

BUILDING CONSTITUTIONAL DEMOCRACY ON ORIENTAL FOUNDATIONS: AN ANATOMY OF SUN YAT-SEN'S CONSTITUTIONALISM

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Abstract:

Sun Yat-sen was one of the earliest and most influential political thinkers in East Asia who advocated constitutional democracy. How different was his model from its Western counterparts? Most of Sun's constitutional thought was built on blocks of ancient Chinese political philosophy, which might not be easy for outsiders to understand. Although his set of ideas was not short of criticisms, it was indeed creative and pioneering in late 19th and early 20th century China. How successful was Sun's controversial yet exciting prototype in integrating democratic constitutionalism with regionalized Oriental political traditions, which have for centuries developed in a course fundamentally different from that of the West?

Key words: History of Constitutional Thought, China, Sun Yat-sen, Five-Power Constitution, Confucianism

I. INTRODUCTION

1. Sun Yat-sen (1866–1925 AD), often called the “Father of Modern China”, was a Chinese thinker, political leader and medical practitioner, widely praised as a significant contributor to the collapse of China's two thousand year-old autocratic imperial system.¹ At the time of the establishment of Asia's first constitutional republic in 1912, the Chinese state encompassed a population as vast as four billion. Sun himself was briefly installed as the first President of the Republic of China for just six weeks, and later became a major founder of the Nationalist Party (Kuomintang or “KMT”).

¹ It has been argued that Sun's many attempts to weaken imperial rule in the late 19th century were largely unsuccessful. Moreover, he did not directly lead the Xinhai revolution, and was not involved in deciding the form of government to adopt in late 1911. It was his patriotic fame that won him support and respect, as well as a reason for him being chosen as the first president of the republic while he was not even in China that time. See Rana Mitter, *Modern China*, Oxford University Press, New York, 2008, pp. 29-30.

2. Sun's considerable volumes of works have heavily influenced the governmental structure of Republican China between 1928 and 1949², and Taiwan until the present day.³ The principal focus of this note will concentrate on the unique constitutional design presented by his writings, which was a true mixture of the very distinctive and even contradictory political and cultural norms of the east and West. Because of Sun Yat-sen's irreplaceable importance in modern Chinese political history, many earlier interpretations of his thoughts were highly influenced by ideological factors that may affect their accuracy.
3. This note will argue that even though Sun's constitutional theory carries some Western elements, it is by nature an indigenous Oriental theory of constitutionalism. Despite its regionalized tendencies, his program may also offer valuable inspirations for other countries, because it attempted to answer some of the central problems of the liberal democratic polity, such as the domination of the "best marketed" politicians of "low-calibre" over the best statesmen; the powerless of the electorate and the difficulties of promoting democratic and socio-economic reforms together.⁴ Sun offered solutions that were unconventional if not unfamiliar to the West, because they were largely rooted in the traditional ideas of Oriental philosophy, particularly, Confucianism. Following the analysis of this note, the interesting question to be asked is whether it is possible to construct a localized theory of constitutionalism on the foundation of non-Western political and legal traditions.
4. Sun's pragmatic project to blend certain Confucian political ideas with certain liberal democratic elements may not be truly satisfactory. In fact, he has been sharply criticized, such as being "disorganized and illogical" in his writings, and the arguments against him may not be false.⁵ However, due to Sun's originality and historical influences, his constitutional philosophy could still provide contemporary readers with valuable insights in the field of comparative constitutional history.

² The several constitutions of Republican China during 1928-1949, including the Plan of the Period of Political Tutelage, 1928; Provisional Constitution of the Republic of China (Period of Political Tutelage) 1931 and Constitution of the Republic of China 1947 were all drafted in accordance with Sun Yat-sen's political ideology and constitutional model. See Cao Chuan-lai, *Guozhijhua yu Bentuhua – Zhongguo Jindai Falutixi De Rengcheng [Internationalization and Localization: The Formation of the Modern Chinese Legal System]*, Peking University Press, Beijing, 2005, pp. 129-136.

³ For example, the Preamble of the Constitution of the Republic of China (1947) stated that the constitution itself was enacted in accordance with "the teachings of Sun Yat-sen in establishing the Republic of China." Article 1 stipulated that "the Republic of China, based on the Three Principles of the People, shall be a democratic republic of, by and for the people."

⁴ Audrey Wells, *The Political Thought of Sun Yat-sen: Development and Impact*, Palgrave, New York, 2001, pp. 200-201.

⁵ June Teufel Dreyer, *China's Political System: Modernization and Tradition*, New York: Pearson Longman, p. 56.

II. HISTORICAL CONTEXT

5. Sun Yat-sen's constitutional project was closely associated with the historical context that nurtured it. Origins of his theories could be traced back to the late 19th century when colonialism and imperialism penetrated into the very heart of the Chinese empire. At that time, China met successive failures in several major wars. The incapable and corrupted dynastic regime accelerated widespread poverty and social instability. Revolts and unrests were common – the Christian-inspired Taiping Rebellion affected the entire of Southern China.
6. As a young man, Sun attributed the Chinese state's weaknesses to the highly autocratic and rigid structure of the Manchurian Qing emperor's government (1644-1912 AD). The Manchurians were an ethnic group alien to the indigenous Han Chinese, but their regime, which conquered the Han people's Ming dynasty, inherited the legal and political system of the Chinese empire with a history dating back to 221 BCE. In the beginning of the twentieth century, Sun's actions against the existing imperial government became more explicit than ever. His corresponding political thought was largely ground-breaking, in the sense that it attempted to shake the very foundations of the traditional Chinese state and society – the supreme, nearly sacred emperor and his professional imperial bureaucracy which derived their legitimacy from Confucian texts. These were once considered as the untouchable pillars of the Chinese state, because even those who originally proposed to adopt a constitution for the imperial government did not argue for the total abolition of the institution of the emperor.⁶
7. Sun's personal background had profound impacts on his constitutional thoughts. He was born, in 1866, to an impoverished peasant family in a small village in the southern Guangdong province. Sun, as a teenager, received education from both the typical Confucian and Western-style liberal traditions. His American years enabled him to speak fluent English, build social linkages with the West and overseas Chinese, and be exposed to the democratic ideas of figures like Abraham Lincoln. Sun later pursued secondary and tertiary studies in the British colony of Hong Kong, where he earned a professional medical qualification from the Hong Kong College of Medicine for Chinese⁷. He subsequently practiced medicine for a short period, but later gave up and fully concentrated on revolutionary activities.
8. The nearly three hundred year-old Qing Dynasty collapsed dramatically after the Xinhai Revolution in October, 1911. However, the revolution itself at most exerted only an accelerating effect to the downfall of the imperial throne. Sun, who was traveling around the world seeking support that time, was dramatically selected as the first president of the new government. But

⁶ For example, see the legal theories of Kang Youwei (1858-1927) and Liang Qichao (1873-1929), who favored democratic reforms under the boundaries of constitutional monarchy. See X. H. Ma., *Zhongguo Falu Sixiangshi [A Study of the History of Chinese Legal Thought]*, Renmin University Press, Beijing, 2007, pp. 148-154.

⁷ The Hong Kong College of Medicine for Chinese, founded in 1877, later became today's Hong Kong University.

his presidency only lasted for less than two months, when the republican regime decided to reward Yuan Shikai, the powerful warlord in Beijing who forced the emperor to abdicate, as the next president. Yuan, who was neither a revolutionary nor a believer of democratic ideals, but more a military bureaucrat, quickly betrayed the republic by declaring himself “Emperor of the Chinese Empire” four years later, shortly before his death. The government in Beijing, although calling itself a republic, was in many ways a substantial continuation of the dynastic polity. The personnel of the new government could almost resemble that of the emperor’s court, because it was a “tradition” for mandarins would serve the successive government after the fall of the previous dynasty.⁸

9. Politics of China between the 1910s and 1920s, where warlords commanding military forces of different sizes segregated the country, could be characterized as simply chaotic. Sun had twice served as the generalissimo of the rival military “Constitutional Protection” (*hufa*) government in Canton (*Guangzhou*). The regime aimed to restore the original constitution abolished by the Beijing government. He was also reelected as the state president of another rival Republican government for a short period during 1921 to 1922 until a dramatic coup happened. Having experienced all of these ups and downs, the man spent a few years concentrating in elaborating ideas which were scattered in major works like *The Three Principles of the People*, *The Congress Manifesto*, *The Doctrine of Sun Yat-sen*, *The Plan for National Construction* and *The Summary of National Construction*. In 1925, Sun passed away from cancer at the age of fifty-eight, in the course of an unfinished talk with the Beijing republic government, and unfulfilled mission to end the nation’s unrest. Sun’s writings were glorified as the “sacred text” of the KMT political program, but his true legacy may be the populace’s admiration of a man who died before having realizing a positive future for his country.⁹
10. The KMT, later under Chiang Kai-shek, overthrew warlord rule and nominally unified the whole of China, when its armies captured Beijing in 1928. Until its defeat by the Communists in 1949, the constitutional model crafted out by Sun Yat-sen’s many writings was largely implemented into the political structures. The nationalist regime retreated to Taiwan since the 1950s still formally crystallized Sun’s ideas in its constitutional system. Sun’s ideas were not short of criticisms. The core of Sun’s political philosophy was a “broad and diffuse”¹⁰ set of ideas called the “Three Principles of the People”.¹¹ These ideas were formulated against different opponents,

⁸ Diana Lary, *China’s Republic*, Cambridge University Press, Cambridge, 2007, p. 50.

⁹ Diana Lary, *China’s Republic op cit.*, p. 76.

¹⁰ Kenneth Lieberthal, *Governing China (2nd Ed.)*, W.W. Norton, New York, 2005, p. 31.

¹¹ See Sun Yat-sen, *The Three Principles of the People*, Sanmin Publishing, Taipei, 2005. The Three Principles refer to nationalism (liberty of the nation and government of the people), democracy (equality of political rights and government by the people) and people’s livelihood (fraternity in society and government for the people) respectively. The notion of nationalism, for Sun transcends ethnicity and stands against imperialism. Sun’s democracy means constitutional government and the exercise of democratic rights. The people’s livelihood refers to achieving social equality and justice through certain redistribution methods. Sun’s socialism was a means to achieve the ideal state of society envisioned in Confucian philosophical classics, the “*datong*”

originally the emperor, and later, the warlords. It is nevertheless difficult to identify the content of Sun's ideas as it was always dominated by the practical tasks of finding allies and gaining support.¹² Some critics argued that his ideas were a hybrid of "ancient and modern, left and right, Chinese and foreign, authoritarianism and freedom" and believing in "democracy, but not right away."¹³ This may not be completely accurate, and Sun's doctrines undoubtedly need a more extensive reassessment, because as it is argued here, they may actually be consistent in at least two dimensions: always Chinese in substance, and Western sources were only injected as refinements.

III. AN OVERVIEW OF THE MODEL

11. A superficial glance at the constitutional model of Sun Yat-sen might be misleading. Rhetoric like the separation of the executive, legislative and judicial powers, the talk of republicanism and representative assemblies, the discussion of regional autonomy and party politics might deceive the lay reader that Sun's theory was foreign to traditional Chinese political theory, or at least, heavily influenced by Western ideas. Sun compared his Three Principles of the People with the French revolutionary slogan of "liberty, equality and fraternity", as well as Abraham Lincoln's "Government of the people, by the people and for the people."¹⁴ But it must be noted that Sun's philosophy was actually highly regionalized both in form and substance. Sun deployed Western terminologies and concepts to refine the pitfalls of the Chinese political tradition.

12. Sun was without doubt one of the foremost thinkers in modern China to give a predominant position to constitutional law and the legal system as a whole in the political establishment. He adopted a mechanical metaphor for the constitution – it is like a machine that strikes a balance between the apparent conflicting values of liberty and rulership. The pursuit of the rule of law is at the heart of his thought.¹⁵ Sun observed that the law is fundamental to the survival of democratic politics, and it is essential to protect human rights, prohibit bandits, and resolve conflicts.¹⁶ Since these ideas were virtually non-existent at that time, his contemporaries could not really see how significant it is.¹⁷ The following metaphor was also centre to Sun Yat-sen's political theory. Sun believed that the shareholders of a factory should hold the power, but they lack administrative techniques. Thus, administrative power should be vested in the administrative talents, who do not possess

society. The Principles are still embraced by the constitution used in Taiwan. However, the Communist and Nationalist Parties, both claiming to be the successor of Sun's unfinished revolution, have very different interpretations of the doctrine.

¹² Kenneth Lieberthal, *Governing China (2nd Ed.)*, *op. cit.*, p. 132.

¹³ Ross Terrill, *The New Chinese Empire*, Basic Books, New York, 2003, p. 106.

¹⁴ Chu-yuan Cheng, "Introduction" in Chu-yuan Cheng (edit.) *Sun Yat-sen's Doctrine in the Modern World*, Westview Press, London, 1989, p. 15.

¹⁵ Z.W. Ma., *China Law Thinking*, Sun Yat-sen University Press, Guangzhou, 2007, pp. 377-378.

¹⁶ Cited in Z.W. Ma., *China Law Thinking*, *op. cit.*, pp. 377-378.

¹⁷ Wang Sheng., *The Thought of Dr. Sun Yat-sen*, Li Ming Culture Enterprise Co., Ltd, Taipei, 1981, p. 204.

power but are able to run the factory expeditiously. Sun applied this analogy to the concept between the people and the public administration. Some significant strands of thoughts flowing through the writings of Sun included the classification of political force into the force of liberty and the force of order maintenance.¹⁸ While the people ought to possess political power, administrative power is to be given to a “Five-Power Government”.

13. The five powers refer to the additions of the independent branches of public examination and supervisory impeachment to the executive, legislative and judicial. Sun briefly expressed the working mechanisms of the center-piece of his constitutional ideology, the “Five-Power Constitution” in an essay so named, that “after the enactment of the constitution, the people from each prefecture should directly vote for a president in order to form the Executive Council (*yuan*), which exercises the executive powers of the government. They should also elect their representatives to form the Legislative Council. The heads of the Judicial, Examination and Supervision Councils should be appointed by the president with consent of the Legislative Council.”¹⁹
14. All of the five Councils should be responsible to the state sovereign authority, the National Assembly. According to Sun, “the Supervision Council should have the power to advice to the National Assembly to recall any government officials on the basis of misconduct. The major responsibilities of the National Assembly are to amend the Constitution and adjudicate the misconduct of public servants. All members of the National Assembly and the five councils should be separately examined by the Examination Council in order to be qualified for their posts.”²⁰
15. It is Sun’s belief that only the introduction of a Five-Power Constitution could eliminate the shortcomings of the three powers within the Western doctrine of separation of powers. In his view, the separation of executive, judicial and legislative powers are incomplete in two respects, firstly, the executive appointment of bureaucrats and mere election of lawmakers lack a serious and transparent examination system, which limits the possibility of having the most talented to serve for the state. This is largely an elitist meritocracy viewpoint having roots in the traditional Chinese political system, which will be discussed later.
16. He was particularly resisting to the American example where the right to be elected is often constrained by factors like financial disparity among candidates, and corruption in election.²¹ He argued that the United States congress was “full of unwise and ignorant people”²², and the appointment in

¹⁸ Wang Sheng., *The Thought of Dr. Sun Yat-sen*, op. cit., p. 205.

¹⁹ Sun Yat-sen, *The Plan for National Construction and The Summary of National Construction*, Sanmin Publishing, Taipei, 1968, p. 46.

²⁰ Sun Yat-sen, *The Plan for National Construction and The Summary of National Construction*, Sanmin Publishing, Taipei, 1968, p. 46.

²¹ Sun Yat-sen. cited in X.H. Ma., *Zhongguo Falu Sixiangshi [A Study of the History of Chinese Legal Thought]*, op. cit., p. 173.

²² Sun Yat-sen, “Speech delivered at the Establishment Anniversary Meeting of the Tokyo People’s Paper” in Sun Yat-sen., *The Selected Works of Sun Yat-sen*, Vol. 1, Chung Hwa Publishing, Beijing, 1981.

the executive wing was often determined by connections and personal will of the serving president. Sun believed that this would result in bribery and bias in the selection of government officials. He believed that government ministers should aim at serving the people instead of agreeing with certain vested political interests. Since state examinations were not independent from the executive, selections and appointments of the public servants would be subjected to the arbitrariness of ruling political parties. In his view, this would lead to the production of unsatisfactory bureaucrats, who would only serve the party they are loyal to.

17. On the other hand, Sun regarded the legislature's possession of impeachment powers, that is, the powers to recall government officials, a cause of legislative hegemony over the executive government. Since the functions of recalling and supervising state officials were both installed in the legislature, lawmakers could easily abuse their extensive powers. Both these shortcomings could severely hamper the quality and efficiency of public administrative services. The power to adjudicate upon officials should rest with an institution independent from others, including the legislature. This led to his formulation of an independent impeachment organ, the Supervision Council. The Supervision Council should not only check misconduct and misbehavior in national politics, rectify mistakes, but also improve the incapacities of the republican polity.

18. The entire notion of a Five-Power Constitution is based on the idea of dividing national power into "political power" (*zhengquan*) and "administrative power" (*zhiquan*). Although this concept is in many ways original, especially in modern Asian political thought, it is in effect, quite similar with the American theory of identifying a dichotomy between politics and public administration.²³ "Political power" means the citizenship's power to control the government, through the channel of the four powers of election, recall, initiation of laws and referendum. In contrast, "administrative power" refers to the power of the government. This power ought to be exercised through the five organs of executive, legislature, judiciary, examination and supervision. To sum up, the dichotomy of "political power" and "administrative power" was elaborated as the division between "*quan*" (people's power and rights) and "*neng*" (government's capacity). To distinguish these two powers is the first task to building a state where the

²³ Sun's theories perhaps coincide with the American public administration theory of political control of bureaucracy. The heart of this thought begs the question, why should the bureaucracy comply with the law and the preferences of the lawmaker? Its basic objective is to explain and ensure how administration can be accountable and subordinate to democratic institutions. Thus, it maintains, conceptually and empirically, a dichotomy between politics and administration. Former U.S. President Woodrow Wilson (1856-1924 AD) was an earlier proponent of this theory when he was still an academic. Sun's theory also creates a dichotomy between politics and administration, and administration should obey politics. Generally, the political control of bureaucracy has been criticized by scholars like Waldo as not realistic and fails to recognize that politics and administration are in fact, inseparable. It will be interesting to investigate whether Sun's thought suffers from this deficiency also. Generally, see H. George Frederickson and Kevin B. Smith, *The Public Administration Theory Primer*, Westview Press, Boulder C.O., 2003, pp. 15-40.

people are in power, and where the government is capable. It is Sun's ambition to strike a balance between the two.

19. The process of materializing the rights and powers of the people could be further separated into the two tiers of central and local governments. On the national level, the powers of election, recall, initiation of laws and referendum should be exercised by the delegates of the National Assembly on behalf of the people. This construction may probably be a consequence of having considered the difficulties of enabling China's huge population to participate in politics. However, in local areas, these four dimensions of political power should be exercised directly. Sun advocated that only the protection of these four could the people directly manage their government.
20. Given that the Five-Power government possesses the vital powers of administrative governance, it should be characterized as an "all-rounded capable" (*wanneng*) government. In this respect, the members of the government must be experts in their own areas. Only an approach as elitist and meritocratic as adopting the Examination Council a distinctive branch of government could a professional technocracy be formed to exercise the administrative power to each greatest potential.
21. Above all, we can see that Sun Yat-sen's constitutional theory is not static. It tends to regenerate itself in the light of historical reality, and his efforts to build a better political philosophy in one of the most instable periods of modern Chinese history should be acknowledged.²⁴

IV. AN ORIENTAL CONSTITUTIONALISM?

1. Traditional Chinese Philosophy

22. Sun's constitutionalism reflected many core elements of Chinese philosophy. One of his highest principles, "public justice for all in the world" (*tianxia weigong*) was originated in the teachings of Confucius, in which he praised as recognizing certain civil rights.²⁵ His theories embodied a "pervasive humanness"²⁶ which was quite similar with the Confucian concept of "ren". But he believed that a restoration of Chinese traditional virtues and wisdom would not be sufficient, not until the Chinese people could catch up and surpass the West in scientific development.²⁷ One of his famous analogies was that were democracy implemented, the 4 billion of populace would all be as powerful as the previous emperors.²⁸ Apparently this was targeted to an audience who had been so used to the concept of having an imperial authoritarian ruler over the country.

²⁴ C.T. Hsieh, *Sun Yat-sen's Constitutional Thought*, Wunan, Taipei, 1999, pp. 229-230.

²⁵ Sun Yat-sen, *The Three Principles of the People*, *op. cit.*, p. 81.

²⁶ Kinderman, G.K., "An Overview of Sun Yat-sen's Doctrine" in Chu-yuan Cheng (edit.) *Sun Yat-sen's Doctrine in the Modern World*, *op. cit.*, pp. 74-75.

²⁷ Wang Sheng., *The Thought of Dr. Sun Yat-sen*, *op. cit.*, p. 41.

²⁸ Sun Yat-sen, *The Three Principles of the People*, *op. cit.*, p. 149.

23. However, at the same time, he advocated that the ability of the collective population, were nothing more than Liu Chan/ Ya Dou, the incapable emperor of the Shu Han State in the Three Kingdoms period (220-280 AD). The republican government, however, was compared with Zhuge Liang, the mystically wise prime minister and genius military strategist of Shu Han. Zhuge Liang represented a category of elites who “knows and understands in advance”. This may imply that while the sovereignty of the people and their residual four powers ought to be upheld and protected, in practice, the position of the people is actually similar to that of a ceremonial head of state in a constitutional monarchy or parliamentary republic. True power was intended to be wielded by experts on behalf of the populace.
24. Sun classified people into those who are alert and sensitive (to national affairs); those who are less alert and less sensitive; and the majority of those who are never alert and never sensitive. Thus, he believed that constitutional democracy could never be possible unless the stages of “military administration”, “political tutelage” have been successfully endured, which were supposed to educate the people with democratic doctrines and teaching them how to exercise their rights and powers. Therefore, in Sun’s vision, the sovereign (the people) should not directly manage state affairs, which should instead be placed in the hands of the government. It is arguable that this vision echoed with some portions of the ancient Legalist philosopher Han Feizi’s (280-233 BCE) political theory, who advocated that while the sovereign should retain the powers of enacting laws and appointment and dismissals of officials, he should not rule the population directly. Instead, the best statecraft refers to administering ministers effectively.
25. In Sun’s analysis of the five powers, emphasis was placed on how the examination and supervisory powers ought to be separated as independent branches of government to check and balance the other powers. However, Sun did not sufficiently discourse on how the executive, legislative and judiciary should interact with each other. But it was evident that these three branches were actually designated to be three specialized departments within one organization (the central government) and dependent on each other. Sun’s understandings of the role of the judiciary link with his ideas about the role of law in society. He believed that the social instability present in the country was a result of internal and external impacts on the old imperial political structure, which led to the weakening of the Confucian social order of moral virtues. As we know, these virtues and rituals, the *li*, were the building blocks of social norms that controlled nearly all aspects of social life in traditional China. Law has always been a politicized instrument manipulated to supplement this social order, and Sun believed that it was useful to restore stability to the Chinese state.
26. The “examination power” as he referred to, was a long established institution in the imperial Chinese government, dating back to at least the Sui Dynasty (581-618 AD) where open examinations on Confucian texts were held in order to select a professional and relatively independent bureaucracy. Moreover, the “impeachment power” was also inspired by the imperial

agency called the Censorate, established as early as in the Qin Dynasty (221-207 BCE), which advises, checks and recalls government bureaucrats and sometimes even the emperor. Sun believed that these are the precious treasures of ancient Chinese legal-political philosophy and they were nevertheless invaluable to China even in modern times.

27. He praised the members of the Censorate, “even their ranks were low, their jurisdiction still encompassed the wide array of officials ranging from the Prime Minister to the smallest officers, making them fear of the consequences of breaking the law. No matter what physical penalty or criticisms they face, these brave and courageous men will always endure.”²⁹ The supervisory institutions of the imperial past could to a certain extent, be considered as an embodiment of the intellectual class’ defense of imperial morality.³⁰ Probably this could have enlightened Sun to believe that an independent impeachment branch could represent a sense of justice in the republic.³¹
28. Many strands of thought of Sun revealed patterns of the ancient Chinese concept of *yin* and *yang*, which formed the cosmological basis of mainstream philosophies like Confucianism and Daoism.³² The ancient Chinese believed that a balance must be struck between the *yin* (literally “brightness”) and *yang* (literally “darkness”), otherwise, prevalence of either side will cause undesirable events. However, they are not simplistically against each other, for their competition forms the basis of their cooperation, and either the *yin* or the *yang* could not survive without each other.³³ In Sun’s theories, notable examples include the balance between the political and governing powers, liberty and rulership and people’s rights and government influence. Indeed, political and administrative powers must not only be separated but must also be kept in equilibrium.³⁴ With the four powers and rights of the people and the five powers of the government effectively exercised and maintained on equal weights, democratic problems may truly be resolved and the public administration will have a clearer agenda to follow.³⁵ The objective of the Five-Power Constitution is to maintain a balanced harmony between the people and their government, so as to establish a powerful and efficient democratic system which realizes its full potential.

²⁹ Sun Yat-sen, *The Completed Works of Sun Yat-sen*, Vol. I, Chung Hwa Publishing, Beijing, 1986, pp. 444-445.

³⁰ Niu Tong, *A Study of Sun Yat-sen’s Constitutional Thought [Sun Zhong Shan Xian Zheng Min Zhu Yan Jiu]*, Huaxia Publishing, Beijing, 2003, p. 161.

³¹ Niu Tong, *A Study of Sun Yat-sen’s Constitutional Thought [Sun Zhong Shan Xian Zheng Min Zhu Yan Jiu]*, *op. cit.*, p. 161.

³² JeeLoo Liu, *An Introduction to Chinese Philosophy: From Ancient Philosophy to Chinese Buddhism*, Blackwell Publishing, Malden, MA, 2006, pp. 5-7.

³³ JeeLoo Liu, *An Introduction to Chinese Philosophy: From Ancient Philosophy to Chinese Buddhism*, *op. cit.*, p. 7.

³⁴ Wang Sheng., *The Thought of Dr. Sun Yat-sen*, *op. cit.*, p. 205.

³⁵ Sun’s Speeches on “The Necessity for Adopting the Five-Power Constitution” and “Using Five-Power Constitutional System to Correct the Defects in the Three-Power Constitutional System” delivered in 1996.

2. Cultural Relativism

29. Sun was unwilling to accept the idea of transplanting Western constitutional institutions into the Chinese context. He admitted that “the written constitution of the United States and the unwritten constitution of Britain are the best of their kind; but it is impossible for China to adopt the British model, and it is unnecessary to follow the Americans.”³⁶ He elaborated that the problems of democracy had not been completely solved in foreign, especially Western countries. Blindly cloning foreign constitutional systems would be undesirable.
30. Based on the wish to reconstruct national pride for a country was severely weak for decades, Sun Yat-sen seemed to have advocated a version of cultural relativism. He suggested that, “the Europeans and the Americans have their own societies, and we have our own. We should consider the characteristics of our own society on the one hand, and take into account of global trends on the other, in order to reform ourselves and advance our own country. If we do not do so, our country will wither and our nation will be endangered.”³⁷ The Five-Power Constitution is “not only what never achieved by any national institutions, but also unnoticed in academic writings – it is a groundbreaking political system.”

3. Rejection of Common Constitutional Ideas of the West

31. Sun favored neither Western style representative democracy nor the separation of powers. Instead, his constitutional theory was influenced more by some of the traditional ideas of Oriental philosophy, particularly, Confucianism; and contrary to many common beliefs, also from the traditional imperial system which he overthrown. A major line of Sun’s thought was his substitution of the concept of the sovereignty of the people in place of the original notion of sovereignty of the emperor. This was followed by his modifications of the old system under this logic.
32. Sun Yat-sen’s Five Powers Constitutional Government is fundamentally different from the classical and influential thought of the Baron de Montesquieu (1689-1755 AD). Moreover, he did not want the Legislative Council to be a parliament-like assembly.³⁸ As part of the technologicistic central government, the Legislative Council should instead function as an association of legal experts formulating and producing legislations. It is mandated to be a group of lawmakers in their purest form. Political debates were not supposed to occur there. The National Assembly is supposed to play what is normally the role of a legislature.
33. The principal approach to limiting government power is in deep contrast between Montesquieu and Sun. Montesquieu and those influenced by him contended that checks and balances between the executive, legislative and

³⁶ Sun Yat-sen, “The Three Principles of the People and the Future of China” in Sun Yat-sen, *The Selected Works of Sun Yat-sen*, Vol. 2, *op. cit.*

³⁷ Sun Yat-sen, *The Completed Works of Sun Yat-sen*, Vol. 9, *op. cit.*, p. 320.

³⁸ C.A. Chang, *The Constitution and Government of ROC*, Wunan, Taipei, 2006, p. 271.

judiciary could prevent the abuse and over centralization of power. The ends of the separation of powers were to protect the people's liberty. For Montesquieu, power itself is the best way to limit the abuse of power.³⁹ Liberty will best be protected if legislators make the laws, the executive government administers them, and the judiciary resolves conflicts or punishing violators of the law independently.⁴⁰ However, Sun, premised on his doctrine of dividing political power and administrative capacity, believed that only the people could legitimately limit government power in a direct manner. This meant that the elitist technocratic public administration should carefully divide its duties and responsibilities among its various branches. Therefore, in place of checking and balancing each other, the executive, legislature, judiciary, examination and supervisory councils should adopt a well-planned work division and specialization. The overwhelmingly common objective of the five branches would lead to a government which is capable in advancing the welfare of the people.

34. Sun made it clear that he favored "direct democracy" as opposed to indirect democracy. This entailed that he was not a supporter of the liberal representative democracy. He criticized liberal democracy as only capable of granting its people the rights of election and being elected.⁴¹ The crux of his charges against representative politics was that elected politicians actually usurp the power of the people by exclusively making decisions in national affairs. Although he put forward such an argument, he did not really construct a theory that adequately explained his belief of "direct democracy". This left a huge area of debate.

4. Collectivism over Individualism

35. Unlike many of his contemporaries, Sun did not believe in individual freedom. He blamed the lack of unity among Chinese people on the reason that they had in fact, enjoyed "too much freedom".⁴² Too much individual freedom, would, according to him, weaken cohesion in a country. To address this problem, Sun believed that the people should be unified into strong associations. While individual freedom should not be praised, he argued that the goal of "national freedom" should be totally pursued.⁴³ Only the attainment of this form of communitarian freedom could the Chinese state be strong and powerful, free from the interferences of foreign powers; but during the process towards this goal, individual freedoms have to be suppressed.⁴⁴
36. For Sun, individual interests are subjected to collective interests, and should be suspended whenever necessary. This may indicate that Sun was never a believer of liberal individualism. Instead, he was more a proponent of Asian-

³⁹ C.W. Peng (editor), *Constitutional Democracy and Civil Societies*, Wunan, Taipei, 2008, pp. 231-232.

⁴⁰ Sun Yat-sen, cited in Yu-long Ling, "The Doctrine of Democracy and Human Rights" in Chuyuan Cheng (edit.) *Sun Yat-sen's Doctrine in the Modern World*, *op. cit.*, p.186.

⁴¹ Sun Yat-sen, *The Three Principles of the People*, *op. cit.*, p. 133.

⁴² Sun Yat-sen, *The Three Principles of the People*, *op. cit.*, p. 100.

⁴³ Sun Yat-sen, *The Three Principles of the People*, *op. cit.*, p. 101.

⁴⁴ Sun Yat-sen, *The Three Principles of the People*, *op. cit.*, p. 101.

style collectivism. These ideas penetrated his constitutional theory, where the constitutional system was supposed to realize a vague concept of collective rights of the people through an empowered government.

V. CONCLUSION

37. Sun Yat-sen's vision of constitutional democracy was firmly grounded on Chinese culture, history and philosophy. It is in many ways, fundamentally indigenous, while recognizing the democratic idea that the people, as a whole, instead of any superior individual, should possess the state's sovereignty and powers. It was an unfinished attempt to invent a constitutional theory which truly belongs to the Chinese, instead of just transplanting a foreign political system to the state.
38. Sun was pragmatic in designing his model. He practically chose those traditional doctrines that were widely held by his compatriots as morally superior to reconstruct a theory compatible with the notion of democratic constitutionalism. He constantly attacked foreign models of constitutional politics for the compelling reasons within that historical context to strengthen national pride in a country of unrest, and to distance himself from the liberal individualism which he disliked. Sun neither favored the representative democracy nor the separation of powers. His constitutional program shared the same intellectual ingredients with many of the traditional ideas of Oriental philosophy, particularly, Confucianism. It was a reformatory proposal striving to redesign many of China's major traditional state institutions to accommodate the modern principles of democracy.
39. Sun's constitutional thought had consistently based its theories on Eastern traditions and added Western elements only when they were useful to the Chinese environment. This is still relevant to constitutional democratization in non-Western contexts. Sun Yat-sen's Oriental constitutionalism definitely needs reassessment.