

A Mistaken Reception of the Parliamentary System—

—A Re-examination of the 1912 Legislation of the Provisional Constitution of the ROC

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Abstract

For the revolutionists in the late Qing dynasty of China, setting up a republic with a democratic constitution was their political goal. When the revolutionist forces seized Nanking and erected the pursued republic, they established a new government based on “the Organizational Law of the Provisional Government”, which imitated the presidential system of the USA. Since this fundamental law was too simple and crude for further applications, it had to be revised and reformed. The presidential system was improved and the articles about civil rights were completed in the reformed draft. Thereafter, it was renamed “the Draft of the Provisional Constitution of the Great ROC”. All legislations were proceeded in the Provisional Senate or the Advisory Assembly, which was controlled by the revolutionist bloc.

The negotiation between the revolutionists in the South and the imperial forces in the North came to that the abdication of the Manchu Emperor could be arranged and in the same time the Provisional Presidency of the new republic must be passed over from Dr. Sun Yat-sen, the renowned revolutionist leader, to Yuan Shih-kei, the plenipotentiary Premier of the Peking government who was also the charismatic leader of the imperial forces in the North. In order to cope with the complication, the Provisional

Senate made an important resolution to the fundamental law - changing the ongoing presidential system into a cabinet system (it was read: “to form an accountable cabinet”), which imitated the parliamentary system of the third republic in France.

It was publicly acknowledged that the Provisional Senate was intending to curb the fierce powers of the oncoming provisional president Yuan. Since studies on the process of the legislation were pretty vague, people wondered that what extent of transformation could be on the government.

In this paper, the legislation was restudied in details by making comparisons between the original text, the middle draft, the related resolutions, the final regulation, and the constitutional laws of the third republic in France. The thorough transformation in the governmental system during its forming period was presented. The long claim of that the Provisional Constitution was a parliamentary system was arguable. The formulation for the parliamentary system was an error.

Keywords: the Provisional Constitution of the ROC,
Sung Chiao-jen, the constitution of the third republic in
France, cabinet system, unechten Parlamentarische
Regierung, false parliamentary government.