Why Did the Republic of China Have a Constitution but Long Fail to Achieve Normal Constitutional Government?

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The Republic of China was Asia's first republic. From the 1912 Provisional Constitution to the 1947 Constitution of the Republic of China, the Chinese people were never short of a constitution on paper. But from 1912 to 1987, the time truly lived under constitutional government — government power constrained by the constitution, and the people's rights guaranteed by the constitution — added up to hardly a few years. Why does having a constitution not equal having constitutional government?

The answer is: a constitution is a text; constitutional government is a practice. For a constitution to come alive, a whole set of supporting conditions is needed: a peaceful environment, independent courts, an army loyal to no individual, a press that dares to speak, and political parties that can afford to lose. For most of the Republic of China's history, these conditions were not present. The constitution was there, but constitutional government was not — and that is the core paradox of twentieth-century Chinese politics.

I. A Constitution Is Easy to Obtain; Constitutional Government Is Hard to Seek

Constitutional government requires at least five conditions to hold at the same time. First, checks and balances actually operating: legislature, executive, and judiciary genuinely restraining one another, rather than being a rubber stamp. Second, judicial independence: courts daring to rule that the government has broken the law. Third, nationalization of the armed forces: the gun obeying the constitution, not an individual. Fourth, freedom of speech and association: the people able to criticize the government and able to organize political parties. Fifth, a peaceful political environment: without civil war, elections have meaning.

Measured against these five conditions, the history of the Republic falls short on almost every one. From 1912 to 1928 came warlord melee, when the gun ruled and the Provisional Constitution was merely a tool the various factions used to attack one another; from 1928 to 1947 came the period of political tutelage, when one-party rule was openly written into the Provisional Constitution and constitutional government was declared "postponed"; in 1947 constitutional government began, but civil war had already broken out; and after 1949, the constitution was again frozen under the martial-law system. The text was always there; the conditions never lined up — that is the complete formula of "having a constitution, but no constitutional government."

II. The Mainland Period: A Constitution Born at the Wrong Time

First, look at the more than thirty years on the mainland. The 1912 Provisional Constitution had been promulgated for less than two years when Yuan Shikai dissolved the parliament and abolished the Provisional Constitution (see Question 4 of this series). In 1928 the Northern Expedition achieved formal unification, the Kuomintang declared the start of the period of political tutelage, and rule by the party over the state postponed constitutional government until "conditions matured" — and that "later" took nineteen years of waiting.

The timing of the 1947 Constitution's implementation was even more tragic: when the constitution was being made, the Nationalists and Communists were already at war, and in the second year of the

Constitution's implementation (1948), the Temporary Provisions Effective During the Period of Communist Rebellion froze many of the Constitution's provisions. In other words, during the brief two years in which the Constitution of the Republic of China nominally applied to all of China, there was never a single day of normal implementation. The constitutional history of the mainland period is a history of "having a constitution, but no constitutional government."

III. After the Move to Taiwan: From Frozen to Implemented

After the government of the Republic of China moved to Taiwan in 1949, the constitution entered an even longer period of freezing. Under the mobilization system and martial law (1949–1987), the president could be re-elected again and again, the representatives of the National Assembly went decades without re-election, and the people's rights guaranteed by the constitution were hollowed out by martial-law orders. During these thirty-eight years, the constitution was the state's signboard, but not the rules by which the state operated.

The turning point came in the late 1980s to the 1990s: martial law was lifted in 1987; in 1991 the Period of Mobilization for the Suppression of Communist Rebellion was ended and the Temporary Provisions abolished; the National Assembly was fully re-elected; the president was directly elected; and the Additional Articles of the Constitution adapted the constitution to the new political reality. Only from the mid-1990s did the Republic of China (Taiwan) for the first time truly live under the constraints of its own constitution — party alternation, judicial review, and freedom of speech, one by one, becoming reality. This course of events also confirms the judgment of Introduction I04 of this series: what can be borrowed are principles; the specific procedures must be redesigned in light of actual conditions. Counted from 1912, that day took more than eighty years of waiting.

IV. The Lessons of Having a Constitution but No Constitutional Government

This history leaves three lessons for the future. First, constitution-making is only the first step, and a comparatively easy one; the hard part is creating the conditions that let a constitution come alive. The people who write a constitution can finish a draft overnight, but the social conditions that let a constitution live take generations to build. If any transition plan produces only a fine-looking constitution, without answering the questions "Whom does the army obey?", "Do the courts dare to rule?", and "Do losers of elections accept the result?", that constitution is only a piece of empty paper.

Second, the reconstruction of constitutional government must advance in step with supporting institutions: nationalization of the armed forces, judicial independence, local self-government, freedom of speech, and civil society — not one can be missing. What Question 20 of this series (why ordinary citizens also need to learn the constitution, local self-government, and public responsibility) says is exactly this reasoning: constitutional government is not a gift; it is a way of life that takes a generation to learn, to practice, and to defend.

Third, the text of the 1947 Constitution has not been abolished. It has continued in force in the Republic of China (Taiwan) to this day, proving that this set of provisions can operate — provided the conditions are present. For the future reconstruction of constitutional government on the mainland, this constitution is both a ready-made institutional blueprint and an unfulfilled promise: to let the constitution come down from paper and become the rules of each person's daily life.

Continue Reading

- Index of the Forty Questions on the Republic of China
- Question 1: From the Xinhai Revolution to Today: Why Has China Repeatedly Fallen into the Political Cycle of Dynastic Change?
- Question 20: Why Do Ordinary Citizens Also Need to Learn the Constitution, Local Self-

Government, and Public Responsibility?
- Research on Transitional Institutional Arrangements
- Why Did China Miss the Historical Opportunity of Provincial Constitutions and Federalism?

References

- Index of the Forty Questions on the Republic of China
- “From the Xinhai Revolution to Today: Why Has China Repeatedly Fallen into the Political Cycle of Dynastic Change?” — conclusion on the “dynastic-change cycle,” cited in this question
- Question 20, “Why Do Ordinary Citizens Also Need to Learn the Constitution, Local Self-Government, and Public Responsibility?” — conclusion on civic constitutional literacy, cited in this question
- Research on Transitional Institutional Arrangements — conclusion on transitional institutional arrangements, cited in this question
- Public historical materials: the period of political tutelage, 1928–1947; martial law in the Taiwan region, 1949–1987; the lifting of martial law in 1987; the termination of the Period of Mobilization for the Suppression of Communist Rebellion in 1991

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