separate military and civilian affairs, thus appointing Zhao Hengti as military governor (*dujun*, 督軍) and the politician Lin Zhiyu as civilian governor (*shengzhang*, 省長), while Tan himself would retain the post of Commander-in-Chief (*zongsiling*, 總司令). However, when he took the reins of power Tan reneged on this promise and retained all three posts. Popular dissatisfaction was running high with his elitist handling of the preparations for the constitution; however, perhaps unsurprisingly, it was the question of soldiers' pay that lit the fuse for the rebellion and ultimately the overthrow of 'Grandfather Tan'. On November 13 soldiers agitating for wage arrears killed the commander of the Number 12 military district. Zhao responded by supporting calls for Tan to resign, prompting Tan's third hasty departure to Shanghai.¹

Tan Yankai's retreat was so rapid that he did not even have time to attend the burial of his wife, Fang Rongqing (方榕卿), which was evidently wrenching as by his usual standards a gourmand, Tan had fasted for 100 days after her death eating only vegetables; moreover, Tan had also declined the match-making services, and presumably any concomitant political advantage, of Dr. Sun Yat-sen. Thus Tan Yankai's boat poignantly passed by the vessel bearing his wife's coffin *en route* to Chaling, but windy weather and waves on Lake Dongting meant he was unable to dock to bid farewell to his wife as she neared the end of her final journey.²

¹ Tian Fulong et al., *A Chronology*, 82.

² *Tan yankai riji*, 15/11/1920.



After proffering exposition on Tan Yankai's rival and successor General Zhao Hengti, this chapter proceeds to examine the drafting of the Constitution of Hunan, which was conducted by a panel of experts at the behest of Zhao Hengti. The revision process was contested and took place against the background of ongoing hostilities in the North-South conflict, which accounts for the radical nature of a document that provided for a high degree of provincial autonomy and enshrined principles such as near universal suffrage, direct democracy and a separation of powers.

Drafting by Blitzkrieg

Zhao Hengti was born on 25 December 1880. Having failed the imperial examinations several times, Zhao's break came when he was sent to Japan to study education by an academy established by the Qing official Zhang Zhidong (張之洞). Zhao quickly switched courses enrolling in a military academy. After returning to China, he won his spurs while working for the office of the military governor (巡撫) of Guangxi by leading soldiers from Guangxi through Hunan to Hubei to assist the Wuchang uprising. After the inglorious end to his first governorship of Hunan, acutely aware of his military weakness, Tan Yankai requested that Huang Xing (黃興) allow Zhao to remain in Hunan in the wake of the overthrow of the Qing. Initially loyal to Tan, Zhao was almost executed by Yuan Shikai after Tan's declaration of independence during the 'Second Revolution', narrowly escaping with a pardon - and perhaps more importantly his head - following the intervention of the politician Li Yuanhong. A talented military leader, Zhao built up the first division of Hunan's provincial army into an efficient fighting force personally loyal to its commander.³

³ A Biographical Dictionary of Republican China, Vol. 1, 143-44.

Figure 2.1: Zhao Hengti - the General

Source: <http://www.renwu.com.cn/>

Figure 2.2: Wang Zhengting- the Harvard-educated jurist

Source: www2.tju.edu.cn

On 25 November in the wake of Tan Yankai's third flight, Lin Zhiyu was elected by the PP as acting civil governor of Hunan; and the military governor, Zhao Hengti, declared that he would take decisive action to complete the drafting process and implement the constitution.⁴ Zhao favoured Cai Yuanpei's proposal, which was strongly supported by Li Chien-nung, for the constitution to be drafted by a committee of experts. On 25 January 1921 Zhao set up the Office for the Preparation of the Constitution (*sheng zizhi genbenfa choubeichu*, 省自治根本法籌備處) headed by Peng Zhao Huang (彭兆璜). The drafting process was to be divided into three phases: drafting, revising, and promulgation after a provincial referendum. In late January 1921 an announcement was published as part of a public consultation process that invited feedback from the people.⁵

A Drafting Committee for the Constitution of Hunan (*hunan shengxian qicao weiyuanhui*, 湖南省憲起草委員會) was appointed, whose thirteen members included the journalist Li Chien-nung (李劍農) as chair, together with Wang Yuxiang (王毓祥), Wang Zhengting (王正廷), Jiang Baili (蔣百里), Peng Yunyi (彭允彝), Shi Taojun (石陶鈞),

⁴ Tian Fulong et al., *A Chronology*.

⁵ ‘Gao quansheng gongmin baihuawen’ (Common Language Notice for the People of the Province), *Dagongbao* (Changsha), 30/01/1921.

Xiang Shaoxuan (向紹軒), Chen Jiaxun (陳嘉勛), Pi Zongshi (皮宗石), Huang Shiheng (黃士衡), Dong Weijian (董維鍵), Tang Dechang (唐德昌), and Zhang Shengshu (張聲樹).⁶

The composition of the committee supports the findings of Lazlo Ladany, who argued that by and large during the Republican period constitutions and laws were written by highly respected, foreign educated judges and barristers.⁷ Of the thirteen members of the drafting committee, twelve had studied abroad, mainly in the US and Japan but also in the UK; three possessed doctorates, five had master's degrees and the remaining five were all university graduates. The age of the drafters ranged from 31 to 43 which, even by the standards of China's political elite today, is young.⁸ Of the thirteen perhaps the most notable were Li Chien-nung, Wang Zhengting and Jiang Baili. Li Chien-nung was a 41-year old Hunanese from Shaoyang (邵陽) who had joined the Tong Menghui in Japan. He served briefly as chief editor of the *Republican Daily* in Hankou in 1912 before leaving the following year to study at the London School of Economics. As editor of the magazine *Pacific* Li Chien-nung became a key figure in the United Provincial Autonomy Movement (*UPAM*). Wang Zhengting was one of China's most prominent contemporary jurists who participated in the drafting of the Provisional Constitution of the Republic of China (*linshi yuefa*, 臨時約法), which soon acquired a mythical status in the constitutionalist movement. A thirty-nine year-old from Fenghua (奉化) in Zhejiang province, in 1910 Wang was awarded a doctorate from Yale and he later became a Prime Minister in one of the many Republican cabinets. Jiang Baili, also from Zhejiang, became head of the famous Baoding (保定) military academy and later an advisor to the president in 1917.⁹

The opening ceremony of the drafting committee was held on 20 March 1921 at the Yuelu Mountain Industrial and Technical School (*yuelvshan gongye zhuanke xuexiao xuezhai*, 岳麓山工業專科學校學齋).¹⁰ Zhao Hengti was not present, in all probability an exercise of his astute political judgment to avoid accusations of interference in the drafting process. At this point, the constitutional drafting machine whirred into action and in the space of exactly a month on 20 April the committee announced the completion of the six documents that formed the bedrock of Hunan's constitution: the Constitution of Hunan (*Hunansheng xianfa*,

⁶ Chang Pengyuan, *An Anthology*, 400-401.

⁷ Laszlo Ladany, *Law and Legality in China: The Testament of a China-Watcher* (London: Hurst, 1992).

⁸ Chang Pengyuan, *An Anthology*.

⁹ *A Biographical Dictionary of Republican China*, 312-317.

¹⁰ *Dagongbao (Changsha)*, 20/03/1921.

湖南省宪法; the Organic Law of the Hunan Parliament (*Hunansheng shengyihui zuzhifa*, 湖南省省议会组织法); the Electoral Law for the Election of Members of the Hunan Parliament (*Hunansheng shengyihui yiyuan xuanjufa*, 湖南省省议会议员选举法); the Electoral Law for the Election of the Governor of Hunan Province (*Hunansheng shengzhang xuanjufa*, 湖南省省长选举法); the Law for the Appointment of Judges to Provincial Courts (*Hunansheng fayuan bianzhifa*, 湖南省法院编制法); and the Electoral Law for the Election of Members of the County Parliaments (*Hunansheng xianyihui yihuiyuan xuanjufa*, 湖南省县议会议员选举法).¹¹

Liang Qichao welcomed news of the completion of the first draft of the Constitution of Hunan by sending a congratulatory telegram urging a swift conclusion to the process.¹² That Zhao moved so quickly to draft the constitution after assuming power indicates its importance as a source of legitimacy for his regime and as a totem to ward off other provincial armies and as a means of extricating Hunan from the devastating fall-out of the North-South conflict. A more thorough analysis of the constitution shall be conducted below after a discussion of the revising process, but at this stage suffice it to say that the constitution was a radical document when considered in its contemporary context. It enfranchised the majority of Hunan's population, emphasised direct democracy, enshrined the principle of a separation of powers, safeguarded the ownership of private property, the freedom of the press, the freedom of assembly and religious freedoms, and attempted to define the relationship between the provincial and the central governments affording a significant degree of autonomy to the former. It should also be pointed out that, despite considerable consultation with the UPAM and key national figures, the Constitution of Hunan was *de facto* unilaterally drafted without the formal authorisation of the central government.

¹¹ The final version of these documents is reprinted in *Hunan shengxian liufa quanwen* (*The Complete Text of the Six Laws of the Constitution of Hunan*). minguo beijing zhengfu zhixian shiliao er bian (Beijing: xianzhuang shuju, 2008).

¹² ‘敬祝賀總投票早日通過，為我國立法史留下第一光榮’ ('Respectfully wishing an early approval by referendum to set a glorious precedent in China's constitutional history') in *Dagongbao* (*Changsha*), 27/04/1921.

Revision: A Contested Process



Figure 2.3: The Committee for Revising the Constitution of

Source : <http://guan.hn-archives.gov.cn/>

If Liang Qichao was delighted by the efficiency of the drafting process, he may have felt less exuberant about the more tortuous process of constitutional revision that followed. A committee was set up in accordance with the Rules and Regulations for Revising the Provincial Constitution.¹³ Members of the Committee for Revising the Constitution of Hunan (CRC) were elected from CPs, the PP and social organisations on the basis of an allocation of three seats to larger counties, two seats to middle-sized counties and one seat for the smaller counties, in total creating 155 committee members.¹⁴ The membership was fairly diverse with an average age of 40, the youngest aged 28 and the oldest 59. All were educated, some had received ‘new style’ education in China, others had worked in the legal affairs departments of the bureaucracy and a few had studied abroad. Women were represented by the member for Chen County (郴縣), Chen Chu (陳倣).¹⁵ On 25 April, Xiong Xiling was elected as head of the CRC but due to his absence on business, this role was assumed by the acting chairman Chou Bie (仇鱉).¹⁶

It was never going to be easy to get 155 members to agree, so it is in many ways remarkable that there were only two major sticking points that had the potential to derail the revision process. The first was the question of voting rights for women. On 9 April Chen Chu published an article in *DGB* entitled ‘Thoughts on the Constitution’ (*zizhi genbenfa yijianshu*, 自治根本法意見書), which argued that based on the definition of ‘the people’ in the

¹³ ‘Sheng xianfa zhangcheng’ in *hunan shengxianfa shenchahui* (*The Committee for Revising the Constitution of Hunan*) (hunan: hunan shengxianfa choubeichu, 1921).

¹⁴ Ibid.

¹⁵ Chang Pengyuan, *An Anthology*, 412-420.

¹⁶ Tian Fulong et al., *A Chronology*.

provisional constitution of the ROC that included both men and women (*renmin baokuo nannv*, 人民包括男女), women should be entitled to five basic rights: (i) the right to vote and to be elected; (ii) the right to equality in education; (iii) the right not to be discriminated against professionally; (iv) the right to decide who they marry; (v) the protection of property and the right to inherit.¹⁷ Over the following weeks more than forty articles were published on the subject of ‘the five rights’.

On 13 May, a heated debate swirled around an amendment tabled by Chen Chu, which proposed inserting a clause into Article three that explicitly stipulated ‘reference to the people in the constitution includes all the people, namely both men and women’ (*xianfa suocheng renmin xi nannü quanti*, 憲法所稱人民系男女全體). The proposal was vehemently opposed by the representatives of Zixing (資興縣) and Xiangxiang (湘鄉縣) counties, respectively Cheng Zishu (程子樞) and Cheng Xiluo (程希洛). The latter published an article in *DGB* arguing against the participation of women in politics, proffering as reasons that female voting was untested even in Europe and America, that only one to two per cent of women in Hunan had sufficient education, that politics for women was unsafe in the present climate and finally, and perhaps most persuasively for Hunanese men, that involvement in elections would constitute a disruption to their domestic duties.¹⁸

Cheng’s article provoked an immediate response: over two thousand women marched on a meeting of the revising committee to present a petition to the acting chairman Chou Bie. The next day Chou publically expressed approval for equality of education, political participation and inheritance rights for women.¹⁹ A tense atmosphere pervaded a meeting of the CRC on May 19 as rumours circulated that the female representative was carrying a gun; perhaps unsurprisingly the two Chongs did not attend that day. On 1 June a motion was passed approving women’s right to vote, stand for election and enjoy equality of education, which were written into Articles 5, 19 and 28 of the constitution respectively.²⁰

The second flash-point could have been equally perilous. Contention surrounded the system of government to be adopted in Hunan, to wit either a cabinet or presidential system.

¹⁷ *Dagongbao (Changsha)*, 09/04/1921.

¹⁸ Cheng Xiluo, ‘Bu zhuzhang nüzi canzheng’ (Say No to the Participation of Women in Politics), *Dagongbao (Changsha)*, 16/05/1921.

¹⁹ ‘Quanti nüjie qingyuan shenchahui jishi’, *Dagongbao (Changsha)*, 17/05/1921.

²⁰ ‘Zuori shengxian shenchahui jiwen’ (News from Yesterday’s Meeting of the CRC), *Dagongbao (Changsha)*, 18/05/1921.

Zhao Hengti, whose preference was for a more presidential system, demanded an explanation as to why the PP did not favour direct election of the Governor by the electorate of Hunan.

The deadlock almost spilled over into violence when just before a crucial vote Zhao dispatched troops to surround the parliament building. This prompted the resignations of 46 members, although the tense stand-off was finally defused by Xiong Xiling who brokered a compromise to the effect that parliament would elect four candidates, one of whom would then be directly elected by the people.²¹ On paper the “people” meant the ordinary people as voters. However, the gentry’s lack of opposition to this apparent sweeping extension of the franchise may have reflected its unfamiliarity with the significance of the reform in terms of constitutional politics, or more probably it echoed a continuing confidence in the ability of the landed elites to command their populations to vote in a particular manner for the purpose of horse-trading votes among themselves in elections for the Governor, PP and CPs.

A more serious blow was dealt to the cause of Hunanese constitutionalism by the outbreak of hostilities between Hunan and Hubei. Momentum had been gathering behind the UPAM campaign for self-governance since the beginning of the year. On 24 December 1920 Zhao Hengti sent a telegram calling for UPAM (*liansheng zizhi*, 聯省自治), a further indication that he envisioned self-governance for Hunan within the context of the federal movement.²² On 3 January 1921 Zhang Taiyan echoed Zhao’s telegram declaring that provincial self-governance was the first stage, an inter-provincial union the second stage and a national federal government the third stage.²³ Shortly afterwards on 8 January 1921 the military governor of Sichuan, Liu Xiang (劉湘), declared self-governance, triggering a chain reaction with Yunnan, Guizhou, Guangdong, Guangxi, Fujian, Zhejiang, Jiangxi, Fengtian (奉天) and Shaanxi, in total 14 provinces, rhetorically all following suit. Zhao Hengti aimed to form a self-governance camp by allying Hunan with Sichuan, Yunnan, Guizhou and Guangdong, all of which had made mutual defence pacts with Hubei and Jiangxi.²⁴

At the same time, a power vacuum was forming on Hunan’s northern border as Wang Zhanyuan’s (王占元) regime in Hubei slowly imploded. In mid-June KMT members and

²¹ Tian Fulong et al., *A Chronology*.

²² ‘Zongzuoguan che liansheng zizhi zhuzhang’ (the Acting Commander-in-Chief Advocates United Provinces’ Self-Government) (总座贯彻联省自治主张), *Dagongbao (Changsha)*, 25/12/1920.

²³ ‘Zhang Taiyan yu ge shengqu zizhilianhehui dian’ (A Telegram from Zhang Taiyan to All Provinces and Districts of the Union), *Shenbao*, 06/01/1921.

²⁴ Li Dajia, *United Provinces Self-Governance*.

supporters of the self-governance of Hubei (*eren zizhi*, 鄂人自治), Jiang Zuobin (將作兵), Kong Geng (孔庚), Li Shucheng (李書城) and He Chengjun (何成浚) arrived in Changsha to persuade Zhao to send troops to oust Wang. They argued that Wang's regime was on the brink of collapse and promised that Zhao could station two divisions in southern Hubei for defensive purposes after the war as well as take control of the weapons factory in Hanyang.²⁵ Zhao's motives for the intervention are not entirely clear. Hubei was certainly an important supply route and it seems that he wanted to establish a buffer zone to shield Hunan against further encroachments from the North²⁶. However, to intervene was a clear violation of Long Jiangong's 'Monroe Doctrine', which was the doctrinal cornerstone of Hunan's self-governance; moreover, annexing part of Hubei risked arousing the ire of Wu Peifu (吳佩孚), the Beiyang militarist in overall charge of the province. Zhao bought time by sending a telegram to Wang Zhanyuan telling him not to believe the wild rumours. Zhao visited Luoyang to request an audience with Wu Peifu, but Wu was too busy to receive him. Proponents of the war, Song Hegeng (宋鶴庚) and Lu Tiaoping (魯涤平), fabricated intelligence to suggest that Wu Peifu did not oppose the war, but because both he and Wang were members of the Zhili faction he could not declare his allegiance publically. A report sent from the consulate in Changsha indicates that British officials believed that Zhao had been "swept along the road of military aggression by his subordinates, well knowing that resistance to their policy would end probably in his assassination and certainly in his removal from office"; otherwise he would not have agreed to the "insane expenditure" of this misconceived military adventure.²⁷

The 'War to Aid Hubei' (*Yuan-E Zhanzheng*, 援鄂戰爭) broke out on 28 July 1921. Wang had reinforced the border area but his forces crumbled when fighting began. On 9 August the Beiyang government appointed Wu Peifu as the military governor of both Hubei and Hunan, and the North retaliated. As the fighting wore on Wu rapidly gained the upper hand, though he did not waste any time in suing for peace lest the conflict provoke a wider conflagration that could suck in Sichuan and Shaanxi.

²⁵ TNA, FO228/3286/10, Dossier 183T: 'Intelligence Report for Changsha for the September Quarter 1921', Lambert Giles, 92-113.

²⁶ Guo Tingyi, Shen Zhenlong, Xie Wensun, 'Zhao Hengti (Gengxu) xiasheng fangwen jilu' (Oral History Records of Conversations with Zhao Hengti) (taibeishi: zhongyang yanjiuyuan jindaishi yanjiusuo), 50.

²⁷ TNA, FO228/3286/10, September 1921, 102.

Wu Peifu had first come onto the radar of the British as a rising star in the firmament of Republican China who was tipped one day to be in a position to unify this continental empire.²⁸ When Wu requested that the British consulate conduct negotiations and mediate between the two parties, it was an invitation they were only too pleased to accept: the British were keen to avert a general outbreak of anti-foreign sentiment after a tense episode in which a Royal Navy gunboat, HMS Scarab, came under fire from Wu's troops, who believed that the vessel was being used to transport enemy soldiers. The British had returned fire with six-inch guns, but wanted to avoid an escalation of the skirmish.²⁹

Wu promised Zhao that as long as he came in person he would not advance on Changsha and Zhao would retain his position. So it was on 1 September 1921 that Zhao Hengti boarded a British gunboat in Yuezhou (岳州) and was taken to *HMS Magnolia* to meet Wu Peifu. It was the first time the two men had met and Wu enthusiastically embraced and kissed Zhao as a gesture of sincerity. They talked for an hour during which Wu demanded that Zhao abolish self-governance and punish the instigators of the conflict. The first condition was a thorny issue, which was resolved only by Zhao agreeing to the permanent stationing of Beiyang troops in Yuezhou, in return for which Wu would allow Hunan to retain its self-governance and abide by the terms of the old mutual defence treaty. Hunan's telegraph network had been destroyed during the fighting, so the terms of the agreement were hammered out through cables sent back and forth via British naval communications.³⁰

²⁸ TNA, FO 228/3217, Dossier 120F, 'Secret Intelligence', 1918-1924.

²⁹ TNA, FO 228/3286/10, September 1921, 99.

³⁰ TNA, FO 228/3211/72, Dossier 120A Secrets Abstracts China Commands Intelligence, 'Command Intelligence Diary for October 1922'; FO 228/2993 Political Situation Report, telegram from Herbert Goffe to Beilby Alston 'Reports Armistice and Other Arrangements for Settlement', 3 September 1921.

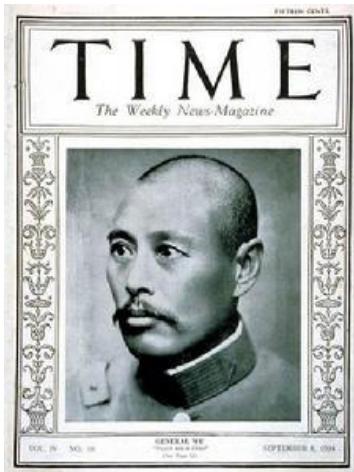


Figure 2.4: General Wu Peifu- the man of the hour

Source: The National Archives



Figure 2.5: Wu Peifu appears on the radar of British intelligence³¹

Source: The National Archives

The war with Hubei was a strategic miscalculation for not only did Zhao Hengti fail to achieve his goal of creating a buffer zone against the North, but it was a pretext for the Beiyang militarists to annex Yueyang, the gateway to Changsha, and establish a permanent outpost in Hunan. Moreover, having violated the axiomatic principle of Hunan's 'Monroe Doctrine', non-interference, the war cast a long shadow over the self-governance movement in Hunan and compromised the credibility of the province's wider status within the inter-provincial autonomous union. Perhaps the only silver lining was the rapid completion of the process of revising the constitution; having dragged on for five months since April, the revisions were finished within three days of the capture of Yuezhou, reaffirming the vital importance of the constitution in bolstering the legitimacy of Zhao Hengti. This irony is deliciously captured by the popular saying, '經始憲法，經之營之；北攻之，不日成之'.³²

The Document of the Constitution

The first Constitution of Hunan consisted of 141 Articles divided into thirteen chapters: chapter one 'General Provisions'; chapter two 'The Rights and Obligations of Citizens'; chapter three 'The Functions and Powers of the Province'; chapter four 'The Provincial

³¹ The blue pencil, used in the photograph to indicate Wu Peifu, was usually reserved for the use of the Minister of the Peking Legation.

³² Li Chien-nung, *Wuxu yihou sanshinian Zhongguo zhengzhishi* (A Political History of the Thirty Years after the 100 Days' Reforms), 2nd edn (Beijing, zhonghua shuju, 1980), 318. A translation is: 'The constitution was written, it was then implemented, but only after the North attacked did it become a reality.'

Assembly'; chapter five 'The Governor and the Cabinet'; chapter six 'Legislation'; chapter seven 'Administration'; chapter eight 'The Judiciary'; chapter nine 'The Board of Auditors'; chapter ten 'General Provisions of the District System'; chapter eleven 'General Provisions for Town and Village Autonomy'; chapter twelve 'Interpretation and Amendment of the Constitution'; and chapter thirteen 'Supplementary Articles'.³³

According to Article one, "Hunan constitutes an autonomous province of the Republic of China;" and Article three defines citizens of Hunan (for clarity, in Chinese 湖南人民 or 'hunan renmin') as citizens of the Republic of China (that is 公民 or '*gongmin*') who have resided in the province continuously for two years, reinforcing an earlier argument that constitutionalism in Hunan was not a separatist movement with aspirations of independence. Article four enshrined the principle of representative government, stating that 'the autonomous powers of the province reside in the whole body of its citizens.'

Chapter two defined the rights and obligations of Hunan's citizens, including Article five which vouchsafed "the right to equality before the law without regard to sex, class, race or religion;" *habeas corpus* (Article six); the inviolable right to ownership of private property (Article seven); freedom of religion (Article ten); freedom of association (Article 12); the right to bear arms (Article 13); compulsory universal education (Article 21). In return the citizens of Hunan were expected to pay taxes and conduct military service (Article 22).

The franchise was granted by Article 30 to all citizens of Hunan over the age of 21 with exception of the mentally ill, prisoners, bankrupts, opium smokers, persons in 'improper occupations' and illiterates. Article 31 bestowed the right to stand for election to all citizens of Hunan over 25 with the exception of serving soldiers, officials, clergymen and students.

In addition to the obvious imprint of the US constitution, there were also echoes of the more direct form of democracy that is written into the Swiss constitution. For example, Article 66 conferred on citizens the power to initiate legislation after the signing of a petition by 1% of the population.³⁴ According to Article 43(1), a petition which garnered the signatures of 1% of the electorate would trigger a referendum on the recall of an elected representative. Also reminiscent of the Swiss constitutional model was the right of the

³³ The author's translation. Please refer to *Hunan shengxian liufa quanwen* for a full version of the constitution in Chinese, a copy of which is in Appendix II. N.B. This applies to all quoted extracts of the constitution.

³⁴ If the PP rejects the proposed bill, it must publically state its reasons and refer the matter to a referendum of the people; if the legislation is approved by the referendum it becomes law.

province to raise its own army, (Article 25(13)) to be commanded by the governor (Article 55(2)), although this was balanced by a provision to gradually reduce military expenditure to one quarter of the provincial budget within three years (Article 139). The constitution also contained an extraordinary commitment to spend at least one third of the budget on education (Article 76). Article 89 was effectively the ‘Monroe Clause’ that proscribed the stationing of other provincial armies in Hunan except with the prior approval of both the PP and the government.

In comparison with the first draft of the constitution drawn up by the thirteen-strong committee of experts, a number of changes had been made to the revised draft.³⁵ In addition to the changes to the rules for electing the governor mentioned above and the extension of the franchise to women,³⁶ the number of elected representatives sitting in the PP was increased from one per 300,000 in the first draft to one per 200,000 in the revised draft. However, before a general survey of the population the allocation of seats was in proportion to the amount of land tax paid by each county: counties repatriating less than 10,000 yuan were assigned one member; those returning 10,000 to 60,000 yuan were given two seats, 60,000 to 120,000 yuan equated to three seats; 120,000 to 180,000 yuan to four seats; and all counties contributing over 180,000 yuan were allocated five seats. Needless to say this temporary provision significantly increased the representation, and by extension, the power of the gentry before such a time that a census was held.

In the revised draft of the constitution, parliament was strengthened in relation to the governor: the attendance threshold for recalling the governor was reduced from a two-thirds majority on a quorum of three-quarters of the members of the PP to the same majority with at least two-thirds of the members present. In the first draft, the head of the cabinet was appointed by the governor and the former concurrently served as secretary of the interior and the finance secretary, whereas in the revised draft of the constitution the cabinet consists of seven departments (*si*, 司); the heads of department are similarly elected by parliament, but the department heads then elect the head of cabinet. The commitment to education was boosted in the revised draft, with the age at which compulsory education started being

³⁵ For a Chinese-language copy of the first draft of the constitution see *Zhongguo xiandaishi congkan, di yi ce*.

³⁶ It should be noted that in many European countries, including Belgium, Switzerland and France, it was only after the Second World War that women were given the right to vote; also, in the UK suffrage did not become universal until 1928.

lowered from seven to six and educational spending rising from a minimum of 10% of the provincial budget to 30%.

To a certain extent, the province emerged as more powerful with respect to the national government in the revised draft of the constitution: in the first draft, customs duties, salt tax, tobacco and alcohol taxes and stamp tax were all designated as national taxes, while the revised draft contains no such requirement. At the same time, the revised version was a slightly less rigid document: the clause prohibiting the stationing of the armies of other provinces in any circumstances in the first draft was amended such that this eventuality could only occur with the prior approval of parliament and the government; also, in comparison with the first draft which held that the constitution could only be amended once every 15 years, this period was reduced to ten years in the revised draft.

Taking the document of the revised draft of the constitution as a whole, it is possible to make a number of generalisations. Firstly, the Constitution of Hunan provided for a high level of provincial autonomy, which is not surprising given that its *raison d'être* was to deter external interference in Hunanese affairs. For instance, according to Article 47, four candidates for the governorship were elected by the PP, then the electorate of Hunan (i.e. ordinary people as voters) chose one; in other words there was no central government involvement in the appointment of the governor. Moreover, Article 25(13) gave the province the power to determine military administration and military laws and Article 55(2) invested the governor with the power to command the army and control military administration. In terms of the courts, Article 90 stated that the High Court of the province had final jurisdiction over civil, military, administrative and all other provincial cases; and this was further buttressed by Article 127 which stated, "In cases of conflicting interpretation of any clause of this constitution, the High Court shall decide."

Secondly, although the province was undoubtedly very powerful in the Constitution of Hunan, there was an attempt to strike an explicit balance between the powers of the province and those of the central government. Article 25 specified that in the interests of uniformity, inter-provincial commerce and national defence the orders of the national government may be followed in relation to transport and communications. Article 26 contained the caveat that Hunan can legislate in matters which solely concern the province as long as this legislation did not conflict with the national constitution; moreover, Article 128

provided that before there is provincial legislation, national legislation pertained except where it contradicted with the Constitution of Hunan and Article 129 hinted that the role of the provincial government would change after a national constitution was established. Article 134 also left open the possibility of the provincial government levying taxes on behalf of the national government provided this was approved by the PP and the executive. In spite of the constitution investing the province with the power to raise its own army, this was tempered by Article 88 that stipulated that in times of foreign invasion the provincial army could be nationalised and by Article 139, which made provisions for the gradual reduction of military spending to one quarter of the provincial budget.

The third distinctive feature was wide-ranging popular participation and voting that were written into the DNA of the constitution. There were no less than eleven clauses which invoked a referendum: to decide on the recall of assembly members after a petition has gathered the signatures of 1% of the member's constituency or has been approved by a majority in the relevant district, town or village council (Articles 43(1), 42(2)); to decide on the dissolution of the PP after the signatures of 1% of voters have been collected, or approved by a majority of CPs, or upon a reasoned proposal of the governor countersigned by the entire cabinet (Articles 44(1), 44(2) and 44(3)); to decide which of the four candidates for the governorship elected by the PP will take office (Article 47); to decide on legislation initiated by 1% of voters or one third of CPs (Article 66); or in the case of the latter if the PP rejected the bill, it must state the reasons and refer the matter to the electorate in a referendum (Article 67); to decide on promulgation of the constitution, only after which it can become effective (Article 141); referenda were also required as part of the election of district magistrates (*xianzhang*, 縣長) under Article 103; and for the amendment of the constitution (Article 126).

The fourth and final salient characteristic of the constitution was that it was modelled on a separation of powers between the legislature, executive and judiciary. Elected PP members help to check the executive as they had the power to vote on the budget, to table amendments to legislation, to elect officials, receive petitions, question members of the cabinet, impeach the governor, impeach the chief justice, chief prosecutor, chief auditor and premier, i.e. head of the cabinet (Article 39(1-10)). The office of governor was further watered down by the fact that the governor could only declare martial law with the approval of the PP. If the governor vetoes legislation, but two-thirds of the PP continues to support the bill then it becomes legislation. The ordinances of the governor were only valid when

countersigned by the premier and responsible department head (Article 62). There were strict limits on the governor's power to dissolve parliament (Article 43) and this could not occur more than twice in a single year (Article 45).

Summary

Recapitulating, the constitution was speedily drafted by a panel of experts at the behest of Zhao Hengti. Revision of the draft constitution was a contested process with female suffrage and the system used to elect the governor acting as catalysts for contention. The revised draft provided for a powerful province with respect to the national government, albeit a Hunan that was emphatically located within the Republic of China and with provisions for cooperation between the central and local governments under specified circumstances, a powerful PP with the provincial gentry as its primary constituency, and a slightly emasculated governor. Drafted and amended against a backdrop of revolutionary ferment it was typically a radical document; a palimpsest of the US and Swiss constitutions, Hunan's constitution enfranchised the majority of the population, incorporated a direct form of democracy and enshrined a separation of powers. The revision process was concluded hastily after General Zhao blundered into an invasion of Hubei, which culminated in the northern militarists setting up camp on Hunan's doorstep. Thus, the constitution may have been a tool whose primary function was to legitimise the regime of Zhao Hengti, but up to a point this was irrelevant; for, to paraphrase Lord Hailsham, nations begin by forming their institutions, but in the end are continuously formed by them or under their influence. Chapter three will turn to examine the promulgation and implementation of the Constitution of Hunan before it was finally abolished in 1926.

CHAPTER 3

The Life and Death of the Constitution

Promulgation, implementation and constitutional reality, 1922-1926

Chapter 3 picks up the story from the point of promulgation. Notwithstanding bribery and violations of the constitution, that document enabled Hunan to extricate itself from the broiling North-South conflict for two years, during which the constitution was used as a basis for organising elections to elect a parliament and the governor. Moreover, the initial scorn and scepticism that the constitution provoked was short-lived as the legislature rapidly realised its virtues as a mechanism by which the executive could be held to account. The first version of the constitution was impractical as it vested too much power in the province in general and the institution of the Provincial Parliament (PP) in particular. However, the amendment process was straight-jacketed by Article 126 which required the approval of three-quarters of the PP and two-thirds of County Parliaments (CP) to propose an amendment, which if approved would only take effect after a provincial referendum. A revised Constitution of Hunan was finally promulgated on 13 May 1925 that streamlined governance in Hunan and clarified the relationship between the central and local governments, repatriating considerable powers to the latter. However, by this time the perils of civil war and militarism had begun to loom large in Hunan.

The Sudden Birth, a Constitutional C-section

Having blundered into an abortive invasion of Hubei in the summer of 1921, a humiliation exacerbated by the northern militarist Wu Peifu's annexation of Yuezhou, the gateway to Changsha, it was once again the constitution to which Zhao Hengti turned to shore up his rumpled prestige. Zhao expedited the revision process and held a referendum between 1 December and 11 December. Hunan's electorate was given a simple yes/no choice (*kejue/foujue*, 可決/否決). The inevitable result was a landslide approval of the constitution

with 18,158,875 votes in favour and 575,230 against.¹ The Taiwanese scholar Chang Pengyuan pointed out that it is highly doubtful that two-thirds of Hunan's population *could* physically have voted in favour of the constitution given that the average life expectancy at that time was 32 years, which means demographically it is improbable that adults even accounted for two-thirds of the population; but if this assumption is taken as read, only 30% of the population was literate and illiterates were barred by the constitution from voting. In the highly unlikely event that these circles can be squared statistically, the 18 million figure implied a 100% turnout, another improbability which intimates widespread electoral manipulation.²

To mark this momentous event, the constitution was triumphantly paraded around Changsha on a ceremonial litter, carried by eight people and delivered to the office of the provincial governor amidst copious fanfare and a 21-gun salute. Zhao appeared, swearing solemnly to uphold the constitution and leading the crowd in three chants of '省憲萬歲' (*shengxian wansui*, 'long live the constitution').³ A similar ritual was repeated on 1 January 1922, the date that the Constitution of Hunan was formally promulgated. As the spectacle unfolded, police and soldiers cleared the roads and everybody in the province was given a three day holiday during which the offices of the Yamen (衙門) were open for public inspection. Ceremonial one-Yuan coins were minted, emblazoned with the head of Zhao Hengti and bearing the inscription '湖南省憲成立紀念' (*hunan shengxian chengli jinian*, 'in commemoration of the establishment of the Constitution of Hunan').

Figure 3.1: Ceremonial dollar commemorating the promulgation of the constitution⁴

Source: <http://show.artxun.com/>

¹ TNA, FO228/3286/11, 'Intelligence Report for Changsha for the December Quarter 1921', Lancelot Giles, 119.

² Chang Pengyuan, *An Anthology*, 410-411.

³ *Dagongbao (Changsha)*, 12/12/1921 and 13/12/1921.

⁴ The three lines symbolise the date of promulgation of the constitution: 十一年一月一日 (1.1.1922). Source: Chinese auctioneer's website, Find Art 搜艺搜 <http://bbs.findart.com.cn/>.

Two Years of ‘Taoyuan’

Foreign Reaction

The Constitution of Hunan initially engendered much scepticism and even scoffing from the resident foreign press, the *North China Herald* (NCH) running such headlines as ‘Hunan, a Nation, *Perfervidum Ingenium Hunanorum*’, which can be translated from Latin as ‘*the treacherous cunning of the Hunanese*'.⁵ Shortly after promulgation of the constitution one *North China Herald* (NCH) journalist sarcastically quipped, “I will promise at least to let your readers know when I personally begin to try and alter my national status.”⁶ Yet this soon gave way to a fear of losing the legal privileges inherent in the system of extraterritoriality under the Chinese Maritime Customs that oversaw for example salt tax extraction, were this to be abolished in the wake of the establishment of a constitutional government in Hunan. Even before promulgation of the constitution, British officials in Changsha were concerned of their diminishing influence as local officials were not obeying the orders of the central government and thus it was becoming impossible to exert pressure on them through the conventional channels. The British Consul in Changsha, Lancelot Giles, reported to the Minister in Peking, “The virus of independence has infected all officials from the highest to the lowest with the result that up-country officials no longer pay the same attention to the orders of their superiors as heretofore and even question the propriety of decisions endorsed by the governor and the commander-in-chief.”⁷

Elections under the constitution

Article 138 of the constitution required elections to the PP and CPs to be held within three months of promulgation. The process began on 7 January and three factions competed for votes, namely those of Tan Yankai, Lin Zhiyu and Zhao Hengti. Before a census was conducted, article 130 of the constitution provided for representation to be based on the

⁵ NCH, 12/10/1920.

⁶ NCH, 14/01/1922.

⁷ TNA, FO228/3286/9, ‘Intelligence Report for Changsha, June Quarter 1921’, Lancelot Giles, p. 77.



payment of land taxes: counties paying land tax of less than 10,000 Yuan were given one representative; counties paying land tax between 10,000 and 60,000 Yuan had two representatives; those who returned land tax in the range of 60,000 – 120,000 Yuan had three representatives; 120,000 -180,000 Yuan four representatives; and any counties paying more than 180,000 had five representatives. The table below demonstrates the number of representatives for each county in Hunan.⁸ This system led to horse-trading between the gentry as the rivals competed to buy a majority of the 166 PP seats. Votes were sold, often in blocks, in teahouses, restaurants and brothels. The acting British consul in Changsha, E.G. Jamieson, related one of the more blatant instances of electoral fraud as a ballot box was opened for counting only to find that it contained a large, tied bundle of ballot papers which evidently could not have been inserted through the opening. Apparently the matter was reported to the Changsha magistrate, but he claimed that he was powerless to intervene.⁹

長沙四名	湘陰三名	瀏陽四名	澧陵三名	湘潭四名
寧鄉三名	宜陽三名	湘鄉四名	攸縣三名	安化二名
茶陵三名	寶慶三名	新化二名	武岡三名	新寧二名
城步一名	衡陽五名	衡衫三名	安仁二名	耒陽三名
常寧二名	酃縣二名	零陵三名	祁陽二名	東安二名
道縣二名	寧遠二名	永明二名	江華二名	新田二名
鄰縣二名	永興二名	資興二名	宜章二名	桂陽二名
桂東二名	汝城二名	臨武二名	藍山二名	嘉禾二名
岳陽三名	平江三名	臨湘二名	華容二名	常德三名
桃源三名	漢壽二名	沅江一名	澧縣三名	石門二名
慈利二名	安鄉二名	臨澧二名	大庸一名	南線二名
黔陽二名	麻陽二名	永順二名	古丈一名	保靖一名
龍山一名	桑植一名	靖縣二名	綏寧二名	會同二名
通道一名	乾城一名	鳳凰一名	永綏一名	晃縣一名
沅陵二名	瀘溪	辰溪二名	漵浦三名	芷江二名

Table 3.1: Allocation of PP members amongst counties
Source: Hunan Shengzhi

If the election for the PP had been tainted by corruption, it was nevertheless a step forward for female participation in Republican politics. Women stood for elections in CPs in Changsha, Ningxiang (寧鄉), Xiangtan (湘潭), Xiangxiang (湘鄉), Taoyuan (桃源),

⁸ *Hunan Shengzhi: Hunan jinbainian dashi jishu* (*Hunan Provincial History: an account of the major events over the past 100 years*), 2nd edn (Changsha, Hunan renmin chubanshe, 1980), 436-439.

⁹ TNA, FO228/3286/13, ‘Intelligence Report for Changsha, June Quarter 1922’, E.G. Jamieson, p. 170.

Hengyang (衡陽), Chenxian (郴縣), Yiyang (益陽), Liling (醴陵), Baojing (保靖), Liuyang (瀏陽), Qiyang (祁養), Pingjiang (平江) and Baoqing (寶慶) districts. In Xiangtan there were seven female candidates. Two women were subsequently elected to the PP, including Wang Changguo (王昌國) who represented Liling and Zhu Jianfan (朱劍凡), the member for Ningxiang.¹⁰ The first session of the newly elected PP was held on 1 May 1922, which saw Lin Zhiyu elected as the head of the assembly. Over the coming months and years, the parliament discussed a wide range of business, including military affairs, the budget, monetary policy, taxation, foreign affairs, judicial affairs, employment and industry in addition to popular issues such as the banning of opium and prostitution.¹¹

Having elected a parliament, the next challenge was to elect the governor. Before a census, the constitution required that the PP elect seven candidates, one of whom would then be confirmed by an election in which all CP members had the right to vote. In the first round, out of the 161 PP members who actually voted by secret ballot, the seven most popular candidates were Zhao Hengti who took 133 votes, Xiong Xiling with 115, Tan Yankai with 87, Tian Yingzhao (田應詔) with 76, Peng Yunyi with 65 and Song Hegeng with 80 votes.¹² In the second round when the final results were announced on 2nd October 1922 Zhao Hengti had managed to procure two-thirds of the CP votes with the remainder shared out between Tan Yankai and the other five candidates.¹³ British consular officials estimated the war chest that Zhao had used to buy his election was anything from half a million to one million Yuan with individual votes of CP members being bought for around 350 Yuan each.¹⁴ On 28 December 1922 Zhao Hengti was formally sworn in as China's first 'elected' provincial governor. The final stage of the process involved the election of a cabinet (*shengwuyuan*, 省務院) by the PP, the members of which concurrently served as the heads of the seven executive departments: the treasury (*caizhengsi*, 財政司), education (*jiaoyusi*, 教育司), business (*shiyesi*, 實業司), internal affairs (*neiwusi sizhang*, 內務司司長), judicial affairs (*sifasi*, 司法司), communications (*jiaoshesi*, 交涉司), and military affairs (*junwusi*, 軍務司);

¹⁰ *Hunan Shengzhi*, 436–439.

¹¹ *Minguo shiliao congkan* (A Compendium of Republican Historical Materials), ed. by Sun Yanjing and Zhanyan, 600 vols (Zhengzhou, daxiang chubanshe: 2009), 'Hunan shengxianfa, Hunan sifa faling daquan' (The Hunan Constitution and a Complete Collection of Legislation).

¹² *Minguo Ribao* (Republican Daily), 20/08/1922, 21/08/1922, and 22/08/1922.

¹³ According to the 28/9/1922 and 2/10/1922 editions of *Dagongbao* (Changsha), 1,581 CP members voted in 74 counties with Zhao Hengti procuring 1,581 of the 2,593 votes that were cast.

¹⁴ TNA, FO228/3286/13, 'Intelligence Report for Changsha, June Quarter 1922', E.G. Jamieson, 187.

the appointed cabinet members are illustrated below by Table 3.2. Li Chien-nung was elected as the head of the cabinet, but protested that he had no political experience; moreover he had not been consulted in advance of the election. Li later acquiesced to his role as a puppet to avoid accusations that he had derailed the constitution, but a few months later he furtively skulked away to Wuhan to teach.¹⁵ A British intelligence report warned that “signs are not wanting to show that the Assembly is becoming a more and more powerful body.”¹⁶

Department	Head
Internal Affairs (<i>neiwusi sizhang</i> , 內務司司長)	Wu Jinghong 吳景鴻
Education (<i>jiaoyusi sizhang</i> , 教育司司長)	Li Chien-nung 李劍農
Business (<i>shiyesi sizhang</i> , 事業司司長)	Tang Chengxu 唐承緒
Communications and Transport (<i>jiaoshesi sizhang</i> , 交涉司司長)	Yang Xuancheng 楊宣城
Judicial Affairs (<i>sifasi sizhang</i> , 司法司司長)	Xu Zhongheng 徐鍾衡
Military Affairs (<i>junwusi sizhang</i> , 軍務司司長)	Li Youwen 李佑文
Treasury (<i>caizhengsi sizhang</i> , 財政司司長)	Yuan Huaxuan 袁華選

Table 3.2: Cabinet Appointed by Governor Zhao

Source: TNA Records

Scaring the Horses: an increasingly assertive Parliament

Despite scornfully mocking the infant parliament it was not long before British officials began to worry about its growing assertiveness, as the PP started to flex its muscles and hold the governor to account. For example, the assembly objected to the fact that it had not been consulted in relation to the selling of Hunan’s provincial mint to a private company. As a

¹⁵ Tang Shengzhi, *1911 nian zhi 1927 nian gaikuo huiyi de ji jian shi* (Memoirs, 1911-1927) (Hunan sheng zhengxie wenshi weiyuanhui, Changsha: 1989), 45.

¹⁶ TNA, FO228/3286/13, June 1922, 198.

result, the governor was forced to halt the privatisation process and give an account of his actions to the assembly. Zhao stated that before the agreement he had met with the chairman and vice-chairmen of the parliament, who had assured him that all of its members were in agreement with the proposal. He then implored the assembly to consent to the privatisation of the mint as the government urgently required revenues to fund its current expenditure.¹⁷

It should be noted that the birth of the Hunan Parliament was accompanied by a crescendo in the mood music for UPAM on China's national political stage. A National Convention was held in Shanghai during May 1922. Twenty-nine delegates representing commerce, education, agriculture, banks, lawyers, the media and trade unions from 14 provinces attended. Two provisional constitutions were drafted then published on 18 August. The first constitution by Zhang Taiyan emphasised the cabinet system, whereas the latter associated with Zhang Junli (張君勵) was more presidential. Both contained 27 clauses relating to the division of sovereignty between the central and local governments and both limited the national army to 200,000 men. The provincial armies would become militias and a federal clause stipulated that, in the event of national political instability, the provinces could declare independence to take charge of the implementation of their own provincial constitutions on the condition that once the status quo had been restored this declaration would be revoked.¹⁸

Perhaps more alarmingly for British officials there were even signs that the assembly was willing to exercise its powers of impeachment. On 1 December 1922 Zhao Hengti allowed hundreds of soldiers under the command of the military governor of Guizhou to pass through Hunan to Hubei to collect and escort back munitions supplies. Zhao agreed on the condition that the soldiers were unarmed (obviously only initially), but his failure to consult the assembly in advance led to it bringing impeachment charges against the governor on the grounds of a breach of article 89 of the constitution. The motion of impeachment was dismissed for procedural reasons before an adjournment, but the issue was raised again in March 1923.¹⁹ Similarly, a threat of impeachment was made against the whole cabinet for failing to submit to the PP a detailed budget at the appropriate time, a threat that appears to have been successful in forcing the government to comply with its obligations following a

¹⁷ Ibid.

¹⁸ Li Dajia *Minguo chunian de liansheng zizhi yundong* (*The United Provinces Self-Governance Movement in the Early Republic*) (Taipei: Hongwen guan Press, 1986).

¹⁹ TNA, FO 228/3286/17, 'Intelligence Report for Changsha for the March Quarter 1923, Lancelot Giles', 227-228.

short extension of the initial deadline.²⁰ To be sure there were also more arbitrary attempts to impeach the governor provoked by political infighting as is the wont of all parliamentary institutions both fledgling and fully-formed, for example when Zhao Hengti sent a congratulatory telegram to the new Premier in Beijing without first seeking the approval of his cabinet²¹; however, irrespective of trivial exceptions, there are ample signs of at least the seeds of constitutional government in Hunan, whereby elected representatives act as a check on power and hold the executive to account according to a set of prescribed rules and regulations. Similarly, although ultimately Provincial Parliament members and the Governor were accountable to the landed gentry who bartered the wider electorate's votes instead of the "ordinary people", nevertheless this marked the beginning of a process whereby sovereignty is diffused away from the state and towards the people, a process undoubtedly facilitated by democratising influences such as a thriving free press in Republican Hunan that could mobilise popular opinion behind a given issue to sway powerbrokers in the gentry who remained the gatekeepers to provincial decision-making.

In the eyes of British officials, an overly powerful PP was compounded by the rigidity of the constitution. The Changsha Consul Lancelot Giles noted in a despatch to Peking:

It has already become apparent to thinking Chinese that the constitution is radically at fault in having reduced the governor to a mere puppet and in having centralised all real power in the hands of the Provincial assembly. Tentative suggestions have been made for an amendment of the constitution to meet the objections that have been made; but unfortunately [under article 126] no provision has been made for the amendment of the constitution in the first ten years of its existence unless voted for by a general plebiscite or by a majority of the District Assemblies. This is cumbersome and presents many difficulties, so that it is probable that nothing will be done in the immediate future.²²

²⁰ Ibid.

²¹ TNA, FO228/3286/16, 'Intelligence Report for Changsha for the December Quarter 1922', Lancelot Giles, 210-211.

²² TNA, FO 228/3286/17, 'Intelligence Report for Changsha for the March Quarter 1923', Lancelot Giles, 227. The exposition in square brackets is the author's insertion.

If not a paragon of democracy or legal due process in the modern sense, Hunan's constitution was remarkable insofar as it served as a check and balance against the power of Hunan's army and its commander-in-chief Governor Zhao Hengti. This was because the source of the Provincial Parliament's real political power was less from idealistic intellectuals than the pragmatic land-owning gentry, from whose ranks the 2,700 County Parliament members and 166 Provincial Parliament members were elected and on whose tax and tribute the army was dependent. Combined with the intellectual firepower behind newspapers such as the *Da Gongbao*, at best this crab-like pincer movement constituted an incipient Darl-esque polyarchy that helped to curb and contain the worst excesses of militarism in Hunan.

Through the connections of my supervisor, Professor Fu Hualing, and with the support of the Faculty of Law at the Central South University in Changsha (中南大学) I was able to access Hunan's provincial party archives (*hunansheng danganguan*, 湖南省檔案館), where records of the Provincial Parliament have been preserved. The records (湖南省議會報告書) are largely contained in five volumes (卷, *juan*), each of which comprises seven books (冊, *ce*) that were published in 1925.²³

²³ Hunan sheng yihui baogao shu (*Hunan Provincial Parliament Political Reports*), wu juan, qi ce, 1925 zhu qian yin (5 volumes, 7 books, printed in stereotype 1925).

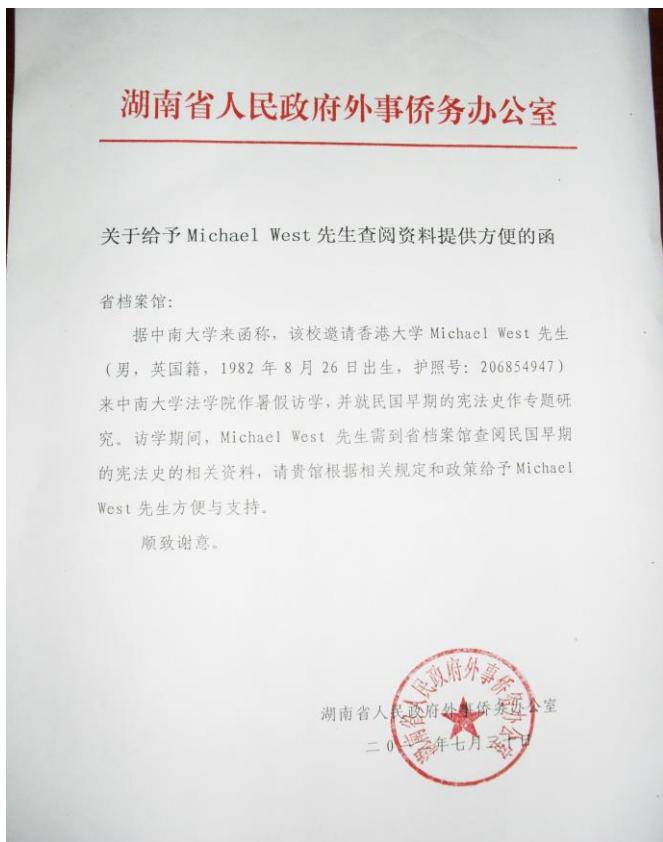


Figure 3.2: Letter of Permission to Access Provincial Party Archives

Together with contemporary copies of newspapers such as *Da Gongbao* and *Shen Bao* which I found scattered across collections at Academia Sinica in Taipei, the provincial Hunan Library in Changsha and on microfiche at the University of Hong Kong and Oxford University, and archival records and reports of the British Consulate in Changsha that have been preserved in the National Archives at Kew Gardens in the UK, I have used these parliamentary records, reports and newspaper articles to piece together a picture of the functioning of the constitution of Hunan in microcosm. For brevity, I have summarized some of the more important events of constitutional significance into a table below²⁴, onto whose bare bones I shall presently try to add some flesh in the paragraphs below. It should be noted that the historical record is not complete for beyond the vagaries of the archiving process, talking to local scholars and librarians in Changsha and according to the Yearbooks there were at least three major fires in which the archives burned down and swathes of documents were destroyed, namely in 1927 after the KMT invasion of Hunan, in 1937 during the anti-

²⁴ For convenient reference, a three colour classification has been adopted whereby cases in which the PP prevailed over the governor are marked in blue, cases in which the converse applied are marked in orange and cases whereby some compromise was reached between the PP and the governor are coloured green.

Japanese movement and again during the Cultural Revolution in the late 1960s.

Notwithstanding the incompleteness of the historical record, perhaps more remarkable is that anything has survived at all during the chaos that ensued.

Table 3.3: A Selection of Key Parliamentary Cases

Source: Hunan Provincial Party Archives, Changsha

Date	Case	Description	Petitioner	Result
10.2.1923	The garrison of Liuyang forcibly collecting land tax and loans from local people	Question	Provincial Senator Pan Zhongqing (潘仲青)	The Governor's reply: the amount collected by the garrison is not over the apportioned amount; and the government issued a telegram ordering the cessation of forcible loans.
15.3.1923	Financial Secretary's loan from the Bank of China	Question	Provincial Senator Deng Shouquan (鄧壽權)	Provincial Government forced to cancel the loan.
22.03.1923	Response to Municipal Loan	Citizen's petition	Citizen of Changsha: Yi Sheng (易晟)	The Govenor's reply: the municipal Loan has been canceled, however, the petition is based on a misunderstanding confounded by rumour.
22.3.1923	Consultation about appointing an Inspector of Police	Veto	Governor Zhao Hengti	Veto exercised: dire financial situation and there is no need to set a precedent by appointing redundant staff.
4.4.1923	Petition for paying retired soldiers' salaries	Citizen's petition	The Hengyang County Council	Governor's reply: the financial situation is terrible and there is no choice but to issue interest-free debt to amortize the veterans' salaries. The government hopes the Provincial Council will pass the Veterans' Pension Bill soon.
5.4.1923	Impeaching the Governor	Veto	Provincial Senator Xu Hanbiao (徐漢彪)	Veto reason: The governor was not convicted for bribery and treason.

12.4.1923	According to the Constitution's timetable, every county has to set up a court and procuratorate to ensure the independence of judicial power and County Magistrates must be elected by people	Provincial Council Proposal	Provincial Senator Yu Deguang (余德廣)	The government meeting's decision: the primary courts will be set up in three stages.
12.4.1923	Consultation of increasing the number of clerks in the Provincial Department	Veto	Governor Zhao Hengti	Veto reason: the organisation of the Provincial Department is determined by the Provincial Constitution and cannot be easily changed.
16.4.1923	Urging the delivery of the budget for 1923 and financial accounts for the past few years	Provincial Council Proposal	Provincial Council	The Cabinet is urging government departments to prepare the budget and will submit to the Provincial Council as soon as possible.
2.5.1923	Disarmament according to the Constitution	Provincial Council Proposal	Provincial Senator Xiong Shifeng (熊世鳳)	The proposed disarmament plan has already been partially achieved.
18.5.1923	The Provincial Government's private loan from the Huai Merchants and utilisation of the loan	Question	Provincial Senator Yi Jingding (易靜鼎)	The Cabinet's reply: the money is a prepayment for salt tax and is not an official loan, so it does not need to be approved by the Provincial Council.
30.5.1923	Proposal to abolish every county's Miscellaneous Tax Collection Bureau to collecting by the town autonomous organs assigned by the county magistrates	Citizen's petition	County Councils of Changsha, Yueyang, Hengshan, Changde etc	This case will decrease the income of Provincial Treasury and only benefit the local gentries. The Council persisted with their proposal but the Government did not give up its resistance.
10.7.1923	Petition for cancelling the order issuing provincial treasury bills	Question	Provincial Council	Order revoked and bond issue cancelled.
14.7.1923	Call for the declaration of martial law in order to suppress Cai Juyou	Governor's proposal	Governor Zhao Hengti	The Council passed the proposal and supported the Governor to protect the constitution by force.

10.12.1923	Proposal to cancel the special military land tax	Provincial Council Proposal	Provincial Senator Chen Zhendong (陳振東)	The Governor's reply: the tax cannot be repealed since the military situation is still dangerous. The Provincial Council persisted but the Government disagreed, so the council issued an open telegram to the counties to urge them to support their refusal to pay the tax.
14.12.1923	Motion for the government to send an open telegram to the officers of the army prohibiting the collection of land tax in all counties henceforth	Provincial Council Proposal	Provincial Senator Bao Daoping (包道平)	There have been many similar proposals and the government has already ordered the officers to stop this behaviour although the order has not always been obeyed.
20.12.1923	Petition to cancel the lake land tax	Citizen's petition	Senator Peng Zhibao (彭秩苞), who represented the ten contiguous counties around the lake.	The Governor's reply: the year is ending and Hunan is still at war, moreover the government can barely survive. If there is another way to collect money, then the government will cancel the tax.
31.12.1923	Proposal for the government to stop the army taking weapons from the county garrisons	Provincial Council Proposal	Provincial Senator Lei Feipeng (雷飛鵬)	There have been many similar proposals and the government has already given orders to stop this action.
9.1.1924	Motion for a plan to reduce the number of soldiers and consolidate the budget to be submitted to the Provincial Council	Provincial Council Proposal	Provincial Senator Li Yaoxiang (李耀湘)	The Governor's reply: the government is working on implementing the proposal.
19.1.1924	Proposal to repay the education fund and forbidding further raids on the education fund	Provincial Council Proposal	Provincial Senator Ling Bing (凌炳)	The Governor's reply: the government ordered the Mobilisation Department to stop this action and repay the funds already removed.

21.1.1924	Petition to cancel regulations made by the Bureau of Justice (司法司) stipulating that citizens should pay for all kinds of litigation costs	Provincial Council Proposal	Provincial Senator Ma Xuchang (馬續常)	The Governor's reply: these rules are administrative regulations instead of general laws, so there is no need to seek the permission of the Provincial Council
28.1.1924	Petition ordering the Changsha magistrate to cancel stamp tax on executing security for loans and make it be a general rule	Citizen's petition	The collective heads of the town and village assemblies of Changsha County	The governor's reply: The government issued a decree requiring every county to do as the same.
18.3.1924	Petition requiring the Provincial Government to make regulations about the assessment of magistrates' character and suitability	Provincial Council Proposal	Provincial Senator Yu Deguang (余德廣)	The regulation will be approved later and the first exam for the county magistrates will be held in 1925.
24.5.1924	Petition requiring the Financial Secretary to cancel the illicit lime ash tax and to promulgate a general tax on agricultural fertilizer	Citizen's petition	The Peasant Association of Changsha County	The governor's reply: the lime ash tax is one type of standardised tax according to the new measures published by the Financial Secretary. The Peasant Association's characterisation of it as an illicit tax is based on ulterior motivations.
3.5.1924	Petition to cancel the special military tax on forestry in Xiangxi	Citizen's petition	Fang Wanfu (方頑佛) who is one of the representatives of forestry in Xiangxi	The Governor's reply: the government has already issued many orders to the officers in Xiangxi to cancel this special tax, and will also order Mr Tian who is the guarding commander of Xiangxi and his supervisor Mr Ye to cancel this tax in earnest.

A brief survey of all the documents I found in the provincial archives shows that between 1922 and 1926 there appears to have been 73 resolutions relating to the army's

illegal predation of resources; 68 resolutions calling for a reduction in miscellaneous taxes and land-based taxes; 73 attempts to impeach provincial government officials including the Governor; and 12 motions tabled to cancel government loans or bond issues. In terms of the originators of the motions, there were at least 8 petitions brought by citizens of Hunan; 91 resolutions brought by the Provincial Parliament; 35 tabled by the Governor; and two by civic institutions. In addition, of these 18 were inquiries and 20 were vetoes. Thus at the outset notwithstanding any implementation gap, it is clear that there was at least an attempt to monitor and hold the government and Governor to account using the constitution by the Provincial Parliament. Our focus shall now shift to a more detailed consideration of some of the major resolutions. In essence in the early Republic power was split between three nuclei, namely the Gentry, the People, and the Army (and occasionally the Central Government) and frequently the Gentry and the People aligned in part with the help of Hunan's Constitution to check the Army. In spite of the absence of organised political parties in Hunan at this time, such an arrangement could be described as a polyarchy to use a term from the Yale political scientist Robert A. Dahl's pluralist theory of democracy.²⁵ In some respects the developing constitutionalism in early Republican Hunan is not dissimilar to the "Gentry Democracy" described by the Sinologist Mark Elvin in his unpublished PhD thesis about the Shanghai Municipal Council in the early twentieth century insofar as it would be manifestly incorrect to describe what was evolving in Hunan as fully-blown constitutionalism, just as the kind of democracy Elvin identified in Shanghai is a long way from what we mean by the term today in the conventional sense, nevertheless in both instances the seeds of a form of government that was new in the Chinese context were germinating.²⁶

To add some context, Hunan's financial plight was neatly summarised by Governor Lin Zhiyu's resignation letter that was published in *Da Gongbao*.²⁷ Traditionally the provincial coffers relied on two major sources of income, namely the land tax (禮金 or *likin*) and miscellaneous taxes that flowed intermittently from customs, tobacco, salt, meat, alcohol as well as stamp tax. At the turn of the twentieth century and reaching a peak during the First World War, Hunan began to benefit from revenue generated by its abundance of natural resources, including stibonium (or antimony ore), lead and zinc to the extent that companies

²⁵Robert A. Dahl, *Polyarchy: Participation and Opposition*. New Haven: Yale University Press, 1972.

²⁶ John Mark Dutton Elvin, "The Gentry Democracy in Shanghai, 1905-1914," University of Cambridge, 1968.

²⁷"Lin zhiyu cizhi zhi biaoshi" ("Lin Zhiyu's Letter of Resignation"), *Da Gongbao (Changsha)*, 27/11/1920.

were established to extract these resources at a profit.²⁸ By contrast the main sources of expenditure were administration and military. In an average year, apart from a brief interlude during the First World War, Hunan's treasury spending probably exceeded revenue by 10-20 million Yuan.²⁹ To make up the shortfall, without much funding from the Central Government Hunan's provincial government frequently increased taxes, took out loans and issued bond notes. It was this practice that ignited the first major constitutional standoff between the Provincial Parliament and the Government.

In the winter of 1922, Beijing-based Hunanese businessmen including Zhang Shizhao (章士釗) and Zhong Caihong (鍾才宏) negotiated a bridging loan for 2 million Yuan with the deputy head of the Bank of China, Zhang Gongquan (張公權), after a personal visit to Hunan; however, this was kiboshed by members of the Beijing parliament including Luo Shangni (羅上霓) reflecting the inability of the central and provincial governments to work together constructively. In early 1923 the Secretary of Finance from Hunan telegrammed Beijing again to request financial support. This time the Hankou delegation of the Bank of China was sent to Hunan and a 60,000 Yuan loan was negotiated in two installments with the Huai Chamber of Commerce putting up salt tax revenue as collateral for the loan. However, because the merchants had not sought approval in advance from the Provincial Parliament, senator Deng Shouquan (鄧壽荃), together with 16 other signatories, tabled a resolution that required the government to clarify the existence and terms of the loan.³⁰ In addition, there was a public outcry³¹ which resulted in the Provincial Parliament formally telegramming the Hankou Branch of the Bank of China to inform them that the loan had not been granted the requisite parliamentary approval in accordance with Articles 25 and 39 of the Constitution.³² Thus, the loan was blocked this time by the Provincial Parliament, although but for printing

²⁸ Chang Pengyuan, *zhongguo xiandaihua de quyu yanjiu, hunan sheng*, (*Regional Modernisation in China, Hunan Province*), taipei, zhongyang yanjiuyuan jindaishi yanjiusuo, 1983 (Institute of Modern History, Academia Sinica, Taipei), 261-301.

²⁹ Ibid: Lin Zhiyu's Letter of Resignation.

³⁰ HPA, *Hunan Parliamentary Reports*, Volume 4 'Public Documents', 'Questions File', 3-5 'zhi shengwuyuan zhun deng yi yuan shouquan tichu guanyu caizhengsi xiang zhongguo yinhang jiekuan zhiwen shu qigyu san ri nei mingbai dafu han' (Letter from Senator Deng Shouquan to Provincial Government Cabinet Requesting Clear Reply within 3 days regarding the Treasury Loan to the Bank of China) in 'hunansheng yihui baogaoshu, juan si gongwen, zhiwen an'.

³¹ 'Sheng yihui duiyu jiekuan an zhi da taolun' (Debate in the Provincial Parliament On Loans), *Da Gongbao (Changsha)*, 25/3/1923.

³² HPA, *Hunan Parliamentary Reports*, Volume 5 'Telegrams', 26/03/1923, 2 'Dian hankou zhongguo yinhang shengming zhengfu jiekuan xu you ben yihui juewen' (Telegram to Hankou Branch of the Bank of China Announcing that Government Loans Require Approval by PP Resolution), in 'hunansheng yihui baogaoshu, juanwu, "dianwen"'

money and selling the province's mineral reserves no alternative source of funding was proposed.³³

However unrealistic the Provincial Parliament's rejection of external financing may seem with hindsight, it was driven by much more than nit-picking and blind adherence to the letter of the law. Indeed the underlying motivation was to balance Hunan's books by reducing military expenditure from 90 per cent to one third of the overall provincial budget in accordance with Article 139 of the constitution. In total 14 counties including Hanshou (漢壽), Yiyang (益陽), Nanxian (南縣), Guzhang (古丈), Wugang (武岡), Anhua (安化), Ningyuan (寧遠), Yueyang (岳陽), Xinning (新寧), Huitong and Taoyuan took the lead in uniting together with the Provincial Parliament to lobby the government to fulfil its constitutional commitment to demobilisation.³⁴ This pressure led to delays in delivering a budget to the Provincial Parliament and on two occasions Li Chien-nung and his Cabinet offered to resign *en masse* in May 1923, although its resignation was rejected by Governor Zhao Hengti. The Secretary for the Military Bureau Chan Lizuo (長李佑) argued that the spirit of the constitution envisioned a gradual reduction of military expenditure rather than sudden slashing, in turn counter-proposing to initially reduce military spending to half of the provincial budget.³⁵ On 28th June Zhao Hengti convened a meeting of the military top brass, who hammered out a budget in which army spending would be limited to 6 mn Yuan from a total budget of just over 10 mn Yuan.³⁶ In this way a politics of compromise was borne as the gentry and an embryonic civil society, in the guise of scholars acting through a flourishing Republican press, rallied around the constitution to check the power of the army; conversely, Zhao Hengti who was a talented general but without any powerbase amongst the gentry or scholar officials derived his legitimacy by governing in accordance with the provisions of constitution.

³³ ‘Li yuanzhang guanyu caizheng wenti zhi tanhua’, *Da Gongbao (Changsha)*, 7/3/1923.

³⁴ HPA, *Hunan Parliamentary Reports*, Volume 4 ‘Public Documents’, ‘Resolutions File’, 28-61: ‘Zi shengzheng zhun zhong jiagan yiyuan xiong shifeng yiyuan taiji hanshou deng shisi xian yihui qingyuan caibing xianqi zuzhi caibing weiyuanhui ni ju banfa jiao yiwen’ (Inquiry to the Governor approved by Senators Zhou Jiagan and Xiong Shifeng Proposing that 14 Counties Including Hanshou Voluntarily Establish Demobilisation Committees Within a Limited Time and Formulate a Plan for Implementation) in ‘Hunansheng yihui baogaoshu, juansi gongwen, yijuean’.

³⁵ ‘shier niandu xin yusuan an zisong yihui yi’ (Budget for 1923 Revealed in the Provincial Parliament), *Da Gongbao (Changsha)*, 31/5/1923.

³⁶ HPA, *Hunan Parliamentary Reports*, Volume 4 ‘Public Documents’, ‘Miscellaneous File’, 27-28: ‘Junwusi fuhan’ (Reply Letter from Military Affairs Department, 27/6/1923) in ‘hunansheng yihui baogaoshu, juansi gongwen, zajian’.

Another high-profile example of the Provincial Parliament robustly rejecting unauthorised taxes that the Governor and army sought to levy on the grounds of unconstitutionality occurred during the War to Protect the Constitution. The politics, strategic and historical significance of this war will be returned to in more detail below, whereas here we will focus on how the constitution was used as a shield by the gentry to check military power. In August 1923 Tan Yankai led an army into Hunan with the aim of overthrowing Zhao Hengti. As a result of the drain on the provincial coffers, in mid-October General Zhao met with his commanders to discuss the levying of a special land tax to fund the war. Initially it was proposed to levy the tax at a rate of 1.8 dollars for each tael of silver of the land's value, however, the rate was reduced to 1.2 after heated discussion in the press.³⁷ As hostilities neared a close by the end of November, the counties of Changsha (長沙), Liling (醴陵), Yuanjiang (沅江), Leiyang (耒陽) and Pingjiang (平江) began to call for the abolition of this 'illegal tax' as required by Article 7 of the constitution and a resolution was passed in the Provincial Parliament to this effect.³⁸ However, Governor Zhao refused to cancel the tax arguing that the military situation remained precarious and a debt was owed to his soldiers; therefore Zhao cabled government organs and the County Councils ordering them to carry on collecting the tax.³⁹ With the Governor and the Provincial Parliament at loggerheads, members of the County and Provincial Parliaments collected petitions and there was much discussion of impeachment. Indeed with government officers refusing to collect the tax in the face of popular opposition, the soldiers had to personally collect the tax.⁴⁰ Irrespective of the wisdom or practicality of the Provincial Parliament's actions, nevertheless this incident demonstrates the real power of the gentry operating under the auspices of the constitution and through the parliament in counterbalancing untrammelled military might; even in a time of war and emergency, the Provincial Parliament was able to exercise some control over the government's purse strings. As such these events collectively illustrate the functioning of a

³⁷ ‘zong zhihi bu tongling zhengshou junyong tianfu tejuan’ (Military Command Orders the Collection of Special Land Tax), Da Gongbao (Changsha), 14/10/1923.

³⁸ HPA, *Hunan Parliamentary Reports*, Volume 4 ‘Public Documents’, ‘Resolutions File’, 19/12/1923, 129-130, ‘zi shengzhang zhun chen yi zhen dongyuan dongyi qing quxiao junshi tejuan sunwen (Petition to the Governor by Senator Chen Yizhen Requesting Cancellation of the Special Military Taxes) in ‘hunansheng yihui baogaoshu, juansi gongwen, jueyian’.

³⁹ HPA, *Hunan Parliamentary Reports*, Volume 4 ‘Public Documents’, ‘Bans Against Extraneous Taxes’, 10/1/1924, 57, ‘Zi shengzhang zhun Liuyang xian yihui dian qing quxiao tianfu tejuan wen’ (Petition Dated to Governor from the Senator for Liuyang County to Cancel Special Land Tax) in ‘hunansheng yihui baogaoshu, juansi gongwen, jin tifu shuilejuan kepai’.

⁴⁰ ‘sheng yihui fandui tejuan zhi jianjue’ (‘the Provincial Parliament’s Determination to Oppose the Special Tax’), Da Gongbao (Changsha), 25/1/1924.

rudimentary type of constitutional politics the hallmark of which was a separation of powers and checks and balances. This differs fundamentally from the image of warlords, chaos and paper constitutions that many Nationalist and Communist legal historians have used to portray the early Republican period. Moreover, such sweeping misconceptions continue to be perpetuated by otherwise innovative revisionist analysis of constitutions in China.⁴¹

Violations

In evaluating the implementation of the Constitution of Hunan, a critical consideration must perforce be violations thereof. Perhaps not surprisingly in a state of civil war there was never a serious effort to reduce military expenditure or the size of the army as required by article 139; instead Tan Yankai and Zhao Hengti maintained combined forces of approximately 100,000, which was ten times the limit specified by the constitution. Free speech and freedom of the press, provided in the constitution under article 11, were limited under Zhao's regime and the *DGB*, *New Autonomy Daily* (*Zizhi xinbao*, 自治新報) and *New Hunan* (*Xinxiangbao*, 新湘報) were all closed down. Nor did the constitution fully protect the citizens of Hunan from the arbitrary predations of Zhao and his soldiers, which included advance collection of land taxes to pay army wage arrears; the issuing of 30,000 Yuan of provincial bonds in July 1923 without the approval of the PP; interference in the appointment of county magistrates that saw Zhao replace 24 magistrates in Changsha and Xiangtan alone between 23 September and 16 November 1923; and the arrest and summary execution without trial of the suspected ringleaders of a riot which broke out at the Hunan Cotton Mill in February 1922.⁴² Thus, in evaluating the success of constitutionalism in Hunan, evidently these serious violations need

⁴¹ For example, see Zhang, Qianfan. *The Constitution of China: A Contextual Analysis*. Constitutional Systems of the World. Oxford, United Kingdom; Portland, Oregon: Hart Publishing, 2012, 23: "The demise of this grand warlord [Yuan Shikai] plunged China straight into a short period of political chaos dominated by a dozen petty warlords, each successively coming into power and enacting a constitution of its own, which was only to be discarded by his successor. Nothing of this period is worthy of elaboration except the ephemeral 'provincial autonomy movements during the early 1920s'... Both in procedure and in substance the Hunan constitution lived up to the contemporary standard."

⁴² TNA, FO228/3286/16, 'Changsha Intelligence Report for the March Quarter 1922', E.G. Jamieson, pp. 137-156; NCH, 'Justice in Modern Hunan', 25/02/1922. The NCH report appears to be accurate as this has been cross-checked with several Chinese and English-language sources, but the *Herald*'s innate bias is evident in the same article, which concludes 'that the day has not come for the abolition of extra-territoriality.'

to be weighed against its achievements such as limiting the power of the executive and holding the governor to account.

Death Throes: wars, revision and abolition

The Return of Tan Yankai

Disillusionment with flagrant violations of the constitution may have been a factor, but it was a shift in the wider strategic balance of power that led to the outbreak of a second war in 1923. The third routing of Tan Yankai in November 1921 drove Tan into an alliance with Sun Yat-sen, from whom Zhao Hengti had been estranged after Zhao refused Sun's troops passage through Hunan at the outset of the first Northern Expedition, forcing Sun to take a detour through Jiangxi. At home, Zhao had been unpopular since the debacle of the Hunan-Hubei War. The rebellion in July of one of Zhao's officers Cai Juyou (蔡巨猷), who declared the independence of West Hunan, provided the long-awaited pretext for Tan to mount an invasion. Tan convened a meeting of 22 associations in Heng Yang (衡陽) at which he made a speech invoking Sun Yat-sen's *Three Principles of the People*.⁴³ In pointed contrast to Tan, Zhao mobilised his troops in the name of protecting the constitution.⁴⁴ Skirmishes broke out around Heng Shan on 25 August 1923. Zhao was saved by the intervention of Wu Peifu who sent troops to aid Zhao in September. At this point Sun Yat-sen's rival Chen Jiongming (陳炯明) took advantage of this moment of military weakness to invade Guangzhou, prompting the urgent recall of Tan's army to aid Sun.

⁴³ *Dagongbao (Changsha)*, 12/09/1923 and 13/09/1923.

⁴⁴ ‘Governor Zhao Announces the Formation of a Committee for the Armed Protection of the Constitution’ (Zhao shengzhang tonggao xuangao yong bing huxian yuanwei), *Dagongbao (Changsha)*, 23/08/1923.

The 1923 Constitution of the Republic of China

The retreat of Tan Yankai's forces may have marked a temporary subsiding of military dangers, but another battle was raging: the fight for the survival of the constitution. As a precondition for sending soldiers Wu Peifu had demanded the abolition of the constitution. Wu was himself under enormous pressure following a renewed campaign for armed unification under the presidency of Cao Kun, who promulgated a new constitution of the ROC on 10 October 1923.⁴⁵ As mentioned in the introduction, Ch'ien Tuan-sheng, the Chinese intellectual who left China after the defeat of the Nationalists to work with John King Fairbank at Harvard, regarded the Cao Kun Constitution in terms of its draftsmanship as the best constitution produced during the Republican era. Of its 140 articles, more than thirty elaborated in detail the nuts and bolts of the relationship between the central and local governments, affording a considerable degree of autonomy to the latter; albeit within the framework of a functional centralised state. For example, under article 24 the Province could enact its own basic law⁴⁶ and legislation, provided these did not conflict with the Constitution of the Republic. Also, article 26 states that any unspecified matter will be a concern for the Republic if by its nature it concerns the Republic and a concern for the Province if by its nature the matter concerns the Province; in the event the matter is disputed, its jurisdiction will be decided by the Supreme Court. At the same time article 35 reserved for the central government the power to compel and punish provinces not complying with national legislation.

Despite the significant measure of provincial autonomy provided by the 1923 ROC Constitution, the unilaterally-drafted 1922 Constitution of Hunan by comparison remained a radical document with a number of provisions that directly contradicted articles of the Cao Kun Constitution. Notably, Article 34 of the Cao Kun Constitution explicitly forbade provinces from maintaining their own standing armies; neither was a province allowed to

⁴⁵ For an authoritative English-language translation of the 1923 ROC constitution see: Ch'ien Tuan-sheng, *Government and Politics*, 436-445. This is contained within Appendix IV.

⁴⁶ Interestingly this shift in language from "constitution" to "basic law" and "autonomous law" as apparent in the Cao Kun constitution represented the drawing of a clear distinction between autonomy on the one hand and independence on the other. The same distinction is present in the final drafts of the same for Zhejiang and Guangdong and was later also preserved by the KMT government on the island of Taiwan for it was keen to delineate the boundaries between the government of the Republic of China and that of the province of Taiwan for the purpose of organizing local elections (a practice dating back to the Japanese occupation).

establish a military academy or arsenal. However, the American political-scientist who acted as a paid constitutional advisor to Yuan Shikai, Harold Scott Quigley, spotted an ambiguity in the drafting of the 1923 ROC constitution, which could have provided some leeway for extemporisation in negotiating the relationship between the central and local governments: the power of the Supreme Court to review legislation was stated ambiguously. By Article 28 it was apparently authorised to decide conflicts between the national and provincial governments as to the scope of their respective powers, yet Article 139 provided that “should there be any question regarding the meaning of the constitution, it shall be decided by the constitutional convention,” in other words by the National Assembly.⁴⁷

Revising the Constitution of Hunan

Having resolved the previous deadlock surrounding the question of abolishing Hunan’s constitution aboard the *HMS Magnolia* two years earlier in 1921 when Zhao Hengti conceded to Wu the right to station a division permanently at Yuezhou, this time another compromise was reached whereby Zhao agreed to revise the constitution to clarify the relationship between the province and the centre. An overhaul of the constitution was overdue as part of the heuristic process of ironing out such inefficiencies as were regularly noted in British consular despatches. However, as before, the constitution was caught on the hook of its own rigidity for under article 126 it required the approval of three-quarters of the PP and two-thirds of CPs to propose an amendment, which if approved would only take effect after a provincial referendum. This process did not begin until July 1924 and the requisite number of signatures was reached on 1 September. To overcome the reluctance of the PP to amend the constitution, Zhao formulated three general principles for the revision process, namely that the revised constitution would retain a separation of powers, it would not abolish the cabinet system and the central government would not be allowed to appoint or remove officials until a legitimate national government was formed.⁴⁸

⁴⁷ Harold Scott Quigley, “Some Aspects of China’s Constitutional Problem,” *Political Science Quarterly*, 39(2), (1924), 197.

⁴⁸ Hunan sheng shixing xiugai shengxianfa (The Revision of Hunan’s Constitution), *Dongfang Zazhi (Eastern Miscellany)* (Shanghai, shangwu yinshu guan: 1948), vol. 21 (21).

The revised constitution was promulgated formally on 13 May 1925. It comprised 152 articles and, taken as a whole, it reflected an increase in the power of the governor and a strengthening of the role of the central government. Major amendments included the appointment of magistrates to be made by the governor; requiring the approval of the governor for a motion of impeachment of a PP member; a reduction in the number of seats of the PP to 108; an increase in the minimum age of standing for election to the PP from 25 to 30; the introduction of a four-tiered judicial system, with references to the ‘final hearing’ and ‘final appeal’ in the original constitution replaced by the ‘second hearing’ or the ‘third appeal’ etc in order to adhere to article 100 of the revised constitution that stipulated serious cases would be investigated by the Procuratorate of the Republic; after election the governor of the province would formally be appointed by the national government; four-year consecutive terms for the governorship were amended so that the governor could serve one consecutive term only; the position of the premier was abolished and combined with the role of the governor, who also gained powers to appoint and remove all members of his cabinet; and the legislative wings of CPs were clipped. Despite this series of significant revisions intended to increase the efficiency of constitutional government in Hunan at the same time as crucially securing the support of the central government, there was one glaring continuity: article 55(2), the insidious clause that fuelled militarism by combining the role of the governor of the province with that of the commander of the military.⁴⁹

⁴⁹ For a Chinese-language edition of the Revised 1925 edition of the Constitution of Hunan see: *Zhongguo xiandaishi congkan, di yi ce* (*A Compendium of Modern Chinese History*), ed. by Wu Xiangxiang, 4 vols (Taipei, Zhengzhong shuju, 1960-1968), I (1960), 272-96. This document can be referred to in Appendix IV of this dissertation.

Beware the Devil You Know - a military coup topples General Zhao

Figure 3.3: Tang Shengzhi - Zhao's prodigy

Source: <http://news.changsha.cn/>

As the process of revising the Constitution of Hunan neared its conclusion, events in Beijing took a different course. Feng Yuxiang imprisoned Cao Kun and formed an alliance with Zhang Zuolin to bring Duan Qirui back to power, which effectively curbed the influence of Wu Peifei in Hunan. An ambitious officer, Tang Shengzhi (唐生智), chose this moment to strike. After Tan Yankai's retreat to Guangdong, Zhao reorganised his remaining 20,000 soldiers into four divisions, of which the fourth was commanded by Tang Shengzhi and stationed in Xiangnan (湘南). Tang was born on 12 October 1889 in Dongan county (東安縣), Hunan. His grandfather had earned a living raising ducks, but later participated in the Hunan Army to become a Qing official in Guangxi. Tang had enrolled in the famous Baoding Military Academy. Aping the model of Zhang Yuxiang's Christian Army, Tang indoctrinated his soldiers with Buddhist principles. His dogma could be summarised as the 'Five Abstinences', which were abstinence from stealing, swearing, thuggery, prostitution and alcoholism. Tang raised money to equip his soldiers from the sale of zinc and other mineral ores as well as seizing weapons from the northern militarists. His division was the largest in Zhao's army and grew to around 30,000 soldiers; Tang's men were also the best-trained and best-equipped with high morale.⁵⁰

With Wu Peifu distracted by Feng Yuxiang's coup, Tang Shengzhi seized this moment to overthrow Zhao Hengti. Zhao realised his troops were no match for Tang's so he

⁵⁰ A Biographical Dictionary of Republican China, Vol. 3, 236-239.

resigned on 12 March 1926 citing the forthcoming elections in June as his reason. Zhao then fled to Shanghai in the early hours of 13 March when he discovered a bomb planted in his residence. With Tang now in control, the first problem he faced was what to do about the constitution. There was a deathly silence while Tang contemplated his next move. When it appeared that Tang Shengzhi was leaning towards an alliance with Sun Yat-sen, Wu Peifu decided to intervene. Wu's forces inflicted heavy losses on Tang's men in northern Hunan and the single remaining brigade in Changsha retreated to a temple in Hengyang to wait for reinforcements from the South. On May 12 Tang Shengzhi declared his support for the Nationalist government in Guangzhou.⁵¹ With the arrival of Nationalist forces, the PP was dissolved and the constitution abolished formally on 14 July 1926, burying all hopes of the constitutional self-governance of Hunan.⁵²

Figure 3.4: Tan Yankai's Mausoleum, Nanjing- having joined the Nationalists and ridden a coach and horses through Hunan's constitution, the gentry scholar died of a brain haemorrhage when he fell off his horse on 21 September 1930

Source: <http://www.360doc.com/>

⁵¹ *Dagongbao (Changsha)*, 12/05/1926.

⁵² *Dagongbao (Changsha)*, 14/07/1926; TNA, FO228/3286/37, 'Political Report for Changsha for the Quarter Ending 30 September 1926', P.G. Jones, 331.

Summary

The Constitution of Hunan was approved by a dubious referendum in December 1921 and then formally promulgated on 1 January 1922. Provincial and County Parliaments were elected, which included female representatives, and Zhao Hengti became the first elected governor of Hunan. Cynicism was rapidly replaced by concern for foreign interests as the power of Changsha waxed while Beijing's authority waned, and the PP began to exercise its constitutional powers to hold the government and the governor to account. There were attempts to impeach the governor for violations of the constitution. Notwithstanding its considerable accomplishments, on paper at least it is the case that the first Constitution of Hunan was unwieldy as it was unilaterally drafted without negotiating with Beijing and it lacked provisions for the institutional hardware in the form of a viable Supreme Court needed to mediate between the centre and Changsha; moreover, contemporary observers argued that it gave too much power to the PP, thereby almost emasculating the governor. However, much of these points were academic for the archival research does not reveal any substantial evidence to show that the Governor was unable to make an important decision at a critical juncture due to the checks and balances imposed by the Constitution and the PP. Moreover given the absence of cases where constitutional conflicts between the central and local governments arose, then it cannot soundly be argued that the lack of a judicial forum to settle such disputes was a contributing factor to the “failure” of constitutional practice in Hunan. In any event, despite the rigidity of article 126 that stipulated a high threshold for amendment of the constitution within the first ten years of its operation a revised constitution was eventually promulgated. However, finally constitutional governance in Hunan was abandoned when internal machinations led to Zhao Hengti being deposed in a coup by Tang Shengzhi, as a result of which Tang eventually threw in his lot with Sun Yat-sen embroiling Hunan in the civil war it had sought to avoid for so long. Thus, any explanation for the “failure” of constitutionalism must look primarily to external factors rather than internal dynamics in the functioning of the constitution. In subsequent chapters an attempt to situate constitutionalism in Hunan within the wider context of the national UPAM movement will be made, before examining the comparative experiences of constitutionalism in other provinces in order to pinpoint the unique features of Hunanese constitutionalism in the early Republic.

CHAPTER 4

The United Provincial Autonomy Movement

Joining up the provincial dots to form a federal Chinese state

Chapter 4 examines the origins of federalism in Chinese thought and literature generally before honing in on its development in late Qing and early Republican Hunan together with neighbouring provinces that were members of the Union for Provincial Autonomy. As provincial gentries joined forces with intellectual elites it was constitutionalism and the idea of creating a national federal state to which they turned as a bulwark against militarism and the North-South confrontation in the hope of reforming the Chinese polity so as to end the endless dynastic cycles of civil strife that have been an abiding feature of China's history. Just like the fortunes of countless empires before them, the loose confederation of provinces that made up the UPAM waxed and waned, growing to a majority of provinces totalling 14 in number and more than half China's landmass at the movement's apogee. The idea of a modern federal state attracted formidable Chinese and Western minds, including Liang Qichao, Hu Shi, Cai Yuanpei, Zhang Taiyan, Wang Zhengting, Wang Chonghui, Xiong Xiling, Bertrand Russell and John Dewey. Zhang Taiyan distilled the UPAM's aims into a simple three-step formula: first, each province would seek to become self-governing; second, the provinces would unite to form a confederation of autonomous provinces; third and finally, the provinces would form a federal nation state. As the movement neared its peak a conference was convened in the safety of the international concession of Shanghai in 1922 and a national federal constitution drafted; however, unable to escape the perils of militarism or the North-South Civil War, the movement was finally swept aside by Chiang Kai-shek's Northern Expedition, although its intellectual history is enshrined and lives on to the present in the constitution of the Republic of China on the Island of Taiwan.

Evolution of the UPAM: an intellectual history of federalist thought

Deeply Ingrained in Chinese Culture and Consciousness?

Confucius' most famous disciple, the Chinese philosopher Mencius, observed in the third century BC that Chinese history is made up of recurring cycles of peace and prosperity punctuated by periods of war and chaos.¹ Indeed Chinese literature is pregnant with latent references to autonomy; from well known quotes in one of the most celebrated works of Chinese literature *Romance of the Three Kingdoms*- “that which is long divided must unify; that which is long unified must divide”²–to common idioms and phrases such as “Heaven is high and the Emperor far away”³ or “the whip is long but still cannot reach,”⁴ evoking the fractured nature of the Chinese polity. However, words such as ‘federalism’ or ‘constitutional governance’ are relatively recent imports via the Japanese language in the wake of the Meiji transformation. Thus separation, autonomy and self-governance are themes that for millennia have not been entirely foreign to Chinese history and literature.

More recently, the revisionist historian and political scientist Victoria Hui empirically debunked the myth of 5,000 years of stability and unity as she documented and analysed the cycles of state formation and war in ancient China, which she compares with modern Europe using a realist international relations framework. According to Hui:

¹ Mengzi, *tengwen gongxia*, chapter 14: 「天下之生久矣，一治一亂」, ‘tianxia zhi shengjiu yi, yi zhi yi luan’, full text available at: <http://ctext.org/mengzi/teng-wen-gong-ii/zh>.

² Luo Guanzhong, *sanguo yanyi* (*Romance of the Three Kingdoms*), chapter 1: 「分久必合合久必分」“fenjiu bihe, hejiu bifen”, full text available at: <http://cls.hs.yzu.edu.tw/san/bin/text.asp>.

³天高皇帝遠 (*tian gao huangdi yuan*), which intimates China’s vast Geography with the state having limited influence in far away regions. A vivid recent illustration of this mentality is an attempt by the Central Government to standardise the length of the annual Spring Festival public holidays across government departments. A journalist visited various government departments in Hunan a week after the official end of public holidays only to find the offices empty. When questioned as to why they were not complying with the central government directive on holidays local offices told a journalist “国务院多遥远”, translating as “the State Council is very far away” and reflects what is a frequent reality in Chinese politics that the Central government has limited influence over local governments even at the Provincial Level: 北晨网, 18/2/2013 “国务院多遥远?”, reproduced at <http://star.news.sohu.com/20130219/n366379410.shtml>.

⁴鞭長莫及 (*bian chang mo ji*) meaning to be beyond one’s influence.

In essence, world politics should be seen as strategic interaction between domination-seekers and targets of domination who employ competing strategies and who are simultaneously facilitated and hindered by competing causal mechanisms. Scholars of international politics and state formation generally presume that attempts at domination are checked by the mechanism of balance of power or resistance and that of rising costs of expansion or administration ... Domination-seekers can significantly enhance their coercive capabilities and lower the costs of domination by self-strengthening reforms, divide and conquer strategies and Machiavellian stratagems.⁵

In her prodigious study, Hui finds evidence of 256 wars involving ‘great powers’ from 656 BC to 221 BC in Ancient China as compared with 89 wars involving ‘great powers’ in Early Modern Europe from 1495 to 1815.⁶ Insofar as attenuating this pattern of violence Hui concludes that:

If the Weberian state with both capacity and legitimacy solved the problems of state deformation and Darwinian competition in Europe, then it may also be the solution to state failures in the non-Western world... However, if state-society bargains and citizenship rights indigenously sprouted on Chinese soil two thousand years before they blossomed on European soil, then the roots of liberal democracy are far more universal than Western.⁷

The Late Qing Rise of Provincial Forces and Provincial Consciousness

The involvement of the military in political affairs in Qing China was facilitated by the institution of ‘brave camps’ (*yongying*, 勇營) to suppress the Taiping Rebellion, which claimed around 20 million lives in the mid-nineteenth century.⁸ With the progressive collapse of the Qing authority and imperial credibility around the

⁵Hui, Victoria Tin-bor. *War and State Formation in Ancient China and Early Modern Europe*. (Cambridge: Cambridge University Press, 2005), 224-225.

⁶Ibid: Appendices I and II.

⁷Ibid:237.

⁸Spence, Johnathan D. *The Search for Modern China*. New Ed edition. W. W. Norton & Company, 2001.

twentieth year of the Emperor Guangxu's reign, military governors (*dufu*, 督府) established brave camps at the same time as the local gentry (*tushen*, 土神) gradually assumed a more active role in the provinces as distrust of central authority wielded from Beijing rose.

The Mutual Protection of the South-East (*dongnan zibao* 東南自保 or occasionally referred to as *dongnan hubao* 東南互保) during the Boxer Rebellion was perhaps the first example of independent political action by military governors and a sign of the growing distrust and disaffection towards the policies of the Qing court. Hunan assumed a prominent position already in 1897 when Liang Qichao assigned military governor Chen Baocheng to the *Hunan zilizibao* (湖南自立自保), which constituted the basis for the persistence of independent political groups in Southern China, a phenomenon that did not occur in the North. A fundamental role in formulating the proposal of new reinforcement policies in Hunan was played by the Southern Study Society (*nan xuehui*, 南学会) and the local gentry. Some authors describe this phenomenon as *Hunan's New Policy Movement* (*Hunan xinzheng yundong*, 湖南新政运动),⁹ although perhaps a national rather than regional framework is more appropriate as in essence this was a product of the growing national sentiment of distrust towards the Qing court.

Two publications were key to the development of the *zilizibao* movement in the Southern provinces: *xin Guangdong* (新广东) published by Ou Jujia and *xin Hunan* (新湖南) published by Yang Shouren, which paved the way for the rise of a provincial consciousness and identity in the South of China and helped cultivate the intellectual grounds for the Xinhai Revolution. The latter publication claimed to have coined the popular slogan “Hunan for the Hunanese” (*hunanren zhi hunan*, 湖南之湖南人). Another fundamental experience in the rise of provincial consciousness in China was the formative experience of the short-lived Republic of Taiwan (*Taiwan minzhuguo*, 台湾民主国) that was declared in 1895 but was impotent in the face of the Japanese invasion. Thus, the Self-Protection Movement (*zilibao*, 自立自保运动)

⁹ Li Dajia, *minguo chunian de liangsheng zizhi yundong* (Early Republican Movement of Self-Provinces) (taibeishi: hongwenguan chubanshe, 1986).

that was borne in a number of Southern Chinese Provinces stemmed from the same climate of distrust towards Beijing's central authority that was later to pave the way for the UPAM (*liansheng zizhi yundong*, 联省自治运动).

Federal Theories in the Late Qing and Early Republic Periods

At about the same time as the *zilibao* movement, Western political thought on federalism arrived in China and started to spread. The debate on federalism in the early twentieth century, however, more likely arose in substance from home-grown self-reliance and self-protection movements. Notwithstanding the subsequent roles in the debate of big personalities such as Sun Yat-sen and Liang Qichao, in the first instance it was intellectuals, particularly in the All Circles Society of Shandong (*Shandong gejie lianhehui*, 山东各界联合会), relentlessly lobbying the military governor Sun Baoqi that produced some of the first comprehensive proposals for a federal China, specifically the institution of a federal political structure at the national level together with the contemporaneous institution of provincial constitutions.¹⁰ Japanese writers¹¹ point out how their country's transformation during the Meiji Restoration from feudal fiefdoms to a centralised government added fuel to the fire of the intellectual maelstrom in China as it seemed to reinforce the appeal of "Westernised" reforms¹²; the Japanese Minister of the Interior Duke Ōkuma Shigenobu (大隈重信, おおくましげのぶ) even opined on the eve of the Xinhai Revolution that the only structure of government that could bring peace and prosperity to a country as large as China was a democratic federal Republic.¹³

¹⁰Ibid: 18.

¹¹ Liu Di, 'shenshi zhengzhi shidai: xiong xiling hunan shengxian yundong yinshu' (*The Era of Gentry Government: an introduction to Xiong Xiling and the Hunan Provincial Constitution Movement*), *Kyorin University Journal of Social Sciences*, 25(4), 2009: 47-60.

¹²The Okuma Doctrine might have been self-serving given that Japan had a strategic interest in keeping the Western powers out of China, nevertheless it was still influential among Chinese intellectuals who were in awe of the Meiji transformation and many of whom were given succor from Manchu persecution during their exile in Japan.

¹³'Chenzhongminze, riben dawei bojue lun zhongguo qingxing' (Japan's Duke Dawei on the Current Situation of the Chinese State), *Dongfang Zazhi* (*Eastern Miscellany*) (Shanghai, shangwu yinshu guan: 1948), November 1911, vol. 19 (5).

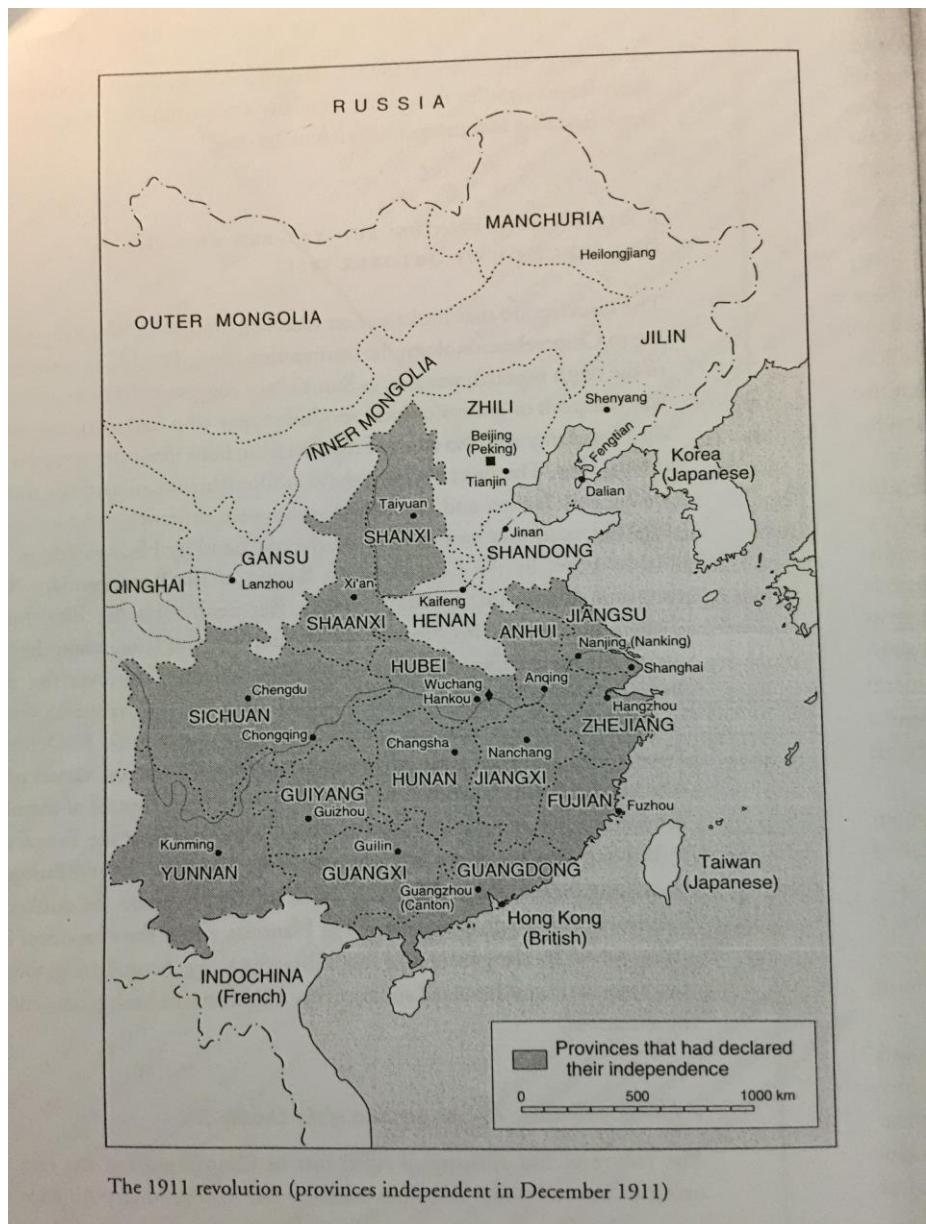


Figure 4.1: Map of Provinces Declaring Independence after the Xinhai Revolution

Source: Bergere, Marie-Claire. Sun Yat-Sen (Translated by Janet Lloyd, 1st ed. Stanford University Press, 2000), 203.

Against such a backdrop when the Xinhai Revolution eventually swept across China constitutions began to appear in its wake in many Chinese provinces, including Hubei, Zhejiang, Jiangxi and Jiangsu. In large part these constitutions were an expression of the local need for order at a time of particular unrest. Moreover as the Republic descended into a military dictatorship under the Qing dynasty courtier Yuan

Shikai, there were many converts to the federal cause.¹⁴ For example, prominent KMT members such as Prime Minister of the first Republic Song Jiaoren (宋教仁) and the politician Huang Xing (黃興), who had previously been passionate advocates of a centralised system of government, were persuaded by events and close friends and acquaintances such as Hu Hanmin (胡漢民).¹⁵ After the death of Yuan Shikai and his abortive attempt to restore the Qing monarchy, the luminary scholar Liang Qichao who had argued that under the burden of Confucian thought the only system of government suitable to China was a unitary state incredibly began to change his mind.¹⁶ Following a study tour of Europe and America (*ouyou xinyinglv*, 歐游心影錄) amidst the turbulence of further civil strife in China, Liang swung his weight behind the federal movement which he evangelised in his widely read new magazine and journal *jiefang yu gaizao* (解放與改造), introducing readers to the nuances of the Swiss and American systems of governance¹⁷. Meanwhile leading lights of the KMT, including Zhang Ji (張繼), Cai Yuanpei (蔡元培), Zhang Taiyan (章太炎), Jiang Fangzhen (蔣方震), Xiong Xiling (熊希齡), Wang Chonghui (王寵惠) and Hu Shi (胡適) swelled the barrage of UPAM propaganda through newspapers, magazines and periodicals, including *shishi xinbao* (時事新報), *gaizao* (改造), *taiping yang* (太平洋), Eastern Miscellany (*dong fangzazhi*, 東方雜誌), *nuli zhoubao* (努力周報), and *xinhubei* (新湖北). Amongst the leading participants of UPAM there was a growing consensus that “in order to eliminate warlordism it was necessary to demobilise the army; that in order to demobilise it was necessary to first unite; and that to unite it was necessary to form a federation.”¹⁸

¹⁴ Li Chien-nung, *Zhongguo jinbainian zhengzhishi 1840-1926 (The Political History of China 1840-1928)*, centenary edition (Wuhan: Wuhan daxue chubanshe, 2006), 545.

¹⁵ Hu Hanmin, ‘*huhanmin zizhuan*’ in ‘*huhanmin xiansheng wenji*’ (Autobiography in ‘Collected Works of Mr Hu Hanmin’) (KMT Party Archives, Volume 2), 70-71. Also see Huang Xing, *dangde, danggang ji guozhi wenti* (‘Party Discipline, Party Line and Issues of State Formation’) (Minli Bao, Shanghai ed., 17/11/1911).

¹⁶ Liang Qichao, *xianqin zhengzhi sixiang shi* (A History of Political Thought Before the Qin) (taibei, zhonghua shuju, 1986), 156.

¹⁷ Chang Pengyuan, *liangqichao yu mingguo zhengzhi* (Liang Qichao and Republican Politics) (taibei, shihuo chubanshe, 1978), 241.

¹⁸ “欲廢督必先裁兵，欲裁兵必先統一，欲統一必先確定聯邦制” in *Tai Pingyang* (Pacific) (1922), v.3(7).

The Initial Stages of the Federal-Autonomist Movement

The federal-autonomist movement flourished especially in Southern China in the context of the confrontation with the Beiyang government in Beijing. Arguably concepts like the UPAM (*liansheng zizhi*, 联省自治) derived more from the actions and the decisions taken by military governors than from a social and political debate. At the same time writers such as Li Dajia believe this same reason for the rise of the movement also accounts for its later failure.¹⁹

Hunan and Sichuan, because of their crucial position in the confrontation between the Beiyang regime and the South, deeply suffered from excesses of the military governments imposed by Beijing. In this context, the beginning of the Anhui-Zhili War was an extraordinary opportunity for the movements of these two provinces to release themselves from the control of the central cliques.

In the case of Hunan, the Federal-Autonomist Movement grew out of the campaign to expel the military governor Zhang Jingyao (*quzhang zhazheng*, 驱张战争). This campaign effectively created a united front between the Provincial Parliament (*sheng yihui*, 省议会), the Education Society (*jiaoyuhui*, 教育会), students and farmers, all of whom hoped to finally put an end to the sufferance wrought by the North-South confrontation. Amongst the Hunanese intelligentsia in particular, Wilsonian ideas of self-determination coming from the First World War, together with the bitter experience of Late Qing unrest and the Xinhai Revolution engendered an emerging provincial consciousness. The Association for Promoting Reform in Hunan (*hunan gaizao cunjinhui*, 湖南改造促进会) and the *Da Gong Baone* newspaper played a fundamental role in diffusing and supporting these ideas. In the minds of Hunanese intellectual circles, the fight for self-determination was instrumental to escape from the control of the North-South confrontation, but at the same time it was commonly associated in public opinion with separatist, independence positions. In practice, the calls for independence were limited to a minority of hot-headed extremists, including the young Mao Zedong who during the public debates over the

¹⁹Li Dajia, *minguo chunian de liangsheng zizhi yundong* (Early Republican Movement of Self-Provinces) (taibeishi: hongwenguan chubanshe, 1986), 53, 59.

drafting of Hunan's constitution was instead calling for the province to break away from China and declare an independent Republic of Hunan; Mao even went further advocating the splitting up of China into 27 separate countries.²⁰

As a relatively free press flourished, a hundred flowers blossomed with lively debates in publications such as Tianjin's *Da Gongbao* (大公報), Shanghai's *shibao* (時報), Hunan's *minguo ribao* (民國日報) and the Changsha edition of *Da Gongbao* (大公報), and the *huazi ribao* in Hong Kong (華字日報). In August 1917 the classical scholar and graduate of the prestigious Hanlin Academy Xiong Xiling was urging other members of the Beijing-based Hunanese gentry to lobby President Duan Qirui to support UPAM and recall Governor Tan Yankai.²¹ The Pragmatist Western Philosopher John Dewey gave lectures about the American federal system during visits to Shanghai, Beijing and Changsha during which, while cautiously avoiding being too prescriptive in the Chinese context, he encouraged a creative, gradualist approach to bottom-up reforms. Having concluded that the most suitable form of state for China was a federation, as debates reached fever pitch in the midst of the national May 4th Movement the prominent KMT intellectual Hu Shi passionately debated with the founder of the Chinese Communist Party Chen Duxiu whether or not UPAM was merely a bourgeois front for capitalist warlords.²² In the meantime, one of the leading luminaries of UPAM Zhang Taiyan, also known as Zhang Bingling (章炳麟), refined his thinking on the national approach to achieving a federal state. According to Zhang, surveying the long durée of Chinese history, after the establishment of national unity peace lasted for around 30 to 40 years, then between 40 and 50 years the country spiralled into separatist chaos; at best this cycle could last up to 300 years. For Zhang, the solution to the endless dynastic cycles of civil strife was simple: establishing a federal Chinese state, with powers devolved to the provinces. Using a process of trial and error he formulated a three stage approach to achieving this aim in the fractious

²⁰ 'Shengzi gaicheng yi ge guozi' (Changing a Name: Province to Country) by Mao Zedong, *Da Gongbao* (Changsha), 3/10/1920; Mao advocates splitting China into 27 independent republics in 'Mao zedong fabiao hunan gongheguo xuanyan' (Mao Zedong's Declaration of the Republic of Hunan), *Da Gongbao* (Changsha), 16/9/1920.

²¹ Tao Juyin, *beiyang junfa tongzhi shiqi shihua* (A History of Beiyang Warlord Government) (tiandi toushu chubanshe, 2011), v.3, 84.

²² The quote 「不過聯省其名，聯督割據之實」 “United Province in name, united dictatorship in fact” is from Chen Duxiu's article ‘duiyu xianzai zhongguo zhengzhi wenti de wojian’, *Nuli Zhoubao*, v.18; also see Hu Shi's reply in ‘liansheng zizhi yu junfa geju—da chen duxiu’ (United Provincial Self-Governance and Warlord Fiefdoms), *Nuli Zhoubao*, September 1922, v.19.

context of the early Republic: first, each province should become self-governing; second, a national union of autonomous provinces should be formed; thirdly and finally, a central, federal state could be established.²³ In this context, Zhang was highly critical of Sun Yat-sen's proclivity towards dictatorship and a vocal critic of the proposed Northern Expedition. He described the Provisional Constitution, the National Parliament and its President as the real “three scourges” (*san chong*, 三蠹) of China in the 1920s besides the warlords.

Figure 4.2:Zhang Taiyan

Source: <http://buddhistinformatics.ddbc.edu.tw/>

The Constitution of Hunan

The beginning of the Zhili-Anhui War in July 1920 for the control of the Beijing government was crucial to the self-governance question in Hunan. Before the outbreak of the conflict inside the Beiyang government Tan Yankai avoided outwardly supporting the requests of the Hunanese gentry and intellectual circles,

²³“欲廢督必先裁兵，欲裁兵必先統一，欲統一必先確定聯邦制” in Li Chien-nung, *Zhongguo jinbainian zhengzhishi 1840-1926 (The Political History of China 1840-1928)*, centenary edition (Wuhan: Wuhan daxue chubanshe, 2006), 547.

fearing a military response from Beijing, however, after the start of the war, he finally cabled the famous ‘Ma memo’. Following the ‘Ma memo’, Liang Qichao, who believed that Hunan could light the spark for the Constitutional Movement across the nation, in cooperation with Beijing-based Hunanese such as Xiong Xiling and Fan Yuanlian, drafted the guidelines for a Hunanese Constitution (*hunan zizhi dagang*, 湖南自治法大纲) which later formed the basis for the Basic Law of Hunan(*hunan zizhi genbenfa*, 湖南自治根本法). In a telegram sent to Tan Yankai, Xiong Xiling stated the need to follow the example of the American Constitution and the new German Federal Constitution, with every province implementing its own fundamental law without depending on a national parliament. Xiong thought that the drafting and establishment of a Provincial Autonomy Law(*sheng zizhifa*, 省自治法) should have been a joint effort between the Provincial Assembly, the Education Associations and Chambers of Commerce; then, following European and American precedents, the constitution of Hunan should be put to a referendum to be voted on by all the people of every county in the province. Hunan’s autonomy, according to Xiong, would have been an exemplar for all the other provinces as to how to avoid the tyranny of central authority. A key motivation behind Xiong’s vision of federalism was as a means of establishing a new ‘bottom-up’ Chinese state (*you xia er shang*, 由下而上) as distinct from the traditional ‘top-down’ approach (*you shang er xia*, 由上而下). Xiong’s vision of *liansheng liguo* (联省立国) was therefore a forerunner of the UPAM (*liansheng zizhi*, 联省自治) ideas and policies.²⁴ Sending the infamous ‘Ma Memo’ perhaps was also a means for the savvy politician Tan Yankai of testing Beijing’s reaction to Hunan’s first steps towards autonomy.

Drafting the Constitution of Hunan was crucially conditioned by divisions in Hunanese society and in particular by the role of the gentry (*guanshen*, 官绅) which constrained the positions of radicals. The radical elements were on the one hand opposed to an alliance between Tan Yankai and the gentry in the Provincial Parliament to draft the Constitution and on the other hand they promoted the People’s Movement

²⁴Li Dajia, *minguo chunian de liangsheng zizhi yundong* (Early Republican Movement of Self-Provinces) (taibeishi: hongwenguan chubanshe, 1986), 61-62.

to Draft the Constitution (*gongmin zhixian yundong*, 公民制宪运动) in order to overthrow the gentry. This radical faction included personalities such as Long Jiangong, journalists, members of Study Societies and professors who published pamphlets (*jianyishu*, 建议书) calling for the transformation of Tan's government into a Revolutionary Government (*geming zhengfu*, 革命政府) and the establishment of a Constitution drafted by the People's Public Convention (*renmin xianfa huiyi*, 人民宪法会议), positions that were clearly influenced by the events of the Russian Revolution.²⁵

Opposition to ‘Gentry self-governance’(*guanshen zizhi*, 官绅自治) culminated in a petition during the summer of 1920 and again in October to the International Conference sponsored by the Education Association (see Chapter 1). In due course differences between Tan Yankai and the Hunan Army, together with contemporary military politics in Guangdong (in particular the Guangdong-Guangxi War), led to the end of Tan Yankai’s third government in Hunan. Zhou Zhenlin (周震麟), a major personality within the contemporary Guangdong government, soon after the outbreak of hostilities with the Guangxi Clique visited Tan in Changsha to enlist his support; however, because of Tan’s ties with both cliques in the North and in the South, Tan had to decline. This pushed Zhou into overthrowing Tan with the collaboration of the Army of Hunan, in turn leading to the establishment of a successive military government led by General Zhao Hengti.

The Precepts of UPAM (liansheng zizhi, 联省自治)

In Chinese historiography a common mistake is to consider all the proponents of federalism (, 联邦者) as supporters of the UPAM, perhaps most notably in relation to one of the founding fathers of Chinese Communism Li Dazhao(李大釗).

²⁵Despite Mao Zedong’s earlier vocal advocacy for a Republic of Hunan, his relative silence in the public consultations during the drafting of Hunan’s Constitution one year later perhaps reflects his subsequent preoccupation with Communist Party politics following the Party’s establishment in Shanghai in 1921.

Li published a widely read article in 1920 entitled “United Global Federalism” (*lianzhizhuyu yu shijie zuzhi*, 联治主义与世界组织). However, the article is fundamentally different in several respects to the positions espoused by the UPAM. Li Dazhao’s central idea was the close connection between democracy and federalism. Li believed federalism and democracy should progressively begin in single countries, which would then unite into continents and finally form the sum total of a global federation(*shijie lianhe*, 世界联合). Federalism in China was therefore a step needed by China to reach democracy and enter the modern world. Li Dazhao’s positions, however, were developed from a socialist framework that was distant from the events and the proposals of the *lianzhizhuyu* (*lianzhizhuyu*) between Hunan and Sichuan.²⁶

Although its origin is contested, according to the writer Li Dajia the slogan of UPAM “*liansheng zizhi*”(联省自治) emerged in August 1921 in the context of the federal union (*zizhi tongmeng*, 自治同盟) between Sichuan and Hunan in opposition to the government. The first and most important promoter of the movement was Zhang Taiyan, who since the end of the Guangxi-Guandong War was extremely critical of the KMT reformed government in Guangzhou and its rapprochement with Duan Qirui. Zhang thought that Sun Yat-sen’s actions destroyed the core leadership of the Guangdong Military Government in the South leaving the South-Western provinces exposed to possible attack by the government. Thus for Li the main reason and the true significance of the UPAM was rooted in the confrontation between the South-Western provinces and the Beiyang government and not in the positions of the federalists (*lianbangzhe*, 联邦者) of the late Qing period.²⁷

Zhang Taiyan’s thoughts on UPAM became public in October 1921 when he met Tan Yankai in Changsha. However, Zhang’s ideas were also influenced and shaped by the Constitutional Movement in Hunan, which in turn precipitated further developments in the movement especially in relation to the idea that in order to establish a federal China it was necessary to break down central authority and establish new constitutions and hold elections in every province.²⁸ Thus the events in

²⁶Zhu, Pei Zan, Fen Song Shan, Qi Bian. *Li Dazhao and the early Chinese Communist Party* (Shijiazhuang Shi: Hebei Education Publishing House, 2011).

²⁷ Li Dajia, *minguo chunian de liangsheng zizhi yundong* (*Early Republican Movement of Self-Provinces*) (taibeishi: hongwenguan chubanshe, 1986), 80-81.

²⁸ Wuwei, *Hunan zizhi yundong shi* (*The History of Hunan’s Self-Governance Movement*) (Shanghai, taidong tushuju, 1920).

Hunan had a real impact on the UPAM. Moreover, Zhang's ideas represented a significant departure from preceding positions on federalism in China as the writer took aim at what he called the three scourges (*chong*, 蟲) of political modernisation in China, mentioned above as the National Parliament, the Presidency and the Provisional Constitution that were the original cause of the unrest in the Republic of China. Zhang's idea rapidly fed into the Constitutional Movement of Hunan, perhaps because of the political situation, and received quick support from the South-Western provinces, particularly and first of all from Tan Yankai in Hunan. Moreover, Zhang was persuasive in addressing what he described as the four main reasons proffered by the opponents of self-governance, namely that China been a country for thousands of years, education levels were chronically too low, and federalism would lead to separatism and give legal legitimacy to warlords.²⁹ For Zhang Taiyan, the myth of unity was belied by the fact that China had only been 'unified' for 2,000 years of its much vaunted 5,000 years of civilisation; and even after the Qin dynasty Chinese history had comprised a sequence of dynastic cycles interspersed by periods of intense violence during which rebellion and armed uprisings were the only way to promote change in government. Zhang further reasoned that even if the assumption that Chinese education was low were to be taken as read, then surely self-government provided an opportunity for the masses to practise politics, as indeed they would soon do with varying degrees of success.

²⁹Li Dajia, *Minguo chunian*, 198-199.

The Climax of UPAM: Lushan and Shanghai meetings to draft a national federal constitution

The Lushan National Convention

Figure 4.3:Mount Lu Shan, Jiangxi Province

Source: Tianhai Travel

There were several concerted attempts among supporters of UPAM to coordinate a convention to draft a national federal constitution. The first major efforts coalesced around the Lushan National Conference (*lushan yihui*, 廬山會議) in Jiangxi in September 1921. For example, in January 1921 Zhang Taiyan sent a telegram to representatives of 14 provinces that reiterated his ‘three steps’ to achieving federal governance and called for a meeting to draft a national constitution.³⁰ In spite of support from Xiong Kewu in Sichuan, following Sun Yat-sen’s routing from Canton by the army of Chen Jiongming, the KMT was divided with Sun, Tang Shaoyi and Wang Fangting still in *de facto* exile in Shanghai having fled Canton.³¹ Not wishing to provoke the Wu Peifu-controlled North into an invasion, there were divisions

³⁰*Huazi ribao*, 13/1/1921.

³¹ Li Chien-nung, *Zhongguo jinbainian zhengzhishi 1840-1926 (The Political History of China 1840-1928)*, centenary edition (Wuhan: Wuhan daxue chubanshe, 2006), 545.

among the Cantonese as to whether the office of the president should be re-established and if so whether Sun Yat-sen or Li Hongyuan should be the president.³²

Organising the Lushan Convention was further complicated by the fall-out from the ‘War to Aid Hubei’ described earlier in Chapter 2. It is possible that apart from driving out the military governor of Hubei Wang Zhanyuan and establishing a strategic buffer to keep Wu Peifu at bay, Zhao Hengti may have been motivated by a desire to further the cause of UPAM by establishing its capital in Wuhan.³³ Whatever the real reason for Zhao’s invasion, the result was a division of Wu Peifu’s soldiers stationed permanently in Hubei and Wu had a free hand to help organise, or perhaps sabotage, the Lushan Convention. The arrangements for the Convention were elaborate and designed to elicit support and involvement of all the participating provinces. To this end, each province would send and bear the costs of three representatives who were fully empowered to draft and approve the constitution, including representatives for the Inner Mongolia, Tibet and Qinghai regions, representatives from the army and navy and official representatives from the central government. In order to approve the constitution, provisionally it was decided that more than half of the representatives of each province needed to vote in favour.³⁴ The Lushan Convention was initially delayed by the Washington Naval Conference to which the central government’s attention and resources had to be devoted, then later when the meeting was rescheduled Wu Peifu telegrammed representatives individually ordering them not to participate as a result of which the first national federal convention in Lushan was abandoned.³⁵

³²Tao Juyin, *beiyang junfa tongzhi shiqi shihua* (*A History of Beiyang Warlord Government*) (tiandi toushu chubanshe, 2011), v.6, 55.

³³‘*eju zhi xin bianhua*’ (“New Changes in the Situation in Hubei”), *Huazi ribao*, 10/8/1921.

³⁴*Dongfang Zazhi* (*Eastern Miscellany*) (Shanghai, shangwu yinshu guan: 1948), October 1921, vol. 18 (20).

³⁵Tao Juyin, *beiyang junfa tongzhi shiqi shihua* (*A History of Beiyang Warlord Government*) (tiandi toushu chubanshe, 2011), v.6, 145; *zhao hengti xiansheng fangwen jilu* (*Oral History, Zhao Hengti Interview Records*) (Academia Sinica, Institute of Modern History, Taipei).

The Shanghai National Convention

The machinations that scuppered the Lushan meeting stalled the National Convention, but six months later on 15 March 1922 the ‘Eight Associations’ National Convention³⁶ opened in Shanghai. As an international concession, an entrepôt of intrigue and a safe haven for fugitives from imperial Chinese law, Shanghai was perhaps the natural hub to host the UPAM national constitutional drafting convention. It was the abode of key figures in the federal movement, including Zhang Taiyan, Wang Zhao, Wang Zhengting, Zhang Shizhao, Huang Yanpei and Tang Shaoyi amongst many.



Figure 4.4:Shanghai’s Bund, the perfect city for intrigue

Source: <https://www.hpcbristol.net/>

A telegram making provisions for the meeting stipulated that each province could send two representatives of the Provincial Parliament; two representatives of the Chambers of Commerce; two representatives of the Education Association; two representatives of the Agricultural Association; two Labour Union representatives; four representatives of the Union of Banks; moreover, the Manchurian, Mongol, Hui (Muslim) and Tibetan ethnic groups could each send two representatives.³⁶ True to its name, the Eight Associations’ Meeting was elitist in character with its ‘functional constituents’ only indirectly representing the people of each province. In total 29

³⁶ ‘Shangjiao lianhewui faqi guoshi huiyi tongdian’ (The Alliance of Commerce and Education’s Telegram Announcing a National Convention), *Huazi ribao*, 25/10/1921.

delegates attended the Shanghai Convention representing 14 provinces.³⁷ The chief drafters Zhang Taiyan and Zhang Junli (張君勸) were tasked with overseeing the drafting of two separate versions ‘A’ (*jia*, 甲) and ‘B’ (*yi*, 乙) of the national federal constitution respectively. Version A emphasized the cabinet-system, whereas version B was more presidential in nature. On 18 August 1922 the two draft constitutions were published.³⁸ Although the constitutions had no legal status and were only proposals with Li Hongyuan’s government officially still responsible for the drafting of the national constitution, they purported to follow in the spirit of the totemic Temple of Heaven draft constitution of 1913.

The text of the draft federal constitutions is displayed in Appendix V. From the document (using Draft A for the sake of referential consistency) a number of observations can be made. Firstly, Article 1 of the Constitution established a ‘Federal Republic of China’ (*zhonghua minguo wei liansheng gongheguo*, 中華民國為聯省共和國).

Secondly, Chapter 2 of the constitution clearly spells out the division of powers between central and provincial governments. Moreover, Article 8 stipulates that in event of conflict between provincial constitutions and the national federal constitution the latter would prevail. Further, in event of disputes between different provinces the matter would be decided by the Central government under Article 9 of the constitution.

Thirdly, reflecting the experience of the Provisional Constitution and the controversial first Parliament of the Republic, Article 11 of the constitution limited the legislature to one house to avoid parliamentary paralysis. The representative, semi-democratic nature of the federal constitution was further entrenched by Article 12 which provided that members of the legislature were to be elected by representatives of professional organisations including each provincial parliament, provincial education associations, provincial chambers of commerce, provincial labour unions, overseas Chinese and universities; reflecting a certain reverence for

³⁷ *Shen Bao*, 23/7/1922.

³⁸ *Dongfang Zazhi* (Eastern Miscellany) (Shanghai, shangwu yinshu guan: 1948), 1922, vol. 19 (21), see Appendix V.

skilled elites and also the vested interests of the ‘Eight Associations’³⁹ participating in the Constitutional Convention.

Fourthly, in line with restrictions on the military involvement in politics imposed by the constitutions of Hunan, Zhejiang and Sichuan, Article 31 provided that retired soldiers were prohibited from standing in the presidential elections for 3 years after retirement. In addition, Article 65 in Chapter 4 of the constitution made it illegal for serving soldiers and officers to participate in politics by publishing written articles while in service.

Fifthly, Chapter 6 vested (in pointed contrast with the constitutions of Hunan and Zhejiang) the power of final interpretation in a federal constitutional court (rather than provincial supreme courts) that would also adjudicate disputes and conflicts of laws between the different provinces, organs of governments and in cases of violation of individual rights. Lastly, the national army was to be limited to 200,000 men with the defence budget limited to 20% of the federal budget.

Reaction to and Legacy of the Shanghai Constitutional Convention

Despite the inconducive political environment into which the UPAM national constitution was born, it nevertheless elicited a strong reaction: the articles of Chen Duxiu and his debate with Hu Shi have already been mentioned above; in addition, on 1 August 1922 Wu Peifu sent out the infamous “Eastern Telegram” (*dong dian*, 東電), pre-emptively campaigning to criticise the UPAM as a separatist experiment that could split China apart. Subsequently the text and arguments in that telegram were serialised in Shanghai newspapers.⁴⁰ Perhaps more surprising than the fact of Wu Peifu’s response *per se* was rather the force of his reaction which if anything is indicative of the depth of support for the UPAM at least in official, elite and

³⁹ The 8 Associations comprised the Chambers of Commerce, the Education Associations and Association representing Agriculture, Labour, Banks, Lawyers, Newspapers and the Provincial Parliaments.

⁴⁰ The complete text of Wu Peifu’s ‘dong dian’ (Eastern Telegram) was serialised daily in *Shun Tian Shibao*, 6/8/1922 to 10/8/1922.

intellectual circles. Moreover, accounts of the meetings in Lushan and Shanghai and a cursory reading of the text of the draft constitutions they produced indicates categorically that UPAM was not separatist or an independence movement in terms of its aims, but one which viewed provinces being governed within the framework of a Chinese federal state, albeit with a relatively high degree of autonomy to make their own decisions. Perhaps testament to the partial success of this movement is the fact that many provisions in the text of the draft federal constitution, particularly those that clearly and flexibly regulated the relationship between the central government and provincial governments, were later adopted in the drafting of the model Cao Kun Constitution; as noted in the Introduction to this thesis, that constitution was widely regarded as one of the best drafted constitutions in the Republican period from a technical perspective and later informed the drafting of the KMT Constitution adopted in Taiwan that persists through to the present day. Ironically, after Cao Kun's fraudulent election in which he effectively bought the office of the Presidency, telegrams found in Academia Historica, the Taiwanese National Archives in Taipei, indicate that it was the UPAM he invoked to assuage the outrage and propose a solution along the lines of Zhang Taiyan's three-step mantra.⁴¹

The Decline of UPAM and Federalist Thought

The Sichuan Campaign to Expel the Yunnan and Guizhou Armies

Because of its geographical position, Sichuan, like Hunan, was a key zone in the confrontation between Northern and Southern governments, and therefore the theatre of the violent clashes that blighted the lives of the local populations. After the short

⁴¹ ‘*Taofa huixuan yong duan chushan yu xietu shanhou an*’ (Attack electoral bribery support Duan to make a stance and deal with the aftermath case), Academia Historica, Taipei: Yan Xishan Papers, Storage No. 116-010101-0020-126, Registration No. 11600000041A; *zhao hengti zhi yan xishan dianwen* (Telegram from Zhao Hengti to Yan Xishan), 18/12/1924: “中國地廣民眾，因此實行聯省自治實為恰當。希望閻錫山能共同提倡制定省憲，樹立聯治之風氣，以達統一之目標”，“China is vast and populous, therefore united provinces self-governance is appropriate. Hope Yan Xishan is able to support the drafting of the constitution in the spirit of federal governance in order to unite the nation”.

military campaign against Yuan Shikai's abortive attempt to restore the Qing dynasty monarchy (*fandizhi zhanzheng*, 反帝制战争), the armies of Yunnan (*dian*, 滇) and Guizhou (*Qin*, 黔) commanded by Cai E, remained in Sichuan constituting a major drain on the economic resources of the region. Therefore trying to restore some order to Sichuan province, Duan Qirui's cabinet decided *ex post facto* to grant legal status to the Guizhou and Yunnan armies in Sichuan as the official Central government army while at the same time ordering the partial disarmament of the military governor Luo Peijin, who acted as head of the combined armies after the death of Cai E.

Luo, however, did not implement the Beiyang government's orders, seeking instead total control of Sichuan by Yunnan. Some of the most important figures in the Sichuanese Army such as Liu Cunhou (刘存厚), Zhou Daogang (周道刚), Zhong Tidao (钟体道), Chen Zepei (陈泽霈) and Xiong Kewu (熊克武) endeavoured to halt Luo's plans by petitioning Duan Qirui's cabinet over the failed disarmament. In April 1918 the tension spilled into violent hostilities between the Sichuan Army and those of Yunnan-Guizhou. Even though the Sichuanese succeeded in driving Duan Qirui's Beiyang Army out, the Yunnan and the Guizhou armies were firmly embedded in Sichuan. The head of the Sichuan Army Xiong Kewu tried therefore to approach Sun Yat-sen to form an alliance, but his plan failed because of the political defeat of Sun in Guangzhou and his escape to Shanghai. The Reformed Military Government (*gaizao junzhengfu*, 改组军政府) in the South was thus innately hostile towards Xiong, supporting instead Yunnan and Guizhou.

Then a suddenshift in the political situation in Guangzhou led to a switch of alliances. Sun Yat-sen, Tang Jingyao, the Yunnan-Guizhou Army and, most importantly, the KMT-faction of the Sichuanese Army united together to overthrow Xiong Kewu in 1921 (*daoxiong tongmeng*, 倒熊同盟) aided by the Guangxi Army. Even though this new alliance adopted rhetoric such as 'Sichuan for the Sichuanese' (*chuanshi chuanren zile*, 川事川人自了) it was clear from the composition of the alliance that Sichuanese autonomy was not one of the aims of this conflict. Although the Campaign Against Xiong had an absolute superiority in terms of resources, through Xiong Kewu's alliance the *jingchuan jun* army (靖川軍) between August and October successfully expelled the Yunnan-Guizhou Armies from Sichuan. This success was achieved especially through the support of the Sichuanese

population and the Sichuanese militias mobilised by Xiong Kewu. The victory of the campaign to expel the Yunnan and Guizhou Armies (*quzhu dianqian*, 驱逐滇黔) could also be described as a victory for the Sichuanese self-determination movement.

Perhaps the overwhelming reason behind the Sichuanese Army's successful expulsion of the Yunnan and Guizhou Armies was the desire to avoid external interference from other provinces in the region, albeit unfortunately without a coherent plan of action after the conflict. Thus the prominent fault-lines and divisions within the army remained hallmarks of the movement for autonomy (*zizhi*, 自治) in Sichuan when compared and contrasted to other provinces.

The Guangdong Army Question (yuejun huiyue, 粤军回粤)

The Guangdong Army Question, together with the constitutional movement in Hunan and the movement to expel army cliques in Sichuan, was one of the crucial turning points historically in the development of the federal movement. The Guangdong Army was created as the military guard of the Guangdong Governor. After Guangdong's declaration of autonomy in 1918, half of its army under the command of Chen Jiongming was redeployed to Fujian in order to defend the South from an assault by the government, which at the time had been captured by the Anhui Clique (*wanxi*, 皖系). The establishment of a well-equipped army, however, has to be analyzed in the context of complex relations between the KMT and the Guangxi Clique 桂系.

Chen Jiongming's operations in Fujian from his headquarters at Zhangzhou were quite successful in containing the Anhui Clique in Fujian, and Chen's army soon became extremely powerful with a growing number of soldiers and weapons. The rising tensions between the KMT and the Guangxi Clique in Guangdong in 1919 transformed control of the Guangdong Army and its redeployment of troops. Sun Yat-sen ordered Chen to return to Guangdong (粤军回粤) while at the same time approaching the head of the Beiyang government, Duan Qirui, to assist in counterbalancing the Guangxi Clique. Chen, however, initially refused to obey Sun's order because of his links to the Guangxi Clique. To neutralise Sun's actions the

Guangxi Clique began to conduct talks with Duan Qirui's rival faction in the Beiyang government, the Zhili Clique 直系, in a joint plot to expel the KMT from Guangdong and the Anhui Clique from Beijing.

The attempted rapprochement between Sun and Duan collapsed during the Peace Talks in Shanghai in 1919 (*nanbei hehui*, 南北和会) and Sun Yat-sen resigned from his government in Guangzhou and fled to Shanghai. However, a few weeks after the beginning of the Zhili-Anhui War for the control of the Beiyang government in July 1920 hostilities broke out between the Guangxi Clique and the KMT. The Guangdong Army under Cheng Jiongming, with the support of the Fujian military governor Li Houji (李厚基), defeated the Guangxi Clique in what is known as the first Guangdong-Guangxi War (*di yi ci yuezhi zhanzheng*, 第一次粵直战争). This victory played a crucial role in the development of a provincial consciousness and more generally in the federal movement in Southern China as Chen Jiongming in October 1920 was able to skillfully spin the propaganda message embodied by slogans such as ‘Canton for the Cantonese’ (*yueren zhizhong*, 粵人治粵) and ‘Cantonese peace’ (*guangdongren wu da guangdongren*, 广东人无打广东人) to galvanise the province’s population and whip up animosity to the presence of the Guangxi Clique in Guangzhou. The Guangxi Clique appealed for help from the governor of Hunan Tan Yankai although this plea fell on deaf ears.

In summary it is evident that even though the return of the Guangdong Army to Guangdong had a huge impact on the hearts and minds of the people, from a strictly political point of view the federal movement in Guangdong was quite different from those in Hunan and Sichuan, in particular the Canton government was overshadowed by questions of its legitimacy because it was established by the Army after violently overthrowing the Guangxi-controlled government in Guangdong. While the Guangxi Clique had politically, and therefore legitimately, defeated Sun Yat-sen (*hefa dao sun*, 合法倒孙) forcing him to flee to Shanghai, the return of the Guangdong Army was instead perceived as a military coup d’etat (*wuli dao gui*, 武力倒桂). During the First Guangxi-Guangdong War critics repeatedly urged Sun Yat-sen and Cheng Jiongming to sue for peace with the Anhui Clique before the

commencement of Zhili-Anhui War, although these requests were comprehensively ignored. Thus as a consequence the return of the Cantonese Army to Canton seriously undermined the perceived legitimacy of the newly reformed KMT government in Guangzhou and as such its wider position within the federal movement in China.

Zhao Hengti's Invasion of Hubei

Equally damaging to legitimacy in the public consciousness of UPAM as the military overthrow of the Guangdong government and the infighting that followed culminating in the ‘616 incident’, in which Chen Jiongming in the face of threats to use poisonous gas bombed Sun Yat-sen’s residence to expel him from Canton, was the botched invasion of Hubei by Hunan under the leadership of governor Zhao Hengti. There are a number of speculative causes for the invasion, which have been discussed in previous chapters ranging from the expansionist logic of militarism, factionalism and duplicitous plots and rumours orchestrated by the Beiyang government that intimated Wu Peifu’s assumed acquiescence to the invasion, to the notion of an idealistic adventure to set up a capital for UPAM in Wuhan before drafting a national federal constitution. Wherever the truth may lie, it is undeniable that the aftermath of the invasion was ideologically disastrous for the federal movement. Even if the ‘minor’ infraction of ousting the brutal warlord Wang Zhanyuan to establish self-governance could be ignored as a violation of the ‘Monroe Doctrine’, the upshot of Wu Peifu’s swift and decisive military intervention in the conflict was that Hunan’s autonomy was irrevocably compromised by the permanent stationing of Beiyang troops inside the provincial border at Yuezhou.⁴² Moreover, by refusing Sun Yat-sen passage through Hunan (in compliance with the province’s constitutional obligations) and forcing him to take a detour through Jianxi, Zhao Hengti alienated Sun Yat-sen, whose KMT Party later reaped vengeance by aligning with Tan Yankai to abolish

⁴²Tao Juyin, *beiyang junfa tongzhi shiqi shihua* (A History of Beiyang Warlord Government) (tiandi toushu chubanshe, 2011), v.6, 54.

Hunan's constitution when the Northern Expedition was relaunched in earnest in 1926.⁴³

Perhaps the writing was already on the wall back at the Shanghai constitutional conference for, as Zhang Taiyan admitted, the UPAM had not strictly adhered to its own three-pronged mantra, namely that a national federal constitution had been drafted even before provincial self-governance was achieved in the majority if not all of the provinces.⁴⁴ Nor from an institutional point of view did the UPAM mature to the point of setting up a federal constitutional court, neither was it able to work together with the existing institutions of the Beiyang government: a survey of archival materials in Taipei shows that according to the government archival record and the reports of the most senior court of the Republican government, *大理院公報* (*daliyuan gongbao*), despite the vast number of cases dealt with by the *Daliyuan*, the court heard no cases relating to Hunan constitutional disputes over the many years of its recorded history⁴⁵; this in turn highlights the wider lack of legal interaction at the institutional level between the centre and the provinces. Be that as it may, precisely the fact that there were a paucity of constitutional cases relating to the Provinces heard by the *Daliyuan* then the “failure” of provincial constitutionalism cannot be attributed to the lack of legal institutions to mediate between the local and central governments (even if this issue bears the seeds of potential future conflict and would need to be resolved eventually). For example, in the case of Hunan perhaps Zhao Hengti’s relationship with Central government officials, including native Hunanese,

⁴³Zhang Taiyan criticizes SYS’s dictatorial tendencies: “近知粵中聯省政府之議，亦將指向各省徵求同意。窺其態度，仍是獨裁，並謂省憲未成以前，軍民兵官仍由聯省政府任命。此乃阻遏省憲，破壞自治之端。……貴省現既脫離南北漩渦，軍民兩長亟應早推。粵中提議，務須反抗，以免自詒伊戚”，‘Zhang taiyan zhi ligenyuan de xin’ (Zhang Taiyan’s Correspondence with Li Genyuan) (*Jindaishi ziliao, zhonghua ju*), 103; Zhang Zhijun, ed., ‘Zhang taiyan nianpu changbian’ (Extended Edition of Zhang Taiyan’s Yearbook), Vol. 2, 607.

⁴⁴“聯省政府與聯省自治名義似無差別，其實有冰炭之殊……各省自治為第一步，聯省自治為第二步，聯省政府為第三步。未有各省自治而先有聯省政府，則啟寵納侮也。……若昧於步驟，貿然欲求聯省政府，斯乃妨害自治之大端矣。”“United Provincial Governance and United Provincial Self-Governance seem similar in name, in fact they are polar opposites. United Provincial Self-Governance is the second step, United Provincial Governance the third step. Without each province attaining self-governance first, it’s like spoiling somebody so that they become arrogant. By missing a step and rashly seeking a United Government, actually this hinders more than helps the cause of self-governance” *Shen Bao*, 6/1/1921 in Tang Zhijun, *zhang taiyan nianpu*, (beijing shi, zhonghuaju, 2013), Part 2, 610.

⁴⁵ Huang Yuansheng, *minchu daliyuan yu caipan* (The Supreme Court and its Judgments in the Early Republic of China) (tai bei, xiqi fashi yanjiu, 2011).

was sufficient for resolving such issues as arose during the period in which the constitution was in force.

Summary

If not “universal values”, notions of decentralising power have roots in ancient Chinese philosophy, literature and culture, flourishing especially at times of collapse and chaos as the seemingly eternal dynastic cycle that has perhaps been the singular constant of Chinese history invariably repeats itself. Just as it would be wrong to essentialise Chinese historiography by reducing conceptions of governance to Confucian stereotypes, it would be equally Orientalist and churlish to assert that these ideas were entirely absent from Chinese history and literature.⁴⁶ Thus, China in the late Qing again looked into its own past and to Enlightenment ideas imported from the outside world as it contemplated the path ahead. Both Chinese and Western luminaries contributed to the federal debate that eliminated the darkness of the early Republican period as a new movement emerged. At its height the UPAM attracted varying degrees of support from more than half of China’s provinces, particularly those inland in the East and South-Central China. In line with Zhang Taiyan’s blueprint, which echoed the American experience, the provinces were initially to become self-governing before forming a confederal union; finally, a national constitution was to be drafted and a federal Republic formed. Despite resistance to the Lushan conference, this finally came to fruition in Shanghai in 1922. The conference drafted two versions of the federal constitution, one of which had a Prime-Ministerial/Cabinet-system and the other a Presidential form of government. Both drafts contained extensive provisions for mediating the relationship between the Central and Provincial governments; provided for demobilisation and strict controls on the army; the establishment of a federal supreme court with powers of final adjudication and interpretation (in direct conflict with the constitutions of Hunan and Zhejiang); and reflected the elite nature of professional organisations that had drafted

⁴⁶ Shiga Shuzo, “Some Remarks on the Judicial System in China: Historical Development and Characteristics”, *Journal of Asian and African Studies*, 2:1 (1967): 44.

them. Despite these achievements, the national federal constitution drafted by the UPAM never had any legal effect without the sanction of the Beiyang government in the North or Sun Yat-sen's revolutionary regime in the South and there was a conspicuous lack of coordination of laws between the Central and Provincial governments; for example, the records of the equivalent of the then Supreme Court, the *Daliyuan*, have no reference to constitutional cases or provincial courts in the case of Hunan. Finally, the UPAM was undermined by contemporary geopolitics, particularly after the incursions of the Beiyang military in Sichuan and Hunan after their respective military campaigns to expel the armies of Yunnan and Guizhou in the case of the former and following the deployment of troops to rebuff Zhao Hengti's annexation of Hubei with regard to the latter; as well as the use of force in Guangdong to drive out the Guangxi Clique and in the ensuing showdown in Canton between Sun Yat-sen and Chen Jiongming. Chapter 5 will compare and contrast the experience of constitutionalism in Guangdong, Zhejiang and Fujian with that of Hunan, before seeking to draw out some conclusions on the federal interlude in the early Republic of China. The table below (Table 4.1) was compiled by the author from the sources in this chapter to provide a succinct chronology of the rise and fall of UPAM to facilitate further analysis in the next chapter with events of particular significance highlighted in yellow.

Table 4.1: Chronology of UPAM and Southern Military History

Date	Event
14.07.1920	Zhili-Anhui War breaks out
19.07.1920	Duan Qirui telegram ordering Anhui Army to cease hostilities
22.07.1920	Tan Yankai, the Supreme Commander of Hunan, sends telegram declaring the province's autonomy
13.09.1920	Tan Yankai as the Governor of Hunan hosts autonomy conference in Changsha
20.09.1920	Publication of the "New Hubei" (<i>xin hubei</i> , 新湖北) monthly magazine by Autonomous Association located in Shanghai
10.10.1920	Citizens of Changsha parade in favour of UPAM demanding dissolution of the Provincial Parliament
14.10.1920	Zhang Taiyan arrives at Changsha
19.10.1920	Zhang Taiyan makes speech about UPAM (<i>liansheng zizhi</i> , 联省自治) in

	Changsha
24.10.1920	Cen Chunxuan(岑春煊), Lu Rongting(陸榮廷), Lin Baoyi(林葆暉), Wen Zongrao(溫宗饒), the Chief Executive Officers of the Guang Dong Military Government, resign <i>en masse</i> and petition the Beiyang government to convene a Congress and urge the South-West Provinces to rescind their declarations of autonomy
30.10.1920	The Beiyang government declares national unity
01.11.1920	Tan Yankai who is the Supreme Commander of Hunan and Zhao Hengti, then the division commander under Tan, send telegram to refute Cen Chunxuan's withdrawal of the declaration of Provincial Autonomy, reaffirming Hunan's autonomy taking the lead in the UPAM
06.11.1920	Sichuan Provincial Parliament sends telegram calling for the implementation of provincial autonomy. Citizens from other provinces in Peking establish the Inter-provincial Movement Association.
11.11.1920	Tang Jiyao(唐繼堯) declares that Yunnan will implement autonomy in isolation from the outside world.
10.12.1920	General Liu Xiang (劉湘) in Sichuan holds meeting in Chongqing and proposes Sichuan to implement autonomy urging Liu Cunhou(劉存厚) and Xiong Kewu(熊克武) to express an opinion on the matter.
13.12.1920	Liu Xiang, Dan Maoxin(但懋辛) and Liu Chengxun(劉成勳), army commanders in Sichuan, send a telegram declaring the province's autonomy and pledging to oppose Liu Cunhou, who is the Governor-General (<i>dujun</i> , 督軍) of Sichuan.
25.12.1920	Zhang Qiubai(張秋白) and Ding Xiangqian(丁象謙) – Anhui Citizens living in Shanghai – publish the “New Anhui”.
30.12.1920	The Peking Government appoints Xiong Kewu as the Governor of Sichuan, Liu Xiang(劉湘) as the Envoy for the Protection Army (<i>hujunli</i> , 護軍使) of Chongqing and announces the appointment of Nine Municipal Defence Envoys (<i>zhenshouli</i> , 鎮守使).
01.01.1921	Sun Yat-sen gives a speech to the Guangzhou Military Government and proposes the establishment of an official Government.
01.08.1921	Liu Xiang and Dan Maoxin, army commanders in Sichuan, send a telegram to declare the complete autonomy of Sichuan, declining to support either the Beiyang government or the Guangdong Military Government.
21.01.1921	Liu Xiang, Dan Maoxin and Liu Chengxun send a telegram to refute their appointment by the Beiyang government in order to demonstrate that Sichuan is a truly autonomous province.
28.01.1921	Lu Tao(盧燾), the Supreme Commander of Guizhou Province, declares the autonomy of Guizhou.
01.02.1921	Zhang Jinglu (張靜盧) – a Zhejiang Citizen living in Shanghai – publishes

	the “New Zhejiang”.
02.04.1921	Lu Tao and Ren Kecheng(任可澄), Governor of Guizhou, send a telegram proposing the autonomy of each province with the ultimate aim of UPAM.
07.04.1921	The Old Parliament calls a special conference to elect Sun Yat-sen as the President.
10.04.1921	Zhao Hengti telegrams Sun Yat-sen in an effort to persuade him not to assume the Extraordinary Presidency.
20.04.1921	The Draft Constitution of Hunan Province is finished.
01.05.1921	The inaugural meeting of the Committee for the Amendment and Revision of the Draft Hunan Provincial Constitution.
05.05.1921	Sun Yat-sen takes office as Extraordinary President in Guangzhou.
04.06.1921	The General-Governor of Zhejiang Lu Yongxiang(卢永祥) sends a telegram calling on each province to make their own Provincial Constitution, then convene a meeting including representatives from all provinces to decide the National Constitution. (This telegram became known as <i>Haodian</i> , 豪电).
09.06.1921	Zhao Hengti as the Supreme Commander and Governor of Hunan Province sends a telegram in support of Lu Yongxiang's <i>Haodian</i> .
12.06.1921	Lu Tao as the Supreme Commander of Guizhou sends telegram in support of Lu Yongxiang's <i>Haodian</i> .
16.06.1921	The establishment of a committee to draft the Zhejiang Provincial Constitution.
20.06.1921	Liu Xiang as the Supreme Commander of Sichuan sends a telegram in support of Lu Yongxiang's <i>Haodian</i> .
27.06.1921	The Shandong Provincial Parliament telegrams to propose that each province make their own Provincial Constitution.
29.06.1921	Gu Pinzhen(顧品珍) as the Supreme Commander of Yunnan sends a telegram to support Lu Yongxiang's <i>Haodian</i> .
05.07.1921	Shanxi opened a conference to draft the Provincial Constitution.
29.07.1921	The Hunan-Hubei War (湘鄂戰事) breaks out.
18.08.1921	Chen Jiongming sends a telegram asking Lu Yongxiang as the governor of Zhejiang Province to send a telegram to the whole country to call for the assembly of delegates from all provinces in Shanghai to draft the National Federal Constitution.
21.08.1921	Zhao Hengti sends a representative to Wu Peifu to sue for peace.
02.12.1921	The Provincial Constitution of Hunan finishes the revision and amendment process. The Provincial Constitution of Zhejiang (<i>Nine Nine Draft Constitution</i>) and the regulations for the implementation of the Provincial Constitution are issued.

10.12.1921	The Draft Constitution of Guangdong Province is finalised.
11.12.1921	The Provincial Constitution of Hunan is passed by referendum.
19.12.1921	The Provincial Parliament of Guangdong approves the draft constitution.
01.01.1922	The Provincial Constitution of Hunan is promulgated.
01.05.1922	Zhang Zuolin states that the three provinces in North-East China will become autonomous in their administrative affairs and will act in concert with friendly provinces in South-West China and the Yangtze River Basin.
06.05.1922	The Eight Associations convene a conference to discuss national affairs in Shanghai.
19.05.1922	The Provincial Parliament in Fengtian Province elect Zhang Zuolin as the Commander in Chief (<i>baowan zongsiling</i> , 保安总司令) of the three provinces in North-East China and the Governor of Fengtian Province.
11.06.1922	Li Yuanhong(黎元洪) leaves Tianjin and travels to Peking to act as temporary President.
16.06.1922	General Ye Ju(叶举) and Hong Zhaolin(洪兆麟) of the Cantonese Army bomb the Presidential Palace in Guanyinshan (观音山), and Sun Yat-sen escapes to a safehaven.
22.07.1922	Zhang Taiyan and Cao Yabo(曹亚伯) establish the Association for Promoting UPAM in Shanghai.
28.09.1922	The opening of the Shanghai conference to draft a national federal constitution.
04.11.1922	The Revising and Amendment Committee of the Zhejiang Provincial Constitution opens to review the Three Colour Constitution(<i>sanse xianfa</i> , 三色宪法).
18.12.1922	The Autonomous Government of Hunan is established and Zhang Hengti inaugurated as the Governor.
10.01.1923	The Constitutional Drafting Committee in Sichuan is officially established.
10.03.1923	The draft Constitution of Sichuan is completed.
02.07.1923	The Autonomous Regulations of Zhejiang Province are completed.
25.07.1923	Seventeen regimental commanders in Hunan send a telegram to support the Provincial Constitution, and pledging obedience to Zhang Hengti to rebuff Cai Juyou(蔡钜猷)
26.07.1923	Tan Yankai returns to Hunan under orders from Grand Marshal Sun Yat-sen, and allied with Cai Juyou to overthrow Zhao Hengti.
21.03.1924	The Provincial Parliament of Hunan passes an act to maintain the Provincial Constitution and calling for the Provincial Government to arrest Ye Dehui(叶德辉) who proposes abolishing the Provincial Constitution.

01.08.1924	A Conference on Autonomous Law is held in Zhejiang Province.
28.09.1924	The Provincial Parliament in Hunan passes an act to revise the Provincial Constitution.
20.11.1924	The revision process of the Provincial Constitution in Hunan is completed.
14.01.1925	The Provincial Parliament of Fujian Province publishes its Provincial Constitution.
12.03.1925	Sun Yat-sen dies in Peking.
20.03.1925	Tang Jiyao and Zhao Hengti send a telegram to support the UPAM
30.03.1925	Revisions to the Provincial Constitution of Hunan are passed by referendum.
22.04.1925	The Provincial Parliament of Jiangsu Province enacts a Provincial Constitution.
25.04.1925	The Preparatory Office for enacting the Provincial Constitution of Hubei is established.
01.01.1926	The Autonomous Law of Zhejiang Province is published.
23.01.1926	The three provinces in North-East China promulgate autonomous regulations and Zhang Zuolin is inaugurated as the Commander-in-Chief.
09.07.1926	The Commander of the National Revolutionary Army Chiang Kai-shek (蒋介石) declares an oath to launch the Northern Expedition.
14.07.1926	Tang Shengzhi (唐生智) announces the abolition of the Provincial Constitution in Hunan and dissolves the Provincial Parliament.

CHAPTER 5

The Constitutions of Guangdong and Zhejiang

Contrasting constitutional idealism with Hunan's constitutional reality

As noted by one of the foremost scholars of Chinese constitutional law, Professor Albert Chen, in his unpublished opening remarks to a paper he delivered in Chinese at conference in Tsinghua University in the Spring of 2012¹, like many words associated with modernisation the phrase ‘Constitutional Governance’ did not exist in traditional Chinese, but instead entered the language via the Japanese formulation ‘kensei’ or ‘宪政’, which was selected and reiterated until it became part of our legal lexicon by such contemporary elites writing on the topic as Liang Qichao. In other words, buffeted by the turbulence of change it is hardly surprising that to penetrate a roiling ocean of Republican factional politics even the concept of Constitutional Governance was refracted through many layers of subjective understanding. In this light perhaps more remarkable than the ‘failure’ of constitutionalism and the UPAM movement in the early Republic was the extent to which it operated in provinces such as Zhejiang, Canton and Fujian in the teeth of fierce militarism to contain power struggles in return for enabling one faction to drape itself in the legitimising robes of modern constitutional governance. Moreover, as will be demonstrated below in the course of the drafting process constitutions were tailored to the particular local conditions prevailing in a diversity of provinces, all with the aim of eventually uniting in a national federal state. In the meantime provincial constitutions preserved flexibility legal certainty, and sought to defuse disquiet and instil confidence in the constitutional process by vesting substantial reserve powers in the central government.

¹ Albert Chen discussed these concepts in his opening remarks to a lecture given at Tsinghua University how ‘憲政’ or ‘kensei’ was first borrowed by scholars such as Liang Qichao writing around the time of the Xinhai Revolution: Chen Hongyi, ‘Xianzheng, xianzhengziyuan yu zhengshike’ (Constitutional Government, Political Resources and Timing) (Tsinghua Conference Speech).

The Zhejiang Constitutional Movement

Zhejiang province is located on the coast close to the bastion of international trade port liberalism in Shanghai as one of the Five Treaty Ports and as such its location means that it was a province profoundly influenced by the wave of Westernisation in the late Qing Dynasty. In this vein, in Zhejiang just like Guangdong province after the Xinhai Revolution when China first became a Republic nation-state the spirit of constitutionalism was stronger here than in other provinces.²

Autonomy and the Nine Nine Constitution

During the War for the Protection of the Constitution (the Anti-Monarchy War, *fan hongxiandizhi yundong*, 反洪憲帝制運動) after the Second Revolution (*er ci geming*, 二次革命), Zhejiang declared its autonomy at Ningbo (寧波) under the slogan ‘Zhejiang people govern Zhejiang’ (*zheren zhi zhi*, 浙人治浙). The ‘Zhejiang Autonomous Association’ helped to propagate the province’s autonomy from its base in Shanghai.³ Active among these organisations, it was Ruan Xingcun (阮性存) who was also the president of the Lawyers Association at Hangxian (杭縣) who proposed that the Zhejiang Parliament hold a conference to draft the Autonomous Law of Zhejiang to facilitate the exercise of their inherent rights by the people of Zhejiang.⁴ On 1 February 1921, Zhang Jinglu (張靜盧), Tong Yixin (童一心) and Wu Tianfang (吳天放) amongst others – Zhejiang citizens living in Shanghai – published the ‘*New Zhejiang*’ aimed at disseminating the theory of an autonomous Zhejiang amongst an international readership in Shanghai.⁵

² See for example "Zhejiang chao zazhi" (Zhejiang Trends) as discussed in R. Keith Schoppa, "Province and Nation: The Chekiang Provincial Autonomy Movement, 1917-1927," *Journal of Asian Studies*, Vol.36, No.4: 663.

³ Shanghai ‘*Shibao*’, 2nd edition, 26/12/1920.

⁴ Ruan Yicheng, ed., ‘*Ruan kebo xiansheng yiji*’ (Memoirs of Mr. Ruan Kejbo) (Taibei, wenhai chubanshe, Vol.4), 45.

⁵ Guo Yanyi, ‘*Zhonghua minguo shishi riji*’ (Annals of the Republic of China) Part 1, 554.

Lu Yongxiang (盧永祥) who at that time was the Governor-General of Zhejiang was not a Zhejiang citizen, therefore his governorship was in technical violation of one of the cardinal principles of the Autonomous Movement, namely ‘Zhejiang people govern Zhejiang’ (浙人治浙). Moreover, since Lu was one of the few surviving Governor-Generals of the Anhui Clique after their defeat in the Zhili-Anhui War in July 1920, he was vulnerable to further pressure from the Zhili Clique; on 25th May 1921 to resist the pressure of stationing a Northern Army in Zhejiang, the Zhili Clique acting through Lu telegrammed the Peking Government to send what became the nationally famous ‘*Haodian*’ telegraphed on 4th June, 1921, which pledged Zhejiang’s allegiance to UPAM.⁶

Figure 5.1: General Lu Yongxiang
Source: <https://zh.wikipedia.org/>

Zhang Taiyan (章太炎), domiciled in Shanghai, agreed to go to Hangzhou to participate in the work of drafting the Zhejiang Provincial Constitution and sent the the ‘Zhendian’ (真電) telegraph to persuade Lu Yongxiang to declare the autonomy

⁶ For the full text of *Haodian* see ‘Shuntian shibao’, 07/06/1921.

of Zhejiang, which was a direct blow against the Peking Government.⁷ Zhang especially invited KMT member Zhu Fuchen (褚輔成) to bring the ‘Program for Promoting Zhejiang Autonomy’ from Shanghai to Hangzhou to facilitate its implementation; and Lu Yongxiang also attended the forum for discussing the provincial constitution held at the Army Comrades Association in Hangzhou.⁸

In order to fulfill Ruan Xingcheng’s request to establish a Provincial Parliament governed by the constitution of Zhejiang, the Second Zhejiang Provincial Parliament officially elected 55 people as members of the Zhejiang Constitutional Drafting Committee. After its institution Fan Xi (繁熙) was immediately elected as head of the committee. Then following completion of the Draft Constitution, on July 12 it was submitted to the Drafting Committee for the Implementation of the Basic Law for scrutiny under a Three Phase Reading Procedure (*san du shouxu*, 三讀手續) and thereafter submitted to the Zhejiang Provincial Constitutional Conference to be discussed and amended. Following the establishment of a drafting committee, a conference made up of 207 people was convened at the Provincial Parliament at Gaoqiaoxiang (高喬巷), Hangzhou on 23 July 1921. The Constitutional Conference immediately elected Wang Zhengting (王正廷) as its Speaker, Zhu Fucheng (褚輔成) as a Vice Speaker and Ruan Xingcun as the Chairman of the Review Committee (*shenyihui*, 審議會).⁹

After the articles of the Zhejiang Provincial Constitution were finished, the Draft Constitution passed its first reading (*chu du*, 初讀) on 13 July, a second reading (*er du*, 二讀) on 6 September, and was finally published at 10 am on 9 September 1921. Before the conclusion of the conference on 6 September, the Conference passed a resolution to establish a Constitution Implementing Committee and elected Cai Yuanpei (蔡元培), Huang Fu (黃郛), Lu Yongxiang (盧永祥), Shen Jinjian (沈金鑾) amongst a total of nine committee members, with the nine further alternate committee

⁷ Ibid.

⁸ ‘Zhesheng zizhi zhi zhenxiang’, Hong Kong ed. of *Huazi ribao*, 25/05/1921.

⁹ Ruan yicheng ‘Xian junkebogong nianzhu’ (Year Book of Mr Jun Kebo), ‘Ruan kebo xiansheng xuanji’ (Selected Works of Mr Ruan Kebo) (Taipei, wenhui chubanshe), 30.

members including Zhu Fucheng (褚輔成) and Ruan Xingcun (阮性存), in order to implement the Provincial Constitution.¹⁰

Although the ‘Nine Nine Constitution’ of Zhejiang was genuinely designed to be implemented, there were serious practical obstacles to such. For example, a common saying in popular circulation lamented that “the Province is ostensibly autonomous while in reality it is actually governed by the army” (*shengzhi qiming, bingzhi qishi*, 省治其名，兵治其實). Moreover, from the outset of the implementation of the Zhejiang Constitution, Zhang Taiyan cryptically described the Zhejiang Constitution as ‘a quisling provincial contract’.¹¹

The Nine Nine Constitution contained 157 articles divided into 18 chapters. In addition, there were also 23 pieces of primary legislation and 15 kinds of subsidiary laws to enable the implementation of the Constitution of Zhejiang, thus comprising a comprehensive framework.¹² The Nine Nine Constitution of Zhejiang preceded that of Hunan, a completed draft of which was published on 20 April 1921 before the final version of the Zhejiang Constitution was published on 9 September 1921; by which time the Hunan Constitution had just passed the amendment stage and was not finally ratified until a provincial referendum in the middle of December 1921, followed by promulgation on New Year’s Day of 1922. Nevertheless, whether copying wholesale large parts of Hunan’s landmark constitution like the design of the provincial government and the division of powers or smaller details like the structure of the articles and chapters of the constitution and the utilisation of language, the Constitution of Zhejiang was significantly influenced by the Constitution of Hunan. Indeed it could be said that the two constitutions were virtually the same except in a handful of areas, which are examined in more detail below.

Except for the preface of the first chapter of the Nine Nine Constitution, which comprises an outline of the constitution and includes 4 articles that illustrate Zhejiang is an autonomous province of the Republic of China and that its autonomy belongs to all of the citizenry within the province's inherent boundaries, there is little difference

¹⁰ Ibid.

¹¹ ‘wo zhi shiju guan’ (My View of the Times) in Hong Kong edition of *Huazi ribao*, 07/08/1921.

¹² See Li Guoqi, ‘Zhongguo xiandahua quyu yanjiu: minzhe diqu zhengzhi xiandaihua’ (Research on Regional Modernisation in China: political modernisation in Fujian and Zhejiang) (taibei, zhongyanyuan jindaishisuo).

from Hunan's Constitution in terms of the content of the first chapter. This attests to the influence of Hunan's Constitution amongst the UPAM and the fact that it was drafted if not promulgated before the Constitution of Zhejiang.

More substantively, the two constitutions differ slightly in terms of *habeas corpus* rights. In Zhejiang, the arresting authority must inform the suspect detained of the reasons for their detention within 6 hours. The arrested man or a third party can both appear in court and can ask the court to examine the stated reasons for the arrest. Thus, the Nine Nine Constitution shortened Hunan Constitution's 24 hours to 6 hours in order to further entrench and protect the right of *habeas corpus*.¹³

In order to make a clear division between provincial power and the central government powers, the third chapter of both the Constitution of Hunan and Zhejiang's Nine Nine Constitution deals with 'the powers of the Province' (*sheng zhi shiquan*, 省之事權). The main difference is that the Nine Nine Constitution of Zhejiang has more detailed provisions than Article 31 of the Constitution of Hunan for mediating the relationship between the central and provincial governments, in particular in relation to the Law of Contract, which perhaps reflects Zhejiang's longstanding reputation as a hub of commercial entrepreneurialism: "if the national law is not applicable in this province, it can be revised in accordance with provincial law only if the revision is not contrary to this constitution". In addition, Article 32 states: "Where the laws or contracts with foreign countries which are made by the central government may damage the rights of this province or increase the burden of this province, then these laws or contracts must be first agreed by this province". Furthermore, in accordance with Article 33: "Where the state's military operations and equipment may damage the interests of this province, then it must be agreed first by this province".¹⁴ This also illustrates how drafting of the provincial constitutions was tailored to the conditions on the ground, to wit the issues and problems of particular provinces that made up the UPAM rather than indolently relying upon a cookie-cutter, one-size-fits-all template.

Notably the organisation, term of office and authority of the Provincial Parliament governed by the Zhejiang Constitution is exactly the same as the

¹³ Ibid.

¹⁴ Ibid.

Provincial Parliament provided for under the Hunan Constitution. The powers of the Provincial Parliament include the right to impeach the Governor, provincial civil servants (*shengwuyuan*, 省务员), the President of the Provincial Court of Final Appeal, judges, auditors and ombudsmen in addition to general legislative powers. The difference between the two provincial constitutions is that Zhejiang's Provincial Parliament only opens once a year for a session three months in duration from 1 March, whereas the Hunan Provincial Parliament convenes twice a year with each session of duration two months, moreover there is no provision for the establishment of a permanent committee of the Zhejiang Provincial Parliament during the recess period unlike the corresponding provision that applies to Hunan. In this respect Hunan's constitution was perhaps slightly more viable insofar as it conceived its Parliament operating in practice.

As for the Provincial Government, the office of the Governor and Zhejiang's administrative system also imitates the cabinet system (*neige zhi*, 内阁制) of Hunan: in both provinces under their respective constitutions, the governor was the head of the Provincial Government and chairman of the cabinet, the province's highest level decision-making body. However, while there was no term of office for provincial civil servants in Hunan, in contrast Zhejiang made a mandatory rule that the term of office must not exceed 3 years.¹⁵ This innovative provision was aimed at tackling the age-old problem of officials building up local power bases and nepotistic networks of patronage, or *clientalism*, which were perhaps deemed even more endemic in Zhejiang at least by the drafters of the Nine Nine Constitution.

In relation to the administration of the provincial legal systems, the original four-tier trial and appeal system (*siji sanshen zhi*, 四級三審制) conceived for Hunan was compressed into a three-tier trial and appeal system in Zhejiang (*sanji sanshen zhi*, 三級三審制).¹⁶ In both cases the President of the provincial court and judges sitting on the courts should be elected from the People's District (*renmin fenqu*, 人民分區). Similar to Hunan, in Zhejiang under the constitution the right of final appeal is not to the central government, that is the Republican Supreme Court (*Daliyuan*, 大理院), instead only to the Provincial Court of Final Appeal. In other words both

¹⁵ Ibid.

¹⁶ Ibid.

constitutions sowed the seeds of potential problems and jurisdictional and institutional skirmishes between the local and central governments due to the nebulousness of the ultimate locus of judicial power.

At the implementation level and in regard to inbuilt checks and balances, unlike the Zhejiang Constitution, there is no article providing for the establishment of an independent Organization for Supervision (*jianchayuan*, 監察院) under the Hunan Constitution. This originated from ‘supervisory rights’ (*jiuchaquan*, 紛察權) and ‘impeachment rights’ (*tanhequan*, 彈劾權) that were purportedly advocated by Dr. Sun Yat-sen. The organization was made up of 11 supervisors to be elected by all provincial voters and as a body that represented the provincial people it was vested with the right to exercise the power to impeach senators of the Provincial Parliament, the Governor, civil servants, judges of the provincial courts, the auditor and officials at all levels. In this way, an additional innovation of this organisation was as a remedy to the graft and corruption that was rife in Chinese politics; an innovation that was shortly afterwards adopted also by the Sichuanese Constitution following in the footsteps of Zhejiang.¹⁷

In a similar vein, chapter eight of Zhejiang’s Constitution established an Auditor’s in order to check the arbitrary predations of government taxation and imprudent spending in the twilight era of the Qing dynasty when fiscal chaos reached its climax. Thus Zhejiang emulated the model of Hunan and even went further in the quest for fiscal prudence by establishing an Audit Bureau to fulfill an additional supervisory role and placate the will of the people.

Structurally, just like Hunan’s Constitution Zhejiang’s Constitution also included specific chapters entitled ‘Legislation’, ‘Finances’, ‘Education’, ‘Industrial’, ‘Traffic’, and ‘County’ and ‘City’. However, in a creative departure from the Hunanese Constitution, among these specialised chapters Article 101 of Zhejiang’s provincial constitution was drafted such that it stipulates that the financial burden of Zhejiang to the government administration should not exceed 30% of the province’s revenue. In terms of presentation, of all the provisions in Hunan’s Constitution, only the items ‘Legislation’, ‘Outline of the County System’ and the ‘Outline of the Autonomy of Towns’ are specifically designated as chapters, the remaining items

¹⁷ See Chapter 10 of the *Draft Constitution of Sichuan*.

being referred to all as sections. Furthermore, Zhejiang's constitution has one more chapter than Hunan's, namely the one pertaining to 'Traffic'.

Reviewing the aforesaid provisions of the Nine Nine Constitution, it is not difficult to discern a link between its constitution and its basis in the UPAM, the hallmarks of which are protection of the rights of people and a high degree of direct democratic governance. In the process of its drafting, it is difficult to deny that there is imitation if not plagiarism of Hunan Province's Constitution. The significance of Zhejiang's Constitution lies perhaps not in the originality of its drafting but in its wider impact on promoting the popular consciousness of the UPAM and checking the power of local warlords.

Lu Yongxiang and the Three Colour Constitution

Born in Shandong, Lu Yongxiang was not a member of the Beiyang Clique; and despite connections with the eponymous army, Lu initially belonged to the Anhui faction. As an outsider, apart from reliance on crude military might, a key plank of his legitimacy was the Constitution of Zhejiang. To this end, Lu Yongxiang, Shen Jinjian, Cai Yuanpei and Huang Fu were specially elected as members of the executive drafting committee and helped to formulate a law entitled 'the Zhejiang Constitution Implementation Law' which consisted of 23 clauses to facilitate the operation of the constitution before a provincial census could be conducted; establishing an election body comprised of the Provincial Education Association, the Provincial Peasantry Association, the Provincial Labour Union, the Hangzhou General Chamber of Commerce, the Ningbo General Chamber of Commerce, the Lawyers' Union, the Journalists' Union, the Education Association, the Peasantry Association, the Chamber of Commerce, Labour Unions and the County Parliament of each county to elect the Governor. Each county elected one provincial senator, in other words voting was not in proportion to population. Except for a few special cases like Ruan Xingcun's, most provincial senators were national senators or members of the local gentry or merchant elites, including Wang Zhengting, Zhu Fucheng, Cai Yuanpei and

Huang Fu.¹⁸ Thus, it is clear to the Beiyang factions and even the Hang Zhou General Chambers of Commerce that most of the members of the constitutional drafting committee had lived outside of the province for a long time and were not familiar with the situation of the province, therefore it was impossible to argue that they reflected public opinion.¹⁹

However, the third elected session of the Provincial Parliament argued that since the Nine Nine Constitution was still not passed by a general referendum of the voters of the province, as such it had to be ratified by a new Zhejiang Constitutional Conference. More than one hundred amendments to the draft constitution were submitted by provincial citizens.²⁰ The 110 elected constitutional supervisors (*xianfa shenchayuan*, 憲法審查員) commenced the Zhejiang Constitutional Revision Conference on 4 November 1922 before the assembly drew to a close on 26 January 1923. The conference distilled all the draft constitutions into three constitutions, written on *red*, *yellow* and *white* papers, hence the name the ‘Three Colour Draft Constitution’ (*sanse xianfa*, 三色憲法). The original plan was to publish the Three Colour Draft Constitution as part of a public consultation (*shehui dazhong*, 社會大眾) with a provincial vote to be held on 1 August 1923 to choose *one* of the three constitutions. However, ultimately this never happened and so the Three Colour Constitution transpired to be little more than an iridescent version of the Nine Nine Constitution.²¹

Unlike the Nine Nine Constitution, the Three Colour Constitution strongly reflected the constitutional law principle of *subsidiarity*, namely “that it is only concerned with the situation of Zhejiang instead of the whole country”. The original content of Article 29 stated that “it is for the province to formulate laws and implement them, provided that they are not contrary to the national constitution ... except for areas expressly stated by the national constitution like diplomacy, national

¹⁸ Hu Chunhui, ‘*Minchu de defang zhuyi yu liansheng zizhi*’ (Republican Regionalism and Inter-Provincial Self-Governance) (Beijing, zhongguo shehui kexue chubanshe, 2011), 192.

¹⁹ Ruan yicheng, “*Zhengyan*” (Politics), Part 2 (Taipei, shangwu yinshuguan), 405-408.

²⁰ Ibid: 409.

²¹ Li Chien-nung, ‘*Zhongguo jjinbainian zhengzhi shi: 1840-1926*’ (A Century of Chinese Political History: 1840-1926) Part 2 (Wuhan daxue chubanshe, 2006), 550-551.

defence and state finances, all other terms should be legislated and implemented by the province''.²²

Among the three constitutions, the red constitution proposed a *committee system* made up of 11 administrative members (11 *ren weiyuan zhi*, 11 人委員會制); the yellow constitution proposed a *semi-cabinet system*: all the orders of the governor should be countersigned by the president of the provincial government (*shengzhengyuan*, 省政院) and the chief executive of civil servants (*zhuguan zhengwuyuan*, 主管政務員), although in practice there is little difference between this and the pure cabinet system since the president of the provincial government and chief executive of the civil servants are appointed by the Governor directly²³; while the white constitution proposed a governor and executive discussion system (*shengzhang yu zhengwuyuan heyi zhi*, 省長與政務員合議制).²⁴

All three drafts of the constitution emphasised the importance of mass education, providing for the right of a citizen to receive education with corresponding social obligations to pay taxes and serve in the army (*shehui zhuyi secai*, 社會主義色彩). In the final analysis, the Nine Nine Constitution of Zhejiang was more honoured in the breach than the observance and could not be implemented in large part because there was no clear division between administration and army affairs and national and local taxation.

The Final Eclipse of Zhejiang's Autonomy Movement

It is probably true that, in common with Chen Jiongming's aspirations for Guangdong that shall be discussed in greater detail below, the Zhejiang constitutional movement was far too idealistic beyond early Republican reality on the ground, which is the root cause for failure to implement the constitution; and it is certainly the case that

²² See the original draft of the Red Zhejiang Provincial Constitution in 'Zhongguo di yi hui nianjian' (Yearbook of China) Part 1, preface, 92 and 102-112.

²³ In the yellow and white constitutions, the civil governor was to be elected by the people of Zhejiang, see footnote 23 in Schoppa, "Province and Nation", *the Journal of Asian Studies*, 669.

²⁴ Li Dajia, *Early Republic UPAM*, 195.

constitutionalism in Zhejiang was also substantially contrary to the interest of militarists in power at the time. Furthermore, after the first Zhili-Fengtian War in the summer of 1923, the Zhili Clique prevailed with the result that Zhejiang was under the constant threat of outside occupation. At that time preparing for the coming Jiangsu-Zhejiang War was in reality the only preoccupation of Lu Yongxiang, all other endeavours being deemed by him to be an unnecessary distraction at the time.²⁵ By comparison, the fact that Hunan's pragmatic constitution was arguably more realistic - in offering a high degree of devolution of power to the province without provocatively being perceived as an independence movement that might attract intervention from the central government (the provocations of Mao Zedong aside!) - might explain Hunan's ability to lay low on the Beiyang radar, facilitating a period of 'taoyuan' in which the province could go about its affairs temporarily insulated from the ravages of warlordism and civil strife.

The Zhejiang Constitutional movement was galvanised in Peking by the return to power of Li Yuanhong (黎元洪), who restored the national constitution. Consequently, the constitutional movement of Zhejiang renewed its emphasis on 'autonomy' because many of the elites and figures influential in Zhejiang's constitutional movement were closely connected with Li Yuanhong's faction in Peking central to whose legitimacy was the overriding importance of the national constitution. This intermission for Zhejiang was short-lived as Li was inaugurated for just one year before being forced to resign by Cao Kun and Wu Peifu because he lost the support of the latter. The high-water mark of the constitutional movement in Zhejiang is perhaps embodied in the 'Provincial Autonomous Conference Law' that was published by the Zhejiang governor on New Year's Day of 1924.²⁶

As the national tide began to turn against constitutionalism in Zhejiang, the winner of the Jiangsu-Zhejiang war, the Zhili Clique, was defeated in the Second Zhili-Fentian War half a month later following a coup d'état in Peking launched by the Manchurian General Feng Yuxiang (馮玉祥). In response Lu Yongxiang commanded the Fengtian Army to go south along the Jing Pu railway (津浦路) with

²⁵ Tao Juyin, 'Beiyang junfa tongzhi shiqi shihua' (A History of the Beiyang Warlord Period), Vol. 7 (Sanlian shudian yinxing, 1957), 80.

²⁶ Academia Historica document, 'Ruan yicheng wei Zhejiang zizhi yundongshi shi zhi guoshiguan huang liliu guang chang han' (Letters of Ruan Yicheng in relation to the self-governance movement deposited at Academia Historica), 30/05/1980.

the support of General Zhang Zuolin (張作霖) in order to reconquer Southeast China. Confronted with a crisis, Sun Chuanfang (孫傳芳) combined forces with Qi Xieyuan (齊燮元) from Jiangsu, Ma Lianjia (馬聯甲) from Anhui, Cai Chengxun (蔡成勳) from Jiangxi, Zhou Yinren (周蔭人) from Fujian and Xiao Yaonan (肖耀楠) from Hubei- in other words the military governors (督軍) of eight provinces in total - to send a joint telegram to the interim Peking Government declaring the autonomy of South-East China under the popular slogan ‘protecting the people’.²⁷

At this point a final resolution was passed by the Zhejiang’s Constitutional Conference and it was decided to officially promulgate a new law on New Year’s Day of 1926. However, Sun Chuanfang who still marshalled a powerful army at that time simply would not entertain the idea of Zhejiangese autonomy. Paradoxically, or perhaps another indication of the powerful potential of provincial constitutionalism for mobilisation, when Chiang Kai-shek’s (蔣介石) National Revolutionary Army eventually defeated Sun Chuanfang at Jiangxi during the North Expedition, stationing troops at Quzhou (衢州) and Longyou (龍游) in the Western part of Zhejiang province, Sun Chuanfang promised to “return Zhejiang affairs to the Zhejiangese people” (*zhe shi huan zhi zhe ren*, 浙事還之浙人). Under the slogan ‘Zhejiangese govern Zhejiang’ the upper class elites comprising the Committee of Provincial Affairs (*shengwu weiyuan*, 省務委員) of the autonomous provincial government of Zhejiang (*Zhejiang zizhi sheng zhengfu*, 浙江自治省政府) were forced by Sun Chuanfang to escape to Shanghai, prefiguring an abolition of the Provincial Constitution, which ironically brought to an end an autonomy movement that had lasted off and on in Zhejiang for 9 years. Perhaps unsurprisingly given the entrenched influence of militarists such as Yang Shande, Lu Yongxiang and Sun Chuanfang who governed Zhejiang one after another, constitutionalism was unable to take root in Zhejiang in the way that it did in Hunan.

²⁷ ‘*Shuntian shibao*’, 2nd edition, 16/11/1924.

Guangdong's Provincial Constitutional Movement

Figure 5.2: Wang Chonghui, a Cantonese reformer with a doctorate in Law from Yale

Source: https://zh.wikipedia.org/wiki/File:Wang_Chonghui3.jpg

Sun Yat-sen (孫中山), Liu Xuexun (劉學詢) and He Qi (何啟) had plotted and planned for the independence of Guangdong ever since the Boxer Rebellion in 1900 (*baguo lianjun gengzi zhi yi*, 八國聯軍庚子之役). As Cantonese students living in Japan, Zheng Guiyi (鄭貴一), Li Zizhong (李自重), Feng Sile (馮思樂), Wang Chonghui (王寵惠) and Feng Ziyou (馮自由) established an organization named the ‘Guangdong Independence Association’, which advocated that Guangdong declare

independence from the Qing Government. The next year the reformer Ou Jujia (歐榦甲) published a paper in the *Datong Daily News* (大同日報) to propagate a theory about the independence of Guangdong and popularise the slogan ‘Canton for the Cantonese’. In addition to the prosperity generated by Guangdong’s unique historical and legal status as a foreign trading port and its early embrace of Western liberal ideas, it was also self-sufficient and rich in produce; these, together with the influence of a powerful coterie of overseas Chinese, all made for fertile conditions to establish the roots of an autonomy movement in southern China. After Chen Jiongming’s (陳炯明) Yue Army (*yue jun*, 粵軍) successfully expelled the Gui Army (*gui jun*, 貴軍) from Guangdong in 1920, without the incursions of armies from other provinces the administration of Canton was in theory unified, and therefore in a position to leverage the vast financial revenue base of the province to win over public support for the movement. In 1922 Canton was dubbed ‘the most likely contemporary province to implement constitutionalism and autonomy’ by the renowned scholar Zhou Gengsheng (周鯁生).²⁸

However, in reality Guangdong was already under the entrenched leadership of the KMT when it became a *de facto* colony that furnished the needs of the exiled Guangxi Army after Yuan Shikai’s toppling of the President of the Republic of China Dr. Sun Yat-sen in 1912 as part of his campaign towards autocratic government and the recentralisation of power. Against this backdrop, Zou Lu (鄒魯) supported Tang Shaoyi (唐紹儀) as the representative of South China to propose the policy of a ‘Canton governed by the Cantonese’ (*yueren zhi yue*, 粵人治粵).²⁹ In June 1919 in Sun Yat-sen’s absence from Guangdong, Zou Lu and his associates mobilised the Guangzhou middle class to convene the Provincial Citizens’ Conference, which endeavoured to have a senator of the Hong Kong Legislative Conference Wu Tingfang (伍廷芳) elected by the Cantonese as the Governor of the Conference. However, it ultimately failed due to the objection of Lu Rongting (陸榮廷) who represented the Gui Clique (貴系); otherwise Guangdong would have been the first province in China to achieve provincial autonomy rather than Hunan.

²⁸ Zhou Gengsheng. ‘Du Guangdongsheng xianfa caoan’ in *Far Eastern Miscellany*, 1922, V.19(6).

²⁹ Zou Lv, ‘Huigu lu’ in ‘Zou lv quanji’, V.1 (taibei, sanmin shuju, 1976), 103.

Tan Yankai successfully expelled Zhang Jingyao and encouraged Chen Jiongming to lead the Yue Army back to Guangdong amidst a tide of support for UPAM that pervaded all levels of society. The Cantonese living in Peking held an assembly under the name of *Yueshi Weichi Hui* (粵事維持會) which commenced on 18 September 1920, publishing a statement to emphasise their support for the policy that Canton should governed be by the Cantonese; calling for the abolition of military governorships or dujun (督軍) in order to contain the Guest Army (客軍); electing a governor to reassert Guangdong's autonomy and urging the Guangdong citizens to stop handing over food or taxes (*yiqie liang juan*, 一切糧捐) until the Guest Army withdrew from the province. The Fellow Cantonese Association (*Guangdong tongxiang hui*, 廣東同鄉會) for expatriates living in Tianjin also held a meeting on 25 September and published a statement calling on Cantonese compatriots to support Chen Jiongming's Yue Army to return to Guangdong in order to achieve the goal of autonomy for Canton.³⁰ The deputy speaker of the Guangdong Parliament, Tan Binghua (譚炳華), sent two telegrams on 23 September and 28 September to inform all Cantonese, whether residing in Guangdong or not, that Sun Yat-sen, Tang Shaoyi and Wu Tingfang (who were all Cantonese) were to preside over the Constitutional Protection Government (*hufa jun zhengfu*, 護法軍政府) and to encourage “Cantonese living in Shanghai [to] celebrate the autonomy of Guangdong.”³¹

Chen Jiongming led the Yue Army back to Guangdong in the autumn of 1920 under direct orders from Sun Yat-sen and with significant support among local people and army divisions under Zou Lu, Zhu Zhixin (朱執信) and Yao Yupin (姚雨平), culminating in Chen's overwhelming defeat of the Gui Army in East Guangdong, which finally forced Lu Rongting to send a telegram to declare his withdrawal from the province. The swell of public opinion created by the UPAM and the ideal of Canton governed by the Cantonese naturally assisted the Yue Army in its successful return to Guangdong, which might also account for Chen Jiongming's steadfast adherence to the policies and slogans of UPAM. When Chen Jiongming arrived in Guangzhou, the Guangdong Student's Union exhorted Chen to abolish the military governorship and replace the office with an elected governor following competitive

³⁰ ‘yue shi weichi hui tongdian’, *Huazi Ribao (Hong Kong)*, 25/09/1920.

³¹ ‘lv lu yue ren qing yue zizhi’, *Shibao (Shanghai)*, 01/11/1920.

elections, as well as urging Chen to fulfil his promise to make a declaration of Guangdong's autonomy.³² This illustrates how the ideals and theory of federalism facilitated popular mobilisation in Canton.

On the other hand despite such high-flown ideals and expectations, the experience of the Constitutional Protection Government controlled by the Gui and Political Study (*zhengxuexi*, 政學系) Cliques for three years in Guangzhou was in reality a traumatic period for many Guangdong citizens. Perhaps the reason why Chen was so enthusiastic for the cause of UPAM was not only because he was influenced by the popular mood and theoretical ideas of federalism, but Chen's thoughts probably also incubated during his formative political experience in South Fujian (*minnan*, 閩南) which stimulated a determination to implement provincial autonomy. Fujian was a successful federal experiment in which the Yue Army was stationed in Fujian and commanded by Chen Jiongming at Zhang Zhou. With advice from KMT members such as Zhu Zhixin, Chen resolved to reform more than twenty counties around Zhang Zhou in the region of South-West Fujian (*min xinan diqu*, 閩西南地區) where he built roads, constructed public parks and gardens, recruited local elites into public service and renewed education to the extent that South-West Fujian was an autonomous region completely independent of the Central government or other 'warlords'. Naturally his achievements in Fujian positively reinforced Chen's faith in the UPAM.³³

The Document of Canton's Draft Constitution

The draft Provincial Constitution of Guangdong passed by the Provincial Parliament on 19 December 1921 consists of 135 articles, which in total are divided into 15 chapters: the first chapter is a preface which outlines the characteristics of Guangdong's autonomy, its borders and the rights of the people of Guangdong province; the second chapter illustrates the status of the Provincial Constitution with respect to the rights and obligations of the people's property and their lives and

³² *Huazi ribao*, 04/11/1920 in 'Beiyang junfa tongzhi shiqi shihua', V.5, 198.

³³ Hai Ouguke, 'Jiefang bielu' (An Alternative History of Liberation) (taibei, wanghai chubanshe), 1-2.

freedoms as safeguarded by the constitution, which was also a reaction to the warlord politics of the time; the third chapter clarifies the affairs and formal rights of the province vis-à-vis its relationship with the Central Government, while Articles 25 and 26 almost exactly mirror their equivalents in the Nine Nine Constitution of Zhejiang – for instance, in respect of legislation and the actions of the Central Government, the province has the right to veto or derogate from its decisions. The fourth chapter provides for the functioning of the Provincial Parliament whose term is by and large similar to that under the provisions in the Constitution of Hunan, except for the fact that in Guangdong's case the details of parliamentary elections are left to be decided at a later date by provincial laws under Article 32 of the draft constitution. The fifth chapter defines the relationship between the Governor and the Province Council (*zhengwuyuan*, 政務院), which is in essence a cabinet system, although because the chief provincial civil servants (*sheng zhengwuyuan*, 省政務員) are all appointed by the Governor power was more consolidated around the office of the latter in Canton. Moreover, the Governor is also the commander-in-chief of the province's army and navy and has the power to declare and enforce martial law which is more in line with the spirit of gubernatorial system (*shengzhang zhi*, 省長制). Furthermore, the President of Guangdong's High Court is also appointed by the Governor which is different from Hunan whose governor is elected by the Provincial Parliament and hence more akin to a cabinet or Prime Ministerial system. Expenses under Chapter 6 are dealt with in a way that is broadly similar to the constitutions of Hunan and Zhejiang and in the case of Guangdong the only rule that tentatively provides for the possibility of the province assuming the burden of any national expenses is delegated to subsidiary legislation under Article 84 of the draft Guangdong Provincial Constitution. Chapter 14 provides for the revision of the constitution under certain circumstances.³⁴

Peculiarly the Guangdong Provincial Constitution also borrows wholesale from the Constitution of Hunan a clause under Article 117 which allows for provincial troops to be placed under national command in the event of a declaration of war with a foreign power; given Canton's geopolitical situation and location, unlike

³⁴ Zhou Gengsheng, 'Du Guangdong shengxianfa caoan' (Reading Guangdong Province's Draft Constitution) *Eastern Miscellany*, Vol.19(6), 25/03/1922. See Appendix VI for full version of the draft constitution.

Hunan it was hardly in a position to insulate itself from foreign intrusion, hence the real likelihood that such a clause could be legitimately invoked even if only masquerading as a pretext by the Beiyang Government to usurp provincial autonomy. In common with Hunan, national laws or treaties made with foreign powers that are potentially detrimental to the rights of the province or which involve the assumption of any financial burden by the province needed provincial approval. However, if the constitution was really implemented in Guangdong the matter of how to deal with Sun Yat-sen, the Extraordinary President who presided over an Extraordinary session of the National Congress, was left unclear; and perhaps it is such intrinsic defects of the Guangdong Provincial Constitution Draft that account for its failure to come to fruition. That said, in light of the fact that the making of the Guangdong Provincial Constitution was later than Hunan and Zhejiang's, the Canton Provincial Constitution clearly benefitted from the lessons derived from Hunan and Zhejiang to the extent that both the latter are extensively referenced in the former. In addition, while the technical drafting of Guangdong's Constitution was slightly more sophisticated than its predecessors from a legal point of view, Guangdong's Constitution arguably benefitted precisely from its simplicity, which incorporated ambiguity and more room for flexible evolution and development. In this way Guangdong's constitution emphasised pragmatism rather than the ideology of direct democracy, which is for example illustrated by the fact that in the drafting and revisions of the constitution there are no provisions to hold a provincial referendum.³⁵

The Embittered Rivalry Between Sun Yat-sen and Chen Jiongming

One of the decisive factors that was pivotal to the fate of UPAM and the federal experiment in Canton was the deep-seated personal rivalry between the KMT revolutionary and President of the Republic of China Sun Yat-sen and the military governor of Guangdong and self-proclaimed federalist Chen Jiongming. For this reason, the powerful personalities of these two men that ostensibly were locked into mortal combat will be considered briefly.

³⁵ Zhou Gengsheng, *Guangdongsheng xianfa*; also see *Eastern Miscellany*, 1922, 19(6).

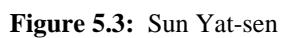


Figure 5.3: Sun Yat-sen

Source: <https://global.britannica.com/biography/Sun-Yat-sen>



Figure 5.4: Chen Jiongming

Source: gushi.tw

There have been many biographies of Sun Yat-sen, a man whose image to this day is a cornerstone of the founding ideology of the Nationalist Party of the Republic of China. In a similar fashion to the old imperial historians who were government officials employed to preserve and classify the correct version of events from the point of view of the reigning dynasty, Communist regimes are accustomed to rewriting the past to suit the objectives of the present, in other words history is invariably subordinated to politics. Meanwhile, Nationalist historians through their eulogies and hagiographies of Dr. Sun Yat-sen have erected a cult of personality around the ‘Father of the Nation’ (國父). In contrast, Western historians have more reflexively questioned Sun’s personality and role in shaping modern China, stressing his revolutionary failures, probing his personal weaknesses and exposing the intellectual incoherence of the writings and doctrine of Dr. Sun Yat-sen. This approach is perhaps best described as an attempt at demythification in order to correct a distorted historical evaluation by the Nationalists and Communists alike.³⁶ Thus, it is invariably perilous to try to establish any ‘correct’ balance, although perhaps one of the most successful biographies in this respect was that of the French historian Marie-Claire Bergere who argues that despite failing as a revolutionary and as a politician,

³⁶ For example see the works of Harold Z. Schiffrin, C.Martin Wilbur.

Sun Yat-sen was comparatively successful as a propagandist who opportunistically fathered the founding myth of the Republic of China.³⁷

Sun Yat-sen was a Cantonese raised in Hawaii and later living in Hong Kong, a product of maritime China and its coastal provinces and overseas communities open to foreign influence, or in Bergere's words an "adventurer of the Southern Seas."³⁸ As a young peasant Sun travelled extensively, receiving his education in missionary schools that initiated him into the modern world and aroused in him a desire to give China a rank and role worthy of it. At a young age he associated with secret societies and devoted himself to organising peasant rebellions. Eventually he successfully gained acceptance by the emerging intelligentsia, becoming leader of the Nationalist and Republican revolutionary party, the Revolutionary Alliance that was designed to prepare for downfall of Qing. After the 1911 revolution Sun Yat-sen fleetingly became the first President of the Republic of China, which rapidly degenerated into dictatorship and anarchy. Sun then struggled to organise a revolutionary base in Canton from where he could rally the forces of progress to seize power in Peking. He went on to form an alliance with Soviet Russia, reorganising the KMT and reformulating his Three People's Principles. Begere describes Sun Yat-sen as:

a muddled politician, opportunist with generous but confused ideas, interested first and foremost in conquest and power games. This Sun Yat-sen made little impression on the course of history. In opposition, he was usually impotent, and in the very brief periods when he held the responsibilities of leadership (as President of the Republic at the beginning of 1912, or as head of the various provisional governments in Canton, between 1917 and 1924), the power of decision eluded him. Nor was he a great theorist. His doctrine of the Three Principles of the People had neither the originality nor the intellectual rigour of either Marxism or the great political texts of Chinese Reform - by men like Kang Youwei and Liang Qichao. Sun Yat-sen, it would seem was not one of those protagonists of history, one of those major actors, whose intervention

³⁷ Bergere, Marie-Claire, *Sun Yat-Sen*, trans. Janet Lloyd (1st ed., Stanford University Press, 2000).

³⁸ Ibid: p.3.

changes the course of both events and thought. His destiny cannot match that of his contemporary Lenin, whom he dreamed of emulating.³⁹

At the same time Begere acknowledges that Sun was a “communicator, a kind of media genius, born of jetliners, the Fax, and television, despite having to content himself with steamers, the telegraph, and the press.”⁴⁰ In other words in addition to being a bandit Sun embodied the China in which he lived, a realm dislodged from centuries of torpid slumber that was now rapidly moving towards modernity. Belatedly Sun turned to anti-imperialist nationalism so as to rally support for an alliance with the Soviets in return for funding, arms and strategic military advice. Thus Sun Yat-sen remained a marginal figure operating around the fringes of Eastern and Western societies until around the age of forty. He cultivated extensive networks of contacts in overseas Chinese communities, circles of merchants and compradors, secret societies and missionaries, but at the same time was shunned by the Confucian bureaucracy and its faithful adherents as the uneducated son of peasant. Indeed, it is possible that it was a humiliating snub by the mandarin governor-general of Zhili in 1894 - when Sun Yat-sen travelled to Tianjin only to be refused an audience - that committed him to his path of eternal opposition.

Having witnessed China’s defeat in the war against Japan in 1894, concluding that the nation had to modernise in order to survive, Sun Yat-sen founded the Revive China Society (*xingzhonghui*, 興中會) in Hawaii in November 1894 before moving to Hong Kong in 1895 where his circles of friends included Ho Kai, a powerful Anglicised Chinese who owned the English-language newspaper *China Mail*. After years of obscurity, almost overnight the clumsy kidnapping of Sun Yat-sen by Manchu imperial agents from the Chinese Legation in London turned him into an instant hero; with the aid of a sensational newspaper story upon which Sun capitalised, seizing the opportunity to rebrand his image as that of a persecuted reformer. In August of 1897 Sun Yat-sen settled in Japan and to all intents and purposes for the next three years he *was* a Japanese. Japan encouraged Chinese modernisation for fear of a Sino-British alliance that could be directed against her. Through conversations with his friend Minakata Kumagusu, Sun perceived the strength of Pan-Asianism as a basis for political mobilisation. Sun then gradually honed his Three Principles

³⁹ Ibid: pp. 4-5.

⁴⁰ Ibid.

ideology to cement his status as a political chief in exile, although these remained fluid and fluctuated right up until his actual death. Almost a decade later in 1905 in Tokyo Sun formed the Revolutionary Alliance and finally succeeded in bringing together exiled reformist elites, including Liang Qichao and revolutionaries such as Huang Xing and Song Jiaoren.⁴¹ Tactically he was prepared to collaborate with *any* organization as long as Sun's personal supremacy was guaranteed. Sun negotiated with foreign powers for whose protection he was prepared to pay with many territorial and political concessions to the significant detriment of China as a nation-state. In 1905 Sun Yat-sen sought to replace Japanese aid with French support. He thus appealed to the French by calling for a 'federated republic of the provinces of Southern China,' i.e. so France could expand its sphere of influence in Vietnam, Guangxi and Yunnan.⁴² Begere makes the perceptive observation that:

Accustomed to wield his own power personally, Sun could not tolerate seeing it dependent upon an institution and, in all likelihood, limited by the statutes that institution had given itself. He made no attempt to turn the Alliance into the instrument of his own policies, but continued to found his authority upon the networks of friends, partisans, and contacts that he systematically maintained and extended.⁴³

Figure 5.5: Chen Jiongming in Malaysia

Source: Begere, *Sun Yat-sen*, 165

⁴¹ Ibid: 132.

⁴² Ibid: 118.

⁴³ Ibid: 141.

Another key protagonist in determining the fate of the constitutional movement in Guangdong was Sun Yat-sen's arch-rival Chen Jiongming. In contrast to the erratic talent and violent, protean, revolutionary instincts of Sun Yat-sen, his former disciple turned rival was a more committed federalist who advocated a provincial-level program of political, economic and social reform that would achieve national unity in peaceful stages rather than through the violent reunification of the Northern Expedition. One of the better accounts of Chen Jiongming, notwithstanding its inherent bias in avowedly aiming to rehabilitate Chen's reputation in the face of Communist and Nationalist depictions of him as a warlord, his son Chen Dingyan's biography, published in a monograph at the University of Michigan⁴⁴ (whose personal papers have recently been deposited posthumously at the Hoover Institute of Stanford), provides a useful revisionist historical account of the period.

Chen was born at Haifeng in Canton in 1878 where he grew up. Upon graduation in 1908 from Canton's newly established Academy of Law and Political Science, Chen was elected to the first session of the new Guangdong Provincial Assembly instituted in Guangzhou in the twilight of the Qing dynasty. Chen then held a variety of positions in Guangdong between 1911 and 1913 when he was forced to flee the country. He used his time in exile to become acquainted with overseas Chinese communities in Southeast Asia and to visit Europe, where his experiences in Paris and London stimulated many of his municipal reform ideas. Chen returned to Guangdong in 1915 to participate in both the second campaign against Yuan Shikai and the movement to Protect the Constitution (*hufa yundong*, 護法運動). In 1918 he led the Guangdong Army into southern Fujian Province, capturing its chief city, Zhangzhou. He remained there for two years, creating a 'little model China in southern Fujian.' His political, social, and economic programs even attracted the attention of Lenin, who sent an emissary to see whether Chen might be amenable to Soviet support and direction. Although the Bolshevik Revolution was widely applauded and admired among Chinese revolutionaries, Chen declined to form an alliance with the Soviets.

⁴⁴ Leslie H. Chen, Dingyan, *Chen Jiongming and the Federalist Movement* (University of Michigan Centre for Chinese Studies, 1999).

When Hunan Province declared its independence in 1920, Chen took advantage of the opportunity to return to Guangdong, where he became civil governor as well as commander-in-chief of the Guangdong Army. At last he had his entire home province in which to establish a reform model for the nation. Thus, Chen Jiongming implemented a federal reform program in Guangdong, which he hoped to transform into a model province that would be an exemplar for other provinces as a first step towards building a nationally federated China. According to Chen Dingyan, his father was deeply committed to the principle of self-government, starting with a rice-roots, bottom up movement first at the lowest level in the villages (*zizhi cunzhuang*, 自治村莊) and counties (县), then the province (省), then finally the nation (國). He believed the key responsibility of the national government of a federation was defence of the nation. Given the realities of China in the warlord period, for Chen Jiongming a federalist approach similar to the Swiss federation or the US confederal stepping stone was the only feasible way to eventually establish a united, democratic Republic of China.⁴⁵ Indeed, Chen had even grander ambitions than Sun Yat-sen. From the beginning Chen believed that the federalist principle should be applied on a global scale. In a foreword he wrote in 1919 for *Minxing bao*, Chen argued that the New Culture movement must necessarily involve the reform of human thought. However, one could not use force or coercion to do this. Rather one had to rely on an evolutionary process based on fraternal love and the principle of mutual aid. Chen believed that human society developed in a never-ending upward evolution that would lead ultimately to a stage where all people could enjoy full equality and where there would be no bondage of states, nations, or individuals – a Confucian utopia (*shijie datong*, 世界大同).

While these beliefs might appear wildly idealistic with the benefit of hindsight, at the time Chen Jiongming undoubtedly commanded more respect in intellectual and international diplomatic circles than his rival Sun Yat-sen. After a two-year tour of China in 1919-1921, the American educator and philosopher John Dewey spoke of Chen as “the most impressive of all the officials whom I have met in China.”⁴⁶ In 1926, having fled to Hong Kong Chen Jiongming worked assiduously to establish the *Zhigong* political party (中國致公黨) and to put his ideas onto paper in *A Proposal*

⁴⁵ Ibid: xii.

⁴⁶ Ibid: 2.

for the Unification of China (*Zhongguo tongyi chuyi*, 中國同意初意,), which was published in the winter of 1927. The UPAM luminary Zhang Taiyan wrote a foreword for the second printing of Chen's political tract in May 1928, coincidentally, the twenty-fifth anniversary of the publication of his foreword to Zou Rong's *The Revolutionary Army*. In the foreword to Chen's book he said:

Chen Jiongming deals with the basic problems of the Republic. Others, fearing foreign imperialism, have attempted to save the country by changing the nature of the Republic in violation of its Basic Law. This, however, is like someone, who, fearing death, commits suicide to avoid it. In this respect, Chen Jiongming has the right approach.⁴⁷

Candidly speaking, if not a backhanded compliment this is a clearly less than a full-hearted affirmation of the policies of Chen Jiongming. Nevertheless, it demonstrates Zhang Taiyan's tough admiration for Chen's adherence to federal values in contrast to Sun Yat-sen who opportunistically jettisoned his early support for multi-party democracy and federalism in favour of a Soviet-style one-party dictatorship in the name of anti-imperialism and national salvation. Indeed, Sun Yat-sen was frequently viewed with contempt by powerful contemporary interlocutors. The American minister to Peking, Charles R. Crane, described Sun as a man with "impractical and grandiose schemes" who showed "great personal vanity". According to Crane, many regarded him as "an unscrupulous adventurer, more than willing to [sacrifice] the interests of the nation to his own ends" and "an outstanding obstacle to national reunification."⁴⁸ Even Borodin, the Soviet Comintern envoy and secret agent sent to further Russian interests in early Republican China, demonstrated a dim impression of Sun in the confidential reports that he relayed to Moscow: "Sun is very backward. He judges very badly in political matters... He often reasons in a simple way like a man in the street."⁴⁹

Notably Chen Jiongming received harsh contemporary criticism from the journalist and writer Li Chien-nung, who mused that it was not possible to conclude that Chen betrayed Sun Yat-sen who won over the majority of the KMT, or that he really believed in the ideal of a union of self-governing provinces; more likely that he

⁴⁷ Ibid: 274.

⁴⁸ Begere, *Sun Yat-sen*, 297.

⁴⁹ Ibid: 320.

seized upon UPAM as a grand idea around which to crystallise his legitimacy, which according to Li Chien-nung, Hu Han described as having a voracious if not greedy appetite for fresh ideas (*tanxin haoda*, 貪新好大).⁵⁰ In Chen's own words that he used in a letter to Wu Jingheng, he said that a geopolitical strategic rationale for the UPAM was because of its potential to first "thwart the recovery of powerful warlords at the same time as checking the domains of the smaller warlords", which he admitted was a kind of fake "union autonomy."⁵¹

Thus, perhaps especially given the hagiographical tone of his son's biography, Chen Jiongming's writings from the powerless wilderness of exile in Hong Kong, which appear to advocate modern Western multi-party democracy for China⁵², might be taken with a similar grain of salt as those which exalt Zhao Ziyang post-1989 beyond the status of a liberal reformer to that of the leader of a democratic Fifth Column within the CCP⁵³; in other words on balance Chen in all probability simply represented a more enlightened faction within the KMT in early Republican China. That said, Chen's son raises some provocative questions:

Would federalism have worked? It certainly seemed to promise more than what China actually got. History is, of course, littered with useless 'what if' situations, but perhaps federalist ideas are not entirely a thing of the past. Perhaps they still have something to offer China as it enters a new era.⁵⁴

As the author himself notes there is no answer to such questions and to a certain extent the beliefs of the individual protagonists are irrelevant, suffice to note that Chen Jiongming's alternative political ideology formed the basis for political and military mobilisation in Canton, which sooner or later would put him on a collision course with the other main contender for power in Guangdong, Dr. Sun Yat-sen.

⁵⁰ Hu Hanmin, '*Hu Hanmin xiansheng wenji*' (The Private Collection of Mr Hu Hanmin) (Taibei, dangshihui, 1978).

⁵¹ 'Fu Wujingheng han' (Reply to Wujingheng) in Li Chien-nung, '*Zhongguo jjinbainian*:' 鉗制大軍閥之不能復生，安置小軍閥之鬼有所歸的“假聯治”而已。

⁵² Chen Dingyan, *Chen Jiongming*, 6. During his last years in Hong Kong, Chen even advocated the extension of the federalist principle to the reconstruction of Asia, Europe and America, eventually leading to a world federation of demilitarised nations (Ibid: 269).

⁵³ This is the author's impression of the portrayal of Zhao for instance in the Tiananmen Papers that were translated by Andrew Nathan and Perry Link.

⁵⁴ Ibid: 7.

Chen Jiongming's proposal for a union of self-governing, autonomous provinces (*lianzhì*, 聯治) first garnered support from Wu Zhijun (吳稚軍), Zhang Ji (張繼), Wang Zhaoming (汪兆銘), Li Shizeng (李石曾) and Zhu Fucheng (褚輔成) among other members of the KMT, with additional backing from Zhang Taiyan, Tang Jiyao (唐繼堯), Tan Yankai, Zhao Hengti, Lu Yongxiang and even including warlords from the South-West provinces. Chen gradually formed a different ideal from Sun Yat-sen's plan to launch the Northern Expedition into the heart of Hunan under the auspices of its military governor Zhao Hengti. Critically, Chen objected to the reopening of the Old Parliament in Guangzhou in order to reconstruct an official central government.⁵⁵ Chen ordered every county in Guangdong to propagate autonomy and self-defence in January 1921, with the result that counties like Xinhui (新會) all established an organisation dedicated to this purpose named the Autonomy Preparation Association.

During a session of the Guangdong Parliament on 4 March 1921 senator Huang Peiquan (黃佩荃) officially proposed a motion to draft a Guangdong Province Autonomous Law and following further discussion the conference decided to accept senator Yu Tongren's (余同人) idea of sending a telegram to every province to ask them to deliver their already completed provincial constitution drafts to Guangdong as a reference for Guangdong during the drafting process. On 8 May, the Guangdong Provincial Parliament passed a resolution officially establishing the Guangdong Autonomous Law Drafting Committee with the remit of discussing questions pertaining to drafting affairs commencing from 12 May. Following the publication of Lu Yongxiang's *Haodian* on 4 June, which bolstered the confidence of the Cantonese to achieve their goal of autonomy within a union of self-governing provinces, Chen Jiongming also sent a telegram to Lu Yongxiang to praise his proposal that every province make their own constitution in order to attain local autonomy.⁵⁶

⁵⁵ Li Chien-nung, 'Zhongguo jinbianjian', V.2, 567.

⁵⁶ 'yuesheng yaowen' (Important News for Guangdong Province) in *Huazi Ribao* (Hong Kong), 04/03/2021, 10/05/1921.

Since Chen Jiongming initially emulated Zhao Hengti in Hunan and latterly was also inspired by Lu Yongxiang, a rift gradually developed between him and the president of the KMT – as Chen ignored Sun Yat-sen’s instructions with little regard for the situation of the Constitutional Protection Government. Subsequently, the Guangdong Parliament began in earnest to draft its autonomous law with the agreement and support of Chen Jiongming. In the middle of June, Huang Yi (黃毅), in his capacity as a senator of the Guangdong Parliament, personally introduced the Guangdong Autonomous Law with reference to the freshly finished provincial constitution of Hunan as well as the constitutions of Switzerland and Belgium, which was published in stages in newspapers in Guangdong and Hong Kong from 18 June 1921. The first article and preface pronounced “Guangdong is an autonomous province of the Republic of China”, thereby not only emphasising Guangdong’s autonomous status but also describing the basis of a federal union of self-governing Chinese provinces.⁵⁷

After several rounds of discussion all but the process of the third reading (*san du*, 三讀) was completed and the content of the constitution was printed and officially submitted to the Provincial Parliament to discuss in early September 1921. Having finished the preliminary deliberations, since some senators thought there were still many issues with the draft the conference decided to establish another organisation for independently reviewing the work of the committee. Then when the Guangdong Provincial Constitution Draft was first released and amended, the Provincial Parliament printed more than 2,000 copies that were circulated among wide social circles to solicit advice and feedback.⁵⁸

However, with respect to any final decision in the three-stage process relating to ratification of the Provincial Constitution it was a matter for the whole body of the people of the province to put to the vote in a referendum. Thus, on 2 December 1921 a motion for the Guangdong Provincial Constitution Draft was passed, which the Provincial Constitution Conference revised a little and officially approved the finalised version on 19 December.⁵⁹ Having completed the second round of the

⁵⁷ ‘Zhonghua liansheng guojia – yi guo duo zhi’ (A Federal Republic of China – One Country Many Systems) in yue shi yaowen in *Huazi ribao* (Hong Kong) 18/06/2021.

⁵⁸ yue shi yaowen in *Huazi ribao* (Hong Kong), 07/09/2021.

⁵⁹ *Eastern Miscellany*, 19(2) 1921.

approval process (*er du*, 二讀), given that any draft had to pass a third hurdle (*di san du*, 三讀) in the form of a provincial referendum, it became stuck in an infernal limbo. Perhaps it was the breakdown of the relationship between Sun and Chen that in the final analysis accounts for the failure of Canton's Constitution to complete all three stages of the ratification process. What is apparent is that Liang Shiyi (梁士詒) travelled South with orders from Beijing and participated in several secret meetings with representatives of Chen Jiongming in the relative safe haven of Hong Kong. What is more, after Liang Shiyi returned on 24 December he became Prime Minister, which instilled in Chen Jiongming greater confidence in the Beiyang Government. Thus gradually the constitutional referendum was kicked into the long grass pending 'more detailed commentary'.

Life and Premature Death of a Stillborn Constitution

In addition to the ideological differences and personal rivalry between the two major contenders for power in Guangdong, there were also fundamental divergences in policy and military strategy. Between 1920 and 1925 Sun Yat-sen devoted all his energy into establishing a political base in Canton from which he hoped to reconquer the North and establish himself as a paramount leader of the Republic of China in Peking. To this end he strove to have himself elected as 'Extraordinary President' (*feichang da zongtong*, 非常大總統) of the rump of the Republican parliament, a title that was necessitated by the fact that his re-election lacked the requisite provisional parliamentary quorum. This policy was opposed by hostile Western powers, who perceived their interests as best served by a 'stable' central government, just as it was by the local Cantonese gentry who would invariably end up footing the cost of Sun's financial and military adventurism. Another implacable opponent of Sun Yat-sen's strategy was Chen Jiongming, whose hostility ran along military and ideological lines.



Figure 5.6: ‘天下為公’, The exquisite ceiling of a memorial to Sun on the site of his rump parliament.

Source: <https://kknews.cc/zh-hk/photography/35e6ga.html>

On the one hand Chen Jiongming perceived that Guangdong's - and no doubt his own - interests would be better served with peace and economic development in Canton underpinned by a series of strategic military alliances such as the mutual defence pact with the Governor of Hunan Zhao Hengti, whilst on the other Chen believed the election of Sun as Extraordinary President was invalid, concluding that on balance the province's interests could be safely advanced through an ideology of Cantonese regionalism and pragmatic socialism; under which a model province would be established that would later integrate back into a united, federal Republic of China. To this end the draft constitution of Canton as promulgated by the provincial parliament limited military expenses to 30% of the provincial budget, reserving 20% for education that funded the building of many schools and colleges together with financing the overseas study and training of many Cantonese.⁶⁰

Chen understood that the provocation of electing an Extraordinary President and mobilising support for the Northern Expedition could form the basis of a potential pretext to attack the South, as indeed it did. Thus, Chen Jiongming was forced to set

⁶⁰ Begere, *Sun Yat-sen*, 296-7.

aside his reform program in Canton to lead the Guangdong Army into Guangxi to repel a concerted attack from the Beiyang Clique. Subsequently the Guixi Clique, together with the military governors of Jiangxi Chen Guangyuan (陳光遠) and Fujian Li Houji (李厚基), provided soldiers and naval support to blockade Guangdong. The ensuing deadlock was eventually broken by the return to Guangdong of Chen Jiongming, who pledged to govern the province in accordance with the precepts of self-governance instead of pursuing Sun's Northern Expedition.⁶¹ In this way, Sun Yat-sen's dissatisfaction at Chen's refusal to commit more money and Guangdong troops to the Northern Expedition was crystallised by the fact that Sun was now unable to move his expeditionary army through Hunan Province, which he held to be Chen's fault⁶². Sun therefore decided to bring his army back to Canton and stripped Chen of all his military and civilian posts as governor in April 1922, although this gambit had little practical impact on Chen's power as the latter remained in substantial control of Guangdong. Chen responded by calling for Sun's departure from the province. As the two jockeyed for power, Sun Yat-sen replied to isolation with provocation and intimidation, boasting he had 8-inch guns and poisonous shells.

At a press conference on 12 June 1922, Sun announced:

People often say that I am a ‘boasting big gun.’ Well, this time there will be a real ‘big gun.’ If they again refuse to obey my order, I shall use conical shells or eight-inch guns with poison gas shells, which can easily finish them off in three hours.⁶³

⁶¹ Tao Juyin, *A History of the Beiyang Warlord Period*, V.6, 23; *Huazi ribao* (Hong Kong), 19/05/1921.

⁶² Lin Sheng, ‘Zaishu Sun Chen zhi zheng’ (Further Background to the Conflict between Sun and Chen), *Nuli zhoubao*, V.17, 27/08/1922.

⁶³ *Huazi ribao*, 14 June 1922; *Shen bao*, 19 June 1922.

Figure 5.7: CJM's army conducting a military parade in Canton

Source: <http://history.sohu.com/20150106/n404679220.shtml>

However, Sun Yat-sen's bluff back-fired as Chen calculated correctly - in what was infamously described in KMT histiography as '*the 616 Incident*' - that he could drive Sun Yat-sen out of Canton for good by shelling his residence with heavy artillery.⁶⁴ Sun narrowly escaped with his life, going into internal exile in Shanghai where he wrote, lectured and continued his machinations with the Soviets. On 12 January 1923 the International Comintern passed a resolution approving an alliance between the Soviets and the KMT, with the Sun-Joffe Joint Statement of Shanghai providing the basis for cooperation namely that although Sun accepted Moscow's aid, China would not be communist; Russia agreed to a renunciation of the privileges granted by the Czarist Treaties; but the Soviets would manage the railway works in Manchuria and were permitted to occupy Outer Mongolia. These concessions were heavily criticised by Sun's adversaries as amounting to the carving up of China 'like a melon' for his personal benefit.

Be that as it may in 1924 Sun's Nationalist party began to admit Communists as members and Soviet aid in the form of money, personnel, and advice began to flood into Canton. Certain powerful groups continued to express discontent with Sun's new style of administration, prompting Sun to order the razing to the ground of the Xiguan quarter of the Guangzhou in an attempt to liquidate merchant opposition.

⁶⁴ 'Shiliu ri shangwu er shi, yue jun kaishi juehong guanyinshan' (the 16th day, 2am, the Guangdong Army starts heavy artillery shelling of Guanyin Mountain), *Da gongbao*, 28/06/1922.

When the city revolted a deputation of merchants called in Chen and the Guangdong Army. This time, however, Chen's army faced a highly trained, Soviet-equipped force led by Sun's successor Chiang Kai-shek with the support of mercenaries financed to the tune of 400,000 Chinese dollars; which in a succession of battles by the end of 1925 had defeated the Guangdong Army. Chen retired to Hong Kong, where he continued to work for the peaceful unification of China into a federal republic. He founded a political party (*zhigong dang* 致公黨) and worked with leaders in the North until his untimely death from typhoid fever in 1933. By contrast, although the 'Political Testament', which was a will drawn up by Wang Jingwei on Sun Yat-sen's deathbed, bequeathing Sun's modest legacy comprising books, a house and personal effects to his wife Song Qingling, demonstrated Sun's lack of graft⁶⁵; notwithstanding the fact that his time in actual power was limited to 45 days as President of the Republic from 1 January to 15 February 1912, Sun's pursuit of violent unification did much to destabilise and undermine the Republic that he had nominally founded. Conversely, perhaps by a similar token Chen's espousal of world federalism, beginning from the bottom up in Guangdong, was certainly idealistic not to say naïve. It is also fair to say that Chen's vision of federalism did not always technically conform with the conventional notions of constitutional politics; as noted by the Taiwanese historian Li Dajia, Chen advocated practising self-government first without even writing a constitution, then drafting a constitution to formalise what was practised at the grass roots.⁶⁶ Nevertheless, the failure of constitutionalism in Canton meant that the UPAM lost a potential leader.⁶⁷ Perhaps one of the reasons why self-governance flourished not only in principle but also in practice in Hunan was because the goals of its advocates were more focussed, more localised and less ambitious.

⁶⁵ Begere. *Sun Yat-sen*, 406: "It testifies to the honesty of the revolutionary leader who, after raising and managing such vast funds for the revolution, died with no personal fortune at all. At a time of generalized corruption, that integrity added to Sun's stature and raised him above his rivals, the warlords, whose methods of action and political style he had, in other respects, often adopted."

⁶⁶ Hu Chunhui, *Republican Regionalism*, 291.

⁶⁷ Li Dajia, *Early Republic UPAM*, 167.

The Autonomy and Constitutional Movement of Fujian Province

According to Li Guoqi (李國祁) the weakness of Fujian's autonomy movement can be attributed to the relative weakness of its intellectuals compared with Zhejiang's, together with the fact that both the established gentry and new intellectuals lacked a basic understanding of democratic politics.⁶⁸ In the spring of 1913 the Fujian Provincial Parliament was officially established by election, however, because of a deep-seated opposition between the KMT and the Republican Party (*gonghe dang*, 共和黨) it was unable to function like the Zhejiang Provincial Parliament. In the aftermath of the failure of the Second Revolution Li Houji (李厚基) was sent to Fujian as a representative of the Peking Government and retained a firm grasp on the reigns of power. During a boycott of Japanese goods after the May Fourth Movement, Li ruthlessly cracked down on students. It was these heavy-handed series of arrests that led to great indignation among the people of Fujian. Fujianese living in Shanghai were catalysed into forming the Fellow Fujianese Compatriots Association (*Fujian tongxiang hui*, 福建同鄉會) and the Fujian Student Union which disseminated and popularised slogans such as 'Fujianese govern Fujian' aping other provincial autonomy movements. On October 1920, these groups sent an open telegram to the Peking Government to ask the national government to follow the lead of public opinion, recall the military governor and devolve power to the people of Fujian.⁶⁹ In other words Fujian's constitutional movement was defined in *negative* terms as anti-Li Houji rather than pro-constitutionalism *per se*.

Although Fujian remained nominally under the control of Li Houji, after the Constitutional Protection War Chen Jiongming's Yue Army In Aid of Fujian (*yuan min yue jun*, 援閩粵軍) and the Zhejiang Liberation Army (*jing zhe jun*, 靖浙軍) of Chen Zhaoying (陳肇英) and Yang Chiping (楊持平) were all stationed in Fujian, together with the national navy which had a historically thorny relationship with the Fujianese people; substantially due to the predations to which the Fujianese were constantly subjected, which were probably no less than the suffering of the people of

⁶⁸ Li Guoqi, *Zhongguo Xiandahua Quyu Yanjiu*, 49.

⁶⁹ *Shibao* (Shanghai), 20/10/1920.



Hunan during the civil war and contiguous periods of lawlessness. In point of fact, the areas protected by Chen Jiongming were probably afflicted by less pillage due to the relative discipline of Chen's iron rule. In the autumn of 1920 when Chen Jiongming returned to Guangdong, he received money and armaments from Li Houji and the Beiyang Government, benefitting from good personal relationships with Duan Qirui and Sun Yat-sen.⁷⁰ Later it was the Fujianese living in these pockets of liberty that organized the Fujian Autonomous Army with the support of Xu Chongzhi (許崇智) and the navy to repel Li Houji's forces back to the west boundary of Fujian. At the same time in order to win hearts and minds, they published a paper entitled 'A Letter to Hometown Elders' (*gao guxiang fulao wen*, 告故鄉父老文) to urge the central government to permit the Fujianese to govern Fujian (*min ren zi jue*, 閩人自決).⁷¹

An Autonomous Army rallied under the slogan 'Fujianese governing Fujian' with support from the KMT. Li Houji, who originally belonged to the Anhui Clique, surrendered to Wu Peifu after final defeat. Later during Xu Chongzhi's national Northern Expedition the army entered Fujian to help Wang Yongquan (王永泉) to overthrow Li Houji. The more Li Houji seemed to oppress the population of Fujian, the stronger and stronger the local Autonomous Army gradually grew. Rallying once again to the powerful mobilising slogan 'Fujianese govern Fujian' the associations elected Sa Zhenbing (薩鎮冰), a decorated general from the navy, as the provisional governor. Although Sa had close ties with the Peking Government he was also inclined towards Fujian autonomy, an asset which would help Sa to navigate the perilous political minefields ahead. Even when another Beiyang general Sun Chuanfang's army was stationed at Fujian, Sa Zhenbing continued to support the Fujianese constitutional movement, passing a resolution by the Fujian Provincial Parliament to establish the Fujian Provincial Constitution Preparing organisation. On 13 January 1925, in defiance of direct orders from the Peking Government, Sa Zhenbing published the Fujian Provincial Constitution. This renegade action probably reflected the geography of Fujian as well as Sa's relationship with the navy in that in 1925 the Peking Government was unable to project power fully over Fujian.

⁷⁰ Tao Juyin, *A History of the Beiyang Warlord Period*, V.5, 194.

⁷¹ *Huazi ribao* (Hong Kong), 24/08/1921.

In summary, although there was also a constitutional movement in Fujian after 1920, the evolution of UPAM in Fujian was slower than other Southern provinces. Partly, this was because Fujian's economy, society and politics were less apt to the flourishing of self-governance in comparison with other provinces; in other parts, it illustrates the stranglehold of Li Houji's military dictatorship in Fujian. Thus, the self-governance movement led by the gentry of Fujian and vocalised through the provincial parliament was unable to form a force to meaningfully balance against and check the influence of the military governor as a result of which Fujian played a relatively lacklustre role in the UPAM.⁷²

Summary

Apart from Hunan, of the 14 provinces participating in the UPAM the constitutional movements in Zhejiang, Guangdong and Fujian were among the most significant. This chapter has argued that even where the drafting or promulgation of the provincial constitutions in these respective provinces preceded Hunan, the constitutions were informed by and often borrowed heavily from Hunan's Constitution in both style and substance. In addition, these constitutions frequently built upon the edifice of Hunan's Constitution by adding clauses and making provisions to adapt the constitutions better to the local conditions prevailing in the variety of provinces. This is, for example, illustrated by the relative importance and emphasis attached to contract law by Zhejiang's Constitution, which reflected the province's longstanding history as a hub of commercial and entrepreneurial activity in China. It can also be argued that in Guangdong, as a microcosm of the ongoing struggle between Chen Jiongming and Sun Yat-sen, despite being unapologetically Presidential in its model of government adopted and having an 'Achilles' heel clause' that provided for the central government's retaking control of the provincial army in event of foreign intervention, which was a reality given the geography and history of Canton, the constitution was forged in the crucible of Chen Jiongming's successful federal experiment in Zhang

⁷² Hu Chunhui, *Republican Regionalism*, 211.

Zhou and allowed Chen to exploit its full potential for providing a veil of political legitimacy.

Notwithstanding the *ex post facto* warlord narrative that was conveniently crafted by Nationalists and Communists, the provincial constitutions undoubtedly had their contemporary critics. Li Chien-nung criticised some provinces for usurping foreign affairs powers; was sceptical of the precedent set by the Hunanese Constitution which retained the province's power to raise an army under Article 25;⁷³ and argued that constitutions should be more specific in their allocation of taxation powers between the central and local governments to avoid disputes.⁷⁴ Zhou Gengsheng pointed out that in order for provincial constitutions to function effectively within the framework of the Constitution of the Republic of China there needed to be a special adjudicator (*tebie caipan*, 特別裁判) and a Federal Supreme Court (*liansheng zuigao fayuan*, 聯省最高法院) alongside the Daliyuan to resolve political and legal disputes between provinces and conflicts of provincial and national laws and constitutions.⁷⁵ Notwithstanding the impact of militarist politics, for example as evidenced in Guangdong in the constant struggle between Chen Jiongming and Sun Yat-sen on top of which were superimposed the factional struggles of the Beiyang government and the blight of foreign intervention in Chinese domestic affairs, as discussed in the Republican press by dividing up powers between the central and local governments in such a way so as to retain significant reserve powers for the former this provided the provinces with a degree of flexibility and strategic ambiguity that meant constitutions could be amended to address teething problems while retaining the confidence of the central and other provincial governments; as such this often enabled them to muddle through the chaotic and treacherous political jungle of the Early Republic.⁷⁶ Moreover, by adapting provincial constitutions to reflect local conditions, this served to enhance the legitimacy of the constitutional talisman in the eyes of the local populations. It is noteworthy that even in cases such as Fujian's where the constitution was initially a sham, not least due to

⁷³ Li Chien-nung, 'You hunan zhixian suode de jiaoxun', *Pacific*, Vol. 3(6).

⁷⁴ For example, under Article 65 of the constitution the central government was endowed with the power to raise customs duty, salt taxes, tax on alcohol and tobacco, and stamp duty, however, all other residual taxation powers were retained by the province. See Shu Heng, 'Huafen guoshui shengshui yijianshu', *Nuli Zhoubao*, V.29, 19/01/1922.

⁷⁵ Zhou Gengsheng, 'Shengxian yu guoxian' (Provincial and National Constitutions) *Pacific*, Vol.3(7).

⁷⁶ Zhou Gengsheng, 'Du Guangdong shengxianfa caoan' (Reading Guangdong Province's Draft Constitution) *Far Eastern Miscellany*, Vol.19(6), 25/03/1922;

the political reality of the military dictatorship of Li Houji, when the political ecology shifted it was constitutional governance to which the new militarist, Sa Zhenbing, turned to shore up his shaky legitimacy. In addition, Li Guoqi argued that significantly the pockets of Fujian province that had benefitted from Chen Jiongming's experimentation with federalism were insulated from the worst excesses of subsequent military governors.

While the Taiwanese historian Li Dajia highlighted the problems of the lack of a unified system of taxation and sequencing of the transition to a federal government - theoretically Li argued that the first stage is self-governance, followed by the formation of a united federal government, but because of the civil war he noted that the two stages (*liansheng + zizhi*, 連省 + 自治) had coincided at same time⁷⁷ - these criticisms were often moot, academic points. Li Dajia without elaborating in any significant detail also makes a good point that a factor overlooked when considering the failure of the federal interlude in the early Republic apart from military politics and failure to demobilise local armies that are acknowledged by Li⁷⁸ is the lack of adequately functioning institutions for supervising the implementation of the constitution and coordinating the constitutional relationships between provincial and central governments. However, the lack of actual constitutional cases requiring the resolution of such disputes suggests that the lack of institutions *per se* was not the reason for the abrupt conclusion of the constitutional interlude in early Republican China. Similarly, perhaps in conclusion one reason for the relative success of constitutionalism in Hunan when contrasted with the experiences of Zhejiang, Guangdong and Fujian was the relative pragmatism of Hunan compared with the idealism of other provinces; whereas the other provinces entangled themselves with the wider issue of national reunification, if not world federalism in the case of Chen Jiongming, Hunan steadfastly focussed on getting its own affairs within its provincial boundaries in order first to avoid the perils of the civil war, factionalism and militarism. Indeed it was only when Zhao Hengti let down his guard and went against the Provincial Parliament twice in violation of Hunan's Constitution and the Monroe doctrine of provincial neutrality, namely when he allowed the passage of Gui Xi soldiers through Hunan and when he invaded Hubei ostensibly to establish a buffer

⁷⁷ Li Dajia, *Early Republic UPAM*, 216.

⁷⁸ Li Dajia, *Early Republic UPAM*, 207.

against the North by installing a constitutional government in Wuhan (with hindsight a miscalculation probably provoked by his advisors and machinations of Wu Peifu's counter-intelligence), that Wu Peifu had a pretext to invade Hunan and deploy a strategic regiment at Yuezho, the 'gateway to Changsha'; that marked the beginning of the end of constitutionalism in Hunan and ergo perhaps for China as a whole. In the following chapter the Conclusion shall attempt to summarise some of the salient features of Hunan's experiment in constitutional governance, evaluate its successes and examine the causes of its 'failure' in the wider context of the UPAM movement in the early Republican period.



CONCLUSION

Critique of Constitutionalism in Hunan

1922-26, the Dark Era?

Beyond a Narrative of Convenience

This thesis has traced how ideas of constitutionalism were transplanted from the West via Meiji Japan into the early Republic of China. Previously alien concepts of governance found politically fertile ground in Hunan, a province with a fiercely proud identity that was defined by a history of punching above its weight in national politics ever since Zeng Guofan ruthlessly crushed the Taiping Rebellion in 1864. Hunan's self-contained geography and the fact that it had been ravaged by the civil war that raged between the Beiyang militarists in the North and Sun Yat-sen's regime in Guangdong further contributed to the flourishing of federal ideals in the province. Thus, initially the main proponents of Hunan's self-governance were idealists, including intellectuals and journalists such as Hu Shi¹, Liang Qichao, the *Da Gong Bao* (*DGB*) editor Long Jiangong and the editor of *Pacific* Li Chien-nung, elder-statesman figures such as Xiong Xiling, and young firebrands like Mao Zedong. However, it was not long before politicians and militarists of the likes of Tan Yankai and Zhao Hengti realised the power of ideas such as constitutionalism and a 'Monroe Doctrine for Hunan' as strategic tools for political mobilization to consolidate their own legitimacy.

China's first provincial constitution was drawn up by a panel of thirteen experts, of whom perhaps the most prominent was the Yale-educated jurist Wang Zhengting. Promulgated with brash fanfare on 1 January 1922, the Constitution of

¹ For example, Hu Shi wrote "Devolving real power enables the locality to develop its full potential to combat warlordism. This is the meaning of the provincial self-governance and the result of federalism." ("增加地方的實權，使地方能充分發展他的潛勢力，來和軍閥作戰，來推翻軍閥。這是省自治的意義，這是聯邦運動的作用。") "Hunan liansheng zizhi yu junfa geju" (United Province Self-Governance and Warlordism), *Dongfang Zazhi* (*Eastern Miscellany*) (Shanghai, shangwu yinshu guan: 1948), vol. 19 (17).

Hunan was a radical document heavily influenced by the American and Swiss models. It was personally endorsed by association with renowned contemporary Western thinkers such as Bertrand Russell and John Dewey, who attended an international conference in Changsha organised by Tan Yankai in November 1920. The constitution was revised in May 1925 before being abolished by the KMT in July 1926 when Hunan was finally sucked into the vortex of the North-South conflict; thus ending four years of constitutional governance.

Achievements and Shortcomings

In calibrating any yardstick against which the success or failure of constitutionalism in Hunan during the early Republican period can be measured, it is important not to judge this experiment by the standards of today. Indeed it should be assessed according to contemporary standards and a more appropriate set of criteria for evaluating the constitution might be formulated in terms of the extent to which its laws and restrictions were in reality observed, or more generally whether the constitution achieved the political goals of its “founding fathers”. In many ways Hunan was the guiding star of the movement for regional autonomy, spearheading the push for federalism in early Republican China. Thirty million Hunanese led the way for 400 million Chinese, subsequently inspiring declarations of self-governance in Sichuan, Hubei, Yunnan, Guangdong, Guangxi, Guiyang, Fujian, Zhejiang, Jiangxi, Jiangsu, Anhui, Shanxi and Shaanxi (in total 14 provinces), albeit with vast differences in the degree and reality of autonomy.

Perhaps the greatest achievement of the constitutionalists in Hunan was the fact that the constitution was drafted, revised and promulgated *at all* against a background of civil war. One major shortcoming was that no serious attempts were made to demobilise the provincial army as per Article 139, on the other hand without Zhao Hengti’s army it is inconceivable that Hunan could have stayed out of China’s civil war to embark upon this attempt to build a ‘taoyuan’. Further, with the exception of Zhao Hengti’s abortive intervention in Hubei, which ironically was in part probably provoked by the cost of maintaining the province’s standing army, Hunan

did not use military force for the purpose of aggression. Hence, despite some serious violations, Hunan's constitution was a totemic document that symbolised a bold experiment in constitutional governance. Enshrined in the DNA of the Constitution of Hunan were wide-ranging powers of popular participation under Article 30 - which (with exceptions) enfranchised all citizens of Hunan over the age of 21 – and provided for an unusually high degree of direct democracy, with no less than eleven clauses invoking provincial referenda. While Hunan was clearly not a paragon of democracy by modern standards, rather the gentry presumed to carve up the elections by horse-trading votes of the electorate in their constituencies, yet in many contemporary “liberal democracies” including the Great Britain there were stringent restrictions on the franchise pertaining to the ownership of private property, wealth, gender, age and race. If something of an oligopoly, constitutionalism in Hunan may be regarded as successful insofar as scholar officials, the gentry and militarists worked together in a mutually dependent form of corporate governance as parliament checked the powers of the Governor and the government based on a set of rules laid down by the constitution; and for four years Hunan *was* able to avoid the North-South conflict. In economic terms, the constitution may be heralded as a success for during the tenure of Zhao Hengti as governor of Hunan roads were widened and textile plants and private schools were built; the University of Hunan and the Hunan College of Dentistry and Medicine (*Xiang yayi xueyuan*, 湘牙醫學院) were also established. Significantly, the constitution was emphatically not a declaration of independence, but with frequent references to the central government it represented a responsible, if precocious, attempt to define the relationship between the Province and Centre so as to safeguard the interests of Hunan within the wider framework of the Republic of China. A survey of the surviving records of the Provincial Parliament gleaned from research conducted at the archives in Changsha, although not scientific in its basis, suggests that most cases raised by members of the parliament and most motions and petitions, as might be expected, concerned financial matters. It is a truism that one of the most effective checks parliamentary or congressional bodies have upon the executive is through exercising control over its purse strings. Other cases involved military affairs and matters of executive and judicial administration. There is significant correlation between the cases raised in parliament and their coverage in the local media, which attests to the rambunctiousness of a flourishing Republican press, another

democratizing factor that helped to hold the governor to account and empower the ordinary people beyond the traditional bounds of the gentry. As demonstrated by the colour-coded Table 3.3 summarising the PP cases examined by the author in the archives in Changsha, it is evident that in approximately half of the unscientifically selected cases the legislature failed to exercise effective control over the executive. Moreover, of the cases in which Parliament prevailed, some cases were undoubtedly more successful than others. This in itself is hardly surprising, indeed a modern legislature would probably be satisfied if half the time it was successful in compelling or cajoling the government into exercising fiscal or military restraint!

However, these considerable achievements should necessarily be weighed against not insignificant shortcomings, including fraudulent elections, violations of the constitution and a chimeric form of government, which at best was a form of ‘gentry-democracy’ and at worst was more of the same militarism endemic in Republican China. Many of the key protagonists, including Tan Yankai and Zhao Hengti, can perhaps only be described as ambivalent constitutionalists, having received a classical Confucian education or vicariously absorbing ideas of constitutional governance at arms-length refracted through contact with Japan. And it is certainly true that constitutionalism was latched onto principally as a political tool for legitimising Zhao’s regime. Moreover, given widespread illiteracy amongst the general population and an acquiescence to the centralised, absolutist imperial system of governance which had prevailed, albeit not uninterrupted, for millennia in China, in light of such inauspicious beginnings perhaps most surprising is the degree to which constitutionalism actually took root in the war-torn Hunan of the 1920s as an institutionalised form of government by which political power was checked and limited. In many regards, for this reason alone the constitutional experiment in Hunan should be regarded as a success story of early Republican China. However, without attaching any value judgment presently a tentative attempt to account for the ‘failure’ of constitutionalism in Hunan will be made, which may or may not have contemporary relevance to regions of China where forms of federal governance currently exist or are perhaps likely to develop in the twenty-first century.

The UPAM

Federal idioms and sayings have long been common currency in Chinese literature and written history. More recently, revisionist historians and theorists of international relations such as Victoria Hui have sought to objectively quantify and measure the relative (in)stability of Chinese imperial dynasties as distinct from the decentralised, federal interludes that invariably punctuate the dynastic cycle. In contrasting the comparative bloodiness and frequency of internecine wars inherent in imperial China with those during the era of modern European state formation – by all accounts a very chaotic period in European history – Hui debunks the myth of stability associated with notions of ‘strong’ authoritarian central governments in China.

As with previous dynasties, following the collapse of the Qing Empire, China reverted back to a more decentralised equilibrium in the early Republic. This political reality was recognised by the emergence of Provincial Assemblies, then Provincial Parliaments and eventually the UPAM. The movement grew to encompass a majority of provinces at its apogee, totalling 14 in number and more than half China’s landmass. The idea of a modern federal state attracted formidable Chinese and Western minds, including Liang Qichao, Hu Shi, Cai Yuanpei, Zhang Taiyan, Wang Zhengting, Wang Chonghui, Xiong Xiling, Bertrand Russell and John Dewey. Zhang Taiyan distilled the UPAM’s aims into a simple three-step mantra: first, each province would seek to become self-governing; second, the provinces would unite to form a confederation of autonomous provinces; third and finally, the provinces would form a federal nation state. As the movement neared its peak, a conference was convened in the relative safety and freedom of the international concession of Shanghai in 1922 and two alternative drafts of a national federal constitution were published on 15 March 1922. Intellectuals and politicians from Hunan, Zhejiang and Guangdong were in the vanguard of the UPAM as illustrated by the fact that it was the Governor-General of Zhejiang, Lu Yongxiang, who sent the influential *haodian* telegram on 4 June 1921 calling on all provinces to draft their own constitutions before the convening of a national convention to draft a federal constitution for China as a whole.

Despite the formidable intellectual weight behind UPAM, without the support

of the Beiyang warlords – who either misconceived the movement as separatist or deliberately sought to portray it as such in the hope that their faction would prevail and ultimately assert centralised control over China – and without a meaningful institutional framework to mediate the relationship between the central and local government bureaucracies and legal systems, however well drafted, the national federal constitutions drafted in Shanghai by the leaders of the UPAM never had legal validity or came into effect in China. Indeed, perhaps just as fatal as it was to the cause of Hunan’s provincial movement, Zhao Hengti’s abortive invasion of Hubei also discredited the wider UPAM, enabling Wu Peifu to brush aside the movement’s demands with the result that the Lushan Conference scheduled to draft the national federal constitution was cancelled.

Comparisons with Zhejiang, Guangdong and Fujian

As a point of reference it is helpful to compare the relative successes and failures of constitutionalism in three other provinces, whose citizens were as similarly prominent to those of Hunan in the UPAM movement. Whether preceding or succeeding the promulgation of the Provincial Constitution in Hunan, Zhejiang, Guangdong and Fujian all borrowed heavily from the text of Hunan’s Constitution, indicating the central role played by Hunan in the UPAM. However, these provinces readily experimented in tailoring the drafting of their constitutions to reflect local conditions, for example as illustrated with the safeguarding of property rights and contractual law in Zhejiang’s Nine-Nine and Three Colour Constitutions. Testament to the way in which the leaders of UPAM saw themselves operating within the framework of the greater Republic of China, typically the drafting of provincial constitutions vested significant reserve powers in the Central government to preserve flexibility and confidence in building a working relationship between central and local governments as it was recognised that initial draft constitutions would invariably need to be amended with time to fix unforeseen teething problems. The reasons for ‘failure’ of constitutionalism in these three provinces differ slightly, from the entrenched influence of military dictators in Zhejiang and Fujian to the intense power struggle

between the federalist Chen Jiongming and Sun Yat-sen as the latter belatedly prevailed with external military support from the Soviet Union. In turn this partially reflects the difference between the coastal geography of these three provinces compared with Hunan's landlocked location that partially insulated it from the ravages of the civil war and the predations of foreign powers.

Nevertheless, it is abundantly clear that irrespective of the reality of constitutionalism on the ground, it was universally useful as a modern legitimising tool for the protagonists in provincial power struggles and to the extent that constitutional norms later went on to bind or restrain the parties involved, their motives or the sincerity of these ideals are surely irrelevant. Given the vast cultural differences between China and Western Enlightenment countries that are usually associated with federalism, perhaps more remarkable than the eventual eclipse of the constitutional movement is the fact that against great odds it took root at all on Chinese soil during a period of intense turbulence and civil strife.

Accounting for ‘Failure’ – the Key Distinction

It is impossible to avoid the conclusion that the primary reason constitutionalism in Hunan was abruptly terminated was the invasion of the KMT. In spite of its valiant efforts Hunan in the final analysis was unable to escape being sucked into the civil war between the North and the South, in part due to the infighting between Zhao Hengti and Tan Yankai which finally culminated in Zhao being overthrown by his deputy Tang Shengzhi in a fashion reminiscent of the previous toppling of Governor Tan. It is perhaps arguable that the constitution was doomed before it was even promulgated as a consequence of General Zhao's fatal miscalculation that led to the invasion of Hubei, which in turn provoked swift retaliation from Wu Peifu who seized upon the debacle as a pretext to occupy Yuezhou, the strategically located 'gateway to Changsha'. Moreover, Zhao's military intervention in Hubei was a direct violation of the 'Monroe Doctrine' and, as such, the affair damaged the prestige of the constitution. Were Hunan to have adhered to this doctrine more strictly, it might have been able to

operate the kind of system of neutrality that was relatively successful in enabling the Swiss to avoid participation in the Second World War in Europe.

In examining this Wuhan incident in more detail, it is apparent that the logic of militarism was decisive in instigating the decision to annex Hubei: in order to maintain an army of 100,000 men, military spending occupied around 80% of the provincial budget, which funded ten times the limit for the number of soldiers stipulated under Article 139 of the constitution. Thus, simply to maintain this level of expenditure, having already bled the citizens of Hunan dry, apart from military conquests and adventurism there were few alternatives. As shown in Chapter 2, British consular officials in Changsha surmised that Zhao Hengti would have been assassinated had he not consented to the invasion of Hubei. An interesting counter-factual is to consider whether such an incident could have taken place if there had been constitutional provisions in place for a clear separation of civilian and military power instead of both being subsumed within the office of the governor, who was also commander-in-chief of the army with responsibility for operational decisions under Article 55(2). Prescient contemporary writers such as Li Chien-nung recognized the need to maintain a provincial army to guard against invasion from other provinces as the fundamental Achilles' heel of the Republican constitutional experiment.²

Yet in order to move beyond ideological hagiographies of Mao Zedong on the one hand or Chiang Kai-shek and Sun Yat-sen on the other, it is critical to distinguish between the *external factors*, particularly the civil war and the KMT's invasion of Hunan, that directly caused the termination of constitutionalism in Hunan rather than any *internal dynamics* within the constitution. It might be the case that there were deficiencies in the drafting and design of the 1922 Constitution of Hunan, which some say rendered the Provincial Parliament (PP) too powerful at the expense of emasculating the governor, the corollary of which was inefficient governance. Yet, archival research has yielded no evidence or examples of cases where the Governor was paralysed from making critical decisions due to the opposition of Parliament or the fetters of the Constitution. Further to the contrary, a belated attempt was made to remedy these concerns, although myopic drafting meant that the constitution was

² Li Chien-nung, *Zhongguo jinbainian zhengzhishi 1840-1926 (The Political History of China 1840-1928)*, centenary edition (Wuhan: Wuhan daxue chubanshe, 2006), 506.

caught on the hook of its own rigidity as under Article 126 during the first ten years the constitution could only be amended with the approval of three-quarters of the PP and two-thirds of CPs, followed by a provincial plebiscite. Thus, arguably by the time that a more practical revised constitution was promulgated in May 1925 it was already too late.

Perhaps a more significant legal issue was the fact that the constitution had been unilaterally drawn up without the participation, much less the consent, of the central government. Without negotiations to properly delineate the competence of powers vested in the government of Hunan, shortly after its promulgation Hunan's Constitution fell foul of the 1923 Constitution of the ROC as article 34 thereof explicitly forbade the provinces maintaining standing armies of their own. On the other hand, the drafters of the constitution were deeply involved in national political affairs and had their own power bases or constituencies within the central government that helped to lubricate any frictions between the central and provincial governments.

It is also true that the constitution lacked the kind of institutional hardware that many regard as essential to safeguarding its effective implementation. Notably there was no institutional mechanism for arbitrating disputes between Changsha and the Beijing government. The 1922 Constitution of Hunan did not recognise either the Supreme Court of the Republic of China or the *Daliyuan* as under article 90 the Provincial High Court had final jurisdiction over all decisions made in Hunan. Conversely, a survey of the extensive record of cases heard by the Daliyuan kept in the archives in Taipei shows that not a single case has been found dealing with Hunanese constitutional issues. Nor was the 1923 Constitution of the Republic of China completely clear as to whether it was the role of the Supreme Court or the National Assembly to mediate in disputes between the centre and the province. In summary, since it was clearly the invasion of the KMT that caused the termination of Hunan's experiment with constitutional governance- a factor that is more or less external to the affairs of the province- therefore, saliently there is no evidence to support assertions that any "failure" was due to any internal dynamics within the constitution. Presently, the legacy of constitutionalism in Hunan shall be considered.

Legacy

If the main goal of the constitutional movement in Hunan was to avoid the North-South conflagration, then manifestly it failed. Yet for four years the Hunanese practised a codified form of governance in which powers were limited and regulated, however imperfectly, according to a constitution. The impact of this example was felt well beyond the borders of Hunan province. An interesting question is why did the kind of federal system of governance that developed in the United States failed to take root in early Republican China given ostensible similarities in the continental size and geography of both countries? Part of the explanation, besides cultural factors such as America's founding fathers being steeped in a political tradition of constitutional governance that had evolved over centuries in Europe, might be that in China the UPAM was essentially a *bottom-up* movement with Hunan and Zhejiang at the helm that crucially failed to mobilise a critical mass of support on the national political stage. In contrast, in the USA despite initially conceding a significant degree of autonomy to all States in the Union there was strong top-down, central leadership through leaders such as Abraham Lincoln and George Washington underpinned by a coherent political philosophy and a compelling ideology as eloquently articulated by John Adams, Thomas Madison and Thomas Jefferson.³

Building on the contributions of scholars such as E.S.K. Fung who have argued for a reinterpretation of early Republic era history in light of the existence of a third force alongside Nationalism and Communism, namely Constitutionalism, this dissertation has attempted to draw attention to a topic previously neglected by Western and Chinese scholarship; and in so doing to shift the terms of the blinkered debate conducted by Marxist academics, which focuses on the influence of Hunanese constitutionalism on the life of Mao Zedong and often tends towards navel-gazing 'Maology', interpreting every utterance or word written by the Chairman and getting bogged down in hairsplitting ideological arguments as to what Mao Zedong meant by 'self-governance' (*zizhi*, 自治), countering one Mao quote with another *ad infinitum*. In so doing, this thesis seeks to debunk a central conceit of Marxist scholarship

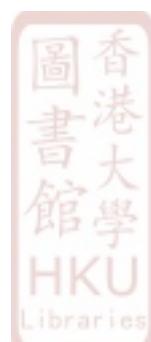
³ Bogdanor, *Constitutions in Democratic Politics*, chapter five.

surrounding the Hunan Constitution, namely that the constitutional movement was a separatist campaign with independence as its ultimate goal; and the canard that constitutionalism failed in Hunan because it is inherently incompatible with the Chinese polity. Instead in analyzing and evaluating constitutionalism in Hunan, it emphasizes the role of external factors through the military invasion of Hunan that prematurely concluded this experiment in the early Republic of China. Conversely, pointing out that there is no evidence to support the proposition that constitutionalism and China were incompatible does not necessarily suggest that constitutionalism and China were, or even are, compatible either, although *prima facie* the case of Hunan from 1922-1926 would appear to be encouraging for liberal constitutionalists.

Contemporary Relevance and Comparative Governance Research

In rebutting the cynical interpretations of constitutionalism in the early Republic by Nationalists and Communists alike this thesis seeks to offer a more balanced, contextualised portrayal of the federal interlude. Self-evidently, it would be folly to try to draw wider conclusions about the ideal structure of the Chinese state, which is indeed a discussion best left to political scientists. Suffice it to say that just as Chris Patten persuasively argued in his memoirs that the term ‘Asian Values’ has little relevance to a continent that encompasses cultures as diverse as Buddhism, Hinduism, Taoism, Confucianism, Shintoism and Christianity in democracies from India, Korea, Taiwan and Japan to dictatorships such as Singapore and the People’s Republic of China alike – rather the debate about Asian Values can be mercifully interred together with Singapore’s former strongman in a specific historical context when Lee Kuan-yew sought to gain geopolitical advantage through craftily concocting such rhetoric in order to reach out to Beijing at a time that China faced isolation due to the international opprobrium heaped on its bloody crackdown in Tiananmen Square in 1989⁴ - this dissertation similarly seeks to eschew the hollow rhetoric of warlordism, which apart from traducing the successes of constitutional movements in the early Republic, simply has no relevance to China’s past, present or future.

⁴ Patten, C. *East and West: China, power, and the future of Asia* (1st ed., New York: Times Books, 1998)



By the same token after a century of development, the experience of constitutionalism in Hunan and other Chinese provinces in the 1920s have limited relevance to the present, not least because in the twenty-first century China is no longer blighted by the perils of militarism, civil strife and external invasion. For this reason, equally it would be unwise to seek to tenuously or tendentiously extrapolate this thesis to the constitutional challenges facing modern day Hong Kong, Taiwan, Tibet, Mongolia and Xinjiang etc. Suffice it to note that the constitutional movement in Republican China underscores the need for clear drafting of provincial constitutions with support from both the central and local governments, a workable balance between De Montesquieu's three branches of power, an independent legal system, and functioning institutions to effectively check power and mediate the horizontal relationship between different provinces on the one hand and the vertical relationship with the central government on the other; moreover, if anything the experience of this period in China demonstrates that constitutionalism *per se* is not a panacea for political problems, nor is any solution ever final for democratic constitutions evolve, form and are in turn formed by nations.

Rolling Forward the Research Frontier

This dissertation has made extensive use of hitherto unused documents from what records remain in government reports of the Hunan Provincial Parliament located in the Provincial (Party) Archives in Changsha. Such datasets are incomplete, not least because of the three fires mentioned in 1927, 1937 and again during the Cultural Revolution. The author personally accessed these archives and employed students from the Law Faculty of Central South University in Changsha given the volume of documents involved and the fact that the Chinese catalogues of the Provincial Archives have not yet been computerised, in other words they are hand-written with varying degrees of legibility. Thus, it is certainly possible that documents have been overlooked. Moreover, given the vagaries of archival research in general added to which are political factors such as increased censorship of historical research in Mainland China, especially anything pertaining to constitutional law, it is certainly possible that further foraging could yield new harvests. The same applies to

interrogating archival records under time constraints even in relatively research-friendly environs such as the National Archives in Kew, London or Academica Historica in Taipei, the outcome of which often involves a degree of serendipity.

It is also possible that local archives in Hunan may contain relevant documents, for example the Baojing County Archives, the Changsha City Archives, the Huaihua Prefectural Archives, the Huitong County Archives, the Li Xian County Archives, the Linli County Archives, the Shupu County Archives, the Taoyuan County Archives, the Xiangtan City Archives and the Yiyang City Archives are all known to have records relating to the Republican period.⁵

In the same way that the records of the British Consulate in Changsha were extremely fruitful resources for the author- not least because the officials kept a close eye on Hunan's politics due to the potential implications for the revenue extraction capacity of the Chinese Maritime Customs as well as the significance of the wider impact on national politics – doubtless the United States consulate in Changsha would have had strategic considerations for following local politics, albeit in the relatively early years of the American imperium.⁶ The private papers of key figures such as Zhao Hengti have been bequested to myriad university libraries scattered around America. Unfortunately, for reasons of time and money this thesis was not able to make use of such documents, however, they may form a rich vein for future generations of historians to mine. Although the SOAS Missionary Collections were trawled without substantial quarry in the search for records of Christian missionaries living in Changsha, it is also possible that unpublished or little known private collections contain gems yet to be mined.

As regards other provinces involved in the UPAM, this thesis examined Hunan's constitutional movement in detail and only touched upon its counterparts in Guangdong, Zhejiang and Fujian. Therefore more detailed research remains to be done with respect to the UPAM in these three key provinces in addition to the other ten provinces participating in the movement. Of particular interest might be Sichuan and Yunnan due to their relative proximity to Hunan and the important roles those

⁵ Ye Wa and Joseph Esherick, *Chinese Archives: An Introductory Guide* (China Research Monographs 45, Berkeley: Institute of East Asian Studies, University of California, Berkeley, 1996), 186-191.

⁶ See the National Archives in Washington, USDS 2007298.958AL: 'Index to Consular Records for Changsha, China, compiled 1915 – 1925'

provinces played in the UPAM movement in Southern China in addition to perhaps Shandong and Manchuria in the North for the purpose of piecing together the puzzle to explain more thoroughly why the movement failed to gain more traction with any of the factions making up the fissiparous Beiyang government.

Lastly, given the pre-eminent China-watching skills of Japanese academics, including a stereotypical renown for their detailed ‘*kao zheng*’ (考證) or ‘archeological’ approach to history more generally, there may well be useful secondary materials published *in Japanese* that this author did not have the linguistic skills to access more fully. As mentioned briefly in the Introduction the writer Liu Di has published in Japanese journal articles about Hunanese constitutionalism, which the author had a historian at *Academica Sinica* translate, however, beyond summarising the Chinese language secondary literature on the subject the articles read appear to be more concerned with a superficial discussion as to the stability of the Chinese polity today from a political science point of view.⁷

Perhaps an apt illustration of the vagaries, unpredictability and non-linear nature of constitutional history is given by the brief Gettysburg address, delivered on the afternoon of Thursday 19 November, 1863 (87 years after America’s Declaration of Liberty) at the site of one of the bloodiest confrontations in the American Civil War. In stark contrast to the hours of long-winded oratory from Edward Everett with 10 lines, or ‘a few appropriate remarks’, Lincoln lit up the imagination of generations in words which would echo through the ages:

Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.

Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure. We are met on a great battle-field of that war. We have come to dedicate a portion of that field,

⁷ Liu Di (劉迪), “国憲法と連邦制 《中華民国憲法（1923年）》を中心に” (A Study of the Federal System in China), *Bijiao faxue*, 34:1 (2000): 1-49. For online access see: <https://www.waseda.jp/folaw/icl/assets/uploads/2014/05/A04408055-00-034020001.pdf>.

as a final resting place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this.

But, in a larger sense, we can not dedicate—we can not consecrate—we can not hallow—this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note, nor long remember what we say here, but it can never forget what they did here. It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth.⁸

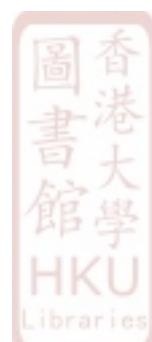
⁸ Wikipedia, website, https://en.wikipedia.org/wiki/Gettysburg_Address (accessed 11/10/2017).

GLOSSARY

Baoding junxiao	保定軍校	Baoding Military Academy
Baojing	保靖	
Baoqing	寶慶	
Baoweiju	保衛局	
Beiyang pai	北洋派	Beiyang faction
Cai E	蔡锷	
Cai Juyou	蔡巨猷	
Cai Yuanpei	蔡元培	
Caizhengsi	財政司	Treasury
Cao Kun	曹錕	
Chaling	茶陵	
Chen Baozhen	陳寶箴	
Chen Chu	陳倅	
Chen Jiaxun	陳嘉勛	
Chen xian	郴縣	Chen County
Cheng Xiluo	程希洛	
Cheng Zishu	程子樞	
Chengnan Shuyuan	城南書院	Chengnan Academy
Chenxian	郴縣	
Chiang Ching-kuo	蔣經國	
Chou Bie	仇鰲	
Da Gong Bao	長沙大公報	
Daliyuan	大理院	Republican Supreme Court
Daliyuan gongbao	大理院公報	Reports of the Supreme Court
Dazongtong	大總統	National President
Dian	滇	Yunnan
Dong Weijian	董維鍵	
Dongan xian	東安縣	Dongan County



Dongdian	東電	Eastern Telegram
Dongfang Zazhi	東方雜誌	Eastern Miscellany
Dongnan hubao	東南互保	Mutual SE Protection Society
Du Xigui	杜錫珪	
Duan Qirui	段祺瑞	
Dufu	督撫	Military Governor
Dujunshu	督軍署	Governor's Office
Eren zizhi	鄂人自治	Self-governance of Hubei
Fang Rongqing	方榕卿	
Feng Guozhang	馮國璋	
Fenghua	奉化	
Fengxi	奉系	Fengtian clique
Fu Liangzuo	傅良佐	
Gaizao	改造	Reform
Gao Lingwei	高凌霨	
Gong Xinzhan	龔心湛	
Gongming	功名	Provincial Scholar
Gu Weijun	顧維鈞	Wellington Koo
Guanshen	官紳	Gentry official
Guixi	桂系	Guangxi Clique
Guofu	國父	Sun Yat-sen
Hanlinyuan	翰林院	Imperial Academy
Haodian	豪電	Lu Yongxiang's telegram
He Chengjun	何成浚	
Heng Yang	衡陽	
Hengyang	衡陽	
Hu Huanmin	胡漢民	
Hufa Yundong	護法運動	Protect the Constitution Movement
Hua Guofeng	華國鋒	
Huazi ribao	華字日報	The Chinese Mail (HK)
Huang Fu	黃郛	
Huang Shiheng	黃士衡	
Huang Xing	黃興	



Huang Zunxian	黃遵憲	
huiyuan	會元	First place in imperial exam
Hunan gaizao cucheng hui	湖南改造促成会	Association for Promoting Reform in Hunan
Hunansheng danganguan	湖南省檔案館	Hunan Provincial Archives
Hunansheng xianfa	湖南省宪法	Constitution of Hunan
Hunansheng yihui baogao shu	湖南省議會報告書	Hunan Provincial Parliament Political Reports
Jiang Baili	將百里	
Jiang Zuobin	將作兵	
Jiaoshesi	交涉司	Communications Department
Jiaoyuhui	教育會	Education Association
Jiaoyusi	教育司	Education Department
Jin Yunpeng	靳雲鵬	
Jinshi	進士	Imperial degree holder (highest level)
Jiujiu Xianfa	九九憲法	Nine Nine Constitution
Junwusi	軍務司	Military Affairs Department
Juren	舉人	Imperial degree holder
Kang Youwei	康有為	
kaozheng	考證	detailed analysis
Kong Geng	孔庚	
Li Jiannong	李劍農	Li Chien-nung
Li Houji	李厚基	
Li Shicen	李石岑	
Li Shucheng	李書城	
Li Yuanhong	黎元洪	
Liang Qichao	梁啟超	
Liansheng zizhi self-governance	聯省自治	Inter-Provincial
Liansheng zizhi yundong	連省自治運動	Union of Autonomous Provinces (UPAM)



Liling	醴陵	
Lin Zhiyu	林芝宇	
Liu Jianqiang	劉建強	
Liu Renxi	劉人熙	
Liu Shaoqi	劉少奇	
Liu Xiang	劉湘	
Liuyang	瀏陽	
Long Jiangong	龍兼公	
Lushan Huiyi	廬山會議	Lushan National Conference
Lu Yongxiang	盧永祥	
Lu Tiaoping	魯涤平	
Ma dian	祃電	Ma Memo
Mao Zedong	毛泽东	
Meiji xianfa	明治憲法	Meiji Constitution
Minguo ribao	民國日報	Republican Daily
Nanxuehui	南學會	Southern Study Society
Ningxiang	寧鄉	
Peng Dehuai	彭德懷	
Peng Huang	彭璜	
Peng Yunyi	彭允彝	
Peng Zhaochuang	彭兆璜	
Pi Zongshi	皮宗石	
Pingjiang	平江	
Qian Duansheng	錢端升	Ch'ien Tuan-sheng
Qian Nengxun	錢能訓	
Qiyang	祁養	
Qin	黔	Guizhou
qu Zhang	驅張	Campaign to expel Zhang
		Self-Governance
Ruan Xingcun	阮性存	
Sanse Xianfa	三色憲法	Three Colour Constitution
Shaoyang	邵陽	
Sheng Yihui	省議會	Provincial Parliament
Shengwuyuan	省務院	Provincial Cabinet

Shengzhang	省長	Provincial Governor
Shi Taojun	石陶鈞	
Shigu Shuyuan	石鼓書院	Shigu Academy
Shiyesi	實業司	Employment
Sifasi	司法司	Departmentment Judicial Affairs
Song Hegeng	宋鶴庚	
Song Jiaoren	宋教仁	
Sun Zhongshan	孫中山	Sun Yat-sen
Taipingyang	太平洋	Pacific
Tan Sitong	譚嗣同	
Tan Yankai	譚延闔	
Tang Dechang	唐德昌	
Tang Shaoyi	唐紹儀	
Tang Shengzhi	唐生智	
Tang Xiangming	湯薌銘	
Tao Xingzhi	陶行知	
Taoyuan	桃源	Place in Hunan; also a state of Paradise apart from this world
Tian Yingzhao	田應詔	
Tong Menghui	同盟會	Chinese League
Tushen	土神	Local gentry
Wang Changguo	王昌國	
Wang Chonghui	王寵惠	
Wang Daxie	汪大燮	
Wang Fuzhi	王夫之	
Wang Yuxiang	王毓祥	
Wang Zhanyuan's	王占元	
Wang Zhengting	王正廷	
Wanxi	皖系	Anhui clique
Wei Yuan	魏源	
Weixin Bianfa	維新變法	Hundred Days' Reforms
Wen Jiabao	溫家寶	

Wu Peifu	吳佩孚	
Wuzhuang tongyi	武力統一	Armed reunification
Xiang Shaoxuan	向紹軒	
Xiang yayi xueyuan	湘牙醫學院	Hunan College of Dentistry and Medicine
Xiang E Zhanshi	湘鄂戰事	Hunan-Hubei War
Xiangjun	湘軍	Hunan Army
Xiangtan	湘潭	
Xiangxiang	湘鄉	
Xiangxiang	湘鄉縣	
Xianzhang	縣長	
Xingzhonghui	興中會	Revive China Society
Xin Guangdong	新广东	New Guangdong
Xinxiangbao	新湘報	New Hunan
Xinzheng Gaige	新政改革	New Policy Reforms
Xiong Xiling	熊希齡	
Xu Shichang	徐世昌	
Xunfu	巡撫	Military Governor
Yan Huiqing	顏惠慶	
Yang Changji	楊昌濟	
Yang Kaihui	楊开慧	
Yang Yulin	楊毓麟	
Yiyang	益陽	
Yongying	勇營	Brave Camps
Yuan Shikai	袁世凱	
Yuan-E Zhanzheng	援鄂戰爭	
Yuejun	粵軍	Guangdong Army
Yuelu Shuyuan	岳麓書院	Yuelu Academy
Yuezhou	岳州	
Zeng Guofan	曾國藩	
Zhang Bingwen	張秉文	

Zhang Dongsun	張東蓀	
Zhang Jicai	張繼才	
Zhang Jingyao	張敬堯	
Zhang Junli	張君勵	
Zhang Pengyuan	張朋園	Chang Pengyuan
Zhang Shaozeng	張紹曾	
Zhang Shengshu	張聲樹	
Zhang Taiyan	章太炎	
Zhang Yufa	張玉法	Chang Yufa
Zhang Zhidong	張之洞	
Zhang Zuolin	張作霖	
Zhao Hengti	趙恆惕	
Zhao Yuanren	趙元任	
Zhao Ziyang	趙紫陽	
Zhixi	直系	Zhili clique
Zhou Zhenlin	週震鱗	
Zhou Ziqi	周自齊	
Zhu Jianfan	朱劍凡	
Zixing	資興縣	
Ziyiju	諮詢局	Provincial Assembly
Zizhi Xinbao	自治新報	
Zongsiling	總司令	Commander-in-Chief

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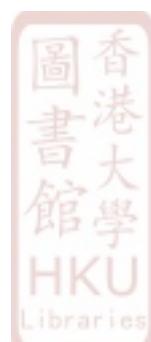
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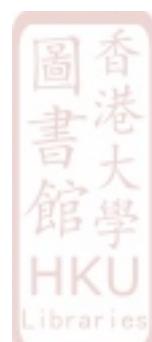
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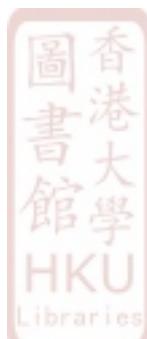
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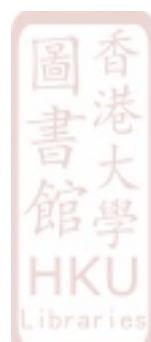
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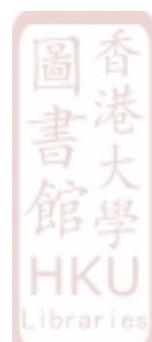
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APPENDIX

I

Sample of Tan Yankai's diary, 1 November 1920



十一月一日（庚申九月二十一日癸亥）

月曜日

（即星期一）

港大

民國廿九年九月記

要
提
交

小雨全無空氣

（信 通）

日本晴天

七十二度

（度通）（候報）

書館

圖書館

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Libraries

（底拉格棧） 弟兄在況活生共人他與如不樂之居獨

山雨狂風三十多天也。雨多之後今去東山山陰
已移後移至山中。但未到處而用子然南三
病床に移す。併立走道。是久休。山中未生。小雨全無
及黑鷺全無。招訪杜威。杜威。年。人。計。備。自。向。此。
小雨。小雨。小雨。小雨。小雨。小雨。小雨。小雨。小雨。小雨。
小雨。小雨。小雨。小雨。小雨。小雨。小雨。小雨。小雨。小雨。
小雨。小雨。小雨。小雨。小雨。小雨。小雨。小雨。小雨。小雨。
小雨。小雨。小雨。小雨。小雨。小雨。小雨。小雨。小雨。小雨。

天晴而有風

（工亮周） 秋 晚 製 雜 鸴 路 霜 迷 腾

APPENDIX

II

Six Basic Laws of Hunan



湖南省憲法附

湖南省省議會組織法
湖南省省議會議員選舉法
湖南省省長選舉法
湖南省法院編制法
湖南省縣議員選舉法

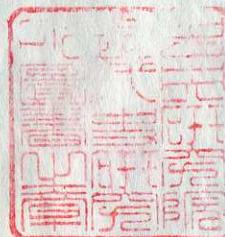
中華民國十年九月

湖南省憲法審查會審定
湖南省憲法籌備處印行

II
15-A 88
87

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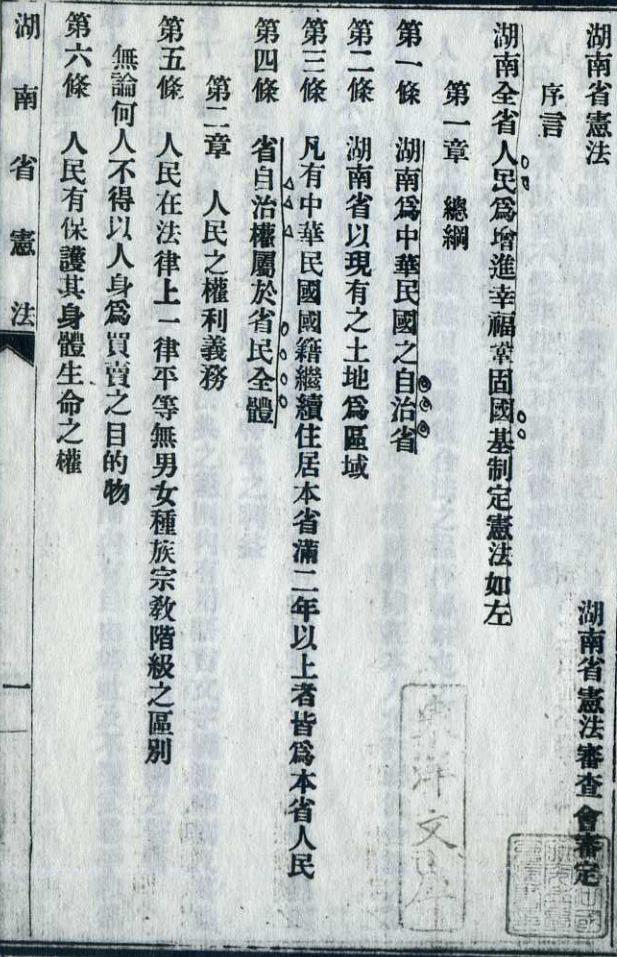
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身體之自由權非依法律不受何種限制或被剝奪

依法而受限制或被剝奪時不得虐待或刑訊

除現役軍人外凡人身自由被剝奪時施行剝奪令之機關至遲須於二十四小時以內以剝奪之理由通知本人令其得有即時提出申辯之機會被剝奪人或他人皆得向法庭請求出庭狀法庭不得拒絕之

人民有要求受適當法庭迅速審判之權除依戒嚴法規定外不受軍法機關之審判

凡行為必於其實行以前已經法律規定為犯罪行為審判時方得以犯罪目之人民受法庭審判時非正式宣告判決有罪確定後不受何種刑罰之執行人民不受身體上之刑罰

第七條 人民有保護其私有財產之權

人民之私有財產依法律認為必要時非給以相當之價值不得收為公用

人民之私有財產非依法律不得查封沒收及其他處分

人民之私有財產不受非法之科罰捐輸或借貸

第八條 人民有保護其居宅之權

人民居宅不得駐屯軍隊但戰時依合法之程序得駐屯之

第九條 人民之身體居宅郵電文書及各種財物除經本人允許或依合法之程序外不受搜索檢查

第十條 人民限於不妨害社會秩序善良風俗有信仰宗教之自由政府不得對於何種宗教與以不平之限制或特享之利益

第十一條 人民在不抵觸刑事法典之範圍內有用語言文字圖書印刷及其他方法自由發表意思之權不受何種特別法令之限制或檢查機關之侵害

第十二條 人民在不抵觸刑事法典之範圍內有自由結社及不攜武器平和集會之權不受何種特別法令之限制

人民之基本權利為憲法所保障不得以宗教信仰之故而生變動

人民不受歧視

人民有受教育之權

人民或人民之自治團體有購置槍枝子彈以謀自衛之權但須經官廳之許可登記

前項之槍枝子彈無論何種機關不得強制借用或提取

人民有營業之自由權但為保障重大之公共利益時須受法律上之限制

人民有居住遷徙之自由

除省法律別有規定外在本省內無論移住何縣何市何鄉有與該地人民同等

之權利義務

人民有請願於議會之權

人民有陳訴於行政官署之權

人民有訴訟於法院之權

法院如違背訴訟法規延不審判人民得提起懲戒之訴

人民有請求救恤災難之權

人民依法律有選舉被選舉提案總投票及任受公職之權

公職員之任免保護及懲戒以省法令定之

人民有受教育之義務

義務教育以上之各級教育無分男女皆有享受其同等利益之權

人民依法律有左列各種義務

(一)納租稅之義務

(二)服兵役之義務

(三)擔任名譽公職之義務

人民之一切公私權利及義務不得以宗教信仰之故而生變動

外省人之居住營業於本省者與本省人受同等之保護

省之事權

第十六條 人民有選舉及被選之權
第十七條 人民有被徵募為軍隊之權
第十八條 人民有被徵募為海陸空軍之權
第十九條 人民有被徵募為海陸空軍之權
第二十條 人民有被徵募為海陸空軍之權
第二十一條 人民有被徵募為海陸空軍之權
第二十二條 人民有被徵募為海陸空軍之權
第二十三條 人民有被徵募為海陸空軍之權
第二十四條 人民有被徵募為海陸空軍之權
第二十五條 關於左列各事項省有議決執行權

第二十五條 關於左列各事項省有議決執行權

- (一) 省以下之地方制度及各級地方自治之監督
- (二) 省官制官規官俸及官吏之考試
- (三) 省法院之編制監獄及感化院之設立及司法行政之監督
- (四) 各種職業團體之組織及關於勞動之法規
- (五) 制定本省稅則募集省公債及訂結省政府有負擔之契約
- (六) 制定戶籍法及登記法
- (七) 省公產及營造物之處分
- (八) 各級學校學制及與教育相聯屬之事項
- (九) 鑛業農林之保護及發展
- (十) 各種公共實業及關於實業之法規
- (十一) 省以內之河川道路土地整理及其他土木工程事項
- (十二) 省以內之鐵道電話電報支線之建設但為謀交通行政之統一聯絡省際商業之發達及應國防上之急需國政府之命令得容受之
- (十三) 省內之軍政軍令事項
- (十四) 省警察行政事項
- (十五) 衛生及各種公益慈善事項
- (十六) 其他關於省以內之事項在與國憲不相抵觸之範圍內省得制定法規並執行之
- (十七) 省政府受國政府之委託得執行國家行政事務但因執行國家行政所生之費用須由國政府負擔
- (十八) 省議會以全省公民直接選出之議員組織之
- (十九) 凡有選舉權之人民稱公民
- (二十) 湖南省憲法

之權

- (一) 現役軍人
- (二) 現任官吏
- (三) 現任宗教師
- (四) 在校未畢業之學生

第三十二條 省議員之選舉及省議會之組織以省法律定之

第三十三條 省議員任期三年從當選之日起算至滿三年之日為止

第三十四條 省議會設議長一人副議長二人由議員互選之

第三十五條 省議會自行集會開會閉會

第三十六條 省議會每年開常會二次於每年三月一日九月一日開會常會會期為兩個月但遇有必要時得延長一個月

第三十七條 省議會閉會時設常駐委員會

第二十九條 省議員之名額以人口為比例每人口二十萬選出議員一名但不滿二十萬之縣亦得選出議員一名

第三十條 有中華民國國籍之男女年滿二十一歲以上於調查選舉人資格以前在湖南繼續住居滿二年以上有法定住址無左列情事之一者皆有選舉省議員之權

- (一) 患精神病者
- (二) 被剝奪或停止公權尚未復權者
- (三) 受破產宣告尚未撤銷者
- (四) 吸食鴉片者
- (五) 營不正當業者
- (六) 未受義務教育者但義務教育未普及以前以不識文字者為限

第三十一條 公民年滿二十五歲以上無左列情事之一者皆有被選為省議員

(七) 無故棄其職務者

(八) 有違犯本省公法之行為者

(九) 有違犯本省公法之行為者

(十) 有違犯本省公法之行為者

(十一) 有違犯本省公法之行為者

(十二) 有違犯本省公法之行為者

(十三) 有違犯本省公法之行為者

(十四) 有違犯本省公法之行為者

(十五) 有違犯本省公法之行為者

(十六) 有違犯本省公法之行為者

(十七) 有違犯本省公法之行為者

(十八) 有違犯本省公法之行為者

(十九) 有違犯本省公法之行為者

(二十) 有違犯本省公法之行為者

第三十八條 省議會遇有省議員三分之一以上動議或省長認為必要時得召集臨時會但會期不得過一個月

第三十九條 省議會之職權如左

(一) 議決第二十五條及第二十六條之事項

(二) 議決預算及決算案

(三) 依本法所規定選舉官吏

(四) 受理人民之請願

(五) 提出質問書於省務院或請求省務員出席質問之

(六) 對於省務員之全體或一員得為不信任之投票

(七) 省長有謀叛賄賂或其他重大犯罪行為時得以議員總額四分三以上之出席出席員三分之二以上之可決彈劾之被彈劾之省長須即退職退職後由檢察廳提起公訴

(八) 高等審判廳長及高等檢察廳長有賄賂或其他違法行為時得以議員三分之二以上之出席出席員三分之二以上之可決彈劾之被彈劾之廳長須即退職退職後由檢察廳提起公訴

(九) 省務員及審計院長有賄賂或其他違法行為時得以議員總額三分之二以上之出席出席員三分之二以上之可決彈劾之被彈劾之省務員或審計院長須即退職退職後由檢察廳提起公訴

(十) 對於其他各種官吏有賄賂或其他違法行為時得組織查辦委員會查明咨請該主管官廳懲辦之

第四十條 省議員在會外不負責任

第四十一條 省議員在開會期內被逮捕監禁時逮捕監禁之機關須於二十四小時以內將省議員在開會期內被逮捕監禁時逮捕監禁之機關須於二十四小時以內將

逮捕監禁之理由通告省議會

第四十二條 省議員在任期內不得爲官吏及兼任有給之公職

第四十三條 各選舉區對於該區所選出之議員不信任時得以左列方法撤回之

(一)由原選舉區公民百分之一以上連署提議經該區公民總投票過半數可決者

(二)由原選舉區內之縣議會市議會鄉議會議員總額過半數連署提議經該區公民總投票過半數可決者

第四十四條 省議會得以左列方法解散之

(一)由全省公民百分之一以上連署提議經全省公民總投票過半數可決者

(二)全省縣議會過半數連署提議呈由省長交全省公民總投票之過半數可決者

(三)省長以省務院全體之副署提出理由書付全省公民總投票過半數可決者

第四十五條 依前條及第五十一條第一項解散省議會後須於三個月內召集新省議會但一年內不得解散議會兩次

第五章 省長及省務院

一省長

第四十六條 省行政權由省長及省務院行使之

第四十七條 省長由省議會選出四人交由全省公民總投票決選以得票最多數者爲當選

第四十八條 依本法規定之本省公民年滿三十五歲以上在湖南繼續住居滿五年以上者得被選爲省長

第四十九條 省長就任時須於省議會爲左列之宣誓

「某某誓以至誠遵守憲法執行省長之職權謹誓」

第五十條 現職軍人被選為省長時須解除本職方得就任。

五十一條 省長任期四年不得連任但解職四年後得再被選

省長任滿前三個月須舉行芬任省長之選舉
第五十二條 省長未滿任以前得由省議會呈

第五十二條 各長官辦事以前得由各議會批請交公印經核實表決令其通過
省議會提出此項議案時須有議員總額三分二之出席出席員三分二之可決

方得成立

前項議案成立後省長即須停止其職權之行使公民總投票對於前項議案多數可決時省長即須退職多數否決時則省長回復其職權省議會即須解散

省長缺位時即依本法第四十七條所定之方法選舉新省長

第五十四條 省長應於滿任日解職如屆期新省長尚未選出或選出後尚未就職時省務院長代行其職務

第五十五條 省長之職權如左

(一) 公布法律及發布執行法律之命令

(三)任免全省文武官吏但本法及法律有特別規定者依其規定

四 遇內亂外患時經省議會之同意得宣告形體如在省議會開會期內不得

認為無戒嚴之必要時應即宣告解嚴

第五十六條 省長執行前
湖南省憲法

八

省務員於省議會閉會期內去職時得由省長暫行任命代理

第六十條 省務院設政務會議以省務院長為議長各省務員皆列席議決施政方針及關涉各司權限爭議之事件對於省議會負連帶責任

第六十一條 政務會議議決之結果須由省務院長報告省長

第六十二條 省長所發之命令及其他關於政務之文書非經省務院長及各主

議會會計出處所取之公文或委員會公文由省長簽署後送交省務院長及各主

議會會計出處所取之公文或委員會公文由省長簽署後送交省務院長及各主

署負責

二省務院

第五十七條 省設省務院及左列各司

(一) 內務司

(二) 財政司

(三) 教育司

(四) 實業司

(五) 司法司

(六) 交涉司

(七) 軍務司

省務院以各司之司長組織之各司司長皆為省務員

第五十八條 各司之組織及司長之選舉與任期以省法律定之

第五十九條 各司司長由省議會選舉二人咨請省長擇一任命之
省務院長由各司司長互選一人呈請省長任命

省務員去職時省議會須於省務員去職之日起十日內選出如省議會在閉會期內須於開會後十日內選出之

省務員如有溺職及其他違法行為時省長得罷免之

省務員於省議會閉會期內去職時得由省長暫行任命代理

第六十條 省務院設政務會議以省務院長為議長各省務員皆列席議決施政方針及關涉各司權限爭議之事件對於省議會負連帶責任

第六十一條 政務會議議決之結果須由省務院長報告省長

第六十二條 省長所發之命令及其他關於政務之文書非經省務院長及各主

議會會計出處所取之公文或委員會公文由省長簽署後送交省務院長及各主

(一) 聲譽
(二) 誓言
(三) 賴信
(四) 賴信
(五) 賴信
(六) 賴信

第五十九條

總理會將該案送交省議會審議

第六十條

管司長之副署不生效力

第六十三條 省務員全體或一員受省議會之不信任投票時即須辭職

第六章 立法

第六十四條 法律案由省議會議員或省務院以省長之名義提出之

第六十五條 法定之省教育會農會工會商會律師公會及其他依法律組織之各職業團體得提出關於各該團體範圍內之法律案省議會必須以之付議前項議案開議時提案者得派員出席省議會說明之但不得參加表決

第六十六條 全省公民百分之一以上連署動議或全省縣議會及一等市議會三分之一以上連署動議得提出法律案呈請省長咨省議會決省議會對此項議案如擱置不議或議而否決時省長應將該案及否決之理由付全省公民總投票表決可決時即成爲法律

第六十七條 省議會議決之法律案省長須於送達後二十日內公布之

省議會議決之法律案省長如否認時得於送達後十日內將否認之理由咨省議會覆議如有出席議員三分之二以上仍執前議時應即公布之未咨省議會覆議之法律案逾公布期限即成爲法律法律案於將近閉會期咨送省長者省長如否認時得聲明理由咨省議會於下屆開會時覆議之

法律案咨送省長後如省長否認而省議會被解散時得咨新省議會覆議之全省縣議會及一等市議會三分之一以上連署動議或全省公民百分之一以上連署動議皆得於公布期內要求將已議決之法律案展緩兩月公布兩月內即提交全省公民總投票表決

第六十八條 凡本法所規定得由公民提案及須公民總投票表決之事項其提案及投票之方法以省法律定之

一財政

第六十九條 省之租稅依省法律之規定徵收之

第七十條 省之收入支出由省庫或代理省庫之銀行執掌之
發款書據須有審計院長之簽印省庫方得支付

省庫之組織以省法律定之

第七十一條 省會計年度以每年七月一日為始至次年六月三十日為止

第七十二條 省長須於省議會開會後之五日內將次年度之預算案提交省議會議決

省長得提出追加預算案交省議會議決

以省款經營之事項非一年所能完竣或其費用非一年所能籌備或因契約之關係其負擔不止於一年者得經省議會之議決預定年限設繼續費

省議會對於預算案得修正之但不得增加歲出或增加新款項

預算案內之款項經省議會議決後不得流用

第七十三條 省長須於會計年度終了後將前年度之決算案提交省議會議決

第七十四條 省之財務行政狀況及省議會議決之預算決算案省長須詳細公布之

二教育

第七十五條 全省人民自滿六歲起皆有繼續受四年教育之義務

爲達前項之目的得強制各地方自治團體就地籌集義務教育經費開辦應有之國民學校

第七十六條 每年教育經費至少須佔全省預算案歲出百分之二十每年提出之教育基金至少須佔全省預算案歲出百分之二其保管方法及用途以省法律定之

第七十七條 成績優良之國民學校得酌量獎勵之

省議會應外國侵華事變之需要不時發給之軍械及軍械庫存之數額
以資充當軍費之專款一項及指揮官等級之標準一項

會議表

第七十一条

省議會為籌措軍械及軍械庫存之數額之專款一項及指揮官等級之標準

省議會應外國侵華事變之需要不時發給之軍械及軍械庫存之數額

第七十二条

省議會為籌措軍械及軍械庫存之數額之專款一項及指揮官等級之標準

會議表

第七十三条

省議會為籌措軍械及軍械庫存之數額之專款一項及指揮官等級之標準

會議表

第七十八条 成績優良之職業學校經省議會議決得爲添置設備之補助

第七十九條 省須設立大學一所

第八十條 為達本法第二十一條第二項之目的省政府及各自治團體須設備備
特別基金貲助貧戶男女學童之適於受中等以上教育者其貲助之方法須以
省法律定之

第八十一條 學校不得駐紮軍隊或據爲軍人住宅

三實業

第八十二條 省有產業非經省議會議決不得抵押或變賣之

省內之天然富源無論公有私有不得變賣與無中國國籍者

第八十三條 省政府經省議會議決經營各種實業時須依私人營業之組織

第八十四條 省政府對於省內之私人營業認為於公益上有必要時經省議會
議決得以相當之代價收歸省有

四軍事

第八十五條 省政府對於私有營業之勞工保護勞工賠償勞工衛生等得依法
律之規定監督之

第八十六條 省政府對於私有營業之不正當競爭或不公允價格得依法律之
規定制裁之

第八十七條 全省軍務爲省行政之一部無論平時戰時其管理統率依本法第
五十五條及第五十六條之規定屬於省長

第八十八條 全省之健全男子自滿二十歲至滿四十歲依義務民兵制平時合
計須有十二個月在軍中服務

義務民兵之兵役法及編制以省法律定之但得設一萬人以內之常備部隊
中華民國對外國宣戰時本省軍隊之一部得受國政府之指揮

第八十九條 省內治安省民共保之省外軍隊非經省議會議決及省政府允許

第八十一條 舉辦公事庫某項某項公事人主事

省法務司

司法司

八十幾

三十多

十八幾

十六多

十五多

十四多

永遠不得駐紮或通過本省境內

第八章 司法

第九十條 省設高等審判廳為一省之最高審判機關對於本省之民事刑事行政及其他一切訴訟之判決為最終之判決

高等審判廳之下設地方審判廳初級審判廳

第九十一條 省設高等檢察廳為一省最高之檢察機關

高等檢察廳之下設地方檢察廳初級檢察廳

第九十二條 高等審判廳長及高等檢察廳長以下之各法官均由省議會依法定資格選舉之

選舉方法以省法律定之

高等審判廳長及高等檢察廳長以下之各法官均由省務院呈請任命之

第九十三條 法官獨立審判不受何方之干涉

第九十四條 高等審判廳長及高等檢察廳長任期八年在任期内非依本法規定不得免職

三十九條第八款之規定不得免職

高等審判廳長及高等檢察廳長以下各法官非依法律不得免職降職停職減俸或轉職

法官之懲戒處分以省法律定之

第九十五條 司法區域之劃分法院之編制及法官之俸給以省法律定之

第九章 審計院

第九十六條 省設審計院審計院長由省議會選舉

審計院之組織及審計院長之選舉以省法律定之

第九十七條 審計院長任期八年在任期内非依本法第三十九條第九款之規定不得免職

第九十八條 省經費之收入各徵收機關須於繳納省庫時報告審計院

省經費之支出須經審計院長按照預算案或臨時文出之法案核准簽印支出

第九十四條 高等審計機關及省級審計機關之職權及任務
第九十五條 省官廳立審計不受兩次之干涉者

審計司司長以審計署長之

高學會之不滿者之指揮及監督之不否否否否否否否否

高學會之不滿者之指揮及監督之不否否否否否否否

高學會之不滿者之指揮及監督之不否否否否否否

與原案不符時得拒絕之

第九十九條 審計院得隨時調查各機關之收支簿據

第一百條 審計院對於全省各機關收支簿據之登記法及報告程式有釐訂劃一之權此項釐訂劃一辦法由審計院長咨請省長行之

第十章 縣制大綱

第一百零一條 縣爲省之地方行政區域並爲自治團體

第一百零二條 縣置縣長受省長之指揮監督執行省之地方行政及縣之自治行政並同時監督縣以下之各自治機關

第一百零三條 縣長由縣議會選舉六人交由全縣公民決選一人呈請省長擇一任命

第一百零四條 縣長任期四年但在任期内如有漏職或違法行爲時得由省長免職或縣議會彈劾呈請省長免職免職後即依前條舉行新選舉

第一百零五條 縣長之資格選舉及縣行政機關之組織以省法律定之

第一百零六條 縣置縣議會議員人數依縣之大小酌定之但不得少於十六人至多亦不得過五十人

第一百零七條 在不抵觸省法令之範圍內縣有左列各事項之自治權

- 一、縣以內之教育及與教育相聯屬之事項
- 二、縣以內之道路水利及其他土木工程事項
- 三、縣以內之實業及公共營業
- 四、縣以內之警察衛生及各種公益慈善事項
- 五、縣公產及營造物之處分
- 六、其他依省法令賦與縣自治處理之事項

前例各事有涉及兩縣以上者得協議處理之

第一百零八條 在不抵觸省法令之範圍內縣得制定縣稅及附於省稅之附加稅並他種公共收入以充縣自治事項之經費但須受省政府之監督

第一百零九條 縣之收入支出每年由縣長詳細公布之

第十一章 市鄉自治制大綱

第一百十條 市鄉皆爲自治團體

第一百十一條 省以內之都會商埠人口滿二十萬以上者爲一等市人口滿五萬以上不及二十萬者爲二等市人口滿五千以上不及五萬人者爲三等市不及五千人者屬於鄉

第一百十二條 一等市直接受省政府之監督

第一百十三條 一等市設市長一人由全市公民直接選出任期二年

第一百十四條 一等市設市議會由全市公民直接選出之議員組織之其選舉

及組織以省法律定之

市議會之議員爲無給職

第一百十五條 一等市設市委員會以市長爲委員會長凡市之行政方針由委員會議決施行

委員會之半數由市議會選出其他之半數由市長從各職業團體中擇任之委員會之委員爲無給職

第一百十六條 一等市市政公所之專務職員由市長經委員會之同意任用之第一百十七條 一等市之公民對於市之重要立法有直接提案及總投票之權決權其方法以省法律定之

第一百十八條 在不抵觸省法令之範圍內一等市有左列各事項之自治權

一 市以內之教育及與教育相聯屬之事項
二 市以內之街道水溝及其他土木工程事項

一百十國稅 一等市受省政府監督之市人口數五萬人以上者三等市
一百十一國稅 二等市受省政府監督之市人口數五萬人以下者二等市
一百十二國稅 三等市受省政府監督之市人口數五萬人以下者一等市

一百三十國稅 一等市受省政府監督之市人口數五萬人以上者三等市
一百三十一國稅 二等市受省政府監督之市人口數五萬人以下者二等市
一百三十二國稅 三等市受省政府監督之市人口數五萬人以下者一等市

三 市以內之電燈電車煤氣自來水及其他關於公益之營業

四 市以內之警察衛生及各種公益慈善事項

五 其他依省法令賦與或由省政府委託市執行處理之事項

第一百十九條 一等市受省政府之監督得制定左列各種市稅

一 房屋稅 二 車馬稅 三 戲院及其他各種遊戲場稅 四 屠宰稅

五 酒館稅 六 附於省稅之附加稅 七 其他稅則得省政府之許可者

第一百二十條 一等市受省政府之監督得募集市債

第一百二十一條 二等市之組織得適用本法自第一百三條至第一百十七

條之規定但受縣政府監督

第一百二十二條 二等市之自治權得適用本法第一百十八條及第一百十九

條之規定但以不抵觸省及縣法令為範圍

第一百二十三條 一二等市之制度以省法律定之但在不背本法之範圍內一

二等市得自定其制度經省議會認可施行

第一百二十四條 三等市及鄉之組織以省法律定之但得斟酌各地方情形自
定其組織經省議會認可施行

第一百二十五條 凡市鄉之收入支出每年須詳細公布之

第十二章 本法之修正及解釋

第一百二十六條 本法公布後每十年須召集憲法會議一次議決應行修正案
交由公民總投票決定之

經省議會議員四分之三及全省縣議會及一等市議會團體三分之二提出修
正案得召集憲法會議決交公民總投票決定之

憲法會議之組織以省法律定之

第一百二十七條 因本法所發生之爭議由高等審判廳解釋之

第十三章 附則

第一百二十八條 省法律未公布以前中華民國現行法律及基於法律之命令與本法不相抵觸者仍得適用於本省

第一百二十九條 國憲未成立以前應歸於國之事權得由本省議決執行之

第一百三十條 戶口調查未完竣以前本法第二十九條之規定暫緩施行

省議員之名額暫以各縣田賦爲標準凡田賦未滿一萬元者選出一名一萬元以上六萬元未滿者選出二名六萬元以上十二萬元未滿者選出三名十二萬元以上十八萬元未滿者選出四名十八萬元以上者選出五名

其各縣應選出省議員之名額列表於後

長沙四名	瀏陽四名	湘潭四名	湘鄉四名	湘陰三名	岳陽三名
平江三名	甯鄉三名	益陽三名	攸縣三名	茶陵三名	寶慶三名
武岡三名	醴陵二名	安化二名	新甯二名	臨湘二名	華容二名
新化二名	城步一名	衡陽五名	衡山三名	零陵三名	永陽三名

鄧縣二名 安仁二名 常甯二名 祁陽二名 東安二名 江華二名
 道縣二名 寧遠二名 新田二名 永興二名 郴縣二名 宜章二名
 桂東二名 汝城二名 資興二名 桂陽二名 蘭山二名 臨澧二名
 嘉禾二名 永明二名 常德二名 桃源三名 澄縣三名 淵浦三名
 漢壽二名 石門二名 慈利二名 安鄉二名 臨澧二名 南縣二名
 沅陵二名 瀘溪二名 辰谿二名 會同二名 芷江二名 黔陽二名
 麻陽二名 永順二名 靖縣二名 紹甯二名 保靖二名 龍山二名
 桑植二名 沅江二名 通道二名 乾城二名 凤凰二名 永綏二名
 晉縣二名 大庸二名 古丈二名

第一百三十一條 戶口調查未完竣以前本法第四十七條之規定暫緩施行
 省長之選舉由省議會選出七人交由全省縣議員決選之

緩施行但非遇意外事變至遲須於本法公布後之一年內將省內各重要都會

商埠人口調查完竣依本法制定一等市制度施行之
第一百三十三條 全省人口之調查非遇意外事變至遲須於本法公布後二年

完竣

第一百三十四條 在國憲未成立以前省政府得徵收國稅但徵收額數與其用
企乃負局大省負草案內經省議會議決

第一百三十五條 依本法所定之初級審判廳及檢察廳至遲須於本法公布後

本法公布後頃即由見省文守發立去到局籌會擬定施行本

法所必須之法案於第一次省議會開會時提出議決

第一百三十七條 依本法成立之第一屆省議會第一次開會期不限於三十六
案第一項之規定

卷之二

第一百三十八條 本法公布後至遲須於三個月內依本法辦理省議會及各縣議會選舉省議會及各縣議會選舉完竣後至遲須於三個月內依本法選舉省長省長選出後臨時省長應即解職由正式省長依法組織省行政機關本法第八十七條之規定應即施行

一百三十九條 現有軍隊未收束以前本法第八十八條之規定暫緩施行但至依本法所定正式政府成立之日止須將軍費減至省預算案歲出二分之一至鄰近各省自治政府成立後之半年止軍費須減至省預算案歲出三分之一至國憲成立後之半年止軍費須減至省預算案歲出四分之一並須於國憲成

第一百四十條 立法司法行政各機關依本法成立時原設之機關應即廢止
第一百四十一條 本法由全省公民總投票可決後公布之日起施行

第一百三十九條 省本部設立文選、一課、督辦會計、一太陽會計不滿於二十六
歲之公務員之委派或錄用一次者，須經省會審議會審議後，由省長簽發委任狀。

第一百三十六條 本部公務員之委派由省長簽發委任狀時，應將其姓名及年齡

一并填入公務員名冊內，並由省長簽發委任狀。

第一百三十五條 省本部官員之薪俸由省長簽發委任狀時，應將其姓名及年齡

一并填入公務員名冊內，並由省長簽發委任狀。

第一百三十四條 由省長簽發委任狀時，應將其姓名及年齡

一并填入公務員名冊內，並由省長簽發委任狀。

第一百三十三條 全省人民之公務員之選舉由省長簽發委任狀時，應將其姓名

及年齡一并填入公務員名冊內，並由省長簽發委任狀。

第六章 省議員之選舉

第一百三十二條 省議員之選舉由省長簽發委任狀時，應將其姓名及年齡

一并填入公務員名冊內，並由省長簽發委任狀。

第一百三十一條 省議員之選舉由省長簽發委任狀時，應將其姓名及年齡

一并填入公務員名冊內，並由省長簽發委任狀。

第一百三十條 省議員之選舉由省長簽發委任狀時，應將其姓名及年齡

一并填入公務員名冊內，並由省長簽發委任狀。

第一百二十九條 省議員之選舉由省長簽發委任狀時，應將其姓名及年齡

一并填入公務員名冊內，並由省長簽發委任狀。

第一百二十八條 省議員之選舉由省長簽發委任狀時，應將其姓名及年齡

一并填入公務員名冊內，並由省長簽發委任狀。

第一百二十七條 省議員之選舉由省長簽發委任狀時，應將其姓名及年齡

一并填入公務員名冊內，並由省長簽發委任狀。

第一百二十六條 省議員之選舉由省長簽發委任狀時，應將其姓名及年齡

一并填入公務員名冊內，並由省長簽發委任狀。

第一百二十五條 省議員之選舉由省長簽發委任狀時，應將其姓名及年齡

一并填入公務員名冊內，並由省長簽發委任狀。

第一百二十四條 省議員之選舉由省長簽發委任狀時，應將其姓名及年齡

一并填入公務員名冊內，並由省長簽發委任狀。

- 第八條 省議員不得同時爲其他立法機關之議員
- 第九條 省議員依省憲法第四十二條之規定在任期内不得爲官吏及兼任有給之公職
- 第十條 省議會之集會開會閉會依省憲法第三十五條之規定
- 第十一條 省議會之常會臨時會議期依省憲法第二十六條第二十八條之規定但第一屆會期依第一百三十七條之規定
- 第十二條 省議會依省憲法第三十四條之規定分次選舉議長副議長以得票過出席議員之半數者爲當選議長及副議長須常駐議會
- 第十三條 省議會依省憲法第三十七條之規定設常駐委員會
- 第十四條 議長維持議會秩序及尊嚴並整理議事對外代表議會缺席時副議長代之議長副議長同時缺席時由議員中選出臨時議長代之
- 第十五條 省議員之資格省議會自行審查之
- 第十六條 省議會除省憲法及省議會有特別規定者外以議員總額過半數之出席爲法定開議人數
- 第十七條 省議會議事除省憲法及省議會有特別規定者外以出席議員過半數之同意決之可否同數取決於議長
- 第十八條 省議員於議案涉及本身或其親屬者非經省議會之許可不得與議
- 第十九條 省議員享受省憲法所賦與之保障
- 第二十條 省議會議事須公開之但依省行政長官之請求或出席議員過半數之可決時得秘密之
- 第二十一條 省議員違背議事細則或其他規定者得停止其到會情節較重者除名
- 第二十二條 省議員無故缺席多至五次者除名
- 第二十三條 省議員以省議會名義干預外事者停止其到會或除名

第十五章 告別員之費省會審定之日為有效

第十四條 省長辦公廳會辦處或其委員會及監督員外委員會

第十三條 各縣會辦處或其委員會三十個字由省道政委員會

舉出其總員二千選舉人署名並經監督員簽名

第十二條 每縣會辦處或其委員會三十個字由省道政委員會

舉出其總員二千選舉人署名並經監督員簽名

第十一條 省議會之常會議員會會費每年三十六萬兩三十八萬兩

議十兩 各議會之常會議員會會費每年三十五萬兩

律之公據

第二十四條 停止到會至多以五次為限依出席議員之多數決議行之除名依出席議員三分之二以上決議行之

第二十五條 省議員之歲費每月六十元出席費每次八元其他公費旅費以法律定之

第十六條 省議會議事細則旁聽規則及其他未經本法所規定者以法律定之

第十七條 本法自公布日起施行

湖南省省議會議員選舉法

湖南省憲法審查會審定

第一章 總則

第一條 省議會議員依省憲法第二十八條之規定由全省公民直接選舉之
規定

第二條 省議會議員依省憲法第二十八條之規定由全省公民直接選舉之

第三條 凡有中華民國國籍之公民依省憲法第三十條及第二十一條之規定
有選舉權及被選舉權

第四條 辦理選舉人員於其選舉區內停止其被選舉權

第五條 承攬本省工程之人及承攬本省工程之公司辦事人停止其被選舉權

第六條 省設選舉總監督以本省行政長官充之監督全省選舉事宜

第七條 各選舉區設選舉監督以各本區之行政長官充之監督一切選舉事宜

第八條 各區選舉均設投票管理員監察員開票管理員監察員各若干名由各

湖南省省議會議員選舉法

第二十六條 本法自公布日起施行

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第二十七條 當議員之薪資每員六十元由議會付入其公費或以其公費

出席議員三長之一週上焉議會

第二十八條 本法施行後正大從事為選舉機關之選舉機關之選舉

本區監督分叫委任之但監察員以本區選舉人爲限

第九條 投票管理員職務如左

一、掌投票所啓閉

二、決定投票之應否收受

三、掌投票處投票簿投票紙及選舉人名冊

四、保持投票所秩序

五、其他依本法所定屬於投票管理員職務之事項

第十條 開票管理員職務如左

一、掌開票所啓閉

二、清算投票數目

三、檢查投票紙真偽

四、決定投票之是否合法

五、保存選舉票

六、保持開票所秩序

七、其他依本法所定屬於開票管理員職務之事項

第十一條 投票監察員開票監察員各監視管理員辦理投票開票事宜

監察員與管理員意見不同時呈明選舉監督決定之

第十二條 凡辦理選舉人員均爲名譽職但得酌給公費

第二章 選舉程序

第一節 選舉區

第十三條 選舉區以現設之縣爲境界

第十四條 行政區劃之境界有變更時選舉區一併變更但原選議員不失其職

第二節 投票區

第十五條 各選舉區監督應按照地方情形分劃本管區域爲若干投票區

湖南省省議會議員選舉法

第十六條 投票區應於選舉期前若干日由各選舉區監督等定呈報總監督

第三節 選舉人名冊

第十七條 各選舉區監督應就本管區域內分派調查委員於選舉期前若干日按照選舉資格調查合格者造具選舉人名冊

調查辦事細則由各選舉區監督定之

第十八條 選舉人名冊應載選舉人姓名年歲職業籍貫住址住居年限

第十九條 選舉人名冊應於選舉期前若干日一併告成由各選舉監督呈報

第二十條 各選舉區監督應按各投票區分造選舉人名冊於選舉期前若干日
編號

第一「十個」名選舉監督會

第二十一條 宣示選舉人名冊以十五日爲期如本人以爲有錯誤遺漏或他人

認為資格不符時得於宣示期內取具證憑呈請本選舉區監督更正

卷之三

總監督其判定期間以十五日爲限

第二十二條 凡經各本區選舉監督或總監督判定更正者應由各本區選舉監督更正選舉人名冊并補報總監督

第二十三條 選舉人名冊確定後應分存各投票所及開票所

第十四條 各選舉區監督應於選舉期前若干日頒發選舉通告。

勝章集

二、投票所及開票所地址

第五節 拈票所及開票所

第十九條 每投票區設投票所一處開票所設於本選舉區監督所在地其地
址由各本選舉區監督定之

第二十條 公眾投票所及開票所由各本選舉區監督委員會設立於該選舉區內
或別置投票所及開票所於本管轄區內之公眾場所或由各本選舉區監督委員會
設立於該選舉區內之公眾場所

第二十一條 選舉人當選時應由各本選舉區監督委員會發給投票人證書

第二十二條 選舉人合議

第二十五條 每投票區設投票所一處開票所設於本選舉區監督所在地其地
址由各本選舉區監督定之

第二十六條 投票所及開票所得臨時增派警察保持秩序

第二十七條 投票所及開票所除本所職員選舉人及警察外他人不得擅入

第二十八條 投票所及開票所自投票及開票完畢之日起十五日以內裁撤之

第二十九條 投票所啓閉以午前八時至午後六時為限

第三十條 投票所及開票所辦事細則由各本選舉區監督定之

第三十一條 投票紙由總監督於選舉期前若干日分發各選舉區監督各選舉
區監督於若干日內分發各投票所

第三十二條 各選舉區監督應按照各投票區所屬選舉人分別造具投票簿並
按照定式製成投票冊於若干日內分發各投票所

第三十三條 投票簿應載明選舉人姓名年歲職業籍貫及住址

第三十四條 投票區除投票時外應加封鎖

第六節 投票開票及檢票

第三十五條 投票人以列名本投票所之投票簿者為限

第三十六條 投票人屆選舉期應親赴投票所自行投票

第三十七條 投票人於領投票紙時應先在投票簿所載本人姓名下簽字

第三十八條 投票人每名祇領投票紙一張

第三十九條 投票用無記名單記法每票祇書被選舉人一名不得自書本人姓
名

第四十條 投票人於投票所內除關於投票方法得與職員問答外不得與他人
接談

第四十一條 投票完畢後投票人應即退出

第四十二條 投票人倘有冒替及其他違背法令情事管理員及監察員得令退
湖南省省議會議員選舉法

出

第四十三條 管理員及監察員應將投票始末情形會同造具報告連同投票歷於投票完畢之翌日移交開票所並呈報本選舉區監督

第四十四條 選舉監督自各投票處送齊之翌日應酌定時刻先行宣示屆時親臨開票所督同開票即日宣示

第四十五條 檢票時應將所投票數與投票簿對照

第四十六條 選舉票有左列事項之一者無效

- 一、寫不依式者
- 二、夾寫他事者
- 三、字跡模糊不能認識者
- 四、不用投票所發票紙者
- 五、選出之人為選舉人名冊所無者

第七節 當選確定

第四十七條 開票所管理員及監察員應將開票始末情形會同造具報告於開票完畢之翌日呈送各本選舉區監督

所有選舉票應分別有效無效一併附呈於本屆選舉年限內由各本選舉區監督保存之

第四十八條 當選人足額後並依該區應出議員名額以得票比較多數者依次為候補當選人票數同時以抽籤定之

第五十條 當選人自接到當選通知之日起應於二十日以內答覆願否應選其逾期不覆者以不願應選論

第五十一條 凡應選為省議會議員者由各本選舉區監督給與議員證書

第五十二條 議員證書給與後各本選舉區監督應將選舉始末情形造具報告連同投票簿並有效無效之選舉票及議員名冊呈送總監督於本屆選舉年限內保存之

議員名冊應載明議員姓名年歲籍貫及所得票數

第三章 選舉變更

第一節 選舉無效

第五十三條 凡有左列事項之一者選舉無效

- 一、選舉人名冊因舞弊牽涉全數人員經審判確定者
- 二、辦理選舉違背法令經審判確定者

第五十四條 凡有左列事項之一者當選無效

- 一、不願應選
- 二、死亡

- 三、被選舉資格不符經審判確定者
 - 四、當選票數不實經審判確定者
 - 五、當選人舞弊經審判確定者
- 第五十五條 當選無效時證書已給發者應令繳還並將姓名及其原由宣示
- 第五十六條 當選無效時應以各該區候補當選人遞補之

第二節 补選

第五十七條 补選於選舉無效或議員缺額該選舉區無候補當選人時行之

第五十八條 關於補選事項均依本法之規定行之

第四章 選舉訴訟

第五十九條 選舉人確認辦理選舉人員有舞弊及其他違背法令行為得自選舉日起於十五日內向法庭起訴未設法庭之處得向相當受理訴訟之機關起訴

一、不滿票數

二、議員被指證有違憲或不當之行爲者得依前條之規定起訴

一、選舉人詐欺而致投票率全達人員為之開除其職

議五十三條 由省立法院於第一屆選舉後之

議院會議上提出

第三章 罷免辦法

議員各個選舉區民投票半數以上同意者得依

內省議會

議員被指證有違憲或不當之行爲者得依前條之規定起訴

議五十二條 議員被指證有違憲或不當之行爲者得依前條之規定起訴

第六十條 選舉人確認當選人資格不符或票數不實及有舞弊之行為者得依前條之規定起訴

第六十一條 落選人確認所得票數應當選而未當選或候補當選人確認名次有錯誤者得依前條之規定起訴

第六十二條 選舉訴訟事件應先於各種訴訟事件審判之

第五章 罷免辦法

第六十三條 關於選舉之犯罪依刑律處斷

第六章 附則

第六十四條 本法施行細則及關於第一屆選舉日期以省令定之

第六十五條 本法所定關於選舉事項之日期得由本省行政長官酌量情形更定之

第六十六條 本法經第一屆選舉後得由省議會修正之

第六十七條 本法自公布日起施行

第六十正卷 本卷漢字題外事場專官之日歷發由本管音通事
第六十四卷 次巡視官巡閱公署一國學日課及音會之
第六十五卷 論議
第六十六卷 論議
第六十二卷 聞外事場之職業及課事與酒
第六十一卷 聲議人論議對外事場之職業及課事與酒
第六十卷 聲議人論議對外事場之職業及課事與酒
第六十九卷 聲議人論議對外事場之職業及課事與酒

湖南省省長選舉法

湖南省憲法審查會審定

第一章 總則

第一條 省長選舉依省憲法第四十七條之規定由省議會預選候補當選人四名再由公民總投票決選

第二條 依省憲法第四十八條之規定凡本省公民年滿三十五歲以上在湖南繼續住居滿五年以上者得被選為省長

第三條 省長選舉時省行政長官應即委任選舉總監督及各分監督組織選舉總事務所於省城分所於各縣其組織規程以命令定之

第四條 選舉總事務所及各分所均設選舉管理員及監察員若干人由選舉總分監督分別委任但監察員以所監察之預選或決選之本區選舉人為限

第五條 選舉管理員之職務如左
一、決定投票之應否收受及是否合法

湖南省省長選舉法

- 二 掌投票紙投票簿及檢查投票紙之真偽
- 三 清查投票數目及保存選舉票
- 四 保持投票開票之秩序
- 五 其他關於管理員投票開票之事項

第六條 選舉監察員監視管理員辦理投票開票事宜於監察員與管理員意見不同時可陳明選舉監督決定

第二章 預選

第七條 選舉總事務所成立後兩月應即舉行預選預選期前一個月須將預選日期通告省議會

第八條 選舉總事務所按照省議員名額製定投票紙並依省議員名冊造具投票簿屆期由總監督率同管理員於省議會內按投票簿名次發給出席議員投票紙依次投票預選

第九條 預選用無記名單記法一次投票以得票較多者四名為候補當選人票數同時抽簽定之

第十條 預選投票須由總監督函請在省各法團新聞記者推舉定數之代表入場監視並得出省議會酌發定數之參觀券准公民領券入場參觀

第十一條 投票畢須即時開票將所投票數與投票簿對照

第十二條 預選票有左列事項之一者無效

- 一 寫不依式者
- 二 夾寫他事者
- 三 字跡模糊不能認識者
- 四 不用選舉總事務所所發投票紙者

第十三條 預選結果選舉總事務所即以候補當選人姓名電告各分所定於預選後一個月內同時舉行決選

第三章 決選

第十四條 各分所於決選期前一個月依省議會議員選舉法第十五條至第二十三條之規定劃分決選投票區調查決選公民資格但省議員選舉在舉行省長選舉一年以內者得適用省議員選舉人名冊不另施行調查程序

第十五條 各分所於決選期前頒發選舉通告應載事項如左

一 選舉日期

二 投票所開票所地址

三 投票方法

四 候補當選人姓名

第十六條 決選投票用無記名單記法於候補當選人中決選一人

第十七條 決選投票所開票所投票數與投票簿對照

第十九條 決選票有左列情事之一者無效

- 一 寫不依式者
- 二 夾寫他事者
- 三 字跡模糊不能認識者
- 四 不用投票所發票紙者
- 五 選出之人非候補當選人者

第二十條 開票結果各分所須將各候補當選人所得決選票數電報選舉總事務所

第二十一條 各分所於開票完畢之日起十日內將各該所管之文件票紙名冊等項一並移交該管縣分之行政署保管後即行撤消

第四章 當選確定

第二十二條 選舉總事務所彙集各分所電報各候補當選人所得之決選票數以得票最多者一人為省長當選人票數同時抽簽定之

第二十三條 省長當選人選出後由選舉總事務所通知省議會由省議會發給當選證書

第五章 選舉變更

第二十四條 凡辦理選舉人員於選舉時有違背法令納賄舞弊等情經審判確定與當選人有關係者則當選為無效

第二十五條 省長當選人不願應選或當選而死亡者均為當選無效

第二十六條 省長當選無效時須另行改選

第六章 選舉訴訟及罰則

第二十七條 選舉人確認辦理選舉人員有舞弊及其他違背法令行為得於十

日內向法庭或相當受理訴訟機關起訴

第二十八條 選舉訴訟應先於各種訴訟事件審判之

第二十九條 關於選舉之犯罪依刑律處斷

第七章 附則

第三十條 在戶口調查未完竣以前依省憲法第一百三十一條之規定省長選舉由省議會預選候補當選人七名交由各縣議會議員決選

第三十一條 由縣議會議員決選時本法第十四條第十五條第十七條不適用

第三十二條 由縣議會議員決選時各分所須於決選期前二十日將決選日期及候補當選人姓名通告縣議會

第三十三條 由縣議會議員決選時各分所須於決選期前一個月將各縣議會議員名額電報選舉總事務所領取投票紙並依各縣議員名冊造具投票簿屆期率同管理員監察員於各縣議會內按投票簿名次發給出席議員投票紙依

第二十條 當選議員人數多於應選議員人數時由當選議員依序抽籤決定

第二十一條 當選議員人數少於應選議員人數時由當選議員依序抽籤決定

第三章 當選議員

第四章 當選議員

第五章 當選議員

第六章 當選議員

第七章 當選議員

第八章 當選議員

次投票決選

第三十四條 由縣議會議員決選時各分監督須函請所在地之法團新聞記者推舉代表數人入場監視縣議會得酌定數之參觀券准公民領券入場參觀

第三十五條 由縣議會議員決選時應於投票畢即行開票

第三十六條 本法自公布日施行

湖南省法院編制法目錄

湖南省憲法審查會審定

- 第一章 總綱
- 第二章 審判廳通則
- 第三章 檢察廳通則
- 第四章 初級審判廳初級檢察廳
- 第五章 地方審判廳地方檢察廳
- 第六章 高等審判廳高等檢察廳
- 第七章 各廳廳長推事檢察官
- 第八章 書記官及繙譯官或繙譯
- 第九章 承發吏及檢驗員
- 第十章 庭丁及司法警察
- 第十一章 司法年度及事務分配

湖南省法院編制法目

香港大學
圖書館
HKU
Libraries

第十六章 本省自公事日記

第十五章 出庭證言及證人傳喚公訴與辯護各項之手續

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第十三章

大對照表

第十二章 法庭之開閉及秩序

第十三章 法庭之用語及記錄

第十四章 判決之評議及決議

第十五章 法律上之補助

第十六章 司法行政之職務及監督

第十七章 附則

湖南省法院編制法

湖南省憲法審查會審定

第一章 總綱

第一條 湖南省法院之編制採三級三審制

第二條 法院分為各級審判廳各級檢察廳如左

第一初級審判廳

初級檢察廳

第二地方審判廳

地方檢察廳

第三高等審判廳

高等檢察廳

第三條 除本法及其他法令有特別規定者外一切訴訟案件之初審至終審皆

在本省法院

湖南省法院編制法

第四條 各級審判廳及檢察廳各獨立行其職權不受何方之干涉但各級檢察廳爲一體檢察官應服從上官之命令

第五條 各級審判廳檢察廳之設立廢止及其管轄區域除本法規定外以省法律定之

第六條 各廳推事檢察官員額由省務院主管官廳呈准定之

第二章 審判廳通則

第七條 審判廳掌審判民事刑事行政訴訟案件但其他陸海軍審判等另有法令規定者不在此限

第八條 審判廳依法令所定管轄登記及其他非訟事件

第九條 初級審判廳爲獨任制其審判權以推事一員行之但省會商埠等初級審判廳置推事二員以上者於特別重大案件得用合議制其審判權以推事三員之合議庭行之

第十條 地方審判廳爲折衷制其審判權依左列各款分別行之

一 簡易控告案件以推事一員獨任行之

二 繁重控告案件以推事三員之合議庭行之

三 簡易案件經上告審發回更爲審判者亦以推事三員之合議庭行之

第十一條 高等審判廳爲合議制其審判權以推事三員之合議庭行之但重大案件認爲必要時得臨時增加推事爲五員

第十二條 合議審判以庭長爲審判長庭長有事故時以庭員中資深者充之獨任審判即以該推事行本法所定審判長之職權

第十三條 審判廳之審問無論獨任合議如延至四日以上未能判決者該廳長得另派推事一員蒞視爲補充推事

蒞視推事於承審推事有疾病或他事故不能繼續審判時有代其審判之權

第十四條 審判廳推事審判訴訟案件其事務分配及代理次序卽有未合本法

所定者其審判仍屬有效關於登記及其他非訟事件亦同

第十五條 審判廳權限及辦事方法本法未規定者按訴訟法及其他法令所定辦理

第三章 檢察廳通則

第十六條 檢察廳於刑事民事行政訴訟及其他非訟事件有左列職權

一 刑事 按刑事訴訟法及其他法令所定實行偵查預審提起公訴實行公訴提起上訴並監察判決之執行

二 民事與行政訴訟及其他非訟事件 按民事訴訟法及其他法令所定為訴訟當事人或公益代表人實行特定事宜

審判廳為民事訴訟當事人時應由配置該審判廳之檢察廳檢察官代理為原告或被告

第十七條 檢察廳依法令所定管轄各該監獄及看守所

第十八條 檢察廳之管轄區域與所配置之各級審判廳同

第十九條 檢察官遇有緊急事宜得於管轄區域外行其職權

第二十條 地方及高等檢察廳長有親自處理各該管區域內檢察官事務之權

並有將各該管區域內檢察官事務移於別處檢察官之權

第二十一條 各級檢察廳檢察官均有調度司法警察之權
調度司法警察章程由高等檢察廳長會同省務院主管官廳擬訂呈請省長批

准施行

第二十二條 檢察廳權限及辦事方法本法未規定者按訴訟法及其他法令所定辦理

第四章 初級審判廳初級檢察廳

第二十三條 各縣各設初級審判廳初級檢察廳其管轄區域即以各該縣管轄區域為限但地方邊關訴訟繁劇之縣得增設之

第二十四條 初級審判廳初級檢察廳各置廳長綜理各該廳事務並監督其行政

第二十五條 初級審判廳置推事一員初級檢察廳置檢察官一員但省會商埠及訴訟繁劇之縣得加置推事檢察官各一員以上初級審判廳置推事二員以上者應分庭審判之

第二十六條 各縣民事刑事訴訟案件除屬於高等審判廳特別管轄或國政府所設法院管轄者外其第一審管轄權全屬各該初級審判廳

第二十七條 初級審判廳依法令所定管轄各該縣登記及其他非訟事件

第二十八條 各縣初級檢察廳依法令所定於該縣行其職務但法令有特別規定者不在此限

第二十九條 初級檢察廳於刑事重大案件得行預審

第五章 地方審判廳地方檢察廳

第三十條 湖南省於舊有各府及直隸州各設地方審判廳地方檢察廳其管轄區域卽以舊有各府及直隸州管轄區域爲限但地方遼闊交通不便者得增設之

第三十一條 地方審判廳地方檢察廳各置廳長綜理各該廳事務并監督其行政但地方審判廳長應兼充一庭長

第三十二條 地方審判廳視事之繁簡酌定民事刑事庭數及獨任推事員數每庭各置庭長一員除兼充外以該庭資深推事充之監督該庭事務並定其分配

第三十三條 地方檢察廳視事之繁簡酌定檢察官員數

第三十四條 地方檢察廳長監督該廳各檢察官事務並定其分配

第三十五條 地方審判廳有管轄左列民事刑事行政訴訟案件之權

不服該管初級審判廳判決而控告之件

一不服該管初級審判廳決定或命令依法令抗告之件

三不服該管區域內行政官廳之處分依法訴訟之件

第三十六條 地方檢察廳之職權如左

一依法令於該配置之審判廳行其職務

二不服該管初級檢察廳之不起訴或不上訴處分聲明再議案件之處理

第三十七條 各該地方審判廳受理行政訴訟時應另組合議庭審判之

前項審判確定後如有損害賠償問題交該管初級審判廳為民事上之審判但

於審判時得因其情形附帶判決分別宣告之

若認為有犯罪情形應於前項判決確定後移該配置之檢察廳發交該管初級檢察廳偵查辦理

對於省長之處分提起行政訴訟時地方審判廳應不受理

第三十八條 地方檢察廳於該配置之審判廳審判行政訴訟時應派檢察官為

國家公益代表人

第六章 高等審判廳高等檢察廳

第三十九條 湖南省設高等審判廳各一廳為全省最高法院

第四十條 高等審判廳高等檢察廳各置廳長綜理各該廳事務並監督其行政

第四十一條 高等審判廳視事之繁簡酌定民事刑事行政庭數每庭各置庭長

一員以該庭資深推事充之監督該庭事務並定其分配

第四十二條 高等檢察廳視事之繁簡酌定檢察官員數

第四十三條 高等檢察廳置首席檢察官一員以該廳資深檢察官充之監督各

該檢察事務並定其分配

第四十四條 高等審判廳之審判權如左

第一民事 除本省與他省或國政府之訴訟應由國政府所設立之法院審判外於左列案件有終審權

一、不服地方審判廳判決而上告之件

二、不服地方審判廳決定或命令依法令抗告之件

第二刑事 除內亂罪或三等有期徒刑以上之關於國交及外患罪與國政府有關係者應由國政府所設立之最高法院審判外於左列案件有終審權

一、不服地方審判廳判決而上告之件

二、不服地方審判廳決定或命令依法令抗告之件

左列案件有第一審并終審權

一、內亂罪

二、關於國交及外患罪係三等有期徒刑以上者

第三行政訴訟 不服地方審判廳判決而上訴之件

關於省長之處分提起行政訴訟者有第一審並終審之權

第四十五條 高等審判廳為終審審判廳但若認控告審之調查事實尚未明確

無從為法律上之判決者得發回各該原審判廳更為審判

第四十六條 高等審判廳於管轄區域內有統一解釋法令必應處置之權但國法經國政府最高法院解釋者應從其解釋

前項解釋權不得指揮審判官所掌理各案件之審判

第四十七條 高等審判廳各庭審理案件如解釋法令之意見與本庭成他庭成^或案有異由高等審判廳長依法令之義類開民事庭或刑事庭或行政庭或各庭總會評議決之

第四十八條 高等檢察廳於高等審判廳第一審並終審案件應派檢察官偵查預審與該案有關之各級檢察官長應從高等檢察廳長之命令辦理各項事務其民事刑事終審案件依法令行其職務

第四十九條 高等檢察廳於高等審判廳審判行政訴訟時應派檢察官為國家公益代表人

第五十條 高等檢察廳於人民不服該管地方檢察廳不上訴處分聲明再議案件應予以適當之處理

第五十一條 高等審判廳就上告輕微案件或事實明瞭者得用書面審理前項書面審理若為刑事或人事訴訟上告時應諮詢高等檢察廳檢察官之意見

第七章 各廳廳長推事檢察官

第五十二條 推事及檢察官應照司法官考試法經考試合格或免試者始得依司法官任用法任用之

司法官考試法及任用法以省法律定之

第五十三條 凡法官依考試法經第一次考試合格或免試者分發地方以下各審判廳或檢察廳學習以二年為期滿

學習推事學習檢察官應受各該廳長之監督屆期分別出具切實考語呈報省

務院主管官廳覈定鑑別之其劣者得隨時罷免

第五十四條 凡在各廳學習滿一年以上者得由各該廳長分別酌派掌理特定司法事務

第五十五條 學習人員期滿後應依法官考試法受第二次考試合格或免試者

始得作為候補推事或候補檢察官分發地方以下各審判廳或檢察廳聽候補用
候補推事或檢察官得不拘年限遇有初級廳推事或檢察官缺額即予補用
第五十六條 補地方審判廳推事地方檢察廳檢察官或初級審判廳長初級檢察廳長者須具左列資格之一

- 一 曾任推事或檢察官二年以上者
- 二 候補推事或檢察官候補逾二年以上因無缺額未得補用者
- 三 有司法官考試法考試資格或免試資格而在法政法律各學校充任主要

科目教員或執行律師職務三年以上經主管官廳審查認爲成績優良者第五十七條 補高等審判廳推事高等檢察廳檢察官或地方審判廳長地方檢察廳長者須具左列資格之一

- 一 曾任推事或檢察官五年以上者
- 二 有司法官考試或考試資格或免試資格而在法政法律各學校充任主要科目教員或執行律師職務五年以上經主管官廳審查認爲成績優良者第五十八條 具有前條資格之一者得被選爲高等審判廳長高等檢察廳長第五十九條 第五十六條第五十七條所載年限均接續計算但中間若有間斷時期應除去之

第六十條 高等廳推事檢察官及地方以下廳長推事檢察官由省務院主管官廳按司法官任用法以合前定資格者呈請省長任命之

第六十一條 高等審判廳長高等檢察廳長由省議會依本法第五十八條所定

之資格選任之

第六十二條 凡有左列情事之一者不得爲各廳廳長推事檢察官

- 一 因褫奪公權喪失爲官吏之資格者
- 二 曾處徒刑者
- 三 破產未償債務者
- 四 爲政黨員或各議會議員
- 五 經營商業及官吏不應爲之業務

第六十三條 各廳廳長推事檢察官在職中不得爲左列各事

- 一 於職務外干與政事
- 二 爲報館主筆或律師
- 三 爲政黨員或各議會議員
- 四 兼任非本法所許之公職
- 五 經營商業及官吏不應爲之業務

第六十四條 高等廳推事檢察官及地方以下各廳廳長推事檢察官如因精神

卷五十一

第五十

第六十二

第六十三

六

二 本院遇官告時以該廳員為主事官

一 命官告時以該廳員為主事官

卷五十一

第五十

第六十二

六

衰弱不能任事由高等廳長同省務院主管官廳呈請退職

第六十五條 審判廳及檢察廳如有裁改其裁缺之推事及檢察官由省務院主管官廳呈請給以全俸遇缺即補

第六十六條 各廳廳長推事檢察官在任中不得勒令免職停職降職轉職或減俸但左列各款不在此限

一 有本法第六十二條第六十三條各款情形者

二 因懲戒調查或刑事被告依法應停職者

三 因刑罰之宣告或懲戒之處分者

四 高等審判廳長高等檢察廳長依省憲法第三十九條第八款被彈劾者

第六十七條 各廳廳長推事檢察官之俸給雖在懲戒調查或刑事被告時仍應照給

第六十八條 司法官懲戒法官俸法另以省法律定之

第八章 書記官及譯官或翻譯

第六十九條 各級審判廳各級檢察廳分別各置書記官長書記官掌訴訟紀錄統計檔案會計文牘及其他一切庶務

第七十條 各級審判廳各級檢察廳書記官員額視事之繁簡定之但不得少於各該廳合議庭及獨任推事或檢察官之數

各廳置書記官長一員從廳長之命令分配各書記官事務並監督之

第七十一條 各廳書記官從各該官長之命令得於權限內互相代理

第七十二條 地方以下各廳得各派該廳學習推事或學習檢察官臨時執行該廳書記官事務

其應署名者附記臨時代理字樣

第七十三條 審判廳開庭審判時書記官應遵審判長之命令執行職務其關於特定事宜應遵該特定推事之命令執行職務

檢察廳偵查預審時書記官應遵該檢察官長之命令執行職務其關於特定事宜應遵該特定檢察官之命令執行職務

書記官據前二項命令製作訴訟紀錄編製或更改文書如認該命令爲不當應附記其意見

第七十四條 書記官於權限內所行職務即不合本法所定之事務分配仍屬有效

第七十五條 書記官以考試合格者由高第審判廳長高等檢察廳長分別錄用之書記官考試任用章程由省務院主管官廳呈准定之

第七十六條 省會及商埠各審判廳得特置繙譯官由高等廳長酌量委用但得臨時以各廳推事或檢察官充任推事或檢察官充任繙譯官時不得於該案兼

行推檢職務

第七十七條 偏僻各縣審判檢察廳因人民有不通普通言語得特置繙譯由各

該廳長酌量委用但得臨時以該廳吏警兼充

第七十八條 書記官及繙譯官或繙譯權限並應辦事宜本法所未定者按訴訟法及其他法令所定辦理

第九章 承發吏及檢驗員

第七十九條 地方以下各審判廳置承發吏其職務如左

一 發送文書

二 依照命令執行判決

三 當事人有所呈請執行通知催傳

第八十條 承發吏應服從各廳官長之命令

第八十一條 承發吏執行職務時應服制服

第八十二條 承發吏須經考試始准錄用

承發吏考試錄用章程由省務院主管官廳定之

第八十三條 承發吏由高等審判廳長派充並得委任地方以下各審判廳長派充之

第八十四條 充承發吏者應繳納相當之保證金

第八十五條 承發吏應照承發吏職務章程所定分別酌給津貼

承發吏職務章程由省務院主管官廳定之

第八十六條 承發吏權限並應辦事宜本法所未定者按訴訟法並承發吏職務章程及其他法令所定辦理

第八十七條 初級檢察廳置檢驗員輔助該廳長或檢察官執行檢驗職務但未經該廳長檢察官或蒞視推事親自檢驗者不得有效

第八十八條 檢驗員應服從各該廳官長之命令

第八十九條 檢驗員於執行職務時應服制服

第九十條 檢驗員以檢驗學校畢業生考試合格並有檢驗經驗者始准錄用

檢驗員考試錄用章程由省務院主管官廳定之

第九十一條 檢驗員考試合格經驗不足者得派充實習檢驗員

第九十二條 檢驗員由高等檢察廳長派充並得委任地方以下各檢察廳長派充之

第九十三條 檢驗員學習檢驗員之薪津由省務院主管官廳定之

第十章 庭丁及司法警察

第九十四條 法庭置相當額數之庭丁

第九十五條 法庭開審時應訊人證除在押應簽提者外均由庭丁引至法庭審

審

第九十六條 庭丁執行職務時應服制服

第九十七條 庭丁之僱用撤換由各該審判廳長行之

第九十八條 庭丁服務章程由省務院主管官廳定之

第九十九條 各級檢察廳置相當額數之司法警察

第一百條 司法警察應服從各該廳檢察官長之命令

第一百零一條 司法警察依各該廳檢察官長之命令執行傳喚拘攝解送人犯

搜查證據羈押人之收提取保並於法庭開審時受審判長之指揮維持秩序

第一百零二條 司法警察於執行職務時應服制服

第一百零三條 各廳司法警察服務規程由高等檢察廳定之但地方以下各廳

得自行擬定呈請高等檢察廳核准施行

第一百零四條 司法警察權限及應辦事宜本法所未定者按訴訟法及其他法
令所定辦理

第十一章 司法年度及事務分配

第一百零五條 司法年度每年自一月初一日起至十二月底止

第一百零六條 地方以下審判廳檢察廳辦事章程由省務院主管官廳呈准定

之惟施行以前應知高等審判廳高等檢察廳

地方審判廳長地方檢察廳長按照前項章程統一所轄各廳應辦事宜並發布

命令定期開廳時刻及開庭日期

高等審判廳高等檢察廳各辦事章程由各該廳呈准定之惟施行以前應知

省務院主管官廳

第一百零七條 各級審判廳長按照辦事章程及其他命令於每年年終應開會

議預定次年左列事宜

一 分配合議庭及獨任推事應辦之司法事務

二 定庭長庭員獨任推事之配置及其代理次序

三 定第一百十條所載代理次序

第一百零八條 前條會議各該推事庭長陳述意見後由該廳長取決但該廳長
得取決於多數之意見

第一百零九條 各級檢察廳長按照辦事章程及其他命令應於每年年終預定次年左列事宜

一 分配檢察官應辦之事務

二 定檢察官之配置

三 定第一百十一條所載代理次序

第一百一十條 高等及各地方審判廳推事及代理推事遇有事故得以直隸下級審判廳推事代理

第一百一十一條 地方以下各審判廳並准用各該廳候補或學習推事代理人

本條之代理以緊急事宜爲限

第一百十一條 檢察官遇有必須代理情形得臨時代理所屬檢察廳檢察官

第一百十二條 地方以下各審判廳檢察廳遇有法令上或事實上不能執行職務時得以最近同級之審判廳或檢察廳暫行代理但以緊急事宜爲限

第一百十三條 各級審判廳檢察廳已分配之事務於本司法年度內非有不得已情形不得變更

第十二章 法庭之開閉及秩序

第一百十四條 法庭開設於各級審判廳內但有特別規定者不在此限

第一百十五條 法庭首席爲審判長於開閉法庭及審問訴訟均有指揮之權並於開庭時有維持秩序之權

第一百十六條 法庭之審判公開之若審理中有停止公開之必要者得宣示其理由停止公開但宣告判決時仍應公開

停止公開時審判長得指定尚無妨碍之人特許旁聽

第一百十七條 審判長以旁聽人妨害法庭執務或其他不當之情形者得酌量

輕重照左列各款分別處分

一命退出法庭

二命看管至閉庭時

三至閉庭時更得處以十日以內之拘役或十元以內之罰金

第一百一十八條 原被告中證人鑑定人繙譯及告訴發人等有前條情形者依

左列分別辦理

一刑事被告受前條第一或第二款處分者得不待其陳述即行審理

二民事原被告受前條第一或第二款處分者得聽在庭當事人之供述即行審理

三刑事被告或民事原被告受前條第二款處分者該處分應與各本案分別宣

告

四中證人鑑定人告訴發人等得不待閉庭實行前條第三款處分

第一百一十九條 第一百一十七條第二款處分不得用刑律俱發罪之例

第一百二十條 律師在法庭代理訴訟或辯護案件其言語舉動如有不當審判

長得禁止其代理或辯護

非律師而爲訴訟代理人者亦同

第一百二十一條 處分妨害法庭秩序之人應詳記其事由於讞牘

第一百二十二條 受第一百一十七條之處分者如係官員得按其情節請付懲戒

律師受第一百二十條第一項之處分者亦同

第一百二十三條 推事檢察官書記官等在法庭執務時均應服制服律師在法庭時亦同

第十三章 法庭之用語及記錄

第一百二十四條 法庭之審判應用本國語言

第一百二十五條 原被告中證人鑑定人如有語言不通者得由繙譯官或繙譯

二、凡審判廳皆應設立評議會，其人數由各該廳長酌定，但不得少於十八人。

三、凡審判廳之評議會，應在該廳之轄區內，以十日為定期，遇有緊急事件，得隨時召集。

太保公使司

一、論案出審議

註重湖南各處公文

傳譯

第一百二十六條 審判廳之案牘用本國文字記錄之，如恐兩造爭執或有必要時，得附錄外國語言及各縣土語存案。

第十四章 判決之評議及決議

第一百二十七條 審判廳合議庭判決案件，應照本法所定推事員數評議，議決之。

第一百二十八條 判決之評議，由審判長督率行之。該庭員應各陳述意見，陳述意見之次序，以官資較淺者為始，資同以年少者為始，以審判長為終。

第一百二十九條 評議以過半數決之。

關於賠償或罰金之金額，若意見紛出，不能得過半數者，將諸說排列以金額之多寡為序，數至居中之說即以其說決之。

關於其他科刑案件，若意見紛出，不得過半數者，將諸說排列以不利被告之輕重為序，數至居中之說即以其說決之。
前項評議會由該廳長命令該庭長督率行之，即以該庭長或推事中資深者一員為會長，其總會由該廳長督率行之，其會長由該廳長自任或命令各庭長中資深者一員任之。

第一百二十八條第二項及第一百二十九條之規定準用之於本條評議會及評議總會。

第一百三十條 高等審判廳依本法第四十七條之評議會，須有該庭推事三分之二以上列席，其總會須有各該庭長推事三分之二以上列席方得開議。

前項評議會由該廳長命令該庭長督率行之，即以該庭長或推事中資深者一員為會長，其總會由該廳長督率行之，其會長由該廳長自任或命令各庭長中資深者一員任之。

第一百三十一條 評議應守秘密，但候補及學習推事准其入座旁聽。

第十五章 法律上之輔助

第一百三十二條 各審判廳辦理訴訟事宜，應互相輔助。

第一百三十三條 前條之輔助，各檢察廳相互間亦同。

第一百三十四條 各審判廳檢察廳之書記官以下各職員於其權限內事務應互相輔助

第十六章 司法行政之職務及監督

第一百三十五條 各級審判廳長各級檢察廳長按照本法各任司法中行政之職務

第一百三十六條 司法行政之監督權分別屬於左列各機關

一 高等審判廳長高等檢察廳長監督各該廳及地方以下各審判廳檢察廳
二 省務院主管官廳監督高等廳推事檢察官及地方以下各審判廳檢察廳
三 地方審判廳長地方檢察廳長監督各該廳及各所屬初級審判廳檢察廳
四 初級審判廳長初級檢察廳長監督各該廳

第一百三十七條 監督權之行使得爲左之處分

一 廢弛職務或逾越者加以儆告使之勤慎

二 行止不檢者加以儆告使之悛改

第一百三十八條 審判廳及檢察廳各員如有前條情形屢戒不悛或情形較重者依司法官懲戒法交付懲戒

第一百三十九條 前各條列舉之司法行政職務及監督權不得有瞻徇請託情事

第一百四十條 審判廳及檢察廳各員關於法律及司法行政事宜若有監督權之各官長有所詢問應陳述其意見

第一百四十一條 本章規定不得限制審判上所執事務及審判官之審判權

第十七章 附則

第一百四十二條 本法第四十四條第一款規定應屬國政府法院管轄案件在國政府未成立前暫由本省法院管轄之

其第二款規定應屬國政府最高法院管轄案件在國政府未成立前暫由本省

高等審判廳管轄之

第一百四十三條 本法第四十六條但書規定在國政府未成立前不生效力但以前統一時中央大理院之解釋與本法不相抵觸者得以該條但書論

第一百四十四條 本法第九十條所定若無合格人員得暫以舊檢驗吏充之

第一百四十五條 本法如有應行修改之處得由省議會修改之

前項省議會指依湖南省憲法組織成立之省議會

第一百四十六條 本法自公布之日起施行

湖南省縣議會議員選舉法

湖南省憲法審查會審定

第一條 縣議會議員名額按照省憲法第一百零六條之規定依縣之大小酌定

之但不得少于十六人至多不得過五十人

第二條 縣議會由全縣有選舉權者用無記名投票法直接選出之議員組織之

第三條 本省人民年滿二十一歲以上于調查選舉人資格以前在本縣繼續居

住滿一年以上無左列情事之一者有選舉縣議員之權

- 一 患精神病者
- 二 被剝奪或停止公權尚未復權者
- 三 受破產宣告尚未撤消者
- 四 吸食鴉片煙者
- 五 營不正當業者
- 六 未受義務教育者但義務教育未普及以前以不識文字者爲限

第四條 公民年滿二十五歲以上無左列情事之一者有被選為縣議員之權

一 現役軍人

二 現任行政司法官吏

三 現任宗教師

四 在校未畢業之學生

第五條 辦理選舉人員於其選舉區內停止其被選舉權

第六條 縣設選舉監督以本縣縣長充之監督全縣選舉事宜

第七條 縣選舉監督按照各該縣所屬市鄉區域得酌分為若干選舉區

第八條 各區選舉由各該區之市鄉自治機關辦理之但選舉區內不止一市鄉

自治機關時得由縣選舉監督酌令協同辦理

第九條 市鄉自治機關調查選舉人名冊按名記載姓名年齡職業居住年限于選舉期前若干日一律編成宣示公衆

第十條 選舉人名冊宣示後如本人有以為錯誤遺漏或他人認為資格不符時

得於二十日內取具憑證聲請市鄉自治機關更正

前項聲請更正市鄉自治機關應于五日內判定之不服者得呈請于本縣選舉監督其判定期間以十日為限

第十一條 凡選舉人名冊經市鄉自治機關或縣選舉監督判定更正者應即更正之

第十二條 選舉人名冊確定後應分別由縣選舉監督及市鄉自治機關保存之

第十三條 縣選舉監督應于選舉期前若干日頒發選舉通告應載事項如左

一 選舉日期

二 投票地址

三 投票方法

四 各區應出議員名額

第十八條 谷酒數舉由各鄉鎮之市縣自備辦置之日每
千人開票所每選舉區一所由縣選舉監督酌定之
第十九條 市鄉自治機關應按照各投票所之投票人數分別造具投票簿于選
舉期前若干日分交各投票所

一、選舉人
二、投票所及開票所

第三十條 公民年滿二十正滿凡土滿三十歲者之餘者皆得選舉權

三、投票票冊

第十四條 投票所分設于各選舉區如區域較大者得劃定地段分設投票所若干開票所每選舉區一所由縣選舉監督酌定之

第十五條 市鄉自治機關應按照各投票所之投票人數分別造具投票簿于選
舉期前若干日分交各投票所

投票簿應記載投票人姓名年齡職業居住年限

第十六條 投票所之啓閉由市鄉自治機關掌之其啓閉時刻以午前八時至午
後六時為限

第十七條 投票紙由縣選舉監督按照定式製成于選舉期前若干日分發各投
票所

第十八條 投票所及開票所自投票之日起十日內即須裁撤

第十九條 投票人以列名于各該投票所之投票簿者為限

第二十條 投票人屆選舉期應親赴投票所自行投票

第二十一條 投票人于領投票紙時應先在投票簿所載本人姓名下簽字
第二十二條 投票人每名祇領投票紙一張用無記名單記法每票祇書被選舉
人姓名不得自書本人姓名

第二十三條 投票人於投票所內除關於投票方法得與職員問答外不得與他人接談

第二十四條 投票事竣市鄉自治機關應即將投票函移送開票所

第二十五條 檢票時應將投票數與投票簿對照並任選舉人參觀

第二十六條 選舉票有左列事項之一者無效

一、寫不依式者
二、夾寫他事者

三、字跡模糊不能認識者

四、不用投票所所發投票紙者

第二十七條 被選舉人以在本區得票較多者為當選當選人名次以得票多少為先後票數同時以抽籤定之

第二十八條 當選人確定後應將其姓名及得票數目榜示並造具清冊及始末情形連同選舉票紙呈送縣選舉監督由縣選舉監督通知當選人所有選舉票紙應分別有效無效並前項清冊一併彙送縣選舉監督于本屆選舉年限內保存之

第二十九條 當選人自接到當選通知之日起應于十五日內答復願否應選逾期不復者以不願應選論

第三十條 凡應選者由縣選舉監督給予議員證書

第三十一條 凡有左列事項之一者選舉無效

- 一 選舉人名冊因舞弊牽涉全數人員經審判確定者
- 二 辦理選舉違背法令經審判確定者

第三十二條 凡有左列事項之一者當選無效

- 一 不願應選
- 二 死亡
- 三 被選舉資格不符經審判確定者
- 四 當選票數不實經審判確定者
- 五 當選人舞弊經審判確定者

第三十三條 當選無效時證書已發給者應令繳還並將姓名及其緣由宣布

第三十四條 當選無效時應以各該區被選舉人得票次多數者遞補之

第三十五條 議員任期二年以當選之日起算滿二年改選

補缺議員其任期以補足前任之任期為限

第三十六條 選舉人確認辦理選舉人員有舞弊及其他違背法令行為得自選舉日起於十五日內向法庭起訴未設法庭之處得向相當受理訴訟之機關起

香港大學
圖書館

圖書館

卷之十一

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第三十七條 選舉人確認當選人資格不~~得~~或~~要~~被~~不~~當~~之~~時，
衣前條之規定起訴

第三十八條 落選人確認所得票數應當選而未當選或得票次多數人確認名
三一六之見三四五

第三十九條 選舉訴訟事件應先於各種訴訟事件審判之次有錯認時得依三十六條之規定

第四十條 關於選舉之犯罪依刑律處斷

第四十一條 第一屆選舉日期由縣長定之

第四十二條 本法經第一屆選舉後由省議會制定之。本法施行時各縣之市鄉自治機關有未設立者得由縣選舉監督

照請地方正紳依本法之規定辦理之

第四十四條 本法自公布日起施行

APPENDIX

III

Ch'ien Tuan-sheng's English translation of the 1923 Republic of China Constitution



APPENDIX C

THE CONSTITUTION OF THE REPUBLIC OF CHINA, OCTOBER 10, 1923¹

PREAMBLE

The Constituent Assembly of the Republic of China, in order to foster national glory, secure the national boundaries, promote social welfare, and defend human dignity, do hereby adopt this constitution and cause it to be promulgated throughout the land for faithful and perpetual observance by all.

CHAPTER I. FORM OF GOVERNMENT

Art. 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.

Art. 5. Citizens of the Republic of China shall be equal before the law, without distinction of race, class, or religion.

¹ Based largely on the official translation in *Constitution and Supplementary Laws and Documents of the Republic of China*, China Commission on Extraterritoriality (Peking, 1924), with modifications by the author.

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 law, in accordance with law.

Art. 16. A citizen of the Republic of China shall have the right to petition the Parliament 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 public office 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

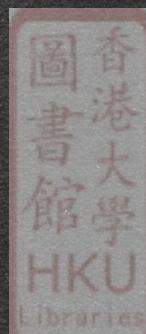
Art. 22. Of the public powers of the Republic of China, those relating to national affairs shall be exercised in accordance

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 subjects of legislation and execution 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 all other taxes the rate 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, appointments, 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 subjects of legislation and execution 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.

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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 subjects of legislation and execution by a Province, or under its order, by a *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 Parliament, 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 concern 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 Supreme Court.

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 null and void. When doubt arises as to whether a Provincial law conflicts with a national law, interpretation shall lie with the Supreme Court.

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 Parliament, be required to share the burden at rates increasing progressively with their annual revenues.

Art. 30. In the event of financial or extraordinary calamity, the locality concerned may, with the approval of the Parliament, 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 decided by the Parliament.

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 fails to perform its duty as provided by a national law and refuses to obey after a warning by the Government, the Government may, with the national power, compel performance.

The aforesaid measure shall be stopped when it is disapproved by the Parliament.

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 in 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 *Hsien*, but not Provinces, have been established.

CHAPTER VI. THE PARLIAMENT

Art. 39. The legislative power of the Republic of China shall be exercised by the Parliament.

Art. 40. The Parliament 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 the law.

Art. 50. Each house shall have a Speaker and a Vice-Speaker who shall be elected from among its own members.

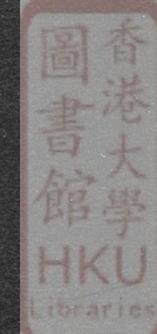
Art. 51. Each house shall itself convene, open, and close its session; provided that extraordinary sessions shall be called under any of the following circumstances:

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.



APPENDICES

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 cast the deciding vote.

Art. 58. An identical decision of both houses shall be the decision of the Parliament.

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 no-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 Supreme Court.

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. THE 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

APPENDIX C

country for ten years or more, shall be eligible as President.

Art. 73. The President shall be elected by a Presidential Electoral College composed of all the members of the Parliament.

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 re-election, 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 Parliament 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 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 Parliament 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 that time a new President 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 provides otherwise.

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.

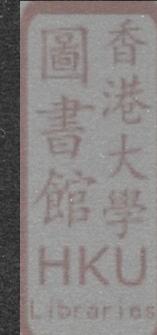
Art. 83. The President shall be the representative of the Republic with regard to foreign powers.

Art. 84. The President may, with the approval of the Parliament, declare war; provided that in the matter of defense against foreign invasion, he requests the approval of the Parliament 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 Parliament.

Art. 86. The President may proclaim martial law in accordance with law; provided that, if the Parliament 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 Supreme Court, remit or reduce punishments and restore civil rights; provided that with regard to a decision in an impeachment case, no restitu-



tion 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 no 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. THE 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 Parliament 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 Parliament, 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 or 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. THE JUDICIARY

Art. 97. The judicial power of the Republic of China shall be exercised by courts of law.

Art. 98. The organization of the judiciary and the qualifications for judicial officials shall be prescribed by law.

The President of the Supreme Court shall be appointed with the approval of the Senate.

Art. 99. Courts of law 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 or any law provides otherwise.

Art. 100. Trials in a court of law 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 the case of an alteration in the organiza-

APPENDIX C

tion 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 Parliament 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 Parliament, he may, within the period for promulgation, state the reasons and request the Parliament 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 Parliament 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 Parliament is submitted for reconsideration, the provisions relating to bills shall apply.

Art. 108. A law in conflict with the Constitution shall be null and 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 Parliament 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 Parliament.

If the Senate amends or rejects a budget passed by the House of Representatives, the concurrence of the House of Representatives 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 funds for continuing expenditures 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 Parliament without the concurrence of the Government:

- Expenditures legally due from the Government as obligations.

- Expenditures necessary to carry out treaties.

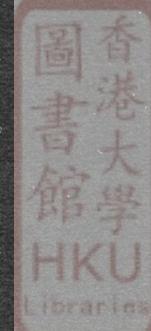
- Expenditures made necessary by provisions of law.

- Continuing expenditure funds.

Art. 116. The Parliament 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 rebellion, or relief for an



tion 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 no 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.

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Art. 113. The Government may, for special undertakings, provide in the budget funds for continuing expenditures 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 Parliament without the concurrence of the Government:

- Expenditures legally due from the Government as obligations.

- Expenditures necessary to carry out treaties.

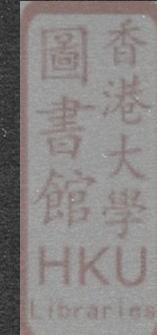
- Expenditures made necessary by provisions of law.

- Continuing expenditure funds.

Art. 116. The Parliament 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 rebellion, or relief for an



extraordinary calamity when the urgency of the situation makes it impossible to summon the Parliament; provided that such measures shall be submitted to the Parliament 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 actual settlement 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 Parliament.

If the House of Representatives rejects such actual settlement or a bill for subsequent approbation, 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 shall, when it has been passed by the Parliament, 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 *Hsien*.

Art. 125. A Province may, in accordance with the provisions of Article 22 of Chapter V of this Constitution, make a 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 Assembly, composed of delegates elected by the Provincial Assembly, *Hsien* Assemblies, and legally constituted professional associations of the Province.

Each *Hsien* shall elect one delegate. The number of delegates elected by the Provincial Assembly and those elected by the legally constituted professional associations shall not exceed one-half of the total number of delegates elected by *Hsien* Assemblies; provided that candidates for election by Provincial Assemblies and *Hsien* 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 said Assembly shall be elected by direct action.
2. A Province shall have a Provincial Administrative Council which shall administer all matters of Provincial self-government. Said 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 *Hsien*:

1. A *Hsien* shall have a *Hsien* Assembly which shall have legislative power over all matters of self-government in the *Hsien*.
2. A *Hsien* shall have a Magistrate who shall be directly elected by the citizens of the *Hsien*, and shall, with the assistance of the *Hsien* Council, administer all matters of *Hsien* 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 *Hsien* shall have the right to retain a portion of the Provincial taxes raised in the *Hsien*; provided that such portion shall not exceed 40 per cent of the whole amount.
4. The Provincial Government shall not dispose of the property of the *Hsien*, or their self-government funds.
5. A *Hsien* 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 *Hsien* shall have the duty to enforce the national and Provincial laws and ordinances.

Art. 129. The separation of the Provincial and *Hsien* taxes shall be determined by the Provincial Assembly.

Art. 130. A Province shall not enforce special laws against one or more *Hsien*; provided that this provision shall not apply to laws concerning the general interests of the whole Province.

Art. 131. A *Hsien* 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 *Hsien* may, as well as being executed by officials appointed by the Republic, be entrusted to the self-government organs of the Province or *Hsien*.

Art. 133. If a self-government organ of a *Hsien* 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 *Hsien*, 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 *Hsien*, and be governed by the provisions of this Chapter; provided that, pending the establishment of the Province and *Hsien*, their administrative systems shall be prescribed by law.

CHAPTER XIII. THE AMENDMENT, INTERPRETATION, AND VALIDITY OF THE CONSTITUTION

Art. 136. The Parliament 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.

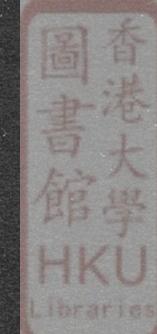
The members of either house shall not make a motion for a proposal to amend the Constitution unless such motion is signed by one-fourth of all the members of the house.

Art. 137. An amendment to the Constitution shall be made by the Constituent Assembly.

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 Constituent Assembly.

Art. 140. The Constituent Assembly shall be composed of the members of the Parliament.



APPENDIX

IV

1925 Revised Constitution of Hunan

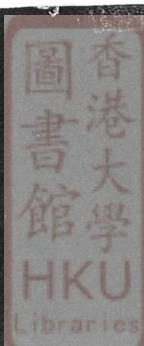


中國現代史叢刊

(第 一 冊)

吳相湘 主編

正中書局印行



湖南省憲法

湖南省憲法會議修正本

序 言

湖南全省人民爲增進幸福鞏固國基制定憲法如左

第一章 總 綱

- 第一條 湖南爲中華民國之自治省
- 第二條 湖南省以現有之土地爲區域
- 第三條 凡有中華民國國籍繼續住居本省滿二年以上者皆爲本省人民
- 第四條 省自治權屬於省民全體

第二章 人民之權利義務

- 第五條 人民在法律上一律平等無男女種族宗教階級之區別無論何人不得以人身爲買賣之目的物
- 第六條 人民有保護其身體生命之權
- 身體之自由權非依法律不受何種限制或剝奪

依法而受限制或被剝奪時不得虐待或刑訊

除現役軍人外凡人身自由被剝奪時施行剝奪令之機關至遲須於二十四小時以內以剝奪之理由通知本人令其得有即時提出申辯之機會被剝奪人或他人皆得向法庭請求出庭狀法庭不得拒絕之

人民有要求受適當法庭迅速審判之權除依戒嚴法規定外不受軍法機關之審判

凡行爲必於其實行以前已經法律規定爲犯罪行爲審判時方得以犯罪目之

人民受法庭審判時非正式宣告判決有罪確定後不受何種刑罰之執行

人民不受身體上之刑罰

第七條 人民有保護其私有財產之權

人民之私有財產依法律認爲必要時非給以相當之價值不得收爲公用

人民之私有財產非依法律不得查封沒收及其他處分

人民之私有財產不受非法之科罰損輸或借貸

第八條 人民有保護其居宅之權

人民居宅不得駐屯軍隊但戰時依合法之程序得駐屯之

第九條 人民之身體居宅郵電文書及各種財物除經本人允許或依合法之程序外不受搜索檢查

第十條 人民限於不妨害社會秩序善良風俗有信仰宗教之自由政府不得對於何種宗教與以不平之限制或特享之利益

第十二條 人民在不抵觸刑事法典之範圍內有用語言文字圖書印刷及其他方法自由發表意思之權不受何種特別法令之限制

第十三條 人民或人民之自治團體有購置槍枝子彈以謀自衛之權但須經官廳之許可登記前項之槍枝子彈無論何種機關不得強制借用或提取

第十四條 人民有營業之自由權但為保障重大之公共利益時須受法律上限制

第十五條 人民有居住遷徙之自由

除省法律特別有規定外在本省內無論移住何縣何市何鄉有與該地人民同等之權利義務

第十六條 人民有請願於議會之權

第十七條 人民有陳訴於行政官署之權

第十八條 人民有訴訟於法院之權

法院如違背訴訟法規延不審判人民得提起懲戒之訴

第十九條 人民有請求救恤災難之權

第二十條 人民依法律有選舉被選舉提案總投票及任受公職之權

公職員之任免保護及懲戒以省法令定之

第二十一條 人民有受教育之義務

義務教育以上之各級教育無分男女皆有享受其同等利益之權

第二十二條 人民依法律有左列各種義務

一、納租稅之義務

二、服兵役之義務

三、擔任名譽公職之義務

第二十三條 關於左列各事項省有議決執行權

一、省以下之地方制度及各級地方自治之監督

二、省官制官規官俸及官吏之考試

三、省法院之編制監獄及感化院之設立及司法行政之監督

四、各種職業團體之組織及關於勞動之法規

五、制定本省稅則募集省公債及訂結省政府有負擔之契約

六、制定戶籍法及登記法

七、省公產及營造物之處分

八、各級學校學制及與教育相聯屬之事項

九、礦業農林之保護及發展

十、各種公共實業及關於實業之法規

十一、省以內之河川道路土地整理及其他土木工程事項

十二、省以內之鐵道電話電報支線之建設但為謀交通行政之統一聯絡省際商業之發達及應國防上之急

需國政府之命令得容受之

十三、省內之軍政軍令事項

十四、省警察行政事項

十五、衛生及各種公益慈善事項

第二十六條 其他關於省以內之事項在與國憲不相抵觸之範圍內省得制定法規並執行之

第二十七條 省政府受國政府之委託得執行國家行政事務但因執行國家行政所生之費用須由國政府負擔

第四章 省議會

第二十八條 省議會以全省公民直接選出之議員組織之

凡有選舉權之人民稱公民

第二十九條 省議員之名額以人口為比例每人口三十萬選出議員一名但不滿三十萬之縣亦得選出議員一名

第三十條 有中華民國國籍之男女年滿二十一歲以上於調查選舉人資格以前在湖南繼續住居滿二年以上有法定住址已受義務教育或合於已受義務教育之程度而無左列情事者皆有選舉議員之權

- 一、患精神病者
- 二、被剝奪或停止公權尚未復權者
- 三、受破產宣告尚未撤銷者
- 四、吸食鴉片者
- 五、營不正當業者

第三十一條 公民年滿三十歲以上無左列各款之一者皆有被選為省議員之權

- 一、現役軍人
- 二、現任官吏
- 三、現任宗教師
- 四、在校未畢業之學生

第三十二條 省議員之選舉及省議會組織以省法律定之

第三十三條 省議員任期三年從第一次開會之日起至下屆議會成立之前一日止但任滿前三個月須舉行新選舉

第三十四條 省議會設議長一人副議長二人由議員互選之

第三十五條 省議會自行集會開會閉會

第三十六條 省議會每年開常會二次於每年三月一日九月一日開會

常會會期為兩個月但遇有必要時得延長一個月

第三十七條 省議會閉會時設常駐委員會

第三十八條 省議會遇有省議員三分之一以上動議或省長認為必要時得召集臨時會但會期不得過一個月

第三十九條 省議會之職權如左

一、議決第二十五條及第二十六條之事項

二、議決預算及決算案

三、依本法所規定之選舉

四、受理人民之請願

五、提出質問書於省務院或請求省務員出席質問之

六、對於省務員之全體或一員得為不信任之投票

七、省長有謀叛賄賂或其他重大犯罪行為時得以議員總額四分三以上之出席出席員三分二以上之可決

彈劾之省長被彈劾時須即退職退職後由檢察廳提起公訴

八、高等審判廳長及高等檢察廳長有賄賂或其他違法行為時得以議員三分二以上之出席出席員三分二以上之可決彈劾之廳長須即退職退職後由檢察廳提起公訴

九、省務員及審計處長有賄賂或其他違法行為時得以議員總額三分二以上之出席出席員三分二以上之可決彈劾之被彈劾之省務員或審計處長須即退職退職後由檢察廳提起公訴

十、對於其他各種官吏有賄賂或其他違法行為時得組織查辦委員會查明咨請該主管官廳懲辦之

第四十一條 省議員在會內所發之言論對於會外不負責任

第四十二條 省議員在任期內不得為官吏及兼任有給之公職

第四十三條 各選舉區對於該區所選出之議員不信任時得以左列方法撤回之

一、由原選舉區公民百分之一以上連署提議經該區公民總投票過半數可決者

二、由原選舉區內之縣議會市議會鄉議會議員總額過半數連署提議經該區公民總投票過半數可決者

第四十四條 省議會得以左列方法解散之

一、由全省公民百分之一以上連署提議經全省公民總投票過半數可決者

二、全省縣議會過半數連署提議呈由省長交全省公民總投票之過半數可決者

三、省長以省務員全體之副署提出理由書付全省公民總投票之過半數可決者

第四十五條 依前條及第五十二條第二項解散省議會後須於三個月內召集新省議會但一年內不得解散會議兩次

第五章 省長及省務院

一、省長

第四十六條 省行政權由省長及省務員行使之

第四十七條 省長由省議會選出四人交由全省公民總投票決選以得票最多數者為當選

省長當選後得受國政府之任命

第四十八條 依本法規定之本省公民年滿三十五歲以上在湖南繼續住居滿五年以上者得被選為省長

第四十九條 省長就任時須於省議會為左列之宣誓

『某某誓以至誠遵守憲法執行省長之職權謹誓』

第五十條 現職軍人被選為省長時須解除本職方得就任

第五十一條 省長任期四年期滿改選如再被選得連任一次省長任滿前三個月須舉行次任省長之選舉

第五十二條 省長未滿任以前得由省議會提議交公民總投票表決令其退職省議會提出此項議案時須有議員總額三分之二出席出席員三分之二之可決方得成立

前項議案成立後省長即須停止其職權之行使公民總投票對於前項議案多數可決時省長即須退職多數否

決時則省長回復其職權省議會即須解散

第五十三條 省長缺位或因事故不能執行其職務時由首席省務員代行其職權至新省長就職之日或省長再行視事時為止

首席省務員有事故不能代行其職權時由次席省務員代行之

第五十四條 省長應於滿任日解職如屆期新省長尚未選出或選出後尚未就職時由首席省務員代行其職權

第五十五條 省長之職權如左

一、公布法律及發布執行法律之命令

二、統率全省軍隊管理全省軍政

三、任免全省文武官吏但本法及法律有特別規定者依其規定

四、遇內亂外患時經省議會之同意得宣告戒嚴如在省議會閉會期內須得常駐委員會同意由省議會於下屆開會時追認之

戒嚴期內本法第九條第十一條第十二條之效力得暫受限制但經省議會認為無戒嚴之必要時應即宣告解嚴

五、遇必要時得召集省議會臨時會

第五十六條 省長執行前條各款之職權有關各司者皆須由主管司長副署負責

二、省務院

第五十七條 省設省務院及左列各司

一、內務司

二、財政司

三、教育司

四、實業司

五、司法司

省務院設省長署內以省長及各司司長組織之省長爲省務院長各司司長皆爲省務員

第五十八條 省長署及各司之組織以省法律定之

第五十九條 各司司長任期三年由省長任命之

各司司長如有濫職及其他違法行爲時由省長罷免之

第六十條 省務院設政務會議省務院長主席各省務員皆列席議決施政方針及關涉各司權限爭執之事件

第六十一條 省長依政務會議決定之施政方針對於省議會負其責任各省務員依施政方針處理其主管事務

對於省議會自負責任

第六十二條 政務會議遇有特別重大事件省務院長不得以省務員不能負責之議案強制其議決執行

第六十三條 省長所發之命令及政務之文書有關於各司者須經各司長之副署

第六十四條 省務員全體或一員受省議會之不信任投票時省長即須罷免之

第六章 立 法

第六十五條 法律案由省議會議員或省務院以省長之名義提出之

第六十六條 法定之省教育會農會工會商會律師公會及其他依法律組織之各職業團體得提出關於各該團體範圍內之法律案省議會必須以之付議

前項議案開會時提案者得派員出席省議會說明之但不得參加表決

第六十七條 全省公民百分之一以上連署動議或全省縣議會及一等市議會三分之一以上連署動議得提出

法律案呈請省長咨省議會議決省議會對於此項議案如擱置不議或議而否決時省長應將該案及否決之理由付全省公民總投票表決時即成爲法律

第六十八條 省議會議決之法律案省長須於送達後二十日公布之

省議會議決之法律案逾公布期限即成爲法律

二以上仍執前議時應即公布之

未咨省議會覆議之法律案逾公布期限即成爲法律

法律案於將近閉會期咨送省長者省長如否認時得聲明理由咨省議會於下屆開會時覆議之

法律案咨送省後如省長否認而省議會被解散時得咨新議會覆議之

全省縣議會及一等市議會三分之一以上連署動議或全省公民百分之一以上連署動議皆得於公布期內要求將已議決之法律案展緩兩月公布兩月內即提交全省公民總投票表決

第六十九條 凡本法所規定得由公民提案及須公民總投票表決之事項其提案及投票之方法以省法律定之

第七章 行政

一、財政

否

第七十條 省之租稅依省法律之規定徵收之

第七十一條 省之收入支出由省庫或代理省庫之銀行執掌之發款書據須有審計處長之簽印省庫方得支付

省庫之組織以省法律定之

第七十二條 省會計年度以每年七月一日為始至次年六月三十日為止

第七十三條 省長須於省議會閉會後之五日內將次年度之預算案提交省議會議決

省長得提出追加預算案交省議會議決

以省款經營之事項非一年所能完竣或其費用非一年所能籌備或因契約之關係其負擔不止於一年者得經省議會之議決預定年限設繼續費

會對於預算案得修正之但不得增加歲出或增加新款式預算案內之款項經省議會議決後不得流用

第七十四條 省長須於會計年度終了後將前年度之決算案提交省議會議決

第七十五條 省之財務行政狀況及省議會議決之預算決算案省長須詳細公布之

二、教育

第七十六條 全省人民自滿六歲起皆有繼續受四年教育之義務

為達前項之目的得強制各地方自治團體就地籌集義務教育經費開辦應有之國民學校

第七十七條 每年教育經費至少須佔全省預算案歲出百分之三十每年提出之教育基金至少須佔全省預算案歲出百分之二其保管方法及用途以省法律定之

第七十八條 成績優良之國民學校得酌量獎勵之

第七十九條 成績優良之職業學校經省議會議決得為添置設備之補助

第八十條 省須設立大學一所

第八十一條 為達本法第二十一條第二項之目的省政府及各自治團體須設備特別基金資助貧戶男女學童之適於受中等以上教育者其資助之方法須以省法律定之

第八十二條 孔廟學校及其他教育機關不得駐紮軍隊或據為軍人住宅

三、實業

第八十三條 省有產業非經省議會議決不得抵押或變賣之省內之天然富源無論公有私有不得變賣與無中華民國國籍者

- 第八十四條 省政府經省議會議決經營各種實業時須依私人營業之組織
- 第八十五條 省政府對於省內之私人營業認為於公益上有必要時經省議會議決得以相當之代價收歸省有
- 第八十六條 省政府對於私有營業之勞工保護勞工賠償勞工衛生等得依法律之規定監督之
- 第八十七條 省政府對於私有營業之不正當競爭或不公允價率得依法律之規定制裁之

四、軍事

- 第八十八條 全省軍務為省行政之一部無論平時戰時其管理統率依本法第五十五條之規定屬於省長
- 第八十九條 全省之健全男子自滿二十歲至滿四十歲依義務民兵制平時合計須有十二個月在軍中服務
- 義務民兵之兵役法及編制以省法律定之但得設一萬人以內之常備部隊
- 遇國防必要或對外宣戰時本省軍隊得受國政府之命令

- 第九十條 省內治安省民共保之省外軍隊非經省議會議決及省政府允許永遠不得駐紮或通過本省境內

第八章 司法

- 第九十一條 司法權以法院行之
- 第九十二條 法院依法律審理民事刑事及行政訴訟
- 第九十三條 法院用四級三審制
- 第九十四條 省設高等審判廳高等檢察廳並劃定區域分別設置地方審判廳地方檢察廳初級審判廳初級檢察廳

察廳

- 第九十五條 高等審判廳高等檢察廳為受理行政訴訟並民刑事重大案第一審及民刑事輕微案第三審機關
- 第九十六條 地方審判廳地方檢察廳為受理行政訴訟第一審及民刑事輕微案第二審機關
- 第九十七條 初級審判廳初級檢察廳為受理民刑事訴訟第一審機關
- 第九十八條 初級審判廳不另置推事初級檢察廳不另置檢察官即以各該廳長分行審判或檢察之職權但省會商埠或其他實屬繁劇之縣得酌置推事檢察官
- 第九十九條 高等以下各審判檢察廳人員名額除本法有規定外由司法司酌量事務之繁簡呈准定之
- 第一百條 依法終審重大案件得送國政府之大理院總檢察廳審理
- 第一百零一條 司法區域之劃分法院之編制法官之俸給及懲戒另以法律定之
- 第一百零二條 法官獨立審判不受何方之干涉
- 第一百零三條 法官非依法律不得開職降職停職減俸或轉職法官任用之方法依國法律之規定

第九章 審計處

- 第一百零四條 省設審計處審計處長由省議會選舉之
- 審計處之組織及審計處長之選舉以省法律定之
- 第一百零五條 審計處長任期三年在任期内非依本法第三十九條第九款之規定不得免職

湖南省憲法

第一百零六條 省經費之收入各徵收機關須於繳納省庫時報告審計處

省經費之支出須經審計處長按照預算案或臨時支出之法案核准籤印支出與原案不符時得拒絕之

第一百零七條 審計處得隨時調查各機關之收支簿據

第一百零八條 審計處對於全省各機關收支簿據之登記法及報告程式有釐訂劃一之權此項釐訂劃一辦法

由審計處長咨請省長行之

第十章 縣制大綱

第一百零九條 縣爲省之地方行政區域並爲自治團體

第一百一十條 縣置縣長受省長之指揮監督執行省之地方行政及縣之自治行政並同時監督縣以下之各自

治機關

第一百十一條 縣長由縣議會選舉六人由全縣公民決選二人呈請省長擇一任命

第一百十二條 縣長任期四年但在任期內如有瀕職或違法行爲時得由省長免職或縣議會彈劾呈請省長免職免職後即依前條舉行新選舉

第一百十三條 縣長之資格選舉及縣行政機關之組織以省法律定之

第一百十四條 縣置縣議會議員人數依縣之大小酌定之但不得少於十二人至多亦不得過三十人

縣議會之議員適用本法第三十一條之規定由全縣公民直接投票選出之

縣議員任期及改選適用本法第三十三條之規定

縣議會之組織解散及縣議員之選舉撤回以省法律定之

第一百十五條 在不抵觸國家法令及省法律之範圍內縣有左列各事項之自治權

一、縣以內之教育及與教育相聯屬之事項

二、縣以內之道路水利及其他土木工程事項

三、縣以內之實業及公共營業

四、縣以內之警察衛生及各種公益慈善事項

五、縣公產及營造物之處分

六、其他依國家法令及省法令賦與縣自治處理之事項

前列各事項涉及兩縣以上者得協議處理之

第一百十六條 在不抵觸國家法令及省法令之範圍內縣得制定縣稅及附於省稅之附加稅並他種公共收入

以充縣自治事項之經費但須受省政府之監督
第一百十七條 縣之收入支出每年由縣長詳細公布之

第十一章 市鄉自治制大綱

第一百十八條 市鄉皆爲自治團體

湖南省憲法

第一百十九條 省以內之都會商埠人口滿二十萬以上者爲一等市人口滿五萬以上不及二十萬者爲二等市人口滿五千以上不及五萬人者爲三等市不及五千人者屬於鄉

第一百二十條 一等市直接受省政府之監督

第一百二十一條 一等市設市長一人由全市公民直接選出任期二年

第一百二十二條 一等市設市議會由全市公民直接選出之議員組織之其選舉及組織以省法律定之

市議會之議員爲無給職

第一百二十三條 一等市設市委員會以市長爲委員會長凡市之行政方針由委員會議決施行委員會之委員爲無給職

第一百二十四條 一等市市政公所之專務職員由市長經委員之同意任用之

第一百二十五條 一等市之公民對於市之重要立法有直接提案及總投票之覆決權其方法以省法律定之第一百二十六條 在不抵觸國家法令及省法令之範圍內一等市有左列各事項之自治權

一、市以內之教育及與教育相聯屬之事項

二、市以內之街道水溝及其他土木工程事項

三、市以內之電燈電車煤氣自來水及其他關於公益之營業

四、市以內之警察衛生及各種公益慈善事業

五、其他依國家法令及省法令賦與或由省政府委託市執行處理之事項

第一百二十七條 一等市受省政府之監督得制定左列各種市稅

(一)房屋稅 (二)車馬稅 (三)戲院及其他各種遊戲場稅 (四)屠宰稅 (五)酒館稅

(六)附於省稅之附加稅 (七)其他稅則得省政府之許可者

第一百二十八條 一等市受省政府之監督得募集市債

第一百二十九條 二等市之組織得適用本法自第一百二十一條至第一百一十五條之規定但受縣長監督

第一百三十條 二等市之自治權得適用本法第一百二十六條及第一百二十七條之規定但以不抵觸省及

縣法令爲範圍

第一百三十一條 一二等市之制度以省法律定之但在不背本法之範圍內一二等市得自定其制度經省議會認可施行

第一百三十二條 三等市及鄉之組織以省法律定之但得斟酌各地方情形自定其組織經省議會認可施行

第一百三十三條 凡市鄉之收入支出每年須詳細公布之

第十二章 本法之修正及解釋

第一百三十四條 本法公布後每十年須召集憲法會議一次議決應行修正案交由公民總投票決定之

經省議會議員四分之三及全省縣議會及一等市議會團體三分之二提出修正案得召集憲法會議議決交公

民總投票決定之

憲法會議之組織以省法律定之
第一百三十五條 因本法所發生之爭議由高等審判廳解釋之

第十三章 附則

第一百三十六條 省法律未公布以前中華民國現行法律及基於法律之命令與本法不相抵觸者仍得適用於本省

第一百三十七條 國憲未實施以前應歸於國之事權得由本省議決執行之

第一百三十八條 戶口調查未完竣義務教育未普及以前本法第二十八條及第一百十四條第二項直接選舉之規定暫緩實行

省議會以全省公民間接選出之議員組織之

依本法第三十一條之規定具有左列資格之一者皆得被選為省議員

一、曾在國內外專門學校畢業者

二、曾任薦任職一年以上或委任職三年以上無過失者

三、曾任省縣議員三年以上者

四、曾任中等學校以上校長教員二年以上者

五、曾任省縣公團法團職務五年以上者

縣議會以全縣公民間接選出之議員組織之

縣議員之資格另以省法律定之

第一百三十九條 戶口調查未完竣以前本法第二十九條之規定暫緩施行

省議員之名額暫定一百零八名全省分三大區第一區三十七名第二區三十六名第三區三十五名除各縣規定一名外以各區田賦較多之縣加選議員一名原為兩縣合併之縣再加選議員一名列表於左

第一區

長沙三名	茶陵二名	湘陰二名	寶慶二名	瀏陽二名	醴陵二名	武岡二名
湘潭二名		新寧二名	寧鄉二名	城步二名	湘鄉二名	岳陽二名
平江二名	攸縣二名		臨湘二名	安化二名	華容二名	益陽二名

第二區

常德二名	綏寧二名	桃源二名	會同一名	漢壽二名	通道二名	瀘溪二名
澧縣二名	沅陵二名	安鄉二名	沅江二名	石門二名	辰谿二名	慈利二名
溆浦二名	臨澧二名	永順二名	大庸二名	保靖二名	鳳凰二名	龍山二名
晃縣二名	桑植二名	南縣二名	芷江二名	乾城二名	黔陽二名	古丈二名
麻陽二名	永綏二名	靖縣二名				

第三區

衡陽三名	道縣二名	衡山二名	寧遠二名	安仁二名	永明二名	耒陽二名
江華二名	常寧二名	新田二名	鄧縣二名	郴縣二名	零陵二名	永興二名
祁陽二名	宜章二名	東安二名	資興二名	汝城二名	臨武二名	桂東二名
藍山二名	桂陽二名	嘉禾二名				

右表各縣議員名額之支配以一屆爲限

第一百四十條 現省議員及現縣議員名額任期不因修正而生變動但本法修正公布後省議會及縣議會之職權須依本法之規定

第一百四十一條 戶口調查未完竣以前本法第四十七條及第五十二條規定之全省公民總投票暫由全省縣議員代行之

第一百四十二條 戶口調查未完竣以前本法第十一章所定一等市之組織暫緩施行但非遇意外事變至遲須於本法公布後一年內將省內各重要都會商埠人口調查完竣依本法制定一等市制度施行之

第一百四十三條 全省戶口之調查非遇意外事變至遲須於本法公布後二年完竣

第一百四十四條 在國憲未實施以前省政府得徵收國稅但徵收額數與其用途仍須編入預算案內經省議會議決

第一百四五條 法院未普設市鄉自治未完成以前本法第一百十一條之規定暫緩施行縣長由省長任命之

省長委任之縣長如有賄賂或其他違法行爲時縣議會得依法彈劾呈請省長撤辦之

第一百四十六條 現省長之任期不因修正而生變更從就職日起算足年限爲止但其職權依本法修正後之規定

第一百四十七條 本法應以省法律規定之事項在省法律未制定以前省長得制定暫行條例施行之

第一百四十八條 本法第一百零三條之規定在國政府未成立前法官由省長依省法律任免之

第一百四十九條 本法第九十四條規定之初級審判廳初級檢察廳各縣有未設立時得設司法署

司法署之組織以省法律定之

第一百五十條 立法行政司法各機關本法修正公布後應即依本法之規定除本法第一百四十六條規定外

凡基於原法所選舉之官吏應即失其效力

第一百五十一條 本法修正公布後凡現行省法律與本法有抵觸者應即失其效力

第一百五十二條 本法由全省公民總投票可決後公布之日施行

湖南省憲法會議

第一次修正

主 席 蒋嗣佑	副 主 席 江 鑑
議 員 唐國珍	黃英灝
雷飛鵬	王克家
黃純核	黃 衍
湖 南 省 憲 法	
陳小元	湯日新
陳振東	黃 錛
彭定均	周天爵
熊焱華	方榮煊
方榮煊	楊雲鶴
唐德度	
嚴國楨	左全志
唐 陶	胡毓楨

中華民國十三年

月

日

李宗麟	黃藻奇	何炳麟	賓步程	朱繼承	馬續常	曹典球	唐嶽
楊樹毅	符定一	程子樞	李希賢	陳強	張聲樹		

主任祕書 李鴻輝

古今政體，因時異同，蓋法無常師，惟適者昌，理固然也。吾國之有省憲，始自湖南，雖成效未彰，要亦自治之先河，憲政之嚆矢。方之今日美國，州憲與國憲並行，統治增強，亦其明效。爰將創制之由，及其經過始末，撮要述之，俾世之留心政術者，有所考覽焉。民初，袁氏毀法，天下紛紛，黎公去位，南北分裂，吾湘劉建藩等，興師護法（註一），西南響應。余時守制舊廬，迫於大義，權出督師，乃與劉君商禦敵之策，幸軍事大捷，湘境肅清（註二）。然損害之巨，已難僂計。民七敵復大舉，派吳佩孚張敬堯張懷芝分三路向岳陽平江醴陵進犯，苦戰連月，後援不繼，劉君殉國（註三），余乃退守永興。爾時廣州七總裁軍政府，非常國會，大元帥府相繼成立。湖南負前衛之責，當半壁之衝。苦鬥頻年，軍民交困，加以共匪之惡蘖初萌，復辟之毒瘤未盡，與夫派系傾軋，新舊歧見，足以長亂而誤國，惑世賊民者不一。且吳佩孚軍進衡陽，張敬堯兵屯長沙，時有進窺兩粵之虞。茶陵譚公，總領軍政，局促郴永，僨乘勢反攻，張部節節敗退，民九之秋，三湘重湖，復歸完整（註四）。惟是直軍仍據長江，西南亦多變化，譚公外觀大局安定無期，內顧桑梓受禍已烈，乃欲與民休息，而事建設，因於是年七月，通電籲請自治，庶幾納軌一隅，以待天下之合轍，此即當時輿情盛稱之篠電也。豈期程潛心腹李仲麟，促平江

兵變，殺害長官，復威逼省城，倡言倒譚。斯時省防各軍，分駐各地，倉卒難集，譚公亦不忍再造之湘局，自我糾紛，重苦父老，逕以軍事付恆毅，民政界林支宇，毅然下野。恆毅自維綿薄，固辭不獲，無何；仲麟復以索餉爲名，煽軍作亂，當時原不難揮師戢暴，顧體譚公授受之意，比囑省會警備司令維持秩序，而脫然引去。惜仲麟不自知其驕橫之已甚，臨時竟爲軍士所戕，或有指爲同謀如某某者，亦不免於難，爾時人情汹懼，省城各界人士，紛紛以大義相責，環請亟圖善後，乃復出綱軍政。自維誠信未孚，率導無方，既不能防患於未萌，復不能定變於突起，任其陷於大戾，牽及多人懷疚在心，今猶耿耿。

自是銳意經營，紀綱漸立，乃謀繼譚公未竟之志，籌制省憲（原名省自治根本大法），以立法治基礎。其時國父在廣州就任臨時大總統，宣言中有各省得自制省憲，自選省長之詔示，湘人聞之，信念益堅。當制憲之初，延聘王正廷、蔣方震、彭允彝、李劍農等十一人，爲省憲起草委員，縣選一人，大縣加選一人，爲省憲審查委員，有修正之權，而以可決否決屬於全省公民總投票。其籌備一切，悉付國議會議員吳景鴻、鍾才宏，省議會議長彭兆璜主持，經歲始於民國十一年元旦公布，都百五十二條，其成文可紀者，人民之權利義務，由今視昔，尙能充分符合近代民主精神。教育預算，佔總額百分三十以上，尤能符合近代責任教育。省長由省議會初選四人，省民決選一人，此種複選制，似較簽署提名單選制，或進一步。省長當選後，得受國政府之任命，其擁護國家統一，亦至明顯。因此省長得於省民縣議會程序之外，提出解散議會理由書，付全省公民決之。議會於省長未滿任前，亦得提議令其退職，交公民總投票，省民同意省長，則議會應即解散，同意議會，則省長應即退職，均衡相制，較之偏重府或會

，每多陷於僵化者，似較靈活，此其聳聳大者也。當時有謂自治，而冠以聯省，迹近地方割據，不知省憲治安，採義務民兵制，但得設一萬人以內之常備兵，硬性法意無過此者，實較清制地方撫標都司，猶爲單薄。且聯省二字，學者津津，從未見諸省憲，時人特未之詳察也。夫民七以還，七八年間，兩粵幾經變亂，北洋軍閥，未能抵隙，以一矢相加，且坐使從容謀統一事擴展者，湖南屏藩之勢，捍衛之力，或亦有足紀焉。恆毅所引爲遺憾者，當被選第一屆省長任內，每以顧念民力，未及多事建設，負此莊嚴，要亦行憲初期，各方利害參差，措施疾徐不一其見，此固議會政治之常態，抑亦民主素養有深淺也，乃援鄂旣虧仗義之功，護憲復滋相煎之痛，險阻艱難，備嘗之矣，才識不逮，愧恨何如。差幸謹守省憲，未向民間妄取分文，各級組織，未受共匪潛力薰染，數年之間，地方粗安，教育交通，力求進展，如湖南大學之設立，全省公路之籌建等是已。恆毅少習軍旅，參預同盟革命，辛亥武昌起義，首率廣西勁旅，兼程赴鄂，癸丑倒袁，進攻鄂境，策應江西，南京之獨立事敗，袁氏欲得而甘心，幸黎公盡力庇緩，得以不死！護法之役，領數萬飢疲子弟之衆，抗十萬軍閥虎狼之師，生死以赴，直數年如一日。至於導之下，謬長議會近十年，而向所云云，卒能曲折表達於現行國憲中，斯亦幸矣。然反觀昔日袍澤部曲，毀我悖我，以自豪者，不少存愛惜，紛紛從賊，每念格召無力，人性汨亡，又不勝感慨繫之！湖南省憲修正本幸存行笈，檢以付梓，並綴數語，姑留天際鳥迹云。

(註一)民六零陵鎮守使劉建藩，與駐衡陽第二旅旅長林修梅，於六月鑑日通電護法，聲討北洋軍閥。

(註二)1.初余與劉君在衡山萱洲河大堡一帶布防，部署粗定，敵軍大至，激戰連月，區司令黃鍊，以彈藥奇缺，恐難支

持，乃率敢死隊近百人，抄襲敵後，全部以殉，爾後衡寶大捷，實基於此。

2.岳州西塘之役，參謀主任何錦，先夕偵察敵情，擬具攻擊命令，翌午敵猶頑抗，彼乃率兵抄入敵後，敵陣動搖乘勢猛攻，敵即潰退，何軍陣亡，手持軍刀，猶指敵陣，遂有岳陽之捷。何君忠勇性成，謀略優越，每戰身先

士卒，畢業南寧講武堂，曾為蔡松波先生所賞識。

(註三)民七岳陽平江軍事失利，不忍省城糜爛，退守衡山，旋與劉君再圖規復，回師攸醴，痛擊張懷芝部，潰不成軍。

正謀進規省城，猝於株洲遇敵，劉君奮力指揮，適過小橋，失足墜水，橋高水深，遂致不救。劉君懷抱英偉，黃蔡二公許為天下才，乃大志未酬，身先殉國，悲恨何如。張懷芝實力，較吳佩孚、張敬堯尤厚，奉北廷命佔領郴州，先頭已至攸縣，其勢張甚，彼時後方空虛，敵如兼程並進，三日可達，直接粵邊，則當時局勢，必又不同，故消滅張懷芝軍關係之大，國人或未之察及也。

(註四)民九四月收復衡陽，衡山湘鄉間，幾經接觸，湘潭之茶園鋪，戰事稍劇，營長趙茂林陣亡，爾時判知敵無反攻意圖，每以重兵向敵抄襲，敵即節節敗退，惟固守岳陽，僞令再三，戰事最烈。經以重兵，由桃林直趨雲溪，截敵歸路，敵乃由岳陽潰退，傷亡及俘虜甚衆。

各註係護法戰役之鱗爪，未能詳敍，愧對忠勇之傷亡袍澤，行當搜輯資料，成湘軍護法記。



APPENDIX

V

(a) 1921 Draft UPAM Constitution for the Republic of China (Zhang Taiyan)

(b) 1921 Draft UPAM Constitution for the Republic of China (Zhang Junli)



中華郵務局特准挂號立券之報紙

東方雜誌

第十九卷

第一十二號

據中央研究院歷史語言研究所藏本
複製·僅供學術用途

上



上海開行

香港大學圖書館 HKU Libraries

第十一章 憲法之修正及解釋

第一百九條 國會得爲修正憲法之發議。

前項發議，非兩院各有列席員三分二以上之同意，不得成立。

兩院議員，非有各本院議員總額四分一以上之連署，不得爲修正憲法之提議。

第一百一十條 憲法之修正，由憲法會議行之。

第一百一十一條 國體不得爲修正之議題。

第一百一十二條 憲法有疑義時，由憲法會議解釋之。

第一百一十三條 憲法會議由國會議員組織之。

前項會議，非總員三分二以上之列席，不得開議，非列席員四分三以上之同意，不得議決。

國是會議憲法草案

十二年八月中華民國
八月國是會議擬定

(甲) 種

第一章 總則

第一條 中華民國爲聯省共和國。

第二條 中華民國之主權依本憲法之規定行使之。

第三條 中華民國之國土如左

一	外交	二	陸海軍；	三	幣制，銀行；	四	度量衡；	五	海關稅，其他國稅；	六	國債，
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第五條 凡事之關於全國者由聯省機關立法或執行之，茲列舉如下。

第二章 聯省及各省權限之劃分

第四條 凡具有中華民國國籍者爲中華民國人民。
各省領土非得其關係省之同意，不得變更，新省之設置或其他區域之變更，以聯省法律定之。

安徽	江西	浙江	福建	湖北	湖南	山東	河南
山西	陝西	甘肅	新疆	四川	廣東	廣西	雲南

七郵政；
八電報；

九鐵路及國道；

十航業；
十一兩省以上之水利；
十二沿海漁業；

十三民法；

十四刑法；

十五商法；

十六民事刑事訴訟法；

十七全國法院編制法；

十八國籍法；

十九發明及專利法；

二十機法；

二十一移民法；

二十二土地收用法；

二十三聯省官制官規；

二十四聯省監獄；

二十五全國戶口調查及統計；

二十六勞動法；

二十七產業公有法。

第二十六、二十七兩項，如聯省尚未頒行法律時，各省亦得行使關於此二項之立法權。

第六條 各省得自定憲法，並專之關於一地方者由各省或地方機關立法或執行之，茲列舉如下：

一、省之官制官規；

二、省之稅法；

三、省以內之實業；

四、省之民團；

五、省債之募集；

六、省之公產之處分；

七、依據第八十六、第八十七兩條省之學制之規定；

八、八省以下之地方制度；

九、八省以內之水利；

十、八省以內之電話；

十一、八省之警察；

十二、八省之司法之範則；

十三、連犯省法之範則；

十四 漢生及改善事項；

十五 省監獄。

第七條 各省憲法應規定以下各項：

- 一 各省應設省議會代表民意，
- 二 省之行政首長，或為一人，或為數人之委員會，由省之人民或議會選舉，但不得以退職未滿三年之軍人充選，
- 三 凡非省內官吏，住居省內二年以上者，依其省之憲法或法律，享有選舉及被選舉權利，
- 四 各省各設民團，其額數由各省省議會議定之，
- 五 省議會應詳訂關於一切選舉之舞弊法，
- 六 各省行政機關中之文官，應定考試，任用及保障之法，不因一省內政治狀況而更動。
- 七 諸別區及蒙古西藏青海之政治組織，另以法律定之。
- 八 聯省桂滇之效力在各省法律效力之上。
- 九 全國官私立大學經政府認可，以選舉權者，每大學選舉一人。
- 十 各省有不能履行本憲法上之義務者，聯省政府應督促之，甲省有以武力侵犯乙省者，聯省政府應阻止之。
- 十一 中華民國之國體發生變動，各省得互相聯合維持憲法。

上規定之組織，至原狀恢復時，各省之行動應即停止。

第三章 參議院

第十一條 一、立法權暫以參議院一院行使之。

第十二條 參議院以下列議員組織之

- 一 各省省議會每省選舉五人，
- 二 每特別區選舉二人，
- 三 內外蒙古西藏各選舉五人，其方法另定之，
- 四 青海選舉一人，其方法另定之，
- 五 各省教育會，每省選舉二人，
- 六 各省商會，每省選舉二人，
- 七 各省農會，每省選舉二人，
- 八 各省工會，每省選舉二人，
- 九 華僑選舉五人，
- 十 全國官私立大學經政府認可，以選舉權者，每大學選舉一人。

以上第五至第十各項，其選舉方法，另以法律定之。

第十三條 參議院議員任期三年。

第十四條 參議院設議長一人，副議長一人，由參議院議員互選

之。

第十五條 參議院常會於每年三月一日開會，以四個月為期，但政府認為必要或議員三分之二要求時，得開臨時會。

第十六條 參議院之議事公開之。

第十七條 參議院非有議員總額之過半數之列席，不得開議。其議事以列席議員過半數之同意決之，可否同數時，取決於議長。

第十八條 參議院議員關於院內之言論，對於院外不負責任。

第十九條 參議院認大總統對總統有謀叛行爲時，得以議員三分之二以上之列席，列席議員三分之二以上之同意彈劾之。

第二十條 參議院認國務總理或國務員有違法行爲時，得以列席議員三分之二以上之同意彈劾之。

第二十一條 參議院議員得提出質問書於國務院，或請其到院質問之。

第二十二條 參議院於常會閉會前，得設置以下四種委員會：

- 一 外交委員會；
- 二 軍事委員會；
- 三 財政委員會；
- 四 法律委員會。

第四章 大總統

第三十條 行政權由大總統以國務總理及國務員之責襄行之。

第三十一條 中華民國人民完全享有公權，年滿三十五歲得被

第二十三條 每種委員會以七八人組織之，在參議院開會期內遇有政府政策關係國家重大利害，隨時提出質問於政府。

第二十四條 各委員會應將經過情形隨時報告於國民及下屆參議院常會。

第二十五條 參議院議員之資格由選舉審查委員會審查之。

此項選舉審查委員會，以大理院長指定之法官四人及議員三人組織之。

選舉資格審查會之審查應公開之，其詳以法律定之。

第二十六條 參議院議員除現行犯及關於內亂外患之犯罪人，會期中非得本院許可不得逮捕。

第二十七條 原選機關對於所選參議員認為不合時，得以原選舉者過半數之同意撤回之。

第二十八條 參議院法由參議院自定之。

第二十九條 參議院議員之歲費，每人不得過三千元，其詳以法律定之。

選為大總統。

現役軍人，非解除兵柄三年者不得當選。

第三十二條 大總統之選舉應本以下各原則，其詳以法律定之：

一、凡願為大總統候選人者，經議員五十人之推薦，或五省以上法定團體之推薦，提出於參議院，作為大總統候選人；

二、大總統候選人應自行提出志願書，並附以國事應與應革之政見書於參議院，

三、大總統候選人在參議院中經議員總額過半數之列席，列席人數三分之二之投票同意，即為大總統初選當選人。

大總統初選當選人應選定六人，

四、各省就本省省會以左列二項聯合，組織大總統選舉會：

一、各省省議會議員，

二、全省教育會，全省商會，全省農會，全省工會，合選與省議會相同之人數。

此項選舉會，就大總統初選當選人中選定大總統。

前項各省選舉會之投票，應當公眾前正式開票，公布票數，並即封寄參議院議長，由該議長當公眾前啟封，並計算所投票數，其得各省選舉人總額過半數為席，列席人數三分之二投票同意，

即當選為大總統。

第三十九條 大總統任免文武官吏，但憲法及法律別有規定者，依其規定行之。

第四十條 大總統為民國陸海軍大元帥，統率陸海軍。

第四十一條 大總統得宣告死刑、減刑及復權，但對於謀叛、謀殺者不得赦免之。

第四十二條 大總統為維持公共治安，防禦非常災患，時機緊急，不能召集參議院時，經參議院法律委員會之議決，得發布與法律有同等效力之教令。

前項教令須於次期參議院開會後七日內請求追認，參議院否決時，即失其效力。

第四十三條 大總統因全國公安之擾亂，得宣告戒嚴；但參議院或其附屬期內之法律委員會要求撤銷時，應即為解嚴之宣告。各省因省公安之擾亂，在其區域內亦得為戒嚴之宣告；但應即時通知聯省政府及省議會，如聯省政府或省議會認為應撤銷時，應即為解嚴之宣告。

第四十四條 大總統得解散參議院，但同一會期內，關於同一事由不得為第二次之解散。

第五章 國務院

第四十五條 國務院以國務總理及其他之國務員組織之。各部總長皆為國務員。

第四十六條 國務總理由大總統任命之。其他國務員，經國務總理之推薦，由大總統任命之。

第四十七條 國務總理及國務員之在職，須得議會之信任，如列席議員三分之二以上之同意，對於國務院全體或國務員為不信任之決議時，國務院全體或國務員應即辭職。

第四十八條 國務總理及國務員質稟大總統對於參議院負責。大總統所發命令及其他關係國務之文書，非經國務總理或國務員之副署不生效力。

第四十九條 國務總理及國務員就職時，應宣布其政治方針。

第六章 法院

第五十條 司法權由聯省所設大理院及各省所設法院行使之。法院之編制及法官資格，由聯省政府公布法律，各省得按此項法律在省內設立法院。

第五十一條 法官在任中，非受刑罰宣告或懲戒處分，不得免職，非依法律不得減俸、停職或轉職。

法官依據法律獨立審判。

第五十二條 除本憲法或法院編制法所規定之法院外，其他特

種法院不得設置；但陸海軍法院，不在此例。

第五十三條 聯省及各省內應設行政訴訟法院，以保護人民對

於行政處分及命令上之陳訴。

第五十四條 聯省政府設國事法院，解決以下各種案件：

- 一 本憲法之解釋；
- 二 甲省與乙省政治上或公法上之爭議；
- 三 聯省官廳與各省官廳權限上之爭議；
- 四 人民憲法上之權利受侵害時所提出之訴願。

第五十五條 國事法院審判關於大總統國務總理或國務員之彈劾案。

此項法院組織，另以法律定之。

第七章 法律

第五十六條 法律案，政府及參議院議員各等提出之；但一經否

決者，同一會期內不得再提出之。

第五十七條 參議院議決之法律案送達於大總統，限一月以內

公布；如大總統有疑義時，於公布期內申明理由，請求參議院

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復議，如議員三分二以上仍執前議時，應即公布之。

第五十八條 法律與憲法抵觸者無效。

第八章 行政

第五十九條 依第五條所舉，凡關於聯省行政，聯省政府得自設

機關執行之；其不自設機關者，由聯省政府委託各省代執行之，但關於委託行政之費用，由聯省政府擔負之。

一 軍政

第六十條 國防軍採用義務民兵制，設幹部軍隊，其總額不得逾二十萬人。

第六十一條 凡具有中華民國國籍之健全男子，皆有捍衛國體之義務，其服役之年月，以法律定之。

第六十二條 關於軍官之養成，為聯省政府之職權，但兵士之訓練，聯省政府得委託各省按所定法律辦理之。對外戰爭時，國防軍及各省之民團，概由聯省政府統率之。

第六十三條 軍費之總數不得逾聯省政府歲出百分之二十。

第六十四條 國防軍應在國防上重要地點分駐之。

第六十五條 現役軍人對於政治不得以文字向公眾發表意見。

二 財政

第六十六條 聯省政府之收入，以國稅及郵電路政，或其他收入充之。

國稅以下列各稅為限：

甲關稅；乙鹽稅；丙印花稅；丁煙酒稅；戊其他消費稅；

己其他全國一律之租稅。

第六十七條 聯省政府須將本年之收入及支出編為預算案，於會計年度開始前提出於參議院。

預算之支出，以每年經參議院承諾為原則，但因特別情形，得預定年限，規定一年以上之繼續費。

第六十八條 會計年度終了後，聯省政府應將前年度之決算案提出於參議院，以解除其責任。

第六十九條 聯省政府限於建築鐵路或其他發達生產之事業，得募集外債，但其條件須得參議院之同意。

第七十條 聯省政府設審計院，其組織權限以法律定之。

第七十一條 聯省政府須將每年財政情形及預算，決算，編成報告書公布之。

第七十二條 各省間對於一切物品之出境入境不得徵抽捐稅以限制之，但以聯省政府之法律，得設定例外。

第九章 國民權利義務

第七十四條 中華民國人民之人身自由，非依法律不得限制之。如有此項事情發生，應於次日通告關係人，俾得伸訴之機會。

第七十五條 中華民國人民之家宅，非依法律不得侵入或搜索。有刑罰之規定者，不得處罰之。

第七十六條 中華民國人民之行為，非在行為發生前法律上早有明文，不得處罰之。

第七十七條 中華民國人民之郵信，電報，電話之秘密，非依法律不得侵犯之。

第七十八條 中華民國人民有選擇住居之自由，非依法律不受制限。

第七十九條 中華民國人民有言論，著作及刊行之自由，非依法律不受制限。

第八十條 中華民國人民有集會，結社之自由，非依法律不受制限。

第八十一條 中華民國人民對於官廳或議會，有請願及陳訴之權。

第八十二條 中華民國人民有從事公職之權。文官地位，使其安心服務，應有法律以保障之。

第八十三條 人民之選舉自由，應尊重之，其詳以法律定之。

不得制限之。

第八十四條 中華民國人民有信教之自由。

第九十二條 美術上，歷史上之古蹟，國家宜保護之。

第八十五條 中華民國人民有納稅之義務。

二 生計

第十章 國民之教育與生計

一 教育

第八十六條 全國學制大綱，由聯省政府規定之，各省根據此項大綱，自定細則，或因特別情形，自定學制。

第八十七條 全國人民不論男女，皆有受教育之義務。聯省政府，省政府以及地方團體，應協力謀教育之普及。

關於義務教育年限之法律，根據前條規定之。

第八十八條 聯省政府，省政府及地方團體須設備特別基金，資助貧戶男女學童之適於受中等以上教育者，但此種資助之方法，應以法律定之。

第八十九條 聯省政府得設大學及其他學術研究機關。

第九十條 各省教育經費，由各省調查財政情形後，以省憲法或省法律明確規定其成數；但最低限度，不得少於每省歲出百分之三十。

第九十一條 學術上之研究，為人民之自由權，國家宜加意保護。

第十一章 附則

第一百零一條 參議院議員五分之三，或五省以上之省議會，或五省以上全數法定團體，得提出憲法修正之動議。

此項動議成立後，應按第十二條選出與參議院相等之人數，組織憲法會議修正之；但原為參議院議員者，不得被選。國體不得為修正之提議。

憲法會議之規則，由該會議自定之。

第一百零二條 候戶口冊編成，國民之識字人數及財產資格得有詳確報告，可省略前條修正之動議，應即組織憲法會議，修正本憲法一院制之條文，並規定參衆兩院之組織及選舉法，原參議院議員被選之制限，於憲法會議議員亦適用之。

此項戶口冊及選民冊之調查應從速實行。

第一百零三條 為關聯省與各省意見之一致，以達第六十條裁汰軍隊至二十萬人之數，並整理財政，使聯省各省政府界限分明，收支適合，應設國事委員會，其詳另以法律定之。

第一百零四條 本憲法自公布之日起施行。

國事委員會法

第一條 國事委員會依據憲法第一〇三條設立之。

第二條 國事委員會以九人組織之。

- 第一條 中華民國為聯省共和國。
第二條 中華民國之主權，依本憲法之規定行使之。
第三條 中華民國之國土如左

一 二十二省 直隸 奉天 吉林 黑龍江 江蘇

第三條 國事委員會委員由大總統得參議院之同意聘任之。

第四條 國事委員會之權限如左：

一 依據憲法第五、六、七各條，聯省與各省間關於權限劃分後，施行上意見之一致。

二 計畫全國裁兵方法

三 計畫全國財政整理方法。

第五條 前條事務之各問題，由大總統提出後，經本會議決，或逕交內閣執行，或提交參議院議決後施行，視其事之性質定之。

第六條 第四條事務終了後，本會議即解散。

第七條 國事委員會議事規則自定之。

第八條 本法自公布日施行。

(乙 種)

第一章 總則

第一條 中華民國為聯省共和國。

- 第二條 中華民國之主權，依本憲法之規定行使之。

第三條 中華民國之國土如左

一 二十二省 直隸 奉天 吉林 黑龍江 江蘇

安徽	江西	浙江	福建	湖北	湖南	山東	河南
山西	陝西	甘肅	新疆	四川	廣東	廣西	雲南
貴州。							

二、特別區 紹遠 热河 察哈爾。

三、蒙古 西藏 青海。

各省領土，非得其關係省之同意，不得變更之。新省之設置或其他區域之變更，以法律定之。

第四條 凡具有中華民國國籍者，為中華民國人民。

第二章 聯省及各省權限之劃分

第五條 凡事之關於全國者，由聯省機關立法或執行之，茲列舉如下：

- 一、外交；
- 二、陸海軍；
- 三、幣制，銀行；
- 四、皮，量衡；
- 五、海關稅，其他國稅；
- 六、國債；
- 七、郵政。

八、電報；
九、鐵路及國道；
十、航業；
十一、兩省以上之水利；
十二、沿海漁業；
十三、民法；
十四、刑法；
十五、商法；
十六、民事，刑事訴訟法；
十七、全國法院編制法；
十八、國籍法；
十九、發明及專利法；
二十、礦法；
二十一、移民法；
二十二、土地收用法；
二十三、聯省官制，官規；
二十四、聯省監獄；
二十五、全國戶口調查及統計；
二十六、勞動法。

二十七、產業公有法。

第二十六、二十七兩項，如聯省尚未頒行法律時，各省亦得行使關於此二項之立法權。

第六條 各省得自定憲法，並專之關於一地方者由各省或地方機關立法或執行之，茲列舉如下：

- 一、省之官制官規；
- 二、省之稅法；
- 三、省以內之實業；
- 四、省之民團；
- 五、省債之募集；
- 六、省之公產之處分；
- 七、依據第八十四、第八十五兩條省之學制之規定；
- 八、省以下之地方制度；
- 九、省以內之水利；
- 十、省造或其他省內交通；
- 十一、省以內之電話；
- 十二、省之警察；
- 十三、違犯省法之罰則；
- 十四、衛生及慈善等項；

十五、省監獄。

第七條 各省憲法應規定以下各項：

一、各省應設省議會代表民意；
二、省之行政首長或為一人，或為數人之委員會，由省之人民或議會選舉，但不得以退職未滿三年之軍人充選；

三、凡非省內官吏，住居省內二年以上者，依其省之憲法或法律，享有選舉及被選舉權利。

四、各省各級民團，其額數由各省省議會議定之；
五、省議會應詳訂關於一切選舉之舞弊法；
六、各省行政機關中之文官，應定考試任用及保障之法，不因一省內政治狀況而更動。

特別區及蒙古西藏青海之政治組織，另以法律定之。

第八條 聯省法律之效力，在各省法律效力之上。

第九條 聯省執政應保證各省之民主政治，如一省內政變擾動有違反本憲法或各省憲法者，聯省執政應干涉之。各省有不能履行本憲法上之義務者，聯省執政應督促之。甲省有以武力侵犯乙省者，聯省執政應阻止之。

第十條 中華民國之國體發生變動，各省得互相聯合，維持憲法上規定之組織。至原狀恢復時，各省之行動應即停止。

第三章 參議院

第十一條 立法權暫以參議院一院行使之。

第十二條 參議院以下列議員組織之

一 各省省議會每省選舉五人；

二 每特別區選舉二人，

三 內外蒙古西藏各選舉五人，其方法另定之，

四 青海選舉一人，其方法另定之，

五 各省教育會每省選舉二人；

六 各省商會每省選舉二人，

七 各省農會每省選舉二人，

八 各省工會每省選舉二人，

九 華僑選舉五人，

十 全國官私立大學經政府認可畀以選舉權者，每大學選舉一人。

以上第五至第十各項其選舉方法，另以法律定之。

第十三條 參議院議員任期三年。

第十四條 參議院設議長一人，副議長一人，由參議院議員互選之。

第十五條 參議院常會於每年三月一日開會，以四個月為期，但國政委員會認為必要，或議員三分之二要求時，得開臨時會。

第十六條 參議院之議事公開之。

第十七條 參議院非有議員總額之過半數之列席，不得開議。

其議事以列席議員過半數之同意決之，可否同數時，取決於議長。

第十八條 參議院議員關於院內之言論，對於院外不負責任。

第十九條 參議院認國政委員會有違法行為時，得以議員三分之二以上之列席，列席議員三分之二以上之同意彈劾之。

第二十條 參議院議員得提出質問書於國政委員會，或請其到院質問之。

第二十一條 參議院議員之資格，由選舉審查委員會審查之。

此項選舉審查委員會，以大理院長指定之法官四人及議員三人組織之。

選舉資格審查會之審查應公開之，其詳以法律定之。

第二十二條 參議院議員除現行犯及關於內亂外患之犯罪，會期中非得本院許可，不得逮捕。

第二十三條 原選機關對於所選參議院議員認為不合時，得以原選舉者過半數之同意撤回之。

第二十四條 參議院法由參議院自定之。

第二十五條 參議院議員之歲費，每人不得過三千元，其詳以法律定之。

第四章 國政委員會

第二十六條 行政權由國政委員會行使之。

國政委員會由會員九人組織之。

第二十七條 中華民國人民完全享有公權，年滿三十五歲，得被選為國政委員會會員。

但現役軍人，非解除兵柄三年後者，不得當選。

第一屆之國政委員會限於三分之一以內，對於軍大之被選者，前項之規定不適用之。

委員會中不得有會員二人屬於同一省。

第二十八條 國政委員會會員之選舉方法如下：

一、由參議院議員以連記方法選舉十八人，經議員總額三分之二以上之列席，列席人數四分三之同意，作爲國政委員會

會員初當選人。

二、各省省議會就國政委員會初當選人十八人中，選定九人，爲國政委員會會員。以各省省議會總額過半數列席，

第三十二條 國政委員會權限內之一切事務，除本憲法別有規定外，須以國政委員會之全體之名義行之。

席人數三分之二之同意者，即作爲當選。
三、前項各省選舉會之投票應當公衆前開票，公布票數，並即封寄參議院議長，由該議長當公衆前啓封，並計算所投票數。

第二十九條 國政委員會會員任期三年，每屆新參議院成立時，國政委員會應即改選。

國政委員會會員出缺，或因故辭職，在次年參議院開會時選舉國政委員會會員初選當選人，交各省省議會依第二十八條第二項選舉之。

國政委員會任滿前六月，參議院應自行集會，選舉次任國政委員會會員初選當選人。

第三十條 國政委員會會員就職時，須爲遵守憲法並忠於職務之宣誓。

第三十一條 國政委員會設首長，副首長各一人，由委員九人中互選之，任期一年。

本年度之首長，副首長，在次年度不得繼續被選爲首長，或副首長。

第三十五條 國政委員會至少須得委員五人之列席方得開議。

國政委員會會議時，會員不得無故缺席。
會員不出席連續至十次以上者，即作爲辭職，依第二十九條第二項補選之。

第三十四條 國政委員會根據法律或參議院之議決案，主持一切關於聯省之事務。

第三十五條 國政委員會對於參議院提出法律案，或其他議決案。

第三十六條 參議院之法律或議決案，由國政委員會公布並執行之。

第三十七條 國政委員會任免文武官吏，但憲法及法律別有規定者，依其規定行之。

第三十八條 國政委員會統率陸海軍。

第三十九條 國政委員會首長對於外國爲民國之代表，外國之公使，領事或其他代表，由國政委員會首長接見之。

第四十條 國政委員會之議決案，由國政委員會首長經簽約或壓印，以及無論何種形式之協定，由國政委員會首長臨參議院之同意與國政委員會之議決後締結之。

關於宣戰、媾和適用前項之規定。

第四十一條 國政委員會爲執行法律，或依法律之委任，得發布命令。

第四十二條 國政委員會會員得出席於參議院發表意見，並提出動議，但不加入表決之列。

第四十三條 國政委員會於參議院每年開會之始，應提出關於一切行政之報告，並提議應獎應革之方針。

第四十四條 國政委員會爲執行事務之便利，得分設各部。

各部總長由國政委員會會員分任之。

各部之執行事務，得以各該總長之名號單獨執行之，其他重大事件，須以國政委員會全體名義行之，此二者之界限，以法律詳綱規定之。

第四十五條 國政委員會之處事規則，及各部之官制，官規，另以法律定之。

第四十六條 國政委員會首長或副首長，以及其他會員之歲俸，以法律定之。

管之。

第五章 法院

第四十八條 司法權由聯省所設大理院，及各省所設法院行之。

法院之編制及法官資格，由聯省執政公布法律，各省得按此項法律，在省內設立法院。

第四十九條 法官在任中，非受刑罰宣告或懲戒處分，不得免職；非依法律，不得減俸，停職或轉職。

法官依據法律，獨立審判。

第五十條 除本憲法或法院編制法所規定之法院外，其他特種法院不得設置，但陸海軍法院不在此例。

第五十一條 聯省及各省內應設行政訴訟法院，以保護人民對於行政處分及命令上之陳訴。

第五十二條 以下各種案件，由聯省之專事法院解決之：

一、本憲法之解釋；

二、甲省與乙省政治上或公法上之爭議；

三、聯省官廳與各省官廳權限上之爭議；

四、人民憲法上權利受侵害時所提出之訴願。

此項法院組織，另以法律定之。

第六章 法律

第五十四條 法律案，國政委員會及參議院議員各得提出之；一經否決者，同一會期內不得再提出之。

第五十五條 參議院議決之法律案送達於國政委員會，限一月以內公布之，如國政委員會有疑義時，於公布期內申明理由請求參議院覆議，如議員三分之二以上仍執前議時，應即公布之。

第五十六條 法律與憲法抵觸者無效。

第七章 行政

第五十七條 依第五條所舉，凡關於聯省行政，國政委員會得自設機關執行之，其不自設機關者，由國政委員會委託各省代執行之，但關於委託行政之費用，由聯省擔負之。

一、軍政

第五十八條 國防軍採用義務民兵制，設幹部軍隊，其總額不得逾二十萬人。

第五十九條 凡具有中華民國國籍之健全男子，皆有捍衛國難之義務，其服役之年月，以法律定之。

第六十條 關於軍官之養成，為聯省之職權；但兵士之訓練，國政委員會得委託各省，按所定法律辦理之。

對外戰爭時，國防軍及各省之民團，概由聯省所設之總司令統率之。

第六十一條 軍費之總數，不得逾聯省歲出百分之二十。

第六十二條 國防軍應在國防上重要地點分駐之。

第六十三條 現役軍人對於政治不得以文字向公衆發表意見。

二 財政

第六十四條 聯省之收入，以國稅及郵、電、路政，或其他收入充之。

國稅以下列各稅為限：甲關稅；乙鹽稅；丙印花稅；丁煙酒稅；戊其他消費稅；己其他全國一律之租稅。

第六十五條 聯省限於建築鐵路，或其他發達生產之事業，得募集外債，但其條件須得參議院之同意。

第六十六條 國政委員會須將奉年之收入及支出編為預算案，於會計年度開始前提出於參議院。

預算之支出，以每年經參議院之承諾為原則；但因特別情形，得預定年限，規定一年以上之繼續費。

第六十七條 會計年度終了後，國政委員會應將前年度之決算案，提出於參議院，以解除其責任。

第六十八條 聯省設審計院，其組織權限以法律定之。

第六十九條 國政委員會將每年財政情形及預算、決算編成報告書公布之。

第七十條 各省間對於一切物品之出境入境，不得徵抽捐稅以限制之；但以聯省之法律，得設定例外。

第八章 國民之權利義務

第七十一條 中華民國人民於法律上無種族、階級、宗教之別，均為平等。

第七十二條 中華民國人民之人身自由，非依法律不得限制之。如有此項事情發生，應於次日通告關係人，俾得有申訴之機會。

第七十三條 中華民國人民之家宅，非依法律不得侵入或搜索。

第七十四條 中華民國人民之行為，非在行為發生前法律上早有刑罰之規定者，不得處罰之。

第七十五條 中華民國人民之郵信、電報、電話之秘密，非依法律不得侵犯之。

第七十六條 中華民國人民有選擇住居之自由，非依法律不受制限。

第七十七條 中華民國人民有言論、著作及刊行之自由，非依法

律不受制限。

第七十八條 中華民國人民有集會、結社之自由，非依法律不受制限。

第七十九條 中華民國人民對於官廳或議會，有請願及陳訴之權利。

第八十條 中華民國人民有從事公職之權。

文官地位，使其安心服務，應有法律以保障之。

第八十一條 人民之選舉自由應尊重之，其詳以法律定之。

第八十二條 中華民國人民有組數之自由。

第八十三條 中華民國人民有納稅之義務。

第九章 國民之教育與生計

一 教育

第八十四條 全國學制大綱，由聯省執政規定之，各省根據此項大綱自定細則，或因特別情形，自定學制。

第八十五條 全國人民，不論男女，皆有受教育之義務。聯省執政，著政府以及地方團體，應努力謀教育之普及。

第八十六條 聯省執政，省政府及地方團體，須設備特別基金，開設義務教育年期之法律，根據前條規定之。

第九十條 美術上歷史上之古蹟，國家宜保護之。
第九十一條 全國之生計組織，應本於公平之原則，使各人得維持相當之生存。
國民各有不背善良風俗為精神上或體力上勞動之義務。

第九十二條 善業及契約上之自由，以法律規定之。

第九十三條 國家對於勞動，應頒法律以保護之。

第九十四條 各種職業之勞動者，為維持其勞動條件，有結社之自由。

第九十五條 土地所有權之制限，以法律規定之，但為增進公共利益，得出相當之代價收為公用。

助貧戶男女學童之適於受中等以上教育者；但此種資助之方法，應以法律定之。

第八十七條 聯省得設大學及其他學術研究機關。

第八十八條 各省教育經費，由各省調查財政情形後，以省憲或省法律明確規定其成數；但最低限度不得少於每省歲出百分之一三十。

第八十九條 學術上之研究為人民之自由權，國家宜加意保護，不得制限之。

第九十條 美術上歷史上之古蹟，國家宜保護之。
二 生計

第九十六條 國家對於遺產應定法律或課稅以制限之。

第九十七條 國家對於私人或公司之大額所得，應課以累進所得稅，其詳以法律定之。

第九十八條 國家關於生計政策上之立法，應諮詢商會、農會、工會之意見。

第十章 附則

憲法會議修正之；但原為參議院議員者，不得被選。國體不得為修正之議題。

憲法會議之規則，由該會議自定之。

第一百條 俟戶口冊編成，國民之識字人數及財產資格得有詳確報告，可省略前條修正之動議，應即組織憲法會議，修正本憲法一院制之條文，并規定參衆兩院之組織及選舉方法。

第九十九條 參議院議員五分之三，或五省以上之省議會，或五省以上全數法定團體，得提出憲法修正之動議。
此項動議成立後，應按第十二條選出與參議院相等之人數組

第一百零一條 本憲法自公布之日起施行。

此項戶口冊及選民冊之調查，應從速實行。

原參議院議員被選之限制，於憲法會議議員亦適用之。

APPENDIX

VI

Draft Constitution of Guangdong Province



第四條 全省戶口未調查明確以前，憲法第三十九條之規定暫緩施行，應由每縣人民直接選出一人，其前係兩縣合併者，加選一人；但至遲須於憲法宣布後三年內，將全省戶口調查完竣。

第五條 憲法施行後，第一屆省議院議員之集會，不遲於三月一日。

第一屆省議院議員任期，至第二屆省議院議員第一次常會開會之前一日為止。

全省調查戶口時，應將學齡兒童一併查竣。

第六條 全省調查戶口時，應將學齡兒童一併查竣。

第七條 憲法施行後，第一屆省議院議員之集會，不遲於三月一日。

第一屆省議院議員任期，至第二屆省議院議員第一次常會開會之前一日為止。

全省戶口未調查明確以前，憲法各條所定全省選民總投票，暫以全省縣議會及特別市議會議員投票代之。

第七條 全省戶口未調查明確以前，憲法第五十三條第七十一條，依左列方法所組織之選舉會選出：

(1) 省教育會、省農會、省工會、杭州總商會、寧波總商會、各律師公會、報界公會，各選出五人，聯合組織一選舉會。

(2) 各縣教育會、農會、商會、工會，按照縣議員定額，合選出同等人數，與縣議會聯合，各組織一選舉會。

前例各選舉會，各於其駐在地，同時投票，每一選舉會為一權。

第八條 全省戶口未調查明確以前，憲法第一百三十條第三項之規定，暫緩施行；每縣縣議會議員額定二十名，其前係兩縣合

人數，與縣議會聯合，各組織一選舉會。

前例各選舉會，各於其駐在地，同時投票，每一選舉會為一權。

廣東省憲法草案

第一章 總綱

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併者，名額倍之。

第九條 特別市未成立前，憲法第七十八條之規定，暫緩施行。

第十條 陪審法未頒布前，憲法第一百一十三條之規定，暫緩施行。

第十一條 全省初審法院，應於憲法施行之日起，三年以內，一律成立；未成立前，暫於未成立各縣設司法公署；其組織以法律定之。

第十二條 全省各種賦稅，未經省議院及縣議會市議會議決，正廢止以前，所有稅率及徵收方法，均暫仍其舊；但有不合租稅原則者，應於三年之內，以次修正。

第十三條 各縣或市鄉，如有於義務教育經費未經認定者，憲法第一百一十三條之規定，於該區範圍以內，得暫緩施行。

第十四條 不屬人民私有之土地，憲法施行前，已指定用途，及與他縣公益有關者，憲法第一百三十七條之規定，不適用之。

第十五條 特別市離縣而獨立時，其原有之捐稅財產，如何劃分，應由縣議會與特別市議會協議行之。

第十六條 國憲未成立以前，憲法第一百另一條之規定，應由本省保留；所有中華民國十年七月以前，向由本省支出之軍事費，暫由省議院議決，核實支付，至國憲成立為止。

第一條 廣東省為中華民國之自治省。

第二條 廣東省依其固有之疆界。

省內行政區域之設置變更，以省法律定之。

第三條 凡有中華民國國籍繼續居住本省二年以上者，皆為本省人民。

第四條 省自治權屬於省民全體，以本法所定之機關行使之。

第二章 人民之權利義務

第五條 人民在法律上一律平等，無男女種族宗教階級之區別。

第六條 人民有保護其身體生命之權。

(1) 身體之自由權，非依法律不受何種制限或被剝奪。

(2) 除現役軍人外，凡人民身體自由之剝奪，至遲須於二十四小時以內，由施行剝奪令之機關，以剝奪之理由通知本人，令其得有即時提出申辯之機會。被剝奪人之親友，皆得代向法庭請求出庭狀，法庭不得拒絕之。

(3) 凡行為必於其實行以前，已經法律規定為犯罪行為，審判時方得以犯罪目之。

(4) 人民受法庭審判時，非正式宣佈判決有罪後，不受何種刑罰之執行。

(5) 人民不受非法之身體上刑罰。

第七條 人民有保護其私有財產之權。

人民之私有財產，非有相當之賠償，不得收為公用。人民之私有財產，非依合法程序，不得沒收或封存，或強制科索。遇公益上有收為公用之必要時，須給相當代價。

第八條 人民有保護其居宅之權。

人民居宅非經所有人及住居人之承諾，不得駐屯軍隊；即戰時亦須依合法之程序，方得駐屯。

第九條 人民之身體住宅郵電文書及各財物，除經本人允許或依合法之程序外，不受搜索檢查。

第十條 人民有信仰宗教之自由。

第十一條 人民在不抵觸刑事法典之範圍內，有言語文字圖畫印刷及其他方法自由發表意思之權，不受何種特別法令之制限或侵害。

第十二條 人民在不抵觸刑事法典之範圍內，有自由結社及不攜武器和平集會之權，不受何種特別法令之制限。

第十三條 人民或人民之自治團體，有購置槍枝子彈以謀自衛之權，但須經官廳之登記。

第十四條 人民有營業之自由權，但為保障重大之公共利益時，

須受法律上制限。

第十五條 人民有居住遷徙之自由。

除省法律別有規定外，在本省內，無論移住何縣，何市，何鄉，有與該地人民同等之權利義務。

第十六條 人民對於政府有上書請願及訴願之權。

第十七條 人民有向法庭依法訴訟之權。

第十八條 人民依法律有選舉被選舉及任受公職之權。

第十九條 人民有受教育之義務。

義務教育以上之各級教育，無分男女，皆有享受同等利益之權。

第二十條 人民依法律有納稅之義務。

第二十一條 人民依法律有服兵役及地方團役之義務。

第二十二條 外省人民之居住營業於本省者，與本省人民受同等之待遇。

第三章 省之事權

第二十八條 省職權範圍內之事項，有須與他省協議或聯合動作者，得與他省協議行之。

第二十九條 省政府得國政府之委託，執行國家行政事務，其費用由國家負擔之。

第三十條 國家遇非常事變，不克依法行使事權時，其在本省以內之國家行政，得由本省收管，至事變平定之日為止。

第四章 省議會

(3) 省法院之編制，監獄及感化院之設置，及司法行政之監督。

(4) 關於各種職業團體之組織法規。

(5) 制定省稅，募集省公債，及訂結省政府負擔之契約。

(6) 省有財產及營造物之保管或處分。

(7) 教育事業及與教育聯帶事項。

(8) 本省特種產業之保護及發展。

(9) 各種公共實業及關於實業之法規。

(10) 關於省交通事業之建設變更及管理。

(11) 省以內之土地整理及其土木工程事業。

(12) 省內之軍政軍令事項。

(13) 警察行政及關於公安事項。

(14) 衛生救恤及各種公益事業。

(15) 國憲之範圍內，省得制定單行法規，並執行之。

(16) 國家立法事項，其施行法令有不適用於本省者，得以省法更定其施行之程序，但不得與本法相抵觸。

(17) 國政府所定法律，或對外締約，有損及本省之權利，或加重本省之負擔時，先取得本省之同意。

(18) 省遇非常事變時，得依省法宣告戒嚴。

(19) 省內之軍政軍令事項。

(20) 警察行政及關於公安事項。

(21) 衛生救恤及各種公益事業。

(22) 國憲之範圍內，省得制定單行法規，並執行之。

(23) 國家立法事項，其施行法令有不適用於本省者，得以省法更定其施行之程序，但不得與本法相抵觸。

(24) 國政府所定法律，或對外締約，有損及本省之權利，或加重本省之負擔時，先取得本省之同意。

(25) 省內之軍政軍令事項。

(26) 警察行政及關於公安事項。

(27) 衛生救恤及各種公益事業。

(28) 國憲之範圍內，省得制定單行法規，並執行之。

(29) 國家立法事項，其施行法令有不適用於本省者，得以省法更定其施行之程序，但不得與本法相抵觸。

(30) 國政府所定法律，或對外締約，有損及本省之權利，或加重本省之負擔時，先取得本省之同意。

(31) 省內之軍政軍令事項。

(32) 警察行政及關於公安事項。

(33) 衛生救恤及各種公益事業。

(34) 國憲之範圍內，省得制定單行法規，並執行之。

(35) 國家立法事項，其施行法令有不適用於本省者，得以省法更定其施行之程序，但不得與本法相抵觸。

(36) 國政府所定法律，或對外締約，有損及本省之權利，或加重本省之負擔時，先取得本省之同意。

(37) 省內之軍政軍令事項。

(38) 警察行政及關於公安事項。

(39) 衛生救恤及各種公益事業。

(8) 得以關於本省行政及其他事件之意見，建議於省政府。

(9) 得咨請省政府查辦官吏納賄及違法事項。

(10) 議決會內一切規則。

(11) 議決本省一切興革事項。

(12) 議決各縣議會市議會應議決而不能議決之事項。

(13) 其他法律賦與事項。

第三十四條 省議會認省長有違憲及其他犯罪行為時，得以議員總額三分二以上之出席，議員三分二以上之可決彈劾之。

第三十五條 省議會對於政務員全體或若干員得為不信任之投票，但此項投票須有議員總額三分二以上之可決方得成立。

第三十六條 省議會議員對於本省行政事項遇有疑義，得提出質問書於省政府，限期答覆。

第三十七條 省議會議員對於省政府之答復，認為不得要領時，得於開會期間，要求省長或政務員到會答辯。

第三十八條 省議員任期三年，從當選之日起算；但下屆未能依期選出開會時，得延至下屆開會之前一日為止。

第三十九條 省議會自行集會開會，但臨時會依左列事情之一行之：

(1) 省議員過半數之連署召集。

第五章 省長及政務院

第四十六條 省級省長一人，由全省各縣縣議會及特別市市政

會議員總投票選舉之。

前項選舉用無記名單記法，由各縣議會特別市議會於其所在地同日舉行之，以得票總額過半數者為當選。

省長選舉法，以省法律定之。

第四十七條 按本法規定之本省公民，年滿三十五歲以上，在廣東繼續住居五年以上者，得被選為省長。

「某某以至誠遵守省憲法及法律，執行省長職權，謹誓。」

第四十九條 現職軍人被選為省長時，須解除軍職，方得就任。

第五十條 省長就任時，須於省議會為左列之宣誓。

第五十一條 省長缺位或因事故不能執行其職務時，由政務院長代行其職權，至新省長選出之日或省長再行視事時為止。

第五十二條 省長執行省政務公布法律。

第五十三條 省長為執行法律或基於法律之委任，得發布命令。

第五十四條 省長有統率全省海陸軍及管理全省軍務之權，別規定者，依其規定。

第五十五條 省長任免全省文武官吏，但本法及其他法律有特別規定者，依其規定。

第五十六條 省長有考試本省吏才之權，其考試法以省法律定。

第五十七條 省長得提出法律案於省議會。

(2) 省長召集。常會會期為兩個月，但遇必要時得延長一個月。臨時會會期，不得過兩個月。

第四十二條 省議會每年開常會一次，於每年三月一日舉行。

第四十三條 省議會議員在會內所發之言論，對於會外不負責。

第四十四條 省議員在開會期間，除現行犯外，非經省議會之許可，不得逮捕審問及監禁。

省議員在開會期間，被逮捕監禁之機關，須於二十四小時內，將逮捕監禁理由通告省議會。

第四十五條 省議會有違法失職時，由全省縣議會三分一以上之連署，提出解散省議會案，經全省公民總投票過半數可決時，省長應即解散之。

公民總投票法，以省法律定之。

第五十八條 省長遇必要時，得召集省議會開臨時會。

第五十九條 省長遇內亂外患時，經省議會之同意，得宣告戒嚴，如在省議會閉會期間，須咨請省議會追認之。

第六十條 在戒嚴期內，本法第九條，第十一條，第十二條，第十五條之效力，得暫受制限；但經省議會認為無戒嚴之必要時，應即宣告解嚴。

第六十一條 省長之命令及其處分，須經政務院長及主管政務員之副署，對於省議會負責。

規定，得解散省議會。

第五十二條 政務院長及各廳廳長，均稱政務員。

第五十三條 政務院及各廳之設置組織，以省法律定之。

第五十四條 省長任命政務員時，須得省議會之同意。

第六十二條 省設政務院，由省長所任命之政務院長及各廳廳長若干人組織之。

此項同意案，省議會若於提交後五日內不行可否之表決時，即作爲默認，但否決不得逾一次。

政務員於省議會閉會期內去職時，得由省長任命代理政務員。第六十四條 關於法律草案或施政方針及一切問題，關涉於各廳權限爭議者，應由政務員開政務會議決之。

第六十五條 政務院長按照政務會議所議決，與省長所核准之治事方針，指揮一切事務。

第六十六條 省長及政務員得出席省議會及發言，但不得參加表決。

第六十七條 政務員全體受省議會不信任投票時，省長非解散省議會，即應令政務員全體辭職。

政務員單獨受不信任投票時，該政務員即須辭職。

省長因前項解散省議會，須經全省縣議會及特別市議會議員總投票之過半數可決，方得行之。

第六十八條 省長受省議會彈劾時，應於十日內將此之項彈劾案交由全省縣議會及特別市市議會議員總投票表決，經過半數可決時，省長即須退職；多數否決時，即解散省議會。省長受彈劾退職後，由法院提起公訴。

第六章 立法

第六十九條 法律案由省長或省議員提出，由省議會議決之。

第七十條 法定之省教育會、農會、工會、商會，得提出關於教育生計諸法律案，呈請省長咨交省議會議決。
前項議案開議時，呈請者得派員出席省議會說明之，但不得參加表決。

第七十一條 全省縣議會及特別市議會十分一以上之連署，得提出法律案，呈請省長咨交省議會議決。

第七十二條 省議會議決之法律案，省長須於送案後十日內公布之。

省議會議決之法律案，省長如否認時，得於公布期內，將否認之理由，咨交省議會覆議；如省議會仍執前議時，應即公布之。未否省議會覆議之法律案，逾公布期限，即成法律；但公布期滿，在省議會開會或解散後者，不在此限。

第七章 司法

第七十三條 省之司法權，以本法所規定之各級法院行使之。

第七十四條 省法院為本省最高法院，對於本省民事、刑事及其他一切訴訟事件，為最終之審判。

第七十五條 省法院之下，設控訴法院、初審法院、審判民刑訴訟及其他一切訴訟事件。

第七十六條 省法院院長由省長任命之，但須得省議會之同意。

第七十七條 法院之審判公開之，但認為妨害公安，或有關於風化者，得祕密之。

第七十八條 法院獨立審判，無論何人不得干涉之。

第七十九條 省法院院長在任中，非依第八十一條之規定，不得免職。

第八十条 省法院院長以下各法官，非依法律不得免降官職減俸或轉職。

省法院院長以下各法官，非依法律不得免降官職減俸或轉職。

法官之懲戒處分，以省法定之。

第八十一條 省法院院長有違法賄賂行為時，省議會得以出席

一議員三分二以上之可決彈劾，咨請省長免職。

省議會發言，但不得參加表決。

第八十二條 行政訴訟事件，由省法院審判之。

第八十三條 本省各種賦稅均為省收入，省政府依法律之形式徵收之。

第八章 財政

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本省對於國家政費之負擔，以法律定之。

第八十五条 省之收入支出，由省庫或代理省庫之銀行掌管之。領款書據，須有審計院長之簽印，省庫方得支出。

省庫之組織，以省法律定之。

第八十六条 省會計年度，以每年七月一日為始，至次年六月末日為止。

第八十七条 省政府須於省議會開會後五日內，將次年度之預算案，咨交省議會議決。

第八十八条 省議會之議決，或別依法令所舉辦之事，非一年所能完竣，其費用非一年所能籌足者，得經省議會之議決，預定年限設繼續費。

第八十九條 預算除正額外，得設預備費，以補充預算之不敷或預算未及規定之事，但不得用諸曾經省議會否決之事項。

第九十条 預備費之支出，須咨請省議會追認之。

第九十一条 關於下列各款之支出，省議會非得省政府之同意，

不得廢除或削減之：

(1) 法律之規定所必需者。

(2) 繼續費。

(3) 履行條約所必需者。

第九十二條 預算案議決後，遇必要時，省政府得於省議會開會期中提出追加預算之修正案；但非基於法律或契約及必不可少之經費外，不得提出。

第九十三條 省議會對於預算案，不得為增加歲出之修正。

第九十四條 預算案經省議會議決後，各種款項有指定用途者，省政府不得移作別用。

第九十五條 省政府於每一會計年度終結後三個月內，應將上年度之歲入歲出決算案，咨交省議會議決。

第九十六條 省議會對於預算案不能議決或全部否決時，省政府得依照前年度之預算施行。

第九十七條 省政府遇有左列各種情事，經省議會議決得募集公債：

(1) 振興利益。

(2) 救濟災變。

(3) 償還債務。

第九十八條 省之財政須公開之。

凡省之財政狀況及省議會議決之預算，省政府須詳細公布之。

第九十九條 省有產業，非經省議會議決，不得抵押或變賣之。

第一百條 省內之天然富源，無論公有私有，不得抵押或變賣與行之。

席議員三分二以上之可決彈劾，咨請省長免職。

第十一章 教育

第一百零八條 本省每年教育經費，至少須占全省預算歲出總額百分之二十。

第一百零九條 本省畫定之教育經費，由教育機關保管之，無論何項政費，不得挪用。

第一百一十條 本省人民，無分男女，由滿七週歲起，皆有繼續受六年教育之義務。

政府為前項目的，得強制各地方自治團體，就地籌集義務教育經費，開辦應有之國民學校。

國民學校不論公立私立，均不得徵收學費，或其他一切費用。

學生一切學校用具，亦須由學校供給之。

自治團體，須設備特別基金，資助貧戶男女學童之適於受中等以上教育者；但此種資助之方法，須以省法律定之。

第十一章 實業

第一百十二條 省政府應於每年預算案內，列實業獎勵補助金。

第一百三條 省設審計院，審計院長由省議會選舉之。

無中華民國國籍者。

第九章 審計院

第一百零一條 省設審計院，審計院長由省議會選舉之。

審計院之組織，以省法律定之。

第一百零二條 審計院院長任期三年，在任期內，非依本法第一百零七條，不得免職。

第一百零三條 省經費之收入，應由各徵收機關，繳納省庫時，同時報告於審計院。

省經費之支出，須先經審計院之核准。

第一百零四條 審計院得隨時調查各機關之收支簿據。

第一百零五條 審計院對於全省各機關收支簿據之登記及報告程式，有釐定畫一之權。此項釐訂畫一辦法，由院長咨請省長定。

第一百零六條 省政府咨交決算案於省議會時，須先經審計議定。

省議會開議該決算案時，審計院院長得出席省議會說明之；但不得參加表決。

第一百零七條 審計院院長有違法賄賂行爲時，得由省議會出

第十二章 軍事

其獎勵補助條例另定之。

第一百十三條 省民新發明之機械，及製造品，省政府認為與公衆有益者，得許專利，並依前條給以獎金。其專利條件另定之。

第一百四條 (缺)

第十三章 縣及特別市

第一百十五條 本省海陸軍，俱為省軍，其編制以省法律定之。

第一百十六條 本省每年軍費最高額，不得超過本省歲出總額百分之三十。

第一百十七條 國家對外國宣戰時，本省軍隊之一部分得受國政府之指揮。

第一百十八條 本省內之要塞建築，或武庫、軍港，及兵工廠，造船廠等，均為本省所有。

第一百十九條 在役軍人，不得干預政治。非依法律命令，不得招集議會。

第一百二十條 縣為省之地方行政區域，並為自治團體。

第一百二十一條 縣設縣長一人，由全縣公民直接選舉，呈請省

長任命，執行省之地方行政及縣之自治行政，並監督縣以下之自治機關。

第一百二十二條 縣設縣議會，以全縣公民直接選舉之議員組成之。

第一百二十三條 縣自治法及縣議員縣長選舉法，以省法律定之。

第一百二十四條 凡人口滿十萬以上之都會商埠，應得為特別市。

第一百二十五條 特別市設參事員五人，掌理市政，由市民直接選舉之。

第一百二十六條 特別市設市議會，由市民及各團體選舉議員組成之。

第一百二十七條 特別市不入縣自治範圍，直轄於省。

第一百二十八條 特別市自治及選舉法，以省法律定之。

第一百二十九條 本法須經省議會議員總額三分之二以上之表決，或本省縣議會及特別市議員過半數之連署，得提出修正案，交由全省公民總投票表決。

第十四章 本法之修正及解釋

第一百三十條 本法發生疑義時，由省法院審判員互選七人合議解釋之。

本社投稿簡章

- 一、投寄之稿，或自撰，或翻譯，或介紹外國學說而附加意見，其文體不拘文言白話，均所歡迎。
 - 二、投寄之稿，望繕寫清楚，並加新式標點符號。能依本雜誌行格繕寫者尤佳。
 - 三、投寄譯稿，並請附寄原本。如原本不便附寄，請將原文題目，原著者姓名，出版日期及地點，詳細敍明。
 - 四、稿末請注明姓名，字，住址，以便通信。至揭載時如何署名，聽投稿者自定。
 - 五、投寄之稿，揭載與否，本社不能豫覆，原稿亦概不檢還。惟長篇在五千字以上者，如未揭載，得因豫先聲明，並附寄郵資，寄還原稿。
 - 六、投寄之稿，俟揭載後，酌致薄酬如下：
- (甲) 每篇酬現金五元至五十元；
- (乙) 酬書券或本雜誌；
- (丙) 尤有關係之稿，特別從優酬。
- 七、投稿揭載後，其酬報之額，由本社酌定，不豫先商。若投稿人欲自定數目者，請於寄稿時同時聲明。
 - 八、投寄之稿，經揭載後，其著作權為本社所有。若本社尚未揭載，已先在他處發佈者，恕不致酬。
 - 九、投寄之稿，本社得酌量增刪之。但投稿人不願他人增刪者，可於投稿時豫先聲明。
 - 十、投稿者請寄上海寶山路商務印書館編譯所東方雜誌社收。

天又(430)

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