How Does the 1947 Constitution of the Republic of China Divide Powers Among the Central Government, Provinces, and Counties?

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On December 25, 1946, the Constituent National Assembly adopted the Constitution of the Republic of China; it was promulgated on January 1, 1947, and came into force on December 25 of the same year. It was China's first national constitution to be formally put into force. On the relationship between the central government and localities, it chose neither centralization nor federalism, but a middle road — the "equalization of powers" (junquan) system advocated by Sun Yat-sen.

What does equalization of powers mean? Simply put: the division of powers between the central government and localities is decided not by who is stronger or weaker, but by the express provisions of the Constitution. Chapter 10 of the Constitution (Powers of the Central and Local Governments) and Chapter 11 (Local Government System), in more than twenty articles, set out clearly what the central government, the provinces, and the counties each manage. This was the first time in Chinese constitutional history that a fundamental law answered the question of "who manages what."

I. Equalization of Powers: A Third Road Between Centralization and Federalism

Sun Yat-sen's idea of equalization of powers was aimed at two extremes: one was centralization, in which all powers belong to the central government and localities are merely executive organs; the other was federalism, in which localities are sovereign units and central powers are derived from cession by the localities. The equalization-of-powers system holds that the powers of both the central government and the localities derive directly from the Constitution, that their status is equal, and that neither is subordinate to the other — in Sun Yat-sen's words, it is "for the purpose of achieving equalization of powers" that the powers of the central government and localities are divided. This idea was later also written into the overall framework of the Five-Power Constitution, becoming one of the important features distinguishing the Constitution of the Republic of China from ordinary separation-of-powers constitutions.

Article 111 of the Constitution is the master switch of the equalization principle: apart from matters listed in the Constitution, for all unlisted affairs, "those of a national uniform nature belong to the central government, those of a provincial uniform nature belong to the province, and those of a county nature belong to the county"; when disputes arise, they are resolved by the Legislative Yuan. This means that the final arbiter of the division of powers is a representative organ, not an administrative order.

II. What the Central Government Manages: Articles 107 and 108

Article 107 lists matters to be "legislated and executed by the central government," thirteen items in total: foreign affairs, national defense, the nationality law and criminal, civil, and commercial laws, the judicial system, aviation, national highways, and posts and telecommunications, central finance and national taxes, the division of taxes, state-run enterprises, the currency system, weights and measures, international trade policy, and foreign-related finance and economics, among others. These are typical affairs of a "national uniform nature," in which localities have no power to interfere.

Article 108 lists matters to be “legislated by the central government” and which may be executed by localities, twenty items in total, including general principles of provincial and county self-government, administrative divisions, the education system, the banking and stock exchange system, the police system, public health, the land law, and the labor law, among others. The central government sets the rules, and localities may execute them; a province, within the scope of not conflicting with national law, may also enact single regulations. This is a division-of-labor model of “central legislation, local execution.”

III. What Provinces and Counties Manage: Articles 109 and 110

Article 109 lists matters to be “legislated and executed by the province,” or entrusted to counties for execution, twelve items in total: the province’s education, health, industry, and transport; provincial property; provincial municipal affairs; provincial public enterprises; provincial agriculture, forestry, water conservancy, fisheries, and animal husbandry; provincial finance and provincial taxes; provincial debts; provincial banks; implementation of provincial police affairs; and provincial charitable and public-welfare affairs, among others. Worth noting is that, when funds are insufficient, “after decision by the Legislative Yuan, subsidies shall be provided from the national treasury” — the Constitution anticipated local fiscal difficulties and provided an institutional channel for resolving them.

Article 110 lists matters to be “legislated and executed by the county,” eleven items in total: the county’s education, health, industry, and transport; county property; county public enterprises; county finance and county taxes; county debts; and implementation of the county police guard, among others. The county is the most basic self-government unit guaranteed by the Constitution. In addition, Chapter 11 (Articles 112 to 128) further prescribes the local self-government system for the two levels of province and county: provinces and counties each set up representative organs and administrative organs, and every level has a popularly elected basis.

IV. Powers Written on Paper: The Gap Between Design and Reality

The design of the equalization-of-powers system was precise, but its fate was tragic. When the Constitution came into force on December 25, 1947, the civil war was raging; in 1948, the Temporary Provisions Effective During the Period of Communist Rebellion were adopted, and a large number of articles concerning the division of powers between the central government and localities were frozen. After the Government of the Republic of China moved to Taiwan, it long remained under martial law and the mobilization-for-rebellion system, and provincial and county self-government was never implemented as the Constitution provided — Taiwan Province was long governed by an appointed provincial chairman, and it was not until the 1990s that local self-government was gradually restored.

But the value of this design has not disappeared. First, it is China’s only constitutional text establishing the division of local powers in the form of a fundamental law; any future constitutional reconstruction need not design central-local relations from scratch — the equalization articles, with slight amendment, can be applied, and this is precisely the institutional legacy the constitution-makers left to posterity. Second, its equalization logic — the division of powers expressly set by the Constitution, and disputes decided by a representative organ — is exactly the ready-made framework that can be directly cited today when discussing future mainland local governance (see Questions 31 to 35 of this series). The 1947 Constitution had no opportunity to be implemented on mainland China, but for a China that is “unified yet divided in powers,” it preserved an institutional blueprint.

Continue Reading

- Index to the Forty Questions on the History of the Republic of China
- Text and Interpretation of the Constitution of the Republic of China
- Overview of the Seven-Law Model Laws (proposed model laws, not laws already in force)
- Why Did the Republic of China Have a Constitution, Yet Long Fail to Achieve Normal

Constitutional Government?

References

- Index to the Forty Questions on the History of the Republic of China
- Text and Interpretation of the Constitution of the Republic of China — conclusions on Chapter 10, Articles 107–111, and Chapter 11, Articles 112–128, cited in this question
- Overview of the Seven-Law Model Laws — the Seven Laws are proposed model laws, not laws already in force
- Public historical sources: the Constitution of the Republic of China was adopted December 25, 1946, promulgated January 1, 1947, and came into force December 25, 1947; the Temporary Provisions Effective During the Period of Communist Rebellion were adopted in 1948

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