

EXPERIMENT OF FEDERALISATION IN REPUBLIC OF CHINA IN 1920s

(On State Constitutionalism in early Republic of China)

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Abstract and Key Words in Chinese:

内容摘要: 省宪运动发起于 19 世纪 20 年代, 此时中华民国肇建, 正处于内战时期。作为一项联邦主义的尝试, 省宪运动最终因为军事干涉失败了。省宪运动作为联邦主义在中国唯一的一次尝试是独一无二的; 同时它所处的复杂环境也是非常少见的。当时的中国在政治和文化上被分为两个团体, 这使得南部和中部省份在内战中处于一种尴尬境地。作为分立的结果, 省宪运动缺乏深厚的民主主义基础而发展起来。作为省宪运动的成果, 只有湖南省宪法得以颁布施行。

关键词: 省宪运动, 联邦主义, 中华民国早期, 地方主义, 湖南省宪法

Abstract and Key Words in English:

Abstract: The State Constitutionalism was originated in early 1920s when the Republic of China was just founded and in a period of civil war. As an experiment of federalization, State Constitutionalism finally failed by reason of military interference. State Constitutionalism is unique as a federal experiment in China; and the complex circumstance of State Constitutionalism was also rare. China was divided into two groups in politics and culture at that time, which made the

south and central provinces in an awkward condition of civil war. As a result of the dividing, State Constitutionalism developed without solid democratic foundation. Only Hunan Province Constitution was established as a result of State Constitutionalism.

Key Words: State Constitutionalism, Federalism, The early Republic of China, Local system, Hunan Province Constitution.

I. INTRODUCTION

The State Constitutionalism was originated in 1920s when the Republic of China was just founded and in a period of civil war. In some provinces of Southern China, Some politician considered that it was time to establish state Constitution and make the provinces self-governing states as the western countries did. This idea was also advocated by some famous ideologists and part of plain people.

The State Constitutionalism was the rage in several provinces in central and southern China, including Hubei, Jiangxi, Guizhou, Hunan, Zhejiang, Guangdong, Sichuan, Fujian, Henan, Jiangsu, Yunnan, Guangxi, etc. Hunan Province finally enacted its constitution, while the other provinces finished drafting bills or just a legislative scheme.

As an experiment of federalization, State Constitutionalism finally failed, but after eighty years, we may also find some clue of China's development of Constitutionalism by retrospection of the history.

II. BACK GROUND: THE DIVIDED NORTH AND SOUTH OF CHINA

After ten years' struggle for National Constitutionalism from 1905¹ to 1915², the ideologists and politicians all felt disappointed by Constitutionalism implemented by the central government and turned to another method of reform. And in the years around 1920, the country relapsed into a chaos caused by civil war. Stratocracy became the major form of politics, while the warlords in the north beat the drum for unification by force, the south uphold the idea of self-government in an area of province. One of the most important reasons why State Constitutionalism was launched is the rupture between the northern China and southern China. This kind of rupture might be interpreted both in politics and culture.

¹ The Qing Court determined to implement Constitutional Practice in 1905, and dispatched official missions abroad to investigate foreign political systems in 1905.

² As the first president of Republic of China, Yuan Shikai crowned himself empire in 1915.

2.1. The rupture in politics

China was divided into several parts by different forces around 1920; this condition was finally ended in 1927. The Republic of China was governed in name by Beijing government which took Xu Shichang³ as nominal president, but it was really controlled by warlords; in southern China Sun Yat-sen⁴ who is the founder of Republic of China constituted a military government in Guangzhou which was the capital of Guangdong province and made himself generalissimo of Republic of China. Both the north and south took themselves as legal government of Republic of China.

Both the north provinces and south provinces were controlled by warlords, and they were subjected to either north or south Government at least or at most on paper. China was divided into two parts in politics. This kind of division was prevalent after the establishment of the Republic of China in both parts of China.

“The fallacy of division of south and north was created by Yuan Shikai⁵ whose purpose was to provoke the northern people to dominate the south and corrupt the political system of Constitution; Duan Qirui⁶ continued with this purpose and took the conduct more eagerly. He took northern China as an independent country and southern China as enemy state in his resignation. His purpose was so obvious.”⁷ Xia Zhishi⁸ Said.

The southern China had the same idea as the northern China did. Tang Jiyao⁹ promulgated a plain text when his army of Yunnan Province went to

³ Xu Shichang (1855-1939) was President of the Republic of China from October 10, 1918 to June 2, 1922. His election as president was largely engineered by Duan Qirui and his Anhui clique. He was chosen because he was a civilian yet had close ties to the Beiyang Army and was neutral to both its Zhili and Anhui cliques. Lacking any military power of his own, he had to play Duan, Zhili leader Cao Kun, and Fengtian leader Zhang Zuolin against each other to stay in power.< http://en.wikipedia.org/wiki/Xu_Shichang >

⁴ Sun Yat-sen (1866-1925) was a Chinese revolutionary and political leader often referred to as the Father of Modern China. Sun played an instrumental role in the eventual collapse of the Qing Dynasty in 1911. He was the first provisional president when the Republic of China (ROC) was founded in 1912 and later co-founded the Kuomintang (KMT) where he served as its first leader. Sun was a uniting figure in post-Imperial China, and remains unique among 20th-century Chinese politicians for being widely revered in both Mainland and Taiwan.< http://en.wikipedia.org/wiki/Sun_Yat-sen >

⁵ Yuan Shikai (1859-1916), who is known in Chinese history for his authoritarian control based on military dictatorship, a presidency with sweeping powers between 1912 and 1915, and his proclamation by democratic process as Emperor in 1916. His stupendous political might and the preeminence of his personal qualities have remained a pop subjects in popular culture.< http://en.wikipedia.org/wiki/Yuan_Shikai >

⁶ Duan Qirui (1864-1936) was a Chinese warlord and politician, commander in the Beiyang Army, and the Provisional Chief Executive of Republic of China (in Beijing) from November 24, 1924 to April 20, 1926. He was arguably the most powerful man in China from 1916 to 1920.< http://en.wikipedia.org/wiki/Duan_Qirui >

⁷ Xia Zhishi, *Telegraph from Xia Zhishi: Don't Make Peace with Northern China*, Law enforcement campaign, Beijing, China: Dossier Press, 1993, p.1105.

⁸ Xia Zhishi (1887-1950), a general of Sichuan Province.

⁹ Tang Jiyao (1883-1927) was a Chinese general and warlord of Yunnan during the Warlord Era

Sichuan which is another province in south China, the plain text said: "In a standpoint of territorialism, my army has to be involved in confrontation with the northern China as to consolidate the southern states. The republic which is constructed by our compatriot will never allow the northern China to corrupt arbitrarily; the south with more than half of Chinese population will never allow the minority of China to tyrannize in; Yunnan and Sichuan which are all parts of China will never allow the north to ruin by perverting the law."¹⁰

2.2. The rupture in culture

From another aspect, the rupture of China was also a culture phenomenon beside politics. "The Chinese take much of localism and stern with the differences among provinces."¹¹ Both business and politics separated into different parties based on regionalism. Localism may promote the development of local autonomy, but over-anxious of localism may also turn to splittism and political disorder.

Localism might do little harm to the country in peacetime, and will also do little harm in time of war with enemy from abroad. When China was invaded by other countries, this sort of drastic localism might always be taken place by nationalism, but when the provinces fight a battle with each other, the localism become a peace breaker. Between 1926 and 1927, the south army delivered a battle with the north and finally unified the country. When the army entered Henan province which was in subjection of North China, the agitprop found it hard to communicate with the people. They said in their reports, "The idioms we used in Wuchang¹² become useless, such as warlord, malfeasant, overthrow, etc. We have to explain these words repeatedly."¹³ As we know, some words such as warlord might be new to the people, but other words such as malfeasant were frequently used in vulgar drama, why was it needed to explain repeatedly? The phenomenon indicated the truth that Henan people were resisting the propaganda from the north.

The rupture between the northern China and southern China was a kind of extended localism, the dissimilarities between the two parts of China were obvious than ever before. The people were also hypersensitive with each other's deeds.

of Republican China. Tang was a notable figure because of his pro-Sun Yat-sen policies. After Cai e died in 1916, Tang helped Sun set up the Constitutional Protection Movement in 1917 and assisted Sun in defeating the Old Guangxi Clique and later Chen Jiongmings's rebellion.<
http://en.wikipedia.org/wiki/Tang_Jiyao >

¹⁰ Tang jiyao, *Plain Text for Dig up the Hatchet with Enemy in Sichuan*, Law enforcement campaign, Beijing, China: Dossier Press, 1993, p.26.

¹¹ Shen Paper, Jul.3,1920.

¹² Wuchang is a part of Wuhan which is the capital of Hubei Province.

¹³ Luo Zhitian, *Undercurrent in Troubled Times: Nationalism and Politics of Republic of China*, Shanghai, China: Ancient Books Press, 2001, p.201.

And in the other hand, the folk-customs of the south and north are dissimilar in many aspects even until now. The south people mainly take rice as staple food while the north people take wheat commonly; the south is much moister than the north; the south is mountainous while the north is almost an extensive and level area of land; and the south is much more multinational than the north; even the dialects of south can hardly be understood by the north.

The differences in so many aspects made it hard for the people from the two regions to understand each other, especially in the period of civil war.

III. STATE CONSTITUTIONALISM AS A RESULT OF DIVIDING

State Constitutionalism was advocated strongly in the south of China, especially in the middle part of China. Hunan province, a province lay between the two parts of China was the most representative. Maybe we could find out the purpose of these provinces by analyzing the situation of Hunan province.

3.1. The awkward situation in the boundary

As we can see, the supporters of State Constitutionalism were provinces which are conventional symbols of backland. But this kind of conventional idea is based on a precondition of no civil war. In armed conflict with the enemy from abroad, they are certainly home front. But unfortunately it was a time of civil war and the traditional inland provinces such as Hunan, Jiangxi became battlefield.

As we know, the provinces in South China were governed by different warlords at that time. The warlords were fear for each other's aggression and they also attempt to invade each others. Some warlords such as Zhao Hengxi, the Governor of Hunan province tried hard to protect the province from civil war, so he tried his best to establish a State Constitution and finally did it in 1922.

According to the Hunan Province Constitution, armies from other provinces are forbidden to enter Hunan Province without permission.¹⁴ This article leads to the final abolishment of Hunan Province Constitution, because this article was an obstacle of anabasis from south to north.

Since the provinces were in so misfortune a condition, they had to find some protective stipulations as to prevent the aggression from other warlords. So the warlord's attitude was in consideration of his strength of army. "Only Hunan Province finally established its Province Constitution, because Hunan lies between the north and south, without the Province Constitution, it will be easily drifted into war which is neither the people's wish nor warlord's wish. As a result, Province Constitution turned out to be a talisman of Zhao Hengxi who is a

¹⁴ Hunan Province Constitution, article 89.

warlord lack of force power.”¹⁵ Mao Zedong¹⁶ indicated.

Cai Hesen¹⁷ revealed the warlords' thought straight from the shoulder: “The warlords who are powerful enough might call for unification by force power, and demand for establishment of a strong central government, such as Cao Kun¹⁸ and Wu Peifu¹⁹. And the warlords who are lack of army force will call for State Constitutionalism, such as Sichuan Province and Yunnan Province. Some warlords are even chameleonic, when assuming the offensive, they might announce unification by force power, while retreat back to their land, and they might declare their opinion of self-government, such as Zhang Zuolin²⁰.” “It is just the only result of warlord autarchy.”²¹

3.2. The desperation of National Constitutionalism

As we can conclude from the description above, the Province Constitutionalism is not really the warlords' true purpose, what they looking forward to just were their own benefits. But as a result of the establishment of Province Constitution, the Federalism came into the sight of Chinese ideologists. With regard of the abortive National Constitutionalism before, some politicians and scholars argued that the State Constitutionalism might be a feasible plan to accomplish.

Xiong Xiling²², the past prime minister of Republic of China was inspired by

¹⁵ Mao Zedong, “*Hunan Province with Hunan Province Constitution*”, Annual of Mao Zedong (1893-1949), Beijing, China: Renmin Press, Central Literature Press, 1993, p.115.

¹⁶ Mao Zedong (1893-1976) who was born in Hunan Province was a Chinese military and political leader who led the Communist Party of China (CPC) to victory against the Kuomintang (KMT) in the Chinese Civil War, and was the leader of the People's Republic of China (PRC) from its establishment in 1949 until his death in 1976. He was one of the most influential politicians and also recognized as a poet and calligrapher <http://en.wikipedia.org/wiki/Mao_Zedong>

¹⁷ Cai Hesen (1895-1931) was a leader of Chinese Communist Party at that time.

¹⁸ Cao Kun (1862-1938) was the fourth president of Republic of China and he was also a warlord of Zhili clique (the group governed the major part of north China including Beijing, Tianjin, and Hebei in territory). After the First Sino-Japanese war was over, he joined Yuan Shikai to participate in the training of New Army. He was then made a general in the Beiyang Army and led the Zhili clique after the death of Feng Guozhang. Cao Kun infamously acquired the presidential office by openly bribing assembly members with 5000 silver dollars each. One of his first acts as president was to promulgate the 1923 constitution of China. <http://en.wikipedia.org/wiki/Cao_Kun>.

¹⁹ Wu Peifu (1874-1939) was a warlord of Zhili clique. He was born in Shandong Province in Eastern China and joined the "New Army" (renamed the Beiyang Army in 1902) created by Yuan Shikai. <http://en.wikipedia.org/wiki/Wu_Peifu>

²⁰ Zhang Zuolin (1875-1928) was one of the major warlords of China in the early 20th century. He was the warlord of Manchuria from 1916 to 1928, and at one time ruled an enormous area of north China. According to some accounts he was born in 1873 in Haicheng County in southern Fengtian province and assassinated on 4 June 1928 in Shenyang, although often 21 June is cited as the official date of his death). <http://en.wikipedia.org/wiki/Zhang_Zuolin>

²¹ Cai Hesen, *unification by force power and combined province autonomy (warlords' autarchy and occupancy)*, Shanghai, China, Xiang Dao Paper, vol.2.

²² Xiong Xiling (1870-1937) was born in Hunan Province and he had already abdicated at that time, On July 1913, Xiong was appointed by Yuan Shikai as the Premier and Finance Minister.

the idea of establishing Hunan Province Constitution and considered the State Constitutionalism effectual for Chinese innovation. He told Tan Yankai²³ before Hunan Province Constitution established, "The Hunan Province Constitution ought to be established before unification by all Hunan people's ballot as to consolidate the legal foundation. This is the only way to win other provinces' support, than each province constitutes state and avoid the control of the evil central government. Hunan will also avoid being a battlefield. It was determined at one fling whether we win or loose, I want you comrades draw together and finally managed it."²⁴

Requested by Xiong Xiling, Liang Qichao²⁵ draft out Hunan Self-governing Law and an explanation about it, argued the idea of "combined provinces autonomy"²⁶.

Zhang Taiyan²⁷ delivered an article named "Combine Provinces and Make the Central Government Absence of Authority", he argued, "The Republic have already encountered three events of anarchy since it founded nine years ago. Recently, some person wants to set up a separate regime in name of maintaining law enforcement." "Several provinces take local autonomy as slogan, such as Hubei, Jiangsu, Zhejiang, etc. "The central government might be made absence

However, after a few months the relationship between Xiong and Yuan began to deteriorate, triggered by their conflicting views on governance. On February 1914, Xiong resigned from the Premiership.< http://en.wikipedia.org/wiki/Xiong_Xiling >

²³ Tan Yankai (1880-1930) was the chief executive of Hunan Province during 1912 to 1920. He was a member of Liang Qichao's Constitutionalist Party; he campaigned for a parliament and restrained monarchy. He was a major leader as the party renamed itself the Progressive Party after the Xinhai Revolution. He remained neutral during Sun Yatsen's attempt to overthrow President Yuan Shikai in the 1913 Second Revolution but Yuan removed him anyways. He returned to power after Yuan's death and led his province into resisting the Beiyang Army in 1917's Constitutional Protection War which saved Sun's Guangdong base. After a brief attempt in spearheading federalism, his subordinates forced him to resign.< http://en.wikipedia.org/wiki/Tan_Yankai >

²⁴ Dagong Paper, Aug.16, 1920.

²⁵ Liang Qichao (1873–1929) was a Chinese scholar, journalist, philosopher and reformist during the Qing Dynasty, who inspired Chinese scholars with his writings and reform movements. He inspired Chinese scholars with his writings and reform movements. See Zhou Hong and Zhu Hanhua, *China's 20th Century Chronicle, Figures Volume*. Jinan, China: Shandong Renmin Publishing House, 2000, pp. 373-374.

²⁶ Ding Wenjiang, Zhao Fengtian, *Annual of Liang Qichao*, Shanghai, Shanghai Renmin Press, 1983, p.916.

²⁷ Zhang Taiyan (1869-1936) was a famous ideologist, scholar and political activist. His name was Zhang Binling, and Zhang Taiyan was his sobriquet. After the first Sino-Japanese War, he came to Shanghai, becoming a member of the Society for National Strengthening. In 1901, under the threat of arrest from the Qing Empire, he escaped to Japan for several months. Upon return, he was arrested. After his release, Zhang went to Japan to join Tongmeng Hui and became the chief editor of the newspaper Min Bao. After Wuchang Uprising, Zhang returned to China to establish the Republic of China Alliance and chief-edit the Dagonghe Ribao. Zhang was put under house arrest for criticizing Yuan for possible responsibility of assassination to Song Jiaoren. After release, Zhang was appointed Minister of the Guangzhou Generalissimo in June 1917. In 1924, Zhang left Kuomintang, entitled himself a loyalist to the Republic of China. < http://en.wikipedia.org/wiki/Zhang_Binglin>.

of authority.”²⁸

IV. BASIC PROCESS OF STATE CONSTITUTIONALISM

It is obvious that Province Constitutionalism was advocated by the south warlords and justified by famous scholars at that time. As for the warlords, they were looking for their own benefit, maybe for their people's benefits on the other hand. The scholars were looking for another way of innovation while they were perplexed by National Constitutionalism in the past ten years of chaos. The experiment of province constitution commenced as a result in Hunan, the danger zone of civil war.

4.1. The prologue of State Constitutionalism

State Constitutionalism had its origin in the development of self-government reform in late Qing Dynasty. China was in an unstable condition in political, social and economic affairs, and was in the scale of abrupt and decisive change.

Parliamentary was than introduced by the government in 1905 when the Qing Court determined to implement Constitutional Practice. The Qing Court dispatched official missions including Zaize²⁹ abroad to investigate foreign political systems in 1905.³⁰ Zaize considered the feature of U.K. constitutionalism as “The country was divided into a system of order-continuous administrative regions and each region votes for the governor itself. The governors of the regions are familiar with the local condition.” “As a result of self-government, the people will not oppose the rule of the authorities, and the tax is used for the local development, so that the people will not complaint for heavy taxation.”³¹

In the November of 1906, the next year of investigating the foreign political systems, the Qing Court ordered Yi Kuang³² to prepare for implementing

²⁸ Zhang Taiyan, “*Combine Provinces and Make the Central Government Absence of Authority*”, Florilegium of Political Comment by Zhang Taiyan, Chinese Book Company, 1977, p.752.

²⁹ Zaize (1876-1928) was a Manchu noble of the bordered white banner from the Aisin Gioro clan. He advocated for constitutional monarchy in China. In 1901, he was made a deputy commander of the Plain Blue Banner. In 1905, he was commissioned by Empress Dowager Cixi to go on a tour of Europe, Japan, and the United States to learn from their respective political systems. When he returned to China in 1906, he sent in a petition to change China into a constitutional monarchy, following the German and Japanese model. See Dai Yi and Li Wenhai, *Qing Comparative Mirror*, Xian, China: Shanxi Renmin Republishing House, 2000, pp. 8976-8977.

³⁰ The investigation missions were made up of Zaize, Dai Hongci, Duanfang, Shaoying and Xu Shichang. The five investigation officials visited Europe, Japan and the United States. See Zhu Jinyuan, “*A study on the Political Investigation abroad of five ministers in the late of Qing Dynasty*”, Guangzhou, China: Academic monthly Journal, no.5, 1987, pp. 33-39.

³¹ Zaize, *the Memorial to the Throne about the Review of the U.K. and the Referendum for going up to French*. The Archives Materials of the Preparation for Constitution-making in the late Qing Dynasty, Beijing, China: Zhonghua Books Company, 1979, p. 11.

³² Yikuang (1836–1918), the Prince Qing, was sent to succeed the Prince Chun in the

self-government with directors of provinces. And on July 7th, 1907, the Qing Court tried out new local bureaucratic system, the rescript announced, “Chang the officials as the foundation of autonomy.”³³ September, Guangxu breved the civil administration to draft the statute of autonomy and prey the emperor’s confirm and order each chief director of provinces to try out the system in each provinces.³⁴ October, the civil administration ordered Beijing tried out autonomy system as an experiment. On September, 1907, the civil administration drafted out the local autonomy rule and submitted to the emperor and made a copy for the Bureau of Constitutional Arrangement. On August 27th, 1908, the Bureau of Constitutional Arrangement and Central Advisory Council presented the Outline of Imperial Constitution, the Essentials of Parliamentary Law, the Essentials of Electoral Law, and the Detailed List about the Preparations for Constitution-Making (In following passage, it is called “the Detailed List” for short) to Guangxu and the Emperor fully approved and promulgated the above-mentioned documents at the same day and gave explicit instructions to officials and people that the existing system should be respected before the constitution was promulgated, and people should wait the government to take order with the preparations for constitution-making.³⁵ The Detailed List also did more detailed arrangement of autonomy. According to the seven-years time table in the Detailed List, a statue named *Autonomy Rule of Cheng, Zhen and Xiang* would be promulgated the first year; and the autonomy of *Cheng, Zhen and Xiang* will be implemented in the next year, *the Autonomy Rule of Ting, Zhou and Xian* would be promulgated simultaneously; the next three years would be a period of consolidation and the autonomy of *Cheng, Zhen and Xiang* will be accomplished in the sixth year and the autonomy of *Zhou, Ting and Xian* should be accomplished in the last year. On January 18th, 1909, the Qing Court printed *Autonomy Rule of Cheng, Zhen and Xiang* and *Voting Rule of Cheng, Zhen and Xiang* as the time table requested; May 5th, 1908, *the Rule of Research Center on Autonomy* was released. February 3rd, 1910, *Beijing Autonomy Rule* and *Voting Rule of Beijing* were established; February 6th, 1910, *Autonomy Rule of Fu, Ting, Zhou and Xian* and *Rule of Voting for the councilor of Fu, Ting, Zhou and Xian* were released.

construction of the Imperial Summer Palace in the late 1890s, and then was sent by the Empress Dowager Cixi, along with veteran diplomat Li Hongzhang to reach an agreement with several Western powers and the Empire of Japan after their invasion of China in 1901. In August, Yikuang and Li Hongzhang signed the Boxer Protocol of 1901. Yikuang was despised by not only reformers, but also by moderate court officials. After the death of the Empress Dowager in 1908, Yikuang led the Monarchal Cabinet as Prime Minister under the regency of Zaifeng, Prince Chun. See Dai Yi and Li Wenhai, *Qing Comparative Mirror*, Xian, Shanxi, China: Shanxi Renmin Republishing House, 2000, p. 6616.

³³ The Institute of Qing History of Renmin University of China, *Chronicle of Qing*, vol.12, Beijing, China: Renmin University of China press, 2000, p.454.

³⁴ See Zhu Shoupeng, *the Donghua collection of Guangxu Dynasty*, Vol.5, Beijing, China: Zhonghua Books Company, 1958, p. 5742.

³⁵ Jiang Guohua, *A Hundred Year’s Celebration of the Constitutional Practice in the Late Qing Dynasty (a Discussion on the Political Compromise of the Constitutional Practice in the Late Qing Dynasty)*, Spain: Historia Constitutional, Sept. 2008. Para. 33.

The *Autonomy Rule of Cheng, Zhen and Xiang* published in 1908 consisted of 9 chapters and summed to 112 articles. The document prescribed the signification, range, outlay, vote of autonomy and the autonomic official's tour of duty and penalty. As the rule declared, *Xiang* and *Zhen* were the basic units of autonomy, *Zhen* had a population more than 50,000 and *Xiang* had a population less than 50,000. The range of *Xiang* and *Zhen* was limited in education, sanitation, civil engineer, farming, industry, commerce and almsdeed. *Zhen* set up directorates and local councils, while *Xiang* set up directors and local councils. The number of councilor was limited and so did the voting qualification and candidature, the listed class will not be elected as autonomic officials: "1. the incumbent bureaucracy; 2. active army; 3. active police; 4. Buddhist, Taoist and other religionist." The offices of directorates, directors and local councils were called *Autonomy Center*. The local executive might disband the directorates and local councils and withdrew the autonomic official with the province chief director's permission.³⁶

Beijing Autonomy Rule and *Voting Rule of Beijing* were similar to *Autonomy Rule of Cheng, Zhen and Xiang* and *Voting Rule of Cheng, Zhen and Xiang*. There was just some details different from the former rules.

Autonomy Rule of Fu, Ting, Zhou and Xian and *Rule of Voting for the councilor of Fu, Ting, Zhou and Xian* were similar to *Autonomy Rule of Cheng, Zhen and Xiang* and *Voting Rule of Cheng, Zhen and Xiang*, too. The differences might be the listed issues: (1) the voting qualification and candidature excluded the qualification of elementary school, but the limitations of active army, Buddhist, Taoist and other religionist were absent. (2) The autonomy range was diminished to local affairs which affect the whole region and could not be solved by *Cheng, Zhen* and *Xiang*, and the affairs appointed by legislature or order. (3) The supervisors were the province governors who could pray for the civil administration to disband the council.³⁷

Qing Dynasty was overturned in Xinhai Revolution in 1911.³⁸ The autonomy had to be ceased before full implement, but the left whole system of council still exerted influence on the reform after revolution.

³⁶ Ma Xiaoquan, *the Relationship of Nation and Society, the Reform of Self-government and Constitutionalism in Qing Dynasty*, Kaifeng, China: Henan University Press, 2001, pp.222-226.

³⁷ Ma Xiaoquan, *the Relationship of Nation and Society, the Reform of Self-government and Constitutionalism in Qing Dynasty*, Kaifeng, China: Henan University Press, 2001, pp.222-226.

³⁸ Xinhai Revolution which is also named Shinhai Revolution, the 1911 Revolution or the Chinese Revolution, began with the Wuchang Uprising on October 10th, 1911 and ended with the abdication of Emperor Puyi on February 12th, 1912. The primary parties to the conflict were the Imperial forces of the Qing Dynasty (1644-1911), and the revolutionary forces of the Chinese Revolutionary Alliance (Tongmenghui). The revolution is so named because 1911 is a Xinhai Year in the sexagenary cycle of the Chinese calendar. <http://en.wikipedia.org/wiki/Xinhai_Revolution>.

4.2. The establishment of Hunan Province Constitution

After Xinhai Revolution, the Republic of China was established and the monarchy overthrown January 1st, 1912, Dr. Sun Yat-sen assumed the provisional president.

But the Revolution revolutionists were not powerful enough, and they just took the control of south China at that time. If Sun Yat-sen wanted to occupy the north, he would meet Yuan Shikai's Beiyang Army which was the most combat-worthy army in China of the time. Finally, Sun Yat-sen negotiated with Yuan Shikai and finally achieved peace.

Chinese Central Government was than in control of Beiyang clique which could be divided to Zhili clique, Fengtian clique and Wan clique, etc. After Yuan Shikai's death in 1916, the President of Central Government alternated continually. And Sun Yet-sen who was against Yuan Shikai and Beiyang clique set a military government in Guangzhou City in the south.

Hunan Province lay between the Guangzhou Military Government and the Central Government in Beijing. As a result it was involved in military conflicts during the period of civil war. The misfortune in battle field might be the first reason to establish a State Constitution as safeguard.

Hunan Province Constitution was the only province constitution in history. As concluded from materials in existence, Hunan Province Constitution might be an accident of history. China had no ground of self-government theory in its history, federalism were seemed absurd in tradition and even unheard before 1840 when the war between China and U.K.

So the process of balloting for the Hunan Province Constitution was laborious and took a period of one and a half year during which there were six rogations drafted out. And the tenet of State Constitutionalism had changed from single state constitutionalism to combined province constitutionalism.

At the outset of Hunan Constitutionalism, there was an opinion that the Province need to be autonomy in the territory of Hunan itself. Mao Zedong was an advocator of this idea before he felt despair of the State Constitutionalism, he argued, "Hunan people have no other way to go besides autonomy, they need to construct a new 'Republic of Hunan'." "I think the basic request is dividing of north and south, the next request is autonomy by each province."³⁹

But the major opinion was supported by some more notable person, such as

³⁹ Mao Zedong, *Full Autonomy and Half Autonomy*, The Early Manuscript of Mao Zedong, Changsha, China: Hunan Press, 1990, p.526.

Liang Qichao and Xiong Xiling. They argued that the first step is to establish the province constitutions and followed with the combine of provinces with constitution.

Mao Zedong was no doubt the most famous person in China, but it was after at least ten years. His opinion was realized as hot-blooded idea of youth at that time. Finally the single state constitutionalism turned to combined province constitutionalism. This depicts the idea about the relationship between the country and province of the day.

During the Consideration of the draft, the council was divided into two groups by different ideas about the name of the final output. This discrepancy might also depict different ideas about the understanding of the relationship between the country and the provinces. The minority of the council thought the name might be “Hunan Province autonomy law”, because constitution was a name belongs to an independent state, while the purpose of establishing the law was just standing the basic of autonomy, not establishing a new state besides the Republic of China, while the major clique insisted that constitution does not exist only in independent country, the states of the U.S. are not independent country either, though they just use the word “constitution” as the name of basic law.⁴⁰ Finally, the Hunan Province Constitution was passed by whole Hunan people with 18,000,000 people agreed and just 570,000 disagreed.

4.3. The analyses of the text of Hunan Province Constitution

Hunan Province Constitution contained 13 chapters beside a prologue: (1) General Program; (2) the Right and Obligations of the People; (3) the Province’s Functions and Powers; (4) the Council of Province; (5) the Governor and Province Department, contained (a) Governor and (b) the Province Department; (6) legislation; (7) Administration, contained (a) Finance; (b) Education; (c) Industry and (d) Military; (8) Justice; (9) Audit Department; (10) Basic System of County; (11) Autonomy of City and Xiang; (12) Amendment and Interpretation; (13) Supplementary Articles.

The Prologue of the Hunan Province Constitution dissertated with the purpose of the establishment of the law. It announced that the purpose of the constitution was to promote the welfare of Hunan people and consolidate the foundation of China. It also reflected the basic concern of the relationship between the province and country. And the first article of Chap.1 announced that Hunan Province was the autonomy province of the Republic of China. These articles established the basic foundation of politics.

⁴⁰ *Explanation to Hunan Province Constitution*, Neoteric China’s Constitutional Course: the History Materials, Beijing, China: China University of Political Science and Law Press, 2004, pp.670-671.

And the right of the people was detailed. *The explanation of the constitution draft* said, "The prescript of civil rights takes the definitude of contents into account and ignore the form of the article in a sense." "We just definite the rights by the essentials and avoid unclear and abstract words which might be ineffective and deceptive."⁴¹

As a result of the purpose, the articles on civil rights were arranged without logical order. But for the convenient of analyze, we could also take an arrangement in the following text: (1) Equal rights; equal rights was established in the 5th article which validated the equal rights of different genders, races, religions and classes, the 24th article affirmed that the citizens resident or work in Hunan Province from other provinces enjoy the equal rights as the Hunan natives do. (2) The right to life and the right to the body; this rights was prescribed detailedly in Hunan Province. The Constitution listed several rights including free from abuse and torture, the principle of a legally prescribed punishment for a specified crime, etc. (3) Property rights; Hunan people may be out of illegal examination and collection. (4) The right to freedom of habitation, migration and work. (5) Political rights; political rights dispersed in several articles and involved the free of speech, association, assembly, petition, statement, vote, the stand for election, resolution, and referendum, etc. (6) The right to litigation; (7) The right to purchasing guns.

Though the articles were out-of-order, the rights established were sufficient as we could conclude from the text. On the other hand, the obligation was far from concrete. The constitution established four basic obligations involved the duty of education, taxation, military service and government service.

The Province's Functions and Powers was also detailed, *Explanation to Hunan Province Constitution* commentated on the purpose, "Our provinces have no established functions and powers at present, all functions are branches of the countries' power; if we do not list inherent extent of province power, the authority of province will be ambiguous and at stake of deprivation in National Constitution's establishment; the province need to have some detailed article for contradiction. So it might be necessary to particularize the function of province."⁴²

As a result of the concern, the functions of province government were too detailed to list fully; generally speaking, the major functions included: (1) Territorialism; (2) Taxation; (3) Jurisdiction; (4) Industry; (5) Military affairs; (6) Police; (7) Exclusive right of personnel. As could be concluded, the articles

⁴¹ *Explanation to Hunan Province Constitution*, Neoteric China's Constitutional Course: the History Materials, Beijing, China: China University of Political Science and Law Press, 2004, p.671.

⁴² *Explanation to Hunan Province Constitution*, Neoteric China's Constitutional Course: the History Materials, Beijing, China: China University of Political Science and Law Press, 2004, p.674.

excluded the most important power of the country.

Hunan Province Constitution divided the power to four branches, including the administrative branch, the council, the justice and the audit department. The administrative institute was composed of Governor of the province and Province Department. The Province Department's function was to assist the Governor and also restrict the Governor's power; the department was responsible for the Province Council instead of the Governor.

The Province Council was democratically instituted and the main functions of this institute are: (1) pass laws and other critical issues, provide, by voting for taxation, the means of carrying on the work of government; (2) vote for important officials; (3) accept and hear petitions; (4) interpellation; (5) vote of non-confidence; (6) the impeachment of officials; (7) consult about particular official's deeds with the department the official belongs to.

A system of courts was also established and the independence of the judiciary was confirmed in the Hunan Province Constitution. The audit department was also an independent branch of power which was responsible for the Province Council.

4.4. The consequent reflection of Hunan's autonomy

In one aspect, Hunan's autonomy was a signal of province autonomy and depicts another approach of Chinese reform. After the autonomy, the State Constitutionalism reached its highlight. More province constitutions were drafted out, such as Zhejiang Constitution, Sichuan Constitution, Jiangsu Constitution, etc.

In another aspect, the political dissenters delivered their counterview at the same time. Sun Yat-sen, the founder of Republic of China said, "The Republic of China has been founded for ten years during which insurgences were ceaseless." "The warlords disregard the National interests and set up separatist regimes. The country is made of provinces and provinces belong to country, no province exists without a country. The diversion of cause and effect will just cause the country falling to pieces."⁴³

Not only Sun Yat-sen resisted the idea of State Constitutionalism, Kang Youwei, Kang Baiqing and Chen Duxiu also took State Constitutionalism as a kind of splittism.

⁴³ Sun Yat-sen, *A Plain Text to Praetors of Provinces*, Collected Edition of Sun Yat-sen, vol.5, Beijing, China: Chinese Book Company, 1986, pp.587-588.

4.5. The end of State Constitutionalism

The south finally dug up the hatchet with the north in 1926, Zhao Hengxi refused to permit the south armies entering, but Tang Shengzhi, the general of south finally entered into Hunan Province and forced Zhao Hengxi to abdicate. After Zhao Hengxi' leaving, the Hunan Province Constitution became invalidation soon. Hunan Province Constitution was made in agreement with Hunan people's voting, yet abolished without any democratic procedure. Tang Shengzhi declared the abolishment of Hunan Province Constitution in Hengyang in June 2, 1926.

In other area of China, the province constitutions were still shelved and became meaningless after the south armies' occupancy. The State Constitutionalism ended with the ceasefire of civil war.

V. THE COMMENT ON STATE CONSTITUTIONALISM

The rise of State Constitutionalism was speedy, so does its finish. We might ascribe the abortive experiment to many reasons, and we might also consider it a result of many happenchances, even we might impute the failure to a single unfortunate person. But what we really want is a perspective which will prevent us from the same mistake.

5.1. "Federalism" without nationalization of the armed forces

Federalism was unacquainted to Chinese at that time of State Constitutionalism, and just like other isms from abroad, federalism's signification was changed by the Chinese during the process of its introduction. As to the western world, the traditional essence of federalism involved that the army belongs to the central government, but it was not the explanation by Chinese politicians, Zhang Taiyan argued, From now on, each province establishes province constitution and makes the civil and military officials people from native place, the army will also be made by native. The officials even the chief magistrates are all voted bye people and the supreme commander of the province army will be elected by military officers with certain level." "I think a powerless central government is needed, the government just own the authority of conferring military decoration and appoint military officers; the other powers are remained by the provinces. Army is under the command of each provinces, the central government has no even one soldier."⁴⁴

So this kind of "federalism" was inborn precarious, because it exclude the basic essence of federalism, the nationalization of the armed forces. Some

⁴⁴ Zhang Taiyan, *Combine Provinces and Make the Central Government Absence of Authority*, Florilegium of Political Comment by Zhang Taiyan, Beijing, China: Chinese Book Company, 1977, pp.752-753.

person got it, but of course he could not solve it. Kang Youwei⁴⁵ said, “The U.S. was in peace from the time of Washington to Lincoln, so the people divided the country to states and took self-government; there was no warlord, so the divided the country to states and took self-government. China has warlords’ autarchy, so the result is not autonomy, but just stratocracy in separate countries. With the warlords, autonomy will never exist.”⁴⁶ Although Kang Youwei got the essence of the issue, he could never solve it at that time. What’s the real obstacle to the reform of army system?

As we all know, the constructions of western separation of powers and Federal system are all based on the precondition of separation of political power and military power. In Chinese history, it was much easier to say than to do. We could take *Tang dynasty* for example in which dynasty the military system was named *Fu Bing System*, Fu was the general name of local authority, Bing was a Chinese character means soldier, this kind of military system means that the army was organized on the base of the identity of soldiers and peasants. In peacetime, *Fu Bing* was peasant took military training in spare time, and after the outbreak of war, the peasant became soldier. So the basic of *Fu Bing system* was sufficient arable land. At the beginning of a new dynasty, arable land was enough to sustain the *Fu Bing System*, but after a long period of peacetime, the *Fu Bing System* will be destroyed on its base of land system. The Annexation of land grew severe while the population went up fleetly and the *Fu Bing System* would be replaced by former mercenary army system as a result. As we can see from the history, *Fu Bing System*, the exemplification of the nationalization of the armed forces in ancient China just exist in a period lasted 200 years from about 550 to 750 A.D. during which the Chinese population was not so huge.

So the huge population was such a tremendous obstructive issue for the Chinese nationalization of the armed forces at that time, as well as the insufficient plowland. As a result of the much more profound Social issues, the army reform was nearly an irredeemable dream.

5.2. “Federalism” without the foundation of Feudalism

Feudalism is a term difficult to state the precise meaning. The term was first used in the early modern period (17th century), in its most classic sense refers to

⁴⁵ Kang Youwei (1858–1927) was a Chinese scholar, noted calligrapher and political reformist. Kang was a strong believer in constitutional monarchy and wanted to remodel the country after Meiji Japan. He, along with his most famous student Liang Qichao, was important participants of a campaign to modernize China now known as the Hundred Days Reform. The reform introduced radical change into the stale Chinese government, and angered conservatives who feared losing power due to the influence of the reformers. See Zhou Hong and Zhu Hanhua, *China’s 20th Century Chronicle, Figures Volume*. Jinan, China: Shandong Renmin Publishing House, 2000, pp. 662-663.

⁴⁶ Kang Youwei, *Counterview about the Combined Province Constitutionalism with Zhao Hengxi*, Political Comment by Kang Youwei, Beijing, China: Chinese Book Company, 1981, pp.1081-1082.

a Medieval Europe political system comprised of a set of reciprocal legal and military obligations among the warrior nobility, revolving around the three key concepts of lords, vassals, and fiefs. It often occurs alongside Manorialism. But there is not a broadly accepted agreement of what it means in the world. Ultimately, the many ways the term feudalism has been used has deprived it of specific meaning, leading many historians and political theorists to reject it as a useful concept for understanding society.⁴⁷

As we could see from the Feudalism of medieval system, the lords, vassals and fiefs constitutes the basic economic and political system of the country. Once the political system was complete, the lord and vassal were in a feudal relationship with agreed-upon mutual obligations to each other. The economic system was based on the vassals' actual control of land which sustained the balance of power.

But Chinese history has nothing to do with the feudalism of medieval system. From Qin Dynasty (221B.C-206B.C.), the land was recognized as the property of monarch, China formed a new social system with a strong central government and several powerless local authorities. The country was divided into *Juns* and *Xians*⁴⁸ which were districts with little power of self-government at that time. And the Chief executives of all *Juns* and *Xians* were appointed by central government. This was a model of the dynasty after Qin Dynasty to design the local system of politics even if *Jun-Xian System* was replaced by other much more complex systems.

Besides Qin Dynasty's reformation of politics, it will be as well to mention Han Dynasty (202B.C-220A.D.) on the other hand. Emperor Wu of Han⁴⁹ was an important emperor of Han Dynasty who issued a decree named *Tuian Order* which permitted the landowners to demise their land to all offspring when he found that the land come into the possession of several silk-stocking gentry. The decree was a death warrant to the former land system and finally led to the collapse of Chinese fiefs.

After the reform of Han Dynasty, China went into a long period of centralism which lasts 2,000 years until now. The Dizhangzi⁵⁰ successive system was limited in the succession of the rank of nobility and official position. The property

⁴⁷ <http://en.wikipedia.org/wiki/Feudal>, 2008-9-17, 20:02.

⁴⁸ In the beginning of Qin Dynasty, There were 36 Juns according to the historian Si Maqian and there might be about 20 Xians of a Jun.

⁴⁹ Emperor Wu of Han (156-87B.C.) was the seventh emperor of the Han Dynasty in China, ruling from 141 BC to 87 BC. Emperor Wu is best remembered for the vast territorial expansion that occurred under his reign, as well as the strong and centralized Confucian state he organized. He is cited in Chinese history as one of the greatest emperors of the Han dynasty. Emperor Wu's effective governance made China the most powerful country in the world.<
<http://en.wikipedia.org/wiki/Emperor> >

⁵⁰ Ancient China's plural marriage was a systemic design validated only one woman as formal wife, and her first son was called Dizhangzi, who was the proper heritor.

including land was bequeathed to all sons and sometimes to girls. This system of succession gave birth to a large population with a small amount of land.

As a result of the particular social and political system distinct with the traditional feudalism, Chinese local government was in a powerless condition under the dominion of central government in the two thousand years. The only exception might be the stratocracy in period of civil war and the exception happened when the land was not enough to meet the need of most people.

As can be concluded from the information above, the vassals as the foundation of local politics power and fiefs as the foundation of local economic strength were absent, so did not the necessary condition of balance between the central and local which was the fundamental issue of Federalism.

After 1912 when the Republic of China was founded, the land system has not been reformed, so that each province was mostly constituted by a large group of peasants with a few lands each. The local people had hardly any actual influence on warlords' deed. This might be the reason for the absence of contributing public participation during whatever Constitutionalism.

5.3. "Federalism" without the understanding of public

The above-mentioned issues were about the absence of public participation in one aspect and in this section, we will go on discussing the absence of public understanding of the idea "Federalism".

The Chinese had been living in a close country until the outbreak of the first Opium War between China and U.K in 1840, and the first examine of western constitution system was carried through in 1905, consequently the study about the federal system was far from sufficient even to some famous politics scholar.

In one hand, the understanding of the purpose of constitutionalism and self-government was not on the right way. It was apparent on the explanations of the Parliamentarism which was the basic of constitutionalism as well as self-government.

Zheng Guanying⁵¹ was the first ideologist argued for establishing local parliament in China, but his purpose was not to develop the expression of people, but the solution of disorder caused by making an official out-of-town in power. Because of the method of selecting officials by imperial examinations, the official could not executive his own home town as to avoid nepotism. But Zheng Guanying argued, "The officials out-of-town are not less earnest than the native did they harmonize with the people. So it was indispensable to vote for officials

⁵¹ Zheng Guanying (1842-1922) was famous for his masterpiece named Warnings to a Prosperous Age which was first published in 1894.

and carry out self-government.”⁵² As to Zheng Guanying, the purpose of parliament was just substitution of imperial examinations. The opinion was also held by He Qi and Hu Liheng.⁵³

Kang Youwei who had another opinion wrote to Guangxu Emperor, “Voting in parliament exists in all western countries. If the councilors gather the opinions and do decision-making as to unify the 4,000,000,000 people’s minds, we will be invincible.”⁵⁴ In Kang Youwei’s opinion, the purpose of parliament was just to hold together the people.

Some scholar-bureaucrats also held the idea that the parliament was relevant to the idea of “reconstruction of *acient xiangting*”⁵⁵ by Gu Yanwu⁵⁶, who was a scholar during Ming Dynasty and Qing Dynasty. He had nothing to do with Parliamentarism, but he delivered his idea about the local system, “the country will be debilitated with too many high position officials and thrived with enough grassroots officials, because the high position officials are appointed to control the grassroots officials who is in charge of the people’s living hood. But the grassroots officials are too scarce to carry out their duties.”⁵⁷ And after taking the parliamentary system into account in late 1800s, the scholars of the time reckoned the Parliamentarism as a solution of the problems, such as Feng Guifen, Chen Zhi.

So the published comments on Parliamentarism were not based on democratic idea, but the solution in view of some practical issues. The approach process might be (1) Parliamentarism substitutes the imperial examination system; (2) Parliamentarism make the whole country drawing together; (3) Parliamentarism is the solution of top-heavy local system. As a result, the parliaments of late Qing Dynasty were not powerful political units, but advisory organizations. The parliaments were still tools of dominion by government, not the embodiment of self-government.

From another aspect, the Parliamentarism was neither recognized by the people even with the three goodish petitionary movements for the establishment

⁵² Zheng Guanying, *Warnings to a Prosperous Age*, Hundred Days’ Reform, chap.1, Shanghai, China: Shanghai Renmin Press, 1957, pp.55-58.

⁵³ See He Qi, Hu Liheng, *Comments about the New Deal*, Hundred Days’ Reform, chap.1, Shanghai, China: Shanghai Renmin Press, 1957, p.196.

⁵⁴ Kang Youwei, *Memorial to the Throne for Governing by Monarch and People and Holding Together the Manchu and Han Nationality*. Hundred Days’ Reform, chap.2, Shanghai, China: Shanghai renmin press, 1957, pp.238-240.

⁵⁵ *Xiang* and *Ting* were the Grass-roots organizations under *Xian*.

⁵⁶ Gu Yanwu, (1613-1682) was a Chinese philologist and geographer. He spent his youth in anti-Manchu activities, when the Ming Dynasty had been overthrown. He never served the Qing Dynasty. Instead, he traveled throughout the country and devoted himself to studies. <http://en.wikipedia.org/wiki/Gu_Yanwu>

⁵⁷ See Feng Guifen, *Counterview in Jiaofenlu*, Hundred Days’ Reform, chap.1, Shanghai, China: Shanghai Renmin Press, 1957, pp.8-10.

of parliament. Without the idealistic revolution like the Enlightenment in Europe, the people were still in condition of willing to be under the dominion of emperor or others alike. The people were still not ready to carry through self-government.

VI. EPILOGUE

As a sort of Federalism experiment, State Constitutionalism finally failed for several reasons, but we could not make a precise judge for the supporter's or the dissenters' deeds at that time because what they did are all unparalleled even until now. As a unique experiment of Federalism, the movement should never be forgotten or ignored by historian and Jurists, this was just the reason we did this review.

As could be concluded from the analyze we delivered above, the Constitutionalism was of course a sort of approach on the purpose of saving the nation from extinction, but the concrete method would be seriously considered on the other hand. We might have several fractions of idea during the reading of the history which was so ephemeral as to be memorized deeply. As the latest and only experiment of Federalism in China, it should never be forgotten by the Chinese, nor does the historian.

We might be inspired in several aspects in which the most critical issue might be the circumstance of reform. Constitutionalism might not be established in a circumstance of war. As illustrated by the history, constitution always came out after war, such as the U.S Constitution established four years after the War of Independence, Weimarer Verfassung proved after the First World War, etc. The facts depicted that a constitutionalism should not be intervened by military force. On the other hand, the checks and balances of government system will surely destroyed by the intervention of army. As a result, the western ideologists seldom take the army fore into account of government system in the precondition of armies' nonparticipation in politics. The State Constitutionalism was launched by the warlords but also failed for the same reason.

Another aspect of circumstance might be the culture circumstance. The Chinese people seldom have national identity; they just know the division of dynasty known from different emperors. As a result of strong local identity, dynasty identity and rare national identity, the experiment of federalism went to a weird form which took the governor of provinces as emperors in different provinces. The result led to the fail of State Constitutionalism to some extent finally.

Finally, we should remember the State Constitutionalism for its unique significance. As the only federal experiment in China which was still traditional, further study is needed as to get inspiration from the ephemeral events. This is

the uppermost reason we wrote about it.

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<http://en.wikipedia.org/wiki/Feudal>