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THE POLITICAL RECONSTRUCTION  
OF CHINA

AN ESSAY SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS  
FOR THE DEGREE OF MASTER OF ARTS IN  
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**THE POLITICAL RECONSTRUCTION OF CHINA**

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## PREFATORY NOTE

This study was completed in the spring of 1921, while the writer was a student in the Graduate School of St. John's University majoring in Political Science. It was felt that the study possessed sufficient merit to justify its publication by the University. The hope is entertained that this may be the first of a series of studies, in the fields of different departments of the University, which may be published at such times as circumstances allow.

The writer has been permitted to make certain alterations in the light of political changes which have occurred since the study was submitted.

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DONALD ROBERTS,  
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## INTRODUCTION

### POLITICAL RECONSTRUCTION AND NATIONAL PROGRESS

The most difficult and pressing of China's innumerable problems to-day is the political question, as presented in many phases and aspects—the question of the reunion of the country, of the summoning of a new parliament, of the making of the Constitution, of "home rule" for the provinces, of the recovery of Urga and of Lhasa, and of the abolition of the Tuchunate and the disbandment of the soldiery, together with a multitude of other questions of both primary and secondary importance. China is, briefly speaking, in a state of political turmoil, of political uncertainty, and of political chaos. A complete and fundamental reconstruction of her political systems and institutions becomes a matter of imperative necessity. Without such a political reconstruction, China can never hope to win a respectful place in the family of nations. Nay, she cannot expect to insure her very life, unless it be safely guaranteed by the Great Powers, and that is a thing not only undesirable but even disgraceful in the eyes of patriotic and intelligent Chinese. We must work out our own destiny and our own salvation by the effort of ourselves and not by the aid of foreigners.

China, we must recognize, is in a period of transition, and is bound to meet such difficulties in the course of her reconstruction as were experienced by other nations. China is like Japan in that she has to modernize herself in accord with Western civilization; she is like France in that she is struggling to establish a republic; she is like England in that she has been striving for political democracy; and she is like Germany and the United States in that she is now working to reach and preserve the national union. Difficult as the task

imposed upon China may seem to be, the time will come when she will rise from a position of insignificance and become one of the foremost of nations. The ignominious title of the "Sick Man" of the Far East will one day lose its appropriateness, and a great and respected constitutional republic will yet be founded upon the ruins of the old monarchy.

The political problem, of course, is not the sole thing confronting China, as she is also troubled by economic and social problems; but the political problem is the greatest and most important of all, and so it deserves our first and highest consideration. Every phase of evil in China may be traced from political causes, and it is primarily, if not wholly, through political reconstruction that we can hope to have true national progress.

For centuries China has been in a backward condition, politically and otherwise, chiefly due to her isolation from the outside world and her refraining from having contact with the West. It is only through the slow influence of Occidental civilization that she has now come to her political awakening and political consciousness, which are elements necessary for political reforms and political reconstruction. In spite of the internal dissension and external aggression going on ever since the establishment of the Republic, China still has great hope in the future of being one of the strong nations of the earth, when the present storms and troubles are over. It is an encouraging prophecy that was made by Monsieur Painlevé, ex-premier of France, who remarked on a certain occasion while visiting China in 1920, that the nineteenth century witnessed America's advance to greatness, and the twentieth century will witness the advance to greatness of China.

With this brief introduction, the writer will proceed to treat in order, in the following chapters, the reconstruction of the central government, of the provincial government, of the local government, and of the government in the dependencies, which four parts will constitute the main body of this essay.

PART I

THE RECONSTRUCTION OF THE CENTRAL GOVERNMENT



## CHAPTER I

### THE CENTRAL GOVERNMENT

Among the great states of the world, the most striking feature in common to them is that they all have strong national governments, be they unitary or federal. This is just what China lacks and it accounts for her being a weak power, so weak that she is unable even to put her own house in order and is utterly impotent to face foreign aggression. The Chinese central government is, in point of theory, like that of France, in that it is based on the principle of concentrating powers in itself without giving any amount of freedom to the provinces; while as a matter of fact, the provinces are gradually getting away from Peking, and bidding defiance to the central government. They are now, practically speaking, masters of themselves, and a state of complete or semi-autonomy is the prevailing fashion in the country. The Tuchuns are, of course, chiefly responsible for creating this situation, as they can be held to account neither by the government nor by the people; and it is because of this military oppression that the spirit of self-government has begun to develop among the people, who demand the exercise of this right by themselves.

There is danger, however, in this provincial autonomy movement, not in that the provinces would have power to administer their own internal affairs, but in that the centrifugal force might grow so much stronger than the cohesive force as to threaten the supremacy and weaken the strength of the national government, to a point when it would be no longer competent to take charge of affairs of the nation as a whole. There will be even greater danger if the Tuchuns should utilize the "home rule" movement for their own advantage, as in that case they would assume more complete independence of the

Peking government and become responsible to nobody. The growth of too strong a provincialism should be given an effective check so as to favor the free development of nationalism. A strong national government is a necessary condition of a strong national state, and the creating of one means the strengthening of the other.

Under the strong rule of Yuan Shih-kai, the central government was at the height of its power, but Yuan's despotism soon proved to be unbearable to the provinces, and his ambition to become emperor contributed to the hastening of his downfall. His successor, Li Yuan-hung, was a weak president, who had neither the will nor the power of his predecessor, and the militarists worked against him and forced his resignation. The decline of the central government in both power and prestige dates from this time.

The short-lived attempt of General Chang Hsün to restore the monarchy was followed by General Tuan Chi-jui's military dictatorship. The ensuing war which he fought with the South was indecisive, and he was again overthrown by the combined forces of the Chihli and Fengtien military factions. The two groups again struggled for supremacy and the Peking government was practically brought under the dictation of the militarists.

There is also the factor of the rebellious South to be counted. The Southwestern provinces, since the Tuchun revolt of 1917 against President Li Yuan-hung, have broken away from Peking, and have become practically independent. They had temporarily come together under the former Canton government when the Seven Directorship was created, but soon became divided among themselves. There was not only a keen rivalry for leadership in the Southwest between Generals Tang Chi-yao and Lu Yung-ting, who were formerly the respective heads of the Yünnan and Kwangsi cliques, but there was also an interprovincial struggle between Szechwan and Yünnan, and between Kwangtung and Kwangsi. In all the six Southwestern provinces,—namely, Sze-

chwan, Yünnan, Kweichow, Kwangsi, Kwangtung, and Hunan,—the old leaders gave way to the new leaders and a new situation was created. These provinces seemed at first to care only for their own respective interests, but with the return of the Kuomintang to power in Kwangtung, the reassembling of the old Parliamentarians at Canton, the election of Dr. Sun Yat-sen as "The President of the Chinese Republic," and the total collapse of Lu Yung-ting's military power in Kwangsi, things were so radically changed that with the possible exception of Hunan, which has been wavering between the North and the South, there is seemingly at present a sort of combination among the Southwestern provinces, headed by Dr. Sun Yat-sen, for launching a northern expedition toward the Yangtze valley against the powerful masters of the North. What will come out of this still remains to be seen.

Such is the general political situation in China to-day. The central government at Peking, owing to its being hard pressed by the Northern Tuchuns and openly opposed by the Southern provinces, is at the lowest ebb of its influence and fortune. Its orders cannot be strongly enforced, if enforced at all, outside the gates of the capital. It is a recognized fact that it has so lost its prestige and power as to have become a cat's-paw of the militarists and a tool of the politicians, affording political advantage to a few ambitious men at the expense and humiliation of the nation. The government treasury is empty and the national finance is on the verge of bankruptcy. The government is now depending on loans to maintain its lingering existence. It is in a worse condition than ever before, so bad a condition that even those in the employ of the Cabinet ministers have repeatedly gone on strike for the payment of arrears! It is no wonder, then, that the government cannot command respect and support from the people since it has already so discredited itself.

President Hsü Shih-chang is well known to have been an imperialist. He was formerly in favor of, and at one time

worked for, the restoration of the Manchus (in secret connection with General Chang Hsün, it has been alleged); and in his heart he is not a genuine believer in the Republic. The Cabinet of Liang Shih-yi depended upon the military force of General Chang Tso-lin for its formation and maintenance. Without such military support it would not have continued to exist, and indeed it fell only when popular disapproval coincided for the time being with the aims of General Wu Pei-fu. There is no representative parliament to represent the people and check the government, and the late parliamentary election for the summoning of a new parliament was only a policy of the government to counteract the presidential election in the South. The parliamentary election itself was unsatisfactory in many points, as it involved a hasty, ill-prepared process tinted with fraud and corruption, besides the fact that many provinces have not yet observed the order of Peking for conducting the general election, not to mention the indifference of the Southwest.

Furthermore, there is no permanent constitution outlining the governmental structure and limiting the governmental powers; the Provisional Constitution is a very imperfect document, and has now lost all its binding force on the government. There are no strong genuine parties in existence to-day; only personal cliques and factions are in control of the national politics. There is no strong, independent, and organized judiciary free from political influence; extraterritoriality is still retained by the foreign powers in China, and no early hope of its cancellation can yet be cherished. The Tuchun system is still in its ascendancy, and the military force is in a wretched condition; a complete reorganization of the military system cannot be effected without first abolishing the Tuchunate and Super-Tuchunate. Foreign relations are still complicated by the Tibetan question and the Mongolian question, despite the temporary settlement of the Shantung and Chientao questions; and a solution of these critical problems is yet far distant, if it

is to be really satisfactory. The central government has no army, no navy, and no money; all powers are kept in the hands of the provinces.

Under such conditions, it is not unfair to say that among the national governments of the world, if we use the term in its true sense, that of China is the weakest. To save the situation, we must restore the central government to its former position of leadership in national affairs, not leaving it subject to interference from the provincial authorities; and such things as foreign affairs, the army, navy, post, telegraphs, national taxation, national legislation, must be strictly reserved to the central government, while all else should be left to the provinces. This requires the reconstruction of all parts of the government, and until it is done we cannot expect to see our central government stand as the vital organ of the whole political system.

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For further discussion of the relations of the central to the provincial government, the reader is referred to Part II, Chapter XI, "The Provincial System and the National State."

## CHAPTER II

### THE LEGISLATIVE-EXECUTIVE POWER

The principle of the separation of powers in the government of a state has been widely adopted in a varying degree by most countries since the time of Montesquieu, who, though not the first originator of this theory, was chiefly responsible for giving it currency in "The Spirit of Laws," in which book the theory was expounded and developed at great length. It finds its most potent exponent in the United States of America, where this theory was consciously followed in the making of national and state constitutions for the organization and working of the federal and state governments. Accordingly, in the United States Government at Washington, the executive power is vested in a President, the legislative power in a Congress and the judicial power in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

Obviously enough, it would be absurd to separate the three usual divisions of government so far as to make each entirely independent of the others. In order to avoid such a chaos of authority and to unify governmental powers, a system of checks and balances has developed in all modern governments, though worked out most carefully in North America. The fundamental idea is that in a state there are certain adverse interests finding expression, and that none of these should become so powerful as to have the others completely at its mercy. This thought is applied later in connection with the theory of the separation of powers so as to develop a system whereby each separate division of government might be controlled by, and in return control, the other divisions. In this way each division checks

the others if they become tyrannical, and is itself checked by similar powers held by the other divisions.

The nature of the American system of government as the most perfect exemplar of this theory was excellently presented by John Adams, who had once been president, in his letter to John Taylor in 1814. "Is there a constitution upon record," says Adams, "more complicated with balances than ours? . . . the executive authority is in some degree balanced against the legislative, . . . the judicial power is balanced against the House, the Senate, the executive powers, and the state governments, . . . the Senate is balanced against the President in all appointments to office, and in all treaties. . . ." <sup>1</sup>

To understand this important theory of the separation of powers, a quotation of Montesquieu's statement seems to be necessary. "If the legislative and executive power," says Montesquieu in "The Spirit of Laws," "are united in the same person or in the same body of persons, there is no liberty, because of the danger that the same monarch or the same senate may make tyrannical laws and execute them tyrannically. Nor again is there any liberty if the judicial power is not separated from the legislative and the executive. If it were joined to the legislative power, the power of the life and liberty of the citizens would be arbitrary; for the judge would be the lawmaker. If it were joined to the executive power, the judge would have the force of an oppressor." <sup>2</sup>

This doctrine is, however, of only partial truth, and in the case of England it is no truth at all. For Montesquieu himself, in his analysis of the English Constitution, had a false conception of the workings of the English government. He overlooked what has since become the leading fact of the English Constitution,—that there has been a junction of both the executive

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<sup>1</sup> Woodrow Wilson: "Congressional Government," p. 12.

<sup>2</sup> Stephen Leacock: "Elements of Political Science," pp. 143, 144.

and the legislative power in the hands of a cabinet or committee chosen out of the legislature,—and he thought to see in it a balance of power effected between the king and the two houses of Parliament, neither of whom was supreme over the other, and from each of whom the judiciary was to a large extent independent. Montesquieu once made this notable remark in regard to the English government: “Were it to be no monarchy, and were the executive power to be given to a certain number of persons drawn from the legislative body, there would be no liberty, because the two powers would be united.” Yet this is practically a description of the present-day English government, for practically speaking there is no monarch in England and the executive power is given to a number of persons drawn from the legislative body. Montesquieu’s ideas on the subject are therefore logical but incorrect, for in England there *is* liberty.

Nor is there a separation of powers observed in the present parliamentary governments of France and Italy. In France, the President is elected by the legislature. His ministers are, in practice, though not in law, the representatives of a majority in the Chamber of Deputies. In the same way the King of Italy governs by means of a party ministry. The same holds true of imperial and of republican Germany, where in the actual working of the federal constitution, both old and new, the powers of the government were not and are not distributed.

“Even under the Constitution of the United States, the principle of the separation of powers is only adopted in the federal government to a modified extent. The executive is not without a share in legislation, since the President has a partial veto power on the acts passed by the Congress, and something resembling a power of initiative by means of presidential messages. Nor is the legislature without a share in the executive government, as is seen in the ratification by the Senate of treaties and appointments. The judges are the appointees of the executive, and the courts are empowered to pass on the

constitutionality of the acts of the two other branches of the government. Even this qualified separation existing under the Constitution is still further modified in the actual operation of the government. Here the existence of the party system is an important factor . . ."<sup>1</sup> in that it serves as a bond of union between the executive and the legislative agencies. In spite of it, the evils resulting from the adoption of a check and balance system are still great. It makes possible the rise of the "boss" in controlling national and local politics, who cares only for party interests and is not responsible to the people. It also brought about the long deadlock between President Wilson and the Senate over the question of the ratification of the Treaty of Versailles, because of the ill-defined nature of the treaty-making power. The Americans must devise means to prevent the recurrence of such troubles.

The principle of the separation of powers in its extreme form cannot, therefore, be made the basis of any concrete political organization, and has proved to be unworkable as a legal principle. "Actual political necessity therefore requires that there shall be harmony between the expression and the execution of the state will. Lack of harmony between the law and its execution results in political paralysis."<sup>2</sup> Either the executive authority must be subordinated to the expressing authority, or the expressing authority must be subjected to the executing authority. Only in this way will there be harmony in the government. Now popular government requires that it is the executing authority which shall be subordinated to the expressing authority since the latter can be made much more representative of the people than can the executing authority. That some such relation must exist between the two ultimate functions of government is seen when we examine the political development of any state.

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<sup>1</sup> Stephen Leacock: "Elements of Political Science," pp. 149, 150.

<sup>2</sup> Frank J. Goodnow: "Politics and Administration," p. 23.

In England there is government by the House of Commons; in France there is government by the Chamber of Deputies; in royal Italy and in republican Germany the same principle prevails. This also holds good in all other countries where the Cabinet system is adopted. And even in the United States, though the system is presidential, there is a scheme of congressional supremacy, as is pointed out by Woodrow Wilson, in his "Congressional Government" (1885), in the actual form of the American government, though the theoretical form of the Constitution is one of nicely adjusted ideal balances.

This parliamentary supremacy is only of degree and not of kind. The term "supremacy" does not mean the dominance of the executive by the legislature; it only signifies that ultimate authority is held in the hands of the legislators as the representatives of the people. By no means whatever should this supremacy be carried to such an extreme as to bring the executive under the thumb of the legislature, as that would undoubtedly have its effect in handicapping the workings of government.

The Chinese Provisional Constitution of 1912 has altogether failed to bring about good government, primarily because of its over-exalting the position of Parliament above the executive, thus causing the reaction of the executive in overturning Parliament. This constantly recurring conflict between the executive and legislative branches of government has time and again upset the country; and it is to be avoided by making the executive independent within its own field of action, but holding it responsible to the Parliament for the acts it has done. The Cabinet must lead in both administration and legislation, and the Parliament is to make inquiry and criticism so as to keep the ministers in a wholesome state of vigilance; it may, by various means, further impose upon them substantial responsibility and control. There would be, as in England, a close union, and nearly complete fusion, of the executive and legislative

powers. It is only by this kind of coöperation that we can hope to have a strong and efficient government.

As to the judiciary, we would all agree that independence in tenure and in action should be given to it, so that it may be free from encroachments on the part of the other two branches of government. It is here, then, that the principle of the separation of powers has its true application without entailing evil results.

## CHAPTER III

### THE PRESIDENT

The President is the head of the state and the chief executive in the government. As the presidency is the highest office in a republic that one can aspire to attain, and as this particularly in China has been the source of trouble in the struggle for power, it is important for us to lay down some general principles in regard to the methods of presidential election, and the scope of presidential powers and functions.

First we shall take up the methods of presidential election. According to the Presidential Election Law of October, 1913, it was provided that "the President shall be elected by an Electoral College organized by the members of the National Assembly of the Chinese Republic." Then it was added that "the said election shall be held by a quorum of two thirds or more of the entire membership of the said Electoral College and shall be conducted by secret ballot. A candidate shall be deemed elected when the number of votes in his favor shall not be less than three fourths of the total number of votes cast at the election. If no candidate secures the requisite number of votes after two ballotings, a final balloting shall be held with the two persons securing the greatest number of votes at the second balloting as candidates. The one securing the majority of votes shall be elected."<sup>1</sup>

This method was derived from the French Constitution in that the latter provides for the election of the French President by the Senate and the Chamber of Deputies united in National Assembly, which body corresponds to the Chinese Electoral College

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<sup>1</sup> B. L. Putnam Weale: "The Fight for the Republic in China," appendix, pp. 407, 408.

composed of all the members in both houses of Parliament; but there is a difference between the two in the actual process of election, for while the French Constitutional Law requires an *absolute majority* of the votes of the National Assembly for the electing of the President, the Chinese Presidential Election Law requires only a quorum of two thirds of the entire membership of the Electoral College for the purpose of election, and three fourths of the total number of votes cast in the election will entitle a candidate to be elected. In the actual working of the latter law, a man may be elected president if only half of the total number of members in the Parliament are present in the election and cast their votes as a solid unit in his favor. To illustrate this, let us suppose there is in the Parliament a total membership of 600; then, according to that Presidential Election Law, 400 members will constitute a quorum, and 300 votes, which is only half of the total number 600, taking one man for one vote, cast solidly for one particular candidate will elect him. The *absolute* majority which the Chinese law strives to get thus may result only in getting a *relative* majority. In case all the 600 members are present and their votes cast are not equally divided, then by the working of the law, the one who receives 301 votes will get elected, while the other 299 votes may accrue to another candidate, who will thus lose the election by a shortage of only two votes. If the total membership is an odd number, e. g., 601 instead of being an even number 600, then the difference between the votes of the winning and losing candidates, provided the votes are not split among more than two candidates, may be only one, as the former may get 301, and the latter 300 votes.

The injustice involved in the working of this election method is plain enough. It makes it possible for a man to be elected by a narrow majority of one or two votes over his opponents, and if the total members are not all present in the election, as is very likely to be a general case, half of the entire membership

forming a solid group would completely decide the result of election. A president thus elected would not feel himself strong enough to command the respect and support of the people because he would not truly represent the wishes of the nation. And though this may be corrected by requiring a two-thirds majority of the votes of the entire membership in the Parliament, and by setting no other limit for the quorum, yet the very method itself of having the President elected by Parliament meets several serious objections. Not only would it completely subordinate the executive to the will of the legislature as in the case of France, but there is also the danger of governmental interference in the election, either by employing the means of bribery, or by threatening the using of force, as was done by Yuan Shih-kai in the presidential election of 1913, an incident which should never be allowed to be repeated.

To avoid this possible evil of parliamentary preponderance and the possible danger of governmental influence, it is proposed that the President should be elected by direct popular vote as is done in Peru, Brazil, and Bolivia, and in actual practice, though not in outward form, in the United States. This, however, could not be used in China, at least for the present, and very probably for the near future, because of the extent of the country, the size of the population, the inconvenience of communication, and above all, the low standard of political intelligence, and the utter lack of party machinery.

Still another alternative is offered for the electing of the President by the provincial legislatures instead of by the national Parliament or by direct popular vote. This, again, would be no better, if it would not be worse, for it would put so much power into the hands of the provinces as to let them dominate and control the national government.

A medium between, and in some sense, a combination of, these several methods, particularly the first and the last, may, however, be found by having the President elected by both the

national Parliament and the provincial legislatures: that is, to have the Parliament first nominate three candidates for the presidency and then refer them to the provincial legislatures for a final choice. Parliament would do the work of counting the votes returned and announcing the results obtained. If none of the candidates should get the desired majority of a two-thirds vote of all the provinces, or if there were a disputed or contested election, then Parliament might have a final vote and reach a final decision, by a joint session of the two houses.

This method has decided advantages over all others in its application to China. It is better than the method of electing the President by the national Parliament alone, because the Parliament may have only the initiative power of nomination, but not, unless there is a disputed or contested election, the ultimate power of choice. It is better than the method of electing the President by provincial legislatures alone, because these legislatures can only have a limited choice of these candidates nominated by Parliament, one of whom is to be chosen president. And it is better than the method of electing the President by direct popular vote, because when the Parliament and the provincial legislatures are composed of fit persons, who themselves are chosen by the people as the latter's representatives, that mode of electing the executive is the very best, since they can cast more intelligent votes than the ignorant masses, who know nothing and care nothing about politics. It is a case of secondary election, under the only conditions in which secondary election is preferable to primary.

Now turning to the field of presidential powers, we find that the Provisional Constitution of 1912 practically puts the President of China in the same position as that of the President of France. A close study of the document will immediately reveal this fact. It is true that the Provisional Constitution makes definite provisions that "the Provisional President (or later, the Constitutional President) represents the Provisional Government

as the fountain of all executive powers and for promulgating all laws" (Article 30); that he "may issue or cause to be issued orders for the execution of laws and of powers delegated to him by the law" (Art. 31); that he "shall be the Commander in Chief of the Army and Navy of the whole of China" (Art. 32); that he "shall ordain and establish the administrative systems and official regulations but he must first submit them to the National Council (or later, the National Parliament) for its approval" (Art. 33); that he "shall appoint and remove civil and military officials, but in the appointment of members of the Cabinet, ambassadors, and ministers he must have the concurrence of the National Council" (Art. 34); that he "shall have power with the concurrence of the National Council, to declare war and conclude treaties" (Art. 35); that he "may, in accordance with law, declare a state of siege" (Art. 36); that he "shall, representing the whole country, receive ambassadors and ministers of foreign countries" (Art. 37); that he "may introduce bills into the National Council" (Art. 38); and that he "may declare a general amnesty, grant special pardon, commute punishment, and restore rights, but in the case of a general amnesty he must have the concurrence of the National Council" (Art. 40).<sup>1</sup>

All this long list of powers legally possessed by the President, however imposing it may be, amounts to nothing when we bear in mind the fact that on the one hand the President is seriously handicapped by the National Council or Parliament in the exercise of his seemingly broad powers, such as the appointing power, the war power, the pardoning power, the treaty-making power, the power for ordaining and establishing administrative systems and official regulations, and the power of suspending legislation for reconsideration, all these powers being limited by the National Council or Parliament whose concurrence is required and whose decision may override the President on the above

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<sup>1</sup> B. L. Putnam Weale: "The Fight for the Republic in China," appendix, p. 405.

matters; and that on the other hand, he is rendered even more powerless by the Cabinet, for, according to the Provisional Constitution, it is provided that "members of the Cabinet shall assist the Provisional President in assuming responsibilities" (Art. 44); and that they "shall countersign all bills introduced by the Provisional President, and all laws and orders issued by him" (Art. 45). Like his French counterpart, it is due to these clauses more than anything else that the President of China is reduced practically to the position of a nominal executive, and his political responsibility together with his political power is shifted to the Cabinet, which is replacing him as the ruling executive. The President, then, is only legally, and not politically, responsible, because it is implied by the Provisional Constitution that the National Council (or Parliament) can only impeach the President in case of high treason (see Art. 19, Section 11).

As is well known, Yuan Shih-kai was not willing to abide by the limitations which the Provisional Constitution placed upon the executive power. The attempt of Tang Shao-yi to organize a responsible Cabinet and that of the Tung-meng Hui (later the so-called Kuo-ming Tang, or Nationalist Party) to organize a party Cabinet all failed in the end, after which the powers of the Cabinet were again transferred to the President. The only powerful body that now stood in the way, and disputed with the power of the President was Parliament, which had been opposing the President in the cases of Sung Chiao-yen, of the Reorganization Loan of 1913, and of making the permanent Constitution, and Yuan was strong, resolute, and despotic enough first to abolish the Parliament and then the Provisional Constitution itself.

With Yuan's death, resulting from the collapse of the Monarchical Movement, the Vice President Li Yuan-hung succeeded to the presidency, and he was a fit person for a Cabinet government though not for a presidential government, because he was content to let Premier Tuan Chi-jui bear full

responsibility to Parliament if only he, the President, could have a small voice in the matters which the Cabinet decided upon. But Tuan was too ambitious and autocratic, and tried, as he did, not only to overrule the President and ignore him altogether, but also to overrule the Parliament, in whom he found his strongest opponent. The consequence was that the conflict between the Cabinet and the Parliament was soon transformed into a conflict between the President and the Cabinet, and resulted in the dismissal of Tuan Chi-jui from office (to satisfy the wishes of the Parliament) and the revolt of the Northern Tuchuns against Li (by the instigation of Tuan). This, in turn, brought about the abrupt fall of the President and the illusory attempt of General Chang Hsün at a restoration.

When Vice President Feng Kuo-chang assumed, after Li's informal resignation, the office of the chief magistrate, and the all-powerful General Tuan Chi-jui came into power again as premier, the conflict between the President and the Premier speedily reasserted itself, as both of them had military support behind them and neither of them was stronger than the other. Both were struggling for the supreme power, and dual control was definitely taking shape. There had been, it will be recalled, a serious dissension between them over the question of civil war with the South, as the President advocated conciliation and the Premier suppression, and the dissension was continued till the end of the term of Feng's Acting Presidency.

When Feng lost the ensuing presidential election of 1918 to the present President Hsü Shih-chang, Tuan was also forced by him to resign his office at the same time, as one could not tolerate the other to remain in power while he himself had, by the fortune of the election, to suffer the loss of position alone. The new President then could choose his Prime Minister comparatively at his own discretion, although in making the choice he was also controlled by the powerful political faction, the Anfu Club, and later by the military factions of Tsao Kun and Chang Tso-lin.

On the whole, President Hsü has seemed to be in accord with various ministries, and no effort was made by him up to the year 1921 to obstruct the Cabinet in exercising its legal powers. This was, however, not the case in the last months of the year 1921 when he had a serious dissension with Premier Chin Yin-pung over the question of filling the post of Minister of Finance, and on other matters as well, and the dissension was so great that the President sought the help of General Chang Tso-lin in ousting the Premier and putting Liang Shih-yi in his place.

From all that has been said above, the defect of the Provisional Constitution seems to be in the faulty division of powers between the President and the Cabinet on the one hand, and between the President and the Parliament on the other. To lessen, and ultimately to eliminate, the conflict between the President and the Cabinet, it should be definitely stated in the Permanent Constitution that will one day be made, that since China is to adopt the Cabinet system, as she has now to some extent adopted it, in place of the presidential system, the Cabinet, instead of the President, is to bear responsibility before Parliament, and hence is vested with full executive powers. The countersigning of the President's bills, accordingly, would still be in the hands of the Cabinet in order that the responsibility of the government can be concentrated in one head, and not divided between two heads, for a divided responsibility means no responsibility. This would, of course, involve a sacrifice of considerable powers on the part of the President, but we cannot help it, because we have to choose between two forms of government,—the Cabinet government and the presidential government,—and the Cabinet government is attended with fewer defects and greater advantages than the presidential government.<sup>1</sup>

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<sup>1</sup>The comparison between these two systems of government will be taken up later in another chapter (see Chapter IV).

The suggestion that the President should himself resume responsibility to Parliament is evidently impracticable, because by so doing, he would throw himself into political storms and expose himself to parliamentary attack, thereby causing the frequent election of a president and shaking the very foundation of the government.

Notwithstanding the great powers wielded in a responsible cabinet, the President should, however, like the English sovereign, in the oft-quoted phrase of Bagehot, have three rights—the right to be consulted, the right to encourage, and the right to warn. A president of great sense and sagacity would want no others. The Cabinet should, on its part, give every information to the President on important affairs of the state, so that when he is asked to sign decrees or confirm appointments, he may have a clear understanding of the matter or situation. The President should also have the right to refuse to sign a Cabinet bill if he considers it inexpedient or dangerous, but he need not be so persistent in his own views as to force the resignation of the Cabinet, and if the Cabinet is supported by the Parliament, he should yield himself to the Cabinet demand, while if the Cabinet policy is opposed by the Parliament, either the Cabinet may be compelled to resign or the Parliament may be dissolved, but it is for the Cabinet itself to decide and the President cannot follow his own discretion in the matter.

The intricate relations between the President and the Cabinet should be definitely settled, their powers clearly divided, and their positions well defined, so that there will be no more conflicts in the future in the domain of powers.

We come now to the second point, for the settlement of the controversy between the President and the Parliament over the same question of powers. The President should have the whole appointing power, including the appointment of the premier, ambassadors, and ministers, without requiring the concurrence of Parliament, which concurrence was provided for in the

Provisional Constitution. This is to strengthen the executive authority and to enforce Cabinet responsibility. And though the Draft Constitution of 1913 has limited the requirement of concurrence by the House of Representatives only in the appointment of the Premier, yet even this is unnecessary, because the President, in making the appointment, would certainly be guided by the wishes of the Parliament; and if the party system should be well developed, the leader of the party controlling a majority in Parliament would inevitably be chosen as premier. Meanwhile, however, during the time when there are no strong political parties the President may exercise some discretion in the appointment, and a close harmony between the President and the Premier ought to result.

Then in declaring war, the President should, as provided in the Provisional Constitution, have the concurrence of Parliament, but this must be qualified by a clause, as inserted in the Draft Constitution of 1913 to the effect that in defending the country from foreign attack the President shall, after the declaration of war, ask the Parliament's affirmation. The President should also have the power to negotiate and conclude treaties, but those relating to peace, territory, and sovereignty, or involving the finances of the state, should be subject to the approval of the Parliament. The President should also have the power to convoke and dissolve the Parliament, provided, in the latter case, that a new election be held and a new parliament convened within a fixed period, say five months. The power of dissolution which was not provided for in the Provisional Constitution, should be vested in the President, for reasons to be given in the next chapter; and accompanying it, the power of convocation, which ordinarily belongs to the Parliament, as it has the power of holding annual and extraordinary sessions, should, however, in time of dissolution of Parliament, belong to the President, because if the Parliament should convoke itself even after it is dissolved, then the power of dissolution will be rendered ineffective or useless.

Finally, certain restrictions should be imposed on the President in his exercise of the pardoning power, so as to prevent his misuse or abuse of it. The President should grant special pardons only after a court has passed judgment of conviction; should commute punishments only after the punishments are determined; and in case of an impeachment sentence, the President must, in restoring rights, get the concurrence of the Parliament. This is in view of the fact that in the pardoning of Liang Shih-yi and of Chang Hsün, President Feng Kuo-chang and President Hsü Shih-chang respectively acted contrary to the wishes of the people, and on the instigation of certain groups, in exercising the pardoning power, and so provisions should be made to prevent the recurrence of such incidents. Recently, when Liang Shih-yi first came to be premier, the first measure that he asked the President to enact was the pardoning of five of the leading Anfuites, who had been taking refuge in the Japanese Legation as a result of the downfall of the Anfu Club. Liang, in making this move, was of course backed up by the warlord Chang Tso-lin, and the President could not but yield to the pressure thus brought to bear upon him, despite the strong protest of General Wu Pei-fu and the vigorous opposition of the people. Thus we see that the pardoning power has been misused over and over again, and for that reason special measures should be taken to guard against it. Then a last word should be said about the general amnesty, which is only a survival of the already outworn monarchical system and therefore contrary to the principles of republican government; the provision made in the Provisional Constitution in regard to it should be abolished altogether.

In suggesting this division of powers between the President and the Parliament, we have, therefore, the idea of making for executive energy and leadership,—in the words of Dr. Willoughby, formerly legal adviser to the Chinese Government, “in order to establish and maintain a Republic.” For “it is,” says

Willoughby, "the essence of republican government that the executive branch should be brought under the control of the representatives of the people—that is, that those who possess executive authority should be made politically, as well as legally, responsible for the manner in which they exercise the powers placed in their hands. But it is a fatal error if the danger of executive oppression be avoided, not by subjecting those in executive authority to political and legal control, but by weakening the executive power itself, or vesting its exercise in the popularly elected chamber."<sup>1</sup> And this is a gross error made in the Provisional Constitution, which attempts "to avoid the danger of executive autocracy (for a lively fear was felt that Yuan Shih-kai, who it was known would be the first president, could not be trusted to abide conscientiously by republican ideals), not by devising means for imposing political or legal responsibility upon the President for acts that he might commit, but by making it constitutionally impossible for him to take essential executive action without first obtaining the approval of the Parliament—which approval it was often impossible to obtain. Furthermore, it became apparent that it was the intention of the Parliament to perpetuate this type of government in the permanent Constitution which it was authorized to draft and to promulgate."<sup>2</sup> Now, as China is tending toward the adoption of Cabinet government, this proposal made for strengthening executive authority would, in effect, mean the strengthening of the Cabinet, for it is the Cabinet that is to bear political and legal responsibility to Parliament, while the President as the nominal and not the working executive can only be held legally responsible for high treason. By having such a strong responsible Cabinet, we may see, then, the developing and maintaining of harmonious working relations between the executive and the legislative branches of government. The conflict between the President and the

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<sup>1</sup> *The Peking Leader Special Supplement*, February, 1919, pp. 5, 6.

<sup>2</sup> *Ibid.*

Parliament may then come to an end, and the coördination between the executive—in effect, the Cabinet—and the legislature be achieved.

With the President's powers well marked out in regard to his relations to the Cabinet and the Parliament, we may now make a brief study of presidential functions under a Cabinet form of government. The President, though by intrusting his executive authority to the Cabinet he finds it impossible or difficult to exercise his powers independently, still has, nevertheless, important functions to perform. It would be erroneous to conclude from what has been said above that the presidency in China is obsolete or unimportant, serving no other purpose than to furnish a visible head of the Republic; or even to say that the President has no real influence in the government. People might think that the Chinese President, under a Cabinet system of government, would be reduced to a figurehead, with no more power than the King of England who "can do no wrong," or the President of France who "neither reigns nor governs." None the less, the uses served by the President are considerable; his influence upon the course of public affairs may, indeed, be great. Esmein, the French writer, says that the executive in a Cabinet form of government, be he president or monarch, is a "balancing and regulating agent." Bartholomé, another French writer, asserts that the President (speaking of the President of France) should not be the leader of one party, but should be the arbiter of all parties. The President, unremovable during his term except for high treason, is the only stable part of the government when the Cabinet is subject to parliamentary fluctuations. The visible continuity of government may be preserved, so long as the President is not changed, although a change of Cabinet may alter the whole system of administration.

Moreover, the President, by his long political experience, and being in the most honored position, can offer suggestions and criticisms to the Cabinet to cause the latter to change its

policy and modify its action. The President, being above politics, can also exert himself to arbitrate party strife and party controversies. By his prestige and impartiality, he can do this work effectively. And though he bears no direct responsibility to the Parliament, nevertheless he owes a high duty to the nation. It is his moral as well as official obligation to keep in close contact with officers and affairs of the state, so that he may be enabled to give valuable advice on the conduct of the government from time to time. In a word, the President stands as an adviser to and a supervisor of, the Cabinet, a relation just the reverse of the American system, according to which the President rules and the Cabinet advises. The influence which the President wields in administration, law-making, and foreign policy depends very largely upon his own capacity, interests, and activity. As to his social functions, their importance is obvious to everybody, and no more mention need be made. The comment of the American writer, A. Lawrence Lowell, on the French President well deserves quotation as applicable also to China. "The anomalous position of the President," says Lowell,—speaking of the President's nominal position as the chief executive of France,—"has saved France from the danger of his trying to make himself a dictator, while the fact that he is independent of the changing moods of Chambers has given to the Republic a dignity and stability it had never enjoyed before."<sup>1</sup>

The tenure of office, for five years, and reëligibility for a second term should be the same as provided in the Presidential Election Law of 1913. The proposals for creating a collective executive; for lengthening the tenure of office to seven years and making the officeholder ineligible for reëlection; and for setting no limit to the number of terms—all are impracticable. The vice presidency, as provided in the Election Law, in the

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<sup>1</sup> A. Lawrence Lowell: "Governments and Parties in Continental Europe," Chapter I, "France," p. 30.

Provisional Constitution, and in the Draft Constitution of 1913 should still be kept in the future Permanent Constitution, as this provision has proved a means of saving the country from much trouble and bloodshed, as both the first and second presidents, Yuan Shih-kai and Li Yuan-hung, were obliged to quit office before the end of their terms, and their successors were immediately found in the vice presidents without any elections. This is a departure from the French system, under which there is no vice president, nor any law of succession, so that whenever the presidential office falls vacant there must be an election; in the meantime, the Council of Ministers is vested with executive powers. It is in line with the American system, under which a vice presidency is created and maintained in order that a successor may be found to fill up a vacant presidency. The reason for keeping this office in China, which seems to be of no use in ordinary times, is because of the actual circumstances as well as of historical traditions, for under the monarchy China always had, with very few exceptions, a crown prince or heir apparent to succeed to the imperial throne in case of the Emperor's deposition, or of his death, abdication, or inability to discharge the powers and duties of his office.

## CHAPTER IV

### THE CABINET SYSTEM

The Cabinet is not an importation from Europe. It has a history of its own. Curiously enough, its development bears striking resemblances to that of the British Cabinet. From time immemorial the Emperor of China had been assisted by a council, which corresponded in power and in function to the British Privy Council from which the British Cabinet was evolved. In the late Manchu dynasty, there were the institutions of the Grand Secretariat—i. e., Inner Cabinet or Supreme Council, and the Grand Council, or Military Council. In 1907 there was created an advisory council which included all the members of the Grand Secretariat and of the Grand Council and the heads of all the boards or departments. In 1911, the last year of the Manchu rule, the three councils were abolished and in their stead a cabinet and a privy council were formed. The boards became ministries and their heads constituted the Cabinet. With the establishment of the Republic, the Privy Council was, of course, done away with, but the Cabinet was still retained under the different name of Council of State Affairs. However, for the sake of simplicity, we shall still use the term "Cabinet" in the following discussion.

China, according to the Provisional Constitution, is a parliamentary republic, the essence of which, it is believed, is a responsible cabinet. It is provided that "Cabinet ministers shall assist the President in assuming responsibilities to Parliament," and that "they shall countersign all bills introduced by the President, and all laws and orders issued by him." Further provisions are made to the effect that "members of the Cabinet and their deputies may be present and speak in

Parliament"; and that "upon members of the Cabinet having been impeached by the Parliament, the President may remove them from office, but such removal shall be subject to the reconsideration of the Parliament." This is based on the British doctrine that "the king can do no wrong" and that his ministers are responsible for his acts.

These provisions in themselves alone are, however, not satisfactory for the establishing of a true Cabinet government, for they are still too incomplete, too imperfect, and purely one-sided in placing the legislative branch above the executive branch of the government. First of all, there is *no power of parliamentary dissolution* vested in the executive as a counter-means of meeting the parliamentary opposition either expressed in the form of making "interpellations," as provided in the Provisional Constitution, or in the form of voting "lack of confidence," as provided in the Draft Constitution of 1913. This power is what Bagehot called the "regulator" of the single sovereignty, which in England is a vital part of the English Constitution, and which greatly helps it to achieve its success. True it is, that according to the Draft Constitution, the power to dissolve the House of Representatives is formally vested in the President, and would normally be exercised by the ruling Cabinet, if the Permanent Constitution had been made and adopted. It is subject, however, to a restriction, which finds a counterpart in France but has no parallel in England: a dissolution can take place only with the consent of two thirds of the total members of the Senate, which consent can hardly be obtained, if obtained at all.

Furthermore, the dissolutions which were carried out first by Yuan Shih-kai in 1913 and again by Li Yuan-hung in 1917 (actually forced by the Northern Tuchuns who backed up the retiring Premier Tuan Chi-jui in the demand for dissolving Parliament) were so unwise, and even so actually unconstitutional—because there was no provision made for

parliamentary dissolution in the Provisional Constitution—as to bring the practice into lasting disfavor. The consequence will be, as in the case of France, to render the power of dissolution, if it should be provided at all, practically obsolete. The effect of this is obvious. In England, when disagreement arises between the Cabinet and Parliament the ministers may resign; but on the other hand, they may dissolve Parliament, order a general election, win a parliamentary majority, and remain at the helm. This is precisely what happened at the two national elections of 1910. But in China, according to the Provisional Constitution, it is the executive, be it the ministry or the President, that must give way in any conflict with Parliament; dissolution is not provided for; and even according to the Draft Constitution in which there is such a provision, it is practically not available as a mode of ministerial vindication. In other words, the ministry is responsible to Parliament alone and not to the nation; it cannot appeal over the head of the Parliament to the electorate, or ask the people to sustain it by electing a parliament of a different political complexion. The executive would, under such conditions, have its hands and feet bound by Parliament unless it should resort to a *coup d'état* as Yuan Shih-kai did in Nov. 4, 1913, in forcibly dissolving Parliament, and again as did Li Yuan-hung in June, 1917,—the latter being forced to do this, however, only at the point of the bayonets of the militarists. Development in England has been of precisely the opposite sort. There the ministry has a constitutional right to refuse, as it does unless the circumstances are very unusual, to yield to an adverse parliamentary majority unless the people back up that majority at the polls.

The use of the occasional and violent process of impeachment by the Parliament as a means of holding the Cabinet ministers to account, as provided in the Provisional Constitution, should be discarded with the development of the principle of ministerial responsibility as a necessary adjunct of parliamentary

government, and should be superseded by continuous and inescapable legislative supervision. Impeachment should only be used to enforce *legal* responsibility when the ministers commit acts against the law, but not to enforce *political* responsibility for the policy of the government, which latter function is to be taken by the use of "interpellation" and the vote of "loss of confidence."

Again, there is another defect in the Provisional Constitution which greatly hinders the efficient working of the Cabinet government, and that is *the requiring of the concurrence of Parliament in the appointment of members of the Cabinet*. This is obviously contradictory to the principle of ministerial responsibility, for it is very difficult to have a cabinet formed if in the appointment of *all* members of the Cabinet the concurrence of the Parliament is required by law. Moreover, it is absurd that the Parliament should first give concurrence to the ministers at their inauguration to office, and then overthrow them in the midst of their administration by "interpellation," "impeachment," or the vote of "loss of confidence." It is neither expedient nor logical. It simply enables the Parliament to restrain the ministry in every way possible. Furthermore, when this provision was enacted in the Provisional Constitution at the time of the Revolution, there was no convention then in existence that ministers should be answerable to the majority in Parliament. Now, as conditions demand that there must be ministerial responsibility, the provision for parliamentary concurrence should be relinquished. Still again, parliamentary concurrence is chiefly used to pass judgment on the past record of the man to whom the office is offered, but a man's past record does not necessarily determine his present capacity or his future potentiality, and so the provision is again of little real use. Then the very fact that the Parliament's concurrence is required in the appointment of each respective minister would absolve the Cabinet of the duty of bearing collective responsibility

for the general policy of the government, because no unanimity of opinion can be reached—and no unanimity of action—when the Prime Minister is legally obliged to secure parliamentary consent for every one of his colleagues.

This latter difficulty is, however, removed by a provision made in the Draft Constitution that only the appointment of the Premier must be subject to the approval of the House of Representatives (Draft Constitution, Art. 80), thus leaving the Premier a free choice of his own colleagues in the formation of a cabinet. This may be a little better than the method in the Provisional Constitution, but after all, even this very provision is unnecessary, for a man who feels himself unable to command the confidence and support of the Parliament would certainly not accept the office of premiership, and if he should accept it, he would soon find himself in difficulty with Parliament and would be ousted outright. The President would, of course, also take the wishes of the Parliament into serious consideration and choose the right man for that important post in the government. There need be no fear of executive autocracy simply because the appointment of the Premier lies in the hands of the President, because the Cabinet's ultimate responsibility must be borne to the Parliament, which can hold it to account at any time after the Cabinet assumes its duty. And if the party system should reach its mature development in China, the leader of the party controlling a majority in the Parliament would undoubtedly be honored with the premiership, and no formal requirement of parliamentary concurrence need be had at all.

In a word, both the Provisional Constitution and the Draft Constitution have not been and will not be of success to the establishment of a true Cabinet government, because of their exalting the legislature above the executive, and hence their provisions are contrary to the principle of legislative-executive coöperation as I have stated in a previous chapter

(see Chapter II). The legislature should be so reconstructed in power and in function, and in the number of its members, that it will be enabled to check the Cabinet, but not to obstruct its action; to stimulate it from idleness, but not to meddle with intricate problems which are beyond its capacity to grasp; to afford opportunities to train politicians and educate the country, but not at the expense of the stability of the government; and to control ministers collectively and individually, but not to tie their hands when prompt decisions are necessary.

If we want to have an ideal form of Cabinet government the English system is to be adopted, but owing to the fact that we have yet no such powerful and well-organized two-party system, which is so necessary to the successful working of the Cabinet government, we cannot adopt the English system to its full extent. The French system, being largely modeled after the English, is, on the whole, well suited to such a republic as China, but there must be also some modifications so as to avoid the instability of ministries, and the frequency of ministerial crises, such as so often happen in France even to-day. A combined Anglo-French system together with a few modifications is therefore to be recommended and the principles embodied in this could be briefly stated as follows:

1. *The President is to appoint the Premier whom he thinks fit for the post and who is able to command the confidence and support of the Parliament, without first getting concurrence from the Parliament in the appointment.* If the party system is well developed, the leader of the party controlling a parliamentary majority should, as he would, be chosen as premier. But *the Premier should have the whole power of choosing his own colleagues without subjecting them to the approval of the Parliament* in order to insure the collective responsibility of the Cabinet and the unanimity of its policy.

2. *The ministers shall countersign bills and acts of the President and thus assume for him political responsibility to Parliament.*

3. *The ministers shall be personally responsible for their private acts, severally responsible for the conduct of their own departments, and collectively responsible for the general policy of the government.*—This is to distinguish the nature of their responsibilities so as to prevent the frequent change of ministries. Here the French system is used instead of the British system, because of the present nonexistence of political parties and hence the utter absence of party government in China, which fact renders the Cabinet almost incapable of enforcing collective responsibility for the private acts of the Cabinet ministers or for the individual conduct of the respective departments, for, as we know, the practice of collective responsibility is intimately connected with the custom of choosing all ministers from one party. Under present circumstances, therefore, the Cabinet can only be jointly responsible for the general policy of the government and for nothing else, until such a time as there is a true party cabinet and then the English system of full collective responsibility can be adopted.

4. *The ministers shall be responsible only to the House of Representatives and not to the Senate.*—This is because it is impossible for the Cabinet to bear dual responsibility to both houses of Parliament, as “a servant cannot serve two masters.” The reason for choosing the House rather than the Senate to hold the Cabinet responsible, which is the common practice in nearly all countries where the Cabinet system is adopted, is because the House more directly and truly represents the people than the Senate and therefore should be vested with greater powers.

5. *The ministers may be impeached by the House of Representatives for their legal acts, but not for their political acts, and be tried by the Senate.*

6. *The House of Representatives shall have the right to make “interpellations” and vote for the test of “confidence” on the policy of the ministry, but the ministry in the name of the President shall also have the power of dissolving Parliament when it meets an adverse*

parliamentary vote. *Dissolution cannot be resorted to for more than once during a single session; and within five months from the date of the dissolution, a new election shall be called and a new parliament convened.* If the new Parliament is in favor of the government policy, then the Cabinet shall remain in power; but if the new Parliament is in opposition to the ministry, then the ministry must resign as a body. *Here Parliament refers only to the House of Representatives and does not include the Senate, because, as has been said, the Cabinet is only to be responsible to the lower and not to the upper chamber, and so dissolution can only be applied to the House and not to the Senate.*

7. *The leadership of the Premier and the secrecy of proceedings should be provided for*—not necessarily in the Constitution, for it may be developed as a custom—so as to insure unity of action and joint responsibility on the part of the Cabinet ministers.

8. *The ministers, whether they are parliamentary members or not, should be automatically given seats in Parliament, without an additional salary.*—This is the practice though not the law in France: it should be introduced into China without importing the British rule that a minister, if not already a member, must find a constituency to represent. The Provisional Constitution of China, indeed, allows the ministers to appear and speak in Parliament, but so far there has been no feeling of community between ministers and members and no inducement to coöperation between the legislative and executive parts of the government. Not understanding that ministers are the link between Parliament and Cabinet, the country has viewed the tendency to appoint members to ministerial posts with serious disapproval, on the ground that a legislator will not necessarily be an administrator; that members are influenced by greed and avarice if they aspire to Cabinet rank; and that members being already substantially paid, the hope of a ministerial salary in addition would excite their selfish desires. These arguments are, however, of not much value when we remember the fact that the crowning success of

the English Cabinet system is in no small part due to the convention that the ministers must be chosen from members of Parliament.

All these above principles which have been set forth to show the establishing of a sound Cabinet government in China are matter of great importance. In building this strong foundation, we must first have a cabinet with full executive energy and a parliament with true national representation; and in achieving the last, we must develop a two-party system in the fashion of England and America, so that a ruling ministry is to be formed out of the party majority in the House of Representatives. The Cabinet should be made in our governmental system, as in England, the keystone of the arch. Its functions are both executive and legislative, and indeed, to employ the expressive figure of Bagehot, it is the hyphen that joins, the buckle that fastens, the executive and legislative departments together. On the one hand, it is within the Cabinet circle that administrative policies are to be decided upon and carried into effect; and on the other, it is the Cabinet ministers who collectively are to direct the process of legislation, and to introduce all measures of importance. In effect, the Cabinet should be such as to form a parliamentary committee chosen, as Bagehot bluntly puts it, to rule the nation.

In China, as we know, the Cabinet ministers are composed of the heads of the nine great departments (for Foreign Affairs, for the Interior, for Finance, for War, for the Navy, for Justice, for Education, for Communications, and for Agriculture and Commerce) and so they exercise double functions, both as leaders in national policy and as heads in national administration. A combined political and administrative rôle is thus played by the ministers. The Premier takes the work of the general supervision of all the departments, and may take any portfolio he likes. The administrative divisions ought to be closely coördinated and strongly centralized under the executive, as in the English Cabinet system. The undersecretaries and other nonpolitical officials

should remain in office during good behavior, irrespective of the changes of ministries, but they should take no active part in politics such as to involve the sacrifice of their positions.

Besides the nine departments just mentioned, there are other departments, under the President, whose chiefs are not in the Cabinet. These departments are, namely: the General Staff (in charge of the National Defense, closely connected with the Ministry of War), the Audit Department (in close connection with the Ministry of Finance), the Department for Mongolia and Tibet (which may be called the Colonial Office), the Administrative Court, the Censorship, the Historiographical Department, and the Department of Salt Administration. All these are under the direct supervision of the President, the Cabinet having no control over them except as regards their expenditure, which falls on the national exchequer.

In order to understand the real value of the Cabinet system, we have to look at a few of its principal effects, and to contrast it very briefly with its great competitor, which seems likely, unless care be taken, to outstrip it. That competitor is the presidential system. "*The independence of the legislative and executive powers is the specific quality of Presidential Government, just as their fusion and combination is the precise principle of Cabinet Government.*" And though China has been tending, as she does now, toward the adoption of the Cabinet system, there are still people who entertain doubt of it and wish China to turn again to the presidential system, such as she had under the rule of Yuan Shih-kai. So it seems even more necessary to make a comparison of the advantages and disadvantages in both these systems in order that we may know which of these we should follow.

Let us first see the disadvantages of the Cabinet system in its comparison with the presidential system:

1. *In point of stability*, the Cabinet system is inferior to the presidential system, because a responsible cabinet depends for its

support on Parliament, and once that support is lost it has either to resign or to dissolve the Parliament and order a new election; that will naturally cause constant parliamentary fluctuations and political disturbances in the country, and a sequence of evils, such as the instability of ministers, the frequency of ministerial crises, and the recurring conflict between the Parliament and the government will inevitably arise, except in a country like England, where there is the existence of the two-party system harmonizing the political current. This weakness is, however, nonexistent or negligible in a presidential government, where the chief executive has either a fixed tenure of office like the American President, or a lifelong tenure by hereditary right as did the German Emperor before the German revolution of 1918, and where he is therefore more independent of the legislature, to which he bears no direct responsibility; conflicts between the executive and the legislature may then be avoided, and a consistent national policy may be carried out.

2. *In time of war*, the weak points of the Cabinet government and the strong features of the presidential government can best be seen. For a Cabinet government is a government by a council, and from that very circumstance is likely to be deficient in the energy, promptness, and decisiveness which may mark the action of a wise president or monarch, who, at any rate, is intrusted for a time with real power and can, if he chooses, carry out the policy which he thinks advisable and likely to benefit the country of which he is more or less the ruler. Moreover, the Cabinet government is usually based on partisanship and it is all but impossible to transmute partisanship into patriotism, which is so essential to success in war time, while the presidential government, despite its defect of making the executive a temporary dictator, limits to a considerable extent the evils of party government, especially in time of warfare.

If the presidential system has these above advantages over the Cabinet system, none the less the Cabinet system has even

more advantages over the presidential system. This will be seen in the following comparison:

1. *Cabinet government makes provision for a speedy settlement of any conflict which may arise between the executive and the legislature, while presidential government does not do so.*—This may be illustrated in the case of legislation—which is so necessary to administration—in England and in America, as the two representative examples of the Cabinet and presidential forms of government. “In England, on a vital occasion, the Cabinet can compel legislation by the threat of resignation, and the threat of dissolution; but neither of these can be used in a presidential state. There the legislature cannot be dissolved by the executive government; and it does not heed a resignation, for it has not to find the successor. Accordingly, when a difference of opinion arises, the legislature is forced to fight the executive, and the executive is forced to fight the legislature; and so very likely”—as lately in the case of the ratification of the Peace Treaty between President Wilson and the Sixty-fifth Congress—“they contend to the conclusion of their respective terms.”<sup>1</sup>

2. *The fusion of the legislature and the executive in Cabinet governments strengthens both the legislative and the executive power, while the division of the legislature and the executive in presidential governments weakens both the legislative and the executive power.*—This is because the fusion strengthens and the division weakens the whole aggregate force of government—the entire imperial power; and therefore the former strengthens and the latter weakens both its halves. For example, in England, a strong cabinet can obtain the concurrence of the legislature in all acts which facilitate its administration; it is itself, so to say, the legislature. Likewise, a strong parliament can also exercise an effective supervision and scrutiny over the policy and conduct of the government, and may have its will so expressed as to influence

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<sup>1</sup> Walter Bagehot: “The English Constitution,” Chapter II, “The Cabinet,” p. 65.

and guide the whole administration of the ruling ministry. But in the United States, owing to the rigid system of the separation of powers, the President may be, and is likely to be, hampered by the Congress, and the Congress may be, and is likely to be, hampered by the President; thus a state of discord and conflict may exist and nothing be accomplished.

3. *Cabinet government possesses a special kind of flexibility, or a "reserve of power," as Bagehot calls it, fit for and needed by extreme exigencies.*—For under a Cabinet constitution at a sudden emergency the people through the Parliament can choose a ruler for the occasion. They can change the helmsman to meet a great crisis—to replace the pilot of the calm by the pilot of the storm. *Presidential government, on the other hand, does not provide for an easy change of the executive so as to adapt itself to the need of a grave emergency.* The President and the Parliament are both elected for a fixed period; all the arrangements are for *stated* times. There is no elastic element, everything is rigid, specified, and dated. Come what may, you can quicken nothing and you can retard nothing. You cannot impeach the President if he commits no high treason or the like, yet a resort to revolution or a *coup d'état* would be too dangerous an alternative.

4. *Cabinet government insures the permanence in the Cabinet of men of ability.*—This is partly because the Prime Minister is almost of necessity one of the few leading men in Parliament, partly because the Prime Minister is, from the desire to carry on his government with success, almost compelled to choose colleagues of parliamentary capacity who will be approved of by the Prime Minister's supporters in Parliament. And a man who is able enough may long keep his premiership, or may enter the Cabinet as often as possible to advance the interests of the country. On the contrary, presidential government allows the chief executive only a fixed tenure of office in a republic, and usually not beyond two terms of from one to seven years each, after which he has to retire, and cannot take the same office again no

matter how able he is. This really closes opportunity to men of ability in the long service of the state. Moreover, as Bagehot remarks, "The statesmen from whom a nation chooses under a presidential system are much inferior to those under a Cabinet system, while the selecting apparatus is also far less discerning."<sup>1</sup>

(5) *A Cabinet government, if well developed, is marked by efficiency, without tending to despotism*, because the Cabinet is controlled by Parliament, to whose support it depends for its existence. *This is not so in a presidential government*, for there the President is independent of the legislature and bears no responsibility to it; this will naturally give rise to serious danger to the life of a republic itself when a man of selfish ambition and great ability like Julius Cæsar, Napoleon Bonaparte, Louis Napoleon, Porfirio Diaz, or Yuan Shih-kai happens to be in the presidency, for the officeholder then not only uses all the power in his hand to make himself a dictator, but tries to establish a monarchy and found a dynasty for himself and his family. It is here then that the presidential government meets a serious objection, and it is chiefly in view of this danger as she has experienced it that China, like France, has swung from one extreme to the other—from the presidential system to the Cabinet system.

Such are the advantages and disadvantages in each system of government, and one must be convinced that the disadvantages in the Cabinet system are more than offset by its advantages, while with the presidential system the contrary is true. Clearly then the former is better than the latter and is the kind of governmental system that we ought to follow. This comparison or contrast explains why the characteristic quality of Cabinet governments—the fusion of the executive power with the legislative power—is of such cardinal importance. We shall attempt to show under what form and with what adjuncts it exists in China.

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<sup>1</sup> Walter Bagehot: "The English Constitution," Chapter II, "The Cabinet," p. 73.

## CHAPTER V

### THE PARLIAMENTARY SYSTEM

In taking up this subject, three things chiefly will be dealt with: (1) the parliamentary system itself; (2) the organization of Parliament and the problems pertaining to it; and (3) the parliamentary system as compared with the bureaucratic system, together with reforms and remedies suggested in regard to the latter.

Here the term "parliamentary system" is used in much the same way and means much the same thing as the term "Cabinet system" used in the preceding chapter. These two systems are intimately bound up together; indeed, they are but different aspects of the same working arrangement. The reason for treating this parliamentary system again is not to duplicate what has been said about the Cabinet system, but to approach the same subject from a different point of view. For in treating the Cabinet system, we have regarded the Cabinet as the center, and in treating the parliamentary system, we shall regard the Parliament as the soul of the governmental system of a state. In a word, in a Cabinet system the Cabinet is the head of the executive department in its relations to the President and the Parliament, while in a parliamentary system the Parliament is the organ of legislative function in its relation to the Cabinet and the electorate. As there is such close connection between these two systems, the two terms denoting them may very often be used interchangeably or be combined into the term "Parliamentary-Cabinet" system, or government.

Under the parliamentary system, as under the Cabinet system, the legislative and executive functions are fused into one, the connecting link between these two parts of the state

being the *Cabinet*, which Bagehot calls a committee of the legislative body selected to be the executive body. It is a committee which unites the law-making power to the law-executing power, and which, by virtue of that combination, is, while it lasts and holds together, the most powerful body in the state. "It is a committee—as it now operates in England—which can dissolve the assembly which appointed it; it is a committee with a suspensive veto—a committee with a power of appeal. Though appointed by one parliament, it can appeal if it chooses to the next. . . . It is an executive which can annihilate the legislature, as well as an executive which is the nominee of the legislature."<sup>1</sup>

The essential points in this so-called parliamentary cabinet suggest, then, the following principles, which make a little departure from the English system and are in close approximation to the French system, though not without modifications, in their application to China. (1) The Premier is to be appointed by the President, and must be one who can command the confidence and support of the Parliament. (2) The Premier is to have a free choice of his own colleagues, but they must be, if possible, of the same political views, or allied affiliations. (3) The Cabinet is to be responsible to the popular chamber, i. e., the House of Representatives, and whenever it loses the confidence and support of that chamber, it must resign or else it may dissolve the chamber and make an appeal to the country. (4) The ministers are to be collectively responsible to Parliament (actually, to the House of Representatives) for the general policy of the government, and individually for their personal acts.

These principles are an adaptation of the parliamentary system to the present need of China under *existing* conditions. If the party system should be gradually developed in this country,

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<sup>1</sup> Walter Bagehot: "The English Constitution," Chapter II, pp. 62, 63.

of course, more elaborate, more consistent, and more complete principles may be followed in the molding of our governmental system on the English model, inasmuch as in the first place, there will be a premier chosen from among the leaders, if there are several of them, of the party in a majority in the House of Representatives; in the second place, the Premier will have to choose his colleagues from *one* party only, and not from a group of parties or from no parties, thereby bringing upon himself all the difficulties and the evils of a "coalition" or a "non-partisan" cabinet; and in the third place, the Cabinet will then act as a unit, and stand and fall together—there will be only joint responsibility and not separate responsibility, only collective responsibility and not individual responsibility. Should these things be attained, China will then have a true parliamentary system, much like that in use in England to-day.

*The most important single feature of the parliamentary system consists in the ministerial responsibility to Parliament, i. e., a cabinet shall continue in office only so long as it enjoys the confidence and support of a majority in the popular chamber—the House of Representatives.* "There are at least four ways in which a parliamentary majority may manifest its dissatisfaction with a cabinet, and so compel its resignation. It may pass a simple vote of 'want of confidence,' assigning therefore no definite reason. It may pass a vote of censure, criticizing the Cabinet for some specified act. It may defeat a measure which the Cabinet advocates and declares to be of vital importance. Or it may pass a bill in opposition to the advice of the ministers. . . . When any of the four votes mentioned is carried in the lower chamber the Premier and his colleagues must do one of two things—resign or appeal to the country. If it is clear that the Cabinet has lost the support, not only of Parliament, but also of the electorate, the only honorable course for the ministry is to resign. If, on the other hand, there is doubt as to whether the parliamentary majority really represents the country upon the matter at issue,

the ministers are warranted to dissolve the Parliament and to order a general election. In such a situation the ministry continues tentatively in office. If the elections return a majority prepared to support the ministers, the Cabinet is given a new lease of life. If, on the other hand, the new parliamentary majority is hostile, no course is open to the ministry save to retire.”<sup>1</sup>

With these various means the Parliament may impose upon the ministers substantial responsibility and control. The ministers, of course, should be free in their executive actions, but they must be held to strict accountability by Parliament. The prerequisites as well as the result of the parliamentary government are a strong executive and a good parliament. In order to attain this end, we must give the following sets of powers to the government, namely: the President to appoint the Premier, and the Premier to choose his own colleagues, both without subjecting their choice to parliamentary concurrence; and the Cabinet to dissolve the House without subjecting its action to the concurrence of the Senate. Then we must also give the Parliament (actually, the House of Representatives) the power to make “interpellation,” to censure, and to vote “loss of confidence,” to enforce the political responsibility of ministers, and finally the power to impeach them so as to enforce their legal responsibility. Besides all these, we must develop a two-party system which is a most necessary condition for the success of parliamentary government.

We turn from the parliamentary system to the organization of Parliament and the problems pertaining to it. The Parliamentary Organization Law of 1912 provides that Parliament shall be composed of a Senate and a House of Representatives. A *bicameral* system is, therefore, definitely adopted as is the common fashion in most countries. It has, however, like many other

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<sup>1</sup> Frederick A. Ogg and Charles A. Beard: “National Governments and the World War,” pp. 213, 214.

things, both advantages and disadvantages. Arguments are advanced both for and against it. Those who are opposed to the system, would say that: (1) there is no need for China to adopt the bicameral system because she has neither historical traditions nor class distinctions which may render provincial or class representation necessary in an upper chamber; (2) the bicameral system is not workable if it involves two houses of equal powers, where the Cabinet system of government has been adopted and where it has not been deemed necessary to make special provisions for state representation; (3) but where the bicameral system has been maintained in a federal state (as in Canada) and where the Cabinet government has been deemed essential, the equal representation of colony, state, or province has had in the nature of things to be sacrificed; (4) as China has been following the principles of Cabinet government, the ministry would have, in actual practice as well as in constitutional requirement, to be responsible only to the House of Representatives, which would become, then, the sole powerful chamber in Parliament, and the Senate would be practically put in a subordinate position and would eventually become a superfluous body or outgrown institution like the British House of Lords; (5) if both houses should be controlled by the same party, no effective check could be imposed on the House by the Senate; (6) on the other hand, if each house should be dominated by a different party, then conflict would be sure to arise between the two and nothing would be accomplished; and (7) the attainment of legislation is relatively slow under the bicameral system and there is a certain amount of unnecessary delay and duplication in the legislative work.

On the other hand, there are also those who stand in favor of this system. They would say that: (1) the bicameral system secures double deliberation and checks hasty, ill-considered legislation; (2) the existence of a second chamber is a safeguard to the liberty and security of the people at large, while a single

house endowed with enormous legislative powers might become tyrannical; (3) a two-chambered legislature gives opportunity for the fair representation of elements in the state which in a single popularly elected house might not be represented—thus an upper house represents in the United States and Germany the component states in the federation, in England and Italy the titled aristocracy and class interests; and (4) the upper house stands as a balance to, or a connecting link between, the government and the lower house.

On the whole, the bicameral system, despite its drawbacks, has some decided advantages over its substitute, the unicameral system. The latter has been tried in the past by some important countries (as in the case of the United States Congress under the Articles of Confederation, and the French Legislative Assembly during the French Revolution and again under the Second Republic), but ultimately abandoned in favor of the former. The unicameral system is, therefore, a historical failure, and one may say a practical failure, too. Moreover, the fact that the bicameral system has been adopted by almost every important state to-day while the unicameral system has been adopted only by some of the smallest states (as in the Balkans) would also warrant China's following the former and not the latter examples, because China is a large country and has varied interests to be represented in her legislature. Now as China is gradually tending to provincial autonomy in the process of transforming herself into a federal state, it will become very necessary for her to give provincial representation, as is provided in the Parliamentary Organization Law of 1912, in a Senate of the National Parliament. The objection that is often raised that the providing of this second chamber might prove disadvantageous to the working of the Cabinet government may also be dispelled by differentiating the powers of the two houses and making the Cabinet responsible only to the House of Representatives.

Having considered the manner of parliamentary composition, let us now study the nature of parliamentary representation. What should be the organization of the Senate? "According to the law of 1912, the Senate consists of the following members:

(a) Ten members elected by the Provincial Assembly in each province (220 members from 22 provinces altogether).

(b) Twenty-seven members elected by the Electoral College of Mongolia.

(c) Ten members elected by the Electoral College of Tibet.

(d) Three members elected by the Electoral College of Ching-hai.

(e) Eight members elected by the Central Educational Society.

(f) Six members elected by the Chinese residents overseas.

"It will be seen that the preponderant majority of the Senators are elected by provincial assemblies; that the special electoral colleges are only constituted where no provincial assembly is available (as in Mongolia and Tibet); and that only insignificant representation is given to the Central Educational Society and to the Chinese abroad whose interests are not otherwise represented. The fundamental idea of the Chinese Senate, like that of the American, is to give every province equal representation, irrespective of its population. Although the Constitution of China is not federal, the construction of her Senate is based upon a federal principle."<sup>1</sup> It may be found necessary in later days to have this provision made in her Constitution if she should definitely adopt a federative government, as she is now tending in that direction.

Let us now see how the lower house is constituted. The law of 1912 provided that the members of the House of Representatives

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<sup>1</sup>S. G. Cheng: "Modern China—A Political Study," pp. 90, 91.

should be elected by the people by an indirect election at the ratio of one representative for 800,000 inhabitants. This ratio has been changed by the law of 1918 (which was passed in Peking for the election of the members of the so-called Anfu Parliament and which has been refused recognition by the Constitutionalist in Canton) to one for 1,000,000. The age qualification for voters at the first stage is also raised from over twenty-one years of age under the law of 1912 to over twenty-five under the law of 1918; and likewise, the qualification for members of the lower house is raised from over twenty-five to over thirty years of age. Again property qualifications for the primary election voters under the law of 1912 are doubled under the law of 1918.

The proportion of 1,000,000 inhabitants to every representative is indeed too large, but it is difficult to diminish it, as the number of representatives must be limited so as to reduce the lower house to a workable size. Even according to this proportion, the Parliament is still too unwieldy to deliberate on serious problems as its total membership almost reaches 770 (the Senate contains 274 and the House approaches 500), while according to the ratio of one member for every 800,000 inhabitants under the law of 1912, this would be increased to 860 (the Senate containing 274 and the House 596), which fact is perhaps accountable for the inefficiency and obstructiveness of the dissolved Parliament which was elected at that ratio. A further reduction of the size of the House of Representatives by raising the proportion over 1,000,000 for one member would, on the one hand, only increase the inadequacy of representation of the electorate, and a small assembly pretending to represent a large number of electors and numerous interests would tend to become autocratic.

Then the complicated character of indirect election and its hindrance to the education of the electorate are also obvious evils. The Representatives' Election Law of 1912 simply affords a hotbed for corruption and a loophole for evasion. It should

be replaced by a provision giving direct proportional representation under a multiple-member constituency system.

Coming to the field of parliamentary functions and powers we find there is practically no difference between those of the Senate and the House except in that the estimates and accounts of the government are to be first discussed by the latter, thus giving it a little more power over money matters, as under the operation of the Parliamentary Organization Law of 1912; while under the Provisional Constitution there is no such provision made at all, because there was then only a single legislative body—the National Council—and not two houses of Parliament, and hence no need for making that provision. Now in order to facilitate the working of the Cabinet government in China, the powers and functions of the two houses should not be coequal. They should be differentiated in the following way. The House should have the exclusive rights over money bills, to make “interpellation,” to censure, to vote for test of “confidence,” and to bring impeachment on the ministers, while the Senate should try impeachment cases and thus act as the court. As to all other things, both houses should have equal voice, and it is not necessary here to enumerate all these common powers possessed by the two houses of Parliament such as are provided in the Provisional Constitution and in the Parliamentary Organization Law of 1912.

As regards the tenure of service of the members of Parliament, it is provided in the law of 1912 that Senators shall have a tenure of six years, and one third of the members are to be chosen every second year, as in the American system. This, however, can be maintained only when the Senate is not subject to dissolution, as provided in the Draft Constitution of 1913, according to which the Cabinet ministers are to be responsible only to the House, and can only dissolve that House, but not the Senate, for to the latter they are not responsible. The same law provides that the Representatives shall have a tenure of three years,

which should be extended, to four years for instance, as is provided in the Draft Constitution, in order to give the parliamentarians the opportunity of pursuing a consistent policy for a greater length of time, as well as because the people of China at present should not be called upon too frequently to vote at elections until more political progress has been made. Moreover, when the voters have only just begun to be interested in public affairs, opinions will not change very much in three years.

As to the salary of the members, much criticism has been made against it, for according to the Parliamentary Law of 1913, which was made by the Parliament itself, the salary for each member in either house of Parliament is fixed at \$5,000 (Mexican) per annum, besides the expenses for traveling, for maintaining a clerk and guard, and for preparation to assume his duties, a total sum bigger than any member has received in any legislature of the world except perhaps the members in the American Congress, which latter case is justified, however, because of the greater living expenses in that country than in China. A reduction of the salary for a Chinese parliamentary member to some \$3,000 or \$4,000 would be quite reasonable and would permit him to maintain a comfortable but not luxurious living.

Having dealt with the organization of the Parliament and the problems pertaining to it, it is well to compare the parliamentary system and the bureaucratic system, with a view to the need of reforming, and ultimately abolishing, the Chinese officialdom, or mandarinism, which has been and still is a curse to China. In reality, there is almost no basis for comparison between the two systems, as they are in character so radically different from each other. However, since the bureaucratic system has taken such firm root in China as well as in some other countries, we should not pass it by without remark. Between these two systems, there are several essential points of difference that should be noticed. In the first place, the bureaucratic system

is a system by which the officials are to rule, and to rule according to their own will or to the will of their superiors; while the parliamentary system is a system by which the Parliament is to rule, and to rule according to the wishes of the people, to whom it owes its election. In the second place, under the bureaucratic system, the officials are appointed by the government, and so they are not responsible to the people and cannot, unless under extraordinary circumstances, be held to account by the people; while under the parliamentary system, the members are elected by the people, either directly or indirectly, and so they have a sense of duty and obligation to the people, and can be held to account in the next election; and if the use of the recall be introduced into China, the members can be recalled at any time during their term of service. In the third place, by its very character, the bureaucracy is the more likely to exploit or oppress the people; while the Parliament usually allies itself with the people and supervises or checks the government. In the fourth place, the bureaucracy depends for its existence upon political influence, military force, or unlawful means, and may thus easily plunge the country into war and revolution, as happened in Germany and as may easily happen in Japan; while the Parliament depends for its support upon the will of the people, and may thus bring popular pressure to bear upon the government and prevent it from taking precipitate action.

The above sketch shows the differences between the two systems and suggests the way to be followed, and it is clear that the parliamentary system should be soon adopted, while the bureaucratic system should be forever abolished. If this cannot be done in an early moment, remedies should be found as soon as possible, because corruption has eaten into the very vitals of our civil as well as our military bureaucracy and renders drastic reform urgently needful. The "spoils system," the system of "rotation of office," and the practice of favoritism should all be renounced, and a system of permanent civil

service, modeled after the fashion of that of England and of the United States, should be introduced into China and put into operation. The Tutchuns should not be allowed to recommend officials of their own to the government, which should have a free hand in making the appointments, and most of the offices of administrative but not political nature should be opened to competitive examinations. If the standard of the people should be raised to a higher level, the more important local offices in the different districts of the provinces should be under a "short-ballot system" of popular election and recall in order that the officials may be made real servants of the people. In effecting this reform we must also be careful of the so-called "boss" system, so familiar in American politics, because the "bosses"—the little instruments of a political party—always try by every means to monopolize the local offices for the sake of their personal as well as for party interests but not for the interest of the people.

## CHAPTER VI

### THE MAKING OF A NATIONAL CONSTITUTION

China for centuries was governed by absolute monarchs, and constitutional government was practically unknown to her people until the beginning of the twentieth century. The people could impose no restraints upon the rulers whatever except by revolution, and the Emperors were free to rule like tyrants without limitations of law; their powers were absolute, supreme, and arbitrary. This fact of course was a cause of the great Revolution of 1911 and resulted in the establishment of the Republic. Such slight progress as had been made before the Revolution toward attaining a constitutional régime, was due to causes which will be discussed later.

The last two decades of Chinese history were marked by a constitutional movement, or constitutional struggle. This movement began in 1898 when Emperor Kwang-hsü, under the influence of the reform party of which Kang Yu-wei was the leader, issued his famous edicts of reform, a work, however, soon undone by the Empress Dowager, who effected a *coup d'état* against the Emperor and seized the reins of government. The period from this time on till the end of the Russo-Japanese War in 1905 was characterized by reactionary and anti-foreign sentiment, and it was not until 1905 that political reformation began in earnest: that year indeed marks the real inauguration and progress of the great constitutional movement. For in 1905, a constitutional commission was sent abroad for study and investigation; in 1907, an advisory council was created as a preliminary step toward the introduction of constitutional government; in 1908, twenty-two provincial assemblies were established, and the grant of a constitution in nine years was

promised; and in 1910, an imperial assembly was called at Peking. All these changes were, however, too slow and too ineffective to satisfy the popular demand for the early convocation of a parliament; the grant of the Nineteen Articles late in 1911, after the Revolution had already well begun, was of no avail, and thus was caused the final downfall of the Manchu dynasty.

While the Revolution was still in progress, the revolutionary provinces, after rejecting the Nineteen Articles, sent delegates to Wuchang and drew up an "Outline for the Organization of the Provisional Government," which in spirit would have created a presidential system. Accordingly, a provisional government was set up in Nanking and a provisional constitution was drafted, largely modeled on the "Outline" but virtually changing its spirit to that of the Cabinet system. This was promulgated in March, 1913, in Peking. The National Council which drafted the Provisional Constitution was then still functioning as Parliament, till the first convocation of that body in April, 1913. The new legislature was intrusted with the work of drafting a permanent constitution, and its product was the ill-fated Draft Constitution of 1913, commonly called the Draft of the Altar of Heaven—after the place in which it was drafted. No sooner was it completed than the Parliament was dissolved and the Provisional Constitution abolished together with the Draft Constitution itself. Henceforth President Yuan Shih-kai played the rôle of *de facto* dictator in China. He first created the so-called Constitutional Compact, and then the Presidential Succession Law, both designed to make him dictator for life. A series of agencies such as the Administrative Conference, the Legislative Council, the Council of State, the Constitutional Compact Conference, and the National (Constitutional) Convention—were created as tools for the realization of his selfish ambition. According to his plan, the permanent constitution was to be drafted by the Council of State, and

ratified by the National Convention. This attempt, however, failed with the collapse of the monarchical movement, and the constitutional changes which Yuan had introduced were canceled, the Provisional Constitution was revived and the old Parliament again convened.

The reconvened Parliament was, however, as inefficient as before. "Sitting upon alternate days (or rather upon as many alternate days as it was possible to obtain a quorum) the Parliament spent six or more months upon the revision of the draft of a Permanent Constitution, but was unable to come to an agreement upon the main important and controversial points."<sup>1</sup> The result was that the party strife between the Kuo-ming Tang, or Nationalist Party, and the Chin-pu Tang, or Progressive Party, and the military pressure brought to bear upon the Parliament by the Tuchunate, were sufficiently strong to break up the whole attempt.

After the second dissolution of Parliament and the failure of Chang Hsün's attempt to restore the monarchy, General Tuan Chi-jui began to rule like a dictator. He first called a national council and then a new parliament, popularly known as the Anfu Parliament, to make a permanent constitution. At the same time, the insurgent provinces in the South also convened the old Parliament at Canton and asked that body to draw up the same document. Thus both parliaments were checking each other in this work of making a constitution and as a result nothing was achieved.

Now since the "Anfu Parliament" was extinguished shortly after the downfall of the Anfu Club, it might seem that the problem of making the constitution—as well as of making peace—would have been much simplified with the exclusion of this undesirable element. Things, however, proved otherwise, for on the one hand, with the return of the Constitutionalists to

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<sup>1</sup> *The Peking Leader Special Supplement*, Feb. 12, 1919, p. 7.

Canton, the old Parliament, reconvened there, was taking the drastic measure of electing Dr. Sun Yat-sen as president, in opposition to the Peking government, and the Peking government likewise called for a general election (though up to the present, only eight provinces have responded to that call), for the convocation of a new parliament in opposition to the Canton government. Both sides were taking an extreme course and nothing could possibly be accomplished, least of all toward making a national constitution, a work which cannot be done unless there is a united China.

It is, indeed, a regrettable fact that more than nine years have elapsed since the establishment of the Republic and China is still without a permanent, working constitution, of which she is now in dire need in the process of her political reconstruction and revival. Although nominally the government is operating under the Provisional Constitution of 1912, practically the Provisional Constitution is a mere scrap of paper. From its abrogation by Yuan Shih-kai in 1914 onwards, the Provisional Constitution has not been called back to life—except temporarily under the presidency of Li Yuan-hung. It has become, practically speaking, a dead letter, both because the governmental authorities were not willing to be limited by this document, and because the constitution itself is not practicable enough to suit the needs of the country. A foreign authority commenting on Chinese government remarks with justice that “there is no such thing as the ‘supreme law of the land’ in China at present.” The evil result of the lack of a constitution is obvious. The absence of a government founded upon an organic law as the expression of public consent, has furnished the most fertile soil for the growth of “a government by force of arms, circumstances, and intrigues.” Where a working constitution is wanting and the Provisional Constitution is dead, there is no guide for legislation, no certainty to administration, and no basis for judicial action. As the Honorable J. C. Ferguson, Adviser to

the President of the Republic, remarked in 1918: "The root of all the difficulties in China has been the single question of a constitution. All other perplexities are subservient to and dependent upon this one. If a permanent constitution had been adopted during the first year of the Republic, all of the dissensions of the last six years would have been avoided, or at least their dangerous influences would have been mitigated."<sup>1</sup> Then the nature of the Provisional Constitution itself also demands revision. This was well brought to light by Dr. W. W. Willoughby, Legal Adviser to the Chinese Government in 1916, when he said: "The success of China's republican experiment has been jeopardized by certain features of the Provisional Constitution under which it has been obliged to operate. In particular there has not been provided a proper relation between the executive and legislative branches of the government." As a matter of fact, the defects of the Provisional Constitution lie not only in the lack of adequate means of harmonizing the executive and the legislature, but also in the ill-defined nature of the powers of the President and the Premier, and the lack of provision for the division of authority between the central and provincial governments. There is no need of criticizing this document in detail; its chief defects have already been discussed elsewhere in this volume (in Chapters III and IV). The unworkable character of this constitution is generally recognized by both its former friends and its opponents. The urgency of a revision is recognized by all. It becomes a compelling necessity for China to-day to adopt a permanent national constitution in place of this Nanking Provisional Constitution, which has been made to do duty for a longer period than its authors expected. It was, as its name implies, only intended to be a temporary expedient by the then existing Provisional Government. "It was a declaration of independence and a fixing of the sovereignty

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<sup>1</sup> The *Chinese Students' Monthly*, April, 1918. "China's Constitution," p. 310.

of the country in the people rather than a document intended for the permanent control of the country."<sup>1</sup>

Before entering into discussion of a future permanent constitution, let us see by what body of men this national Constitution should be drafted, adopted, ratified, and promulgated. It is a great misfortune to China that the drafting of the permanent constitution is vested in the hands of the Parliament, as provided in the Provisional Constitution. This is a unique departure from the practice of the world. The constitutional drafting of almost all the modern states was done by the experienced statesmen of the day. For example, the Constitution of the United States was framed by the special convention of the foremost political leaders of the time, including such great men as Washington, Hamilton, and Franklin. But the drafting of the Chinese Constitution is left to the Parliament, a practice always fraught with grave disadvantages. For in Parliament there is bound to be party strife, where cool and statesmanlike deliberation is rendered almost impossible. Besides, the legislature is always tempted to concentrate all the supreme powers in its own hands and thus to deprive the executive of the opportunities of leadership and initiative. For instance, when the first Parliament came into power in 1913, it drafted a constitution which deprived the President of the vital powers and put them in the hands of the legislature. Later, when Parliament came back to power in 1916, after the monarchical attempt of Yuan Shih-kai, it set itself to the task of constitution drafting with a spirit of revenge, and so reduced the executive to a more pitiful plight than ever before. It denied the executive the power of veto, and more than that it denied him the defensive weapon of dissolution by giving him the power of dissolution only at the concurrence of the Senate, which in the light of French experience amounted to a practical denial of the power. Further, at

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<sup>1</sup> *The Chinese Students' Monthly*, April, 1918; "China's Constitution," p. 310.

times, what constitutional questions cannot be settled by debate are carried to the battlefield for decision. And this constitutes one of the fundamental causes of the present civil war in China.

To remedy this evil, various plans have been proposed as a substitute for the drafting of the constitution by Parliament. Practically all are agreed that a special organ should be created for this special purpose of making the constitution, instead of leaving it to the ordinary law-making body, which is, as has been said, by its very nature not fitted for this most important work. The most general plans that have been proposed by prominent Chinese and foreign advisers are as follows:

1. The proposal for creating a *Constitutional Draft Committee*—as suggested by Liang Chi-chao—some of the members of which are to be appointed by the Provisional President and Provisional Vice President, others to be chosen by the Provisional National Council, still others to be jointly recommended by the governors and legislatures of the provinces, and the rest to be specially delegated by the head agencies of the political parties that existed in 1913; in all numbering forty or fifty persons, so that various political interests may be represented and the best obtainable results achieved.
2. The proposal for creating a similar *Drafting Committee*—the idea advanced by John C. Ferguson, Adviser to the President of the Chinese Republic in 1918—of members chosen by all four branches of government, i. e., by the President, the Cabinet, the Parliament, and the Judiciary, as they are empowered by the Provisional Constitution to exercise the sovereignty of the Chinese Republic in order that all phases of government administration may be represented and the respective rights of these four branches thoroughly considered.
3. The proposal for calling a *Constitutional Convention*—as in the United States in 1787—to be composed of delegates

chosen by the provincial governments, on the ground that China is now moving toward federation and that therefore the provinces should have an important voice in the drafting of the national constitution.

4. The proposal for calling a *National Convention*—as at one time advocated by General Wu Pei-fu—to be composed of members chosen by the agricultural, labor, commercial, and educational communities in each province, forming a sort of people's conference for making the constitution, instead of leaving it to the Northern or the Southern Parliament; on the ground that as the Provisional Constitution vests the sovereignty of the Chinese Republic in the people, the people should do this important piece of work, which cannot be done by the Northern or the Southern government and cannot be settled even by the Shanghai Peace Conference if that should be resumed.
5. The proposal for calling a *National Constituent Assembly*—as was done in Germany in 1919—to be composed of deputies chosen directly by popular vote for the sole purpose of adopting a constitution, and to function as Parliament until the formal convening of that body, in accordance with the same doctrine of popular sovereignty and on the ground of expediency in the present situation.

All these proposals are well thought out plans and deserve high consideration. A combination of the features of these various plans would, however, seem to be more recommendable. It is the opinion of some—of whom the writer numbers himself—that a *Constitutional Commission* representative of the main divisions of government—the legislative, executive, judicial, and provincial—should be constituted and intrusted with the work of drafting the constitution, which draft should, of course, be submitted to the Parliament for adoption and ratification, and to

the government for promulgation. In a word, this body should be so constructed as to make it truly representative of the various political interests of the nation, and should take into it the most learned and experienced men in the country, men who have either had practical training in or are well acquainted with politics; men who can be trusted to give up their former party prejudices, if they have any, when they are charged with this important duty of creating the fundamental law of the land. Thus, and thus only, can a constitution be drafted which will give due consideration to all the vital divisions of the government, and which will be a workable document, adaptable to the needs of the country.

Having considered the special organ necessary for drafting the constitution, let us now study how the document itself should be made and what its chief concerns should be. The matter of a constitution may be classified under three heads: first, a definition of the rights and liberties of individuals; second, an outline of the organization and powers of government; and third, the provisions for altering or amending the constitution itself. According to this plan, the first part of the constitution should set forth the mutual rights and obligations of the people and the government, and the exercise of their civil and political liberties under the limit and protection of law. The provision for the sovereignty of the people as provided in the Provisional Constitution of 1912 and in the Draft Constitution of 1913 has been a disputed point, though it is a common provision made in the constitutions of not a few countries. However, since sovereignty and a people and a territory constitute the recognized essentials of a state, it seems illogical that one of these elements should reside in the other. The modern doctrine of popular sovereignty has its own truth: it means in reality that the power of organizing sovereignty belongs to the people, but not the sovereignty itself. That organizing power consists in the making, amending, and promulgating of the constitution. The people

delegate this power to the government which is to exercise the sovereignty through the legislative, executive, and judicial departments. To say that sovereignty resides in the people is to conclude that "the people are the state," as erroneous a conception of sovereignty as that of the notable monarch who said "I am the state." With this point clear, we can see the nature of sovereignty. We need to remember that *sovereignty resides in the state*, that *the power for organizing sovereignty resides in the people delegating the power to the government*, and that *the government exercises it through the three chief departments of the state*.

As to the rights of the citizens, we should include those concerning equality under the law, the rights of Habeas Corpus, inviolability of residence and correspondence, freedom of speech, free assembly, liberty of conscience, inviolability of property; the right of petition and of instituting legal proceedings, and other miscellaneous rights. There are also duties on the part of the people, such as paying taxes, performing military service, sending their children to school. This implies, of course, that they have to discharge their fundamental duty—namely, to obey the laws.

We come to the second part of the constitution. This part will deal with the organization of the state; the proper relation between the central and provincial governments; the distribution of sovereign powers among the various organs of government; and the scope and manner of exercise of governmental powers, together with restrictions placed upon them. Under this category, we have to treat first of the Parliament and its two chambers—the Senate and the House of Representatives; the composition of each house; the division of powers between the two houses; the privileges of members; and the rules of parliamentary procedure. Then we come to the President and the manner of his election; his qualifications; his tenure of office and his reëligibility for a second term; the oath of office; the office of Vice President; the powers of the President; his liability to impeachment. We shall

take up then the Cabinet, its powers over the administration and its responsibility to Parliament. Finally we shall deal with the judiciary and its scope of powers and independence of action, together with the system of judicial courts. All these matters are the concern of the central government. A provision regarding the provincial government should also be inserted in the constitution, defining its powers and obligations, its organization and administration, the relations of the governor to the assembly, and the status of the provinces in the national system. But if China should adopt a federal form of government, and if the powers of the central government are enumerated in the constitution, this provision regarding the provincial government would be unnecessary, since each province would then have the power and the right to organize its own government in its own way.

The third and the last part of the constitution needs to treat of the process for revision or amendment. According to its text the Provisional Constitution may be amended by the assent of two thirds of the members of Parliament, or upon the application of the President passed by over three fourths of the quorum of the Parliament consisting of over four fifths of the total number of its members. According to the Draft Constitution of 1913, to start the amendment machinery working, one fourth of the members in each house must first signify their consent to consider the question of an amendment. In this case a two-thirds vote of the members present is necessary before the subject of the amendment can be discussed. Finally, the two houses meet as a constitutional amendment conference, and a three-fourths vote is required before the amendment can be passed. This is no better—but rather worse—in its practical operation, than the arrangement made in the Provisional Constitution, and admits of amendment only with overwhelming difficulty, for by this rule of a two-thirds vote for discussing, and a three-fourths vote for passing, an amendment, any small party can obstruct the

proceedings. In order to remedy this weakness, we must adopt the French method of amendment, which in the French Constitution is worded as follows:

“The chambers shall have the right by separate resolutions, taken in each by an absolute majority of votes, either upon their own initiative or upon the request of the President of the Republic, to declare a revision of the constitutional laws necessary.

“After each of the two chambers shall have come to this decision, they shall meet together in National Assembly to proceed with the revision.

“The acts affecting revision of the constitutional laws, in whole or in part, shall be passed by an absolute majority of the members composing the National Assembly.”<sup>1</sup>

This French amending process enables the constitution to keep pace with the changing conditions, the progress and the development of the country, without tending to make the constitution unstable because of the absolute majority vote required of both houses of Parliament sitting as a National Assembly for the final passage of the amendment. Although this plan provides that the work of drafting a constitution for China is to be devolved upon a special organ, a Constitutional Commission, the duty of amending the constitution can be safely left to the Parliament for the sake of convenience and expediency. There must be also a provision such as was made in the French Constitution, that *“the republican form of government shall not be made the subject of a proposed revision.”*

There are three essential points that a permanent national constitution for China must give attention to. They are the ways of compromising the rights of the state and the rights of the individual, the powers of the legislature and the powers of the executive, the concerns of the nation and the concerns of the

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<sup>1</sup> Frank J. Goodnow: “Principles of Constitutional Government,” Appendix II, “France,” “Constitutional Law on the Organization of the Public Powers,” Article 8.

provinces. A good constitution also possesses several general characteristics. It must be *definite* in order to avoid occasion for dispute; it must be *comprehensive* so that it may cover the whole field of government; and it must be *brief* in order to be flexible and elastic and not easily outgrown.

With a national constitution adequately framed we may hope to see the beginning of a constitutional régime. China is a country in which the government has always been *personal* and not *legal*, a government of men and not of laws. The installation of the republican régime has not changed this situation. As a consequence, the public officials rule without law and in defiance of it; the governmental authorities create and abolish laws as they please; and the people suffer both from the absence of law and from their ignorance of such laws as exist. The making of a permanent constitution is, therefore, a matter of the utmost importance. It will serve to insure the republican form of government, to introduce principles of constitutionalism, to safeguard the political and civil liberties of the people, and to limit the sphere of the exercise of governmental powers. The purpose of the constitution, in other words, is the establishment of a *constitutional government*, by which term we mean "a form of government in which laws rather than men control, and which to a greater or lesser degree is popular in character in that it admits to a greater or lesser degree the participation of the important elements in the state's life."<sup>1</sup> In a word, if China would be a constitutional republic at all, the principle guiding the government must be that of *a rule of law and not a rule of men*. Until she is on such a basis China can hardly be recognized as one of the constitutional governments of the world.

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<sup>1</sup>Frank J. Goodnow: "Principles of Constitutional Government," p. 3.

## CHAPTER VII

### PARTY ORGANIZATION AND PARTY GOVERNMENT

Having dealt with the Cabinet system, the parliamentary system, and the constitutional government in the foregoing chapters, it is necessary for us to turn to the need of party organization and party government in China. "Political parties as they are organized and as the term is now understood in Western countries were unknown in China before the Revolution. In a monarchy which has no representative system there is no sphere for and no conception of 'parties' in the sense in which the term is applied in the Occident. There may be factions, more or less conscious, more or less organized, the followers of this or that statesman, the advocates of this or that policy, but not parties. There may be revolutionary, reform and other societies with political programs—but these also are not *parties*. There have been, of course, all of these in China. Thus there were a half-century ago the 'Hwai group' or 'Anhui men,' the followers of Li Hung-chang, and the 'Siang group' or 'Hunan men,' the followers of Tseng Kwo-fang. Later we have the strong group of personal adherents whom Yuan Shih-kai during his years as resident of Korea, governor, viceroy and grand councilor, attached to himself. Contemporaneously we have roughly speaking the 'Southern' and the 'Northern' parties, or more specifically, the 'Cantonese' and the 'Anhui' groups. There have always, in practically every dynasty, been political factions and secret societies, and the influence of these alignments and organizations has at times resulted in revolutionary changes. But until 1912 there had been no society organized as are Western political machines and calling itself a party."<sup>1</sup>

<sup>1</sup>Stanley K. Hornbeck: "Contemporary Politics in the Far East," pp. 67, 68.

In the years following the failure of the reform movement of 1898, it will be recalled, there had arisen two opposing political associations; one called the Constitutional Party, later known as the Pao-hwang Hui (Society for the Protection of the Emperor), with K'ang Yu-wei and Liang Chi-chao as leaders, who advocated a constitutional monarchy; and the other called the Revolutionary Party, later known as the Tung-meng Hui (Alliance Society), with Dr. Sun Yat-sen and Hwang Hsing as its spokesmen, who advocated a republican government. These two groups formed the foundation of the later two great opposing political parties—the Chin-pu Tang (Progressive Party) and the Kuo-ming Tang (Nationalist Party).

With the establishment of the Republic, political parties came forth like seeds sprouting after rain. "There were then, at the end of 1912, two leading parties in the field, the Kuo-ming Tang (Nationalist Party), and the Kung-ho Tang (Republican Party), which had in the process of their construction absorbed most of the smaller parties and the seceders from the remaining groups. The most important party development in 1913 was the amalgamation of the Kung-ho, the Tungyi (Unionist Party), and what remained of the Ming-chu Tang (Democratic Party) to form the Chin-pu Tang (Progressive Party)."<sup>1</sup> This was effected on May 29 of the same year with the definite purpose of making a more effective opposition to the Kuo-ming Tang predominance in Parliament, which was opened in April. Li Yuang-hung was elected director, and Liang Chi-chao, Dr. Wu Ting-fang, Chang Chien, and six others were given the leadership of the party.

The failure of the punitive expedition against Yuan Shih-kai in the summer of 1913 resulted in the ruthless dissolution of the Kuo-ming Tang, which had its effect in leaving more than half of the seats in Parliament empty—while the will of the President became law. Indeed, Yuan had now a free hand to set

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<sup>1</sup>Stanley K. Hornbeck: "Contemporary Politics in the Far East," p. 77.

upon his course of dictatorship. Not only were the Kuo-ming Tang members proscribed; no other party was tolerated to continue its activity—not even the Chin-pu Tang, which had supported him until then in maintaining his power against the Kuo-ming Tang, and which had to suffer now, with the dissolution of Parliament, the break-up of the party itself. This led its leader, Liang Chi-chao, to change from a staunch supporter into a confirmed enemy of Yuan Shih-kai, and made him join the Revolutionists in 1916 in armed opposition to Yuan's attempt to restore the monarchy.

The death of Yuan caused the temporary revival of the activities of the Kuo-ming Tang and of the Chin-pu Tang. Despite their temporary coalition against Yuan, they soon divided among themselves in the reconvened Parliament, and the heat of the struggle centered in the question over the provincial system, as the one party believed in local provincial autonomy, in decentralization, and in federation; while the other believed in a strong national government, in centralization, and in unitarianism. This difference of principle tended to draw them wider apart, and the drafting of the permanent constitution was seriously hampered by the party strife, which eventually brought this work to naught as a consequence of military interference. The second dissolution of Parliament in June, 1917, hastened the decline of both parties, which decline had already well begun with the *coup d'état* of November 4, 1913.

At present it may be said that China has no political party that is worthy of the name: there are personal cliques, political factions, and military groups, but no political parties. They have no open organization, no definite program, no adhered-to principles, and no popular support. The Anfu Club, being, as its name implies, essentially a club, formed for securing power and for the sharing of spoils, could hardly be called a political party, and it has now gone out of existence. The Tseng-siao Hui (Political Learning Society), formerly the ruling

party in the Canton Military Government with Chin Chuen-hsien as its acknowledged leader, was really a political faction, similar to the Anfu Club, and had the same fate in that it was also automatically dissolved following its withdrawal from Canton in face of the returning Cantonese troops. While both the Kuo-ming Tang and the Chin-pu Tang have been split into several small groups, and are therefore not consolidated parties. Of course, their respective leaders, Dr. Sun Yat-sen and Liang Chi-chao, still have members of the old Tung-meng Hui and the Reform Party as their followers, but these groups are too personal in nature and too small in numbers to be called political parties. Moreover, while the Chin-pu Tang is very largely *opportunistic*, and almost always allies itself with the government regardless of what the latter's principles—if there are any—may be, the Kuo-ming Tang is on the other hand essentially *revolutionary*, and has shown a tendency to manifest its opposition to the government by resorting to forcé if not immediately successful at the polls. Hence these two political bodies in the present state of things are in no true sense political parties, although they make the nearest approach to it in that they have had their own respective political development and party background together with some form of organization and some measure of principle.

Besides these, there are other cliques or factions than those of a military nature which have some amount of political influence, the most notable or notorious among them being the so-called Old Communications Clique and the New Communications Clique, the former with Liang Shih-yi as its head, and the latter with Tsao Yu-ling and Lu Chung-yi as its leaders. The name "Communications" is taken from the department which these cliques have held since the establishment of the Republic. They used financial influence to get political power, and they have discredited themselves in the eyes of the people.

Then there are at the present time in North China the Chihli Clique and the Fengtien Clique, with Generals Tsao Kun and Chang Tso-lin as their respective leaders. The Fengtien Clique took the place of the former Anhwei Clique after the campaign of the summer of 1920, but all these three cliques were evolved out of the old Peiyang Party (Northern Party) and are in substance military and not political parties. While in the Southwest there are now almost as many military cliques as the number of provinces composing the Southwest, excepting only Kwangsi, where its former military clique has lost its power to the Kwangtung Clique, for each province has its own military leader and its own provincial troops, which makes it possible to have a military clique of its own, distinctly separated from the cliques of other provinces. But these again are not political parties at all.

The above sketch affords a glimpse of the nature of Chinese politics to-day, and reveals the utter want of political parties in China. The necessary premise for the existence and development of political parties is democracy, with its accompanying freedom of thought and speech. That China should have a constitutional government based upon popular will and guided by public opinion is beyond question, and with it comes the attendant necessity of organized parties, which are both the cause and the consequence of popular government. The recognition of the Opposition as a legitimate body, entitled to attain to power by persuasion, is a primary condition to the success of the party system, and therefore of popular government on a large scale. Other conditions of success follow from this. If the Opposition is not to be regarded as revolutionary, its objects must not be of that character, either in the eyes of its own adherents, or in those of other people. The members of each political party must tacitly or avowedly recognize that their opponents are capable of conducting the government if successful, and as patriotically devoted to the true welfare of the state as themselves. Furthermore, the line of cleavage between political parties should never

be on racial, religious, or social grounds. Each party, if such a line be drawn, believes that the success of its opponents means its own oppression or extinction, and under such belief will fight to the death.

The system of political parties means the principle of opposing forces in government. For a government without an Opposition to criticize and restrict it is liable to abuse its power and turn to despotism, while the oppressed element will resort to revolution as a means of overthrowing the government. This is precisely what has happened in China as a historical fact, due to our lack of a party system. In order to build strong parties, we must on the one hand establish a truly representative government that is conformable to a supreme law; and on the other hand, we must raise the standard of the people by increasing their political knowledge, arousing their political interest, and uplifting their political morality. Given a constitutional democracy and an intelligent people, the development of political parties is inevitable.

There are, however, some prerequisite conditions which a party must fulfill before it can truly be so called. These are: (1) that the party should have open and definite principles, or a platform which its members pledge to support and put into effect if they come into power; (2) that the party should recognize an Opposition to have the equal right of existence and development; (3) that the party should resort to open methods of party warfare, and not to underhand or illegal means; (4) that there should be a strong cohesive force binding together the party which should not allow it either to break into pieces or to have parties within itself; and (5) that the party should not go beyond the legal bounds of the constitution, or resort to violence if resisted, for the party system requires a certain sway of reason, an appeal to argument in order to gain a public end. With these conditions fulfilled, a political party is worthy of the name and is destined to ultimate success. At present there is no single party in China that has

complied with these conditions and none, therefore, that is entitled to be called a genuine political party.

The nature of political parties is well expressed by the Chinese scholar Liang Chi-chao, who has earned the fame of being the foremost "brain" in China. "*A political party*," says Mr. Liang, "*is a voluntary, continuous and relative association of men, based upon public interests, possessing consistent principles, using open methods, engaging in coöperative activities, for the purpose of gaining an advantageous position in the government,*" by which he means to control the government and carry out its general policies.

Let us see what functions political parties perform. *The party system is both valuable to the state and to the individual and hence it has double functions.* It renders valuable service to the individual in that it furnishes in democracies the organization by which, through elections, referendums, and the influence of public opinion, the general will may be formulated and carried into effect. When great issues arise they furnish a means by which citizens may subordinate lesser differences of opinion and decide questions of vital concern. The party system also performs important functions to the state in that where considerable separation or division of powers exists it serves as a unifying force, which by controlling the various organs of government secures a consistent policy and administration. This system in growing outside the ordinary framework of the state enables governmental change to take place as public opinion changes, without disturbing the whole political machinery. It thus serves as a sort of balance wheel to the constitutional system. It is true that a party may cause civil strife and even revolution, but no more easily than will other causes under a non-party system.

In the strengthening of a party organization four essential needs should be noted; namely, *cohesion*, *expansion*, *propaganda*, and *discipline*. By cohesion we mean the binding together of the party so as to avoid a party split. By expansion we mean the attraction of new members to the party, especially the new

voters. By propaganda we mean the spread of political doctrines by speeches and by writing. By discipline we mean the educating of the electorate to trust the party and its leaders.

We proceed, then, from the discussion of party organization to that of party government. "It may be set down as an axiom that political parties are not only an inevitable but a necessary and proper adjunct of any scheme of popular government."<sup>1</sup> "Organized, drilled and disciplined parties are the only means we have yet discovered by which to secure responsible government, and thus to execute the will of the people."<sup>2</sup> Now conditions in China are such as to leave no room for the free development of political parties, and this accounts for the absolute want of popular or responsible government. The executive party has found its strength in the support of the military. History teaches that a political party which is in substance a military party will be generally opposed to the free growth of democratic institutions. Yet this is the actual factor in the present situation, which must be reckoned with in the constitutional development in this country.

When Yuan Shih-kai was Provisional President, the experiment of forming a party cabinet by the members of the Tung-meng Hui (the later Kuo-ming Tang) was tried but soon abandoned. Tuan Chi-jui, also, once organized a coalition cabinet and found it unsuccessful. Most of the time, then, China has been administered under the principle of a "non-party cabinet" or "government by talents," which means nothing less than a non-responsible or irresponsible government. Yet this is contradictory to the principle of a constitutional régime which China has professed to adhere to since the founding of the Republic.

Now if we have really adopted the system of a responsible ministry, it is by means of the party that the executive and

<sup>1</sup>Ogg and Beard: "National Governments and the World War," p. 272.

<sup>2</sup>Ray: "Introduction to Political Parties and Practical Politics," p. 10.

legislative departments are to be brought into harmony. As government by party works out most successfully in England, it is her methods that we must attempt to follow. The essentials of the English Cabinet system, which was evolved out of party rivalry, have been defined as including: (1) the appointment of the ministers from the party which at the given time controls the House of Commons, and (2) the retirement of these ministers whenever they cease to have the support of a parliamentary majority. To quote from Professors Ogg and Beard:

“The only kind of majority that has sufficient coherence and stability to make it dependable is a majority held together by the powerful ties of party. In the absence of parties the situation would be either that ministries would rise and fall with lightning rapidity because no organized force would be interested in keeping them in power, or that they would go on ruling indefinitely after they had got out of harmony with the popular chamber. There would be no point to the retirement of a ministry, did not an opposing party stand ready to set up a ministry of a different sort and assume full power and responsibility.

“The cabinet system and the party system are, therefore, intimately bound up together; indeed, they are but different aspects of the same working arrangement. . . . In England, . . . party works inside rather than outside the governmental system; the machinery of party and the machinery of government are one and the same thing. The ministers—at all events those who sit in the cabinet—are at the same time the working executive, the leaders in legislation and the chiefs of the party in power. The majority in the House of Commons . . . is for practical purposes the party itself; while over against the ministry and its parliamentary majority stands the opposition, consisting of the influential exponents of the contrary political faith, who, in turn, lead the rank and file of their party organization, and are ready

to take the helm whenever their rivals fall out of favor with the popular chamber.”<sup>1</sup>

Party cohesion, both in the House and in the Cabinet is, indeed, an essential feature of the Parliamentary system.

“Not only is it true that a responsible ministry involves government by party; in order to work smoothly such a ministerial system requires the existence of two great parties and no more. . . . Considerations of unity and responsibility demand that the party in power shall be strong enough to govern alone, or substantially so.”<sup>2</sup>

It cannot work well otherwise. For a division into two parties is not only the nominal result of the parliamentary system, but also an essential condition of its success. Now the larger the number of discordant groups that form the majority, the harder the task of pleasing them all, and the more feeble and unstable the position of the Cabinet. This is precisely the situation in France, Italy, and most other continental European countries, where instead of two great parties which are alternating in power and in opposition, we find a number of groups, sometimes united and sometimes hostile to each other, ever forming new combinations, until it becomes almost impossible to follow their evolutions. A party cabinet, however, in contrast with a coalition cabinet, can always hope to get the command of a working majority, and this is possible only when there are two strong parties in a given state.

Now in regard to China, after all the welter of party organizing and party strife which the past ten years have witnessed, there may be said to exist at present but two organizations that have the nature of political parties and these are the Kuo-ming Tang and the Chin-pu Tang. The other

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<sup>1</sup> Ogg and Beard: “National Governments and the World War,” pp. 273, 274.

<sup>2</sup>*Id.*, p. 274.

groups have either died out, or been absorbed into these two parties, or are still continuing their activities with different motives which do not concern us here. If we can use the Kuo-ming Tang and the Chin-pu Tang to build up a two-party system, then we may have the hope of making successful the operation of party government.

The point to be noted is that the party is really the connecting link between the Cabinet and the Parliament, for the Cabinet is chosen from the majority party in Parliament, and so we see the working of the principle of legislative-executive cooperation or harmony in the government of a state. To sum up, the party system, as it operates in England, which country we should take as our constitutional model, is in close relation to the Cabinet system and the parliamentary system. The three cannot be separated without the break-up of the whole political system.

## CHAPTER VIII

### AN INDEPENDENT AND REMODELED JUDICIARY

As has been pointed out in an earlier chapter, it is necessary to have legislative-executive cooperation as opposed to a separation of powers. This does not mean, however, that the judiciary should also be united with both or with either of the other branches of government, for it is in its nature a distinct organ, and should be recognized as such in order to insure the independence and impartiality of its judgments and its decisions. To let it fall under the influence of either the executive or the legislature, or both of them, would be to spell the ruin of individual liberty and constitutional rights.

This is not to say, of course, that there must be complete independence of the three governmental powers in a state—a condition which nowhere exists and necessarily cannot. It is practically impossible to establish in every instance a plain line of demarcation between legislative, executive, and judicial functions. The executive shares the judicial power in the granting of pardons and reprieves, and in some countries in the making of appointments to judicial offices, and in the establishment of administrative courts. The legislature shares the judicial function in the case of impeachments, and in some instances, in the appointing of judges and in establishing courts; while the judiciary shares the legislative power in making the rules of practice which are commonly known as the "judge-made law," and also shares the executive function in enforcing the rules and the decisions it has made.

Nevertheless, in spite of this partial union of powers among the three branches of government, the judiciary should, in the very nature of things, be separated as far as practicable from

the executive and the legislature, for which latter two it is expedient and even desirable to have close and harmonious relations in the practical operation of a cabinet or parliamentary system. We all agree that this particular branch—the judiciary—should be given a greater degree of independence in its field of activity and should not be influenced by either of the two other branches of government. It is true that the executive should have the power of making judicial appointments, and the legislature the power of establishing courts and controlling the expenses for maintaining them, but the fact remains that in order to have an independent and efficient judicial service, we must insure to the judges a permanent tenure of office on good behavior, making them removable only for cause, and granting them a liberal compensation, which should not be diminished during their term of office. With their material welfare provided for and secured against outside influence, the judges will be in a better position to do their duty with courage and independence. The selection of the judges in itself also plays a very important part toward the efficient working of the judicial department. In the first place, the judges must have a thorough knowledge of law. Members of the judiciary are necessarily technical specialists. In the second place, judges must be absolutely and unqualifiedly impartial. They must not be men entangled in party politics or cherishing partisan spirit.

What are then the judicial functions? "The judiciary is that organ of government charged with the interpretation and application of the law. To its part falls the task of deciding points of law, of discerning and protecting the rights and privileges of individuals under the law and inflicting penalties therefor. The judiciary may be said, then, to be the great adjusting force in government, on the one hand, upholding the established rights of the individual against encroachments by another individual or against any conscious or unconscious usurpation on the part of the powerful legislative and executive

branches of government, and on the other hand, curbing the uprisings of individuals who rebel against the legal acts or enactments of the legislative or executive branches.”<sup>1</sup>

There are two legal systems of government in use in the modern world—one that of legislative supremacy such as operates in England, and the other that of judiciary supremacy such as operates in the United States. Under the former system, the judiciary is subordinated to the legislature, in that the decisions of the court are always subject to the overruling power of Parliament. Under the latter system, the judiciary is superior to the legislature in that the Supreme Court may pass on the constitutionality of the acts of Congress. The system of legislative supremacy then makes the legislature the chief guardian of the terms of the constitution as well as of the scope of its own powers. The system of judicial supremacy, however, places the guardianship of a written constitution primarily in a supreme court of justice, which is the sole and final judge of its own rights, as well as those of the executive and the legislature. To choose between these two systems of government, we must be guided by the particular conditions of a country. In England, there is a union of the powers in the sovereign Parliament, which has practically unlimited power, while in the United States there is a separation of powers and a check and balance system. Hence the adoption of legislative supremacy in the former country and of judicial supremacy in the latter.

Now for China, the adoption of the latter system seems preferable, though in the matter of legislative-executive coöperation, China should follow the example of England instead of that of America, where the principle of the separation of powers is vigorously applied. There is involved no contradiction between the system of judicial supremacy and the principle of legislative-executive coöperation—in fact they are two

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<sup>1</sup> Lucson Hudson Holt: “An Introduction to the Study of Government,” Chap. VI, pp. 88, 89.

different parts of the governmental system and no clash of interest can ensue between them. The reason that China should adopt the system of judicial supremacy is that from the experience of the past ten years both the executive autocracy and the parliamentary despotism have done no good to the country, but have, instead, caused untold harm. The intense and continuous conflict between the executive and the legislature for supremacy has brought about great political crises, resulting in the constant changing and weakening of the government. The judiciary, owing to its feeble position, has been unable to do anything to help the situation. It is treated as a subordinate organ of the other two branches of government and no degree of independence is assured it. So in the process of reconstructing our governmental system, the judiciary must be placed on an equal footing with the executive and legislative power. Its rights and functions should be clearly provided for in the constitution. This does not mean that we shall have the check and balance system, because, as has been said above, the executive and the legislature, from the nature of their complicated and intricate relations, should have a bond of union by means of the party system for the successful working of parliamentary government. Nor does it mean that the other two governmental agencies should be brought to the feet of the judiciary, because this power to declare laws invalid, such as could be vested in the latter, by no means implies a superiority of the judicial to the legislative power. It only implies that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, as embodied in the constitution, the judges ought to be governed by the latter rather than by the former. James Wilson, an ardent champion of judicial control, also claimed that no superiority of courts was involved in declaring statutes void. Courts do not invalidate statutes, they merely pronounce them void, because contrary to overruling law.

Indeed, this term "judicial supremacy" is often misleading. It is only a convenient term denoting the supremacy of the law, particularly that of the constitution, as upheld and guarded by the judiciary against encroachment by the executive or the legislature. It does not mean that the judiciary is to have preponderant powers over the other two branches of government simply because it is the ultimate authority on all matters touching the limits of the powers granted by the constitution. There are limitations placed upon judicial authority by the process of amendment, by the discretion allowed the executive and legislative departments of government with regard to acts which do not permit of judicial control, and by the fact that the judicial power may be called into operation only in such cases as are brought before it.

Furthermore, on the exercise of the power to declare laws void, the judiciary is also not without restrictions. The first limitation imposed is that in rendering its decisions the court must not interfere with or limit the proper range of discretion of another department. A second limitation on the exercise of judicial review has been recognized in the rule that all doubtful cases must be decided in favor of legislative authority. Any act should be unconstitutional beyond dispute before it is so pronounced. It is seen, then, that with these provisions and limitations there is no fear of judicial autocracy or dominance from its possession of these great and important powers.

The alarm regarding the abuse of powers on the part of the judiciary was very effectively disposed of by Alexander Hamilton. He held that the judiciary is beyond comparison the weakest of the three departments of power because it has no influence over either the sword or the purse, both of which are controlled respectively by the executive and the legislature; that it can never attack with success either of the other two; that all possible care is requisite to enable it to defend itself against their attack; and that even though individual oppression may

now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter. So long as the judiciary remains truly distinct from both the executive and the legislature this will be true. To secure an honest decision, and prevent the mischiefs which would flow from partiality or corruption, the judges must be liable to removal from office on conviction, in a court of law, of misbehavior.<sup>1</sup> It is to avoid misinterpretation of the term "supremacy" that the word "independence," in speaking of the judiciary, has been here used.

Of the important functions that an independent judiciary would perform, by far the greatest would be the guardianship of the constitution as the supreme and paramount law, and protection of civil liberty and individual rights. The judicial supremacy as worked out in the United States, says Professor Burgess, is "the most momentous product of modern political science. Upon it far more than upon anything else depends the permanent existence of republican government; for elective government must be party government—majority government; and unless the domain of individual liberty is protected by an independent, unpolitical department, such government degenerates into party absolutism and then into Cæsarism."<sup>2</sup>

The Supreme Court of the United States has established its fame mainly by its work of interpreting the federal constitution. In China the Provisional Constitution is silent as to the competent authority of interpretation, but it has been proposed that it should be intrusted to the National Assembly composed of the members of the two houses of Parliament. This proposal would not only deprive the Supreme Court of an important function, but it would also give the legislature an overwhelming power in government, as it would then combine in itself the functions of making and interpreting, and in fact, according to the same

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<sup>1</sup> Haines: "The American Doctrine of Judicial Supremacy," p. 182.

<sup>2</sup> Ogg and Beard: "National Governments and the World War," p. 57.

proposal, of amending the constitution. It would easily lead to abuse and extravagance on the part of the legislature if it were allowed to interpret the fundamental law of its own creation. And though the drafting of the constitution should, as has been said in a preceding chapter, be done by a special committee, yet the Parliament should only have the power of ratifying and amending the same, while the power of interpreting it should be left to the Supreme Court. Moreover, for many years to come, there are sure to be disputes between the legislature and the executive over their respective constitutional powers, and it is only in a powerful judiciary with full authority to interpret all laws of the land, fundamental or otherwise, that we may hope to find an adequate solution of these disputes. *It is therefore necessary that when a permanent constitution is drafted, the Supreme Court be granted the authority to interpret the constitution, so as to enforce respect for the acts of the executive and to prevent the legislature from abusing its power.*

Let us go a step further in studying the organization of the judiciary. Apart from the Ministry of Justice, which is the fountainhead of all judicial organizations in China, there were, under the earlier years of the Republic, four kinds of courts established for the administration of justice. These were, namely: the Supreme Court of Final Appeal (in Peking), the Provincial Courts (high courts in every provincial capital), the Metropolitan Courts (in every prefecture comprising a group of districts), and the Court of First Instance (in every district). To every one of the above courts, including the Supreme Court at Peking, there is attached a Court of Public Prosecution independent of the court of trial. Roughly speaking, its function corresponds, in some respects, to the Grand Jury in the United States. It is the duty of the Court of Public Prosecution to conduct a preliminary examination in all cases brought before it. But a great many cases are not submitted to this court by the injured parties, because of the habitual inclination

of the Chinese to settle their disputes privately by mutual compromise.

The last grade of court, i. e., the Court of First Instance, was abolished soon after its creation, and the three-grade system was adopted, which is in use at the present day. Though this has had the advantage of simplifying the process of judicial procedure, it has nevertheless made it more difficult to bring cases of first instance to the Metropolitan Court, which is provided only for a group of districts and not in every district. As a matter of fact, only in a few provinces have the courts been opened. In the rest the district magistrate is temporarily authorized to act as judge, who takes charge over minor civil and criminal cases of first instance, while more important and appeal cases are to be brought before the Provincial Court. This system is maintained by the government as an expediency for the sake of saving expenses involved in maintaining a separate court in each district, thereby combining the executive and judicial functions in the hands of one man—the magistrate.

Such anomalous features are not characteristic of the two inferior courts alone, but of the two higher courts as well. For the Provincial Court, like its inferior organizations, is also not free from political influence, but is practically controlled by the Tuchuns. The same is true of the Supreme Court, for it is under the thumb of the government in Peking. *This executive domination of the judiciary is a chief cause of the instability of the republican government and of China's backwardness in constitutional development.* If we know the defects we can prescribe the remedies. *The judiciary and the executive should be separated as far as possible.* The Court of First Instance and the Metropolitan Court should be independent of the Magistrate, the Provincial Court independent of the Tuchuns, and the Supreme Court independent of the Peking government. It is only in this way that we can hope to get an efficient and impartial judicial

service in the law courts. Where the districts are small and the population scanty, the Courts of the Justice of the Peace should be instituted to take the place of the Courts of First Instance, which later may be set up in larger and more populous districts. The Courts of the Justice of the Peace, of course, need not be limited to the small districts alone, but should also be extended to larger places alongside the Courts of First Instance, but with jurisdiction over petty cases only. Then several districts may also share one Metropolitan Court, which may correspond to the District Court in the United States. The American system of circuit courts for appeals, by which a judge travels from place to place within a certain area, taking up such judicial business as is brought before him, would be an economy and would make up for the present lack of trained judges. Moreover, the Provincial Court should be made the final court of appeal for each province, while the Supreme Court in Peking should have original jurisdiction over such matters as are national in character or affect more than one province.

*In the remodeling of the judiciary we must introduce the jury system and bring in prison reforms from the West, at the same time modernizing and extending the courts of justice, and making practical application of the Common Law and the Roman Law as each proves adaptable. The Administrative Court now established in Peking should be abolished so as to make all equal before the law and to give no special privilege to the official class. The administrative law may still be kept in use alongside the civil and criminal law, but the officials, high or low (except of course in impeachment cases involving the President and the Cabinet Ministers), ought to appear before the ordinary courts for their personal or official acts. This will not only tend to make the officials show greater respect for the law, but will also mean the gradual supplanting of the bureaucratic system, which is a curse and a burden to China.*

In spite of the fact that in her judicial reform China has made greater strides within the last ten years than she ever made before, it is to be regretted that the reorganized courts have not yet been able to do what they have been expected to do. The Treaty Powers still cling to their extraterritorial rights, because they are not yet satisfied with the present state of the Chinese laws, their method of administration, and other considerations such as to warrant their relinquishing these rights all at once. It is therefore quite evident that even in its reorganized form the judicial system in China still calls for drastic reform, and it is the hope of every patriotic Chinese that by having a strong, independent judiciary and a sound system of justice, we may not only safeguard the Constitution, the republican government, and individual rights, but may also look toward the day when there will be no more foreign consular jurisdiction or extraterritoriality exercised in this country.

## CHAPTER IX

### REORGANIZATION OF THE MILITARY SYSTEM

The military system of China can in nowise be compared with that of the West. If we judge the power of self-defense to be a requisite condition of a national state then China could not be so called. Yet the very existence of the state depends upon the readiness of the government to wage war when the nation's safety or vital interests are at stake. It is because of this military weakness that China was brought to successive crushing defeat in the Opium War, the Arrow War, the Annam War, and the Sino-Japanese War, and on the occasion of the Boxer uprising; as a consequence of all of which events valuable dependencies were lost to other countries, and important ports leased to the Great Powers. Nay! even her dismemberment was seriously considered by the Western governments in the time of the Boxer Rebellion. She will always be exposed to foreign aggression if she is to have no adequate means, as is now the case, of protecting herself. Her utter unpreparedness for war and her total inability to make it, subjected China to the "mailed fist" of Japan in 1915 and compelled her to accept the Twenty-one Demands on the threat of an ultimatum. This painful lesson should be remembered, should we undertake the task of formulating a sound military policy for national defense.

China's military weakness is a lure to foreign ambition and a seed of international conflicts. As long as she is unable to fight and defend herself in the face of an external invasion, so long there will be no true national independence. If she is ever to gain a respected place in the family of nations, her military system must be completely reorganized on the model of the other powers so as to be of real use in a foreign war.

To know the actual military system in China, we have only to investigate the conditions of her army and navy. Let us first take the army into consideration. The Chinese army, though maintained these several years at an average of about one and a half million men (including all sorts of regular or irregular troops in both the North and South), formidable as it seems to be, for it is double that of the standing army of Germany or of France before the War, is nevertheless of no fighting strength and of no fighting spirit, owing to its lack of moral, intellectual, and military discipline. The soldiers are mercenaries, paid to fight, irrespective of what they are fighting for. They make military life their occupation and are liable to become bandits should they be turned out of employment. They know of no principle but money: whoever pays them they will fight for. They have thus served as useful tools of the military chiefs, who use them to fight battles to secure power and position without regard for the country, for the people, or for the soldiers themselves. In a word, the Chinese soldiery is maintained by public money for private or personal use of military leaders instead of for the national defense and for public peace and order, which are the duties owed by the state to its citizens. The soldiers are not used to expel foreign invasions—for which they are utterly inadequate in every way, but to overawe the people and to threaten the government on the part of the military.

The Tuchuns are the petty kings of the provinces and the overlords of the troops, who take things into their own hands and usurp the powers of the civil authorities. The civil governors, though theoretically on an equal standing with the Tuchuns, are treated as merely subordinates. Military forces of the nation are mostly at the Tuchuns' disposal, while only a few divisions are left under the control of the War Department in Peking. It is this condition of things which accounts for the weakness of the central government and the arrogance of the provincial "chieftains." The Tuchuns make alliances and counter-alliances with and against

one another. They are the real rulers of the country—a sort of military oligarchy with the control of the government. It is they who are responsible for the political disturbances in the past ten years, and it is they who have brought China to her present political condition. The present tendency, however, has clearly demonstrated that these all-powerful Tuchuns are bound to give way when the time comes. Not only has the movement for the separation of civil and military administration and for the abolition of the Tuchunate itself dealt a heavy blow to the persistence of the system, but the Tuchuns themselves have not infrequently been overthrown by their inferior military commanders; of which fact the contest in North China of Tuan Chi-jui against Tsao Kun, Chang Tso-lin, and Wu Pei-fu, and in the provinces of the Southwest of Tang Yuan-kai against Chao Heng-ti in Hunan, of Lu Yung-ting against Chen Chiung-ming in Kwangtung, of Liu Shien-shi against Lu Tao in Kweichow, of Tang Chi-yao against Koo Ping-tseng in Yunnan, and of Liu Chen-hou against Liu Shan in Szechwan,—all afford excellent examples. Then the constantly recurring mutinies on the part of the unpaid soldiers also indirectly contribute to the weakening of the power of the Tuchuns, who otherwise would be sovereign and supreme. Before long, therefore, we shall see the end of the Tuchunate as a system, as various forces have been working for its downfall.

Of all the military parties in China, the Pei-yang Party has been the most powerful one—it having controlled national politics ever since the time of its founder, Li Hung-chang. Yuan Shih-kai succeeded after Li's death to the leadership of the party. His downfall soon caused it to split into two cliques—the Chihli Clique as headed by General Feng Kuo-chang, who later became acting president; and the Anhwei Clique as headed by General Tuan Chi-jui, who later became premier. The campaign of the summer of 1920 resulted in the collapse of the Anhwei Clique and the triumph of the Chihli Clique. The newly rising

Fengtien Clique now came to the front and took the place of the Anhwei Clique by virtue of the military aid it gave to the Chihli Clique in overthrowing Tuan Chi-jui. The clash between these two has ended in the elimination of the Fengtien Clique and the supremacy of the Chihli Clique.

The Pei-yang Party, however, makes its influence felt mostly in North and Central China, while in South China it was formerly dominated by the Yünnan Clique and the Kwangsi Clique, the former with Yünnan, Kweichow, and Szechwan as its "sphere of influence," and the latter with Kwangsi, Kwangtung, and Hunan as its sphere. With the growth of the movement for provincial autonomy, these two cliques soon found the subjugated provinces slipping away from their hands and the Yünnan clique could cling only to its own province, while the Kwangsi Clique had to give over its own hold to Kwangtung. Each of the other four provinces is ruled by its own military leaders independently of the Peking government.

Let us turn to the Chinese navy. China has nothing that can be called a navy in any proper sense of the term. She has only a few score of old sea vessels and river gunboats, and these are practically of no use for naval warfare. According to the statistics of 1916, which cannot have changed much since, China possesses only two protected cruisers, built in 1911 (2,756 tons each); four older protected cruisers (3,000-4,300 tons); three torpedo gunboats (850 tons); eleven gunboats (500-750 tons); four destroyers (400 tons); and eight small torpedo boats (120 tons). Of course we must remember that after she entered the War, China got a few more of these vessels from the Germans and the Austrians, but not much naval value or importance can be attached to them since they are mostly merchantmen. In a word, this arm of the defense, it is safe to say, is out of date in China. The total tonnage amounts to only something less than the tonnage of a single American dreadnought (40,000 tons)! Even this little navy which she now possesses is further split into two

hostile factions—the Yangtze fleet in the control of the North and the coasting fleet in the control of the South. This is dividing and weakening our national strength for coast defense. Yet China has a coast line on the Pacific Ocean of no less than five thousand miles, faced by the strong Japanese Empire and the British, French, and American outlying possessions. Though at the Washington Conference the return of the leased ports of Tsingtau, Weihaiwei, and Kwangchowwang has been promised, it must not be forgotten that the British still insist upon holding the Kowloon leased territory, and that the Japanese hold the ports of Dairen and Port Arthur, both powers practically regarding these as their possessions. It is fortunately true that we need not entertain any fear of the immediate aggression of the powers upon China's sovereignty and rights as a nation, embodied as they are in the Nine-Power Treaty concluded at the Washington Conference; but it will be fatal if we should be dragged along without any adequate means of protection, trusting to the goodwill of the powers and to the "open-door" policy as a permanent guarantee to our national existence. As Mr. Bertrand Russell, who has only recently left China, expressed it, "The practice of looking to foreign nations for help is not desirable both because it encourages a parasitic habit of mind and because in the long run all nations are egoistic."

From what has been said above, it is obvious that our army and our navy are both in a deplorable state, in crying need of improvement. The reason for reorganizing the army is plain enough. China is essentially a continental empire, surrounded as her territory is by the territories of Japanese Korea, Russian Siberia and Turkestan, British India, and French Indo-China. This territorial contiguity makes her an easy prey to encroachments from these respective bases of operation. This is proved by Japan's ambitions in Manchuria and Inner Mongolia, by the aims of Russia in Sinkiang and Outer Mongolia, of Britain in

Tibet, and of France in Yünnan and Kwangsi. China therefore needs an effective army to protect her national frontiers—those of her dependencies as well as of her provinces. The territorial integrity of her empire depends not upon the “open-door” policy or other forms of guarantee by the powers, but upon her own ability to keep it intact. She is fitted to develop this military power if she chooses, with her large population, her extensive territory, and her vast natural resources. That her troops are at present useless for waging a foreign war is almost too obvious to need assertion. Is it not desirable, therefore, that some positive means be adopted for the reorganization of our army, somewhat in accordance with the suggestions that follow?

1. That the Swiss system of universal military training of young men of eighteen for six months, and of other male adults for a shorter period in the summer be adopted as the basis of our military system. This is a modified form of the German and the French system of conscription service, but possesses the latter’s advantages without its disadvantages. The English and American system of voluntary service previously used is clearly not well adapted to the need of a modern warfare, as the World War has shown that a nation must be in arms while in public danger, and a standing army is not adequate for carrying on a long war.

2. That the present army of from one million to one million and a half which China now possesses be diminished and reorganized. A standing army of three hundred thousand will be enough for the purpose of national defense if it is properly disciplined, equipped, and organized. Huge military expenditures have drained the national and provincial treasuries of the greater portions of their total annual revenues and they must depend upon foreign or domestic loans for their support and maintenance. The government is unable to pay, and mutinies are the result. The people have suffered the loss of life and property, not to mention the various contributions and requisitions made

upon them by the military chiefs for the keeping of the soldiery. Such an army only serves to make the country weaker and weaker and the people poorer and poorer. Disbandment is of prime necessity in order to save China from financial bankruptcy, as well as from military collapse. The disbanded soldiers must be employed in constructive and productive enterprises provided at the state's expense.

3. That the Tuchun system be abolished and a civil administration substituted in its place. The present system of stationing troops in the different provinces is harmful because it allows the military chiefs to usurp the civil and financial powers for their own gain. The proposed plan of laying out the country into several "military circuits" is likewise inadvisable, because it would make the military commanders of the "circuits" even more powerful than the Tuchuns, as one circuit may, and would, comprise several provinces under military control. To remedy this defect we should mark out our national frontiers into a number of fortified areas, and charge the national army with the national defense only. There should be a concentration of army control, and that is to be accomplished by adopting a rule that army divisions, wherever they are stationed, should be financially supported by the central government, and that on no account should a province be allowed to maintain its own army with its own revenue. The national army thus created needs to be placed under the strict control of the Ministry of War, and no provincial authorities or other political department or institution should be allowed to claim a voice in it, except, of course, the General Staff, which has the closest relation to the War Department. Thus there will be centralization and uniformity in the control of the army instead of provincial influence and direction as at present. The provinces should, however, be permitted to maintain a militia up to a certain limit, and to call on it for service in time of public danger, but not for other purposes.

4. That the police system be reformed and extended, to coördinate its work with that of the army in preserving internal peace and order.

5. That military schools and colleges be founded, and those already existing improved, to provide an education in modern military science.

In all this the guiding principle should be military preparedness alone, as opposed to the militarism of imperial Germany and the present sham militarism now prevalent in China,—both of which are a menace to democracy, that of China being even the worse form because it not only gives no protection to the country but works oppression to the people. But if we are to have an army, modern equipment and modern methods surely need to be introduced.

The same things may be said almost equally well of the need for strengthening our navy, and it is with this in view that the following suggestions may be worth consideration.

1. That a sound naval policy be adopted on the basis of the naval experience of the late World War.

2. That the naval forces be united under one supreme commander, vested with the whole responsibility of conducting naval operations in time of war.

3. That the important naval bases and stations be developed and strengthened, together with the returned leased ports, and made really useful in securing the national defense.

4. That naval schools and colleges be established and equipped for the training of officers and men. That more cadets be sent abroad in order to get a more technical naval education. That cruising vessels be used for the training of officers. That the naval schools at Chefoo, Nanking, Woosung, Foochow, and Canton be reorganized as much as possible on the British system.

5. That shipping be encouraged and subsidized, not only to stimulate maritime commerce, but to secure the possible recruiting of a naval personnel from the merchant marine.

In other words China needs a navy strong enough to protect her coasts in a defensive war. While she lacks this she will remain at the mercy of the stronger powers. Anyone who has read the well-known book of the American author Admiral Mahan, "The Influence of Sea Power upon History," must be convinced that a navy is necessary to a country not for national expansion only but for its national security.

It should become a recognized principle that military and naval men, whatever their rank, should be kept from meddling in party or national politics, and from in any way interfering with the civil administration. This is an extremely important point, because of the fact that most of the troubles in China have come from military interference in politics.

In a reorganized army and a strengthened navy we shall find the safest means for securing our national defense and maintaining our national integrity.

## CHAPTER X

### FOREIGN POLICY AND FOREIGN RELATIONS

Before China had any contact with the West she had nothing that might be called a foreign policy in the modern sense of the term. She led a secluded existence, surrounded by tribal states of far inferior civilization, the natural result of which led her to cultivate a spirit of self-esteem and arrogance toward her neighbors, in addition to demanding of them tribute as a sign of their vassaldom to the "Celestial Empire." Toward the Western nations she maintained practically the same attitude and looked down upon them as "barbarians," never as her equals. It needed the Opium War to force her to open her door to foreign influence. Despite this military disaster suffered at the hands of the British, China still refused to have formal diplomatic relations with foreign countries, and the Tsung-li Yamen, the department through which China communicates with the Foreign Offices of other powers, was not established till 1863, after the Arrow War was over. This was abolished in 1901 when there was created in its place the new Ministry of Foreign Affairs. In a word, the old China pursued a policy of exclusion and non-intercourse and preferred remaining a "hermit nation" to adapting herself to the Western modes of civilization.

The successive wars which China fought with the British in 1840 (the Opium War), with the British and the French in 1856 and again in 1860 (the Arrow War), with the French in 1884 (the Annam War), with the Japanese in 1894 (the Sino-Japanese War), and with the Allies in 1900 (the Boxer Rebellion) brought China to a stage of national degradation so low that she now retains few of the attributes of a sovereign state. These painful lessons, learned from her foreign wars, largely account for her

change in foreign policy from self-esteem to self-humiliation. The battle for concessions and the scramble for territories thrust China into a world of confusion and threatened her with the danger of dismemberment. She was only saved at this critical time by the "open-door" policy, declared by John Hay, American Secretary of State, and acceded to by the other powers. The "balance of power" and international control (or "internationalization") were at that time regarded as the guiding principle in the Oriental policy of the Western nations. The "most-favored nation" clause and the "equal opportunity" doctrine were the factors that brought China to a situation in which she was treated as a field for spoliation rather than as an independent nation. This accounts for China's loss of her own choice and determination in the field of diplomacy. In fact China has nothing that can be called a diplomacy of her own, and what is termed her diplomacy is only the diplomacy of the foreign powers toward her. By the "most-favored nation" clause, monopoly by one power was excluded; and by the "equal opportunity" doctrine, strivings between the nations were fostered. The powers had either to combine for the purpose of gaining their ends, or to battle against each other for securing exclusive rights. Later the policy of "spheres of influence" or "spheres of interest" was embarked upon for the settlement of their controversies and the concentration of their energies upon particular districts in which their interests were, or were professed to be, paramount and superior to those of others. This was really threatening China's integrity as well as her sovereignty. She was in the currents and the cross-currents of international politics. On the one hand there was the "spheres of influence" policy, the policy that would lead to China's ultimate partition; and on the other there was the "open-door" policy, the policy designed for China's preservation. Conflicts between these two policies were not infrequent and the powers were fairly divided into two camps—with Russia, France, and Japan standing for the

former policy, and England, Germany, and the United States standing for the latter, though not without modifications—as England had special interests in the Yangtze valley, and Germany had special interests in Shantung.

This condition of things was, however, somewhat changed after the Chinese Revolution and again after the outbreak of the Great War. The “spheres of influence” policy, which was superseded by the “open-door” policy after 1900, was now again asserted. This was because of railway loans and of Mongolian and Tibetan affairs resulting from the establishment of the Republic. The powers struggled for the railway concessions and used them either to strengthen or to extend their “spheres of interest.” Later an international Syndicate or Consortium was formed in 1913, being at first a four-power group, including British, French, German, and American interests, and then a six-power group, adding Russian and Japanese interests, for the sake of giving China financial assistance and of avoiding international competition. Then the uprisings in Mongolia and Tibet against the Chinese Republican government were taken by England and Russia as an opportunity for extending their influence to these two regions and for claiming a certain protection and control over them. Thus what was formerly pledged by the powers for the preservation and guarantee of China’s territorial integrity was disregarded by the powers themselves, not however including the United States, as she has consistently held to the principle of disinterestedness and noninterference in Far Eastern affairs.

Then came the Great War in 1914 which helped to place Japan in a predominant position in the Far East, as the Western powers were too much occupied to interest themselves in China. Japan now had a free hand in the treatment of this “Sick Man.” The notorious Twenty-one Demands, the Chen-chiatung Affair, the Shantung Question, the Foochow Incident, the Chientao Episode, and the Japanese Loans, are too familiar

to need any discussion at length. Japan was practically the sole master and dictator of the Far East during the entire period of the War. The close of the struggle and the victory of the Allies, however, brought a radical change in the situation. With the extinction of Russia and Germany as important factors in Far Eastern politics, and with the close coördination between the United States, Great Britain, and France, Japan was left isolated in dealing with China, and her aggressive continental policy has had to be given up or modified for the time being at least. The downfall of Tuan Chi-wei and the Anfu Club, and the cancellation of the Sino-Japanese Military Pact, concluded in 1918, also contributed to the lessening of the Japanese influence and the weakening of the Japanese control in China. The "open-door" policy is now regaining its lost strength after the War. As to the future international situation in the Far East, much of course depends upon the condition of China itself, but none the less is it dependent upon the relation between the foreign powers themselves who have important rights and interests in this country.

In order to understand fully the contemporary diplomatic situation of China under the Republic, it is of value to know the historical relation of China under the Empire with the Western powers in the last eight decades of the past century and in the decade preceding the Revolution of 1911. Mr. Morse, the American author of "The International Relations of the Chinese Empire," divides the whole era of China's foreign relations into three periods—from 1832-1860, the Period of Conflict; from 1861-1894, the Period of Submission; and from 1895-1911, the Period of Subjection. From 1912 to the present day, we might add, the third period has continued, and there seems yet no prospect of altering the situation.

The following is a summary of Mr. Morse's narrative, partly in his own words:

For three quarters of a century (1832-1911) there had been international, as distinguished from mercantile, relations between the Chinese Empire and the nations of the West. Beginning with the year 1832 China entered into controversies with the Western powers which brought on the Opium War of 1839-1842, as well as the Arrow War in 1856 and again in 1860 with England and France. As a result of her defeat in these two wars China learned, and had to accept, the fact that whereas she had formerly dictated the conditions under which international relations should be maintained, it was now the Western nations who were to impose their will on China. This was the end of the period of conflict.

In the period of submission that followed, China accepted the decision of war. The empire was exhausted by the great Taiping Rebellion, while its prestige was shaken by its foreign wars; and the central administration was unable to resist the demands of the foreign powers. For some years these demands were directed solely to the enforcement of the treaties, and the envoys at Peking were united in supporting the government, but gradually national ambitions asserted themselves. During these years China lost the control of nearly all her vassal states—the fringe of buffer states which had encircled the empire and protected it from direct contact with the outer world—the Liuchiu Islands, a fringe of Ili, Burma, Annam; and in 1894 there remained only Tibet, Mongolia, and Korea. The plain duty of looking to the defenses of the empire was neglected by the imperial government, and the period of submission—and of peace—was wasted.

Then followed the period of subjection. In 1895, the war with Japan brought to the empire deep humiliation and the loss of Korea. In 1898 four powers (Germany, Russia, France, and England) seized for themselves naval stations and commercial ports on the coast of China, and the break-up of the empire seemed to be impending. Then came the mad

outbreak of the Boxer Rebellion, and in punishment, China was reduced to a state of subjection so low, that it was clear that if the empire was to survive radical reforms were essential. The period of submission had been wasted; of the period of subjection, the first part, 1895 to 1900, had been wasted, the second part, 1901 to 1905, had been spent in futile reforms which were intended not to touch the prestige and the emoluments of the ruling race; and in the last part the empire tried by belated and reluctant reform to stem the tide of the rising Chinese sense of nationality. All these belated efforts failed, and the Manchu empire fell, leaving to the republic, which was erected on its ruins, an inheritance of disorder and corrupt administration, and a status of subjection to the foreign powers.

It is needless to dwell upon the relations of China with the foreign powers and to discuss in detail the relative positions occupied by the different states in the Far East: the facts stated above being sufficient for our purpose. It remains for us to offer remedial suggestions for the reform of our foreign policy and the improvement of our foreign relations.

In the first place, China's diplomacy has always been directed by the government irrespective of the wishes of the people, as a result of which foreign powers may, as they did, use diplomatic intrigue to induce or threaten the Chinese government to grant important concessions and conclude humiliating treaties, without the approval of popular opinion. The government must be made more responsible to public opinion in its dealings with foreign countries. This will guard against secret diplomacy which—if any good can be said of secret diplomacy—can be used to advantage only by the stronger states; and as China is a weak power, she has nothing to gain but everything to lose from it. Indeed, China has always suffered from the evils of secret diplomacy, as shown in her secret alliance with Russia in 1896, the Sino-Japanese Treaty of 1915, and the Sino-Japanese Military Pact or Agreement of 1918, together with other secret

agreements with Japan. Secret diplomacy was severely condemned by President Wilson and open diplomacy asserted as one of his Fourteen Points. It is for the interests of China as well as for the sake of world peace that *we should strive to abolish secret diplomacy and inaugurate open diplomacy.*

Again, China's diplomacy has always been a *passive* and not an *active* one—she never has had a diplomacy of her own but has always followed the lead of other powers. The "open-door" policy is a policy formulated and advocated by the United States and not by China herself. Her national independence and territorial integrity was supposedly, though not really, guaranteed by the Anglo-Japanese Alliance and other agreements among the powers themselves, thus depriving China of a voice in her own destiny; for a nation's sovereignty which must be guaranteed by others is no true sovereignty, particularly since the guarantor may violate that very sovereignty himself if it suits his own interest, as is amply proved by the annexation of Korea by Japan and the invasion of Belgium by Germany though both Japan and Germany respectively had guaranteed Korean independence and Belgian neutrality. Hence it is necessary that China should have an *active* diplomacy guided by her national interests in place of the *passive* diplomacy which she has so long pursued. She should no more live upon the "balance of power," but should show a proper self-assertion in foreign affairs, not allowing herself to be subjected to foreign control.

Furthermore, China is in dire need of a *consistent* national policy to substitute for her present *opportunistic* foreign policy. She has no principle such as the Monroe Doctrine of the United States, or the balance of power of Great Britain. A consistent policy as contrasted with an *opportunistic* policy means the sticking to certain definite principles, instead of shifting with shifting circumstances for the sake of getting immediate advantages. With a consistent policy, we are sure to have permanence

and stability in our foreign affairs in that we have guiding principles to follow, and are not easily tempted by foreign powers to be drawn into any dangerous course of action.

Lastly, the policy of playing off foreign powers has been consistently and repeatedly pursued by China as if it were the only means by which she can overrule foreign aggression. She expects to be enabled to fish in troubled waters if the powers are divided among themselves into discordant or hostile factions. This policy was used in playing off Russia against Japan (after the Sino-Japanese War) and Japan against Russia (before the Russo-Japanese War), in playing off England against Russia (on the question of Russia's evacuation of Manchuria and the proposed building of the Chingchow-Aigun Railway by the British), and Russia against England (using Russia to block England's ambition in Tibet), and China has tried more recently to play off America against Japan,—always with the hope of profiting by such rivalries. The powers have at times been foolish enough to be played off by her and some immediate advantages have thus been gained by China. But on the whole this policy has been not only ineffective but even harmful to her, for the energy has been largely wasted which she might have used in building up her own strength instead. The powers also came to realize this fact, and agreements were made among them with a view to presenting a united front in their dealings with China, the examples of which were afforded by the Russo-Japanese agreements of 1910, 1912, and 1916, and the Anglo-Russian agreements of 1907 and 1913, in regard to the disposal of Manchuria, Mongolia, Sinkiang, and Tibet. Thus this policy, despite its initial success, met ultimate failure in its attempt to "divide and rule." *It must be replaced by a new policy of fair and equal dealing to all nations.* This will keep the powers from using the "most-favored nation" clause and the "equal opportunity" doctrine to get more advantages and concessions from China, and it will enable her to avoid being treated as a field for spoils,

not to mention the possible danger of her partition. This does not mean that there should be no discrimination of any kind. For international friendship is best cultivated by such measures as will improve the relations between two peoples as well as between two governments. But so far as the government only is concerned, no special privileges or special interests should be given to a single power such as to arouse the suspicion and jealousy of other powers; as in that case China would be placed in a more difficult position than if she should treat them all strictly alike.

In a word, China's diplomacy should be directed to protecting national interests instead of making national concessions; to improving international relations instead of complicating them. Her foreign policy should be based upon public opinion, her methods should be open, her attitude positive, her principles fair to all, her policy consistent and guided by the best interests of the nation. International affairs must be carefully studied, international organizations actively participated in, and Japan's newspaper policy particularly guarded against;—for the purpose of removing misunderstandings and promoting our international status. Granting the truth that lies in the statements that "diplomacy should be backed up by force," and that "a weak nation has no diplomacy," we need not be discouraged by this, for if we faithfully discharge our international obligations, and honestly live up to the international standard, there is no ground for stronger nations to find fault with us. For this reason the formulation of a constructive and farsighted foreign policy for China is an imperative necessity. None the less important, however, is the establishment of a strong, unified, national government, for when the country is divided, it loses its international voice; when there is no representative parliament, its international prestige is lowered; and when the national government is not founded on popular support, it will remain *de facto* and not *de jure*, and the foreign powers may withdraw

their recognition at any time. This is exactly the situation in China and thus it is that we must strive to improve, so that our nation may be rightly respected.

Finally, diplomacy alone, no matter how skillful it may be, will not be very effective unless it has prowess behind it. And inasmuch as "peace with honor" is to be the guiding principle in our foreign relations, our military force cannot be neglected but should be strengthened to such an extent that where diplomacy fails to achieve a just end, we may use war as a last resort to redress our international wrongs. Otherwise, in the presence of a superior force, the inevitable result will be to add more national humiliation to our already heavily dented history.



PART II

THE RECONSTRUCTION OF THE PROVINCIAL  
GOVERNMENT



## CHAPTER XI

### THE PROVINCIAL SYSTEM AND THE NATIONAL STATE

The provinces to-day are the most prominent feature in China's political system. In every question of national or local importance they chiefly are involved. Without an effective remodeling of the provincial system, our political problems can hardly reach a successful solution. It is in view of this fact that we shall attempt to treat of the proper relations between the central government and the provincial governments.

At the present moment China is in a state of political confusion, and the question is constantly raised as to whether the government should be centralized or decentralized—unitary or federal; as to what should be the functions of the provinces in the national state. To answer such questions we need to make a careful study of the situation with which China is faced.

In China a uniform system of administration has been maintained since the Tsin dynasty in the second century B.C., when the so-called feudalism was abolished. The division of provinces and the system of provincial government have been altered in the different periods of Chinese history, but the broad principle of the relation of the provincial to the central government has always been the same, and this principle has been one of *centralization*. At times of course, during the middle and especially at the end of a dynasty, troubles arose and independent kingdoms were set up; as a consequence of which, the central authorities were either weakened or overthrown and provincial or local independence or autonomy prevailed. The rise of a new dynasty was needed to put down these rebellions and to unify the country under a single ruler. Such conditions were constantly recurring in our history, and they demonstrate

that movements for centralization and for decentralization came periodically one after the other.

"Centralization as a system," says Mr. S. G. Cheng, "has much to recommend it. It secures uniformity; it maintains unity; and in time it diminishes the differences in social and political developments throughout the country by enforcing one and the same system of administration."<sup>1</sup> Efficient and effective control on the part of the central government is the aim of this system. It seems to be peculiarly adapted to China, because throughout the land, to quote again from Mr. Cheng, "apart from Mongolia and Tibet, which are governed as dependencies under different regulations—there is practically no difference in race, in language, or in religion. The Manchus, who do not belong to the Chinese stock, have, nevertheless, been so thoroughly absorbed by the Chinese that they have lost their original characteristics; and the Mohammedans are numerically not strong enough to disturb the equilibrium or to destroy the uniformity of the country. It is, therefore, easy to divide China into different administrative units and to unite them under one central government without encountering difficulties which beset countries like India."<sup>2</sup> Moreover, in this period of international competition and struggle the concentration of powers in the central government seems the only available means of meeting the critical situation. Internal weakness, as the result of the provinces growing too strong, would not only hinder the national development of the country as a whole, but would make China an easy prey to foreign aggression. It is therefore desirable, from one point of view, to have China centralized in her government, as is modern France.

On the other hand, centralization has not always been effective. In the long history of China it was only under the

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<sup>1</sup> S. G. Cheng: "Modern China—A Political Study," p. 126.

<sup>2</sup> *Id.*, pp. 121, 122.

strong emperors, of whom there were but a few, that there was any real centralized control in the administration, while most of these rulers, through their inactivity and indifference, permitted the provincial authorities to assume excessive powers. Since the overthrow of the Dragon Throne, the governors of the different provinces have shown at best a doubtful loyalty to the central government. The successive revolutions in the past ten years have all resulted in an increase of their independence; and the President and the Cabinet, unable to establish their own authority by the force of law, are compelled to tolerate their arrogance and to acquiesce in their defiance. In truth, the central government depends for the maintenance of its authority on the support of the governors, and this support is only granted on the condition that the latter are not restricted in the enjoyment of their own independence.

Even in the absence of this separatist tendency of different provinces, the growth of modern activities has made the system of centralization obsolete. It is impossible to expect all government departments in Peking, however efficient, to initiate, execute, and supervise numerous social, industrial, and economic reforms in all the provinces, as they are hampered by the distance from the scene and by the difficulty of getting an inside knowledge of local conditions. In a territory so extensive as China, and so rich in natural resources, it is indeed necessary for the government to devolve some of its functions on the provincial authorities if it is to develop the country on a comprehensive scale and by Western methods. Moreover, the introduction of modern reforms has tended to diversify the country which has hitherto been kept uniform by its Confucian civilization. Indeed, there are not only differences between the North and the South, but differences also among the provinces themselves. Each province may have to develop itself in its own way, and it is only through a system of devolution that each may solve its own difficulties. Decentralization of course may give doubt to many, as it would

seem to mean the weakening of the central government and the strengthening of the provincial governments. This, however, is not the truth, for China is a centralized government in name only and not in fact. The Peking government is powerless in respect to the combination of provinces and it is only through a proper decentralization, i. e., a division of powers between the central government and the provincial governments, that a right relation can be established. National and provincial claims have to be settled first before we can reach a true national unity.

The terms "centralization" and "decentralization" as used in China are often misleading and delusive. To many of us "centralization" seems to convey the idea of concentrating all powers in the central government, without leaving the provinces any freedom; while "decentralization" seems to imply the idea of making the provinces all powerful, so far as to entitle them to overshadow the central government and to interfere with its workings. But this need not be, for "centralization" and "decentralization" are relative and not absolute terms. Centralization only means that national affairs as distinguished from local affairs should be centralized in the national government, and not interfered with by the provincial authorities. On the other hand, decentralization only means that local affairs, as distinguished from national affairs, should be devolved on the provincial governments, in which they are not to be encroached upon by the central administration. Now the present condition of things in China is one neither of centralization nor of decentralization; it can only be called a confusion of powers. It has been so chaotic as to allow provincial interference in affairs of the central government and central control of affairs of the provincial government, which fact accounts for the inefficiency and laxity in the operation of our governmental system.

*The remedy for this is to make specific provision that things of national nature should be undertaken by the central government and*

*that things of a peculiarly local nature should be undertaken by the provincial government.* This would compromise national and provincial controversies by confining both the central government and the provincial governments to their respective powers and functions, so that each might jealously guard its own constitutional rights against encroachment from the other, thus insuring a harmonious development of national and local interests at the same time. We shall have then on the one hand a strongly centralized national government with a feeling of strength; and on the other hand a well decentralized provincial government with a sufficient degree of autonomy.

Bearing these things in mind we may ask whether China should remain a unitary state or should transform herself into a federal state. *Governments are grouped or classified as unitary or federal according to whether their powers are centralized or distributed.* In unitary governments the system provides that one central organization shall administer the supreme authority. Local divisions of the state are made for convenience, but such local divisions are the creation of the central organization and have no rights except those the central organization gives them. In federal governments, on the other hand, the various powers of government are distributed according to their nature between (1) the central organization representing the whole state and (2) the several local organizations representing divisions of the state having certain rights guaranteed to them by the constitution of the state.

The present state of things in China seems to favor federalism as a substitute for the unitary system. Though China has had a tradition of unitary government for hundreds of years, yet the very fact of the frequent and periodic recurrence of trouble and insurrections, often resulting in the setting up of independent kingdoms and separate states, clearly demonstrates that the arrangements made in her governmental system did not insure working efficiency and permanent stability. This is because of the sole and all-important fact that the powers have never been

well divided between the central government and the provincial governments, and so it is possible for the central authorities to encroach upon local affairs and for the provincial authorities to interfere with national affairs.

This is precisely the situation in China to-day. The central government wants concentration of powers and therefore extends its rule in the provinces by despotism. The provinces want division of powers and therefore resist the rule of the central government by revolution. Despotism and revolution go to extremes and become recurrent. Finally, the central government has no power to concentrate and the provinces have no power to divide. This combining of central and provincial administration results only in confusion and chaos and is, therefore, the fundamental cause of the civil war and internal strife. Yuan Shih-kai and Tuan Chi-jui for a time succeeded in putting the provinces under the yoke of bondage and had full sway in the exercise of their autocratic power; but when the reins of government slipped from their hands the provinces again broke away from the central government and had their turn in the struggle for supremacy. Factional strife has not been limited to North and South alone, but has extended to the individual provinces as well. Such examples can be found in the struggle between Yünnan and Szechwan, between Kwangtung and Kwangsi, and between Chihli and Fengtien. Provincialism in China, like "particularism" in Germany, has been deep-rooted in the minds of the people, and is not easy to be shaken by temporary means. Some people even consider that loyalty to one's own province is more important than loyalty to the nation, while others, though they do not entertain such a theory, practically make this their guide of action when they are faced with actualities. This state of things will bring about the development of the doctrine of "provincial rights" or "provincial sovereignty" in China, just as the doctrine of "state rights" or "state sovereignty" was developed in America, reaching its climax in the War

of Secession. Provincialism is therefore a serious handicap to the spirit of nationalism, which in China has been so utterly lacking and which is now so urgently needed. It is well remarked by Dr. Dewey that China is not yet a nation; that she is only in the process of becoming a nation; and that politically, economically, and commercially speaking, China is a world in itself.

It is because of this fact that the growth of provincialism is an obstacle to the development of nationalism, together with the belief that the provinces are too big to be administered with efficiency and too strong to be put under the control of the central government, that many have been advocating the abolition of the provincial system altogether and creating in its stead a system of "Tao" (circuits) or "Fu" (prefectures) in order to diminish the power of the provinces, and thus to make China a truly unitary state. They admire the French in their doing away with the royal provinces and the creation of departments, and would like China to take this same step some day. The foremost of these advocates of unitarianism in China are Kang Yu-wei and Liang Chi-chao.

However, despite the fact that China has had a long historic tradition, in addition to possessing a geographic and ethnic unity which seems to make a unitary government desirable, the present course of events has nevertheless been such as to show definitely the impossibility of perpetuating the unitary system in China. In the first place, the provincial system has intrenched itself to such an extent that it would be difficult, if not impossible, to change it. It has a history of some seven hundred years, dating from the Yuan dynasty in the fourteenth century. The sense of provincial division is too deep-rooted to permit any sudden or radical transformation. In the second place, the provincial authorities cannot be easily induced to lay down their power to the central government unless by the force of arms. You can only limit them to the point where they can legitimately exercise their powers within the bounds of a constitution, be it national

or provincial. And this is more practicable under the federal than under the unitary system; for under the latter system we have to have the provincial governors surrender their authority to the national government for the sake of reconstructing the provincial system, to do which has been shown to be exceedingly difficult, at least for the present; while under the former system, we have only to let the present governors be the heads of the provinces, responsible to the provincial assembly, instead of being only national administrators, responsible to the central government, which latter responsibility has, so far, never been observed in any manner.

There is a marked tendency toward the adoption of federal government in China to-day. The "home rule" movement in the provinces, as exemplified by the cry of "Canton for the Cantonese," "Hunan for the Hunanese," "Szechwan for the Szechwanese," etc., clearly convinces us of the need of transforming China into a federal state. China's centralization or unitarianism is only nominal, while in point of fact she is moving in the current toward provincial autonomy or provincial independence. The provinces practically all agree in the demand for self-government and some have even gone so far as to make provincial constitutions by their own authority without the formal sanction of the central government, as in the case of Hunan, of Chekiang, and of some other provinces which are drafting constitutions. The Southwestern provinces, in their present state of autonomy, are especially in favor of the federation movement. The process intended has been first to let each province achieve autonomy separately as an individual unit; second to bring about a federation of these autonomous provinces; and third to adopt a federal government.

The introduction and application of federalism in present-day China is not only highly needful but positively advantageous. In the first place, a federal form of government *will promote the growth of democracy*. More than ten years have elapsed since the

establishment of the Republic, but the people have so far enjoyed no voice in the government and taken little interest in national affairs. It is the unwieldy size of the country, the remoteness of the central government from the people's homes, and the small opportunity for them to enter the political field that have been responsible for the democratic stagnation. Since the experiment of democracy has failed when carried forward on a nation-wide scale, it should be next attempted in the provinces. The province will be enabled to try experiments in legislation and administration which cannot be safely tried in a large centralized country, and at the same time, the people will be given more opportunity to learn and practice the working processes of representative government. Moreover democracy can be better developed in a republic by federalism than by unitarianism, because a unitary government is characterized by centralization and paternalism and sometimes even by despotism, and hence it does not permit the easy growth of democracy; while a federal government is more likely to be distinguished by moderation and compromise and by toleration, and so it promotes the growth of democracy.

Secondly, a federal system of government *will bring about the ultimate unification of China*. As is well known, the condition of China to-day is very much like that of Germany under the Holy Roman Empire and of the United States under the Articles of Confederation. The central government has lost its control of the provinces, which have either declared independence, or adopted autonomy, or have only nominally paid homage to the Peking government. The provinces cannot under the present system be induced to come together either by force or by persuasion. It is only by the adoption of federal government, which will on the one hand give self-government to the provinces, and on the other will promote the interests of the nation, that we can expect to have a close national unification. Professor Gettell remarks: "Federation is particularly valuable. It enables a growing

spirit of nationality and unity to manifest itself, even though local differences are powerful." So a federal system of government will reunite the self-governing provinces which will otherwise persist in asserting their virtual independence.

Thirdly, a federal system of government *will favor the development of self-government*. Self-government stimulates popular interest in local affairs and educates the citizens in their civic duties, securing a good administration besides. Moreover, it enables provinces to adjust their political organization to local environments and to develop in their own ways. A unitary form of government hinders rather than promotes self-government, which only a federal form of government can guarantee.

Fourthly and last, but not least, a federal system of government *will make possible a division of power*. By federation, the relations of the central government and the provinces may be, and can be, so regulated that on the one hand national unity may be preserved, and that on the other local autonomy may be established. A federal government is, fundamentally speaking, one in which the powers are clearly divided between the central and provincial governments, both of which are limited by the constitution and neither of which can intrude into the field of the other. With each government performing its specific functions, great harmony and efficiency can be acquired. Just as the doctrine of division of labor holds good in the realm of economics, so the principle of division of power holds good in the field of government. In all the states of the world, unitary governments have been successful only in countries of small size, where concentration of powers in the central government is made possible, but in countries of vast extent federal government through the division of power between the central and local governments can operate with fewer evils and with greater benefits.

Federation as a principle of government is practicable. It has worked successfully in all the world's federal states. It has met favorably the test of time and circumstance: it is adaptable

to the changing conditions of times. It is an evolutionary form of government, not a rigid and unchangeable one. This is the experience of the United States, Germany, Switzerland, Brazil, Canada, the Australian Commonwealth, the South African Union (considered apart from the British Empire), and many other federal states. Moreover, no country which has once adopted a federal form of government has changed to the unitary type. But at present there are many unitary countries which are considering the adoption of a federal form of government. Great Britain, which has long been a unitary state, is now faced with the problem of federation. Not only is there a movement for the organization of the British Empire into an imperial federation, but there is even the proposal of dividing the United Kingdom into its original component parts under a federal arrangement. The establishment of local legislatures for England, Scotland, and Ireland is being advocated as a means of decentralizing authority and thus securing a government at once more democratic and more effective. France is now working upon a plan of administrative decentralization which aims to break up the close concentration of authority in Paris. Even Russia has adopted a federal form of government, which by its official name is called "The Russian Federated Soviet Republic," and some new European states created after the World War, such as Czecho-Slovakia and Jugo-Slavia, have organized their political systems on a federal basis. In short, the world's tendency has been ever toward the adoption of the federative principle of government, and this tendency has now come to China, as is clearly shown in the launching of the federation movement, which is now increasing so in popularity that it seems irresistible.

Indeed, the history of the Republic is but a history of the struggle for federation. During the Revolution of 1911 many provinces declared their independence. The Delegates' Convention, first called in Shanghai and later removed to Nanking, was

composed of delegates from the independent provinces to direct the work of the Revolution; and it reminds us of the Continental Congress of the Colonies at the time of American independence. The conditions at that time were very favorable for the formation of a federal state. Many politicians in the South advocated the organization of a federation with the independent provinces as units. Kiangsu and Chekiang had each adopted a provisional provincial constitution and elected its own governor as a step toward that goal. The revolution, however, lasted for only a brief period, and the federation movement met with considerable public criticism. People at that time considered the agitation for federation as detrimental to union.

When the first Parliament was in session in 1913 the question of federation was made a subject of hot debate between Kuo-ming Tang and Chin-pu Tang parliamentarians, with the former on the affirmative and the latter on the negative side. The Chin-pu Tang found its main support in the person of Yuan Shih-kai, who found the federation movement a stumbling-block to his selfish ambition, and so the Parliament met its sad end in the first dissolution of November 4, 1913.

With the reconvoation of the Parliament in 1916 after Yuan Shih-kai's death, the old quarrel between Kuo-ming Tang and Chin-pu Tang parliamentarians over the question of federation was revived with increased bitterness. This time the Parliament was again dissolved by Tuan Chi-jui, the successor of Yuan Shih-kai as the leader of the Peiyang Military party, who like his predecessor regarded the federation proposal as being contradictory to his personal policy.

In spite of the dissolution, the federalists have since kept winning adherents to their faith through the wielding of the pen. To-day, not only have leading thinkers and noted periodicals all expressed their sympathy for and lent their support to the adoption of federation in China, but those formerly the staunchest defenders of centralization and unitarianism are now

for the most part converted to the cause of decentralization and federalism under the pressure of circumstances. Such men are Hsiung Hsi-ling, ex-premier of the Republic; Chang Tai-yuan, formerly leader of the Unionist Party (Tung-yi Tang); and Chin Chuen-hsien, formerly the head of the Canton Military Government; and some other prominent men of affairs. Even Liang Chi-chao, former Chin-pu Tang leader and a bitter opponent of federalism, has given up some of his old views and has supported the "home rule" movement. The province was, indeed, originally considered as simply a convenient administrative district of the national state, but the course of events has radically changed its nature. It has forced its way to the goal of federation. Mr. Hsiung Hsi-ling, whom we have just mentioned, in speaking of the relations of the central to the provincial government, once made the following notable remark: "The position of our province is between that of an area of local government and that of a member of a federal state. It cannot be entirely recognized as the former, or as having the attributes of the latter. If we adopt the federal system in order to raise and sustain the position of the province, and to bestow upon it some of the powers of the central government, thus making the administration of the whole country more likely to be thorough and efficient, it will be the most suitable system, taking all things into consideration."

The federation of China, if adopted, will differ, as some people have maintained, from that of the United States, by the fact that the latter was produced by a union of states which had hitherto been practically sovereign and independent, and that the former will be produced by the transfer of duties and powers to the provinces which have hitherto been considered as integral parts of a united country already under the sway of a central government. This would be true in so far as China's past is concerned, but China at present is undergoing and will in the future undergo transformation which will make her politically more and more like the United States. The reason for this is

not far to seek: the provinces are more or less independent of the Peking government and have a free hand in drawing up their provincial constitutions. The result of this is that provincial constitutions have been adopted earlier than a national constitution, which can be made only when the provinces are represented. That will lead to a situation in which the provinces, after first becoming free and autonomous, and having each a separate and independent constitution made without the sanction of the central government, will come together to establish a new national government vested with federal powers, and draw up a national constitution to be ratified by a newly-elected parliament, or, if conditions do not permit this, to be ratified by the different provinces; on the assumption that after three fourths of the provinces have approved of it, it will go into effect at once. The present tendency in China seems to be in that direction.

Indeed, if proper measures are not taken toward reconstructing the national state, China may fall to pieces as the result of her own internal strife between the North and the South, and among the different provinces. The fact of dismemberment may thus come from within and not from without. It is only by balancing national and provincial claims rightly that we can hope to build up a strong yet democratic nation. *For the spirit of federalism as a system consists in the self-government of the provinces in their internal affairs and the division of powers between the central government and the provincial governments.* With these two objects attained, China may become a genuine federal Republic and reach a greater and truer national unity than ever before.

The contention that the adoption of federalism is impracticable to and even inconsistent with the operation of Cabinet government is not without some ground, but the difficulties involved in it may be solved by making the Cabinet responsible to the House of Representatives only and not to the Senate, which latter is created to represent the states or provinces and is vested

with some special powers, acting as an executive council and as a judicial tribunal in the federal government. That this contention is a fallacy may be seen from the fact that the Dominion of Canada, the Commonwealth of Australia, and the Union of South Africa, apart from the British Empire, are all adopting federal systems and Cabinet government at the same time, yet they surely can be said to possess a reasonable amount of working efficiency.

The fear of federalism, as cherished by the "unitarianists," is mostly on the ground that a federation might degenerate into a confederation, and that a *Bundesstaat* (a banded state) might degenerate into a *Staatenbund* (a band of states). This is not without some truth, but if we reflect that the present condition of China is really like that of a confederation, or *Staatenbund*, since there is only a loose connection between the central government and the provincial governments, and an incomplete union among the provinces as a whole, we shall find that we are really making good progress in transforming China into a true federation, or *Bundesstaat*. Then it must also not be thought that federation means the break-up of the national union; that it causes the sacrifice of national interests; that it places the provincial concerns above the national concerns; that it gives greater and more important powers to the various provinces than to the central government; and that it encourages separation or independence on the part of the provinces as an outcome of the autonomy or self-government given them. Federalism is only a sort of arrangement of the governmental system, whereby local interests and rights are respected and protected in the national constitution, and at the same time, the several local organizations are combined together into a form of national union with a clear demarcation of powers between the central government and the provincial governments. It differs from unitarianism in that under the latter there is only a single organization exercising the sovereignty of a state—the national, or central government; while

under the former there is the existence of the dual government exercising this sovereignty—the national, or federal government, and the local, or provincial government.

It is true that the federal system also inherits some weaknesses which are liable at any time to bring about serious trouble. In the first place, there is always the possibility of dispute as to the relative spheres of action of the central government and the local governments. And in the second place, there is always the danger of secession of component members of the federal union to form a separate state. But these weaknesses can be eliminated if the powers of the central government and of the provincial governments are so clearly defined as to give no room or chance for dispute, and even if there is any dispute the case is subject to adjudication in the Supreme Court, which should be vested with the power of interpreting the constitution, thus providing a remedy for the first weakness. Moreover the second weakness may also be dispelled if we make the federal union an indestructible, indivisible, and indissoluble union, with final and supreme authority vested in the people of the Chinese nation and not in the provinces.

Having thus far discussed the nature of the federal system and its advantages over the unitary system, we may now consider how the powers should be distributed between the central, or federal government, and the provincial, or local governments. It is generally agreed that affairs which concern the common welfare of all parts of any federation, whether they be national, or interprovincial, or provincial, should be under the control of the central organization; and that all other affairs, of local interest and importance, should be under the control of the local organizations. According to this principle, we should give to the central government, as all modern federal states agree in giving, control over certain functions essential to national existence, such as the maintenance of the army and the navy, the conduct of foreign affairs, and the power to raise money.

In addition, such functions as the regulation of coinage and currency, of banks and corporations, of patents and copyrights, of communications, of naturalization, of marriage and divorce, and of postal service, which need to be uniform over the entire state, should be given to the central government.

As to the scope of the legislative and executive powers of the central government in its relation to the provinces, it is advisable to follow the German rather than the American system. That is, the federal legislative power should be greater than the federal executive power, or in other words, certain executive functions may be delegated to the provincial governments for the execution of the law, but many economic regulations and much social legislation should be made uniform throughout the country.

In regard to the enumeration of powers, the American method should be used; i. e., the powers of the central government should be enumerated in the national constitution, while the powers not delegated to the Chinese Republic by the constitution nor prohibited by it to the provinces should be reserved to the provinces or to the people. This method is better than the Canadian method, which is just the contrary of this, because it is easier to name the most essential and most important powers to be definitely delegated to the central government than to mention the specified powers as belonging to the provinces, and to vest the residuary powers in the central government; for in the latter case, the powers are too minute to be all named in the constitution. Moreover, there are certain local interests which are particular to some and not common to all, and these might be left unmentioned, as indeed they certainly would be, thus handicapping local development. It is better to have the powers of the central government enumerated and the rest left to the provinces, who can then adjust local administration to local conditions. The contention that by the adoption of this method the provinces would be made too powerful is not sound enough, for the extent of national power and influence is not determined

by the fact that the powers given to the central government are enumerated or not, but rather by the fact that the powers enumerated for it are or are not important enough to insure national strength or efficiency. The objection raised against the American system is further maintained on the ground that powers that are now not so important, but later may be essential to the national government, might not be enumerated in the constitution, and so it would be deprived of important functions which it may legally exercise under the Canadian system. This possible defect may, however, be remedied by making additional provision in the constitution to the effect that federal powers which are left unenumerated shall be given to the central government, provided they have been granted by the national parliament and assented to by the provincial legislatures. This will prove more satisfactory and expedient than to give enumerated powers to the provinces and remaining powers to the central government.

The present provincial constitutions now drawn up in Hunan and Chekiang have adopted the Canadian method of enumerating the powers of the provincial government and leaving the rest to the central government. This will entail many evil consequences, as each province will have a scope of powers different from the others and the central government will be thrown into confusion as to what kind of powers it can legally possess, because of the wide differences between the respective provincial constitutions.

Dr. Goodnow, in his "Principles of Constitutional Government,"<sup>1</sup> makes a suggestion that it would be better for a modern constitution not to follow either the American method or the Canadian method of enumerating the powers of the central government or those of the state or provincial governments, but to vest the general legislative power of the country in a national parliament, which, however, will be recognized as having the

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<sup>1</sup> Frank J. Goodnow: "Principles of Constitutional Government," Chapter VII.

right to delegate the exercise of its powers to any provinces which may be established. All the laws, according to him, regulating the organization and powers of provinces in force at the time of adoption of the constitution may be continued in force until changed by the action of parliament or of the provincial authorities. The view of Dr. Goodnow's was the result of his study of the constitution of the South African Union, but one may well doubt its practicability in the case of China, for the root of China's troubles to-day lies chiefly in the ill-defined division of power between the central government and the provincial governments; and if the powers be not divided and enumerated in the constitution, the same troubles will continue and nothing can be achieved. Hence, after careful analysis of different viewpoints, one is led to the opinion that it is advisable for China to adopt the American method of enumerating the powers of the federal government and leaving the rest to the provinces.

In conclusion, the provincial system should be remodeled in such a way as to give centralization to the central government and decentralization to the provincial government. The federative principle is more adapted to China to-day than the unitary. By the adoption of this system which is founded on compromise, the administrative, financial, and military functions and powers would be clearly divided between the central government and the provincial governments so as to decrease and ultimately to eliminate their mutual conflicts, such as under the present system are constantly arising.

At the same time we should remember that in all modern federations there is a marked tendency toward increasing the authority of the central government. This is partly due to the changing economic and social conditions of modern life. Besides, the creation of a federation is itself a step toward further unity, as is amply illustrated in the case of Germany and the United States. The existence of a common government whose working becomes increasingly familiar to all citizens, cannot fail to

strengthen the national spirit, the beginnings of which at least the desire for federation has indicated. Common action, particularly in war or foreign relations, increases national at the expense of local patriotism. Integration, accompanied by differentiation and independence, seems to be a law in the political as well as in the biological world. In modern states, there is, on the one hand, the tendency toward federation of constituent units, and on the other, the tendency toward centralization in the federal government itself. And it is by organizing China on a federal basis that we can hope to achieve a closer unification of the hitherto semi-independent and loosely-associated provinces now under an imperfect and ill-developed unitary system.

## CHAPTER XII

### THE PROVINCIAL GOVERNMENT

As the foregoing chapter deals with the relation of the provinces to the national state, this chapter will treat of the structure and operation of the provincial government itself, apart from the provincial assembly, which will be taken up in the following chapter. The governor is naturally the head of the provincial government, but concerning the nature of his position views are radically different. Some persons—who advocate a unitary government—consider him as simply the representative of the central government in the administration of the province, while others—who advocate federalism—consider him as only the chief executive of the local government. According to the former view, the governor should be appointed by and responsible to the central government, as is now the case, with no freedom of choice on the part of the province. According to the latter view, the governor is to be elected by direct popular vote, or by the provincial assembly, or by any other means of election, and made responsible to the provincial legislature with no interference on the part of the central government.

As China seems gradually to be taking the shape of a federation, it would be quite logical to take the course of having a provincial choice instead of appointment by the central government, especially when at such a time the central government is without much power to make the free appointment of, and enforce real responsibility upon, the man whom it chooses to represent it in the province.

Nevertheless, the election of the governor by the provincial assembly has met with strong objections, even if it be granted that China may adopt the federal system of government. In the

first place, the governor, by being elected by the provincial assembly and not appointed by the central government, is liable to place provincial interests above national interests. In the second place, since the governor owes his election to the provincial assembly, it is to be feared that he may show favoritism to his supporters in the assembly, creating a condition like the spoils system in America. Nay, even before and during the election, the rival candidates for the governorship might exert undue influence or use bribery in the provincial assembly, which would be so corrupted as not to be representative at all. It would, in a word, make the executive subject to the legislature. These are the two possible defects in the system of choosing the governor by the provincial assembly.

The governor may, of course, be elected by a direct popular vote in the province on the model of the state governments in the United States. But this would be impossible now as judged from the present standard of education and intelligence. Besides, a single Chinese province is about equal to a single European state, and since communications are still very difficult in many parts of the country, the people would be faced with innumerable inconveniences in the exercise of their right of suffrage. Moreover, people are more able to choose legislators than administrators, and as China has no strong political parties of recognized standing the difficulty would be still greater. It is for these considerations that a direct popular vote is not warranted, at least for the present, and very probably for the near future too.

The system of appointing the governor by the central government is likewise not recommendable should China become a federal state, because it would not only enable the central government to encroach upon the powers of the provincial authorities and thus violate the very principles of a federal form of government, but the central government might fail to choose a man acquainted with the conditions of the particular province to which he is sent, as is the case with many of the provincial

governors, military and civil, appointed from Peking in the past and at present. The consequence of this would be a conflict between the province and the governor, and with it a clash between the province and the central government.

An alternative to these three methods of choosing the governor is to use the different official organizations and local bodies of the province and of the districts and important cities within that province to organize separate electoral colleges for the election of the governor, as is provided in the Hunan Provincial Constitution. According to this constitution,<sup>1</sup> which was promulgated in January, 1922, the governor is to be elected by the following electoral colleges:

1. The electoral college composed of the whole body of the provincial assembly;
2. The electoral college composed of electors chosen on an equal basis by the provincial educational association, the provincial agricultural association, the provincial labor association, and the provincial chamber of commerce;
3. The electoral college in each of the districts of the province, composed of the whole body of the district assembly and an equal number of electors chosen on an equal basis by the educational association, the agricultural association, the labor association, and the chamber of commerce of the district;
4. The electoral college in each of the first-class cities (i. e., cities that have a population of over two hundred thousand each, and vested with self-governing powers, being directly under provincial control), composed of the whole body of the city council, and an equal number of electors chosen on an equal basis by the educational

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<sup>1</sup>Recent developments have altered this process of election. The provincial assembly is to have the preliminary choice of seven candidates for governorship, while the district councils are to have the decisive choice of one of these candidates as the governor.

association, the agricultural association, the labor association, and the chamber of commerce of the city.

The votes of each of the above-mentioned electoral colleges are to be taken as one unit, and the person having a majority of the total number of units of votes shall be elected governor. If no person has a majority, then among the two candidates who have a relative majority, one shall be chosen as the governor by ballot by the respective electoral colleges. And if there are more than two persons who have a relative majority, then two of these persons who have an equal number of units of votes will be chosen by lot and referred to the respective electoral colleges for a final choice by ballot. And if the result of this should happen to be a tie, the election is to be finally decided between the two contestants by lot.

This method of choosing the governor, as provided in the Hunan Provincial Constitution and soon to be tried in the election of a new governor for that province, seems very complicated and should be simplified in some way. The general purpose of this system is to give a chance to the recognized public bodies to participate in governmental affairs and to express the popular will.

Let us now consider the powers and functions of the governor. Under the existing system the governor, being appointed by the central government, is responsible to it,—at least nominally so,—and hence has, like the French prefect in the department, double functions to perform. On the one hand he is the representative of the central government, and on the other he is the executive officer of the provincial government. If federal government is adopted in China, the function of the governor will be somewhat changed, as he will be only the head of the provincial administration and not the agent of the central government, though as a matter of fact he is also intrusted with the administering of national affairs together with local affairs,

The powers of the governor are not well defined under the existing system of government. Instead of having one governor

in each province and subjecting the military to the civil authority, as in the states of the American Union and of the Australian Commonwealth, there are regularly two governors in each of the provinces of China, one military and one civil; and where it happens that there is only one governor, the military governor usually acts as civil governor, and the consequences can well be seen. The result is that there is a confusion and overlapping of powers between the military and civil governors; and whenever there is any conflict it is always the military governor who acts as the aggressor and encroaches upon the field of the civil administration. An unscrupulous Tuchun will wield all the political, military, and financial power and leave no field for his colleague, the civil governor. In fact, the civil governor is treated merely as a subordinate, and whatever powers he may have are only those which are left to him by the military governor. Military and civil functions very often have been united in the hands of a single person—the military chieftain—and even if there is any separation of powers, it is usually nominal instead of real. As we have seen in a preceding chapter (Chapter IX), if China should create a national army only for national defense and distribute it along the national frontiers, leaving internal peace and order to be preserved and maintained by the police and the militia under the charge of the civil governor in each province, there would be absolutely no need for the military governorship, which with its band of soldiers is a source of constant trouble in China. Not only should the "Tuchunship" be abolished, but its kindred, the "Inspector-generalship" or "Super-Tuchunship," a survival of the former "Viceroyalty," and the "Defense-commissionership" or "Under-Tuchunship," a survival of the former "Tartar-generalship," should also be done away with, so as to keep each individual province free from military rule. The present movement in the country has been really in that direction, especially in the autonomous provinces of the south-west, and it is to be hoped that this movement may so increase in

influence as to bring about the ultimate abolition of the military régime and to insure civil rule in all the provinces of China.

With the abolition of the military governorship there will be only one governor—a civil governor—for each province. The powers and duties of this governor will be mostly executive and partly legislative in nature. In those provinces which have adopted provincial constitutions the governor is, roughly speaking, granted the following powers: to promulgate and execute the laws passed by the provincial assembly; to collect provincial as well as national taxes intrusted to him by the central government; to maintain police for keeping peace and order; to call on the militia for service in case of local troubles; to appoint his subordinates; to initiate legislation in the provincial assembly; to receive petitions from the people of the province; and to have general supervision of the provincial government. The powers possessed by the governor may of course not be exactly alike in all the provinces, but the general features will be similar to those described.

In the exercise of these powers and functions, some persons believe that the governor should bear direct responsibility to the provincial assembly; others maintain that the governor should be independent of that assembly, as the state governors in the United States are independent of the state legislatures; while still others affirm that the governor's executive council, composed of the heads of the departments, should bear responsibility for him to the provincial assembly, as the ministers in the different states of the Australian Commonwealth bear responsibility for the state governors to the state legislatures. The first view is not recommendable because the governor's position should, as far as possible, be made stable, and should not leave him subject to the constant attacks of the provincial assembly so far as to cause frequent crises in the provincial government. Moreover, if the governor is to be elected by the people of the province, either directly or indirectly, and not appointed by the central

government, and is then ousted by the provincial assembly, it will be necessary to call a new election, and it may take two or three months or even longer to have the new governor duly elected. In the meantime, there will be no one who can be rightly held responsible for the conduct of the provincial administration, and affairs in the province will come to a deadlock. And though the appointment of the governor by the central government may solve this problem of choosing a successor to the governorship in a shorter period of time, yet this will not be warranted if China should adopt a federal form of government. The suggestion, also, that the governor be elected by and responsible to the assembly is again of no avail, because it would mean the complete domination of the executive by the legislature.

The second view, that the governor be independent of the legislature, is likewise not to be recommended, because there should be in the province as in the national state a close coöperation between the executive and legislative branches of government, and not a strict separation of powers as in the United States. If the governor should assume complete independence of the provincial assembly, there would be no way to check him in the excessive use of his powers, since he could not be held to account either by the central government—because he would not be appointed by it, or by the provincial assembly—because he would not be responsible to it, and the people would have no means to bring him to account except by resorting to revolution, which is too dangerous an alternative.

The third view, that the governor's executive council be responsible for him to the provincial assembly, remains then the best alternative. This last view is better than the other two views because it insures the responsibility of the provincial government to the provincial assembly, yet this responsibility is not to be directly borne by the governor, the chief executive of the province, but by a body of men appointed by him, so

that the provincial government can be made more stable by avoiding the frequent election of governors. This executive council is sometimes called the advisory council, but the latter name cannot be properly used here because it might imply that it is a body of men to offer advice to the governor but not to conduct the provincial administration. In both the Hunan and Chekiang provincial constitutions, the name "Council of Provincial Affairs" is used instead of the term "executive council" or "advisory council," and this name can be shortened by calling it the provincial council.

According to the Hunan Provincial Constitution, which follows very closely the New Draft Constitution of 1917 in regard to the organization of the provincial government,<sup>1</sup> the provincial council is to assist the governor in the exercise of his powers and functions and to bear for him responsibility to the provincial assembly, by having the bills of the governor countersigned by the chief of the provincial council, or by individual members of the council who are in charge of their respective departments. The council is to consist of the department heads appointed by the governor to preside over the five public departments of the province: namely, Domestic Affairs, Defense Affairs, Finance, Education, and Industry. The head of either the Domestic Affairs department or the Finance department is to be chosen as the chief of the provincial council, while other department heads are to be members of that council. But the chief of the provincial council and the members of the council recommended by him to the governor are all to be appointed and removed by the governor. In the appointment of the chief of the provincial council, the consent of the provincial assembly is required by the Hunan constitution, but this requirement seems unnecessary, for the same reason

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<sup>1</sup>M. T. Z. T'au: "China's New Constitution and International Problems," Part I, Section VIII, Provincial Government.

that the Premier's appointment by the President need not be subject to the Parliament for approval before he receives office.

There is to be an administrative conference in the provincial council, with the chief of the council as chairman, and all the members of the council are to be present to decide upon the administrative policies. The provincial council is to bear collective responsibility to the provincial assembly; while the individual members of the provincial council who are in charge of their respective departments, are to bear individual responsibility to the provincial assembly. Hence when a member of the council receives a vote of lack of confidence from the provincial assembly, that member is to resign from his office, or in other words he is to be dismissed by the governor. When the chief of the provincial council, or the council as a body, receives such a vote from the assembly, then either the governor is to dissolve the assembly, or else the whole council is to resign, which means that the governor is to dissolve the provincial council and dismiss the various department chiefs. But the provincial assembly cannot be dissolved more than once within one year, i. e., in the same session, and when the assembly is so dissolved, a new assembly must be convoked within the next three months.

Thus the provincial council is a reproduction of the larger Cabinet with its responsibility to Parliament and its power to dissolve it.

In order to insure harmony between the provincial council and the provincial assembly, it should be provided that the members of that council have free access to the latter, and, if necessary, collectively assume its leadership. They should also be put into close contact with the different committees of the assembly and be allowed to appear at their meetings.

The governor's tenure of office is, according to the Hunan Provincial Constitution, limited to four years, and he is not eligible for a second term *immediately* after the first term, but after four

years he may be reëlected for another term. This is for the purpose of keeping the governor from neglecting his duties during his term of office in order to seek reëlection. Granting the merits of this provision, it is perhaps not necessary if only the governor is limited to two terms.

As the provincial council bears for him political responsibility to the provincial assembly, the governor should, like the President, be held legally responsible only for his personal conduct and for criminal acts. According to the Hunan Provincial Constitution, when the governor is impeached for treason, bribery, or other high crimes and misdemeanors, by the provincial assembly, by a three-fourths quorum and a three-fourths vote, he has to resign from his office, and after his resignation, the Court of the Public Prosecution will bring a public suit against him before the Provincial Court, which is, according to the same constitution, to be the court of final appeal for the province. This process of overthrowing the governor is, however, not a complete legal process, because the impeachment must be tried by some agency of the central government, such as the Senate of the national Parliament or the Supreme Court in the national capital, and it is only after conviction of the governor that he is to be removed from office and to be subject to indictment, trial, judgment, and punishment, according to law.

When the office of the governor becomes vacant, or when the governor is for any reason not able to discharge his duties, then the chief of the provincial council is, according to the Hunan Provincial Constitution, to act in the place of the governor until a new governor is elected or until the governor resumes his office and duties.

The question arises whether the governor can be brought to account for other things than for the strict violation of law. The Hunan Provincial Constitution provides that before the governor's term of office expires, the provincial assembly may make a proposal that the governor be removed from his office, and it

may refer this proposal to a plebiscite for decision: when the plebiscite shows a majority in favor of this proposal, the governor is to be removed from office; when the plebiscite shows a majority against this proposal, the governor is as if newly elected and must dismiss the provincial assembly. This provision is, however, not recommendable both because the governor is only legally and not politically responsible, and therefore cannot be removed from office except by impeachment and conviction, and because the system itself is too rigid and the plebiscite is impracticable for China.

This, in brief, will be the organization and working of the provincial government, on the model of the Cabinet system, if the provinces of China are recognized as members of a federal state.

## CHAPTER XIII

### THE PROVINCIAL ASSEMBLY

As we have dealt in the preceding chapter with the provincial executive, we shall deal in this chapter with the provincial legislature. "According to the law promulgated in 1913 it is elected by indirect election and on the same franchise as that for parliamentary election laid down by the law of the same year. The qualifications and disqualifications for voters and candidates in a parliamentary election are equally valid in the election of a provincial assembly. The electoral area of the first-stage election is coincident with the Hsien (district), and that of the second stage is a group of districts arranged by the Central Government. The number of members of a provincial assembly varies from 184 to 94 according to the provincial population."<sup>1</sup>

The provincial assembly is a single-chamber legislature and should so remain, because there is no need for the province to adopt the bicameral system. Not only are the provincial affairs not so fundamentally important as the national affairs as to necessitate having an upper house to serve as a check upon the lower house; but there are also no special classes or interests existing such as to demand the creation of an upper chamber to represent them. In the national Parliament the senate is to represent the territorial districts (provinces and dependencies), but in the provincial assembly a single-chamber is sufficient for representing the general population, and the districts do not need special representation as they are only administrative areas and not corporate personalities as are the provinces. The fear of hasty and ill-considered legislation as an evil of the unicameral system

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<sup>1</sup> S. G. Cheng: "Modern China," pp. 141, 142.

may be avoided by giving the governor a suspensive or partial veto power, which will serve as an effective check on the assembly. The case is different from that of the United States, where the legislatures of all the commonwealths are divided into two houses or chambers, because there historical tradition and national custom created such a system, while this kind of legislative organization has never been introduced in the provinces of China.

According to the present system, members are elected to the provincial assembly only indirectly. There is a primary election held in the different districts, and then a secondary election in a group of districts combined, on the part of the electors from the primary election. The elections in both the first and the second stage are effected neither by the single-member constituency system nor by that of proportional representation. This indirect election is very undesirable as it fosters corruption and the exercise of undue influence among the comparatively small number of members who compose the second-stage electoral college. It makes the assembly really unrepresentative in nature, and fails to educate the voters in public spirit and political intelligence. This election by two stages is discussed and criticized by John Stuart Mill in his "Representative Government," and also by Mr. Montague in his report on Indian Reforms in 1918. It is defended in the case of parliamentary elections by such arguments as the vastness of the constituencies and the large number of electors, but in the province, with an average population of 15,000,000 returning perhaps 110 members to the provincial assembly, there is no difficulty in adopting the system of direct election even though the *scrutin de liste*, or general ticket system, for a multiple-member constituency is used instead of the *scrutin d'arrondissement*, or small district system, for a single-member constituency. One member may fairly represent 140,000 inhabitants, of whom half are disqualified to vote by sex and many others by property and educational

tests. The use of the *scrutin de liste* is to insure proportional representation to all political parties or groups that may be found in a particular district, as well as in other districts of the country, as it requires the election of more than one representative from each district.

"The powers and functions of the provincial assembly differ in different provinces, but broadly speaking, they conform to the Provincial System proposed in July, 1912. It provides that the provincial assembly has the power to pass all the laws applying to the province so long as they do not conflict with national legislation. It has also the power to pass provincial budgets; to discuss the method of collecting provincial taxes; to control the issue of provincial loans, and to decide all matters concerning the purchase and management of provincial properties. It is authorized to reply to all questions referred to it by the civil governor, to receive and consider popular petitions, and to deal with all other matters the decision of which rests with the Governor."<sup>1</sup> But such a provision as is made in the Hunan Provincial Constitution ought to be added, that the assembly shall have the power to test the "confidence" of the individual members of the provincial council, of the council as a body, or of the chief of the council. Finally, the assembly must have the power to impeach the governor by the decision of three fourths of the members present, itself having a quorum of three fourths of its total membership, and to have the case tried by the Senate of the national Parliament or by the Supreme Court in Peking.

Besides enjoying the above-mentioned powers, the provincial assembly should also have the power to make provisions for the subordinate areas of local government, villages, towns, cities, and districts, which are, by geographical convenience, more suited for the provincial government than for the central government to

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<sup>1</sup>*Id.*, pp. 142, 143.

take charge of, though in practice these provincial subdivisions should also have a certain amount of local self-government, as will be pointed out in a later chapter.

In general, this list of powers and functions is comprehensive enough to include all the important cases that the provincial assembly will deal with. They should be taken as a model in the formation of a provincial constitution. It is well for us to know just what kind of powers the provincial assembly is to exercise and what should be their nature and extent. When a national constitution is some day completed, the provincial constitutions that are now being made in some of the more or less autonomous provinces should be modified to such an extent as not to be in conflict with the national constitution; and whatever powers are not enumerated in the latter will be reserved to the provinces, and these powers can be divided between the assembly, the governor, and the provincial council.

The functions of the provincial assembly are more or less implied in its powers. Its most prominent function is to make the laws of the province. Next to this is the function of supervising and checking the governor and the provincial council. A miniature of the Cabinet system, as provided in the Hunan Provincial Constitution, should be adopted in the provincial government, and the provincial assembly should stand in the position of a parliament, the provincial council in the position of a cabinet, and the governor in the position of a president.



**PART III**

**THE RECONSTRUCTION OF THE LOCAL GOVERNMENT**



## CHAPTER XIV

### THE DISTRICT GOVERNMENT

The *hsien*, or district, is now the third and lowest division of the administrative system of China. Before the Revolution of 1911, there were under the Manchu régime almost half a dozen divisions in the administrative system. The province stood in the highest rank; below it were the *tao*, or circuit; the *fu*, or prefecture; the *chow*, or county; the *hsien*, or district; and the *tin*, or department. Besides these there was the so-called *chihli-chow*, or *direct county*, which belonged directly to the circuit and not to the prefecture and might be either an administrative area in itself alone, or might have subordinate divisions such as the district or the department under it. This heterogeneous and complex system throws a foreign observer into confusion when he attempts to study the old system of local administration in China. The inconvenience and inefficiency in the working of this system is too evident to need any comment.

With the establishment of the Republic, the prefecture, the direct county, the county, and the department were all abolished, and only the system of circuits and districts was retained. There are no longer as many divisions as before, and all the districts, or *hsien*, stand legally equal in the newly reformed system of administration. This radical transformation was a long step toward the reconstruction of local government in China. But there remains one defect to be remedied. To quote Mr. S. G. Cheng: "The circuit over which the intendant presides should also be abolished as a distinctive unit of government, and the provincial governor should be put in direct communication with the magistrate without any intermediate authority. The present position of the intendant in the circuit is anomalous.

He is empowered to control the magistrates under him, but in practice he can hardly do anything without the order of the Governor. His duties and powers often overlap with those of the magistrate and if active, he is likely to come into conflict with him. Moreover, the magistrate should be accorded sufficient freedom to fulfill his administrative duties. He should not be subject to a dual control by the Governor and the intendant. If the province is vast and the Governor finds it difficult to supervise the administration of all the magistrates, he can easily appoint inspectors to tour over the different districts."<sup>1</sup> The abolition of the circuit system has actually taken place in some autonomous provinces of the southwest, notably Kwangtung and Hunan; and it is to be hoped that other provinces may also follow the same example and have a uniform system of administration in China.

By abolishing the circuits we should have only two divisions in our administrative system—the province and the district. The area of the district includes the city or town and the rural communities, roughly corresponding to the boroughs, urban districts, and rural districts of the English county. For the present the district is still recognized as an administrative area of the central government, which appoints the magistrate as its representative in that area. But if a federal system of government is adopted the district will be placed directly under the control of the provincial administration. The power of appointing magistrates should then rest with the governor until the local self-governing institutions are well enough organized to warrant a transfer of it from him to the elective councils or local bodies, and the magistrate may even be chosen by a direct popular vote. His term of office should be long enough—say four years—to acquaint him with the local affairs of the district and to insure a sound and efficient district administration.

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<sup>1</sup>S. G. Cheng: "Modern China—A Political Study," p. 144.

He should be made eligible for reappointment or reëlection for any number of terms so long as he can keep the confidence of the governor who appoints him, or of the elective council, or local bodies, or the people, who elect him.

The *hsien*, or district, will be, with the abolition of the circuit, just one grade below the province, and is entitled to be a unit for local government, although under the proposed federal system the province is to have wide powers over it (powers at present assumed or claimed by the central government). It is, however, only an intermediary unit between the province, the primary unit, and the city, town, and village, the ultimate units for local government. Strictly speaking, the province in a federal form of government is not a unit of local government at all, but a component part of the national state, and a central authority over its subordinate areas; and the relations between these subordinate areas and the province are very different from the relations between the province and the federal state. These districts, cities, towns, and villages are, technically, wholly controlled by the legislature of the province; while the province and the federal state are both limited by the national constitution in their sphere of powers.

The district should concern itself with local questions of education, communication, transportation, industry, public enterprises, police, health, charities, public buildings and public property of the district, together with other matters intrusted to it by the laws of the province. Under certain limitations, it should also be allowed to introduce district taxes, impose a surtax on the provincial taxes, and secure other kinds of public revenues for the expenses of the local affairs of the district; but the district in these things must be under the supervision of the provincial government.

Under a federal system, the magistrate, whether appointed or elected, would be the chief executive official of the district, and the representative of the provincial government (instead of

the national government as under the unitary system) in the area. He would execute the laws of the province and carry out the orders of the elective council. This council does not exist now, though it existed for two years after the Revolution before it was abolished in 1914, and it should be created again. Its duty should be to legislate for the district and to receive and examine all petitions or complaints from the inhabitants. It should possess the power to impeach the magistrate and denounce him to the governor, who would then examine and decide the case on its merits. The magistrate should also be equipped with an executive council, the members of which should be partly appointed by himself and partly elected by the elective council. This executive council should be authorized to advise the magistrate on any question initiated by or referred to the elective council. On important measures involving public expenditure, the concurrence of the executive council should be made necessary for the executing of proposals brought forward by the elective council.

It must be acknowledged, however, that since the district includes within its control the towns and villages, local affairs are often administered by these two local governing bodies, and so the district council becomes largely a supervisory body and to a smaller extent a unit of local government. In the city or town where the magistrate resides, its local affairs and hence its local government are often identified with those of the district itself. The magistrate becomes then a sort of mayor, and the district council largely a city council. But the magistrate has still the affairs of the whole district to take care of and so has the district council. It is with the cities, towns, and villages, which are to be distinctly organized as ultimate units for local government, that we shall deal in the following two chapters.

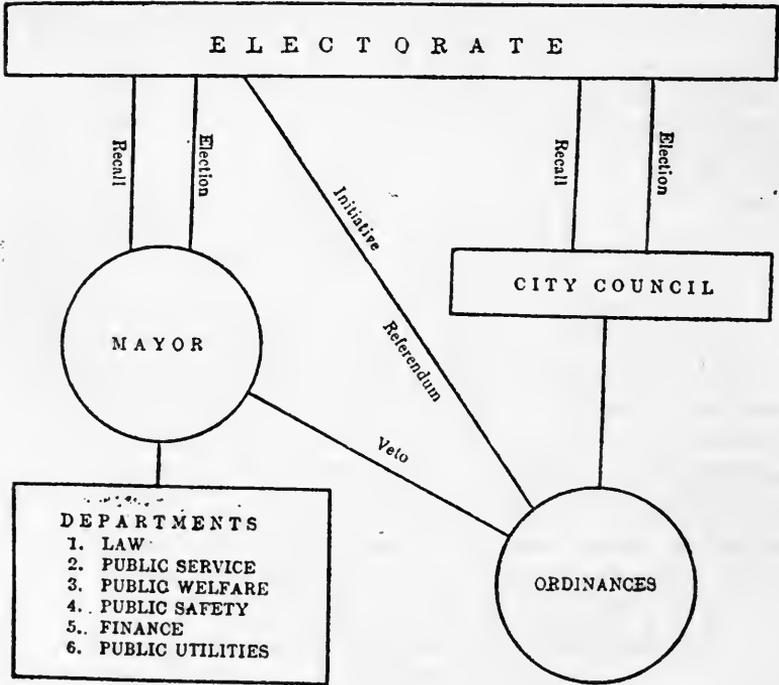
## CHAPTER XV

### THE MUNICIPAL GOVERNMENT

The city as an urban center is distinguished from the district as a territorial area, and is entitled to be an ultimate unit of local self-government. It is essentially an organ for the satisfaction of local needs, although it has been so far recognized only as an administrative division of the country. The great increase in urban population as a result of the industrial revolution now taking place in China has brought municipal problems into prominence. The city has not yet enjoyed the rights and privileges of self-government but is still governed by the district magistrate who has the control of the affairs of the entire district. This is possible in cities of small size where the city affairs can be well undertaken by the magistrates along with the district affairs. But in the larger cities the city affairs need to be differentiated from the district affairs because of their complexity, and the best way to accomplish this is to organize these cities as independent self-governing units, directly under the supervision of the provincial government and enjoying equal privileges of local self-government with the districts themselves. This is what has been actually provided for in the provincial constitutions of Hunan and Chekiang. Cities having a population of 150,000 or more are to be specially organized as municipalities, by their own methods, provided the permission of the provincial government has been obtained. In this way, the government of the city will become more efficient than now because of the smaller area and the greater concentration of responsibility. Moreover, the overlapping and conflict of authority in the government of the city and of the district may be avoided. And even though the city may be territorially included in the district, still it can be made an ultimate unit of local government, as in the case of the English county borough, which is a city of such a size as to be granted the local government of a county. Territorially a county borough may be, and commonly is, entirely within the territorial area of a county, but for purposes of local government it is not a part of the county. The relation of the city to the district in China should be like that of the county borough to the county.

Bearing in mind the relation between the city and the district, we need to consider the organization and working of the municipal government. There are three systems for municipal administration now in use in American cities, all of which present features worth introducing in China. These are, namely, the organic federal system, known as the Cleveland plan; the commission system, as exemplified by the Des Moines plan; and the city-manager system, as represented by the Dayton plan. These three plans will be taken up in order and illustrated by diagrams.

The Cleveland city government since 1913 has been a genuine type of the organic federal system. The following diagram will show its structure.<sup>1</sup>

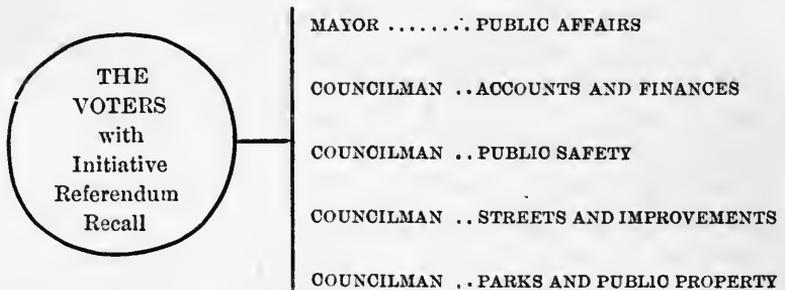


<sup>1</sup> *Tu Chun Hua* (Great China) magazine, Vol. II., b., No. 8, "Dr. Sun Yat-sen's Political Speech," June, 1916.

Under this plan there are no party primaries and party designations on the ballot. Candidates are nominated by petition and voters express their first, second, and other choices at the election. They vote a short ballot because they choose only a mayor and a councilman from each ward—two candidates, after the British system. The mayor and heads of departments have seats in the council but no votes. The charter includes the initiative, the referendum, and the recall. The mayor is the supreme executive, appointing all heads of departments—of law, public service, public welfare, public safety, finance, and public utilities. These constitute his “cabinet.” The department of law has the duty to issue orders for making arrests and for bringing public suits. The department of public service takes charge of the general affairs of the city. The department of public welfare concerns itself with schools, libraries, museums, charities and provident institutions, poor relief and hospitals, pawnshops and savings banks, highways, streets, and markets. The department of public safety is in charge of police and health, fire brigades, building regulations, and economic regulations. The department of finance deals with municipal revenue, expenditure, debts, and financial administration. The department of public utilities controls local public enterprises that have the purpose of making profits—such as street railways, waterworks, telephones, and electric and gas lighting, and often commercial undertakings that are municipalized for better facilities for the public and better compensation for employees. The mayor has general supervision over the different departments whose heads collectively form a sort of executive council to direct and control the whole administration. As to the ordinances enacted by the city council, the mayor has the power to veto them, and a two-thirds to three-fourths majority vote is required to pass over the mayor’s veto. This prevents hasty and ill-considered legislation on the part of the city council. The division between executive and legislative powers is clearly defined.

This system has been much praised by Dr. Sun Yat-sen, who once in 1916 in an address to a certain body of men, strongly urged the adoption of this system in China as a means of attaining true democracy.

We turn from the Cleveland plan to the Des Moines plan, which is representative of the commission system of municipal government. Its organization is shown by the following diagram:



This commission system of government originated in Galveston, but without the newer agencies of democracy, namely, the initiative, the referendum, the protest, and the recall, and the provisions for nominations by a general nonpartisan primary. The system which includes these new agencies is in use now in the Des Moines city government, a revised and modified form of the Galveston plan. This Des Moines plan of 1907 has been taken as a model by other cities, and the spread of the revised commission system has been rapid. Under this plan, a commission consisting of a mayor and four councilors, elected at large, is chosen for a two-year term by the voters of the city. To that body are intrusted all powers hitherto vested in the mayor, the city council, and all administrative boards and officers. The business of the city of Des Moines is grouped under five departments, namely, public affairs, accounts and finances, public safety, streets and public improvements, and parks and

public property; and these again are subdivided into bureaus. By the terms of the charter the commissioner who is elected mayor of the city becomes head of the department of public affairs; each of the other commissioners is put at the head of one of the other departments by a majority vote of the commission, or council, as the body is called in Iowa. All officers and employees of the various departments are appointed by the council. By this plan, the legislative and executive powers are united in a small body of men,—a departure from the old American tradition of checks and balances. This is because city business is almost wholly administrative or executive. There is no occasion for two legislative bodies such as the aldermen and the common council, or even for one of them, in the government of a city.<sup>1</sup>

It may be said without qualification that the commission plan is a vast improvement over a mayor-and-council government in that it simplifies the relation between the electorate and the government. The division of power, typical of the old type of municipal organization, forms, as time goes on, an inconvenience and a hindrance. Unwieldy councils often cause administrative friction and delay, evils which may be reduced under the system of city government by commission. Moreover, the quality of municipal officers may also be improved under the latter system, for it is almost a commonplace of political experience that the caliber of men in public affairs is closely related to the amount of power and authority which they exercise. The short ballot used in the election of the few commissioners secures better men than the long ballot used in the election of the mayor, the council, and a number of other administrative officers.

The system by which single commissioners, whether appointed by the mayor or elected by the people, manage the respective

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<sup>1</sup> W. B. Munro: "The Government of American Cities," Chapter XII, "City Government by Commission."

departments, is more favorably regarded at present than the system of boards, by which a fire board, a street board, a water board, etc., consisting of members appointed by the mayor, administer the affairs which come within their respective provinces, for the reason that responsibility is thus concentrated and quick action in emergencies is assured. The commission system furthermore makes business methods possible in city administration, for the management of a city's affairs is really not government, but business. The board of commissioners in a city is like the board of directors in a company.

In a word, the commission form of city government has immense advantages in that it secures concentration of responsibility, promptness of action, efficiency in administration, and economy in management. The objections urged against this system of government are mostly on the ground that it is oligarchical; that it involves a radical departure from the idea of local self-government; and that it affords no genuine representation of the various interests that make up a large city. These objections are either not sound or not strong enough to discredit the commission system, whose merits are much greater than its defects, and this fact warrants the proposal for its adoption in Chinese cities.

This commission system of government was actually adopted in Canton in February, 1921, with some modifications of the Des Moines plan. First, the initiative, the referendum, and the recall have not been introduced because the people are not ready for them. Second, the mayor and the commissioners are all appointed by the civil governor of the province (Kwangtung), and not directly elected by the people, though the "Charter for the Canton Municipality" provides the popular election of the mayor to be granted after five years of the operation of that charter. Third, instead of five departments, as in the Des Moines plan, there are in Canton six departments, somewhat different in nature from the departments of Des Moines. Fourth, there is a municipal advisory council in the Canton

municipal government, corresponding to the city council under the Cleveland plan but not exactly with the same powers. Last, there is a department of audit, intrusted with the special function of auditing the municipal accounts, and independent of the control of the municipal executive council and the municipal advisory council, and this department is not provided for as an independent agency in any of the commission-governed cities in America. Barring these modifications, all other features are very much like the already-outlined Des Moines plan. This commission system has been worked out in Canton with remarkable success, and is praised by every visitor who visits that city. It is almost universally recognized as the most progressive form of city government in this country. It is organized in the following manner:<sup>1</sup>

1. *The municipal executive council.* This is composed of seven members: namely, the mayor, who is also the chairman ex-officio, and the six commissioners of the administrative departments—of finance, public safety, public education, public health, public works, and public utilities. All the commissioners are to be appointed by the civil governor under the recommendation of the mayor. The council is thus like a cabinet, the mayor like a premier, and the commissioners like ministers.

2. *The municipal advisory council.* This is composed of thirty members, ten of them to be appointed by the civil governor, ten elected by general election, and ten chosen by the various classes: the merchant class and the labor class to elect three members each, and the teaching profession, the medical profession, the engineering profession, and the legal profession to elect one member each. Thus representation is given to the provincial government, to the people, and to the classes in the city. The duties of this advisory council, according to the

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<sup>1</sup> *The Weekly Review of the Far East*, Vol. XIX, No. 1, "Canton Municipal Progress."

Provisional Charter, are as follows: (1) to recommend the petitions from citizens to the municipal executive council, and (2) to decide on matters submitted by the municipal executive council, and (3) to examine the work done by the various departments.

3. *The municipal auditing department.* This department, with its chief auditor appointed by the civil governor, is empowered to audit all municipal accounts and to prepare all the necessary statements and reports for publication by the municipal government.

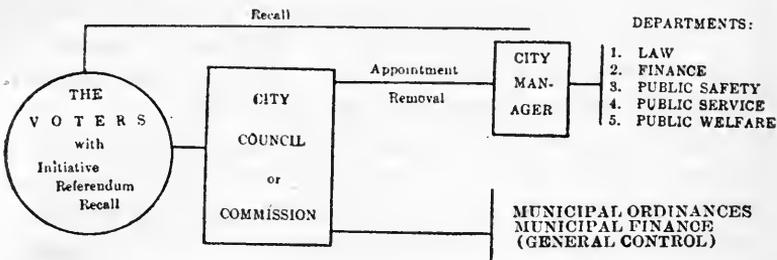
The relations between these three chief divisions of the municipal government can be briefly stated thus: The municipal executive council has the power to refer back decisions passed by the municipal advisory council, for reconsideration, but if the decisions are upheld they must be executed by the municipal executive council accordingly. On the other hand, disputes between the municipal executive council and the municipal auditing department are to be decided by the civil governor.

Another form of commission government is found in the "city-manager" system, as exemplified by the Dayton plan of 1914. This system was devised chiefly in view of the fact that the voters are not necessarily inclined to choose as members of the commission men specially qualified by training or experience for the assigned administrative work. All municipal powers in Dayton, except those relating to the management of the schools and public libraries, are vested in a commission made up of five members elected at large for a four-year term. An election takes place every second year and some of the commissioners (two or three members, as the case may be) are chosen at each election. The control of the commission over actual administrative work is confined to the appointment of the city manager, whose position is the outward feature of the whole plan. This official is appointed for no definite term. He holds office at the will of the commission and may be removed by a majority vote of the

body at any time. He is also subject to recall by the voters in the usual way. He is appointed without any residence qualification, and it is better that he should be an outsider than a resident of the city, in order that he may be free from local prejudices and influences.

The city-manager's powers and duties are (1) to act as adviser to the commission, but with no vote; (2) to see to enforcing the laws and ordinances; (3) to appoint and, if necessary, to remove all heads of city departments and all subordinate officials and employees. There is thus a large concentration of administrative power in his hands.

The Dayton charter establishes five administrative departments under the city manager's supervision. Here it makes a wide departure from the orthodox commission plan of city government. In the commission plan, one of the members of the commission is placed at the head of each department; in the Dayton city-manager plan each department is placed under the charge of an appointive head. This makes possible the concentration of responsibility in a single person—the city-manager. The following diagram will show the general features of the Dayton plan.



This plan has spread to other American cities. Considerable advantages have resulted from its adoption. In the first place, it has secured for each city a trained man for the head of its administrative service. Second, it has brought improvements in municipal finance. Finally, the attitude of the citizens

toward the new scheme of administration is more favorable. The arguments used against the city-manager scheme are not widely different from those used against the plan of government by a commission. The claim is made that it is inadequately representative, that it puts too much power in the hands of one man, and that it impairs the opportunity for the political education of the masses. But these objections need not concern us when we consider the decisive advantages in this system. The cities in America that have adopted this plan are, it is true, mostly places of less than 10,000 inhabitants, though in cities of 100,000 inhabitants this system has also been introduced. Commission-governed cities are specially adaptable to change to this form of government by a city-manager.

In general, these three systems of municipal government—the organic federal system, the commission system, and the city-manager system—are all applicable to China, with some modifications, such as in the use of the initiative, the referendum, and the recall, which are still too novel to the people for early adoption. The first system finds a wide use in cities of over 100,000 population, and the latter two systems in cities or towns of less than 100,000. The success of a municipal administration, of course, largely depends upon the public interest and intelligence of the people, but much also upon the organization and working of the city government itself, according as capable men are attracted to public service by the opportunities offered them.

Other modern types of city government, besides that of Canton, have been introduced in China. In Peking, Tientsin, Shanghai, Hankow, Harbin, Dairen, and Tsingtau, the municipal government presents progressive features that well deserve study. But as most of these cities are under foreign influence, and as their administration is chiefly for the benefit of the foreigners, they cannot be taken as representative of Chinese municipal government.

In the city of Nantungchow, however, situated in the lower Yangtze valley in Kiangsu province, there is a very progressive

type of municipal government which has made Nantungchow known as "the model city of China." The Nantung District Assembly or Self-governing Council, established in December, 1920, and independent of the district magistrate, has achieved a fine record in the improvement and modernization of that city. It is composed of (1) members elected by the respective local areas and local bodies of the district; (2) directors and a chief director; and (3) members and chairmen of ten committees—of finance, statistics, education, industry, communications, water drainage, public works, health, charities, and public enterprises. It has different functions from those of the magistrate in that it is a local self-government institution, whose business is all local in nature. This is for China a new type of city government, thanks to the efforts of Chang Chien, the "city-builder of China," as he is called. And if the American systems of municipal government—the organic federal system, the commission system, and the city-manager plan—can be introduced, modified, and utilized, according to Chinese modes of life, we shall soon see the dawning of an era of municipal reform and progress in this country.

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<sup>1</sup> W. B. Munro: "The Government of American Cities," Chapter XV, "The City Manager Plan."

## CHAPTER XVI

### THE GOVERNMENT IN TOWNS AND VILLAGES

The towns and villages are ultimate units of local government. They are subdivisions of the district and are under the control of the district. The towns differ from the "first-class cities" provided for in the Hunan Provincial Constitution—cities having a population of over 200,000—and from the "special cities" provided in the Chekiang Provincial Constitution—cities having a population of over 150,000—in that these "first-class cities" and "special cities" are granted the same local government as the district and are subject to the direct control of the provincial government, while the towns, like the villages, are subordinate to the district and are considered territorially as a part of the district, even for purposes of local government.

No exact definitions of "towns" and "villages" has been adopted. In general, the "towns" roughly correspond to the English "urban districts," which are somewhat thickly populated; while the "villages" correspond to the English "rural districts," areas in which the population is more scanty. According to the Hunan Provincial Constitution, to which reference has just been made, places having a population of over 50,000 and below 200,000 are to be called second-class cities or towns; those having a population of over 5,000 and below 50,000, third-class cities or towns; while places having a population below 5,000 are to belong to rural areas and are called villages. According to the Chekiang Provincial Constitution, which classifies local areas somewhat differently from the Hunan Provincial Constitution, places having a population of over 10,000 are to be called cities or towns, while places having a population of below 10,000 are to be called rural areas, or villages. Hence we see that towns in

China are places whose population is usually over 5,000, while villages are places whose population is usually below this figure.

As the town does not secure such a degree of independence in local matters as the "first-class cities" of Hunan or the "special cities" of Chekiang, and thus is more under the control of the district organization, the town government will be organized somewhat differently from the city government mentioned in the preceding chapter. It may have an elective executive and an elective council for the administration of town affairs, or an elective board of councilors, or any other kind of organization suitable to local conditions. It may also enjoy the rights of local self-government of a municipality in so far as these rights are in accordance with the laws of the province and of the district. The magistrate should interfere as little as possible with the town government.

Turning from the town to the village, as the village is restricted in size and in population, so its local government is simple in organization and limited in powers. Although it is the lowest area of local government, yet it is a truly self-governed unit, because the people take direct interest in its local affairs, which are left comparatively free from official rule; since the magistrate of the district always resides in the city or town, and consequently cannot exercise a close control over the village.

The village, in China, has a population of from a few hundred to a few thousand, and is formed, sometimes, of several clans or even one large clan—the expansion of a family. The villagers are mostly farming people, possessing some land near their village or living there as tenants. The village thus forms a social and economic unit,—and only to a very small extent a political unit,—inasmuch as its inhabitants are not only close neighbors but even sometimes near relatives, and as they are all, practically speaking, engaged in farming.

As the village population is scanty and scattered, and as the people are accustomed to live in their old and their own way,

no complex form of village government can be adopted. The instituting of a village council would be sufficient for the purpose of administering local affairs of the village community. At present the village is governed by the village elders and country gentlemen or landowners, who assume the duty of councilors and justices of the peace, to settle the disputes and controversies that may arise among the village people, and to take charge of public works and public property in the village. They should nevertheless be organized into a council, and formal elections should replace the assumption of office by tacit consent. They should be responsible to the village for what they do. They should also be made subject to the control of the district magistrate so that in case they misrepresent the people or misgovern the locality, they may be made answerable. The village will benefit by this responsibility put upon it.

PART IV

THE RECONSTRUCTION OF THE GOVERNMENT  
IN THE DEPENDENCIES



## CHAPTER XVII

### THE DEPENDENCIES MONGOLIA AND TIBET

According to the Nanking Provisional Constitution the territory of the Republic of China is composed of twenty-two provinces—namely, the Eighteen Provinces of China proper, the Three Eastern Provinces of Manchuria, and the province of Singkiang, known as Turkestan—together with Mongolia, Tibet, and the territory of Chinghai. This implies that though Mongolia and Tibet possess the nature of dependencies they are yet an integral part of China. The Republican government has received as its legacy the territories that were possessed by the Imperial government, and nothing can rightly change the status except by China's own will. This relationship is further expressed by the five colors of our national standard, representing the five elements that constitute the population of the Republic: namely, Chinese, Manchus, Mongolians, Tibetans, and Moham-medans. All these five population elements have an equally vital interest in the maintenance and welfare of the Republic.

The Provisional Constitution also provides that there shall be no racial discrimination, and a Mongolian or a Tibetan may become a cabinet minister or government official if he is able enough for the post. Centuries of Chinese civilization have made these people more or less assimilated with the Chinese, and the case of the Manchus affords a striking example in that they have entirely lost their national characteristics and have become absorbed into the Chinese stock. This is true only to a lesser extent of the Mongolians and the Tibetans. They are not a subject people or our "protected" inferiors, but our brethren and compatriots. The relation of Mongolia and Tibet to China is closer, for example, than that of Algeria to France, or of

Alaska to the United States, because in the former case the territories are contiguous, while in the latter cases they are detached. The same holds true if we compare the two Chinese "dependencies" with the British self-governing colonies. And though it might be said that the British dominions are inhabited by people who have emigrated from the home country, but that Mongolia and Tibet are only dependencies and not colonies, because the inhabitants there are overwhelmingly non-Chinese, the fact remains that many Chinese have migrated and do migrate to these two dependencies. Indeed, in Inner Mongolia (now comprising the three special territories of Jehol, Tsarhar, and Suiyuan—extending from the Gobi Desert to the Great Wall) and the Tibetan Marches (or the Szechwan Border Territory—extending from Tachienlu to Kiangta), either the Chinese colonists are so overwhelmingly numerous or the native people so completely absorbed that a special type of government has been set up for them, somewhat like the French territorial government for Algeria, and the American territorial government for Alaska, Porto Rico, and Hawaii. They are directly governed by "tutungs," or commanders, in the "Three Special Territories" and by a defense commissioner in the Tibetan Marches, all appointed by the Chinese government. Their territories are marked out into districts and administered by magistrates. Chinese jurisdiction is exercised directly over them. They are, in fact, governed like provinces, though there are yet no such things as provincial assemblies in these territories. There have been, indeed, proposals for transforming them into provinces or incorporating one of them—the Tibetan Marches—into the province of Szechwan, as was done in the late Ching dynasty.

The relation of Mongolia and Tibet to China is far from being that of Burma, Annam, or Korea, for those states stood outside the empire and were only nominally under China's control, whereas Mongolia and Tibet stand inside the empire and have been directly governed by resident commissioners.

Burma, Annam, and Korea were never more than tributary states, but Mongolia and Tibet have even been given representation in both houses of Parliament; indeed, they will need only one step more to be admitted as provinces of China. Their relation to China is very much like that of Siberia to Russia, because Siberia, though it stands outside the territorial confines of Russia proper, constitutes an essentially component part of the Russian empire. In order to understand the present situation of the dependencies Mongolia and Tibet, a brief study of their relations with China may perhaps be of help.

Let us first take up the relation of Mongolia with China. Mongolia, since the time of Kublai Khan who founded the Yuan dynasty in the thirteenth century, has been united with China and has formed a part of the empire. When the Mongol rulers were driven away to Mongolia by the native Chinese, Mongolia was separated from China for a short period of time, but was again brought under China's control by the early Manchu rulers. The Manchus sent a resident commissioner to Urga and several other officials to other parts of Mongolia to govern the country, but allowed much freedom—indeed, too much freedom—to the Mongols in the field of internal affairs. This accounts for the apparent passiveness of the Mongols under the Manchus, and for their backwardness and lack of good government.

During the Chinese Revolution of 1911-1912 that portion of Mongolia lying beyond the Gobi Desert and known as Outer Mongolia, to distinguish it from Inner Mongolia, which lies nearer to China proper, revolted and declared its independence, owing to the instigation of Russia, which country lent it moral and material support. That power had the idea of detaching Outer Mongolia from China and making it a buffer state between China and Russia, and if possible, transforming it into a Russian protectorate, though nominally leaving China her suzerainty over it. With this purpose Russia concluded her convention with Mongolia on November 3, 1912, "pledging to

assist the latter in maintaining the régime of autonomy." A year later, by a convention with China, she made China recognize the autonomy of Outer Mongolia and pledge not to send any troops thereto, nor to colonize the territory. In September, 1914, she made another agreement with Mongolia, obligating it not to grant any railway concession in that country without first consulting Russia. Finally, she concluded a tripartite agreement between herself and China and Outer Mongolia in June, 1915, and established herself as a co-overlord or joint suzerain over Outer Mongolia, and further paved the way for future expansion and annexation. Thus by these successive conventions in 1912, 1913, 1914, and 1915, Russia made Outer Mongolia at least a buffer state between China and herself, if not a Russian protectorate.

To insure her position in Outer Mongolia, Russia also made three agreements with Japan, in 1910, 1912, and 1916, for the appropriation of "spheres of influence" in Manchuria, Mongolia, and Sinkiang. Russia was to have North Manchuria, Outer Mongolia, and Sinkiang, while Japan was to receive South Manchuria and Eastern Inner Mongolia. The secret agreement in 1916 was in the nature of a defensive alliance between Russia and Japan for the protection of these interests.<sup>1</sup> Fortunately for China this unfriendly scheme was not put into effect because of the fundamental change of the Russian policy resulting from the Soviet Revolution of 1917. With the loss of this strong support from Russia, Japan was left alone in the execution of this aggressive policy toward China. The "Island Empire" has now ousted Russia from North Manchuria and is seeking to assume Russia's former influence in Outer Mongolia.

Fortunately again for China, Outer Mongolia, owing to the indifference of Soviet Russia toward maintaining its autonomy,

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<sup>1</sup> Liu Lien: "History of Sino-Japanese Relations During the World War," Chapter IV (in Chinese).

and to the pressure of financial distress in the administration of the government, finally decided in 1919 to cancel its autonomy and voluntarily re-submitted itself to the control of the Chinese government. This condition, however, did not last very long, for within only a year the Mongols again revolted in Urga and declared the independence of Outer Mongolia from China. There were two reasons for this: the first reason was the misrule and mismanagement of Hsü Shu-cheng,—“Little Hsü,”—who was appointed “Inspector General of the Northwest” and who was responsible for arousing the discontent of the Mongols against China. The second reason was the aggressive policy of Japan in Outer Mongolia in the employment of Semenov’s followers, headed by Baron Ungern, to coöperate with the Mongols in their revolt. China could easily have put down this rebellion if her leaders had been united in the effort to recover this lost territory, but the rivalry and struggle for supreme power between the Chihli and Fengtien factions prevented anything being done in that direction.

The régime of Ungern and his party lasted for only a very brief period, when it was again overthrown by the troops sent against him by the Chita government. The latter regarded Ungern as an enemy to the Far Eastern Republic and so asked China to make a joint expedition to Urga, with the promise that when the revolt was put down the whole of Outer Mongolia was to be given back to China unconditionally. This seemed to be a very good opportunity to China to recover her lost territory, but unfortunately she missed this opportunity in not promptly responding to the call of the Chita government. The Chita government therefore resolved to send an expeditionary force of its own to Urga without paying attention to China’s protest. The consequence of this armed intervention on the part of the Chita government was very unfavorable to China, because with the overthrow of Ungern’s party, who were mostly reactionary Russians, there was the installment of the “Mongol

Revolutionary Government'' in Urga, which still continues to exist, under the protection of the Chita government, and with the support of Soviet Russia.

In the settling of this Mongolian question, there are two alternatives for China to choose: either to send an expeditionary force to Urga and subdue the insurgent Mongols, or else to open negotiations with the Chita government for the concluding of a commercial treaty with that country on the condition that Urga be handed over to China. Whatever course is taken, at least the according of autonomy is not the way to solve the Mongolian question, even though China is unable at the present moment to recover Outer Mongolia by military power. If we should grant autonomy now, either it would be refused by the Mongols, or if accepted it would amount to practical independence. Our duty is to continue to assert and to strengthen our authority in that territory in every way that we can.

Let us leave Mongolia for a moment and review Tibet's relation with China. Tibet became a Chinese dependency early in the Manchu dynasty. It was governed by a resident commissioner in Lhasa, as in the case of Outer Mongolia under the Manchus. When the British were conquering India and the Russians were advancing into Siberia, Tibet lay between these two great forces and naturally became a sort of common prey to these two powers. Tibet was nearer to British India than to Russian Siberia. But the Russians were no less ambitious than the British in coveting this territory, as may be seen from their skillful diplomacy in inducing the Dalai Lama to send a mission to the Czar in 1900 and later to dispatch a second mission under the headship of a Russian. This action on the part of Russia greatly aroused Great Britain to the menace of Russia's advance on India, and the British, seizing a pretext, sent an expedition under Colonel Younghusband to Tibet in 1903, and on September 7, 1904, the treaty with Tibet was signed. It provided that British consent should be obtained before territorial concessions

were made to other foreign powers (Art. 9-*a*); that no other foreign power should intervene in Tibetan affairs (Art. 9-*b*), or send representatives or agents into Tibet (Art. 9-*c*); that no commercial concessions should be granted without similar and equivalent concessions being given to the British (Art. 9-*d*); and that no Tibetan revenues should be pledged to any foreign power (Art. 9-*e*).<sup>1</sup> This treaty virtually alienated Tibet from China and put it under British protection, for according to the subsequent British interpretation of the treaty, the term "foreign power" also included China, and this meant that China had no right to exercise her sovereign as well as suzerain rights in Tibet, and that only Great Britain had the right to intervene in Tibetan affairs. This treaty was concluded between Tibet, a Chinese dependency, and Great Britain, a foreign power, without China's previous consent. However, since the treaty was a *fait accompli*, and since China was not strong enough to compel Great Britain to cancel the treaty, it was allowed to continue in force and formally recognized by the Anglo-Chinese Convention of 1906. But the Convention inserted a very important article which fixed China's status as sovereign in Tibet, by making Great Britain promise not to annex Tibetan territory nor interfere with the administration of the country (Art. 2), although China also pledged that she would not permit intervention in Tibet by any other power (Art. 2).<sup>2</sup>

When the British sent the expedition to Tibet and concluded the treaty with Tibet in 1904, it was at the time when Russia had been badly defeated by Japan in the Russo-Japanese War, and therefore the British had no fear of Russia's intervention in the British actions in Tibet. Moreover, the Anglo-Japanese Alliance Treaty, concluded in 1902, was renewed in 1905, and included an article providing that if Britain's interests in India *and its*

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<sup>1</sup> M. J. Bau: "The Foreign Relations of China," Part II, pp. 139, 140.

<sup>2</sup> *Id.*, p. 140.

*borders* were threatened, Japan would come to her aid, and hence the British position in Tibet was further strengthened by the help of an ally in the Far East. The controversies between Great Britain and Russia in the Central East were finally settled by the Anglo-Russian Convention of 1907, in which the important provisions relating to Tibet were: that for the sake of preserving Tibet's territorial integrity both powers (Great Britain and Russia) were not to interfere with the domestic concerns of Tibet; that both powers were to recognize the suzerainty of China over Tibet and that no relation was to be entered into with Tibet except through the Chinese government; that both the government of Great Britain and that of Russia were not to send any representative agent or agents to Lhasa; and that both powers were not to secure any special concessions in Tibet either for themselves or for their subjects.<sup>1</sup> This seemed to be a very fair treaty in regard to Tibet, but it was not long kept by the British.

In 1911 China was plunged into a great revolution. Taking advantage of the situation, Tibet rose in revolt against the Chinese government and declared its independence. Just at this time, we should remember, there was also a similar independence movement going on in Outer Mongolia, and so the Dalai Lama of Tibet concluded an agreement with the Living Buddha of Outer Mongolia, mutually recognizing, guaranteeing, and assisting each other's independence of China.<sup>2</sup> The Tibetans, like the Mongols, drove the Chinese troops out of Tibet and were ready to invade the interior of China through the Tibetan Marches, when they were kept back by the Chinese expeditionary force sent against them under the able command of General Ying Chang-heng, then governor of Szechwan. The

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<sup>1</sup> Liu Lien: "Sino-Japanese Relations During the World War," Chapter XII, pp. 422, 423.

<sup>2</sup> "The Nation" (in Chinese), Vol. 2. No. 25, p. 554, May 21, 1921.

places lost to the Tibetans were recovered, and the way was opened for further advance into Tibet. Just at this juncture, in August, 1912, the British government stepped in on behalf of Tibet, and sent a protest to China through the British Minister in Peking, Sir John Jordan. The protest made four demands on the Chinese government: (1) "China shall not interfere with the domestic concerns of Tibet"; (2) "China shall not send, excepting as body guards, any troops into Tibet"; (3) "Anything relating to the question of Tibet shall be settled by a new convention between China and Great Britain"; (4) "If China does not recognize the above articles, Great Britain will not recognize the Republican government of China."<sup>1</sup>

The protest was in the nature of a threat. It broke the very promise made to China in the Anglo-Chinese Convention of 1906, in which Great Britain recognized China's sovereignty over Tibet. However, as the Republic was just newly established, and was not yet recognized by any foreign powers, and as China was too weak to offer any resistance to these demands, she passively yielded to the threat and recalled her expeditionary force from the border of Tibet. In consequence of this British intervention, the Tibetans became increasingly encouraged in their movement for independence, and the Chinese government was compelled to come to an agreement with Great Britain for the settlement of the Tibetan question. Consequently, to quote from Dr. Bau, "on July 3, 1914, a tripartite agreement was reached between China, Tibet, and India. Tibet was divided into Inner and Outer Tibet." (This was proposed by the British delegates in the Simona Conference so as to incorporate the southern part of Chinghai and the eastern part of the Tibetan Marches as Inner Tibet, and to give the western part of Tibetan Marches to Tibet proper, to form Outer Tibet. In other words,

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<sup>1</sup> Liu Lien: "History of Sino-Japanese Relations During the World War," Chapter XV, p. 541.

it was not a division of Tibet itself, but a division of Chinese territories between China and Tibet.) "It was to form a part of Chinese territory and to be under Chinese suzerainty, but the autonomy of Outer Tibet was to be recognized. China and Great Britain were to abstain from interference in internal administration. China pledged not to convert Tibet into a province nor will Outer Tibet be represented in the Chinese Parliament. China was to send no troops, no civil officers, nor colonizers to Outer Tibet. All these provisions tend to indicate that Great Britain would advance there in exactly the same way that Russia would in Mongolia."<sup>1</sup> In fact, it was even reported that Great Britain had come to a secret understanding with Russia in September, 1912, recognizing Russia's interests in Outer Mongolia in exchange for Russia's recognition of Great Britain's interests in Tibet.<sup>2</sup> Great Britain has apparently determined to create a buffer state between India and China, and if she can, she will transform Tibet into a British protectorate and finally incorporate it into the Indian Empire as she did in the case of Burma.

Though the convention of 1914 was signed by the Chinese delegate Chen I-fang, in excess of his powers, it was, however, not ratified by the Chinese government, which would not admit Batang and Litang in the Tibetan Marches as part of Inner Tibet, and Chinghai, or Koko Nor, south of the Kuenlun Mountains, or north of the Tangla Range, together with a small part of Sinkiang beyond the Kuenlun Mountains, as part of Outer Tibet. The Chinese government nevertheless made some important concessions and offered to negotiate with the British Minister in Peking, but the invitation was not accepted by the latter. Then the Great War came and Great Britain was too busy then to settle this matter. The year

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<sup>1</sup> M. J. Bau: "The Foreign Relations of China," Part II, p. 140.

<sup>2</sup> "The Nation" (in Chinese), Vol. 2. No. 25, p. 553, May 21, 1921.

1917 was marked by a great political crisis in China and the Southwestern provinces were involved in a bloody struggle in Szechwan with the Peking government, thereby affording opportunity to the Tibetans for a renewed invasion into the Tibetan Marches. More territories were lost and have never been recovered since. Finally, in October, 1918, an armistice was concluded between the Chinese and Tibetan troops, with the British consul Taikman as intermediary. His purpose in arranging for this armistice was to let the Tibetans keep the newly occupied territory so that the boundaries for Inner and Outer Tibet as arranged in the Simona Conference could be actually materialized by this armistice agreement. Although the duration of this armistice was only for one year, yet it was prolonged and it seems to be still effective to-day. Meanwhile, the British Minister in Peking, Sir John Jordan, repeatedly called upon the Chinese government to open negotiations with him and settle the matter before his leaving China, but time and again his plans were interrupted and nothing was achieved. The chief difficulty in the settlement of this Tibetan question is that there is almost no basis for negotiation between China and Great Britain. The British claim is hardly acceptable, if at all, because it involves not only the actual loss of Tibet to China, but also the loss of a large part of the Tibetan Marches, a small part of Sinkiang, and the southern part of Chinghai, all of which are Chinese territories and under Chinese administration.

As far as this country is concerned, if the Tibetan question is to reach a successful settlement, it must be through other means than simply the opening of negotiations with the British, because one can hardly expect a stronger power to make concessions to a weaker power if the latter has not made any great effort to maintain her original rights. The reason that China was able to get a settlement of the Shantung question, though not as satisfactory a one as the Chinese people expected to get in the Washington Conference, was that the Chinese nation had made

a very vigorous effort in the seven years since the Japanese occupation of Shantung in 1914, and so the Japanese were compelled to make these concessions to China as embodied in the now ratified Shantung Treaty. If we want the Tibetan question settled in our favor, we must also make the same effort to gain better terms in any future treaty in regard to Tibet. If we can use a military force to retake our lost possessions in the Tibetan Marches, it will be so much the better, because we may then have a stronger basis for negotiation than when, as at present, these regions are still in the hands of the Tibetans. Strictly speaking, the Tibetan question is an internal affair of China, but since we have in the past tolerated Great Britain's intervention in Tibetan affairs, and have again permitted her participation in the various conventions, it will now be impossible to have the question settled between China and Tibet themselves without Great Britain's consent. Without British support Tibet could never stand out so long against China. The uncompromising attitude of the British in regard to the question of boundaries between Tibet and Szechwan adds innumerable difficulties to the solution of an intricate problem. The British wish to get all the substantial rights of "protector" in Tibet, while allowing China to enjoy the empty name of suzerain.

In spite of all these difficulties, no agreement regarding Tibet should ever be recognized by China such as would cut completely the tie between that dependency and us. Some form of self-government should be allowed to the Tibetans, but not such an autonomy as to leave them practically independent of the Peking government.

Comparing the Tibetan question with the Mongolian question, we find that as far as China is concerned, the former is much more difficult to solve than the latter. First of all, Tibet has the support of Great Britain, while Outer Mongolia is only backed up by the Far Eastern Republic, which has not been recognized by any foreign power, and which has been itself hard pressed by

the aggressiveness of Japan. Soviet Russia has repeatedly renounced the former aggressive policy of the Czar's government and once even offered to China—in the telegram of March 26, 1920—the abrogation of all those treaties the object of which was to encroach upon Chinese territorial rights, as well as the return of other rights to China. So there is no fear of Russian intervention in Mongolian affairs, and it is a comparatively easy matter to deal with the Far Eastern Republic, which has been very anxious to conclude a commercial treaty with China in exchange for terms regarding Outer Mongolia. Second, China has larger interests in Mongolia than in Tibet, and easier communication with that territory, so that it will be easier for China to recover Mongolia than to recover Tibet. Third, though Mongolia has twice revolted against China and declared its independence, yet it canceled its independence in 1913 and became an autonomous dependency, and again canceled its autonomy in 1919 and submitted to the control of Chinese government. Tibet, however, has never yielded to China's control since its first declaration of independence in 1911, and has even occupied Chinese territory in the Tibetan Marches. China's power and prestige seem to have been totally lost in that dependency, and it will be very difficult to win back Tibet since it has fallen so under the influence of the British. From these considerations, though we may still get back Outer Mongolia sooner or later, and may gradually transform it into a Chinese province, to Tibet we shall be forced to give a larger degree of self-government, or autonomy in its internal affairs, and there will be no hope of making it a province.

Finally, one word more must be said regarding the dependencies. We must offer them the protection which is the duty of a territorial suzerain, so as to keep them from being absorbed by the foreign powers. Our government must also exercise effective and complete control of the foreign relations of these dependencies or territories. Annam and

Korea were both lost to China because they were allowed to enter into treaties with France and Japan. Outer Mongolia was allowed to enter into treaties with Russia in 1912, 1914, and 1915, and so almost became a Russian protectorate. Tibet was permitted to enter into treaty relations with Great Britain in 1904, and virtually came to be under the protection of the British. Hence, for the preservation of our remaining dependencies, in addition to giving them effective protection China must not permit them to have any direct foreign relations. They will not then be subject to the aggressive designs of foreign powers.

## CHAPTER XVIII

### A NEW NATIONAL POLICY TOWARD THE DEPENDENCIES

In the administration of the dependencies China has pursued a fatally mistaken policy, in that the dependencies have been treated merely as buffer states that would protect China from direct outside invasion, and as vassal states paying nominal homage and unimportant tribute. China enjoys the empty name of overlordship or suzerainty over a vast extent of territory but never tries to exercise actual sovereignty in the regions she long since acquired. She has let them lie idle to be exploited by foreign powers.

When the Manchus came to rule in China, they foolishly forbade the colonization and purchase of land in Mongolia by Chinese, in order to keep the Mongols in quiet by restricting Chinese subjects as much as possible from interfering with them. The Manchu yoke, up till quite recent times, has therefore been a light one to the Mongol people. As in the old days, they have been left under the direct rule of their chieftains; there being placed over the chieftains only an agent of the Chinese government to act as an intermediary between them and the Peking officials. Colonization and assimilation of Mongolia was, therefore, rendered slow and difficult.

Of late years, however, with the denationalization of the Manchus, the Chinese have become more energetic and more eager to advance their interests in Mongolia. With an increasing population at home, and an ever-growing desire on the part of innumerable agriculturists to seek new homes beyond the Great Wall, there has begun a slow but sure colonization of all available land suitable for agriculture. Northwards each year go bands of hardy Chinese colonists. They have passed the boundaries into Inner Mongolia; have

taken up land and pushed back the indigenous Mongols; have even crossed the Desert Zone dividing Inner from Outer Mongolia, and have started with eagerness on the most inviting lands lying along the Mongol frontiers of Siberia. These colonists, as distinguished from the merchants, are usually state-aided; they are forwarded to their destination by government help;<sup>1</sup> though of course some go by their private initiative and enterprise. The colonists are not only farmers, but men with a keen eye for gain, who engage in profitable business by bringing Mongol products into Chinese markets and Chinese goods into Mongolia. Many of the small areas of cultivated land in that country are now controlled by Chinese. The process of colonization has indeed taken long steps, but the process of assimilation is yet too slow to catch up with the pace of colonization. The recent trouble in Mongolia which resulted in a great massacre of Chinese residents there, tends to show that Mongolian nationalistic feeling is very much alive.

What is true of Mongolia is even more true of Tibet. Tibet has earned a name for itself as the "Hermit Country" of the world, primarily because of its mountainous isolation. China's record of colonization here is not even as successful as in Mongolia—with the exception of the Tibetan Marches, where the result of Chinese settlement is comparable to that in Inner Mongolia. As to Tibet proper, there are scarcely a few hundred Chinese, in striking contrast with the case of Outer Mongolia, where before the recent Mongol insurrection there were tens of thousands of Chinese settlers and merchants. The result is that when Tibet rose in revolt in 1911, she secured with the support of the British, to all intents and purposes a complete autonomy from China,—a fact which may in time virtually transform her into a British protectorate.

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<sup>1</sup> Douglais Carruthers: "Unknown Mongolia," Vol. I, Chapter X, "Mongolia, Past and Present."

To effect fundamental reforms in our national policy of administering the dependencies, there are political, economic, and social means to be adopted for colonization and assimilation. Politically, China, in addition to the abolition of the Manchu law forbidding the colonization of Mongolia by Chinese, and the renunciation of the Sino-Russian-Mongol Protocol prohibiting the same, should give every encouragement to the colonizing activities by promising state aid, state support, and state protection. Nothing should be allowed to stand in the way of colonization within the state's capacity and the state's reach. Chinese colonists should be given cheap land and charged an amount just enough to cover the registry expense, provided they are to till the soil within a stated time and not to let the land lie idle in order to speculate upon the rise of land values through the efforts of others. This is to encourage real settlers to develop the country by the transformation of pastures into arable lands, which may be later a source of national strength and revenue. Peace and order are the first conditions of successful settlement. Production will be greatly curtailed, if not made impossible, should the settler not be assured of the fruit of his toil. Hence political conditions must be stabilized, police protection extended, and roads made safe from robbery in order to stimulate and encourage the investment of money in colonization and settlement of land by immigrants.

As to the political means for assimilation, the Mongols and Tibetans must be given the chance to take part in our national affairs. The Mongol and Tibetan members in our national Parliament are not really elected by their respective constituencies, but by a group of Mongol and Tibetan official agents or residents in the capital who have monopolized or usurped the right of electing parliamentary members for their own personal advantage and gain. Henceforth the Mongol and Tibetan people must be enabled to elect their own representatives without an intermediary body to act for them. Only in this way can they

be inspired with national feeling and cohesion, and become firmly bound to China by an intimate political relationship.

Economically, railways will need to be built to, over, and across Mongolia and Tibet, so as to increase and improve the facilities for communication, which would be a great help to colonization and assimilation. With a railway between our thickly populated country and the sparsely settled or unsettled country of Mongolia and Tibet, colonists will emigrate into the new land in large numbers. The effect of the Peking-Mukden Railway in developing Manchuria is a convincing proof of this. A trunk line from Kalgan to Urga and thence to Kiakhta, and one from Chengtu to Lhasa and thence to Gatok should be first built up to open and develop the vast and rich territories lying north and west of China. What Russia has done in Siberia by the great Trans-Siberian Railway we may also expect to be done in Mongolia and Tibet by the building of these two main railways. In other words, colonization and railways depend upon each other for their mutual prosperity. The recent colonization of Manchuria, notwithstanding certain factors which have caused great waste of land and human energy, has been wonderfully prosperous. If we should adopt a scientific method in our colonization project better results still could certainly be obtained.

The land should be bought up by the government in order to prevent speculation. It should be prepared and divided into farmsteads, then leased to colonists on perpetual lease terms. The initial capital, seed, implements, and houses should be furnished by the state at cost price for cash or on the installment plan. For these services, organizations should be formed and measures adopted to transport, to feed, to clothe, and to house every colonist on credit during his first year. Colonizing and developing companies should be subsidized for this enterprise of developing the unsettled regions, and agricultural and commercial banks should be established for the extending of

credits to colonists. If within twenty-five years we can transport, let us say, ten millions of the people from the congested provinces of China to the Northwestern territory to develop its material resources, the benefit to the commercial world at large will be enormous.

Colonization will greatly help the work of assimilation. For once the colonists go over to the new land, and mingle with the natives, there will be an increasing cohesion of the dependency with the mother country. But we must not send criminals, fugitives, and vagabonds to these outlying possessions, and thus create more trouble and ill feeling between the two peoples; instead we must encourage the hard-working and honest-living people to set out there for settlement.

Colonization and assimilation, of course, cannot be limited exclusively to the dependencies, Mongolia and Tibet, but should be extended to the provinces of Manchuria and Sinkiang as well. Colonization and assimilation in Manchuria have been making such rapid progress that the former Manchu race is completely absorbed into the Chinese stock, despite the fact that the prohibition of intermarriage between Chinese and Manchus was abolished only after 1900 and that Manchuria was incorporated into provinces only in 1905. Manchuria is now inhabited overwhelmingly by Chinese immigrants from the neighboring provinces of North China, mostly from Chihli and Shantung. Manchuria—as the home of the Manchu conquerors—is now only a geographical expression. The Manchu conquest of China may fairly be compared with the Norman conquest of England, as in both cases the conquerors were absorbed by the conquered. Manchuria, however, still opens a big field for colonization, as it is only thinly populated—by less than twenty million people. There are vast, rich, and fertile lands along the Sungari, the Amur, and the Ussuri river valleys left for settlement. The agricultural, mining, and forest resources are also awaiting development. The Japanese government has made every effort

to have its subjects colonize Manchuria and the number of Japanese residents there has reached the enormous number of three hundred thousand or more, a number approximately equal to the Japanese settlers in Korea itself. The former Imperial Russian government likewise sent her colonists through and from Siberia to North Manchuria along the Chinese Eastern Railway, and new Russian towns were built in that railway zone. Manchuria, though Chinese territory and inhabited by Chinese, has been regarded as virtually an extension of Japanese-owned Korea and Russian-owned Siberia. And now that Russia has lost all her former influence in the Far East, Japan is taking her lion's share in Manchuria.

The great famine in North China in 1920 afforded a golden opportunity for the famine refugees to move to Manchuria and settle there. Several thousand families from the provinces of Chihli and Shantung were moved to the north. The government gave free railway passage to famine refugees to Manchuria. It asked the Manchuria authorities to take care of the famine refugees and afford them economic help for the purpose of colonization. The aim was to settle the families in the two northern provinces of Kirin and Heilunkiang where there are fewest settlers and where, accordingly, the land is cheapest and most easily obtainable. If such a scheme can be consistently carried out it may prove to be a worth-while by-product of the famine, as it will gradually increase Manchuria's Chinese population, raise the value of the land, and lessen the pressure of overpopulation in China.

Turning from Manchuria to Sinkiang, we find that that province is only sparsely settled by a few million people, including both Chinese and Mohammedans, the latter being the natives of the land. Colonization is indeed slow but steady, the colonists being mostly from the northwestern provinces of Kansu and Shensi, together with a large number of the descendants of the settled Hunanese soldiers brought over there in the

eighties of the last century to put down the Mohammedan rebellion. The people are somewhat assimilated to the Chinese through their historical, geographical, political, and economic relations with China. The Chinese colonists there are not numerous enough, however, to outnumber the natives or to absorb them as in the case of the Manchus. The Mohammedans maintain their religious faith and their racial stock, though intermarriage not infrequently takes place between them and the Chinese. Fortunately, under the present governor, Yang Tseng Hsun, the Chinese and the Mohammedans live peacefully together and no trouble has arisen such as arose during the late Ching dynasty. It is to be hoped that the Mohammedans may be eventually absorbed into the Chinese stock and that their racial and nationalistic feelings and aspirations may be one with those of the Chinese as in the case of the Mohammedans living in Kansu, Shensi, Shansi, and other parts of China.

It is a great natural asset to us to have within our boundaries these vast stretches of almost unsettled land, not merely as a protection against foreign invasions, but as a field for economic development and an outlet for a surplus population. At present China has several hundred soldiers to be disbanded. For this reason, as for other good reasons, colonization is a project that merits consideration.

Colonization must be accompanied by assimilation in order to complete the process of making the Chinese Republic a national unit. Language and customs, traditions and institutions, laws and civilization, must be made ultimately uniform so that the different lesser nationalities within the confines of our country may be bound by a bond of common interest. The present tendency of Mongolia and Tibet to break away from China and establish independent or autonomous states is a clear demonstration of our great failure in achieving assimilation in the past, and we shall have to take up this work afresh to make the future secure.

Colonization and assimilation with the help of political, economic, and social means, will not only provide room for our increasing population and a market for our growing trade, but will also better assure us our territorial integrity. Our old *laissez-faire* policy in regard to the dependencies must be superseded by a more vigorous and progressive policy.

## CHAPTER XIX

### GENERAL CONCLUSION

The essential feature of a modern state is its *organization*, political, military, commercial, and industrial. A modern state, therefore, means an organized state. China is in name a modern state, but in fact she is not, because of this lack of *organization*. In her political system as well as in her economic and social system, many of the medieval institutions still survive. A state of *disorganization* permeates her life. The great states of to-day at some period of their history passed from the stage of disorganization to the stage of organization. For instance, France under the *ancien régime* was not an organized state; she became organized only after the great Revolution of 1789. The United States under the Articles of Confederation was not an organized state; she became organized only after the adoption of the Constitution in 1787. Germany under the Holy Roman Empire and under the Confederation of 1815 was not an organized state; she became organized only after the establishment of the German Empire in 1871. Russia under the Mongol rulers and Muscovite princes was not an organized state; she became organized only after the reforms of Peter the Great and of Catherine. Italy under the papal supremacy and the Austrian domination was not an organized state; she became organized only after the formation of the Italian Kingdom in 1861. Japan under the Tokugawa Shogunate was not an organized state; she became organized only after the Restoration of the Mikado in 1868 and the abolition of feudalism in 1869. England became an organized state earlier than any one of these states. Hence we see that all these important states have had their respective periods of transition from *disorganization* to

*organization*, and in making the transition, they have been presented with problems and difficulties similar to those which China faces now. In other words, if China is to become a modernized state, she must become an organized state, because modernization and organization means much the same thing, and the past history of the great states gives us invaluable experience in the way of organization.

To show that China is a disorganized state, we have only to make a very brief review of the important points brought out in this thesis. Let us first take up the central government. The President is the head of the Republic, but his powers and functions are not well defined, and conflicts with the Cabinet constantly occur. The Cabinet, in addition to its conflicts with the President, has also its conflicts with Parliament, and the struggle between the executive and the legislature for supremacy has produced several political crises in China. The power of dissolution of Parliament is not vested in the government by the Provisional Constitution. The judiciary cannot exercise its powers independently, but is subject to the constant interference of the government. There is yet no permanent constitution, yet the Provisional Constitution has outlived its usefulness and lost its authority. No genuine political parties exist, although a republic must be based on party government. Our military system is weak and corrupt, and our foreign policy is opportunistic and indefinite. The whole structure of the national government is thus seen to be disorganized.

The same thing holds true of the provincial government. The relation of the provinces to the central government is not well adjusted, their powers and functions are not clearly divided. The province is governed not by one governor, but by two, and the relations between these two is not usually a very happy one. The provincial assembly is much handicapped in its workings not only by government interference, but also by its own internal strife, dissension and discord among the

members being almost the rule and harmony and coöperation almost the exception. Thus disorganization is also the prevailing feature of the provincial government.

In regard to the local government the situation is no better. The district is under the dual control of the province—and of the circuit, in places where circuits have not yet been abolished—on the one hand, and under the rule of the magistrate, who exercises both executive and judicial functions, on the other. In the cities, towns, and villages there are no organs for the operation of local self-government, and there is no clear demarcation of powers between these areas over their respective fields of local affairs. The local government is, in other words, disorganized.

In the government in the dependencies, however, disorganization is even more serious than in other cases. Mongolia and Tibet, the two remaining dependencies, are now practically independent of China and under the grip of foreign powers. China cannot, for the present, exercise her rights of suzerainty over them, not to mention rights of sovereignty, though these rights belong to her. She is now faced with the alternative of recovering the dependencies by force, or of recognizing their autonomy by agreement. She has simply permitted the dependencies to care for themselves, and thus has given the foreign powers their chance for encroachment.

This is a very critical situation for China, because a state without organization cannot enjoy internal peace and prosperity, and cannot receive international honor and respect. Not only will civil wars arise in it, but it will continue to invite foreign aggression. If China is to maintain herself as a sovereign and independent state, a *reorganization* and *reconstruction* of her political system cannot be long delayed.

In this thesis the writer has no intention to build a Plato's "Republic" or a More's "Utopia" upon the existing order in China. It is not to be expected that reconstruction can be done in a day, but it *will* be necessary to do these things

within a reasonable period of time. The government must take up these reforms according to the degree of their importance and the possibility of their present execution.

Lastly, political reconstruction is not the only kind of reconstruction needed in China to-day; for economic and social reconstruction is likewise, and perhaps equally, important. The writer, however, feels conscious of the priority of the need of political reconstruction, inasmuch as political troubles in China are the chief cause of our backwardness in economic and social development. Political reconstruction is therefore the first step to be taken toward recreating China and giving her a foremost place among the nations.

## BIBLIOGRAPHY

The following books and publications have been of help to the writer in his study of the subject treated:

- Bagehot, Walter, "The English Constitution." London, 1873.
- Bau, Mingchien Joshua, "The Foreign Relations of China." Fleming H. Revell Company, New York, 1921.
- Carruthers, Douglas, "Unknown Mongolia." 2 vols. J. B. Lippincott Company, London, 1914.
- Cheng, S. G., "Modern China—A Political Study." Clarendon Press, Oxford, 1919.
- "Chinese Students' Monthly, The," published by the Chinese Students' Alliance in America, at the Commercial Press, Shanghai.
- Goodnow, Frank J., "The Principles of Constitutional Government." Macmillan Company, New York. Reprinted, 1914.
- Haines, Charles Grove, "The American Doctrine of Judicial Supremacy." Macmillan Company, New York, 1914.
- Holt, Lucius Hudson, "An Introduction to the Study of Government." Macmillan Company, New York, 1915.
- Hornbeck, Stanley K., "Contemporary Politics in the Far East." D. Appleton Company, New York, 1918.
- Leacock, Stephen, "Elements of Political Science." Houghton Mifflin Company, Boston and New York. Revised Edition, 1913.
- Liu, Lien, "History of Sino-Japanese Relations During the World War." Shanghai, 1921. (In Chinese.)
- Lowell, A. Lawrence, "Governments and Parties in Continental Europe." 2 vols. Houghton Mifflin Company, Boston and New York, 1896.
- Morse, Hosea Ballou, "International Relations of the Chinese Empire." 3 vols. Kelly and Walsh, Shanghai, 1910, 1918.

- Munro, W. B., "The Government of American Cities." Macmillan Company, New York. Revised Edition, 1919.
- Ogg, Frederick A., and Beard, Charles A., "National Governments and the World War." Macmillan Company, New York, 1919.
- "Peking Leader Special Supplement." Published by the *Peking Leader*, Peking. Feb. 12, 1919.
- Ray, P. O., "An Introduction to Political Parties and Practical Politics." Charles Scribner's Sons, New York. Revised Edition, 1917.
- "Ta Chung Hwa" (Great China), a magazine in Chinese. Vol. II, 1916.
- Tyau, Min-chien T. Z., "China's New Constitution and International Problems." Published by the Commercial Press, Shanghai, 1918.
- Weale, B. L. Putnam, "The Fight for the Republic in China," Dodd, Mead and Company, New York, 1917.
- "Weekly Review of the Far East, The." Published by the Millard Publishing Company, Shanghai.
- Wilson, Woodrow, "Congressional Government." Houghton Mifflin Company, Boston and New York. 15th Edition, 1900.
- Wilson, Woodrow, "Constitutional Government in the United States." Columbia University Press, New York, 1908.



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