



探寻宪政之路

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An Exploration of Constitutionalism

*A Study on the Constitutional Thought
and Practices of Mr. Sun Yat-sen*

李默海 ● 著



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序



20世纪是中国由传统向现代转型的100年，中国人试图建设一个不同于封建王朝的新型现代民族国家，其中，实现宪政就是中国现代民族国家建设的重要内容之一。

从清朝末年起，中国人民一直为建立真正的民主宪政而奋斗。当时，先进的中国人为了自强救国，主张在中国“伸民权、争民主、开议院、定宪法”，实行西方式的宪政，先后发动了戊戌变法、辛亥革命等一系列民主宪政运动，揭开了中国走向民主宪政的历史进程。但是，在半殖民地半封建的中国，没有也不可能实现真正的民主宪政。从清朝末年到国民党反动政府，先后制订过十几个不同名目的“宪法”，无不有立宪之名而无宪政之实。清政府颁布的《钦定宪法大纲》和《十九信条》盗用“宪法”的形式确认“皇帝神圣不可侵犯”，根本谈不上宪政。辛亥革命推翻了封建帝制，产生了中国历史上第一个资产阶级民主共和国的宪法，但革命果实被军阀所窃取，宪政最终成为泡影。此后的北洋军阀政府和蒋介石国民党政府虽然都颁布所谓“宪法”，抄袭西方宪政的一些内容，甚至规定“人民之权利”，但实际上搞的是军阀独裁，不给人民以丝毫的权利，因而全都是伪宪政。

真正的宪政是与中国共产党领导的人民民主革命联系在一起的。中国共产党在其诞生之初就举起了“争自由，争人权”的旗帜，并在其领导的根据地建立民主政府，着手实行由人民当家作主保障自己权利的人民民主宪政。如人民革命根据地不同时期颁布的《中华苏维埃共和国宪法大纲》、《陕甘宁边区施政纲领》、《陕甘宁边区宪法原则》等宪法性文件，都规定了人民民主的制度和保障人民权利的内容，并在实践中得到了认真的实施。特别是

障人权”的原则。

人权入宪是人民民主宪政的重大发展。尊重和保障人权是宪政的根本目的和最高原则，是宪法和宪政得以存在和发展的前提、基础和归宿，是衡量是否真正实行宪政的根本标准。新中国成立以来，国家虽然为促进和发展人民的各项权利从制度、政策和物质保障等各方面作出了长期不懈的努力，但是，先后颁布实施的《共同纲领》和四部《宪法》都没有使用“人权”概念，而只使用“公民的基本权利”概念。虽然从实际内容来看公民权利与“人权”概念并无二致，但是，由于宪法中没有“人权”概念和原则，使得我国的人权法律保障和人民民主宪政建设显得不够完整。此次修宪引入“人权”概念，用“国家尊重和保障人权”的原则来概括、提升和统摄宪法关于“公民基本权利”的规定，突出了人权原则，并使人权、民主、法治三项原则名副其实地结合起来，从而完善了人民民主宪政的内涵。

在近现代中国致力于宪政追求的众多历史人物和主张中，孙中山是个代表性人物。辛亥革命后，孙中山逐渐形成了以“三民主义”、“五权宪法”、“民权”、“权能理论”为核心的宪政图式。这一图式集中体现在1921年他拟定《国民政府建国大纲》一文中，其具体内容为：一、国民政府本革命之三民主义、五权宪法，以建设中华民国。二、建设之首要在民生。故对全国人民之食衣住行四大需要，政府当与人民协力，共谋农业之发展，以足民食；共谋织造之发展，以裕民衣；建筑大计划之各式舍，以乐民居；修治道路、运河，以利民行。三、其次为民权。故对于人民之政治知识能力，政府当训导之，以行使其罢免权，行使其创制权，行使其复决权。四、其三为民族。故对于国内之弱小民族，政府当扶植之，使之能自决自治。对于国外之侵略强权，政府当抵御之；并同时修改各国条约，以恢复我国平等、国家独立。五、建设之程序分为三期：一曰军政时期；二曰训政时期；三曰宪政时期。

这个建国大纲，具有总体规划性质。其立国之本是“三民主义”和“五权宪法”；宪政实施的具体内容依次为“民生”、“民权”、“民族”，人民的利益被置于中心位置；实施宪政的过程实行“三步走”战略，由“军政”、“训政”而最后进入“宪政时期”。

孙中山认为，实行民主宪政首先必须实行军法之治，此即为军政时期。

摘 要

孙中山不仅是伟大的革命先行者，而且是中国现代国家的设计者和建设者，其宪政思想是现代国家建设在政治层面上的具体体现。

近代中国救亡图存的需要催生了孙中山宪政思想的产生。面对西方异质文明的冲击，传统中国的文化普世主义出现严重危机。在这种文化普世主义出现严重危机的情况下，中国现代民族主义开始萌芽并进而以不可遏制的势头成为中国主流的意识形态。民族主义诉求于政治，就是建立一个现代意义上的民族国家。孙中山的宪政思想就是在这一背景下产生的。只有结束满清的君主专制制度，才能在中国建立一个现代立宪制国家。以康有为、梁启超为代表的维新派和以孙中山、章太炎为代表的革命派都想要在中国创建一个现代立宪制国家：维新派师法英国、德国、日本，想要在中国创建一个君主立宪制的国家；而革命派效法美国，想要在中国创建一个民主共和国。两派之间不同的是，表现在创建现代立宪制国家的途径与方法上：维新派采取的是和平改良的渐进办法，革命派采取的是激进的革命方法。戊戌维新运动和清末新政的失败证明：在近代中国，用自上而下改良的方法来建构现代立宪制国家根本办不到。因此，孙中山不得不采用体制外革命的办法来建构现代立宪制国家。随着三民主义的诞生，孙中山的宪政思想也逐渐产生与完善。孙中山宪政思想的理论基础是其创立的三民主义。

要实现真正的民权主义，就要建立真正的民主共和国。为此，必须设计出体现国家民主共和的宪政制度。在民权主义的指导下，孙中山提出了系统而完整的宪政思想，主要内容包括：权能分立的政治学原理、中西结合的五权宪法思想、民权初步、地方自治、政党政治和建国三阶段论等。其中，五

孙中山建国三阶段论的影响，又反映了20世纪30年代的中国社会建立一个强有力的政治权威的历史要求。国民党没有能够通过“训政”而达致宪政。国民党“训政”失败的原因很多，客观分析评价国民党“训政”失败的原因，对历史是一个公正的交代，对中国现代国家的建设也是一个很好的借鉴。孙中山建国三阶段论的落脚点是实行宪政，还政于民。国民党并没有真正实行宪政的诚意，尽管制宪国大颁布了《中华民国宪法》，国民党也“仿行”了宪政，但实质上仍是国民党的一党独裁，“行宪”不过是一场骗局罢了。

中国共产党是孙中山宪政思想的真正实践者。新三民主义与共产党的最低革命纲领是一致的，因此，新三民主义也就成为共产党宪政实践的理论基础之一。在第二次国内革命战争时期、抗日战争时期以及解放战争时期的革命根据地，共产党都忠实地实践了孙中山的人民民主的宪政思想。当然，中共在第二次国内革命战争时期的宪政实践是工农民主专政性质的，与苏联创立的社会主义宪政是同一类型。中共在抗日战争时期的宪政实践，尽管带有很强烈的人民民主性，但它和土地革命时期的工农民主专政不是同一类型，它是共和国宪政性质的。中共在解放战争时期的宪政实践，在性质上基本属于苏联社会主义宪政范畴。不论是在土地革命时期、抗日战争时期还是解放战争时期，中共宪政实践的目的只有一个，即为了新民主主义革命的胜利，从总体上看，它们都是新民主主义宪政性质的。新民主主义宪政思想最终还是要向人民民主专政的宪政思想转变，这一点与孙中山的共和民主宪政思想有点区别。由于共产党真正地实践了孙中山的人民民主的宪政思想，所以共产党也就得到了中国广大人民群众拥护，共产党打败国民党，建立人民民主专政的国家政权也就成为必然的了。

回顾孙中山宪政思想的产生、内容、变化、实践，不仅仅是对历史的一个交代，还历史本来的面目，更重要的是要以此来总结近现代中国宪政建设的经验与教训，为当代中国的宪政建设提供借鉴。众所周知，我们国家还不是一个完全意义上的宪政国家，而宪政又是中国社会主义政治文明建设的依归。所以，如何进行当代中国的宪政建设就成为政治文明建设的重中之重。怎样进行当代中国的宪政建设？在总结孙中山宪政思想的产生、内容、变化以及国共两党对孙中山宪政思想实践经验教训的基础上，结合中国的国情，

ABSTRACT

Mr. Sun Yat-Sen was not only a great forerunner of the Chinese revolution but also a designer and constructor of the modern China. His thought of constitutionalism was a specific political embodiment of the construction of a modern country.

Sun Yat-Sen's thought of constitutionalism was born in the exigent moment of saving the nation from subjugation. The Universalism of traditional Chinese culture was facing a serious crisis when the western heterogeneous civilization deluged into China. Under such a condition, Chinese nationalism in the modern society came into being and became the mainstream ideology by a tendency which cannot be contained. What the nationalism required of politics was to establish a modern nationalist nation. Mr. Sun's constitutional thought was developed in such situation: only after the absolute monarchy of Qing Dynasty was overthrown, can a modern constitutional monarchy in China be established. Both the reformists represented by Kang You-wei and Liang Qi-chao and the revolutionaries represented by Sun Yat-Sen and Zhang Tai-yan wanted to found a modern constitutional country in China. However, the reformists wanted to make China a constitutional monarchy modeled after Britain, Germany and Japan while the revolutionaries wanted to make China a democratic republic after the United States. Their dissidence lied in the approaches of realizing their goals: the reformists adopted a method of innovation advanced gradually in peace while the revolutionaries preferred a way of radical revolution.

restoration of the monarchy and the tangled warfare between warlords later urged Mr. Sun to change his views of party politics. He reset the Chinese Revolution Party on which he laid the foundation of the Kuomintang; afterwards, he claimed to “found the nation by the party” and “administer the nation by the party” (these two propositions merged into one in his later years). This transformation in thoughts was caused by his new understanding in the approaches to found the nation rather than the influence of the Soviet Communist Party led by Lenin.

The chaos and disorder of the Republic administration made Mr. Sun realize that China had to go through a thorough reconstruction. The fundamental resolution of this problem was to place the party above the nation, namely, to “found the nation by the party”. We can analyze this transformation of Mr. Sun’s thought with respect to the primary mission of national construction of the modern China. The development and implement of Sun’s thought of ‘founding the nation by the party’ seemed to be a setback in the advancement of realizing constitutionalism in China. However, there was no real modern nationalistic government to ensure a sovereign foundation for the democratic constitutionalism at that time. Therefore, Sun’s thought of ‘administering the country by the party’ was still a rational choice. These two thoughts constituted the main part of Sun’s theory of constitutionalism and cast a profound influence on both the Kuomintang and the Communist Party in realizing constitutionalism in China in the 20th century.

“The political tutelage” was the main activity of Kuomintang in practicing Mr. Sun’s constitutional theory. The period of Kuomintang’s military administration in which Sun’s thought of “founding the nation by the party” was put into practice, was very short. Actually, during this time, Kuomintang didn’t complete thoroughly the task of founding of the nation: externally, they did not get rid of the control on sovereignty by foreign forces and obtain independence; internally, the possibility of establishing separate regimes by local warlords was still in existence, the communist party's agrarian reform was

government of the Soviet Union. CCP' s practice of constitutionalism in the Anti-Japanese War was republic constitutional, though it had a strong democratic feature, which was also different from the government the democratic dictatorship of workers and peasants in the agrarian revolution war. The constitutional practice of CCP in the Liberation war was the same kind with the socialism constitutionalism of the Soviet Union. No matter in the Agrarian Revolution War, Anti-Japanese War or the Liberation War, there was only one purpose of Chinese Communist Party in implementing constitutionalism, namely, for the victory of the New Democratic Revolution. Generally, all CCP' s practice of constitutionalism at these times all had features of the new democratic constitutionalism. The new democratic constitutionalism was bound to transform into the people's democratic dictatorial constitutionalism, which is different from Mr. Sun' s republican democratic constitutionalism. CCP truly implemented Mr. Sun' s thought of people's democratic constitutionalism so she obtained the support of the vast mass and consequently, defeated the Kuomintang and establishing of the people's democratic dictatorship became inevitable.

Reviewing the production, content, improvement and practice of Mr. Sun Yat-Sen' s thought of constitutionalism is not merely a historical problem revealing the truth of history, but also a way to summarize the experience and lessons of the constitutional construction in the modern China which can be used as a reference for the contemporary government to carry on this construction successfully. We all know that our country is still not a complete constitutional country, and constitutionalism is the foundation on which the socialistic political civilization construction depends. Therefore, carrying on the constitutional construction in China becomes the most important task among all the tasks of Chinese political civilization. So, how can we go on with the building of constitutionalism in contemporary China?

Based on the summarization of the production, content and the improvement of Mr. Sun Yat-Sen' s thought of constitutionalism, the contributions and

lessons of both KMT and CCP, and combined with the Chinese situations, this paper suggests that we should carry on the constitutionalism construction from the following three aspects: Firstly, what we are achieving should be a sheer constitutionalism. It was justifiable not to emphasize the power control function of the constitutionalism before the founding of new China because there was no powerful central government at that time. But now, we have a strong government and have to put a restriction on its power so as to ensure human rights, otherwise its public rights would infringe the human rights. Secondly, we should strive to reconcile the relations between the leadership of the party and the constitutional government. All the political activities must be carried out within the restriction of constitution and the constitutional government. Thirdly, more attention should be paid to the education on civil rights of the citizen.

Key words: Sun Yat-Sen Constitutionalism Kuomintang (KMT) Chinese Communist Party (CCP) Practice Modern Nation-state

increasingly intense, and the Japanese invaders entered china in a large scale after 1937. All these unfavorable conditions oppressed the implement of “the political tutelage”

The main activities of “political tutelage” comprised implement of “administering the nation by the party”, fivefold division of the powers and responsibilities and local self-government with the thought of “administering the nation by the party” as the guiding principle all along. The Kuomintang’s political tutelage was mainly influenced by Sun’s theory of three-stage in founding a nation and met the reasonable requirement of establishing a powerful political authority in China in the 1930s. Unfortunately, Kuomintang failed to establish a constitutional government through the political tutelage. An objective appraisal of the various reasons that led to this failure is the profound rethink towards the history and can also provide a good reference for the present administrator in constructing the country. The foundation of Mr. Sun’s three-stage theory was establishing constitutionalism and returning the power to the people. However, Kuomintang didn’t sincerely mean to implement the constitutionalism. Though they held a national conference to promulgate “Constitution of the Republic of China” and also modeled after a constitutional government in administration, their “constitutional government” was nothing but a fraud for Kuomintang was still an autocratic party in essence.

The Chinese Communist Party is Mr. Sun’s faithful heir to fulfill his constitutionalism thought. New Three People's Principles of Sun Yat-Sen consisted with the lowest revolutionary guiding principle of CCP; therefore, it also became one of the practice rationales of CCP in realizing constitutionalism. During the period of the Second Revolutionary Civil War, the Anti-Japanese War as well as the Liberation War, the CCP all practiced faithfully Mr. Sun’s thought of people's democratic constitutionalism. Surely, the constitutional practice by the CCP in the Second Revolutionary Civil War characterized a democratic dictatorship of the workers and peasants in nature, the same model with the socialist constitutional

The failure of the Hundred Days of Reform (1898) and the New Deals Movement at the end of the Qing Dynasty had proved that: in modern China, it is impossible to construct a constitutional nation through reformation from the upper to lower hierarchy in the society. Knowing that, Sun Yat-Sen had to seek a way of revolution to accomplish constitutionalism in China. Sun's thought of constitutionalism was also advanced and perfected with the birth of his Three Principles of the People, which is also the theoretical foundation of this thought.

To actually realize democracy, we must establish a true democratic republic first. Therefore, a constitutional system that could manifest the democratic republic must be designed. Under the guidance of democracy, Sun Yat-Sen developed this systematic and comprehensive thought. The main content including: political principle of division of powers and responsibilities, fivefold constitutionalism combining the Chinese situation with the western theories, preliminary implementation of the civil rights, local self-government, party politics, three-stage theory in establishing the nation and some other thoughts.

The fivefold constitution and principle of division of powers and responsibilities were his fundamental allegations of constitutionalism, with the others being considered as means or approaches of realizing the former two allegations. Mr. Sun's constitutionalism thought was very systematic and had a strong feasibility, because his thought consisted of both macroscopic plans, such as three-stage theory in establishing the nation, and microscopic plans, such as the preliminary implementation theory of civil rights, local self-government, and party politics, direct civil rights and so on.

There was a modification in Mr. Sun's thought of constitutionalism, especially in his view about party politics. From the establishment of the Republic of China to the dismissal of the congress by Yuan Shi-kai, he believed in political liberalism, and advocated to transform the Kuomintang into an ordinary party operated under the regulations of a democratic constitutionalism, such as parliament-cabinet system, competition between various political parties. After 1919, Yuan Shi-kai's

本人认为应在下面三个方面进行宪政建设：第一，还“宪政”以本来面目。在新中国成立前，我们不强调宪政的控权精神，有情可原，因为那时中国并没有一个强有力的政府；但现在我们应强调宪政的“限政”、保障人权的精神，因为现在我们已经有了一个强大的政府，如果不加限制，这个公共权力会侵犯人权；第二，应正确处理党的领导与宪政的关系问题，强调党也应在宪法、宪政的框架下活动；第三，应加强对公民的民权教育和训练；第四，必须注意保护人权。

关键词：孙中山 宪政思想 国民党 中国共产党 实践 现代民族国家

权宪法和权能分立是孙中山的基本宪政主张，其他四个内容可以被看作是实现其宪政主张的手段或者途径。孙中山的宪政思想不仅体系完整，而且具有很强的可操作性。这种可操作性具体表现在：孙中山的宪政思想中既有宏观规划，如建国三阶段论，又有微观计划，如民权初步、地方自治、政党政治、直接民权等。

孙中山宪政思想的变化主要表现在其政党政治观的变化上。民国建立至袁世凯解散国会，孙中山信奉政治自由主义，主张把国民党改造成成为适应民主宪政制度运作的一个普通政党，实行议会内阁制，开展政党竞争的政治活动。1919年后，袁世凯复辟帝制及其以后的军阀混战促使孙中山的这种政党政治观发生变化。他重新组建中华革命党，后来，在中华革命党基础上又组建中国国民党，提出“以党建国”或者“以党治国”（孙中山晚年思想中的“以党建国”和“以党治国”是一个意思）的主张。孙中山政党观之转变，与其说是受列宁领导的苏联共产党建国的影响，不如说是他对重建国家途径的新认识。民国政治的混乱与失序使孙中山感到中国非常需要一种彻底的改造，需要采取一种根本的解决问题的方法，即把“党”放在“国”之上，实行“以党建国”。我们可以从近代中国国家建设的主要任务方面，来分析孙中山政党观的变化。孙中山“以党建国”思想的提出和实施，对于中国的宪政进程似乎是一种曲折，但考虑到中国还没有真正建立现代意义上的民族国家，无法为民主宪政的实现提供主权的基础，因此孙中山的“党治国家”思想仍不失为一种合理的选择。“以党建国”或者“以党治国”是孙中山宪政思想中的重要内容，对后来国共两党、对20世纪中国宪政进程都产生了深远影响。

“训政”是国民党实践孙中山宪政思想的主要活动。国民党的军政时期，即以党建国时期很短暂。在军政时期，国民党以党建国的任务并没有彻底完成：对外，主权没有摆脱外国的控制而获得独立；对内，地方军阀的分裂割据危险仍然存在，共产党的土地革命也是愈演愈烈，1937年后是日本的大举入侵，种种不利状况不能不影响到国民党的“训政”建设。国民党“训政”建设的主要内容包括：“以党治国”、五院制和地方自治，其中，“以党治国”的精神贯穿国民党“训政”建设的始终。国民党实施“训政”建设既有

在他看来，军政统治是实施民主政治的基础，不用革命的武力消灭一切封建腐朽势力和反动的军阀势力，不以革命的军事专制统治方式铲除一切障碍，不事先造成社会和和平安宁环境，是谈不上实行民主政治的。实施民主政治的第二步是训练使用民主权利，此即为训政时期，孙中山亦称“过渡时期”或“约法”时期。孙中山拟定这一时期的任务是“施行约法”（非现行者），建设地方自治，促进民权发达。民主政治第三步是按国民大会制定的宪法实行统治时期，即为宪政时期，孙中山亦称之为“建设完成时期”。拟在此时期始施行宪政。按孙中山构想，宪政开始实行之时，全国国民应按宪法举行全国大选；国民政府在选举完毕后三个月解职，而授政于民选之新政。此后，民选之新政则完全按照五权宪法规定行使职责。此时，民主政治体制才算建立起来了。孙中山所设计的实行民主宪政的这个程序，是相互衔接的一个完整过程，是一个以循序渐进方式实现中国宪政的过程。

孙中山的宪政思想，构建了一个相当完整的共和国方案，具有中国特色的民主主义思想。孙中山在追求更为合理、民主的理想政治制度时表现出的勇气和方法，他的宪政思想的合理内涵，都值得后人学习和借鉴。孙中山的宪政思想具有理论和实践的双重指导意义，是中国近现代政治思想的一个重要里程碑。虽然孙中山的宪政思想没有在中国真正实现，但历史上许多东西尤其是思想方案，不能因其没有实现而否定其历史地位和思想意义，正如已经实现了的不一定全部合理一样。

李默海博士的这本书要表达的观点与思想与上述问题的思考基本一致。其书的结构与内容是其本人在博士生学习期间形成的。很有幸，在他博士研究生学习期间我作了其论文的指导老师。看到该书的出版，寥寥几言，略表欣慰之意。同时，我也把该书的出版看作李默海博士学术生涯的起点，而不是终点，希望他有更好的论著问世。

张锡恩

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在抗日战争时期，各根据地人民政府普遍制定了包含保障“人权、政权、财权”内容的施政纲领，普遍颁布和实施了专门的保障人权的条例。

人民民主革命的胜利和中华人民共和国的成立，开创了人民当家作主的新时代，开辟了人民民主宪政的新纪元。1949年颁布实施的起临时宪法和建国纲领作用的《中国人民政治协商会议共同纲领》，确立了人民共和国的政治法律制度、建国大政方针和保障人民权利的原则。1954年，在全民讨论的基础上制定了第一部《中华人民共和国宪法》，规定了人民民主的国家性质、政治制度和国家机构的职能，并以“公民基本权利和义务”专章规定了公民在政治、经济、社会、文化、人身等方面的权利，奠定了人民民主宪政建设的基础。

新中国的民主宪政建设也经历了一个曲折发展的过程。特别是在十年“文革”中，国家陷入内乱，宪法与法治被摒弃，人权遭到摧残，民主宪政建设一度发生严重倒退。1975年通过的新中国第二部《宪法》，删掉了民主宪政的大量内容，把“公民的基本权利和义务”一章由19条减成4条，缩小了公民基本权利的范围，且一反常规，先规定义务后规定权利。1978年在刚刚结束“文革”的背景下通过的新中国第三部《宪法》，虽然取消了1975年《宪法》中的某些错误规定，增加了对公民基本权利的保障，但在民主宪政方面仍未完全摆脱“文革”的影响，存在较大不足。

1982年12月4日，在总结历史经验的基础上修改通过的新中国第四部《宪法》即现行《宪法》，突出了民主与法治两大宪政原则。一是关于公民基本权利的规定比历次宪法内容更加广泛、切实、明确，且规定了国家为保证公民权利的实现和逐步扩大应采取的政策措施。二是将“发展社会主义民主，健全社会主义法制”定为国家的根本任务之一，突出地强调了宪法的权威和法治的重要性，明确规定：全国各族人民、一切国家机关和武装力量、各政党和社会团体、各个事业组织，都必须以宪法为根本的活动准则，并且负有维护宪法尊严、保证宪法实施的职责；任何组织或者个人都不得有超越宪法和法律的特权。在此基础上，1999年在修宪时进一步明确将法治原则作为国家的基本治国方略和建设目标写入了《宪法》。值得一提的是，此次修宪在民主宪政建设方面的“亮点”是，突出了人本精神，确立了“国家尊重和保