

SUN YAT-SEN'S *SAN-MIN* DOCTRINE AND ITS LEGACY IN CHINESE CONSTITUTIONALISM: THREE PRINCIPLES FOR TWO SYSTEMS

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I. INTRODUCTION

In spite of the ideological and political divergences characterizing the constitutional systems of the People's Republic of China (PRC) and the Republic of China (ROC, commonly Taiwan), it is possible, however, to draw some parallelisms,² amongst which a less explored one refers to the legacy of Sun Yat-sen's Three Principles of the People (三民主義), or *San-min* doctrine.³ Sun developed these three principles – usually resumed in nationalism, democracy and livelihood of the people – as a political guideline for the reconstruction of China after the 1911 revolution, combining traditional Chinese culture with Western doctrines on law and government.⁴ The formulation of the three principles was influenced by Abraham Lincoln's Gettysburg address of 1863, affirming the necessity of establishing a “government of the people, by the people, for the people,” and at a certain extent by the French Revolution's three principles of liberty, equality and fraternity.

The three principles, accepted as an official political program by the Kuomintang, are not simply the expression of a philosophical belief, but also an ideological and cultural doctrine for the edification of a new political structure—as well as for the political reorientation of China after the overthrow of the heavenly empire—however, not without ambiguities and unsolved tensions.⁵ According to Sun, indeed, a doctrine “must begin with an idea, the idea must produce a faith, and the faith in turn must give birth to power.”⁶ As they have been described, they are “a complex product of revolutionary ideals interwoven with compromise.”⁷

After 1949, in the impossibility of applying them in a unified China, the three principles came to exercise a certain influence on the constitutional systems of the two States, which followed an independent way of legal and political evolution.

The constitution of the ROC was promulgated in 1947 to be implemented in all China. The establishment of Taipei as temporary capital in 1949 by Chiang Kai-shek, however, led to its enforcement only in Taiwanese territory prior to its almost immediate suspension in the Mobilization period, which lasted until May 1991. After that, the charter was adapted to this new reality following a process of “Taiwanization”⁸ through progressive amendments in the broader framework of the

country's democratization. Following Sun's revolutionary legacy, his three principles are considered as a capstone in the constitution of 1947,⁹ which states that the ROC is "founded on the Three Principles of the People [and] shall be a democratic republic of the people, to be governed by the people, and for the people" (art. 1).

The PRC, on the contrary, experienced a completely different constitutional history, marked by the adoptions of multiple constitutions, each one characterized by deep ideological and cultural differences. Prior to the adoption of the 1982 charter—still in force, albeit with various revisions—the country had already had three constitutions, adopted respectively in 1954, 1975 and 1978, each one mirroring a different stage in its political evolution. Although not mentioning explicitly the *San-min* doctrine, Sun Yat-sen is celebrated in the 1982 constitution's preamble, and the constitutional vision of mainland China bears implicit, albeit relevant, traces of his influence.¹⁰

This article aims to analyze the influence of the *San-min* doctrine on Chinese constitutionalism, with particular reference to the present drafts of the ROC and the PRC constitutions.

II. A GOVERNMENT "OF THE PEOPLE": *MÍNZÚ ZHŪYÌ*

The first of Sun's three principle is *mínzú zhŭyì* (民族主義), which can be translated as "rule of the people," but also more significantly as "rule of the nation," or "nationalism." *Mínzú* (民族), designates indeed the idea of the people united to form a national body, thus assigning the term a collectivistic identity. According to Sun, in the Chinese tradition family ties are to be considered a powerful unifying force, but at the same time the "unity of the Chinese people has stopped short at the clan and has not extended to the nation,"¹¹ thus with the necessity of structuring a national consciousness and properly and organically locating into China's political discourse. Nationalism, however, is not to be understood as the transposition of a Western notion unto a foreign context,¹² but its rethinking in order to shape a Chinese way to nationalism, following the ideal of the "Chinese nation," or *Zhōnghuá mínzú* (中華民族).¹³

The principle of *mínzú zhŭyì* refers to the idea of national independence, and to the idea of pan-Chinese unity into a single and strong nation. After a cultural offensive aimed at creating a national consciousness, the practical methodology would be that of utilizing "China's ancient social groups, as the family and the clan and consolidat[ing] them to form a great national body."¹⁴ In a unified China, this implied the concord of different ethnicities, including the minoritarian Manchus, Mongols, Tibetans, and Muslims, a principle initially embodied by the five-colored flag of the early

republican period and in the doctrine of “five races under one union,” however, not without unsolved tensions between an interethnic aspiration and factual Han prevalence.¹⁵

a. IN THE ROC CONSTITUTION

Sun’s principle of *mínzú* is closely inherent to the unsolved question regarding whether the ROC constitution still ideally refers to the whole Chinese territory, as it was initially thought, or only to present-day Taiwan, where it is concretely implemented, in the broader context of international law.¹⁶ This point is particularly debated, especially when considering the opposite currents of Taiwanese nationalism, advocating alternatively the overall representation of all the Chinese people, or the affirmation of Taiwan’s independence as a separate entity in respect of mainland China.¹⁷

The issue of independence is central, because of the attention devoted to it by Sun in his lectures on nationalism. Regarding this, the charter explicitly prescribes that the foreign policy of the ROC shall be carried out “in a spirit of independence and self-reliance” (art. 141). Even in this case, however, the unsolved question refers to the meaning of independence. In Sun’s legacy, and after the establishing of the Taiwanese government, the concept can be interpreted according to multiple meanings, ranging from the classical position of the ROC as the “real” Chinese republic, to the more heterodox and recent idea of the affirmation of the independence of Taiwan as a nation.

Another fundamental point refers to the coexistence of various ethnic groups, in comparison with Sun’s idea of Chinese multiethnic nationalism. The constitution states that there “shall be complete equality among the various ethnic groups” (art. 5), as the faithful reposition of the doctrine of the “five races under one union” that initially inspired Sun’s theorization. In the original draft of 1947, the electoral composition of the various branches of the administration explicitly took into account the minority groups, such as Mongols and Tibetans, thus giving more concreteness to the initial affirmation regarding the equality of the ethnic groups. Moreover, according to the charter, the Mongolian League and Tibet shall be entitled to a system of self-local government, in the spirit of decentralization and safeguard of cultural minorities (arts. 119, 120). Nowadays, the state of things is evidently changed, and such provisions cannot but be considered obsolete when applied to monoethnic and insular Taiwan. The constitutional discipline is therefore to be considered as the legacy of what the ROC could effectively be, therefore according to a perspective of potentiality.

b. IN THE PRC CONSTITUTION

Regarding nationalism in the PRC, the most emphasized point relies on the ideas of multinationalism and multiethnicity, recalling the already mentioned notion of the “five races under one nation.” Compared to the ROC constitution, the PRC charter of 1982 further highlights this point, which becomes rather recurrent in its legal phraseology, by stating for instance that during the course of the country’s millenary history “the people of all nationalities in China have jointly created a splendid culture” (preamble) and that “all nationalities [...] are equal” (art. 4). The charter, defining the country as a “unitary multi-national State” (preamble) adopts Sun’s initial view on multinationalism, while at the same time taking the distance from a nationalism focused on ethnic homogeneity, as expressed latterly by Sun himself in his lectures on *mínzú*.¹⁸ On the contrary, this last point is openly condemned, affirming that in the struggle “to safeguard the unity of the nationalities, it is necessary to combat big-nation chauvinism, mainly Han chauvinism, and also necessary to combat local-national chauvinism” (preamble). In spite of its theoretical coherence, the reference made to local nationalisms appears to be a particularly controversial and debated issue, in light of the measures carried out against some minority groups in the course of the last decades, aiming at elaborating a policy of Sinicization for instance in Tibetan territories.¹⁹ This position, nominally inspired by multinationalism, appears to be pragmatically functional to control a vast territory like mainland China, and at the same time to combine the socialist internationalist ideal²⁰ with the Chinese notion of *Zhōnghuá mínzú*.

This overall and comprehensive idea does not only involve the variety of nationalities, but refers also to the idea of territorial integrity. If the ROC charter is quite ambiguous in defining the relationship between Taiwan and the overall Chinese republic, since 1978 the PRC charter is more explicit in affirming the inseparable unity of the country, with the present version stating that “Taiwan is part of the sacred territory” (preamble) of the PRC. This principle is also transposed into binding provisions, prescribing that it is “the duty of citizens [...] to safeguard the unity of the country and the unity of all its nationalities” (art. 52). The question of the division of 1949 is addressed by strongly affirming the necessity of the reunification, assigning its responsibility not only to the State, once again claiming to be the direct heir of the 1911 revolution, but also to the Chinese citizenship, both residing in mainland China and in Taiwan.

As in Sun’s thought, national independence is also particularly stressed in the 1982 constitution, by the recurrence of an anti-imperialistic emphasis, and by the insertion of a mention according to which “China adheres to an independent foreign policy” (preamble). In this, due to historical reasons, the two constitutional systems agree in highlighting the necessity of affirming national independence and condemning foreign interference. The PRC constitution, however, adopts

a wider meaning of independence, extending it to comprehend the idea of ideological supremacy in respect of political dissent that might be perceived as harmful to the socialist cause.²¹

Here, the conception of nationalism is characterized by three basic features: multinationalism as a founding notion, national unity as an ultimate goal to achieve, and national independence as a conquest to preserve. These three characteristics define the way in which the idea originally elaborated by Sun is rethought and revisited in order to fit the new political environment. In particular, and in spite of Sun's later positions, the real unifying element is to be identified in the socialist national policy of the State, which is perceived as representing the synthesis of the imperial and the nationalist experience; a unique reality capable to inspire that "love for the motherland" (art. 24) that turns Sun's concept of *mínzú* into a socialism with Chinese characteristics,²² and a philosophical stance into a constitutional theory.

III. A GOVERNMENT "FROM THE PEOPLE": *MÍNQUÁN ZHǏYÌ*

The second principle is *mínquán zhǐyì* (民權主義), or "political power of the people,"²³ usually referred to as democracy.²⁴ Sun elaborated it by combining Western elements—especially referring to Rousseau and Montesquieu—with Chinese traditional notions, like in the case of the theories of Confucius and Mencius.²⁵ Democracy, in this conception, is a practical concept, functional to progressively and gradually provide China with a strong and modern government. It was all about following the flows of historical events, in that the "world tendency has flowed from theocracy on to autocracy and from autocracy now on to democracy."²⁶ Perhaps from a rather simplistic perspective, democracy is considered to be inseparable from republicanism, in "obvious opposition to monarchical constitutionalism of the time."²⁷

In the doctrine of democracy, two great powers are theorized: "the political power of the people and the administrative power of the government. One is the power of control, the other is the power of the government itself."²⁸ In this context, the political power is vested in the people, responsible for the democratic control over the rulers, while the administrative power is vested in the governmental institutions.

Following the examples of the United States and European countries such as Switzerland, Sun believed that a real democracy should entitle the people with four basic rights in order to properly orient and control the exercise of public power: the right to vote, to propose laws, to abrogate laws, and to recall public servants recurring certain circumstances.²⁹ As for the government, Sun elaborated a peculiar model characterized by five separated powers: the legislative, the executive, the judicial, the examining, and finally, the censorship powers. While the first three powers are evidently

borrowed from the Western political philosophy, the additional two were inspired by the Chinese tradition, in which such functions were exercised in a rather independent way in respect of the imperial authority.³⁰

a. IN THE ROC CONSTITUTION

Sun's teachings on the idea of democracy are faithfully transposed into the ROC constitution, in spite of an apparent paradox. In principle, the country is a "democratic republic of the people" (art. 1), although between 1949 and 1991, it witnessed an authoritarian parenthesis of four decades aimed at containing the communist influence,³¹ after which constitutional rights and liberties were restored.

Aside from that, the charter transposes Sun's theory of the four basic rights of the people into legal provisions, enshrining at a constitutional level the right to vote, the right of initiative, of referendum, and the right to recall public servants from office. This is a coherent implication of the theorization of sovereignty, which "shall reside in the whole body of citizens" (art. 2).³² All of these rights, which altogether delineate one of the systems characterized by the most advanced mechanism of checks and balances, are mentioned and affirmed in the constitution, although disciplined by national legislation (art. 136). As for the right to vote, it is described as direct and universal (art. 143), and since the abolition of the National Assembly in 2005, refers not only to the legislative branch but also to the direct election of President and Vice President of the Republic.³³ The right of recall, which embodies the most relevant innovation of Sun's theory, is described as a fundamental and general principle, according to which a person "duly elected may be recalled by his constituency in accordance with the law" (art. 133). As evident, this represents one of the peculiarities of the Taiwanese system, in which the citizenship is given a role of direct control on the activities of the public servants, currently practiced in the political life of the island.

To properly implement these rights, the constitution adopts Sun's ideas on a model characterized by five separate powers (五院, *wǔyuàn*). The result is an administration divided in five branches, called *yuan* (院): the Executive Yuan, the Legislative Yuan, operating as a unicameral parliament, the Judicial Yuan, the Control Yuan, and the Examination Yuan.³⁴ This hybrid model is a *unicum*, which can be found only in Taiwan, and is "a combination of unitary, competitive elitist, and liberal democratic models."³⁵

b. IN THE PRC CONSTITUTION

In the 1982 constitution, the idea of *mínquán* is translated into a peculiar conception of socialist democracy. Socialism, enshrined since the 1954 constitution, is the outcome of a progressive conquest, and is to be achieved gradually along the path from imperial feudalism to its full realization. Chinese “new democracy,”³⁶ as theorized and implemented since the adoption of the Common Program of 1949, is not but an intermediate passage to be accomplished and then overcome to leave room for the realization of a Chinese way to socialism. In this context, *mínquán* coincides neither with Western liberal democracy, nor with Sun’s teachings, but in a revised version of it: a socialist democracy characterized by the idea of collective leadership.³⁷ It is to be reinterpreted as the synthesis of the preceding phases of the development of China, in light of a political progressivism and as the full realization of the people’s empowerment. It is therefore a conception whose nature “is that people act as the masters of their country,”³⁸ with a constant and customary interplay between State and Party institutions, in a form of unwritten constitutional system largely based on political practice.³⁹

In the charter, all power nominally “belongs to the people” (art. 2), according the Soviet notion of “democratic centralism” (art. 3),⁴⁰ which can be defined as “centralism on the basis of democracy and democracy under centralized guidance.”⁴¹ With respect to the ROC, however, what changes is the way in which the people exercise this power. The foundation of State’s and Party’s representativeness of the people does not necessarily rely on a legal mechanism starting from below, such as direct and universal elections, but on a factual and exclusively political element: the revolutionary process had been carried out by the people and for the people, and the founding of the PRC represents therefore an act of absolute and supreme will of the people, which does not need any further way of explaining itself. The Communist Party of China, whose role has been constitutionalized since the adoption of the 1975 charter, exercises a factual leadership interposing itself between the notions of authority and power, thus establishing the dualism Party-State as a pragmatic and customary way of ideally granting people effective representation.⁴² In this context, and without renouncing the Confucian idea of harmony, it is possible to observe that theoretically an ideal of harmonic cooperation is not referred to the Chinese people abstractly considered, but to the socialist ideal of unity between the working classes; therefore to a *certain portion* of the Chinese people. This reinterpretation of the concept of democracy cannot but imply the abandonment of the practical ways in which the *San-min* doctrine envisaged its implementation, to adopt an innovative and creative reading of Marxism to reinterpret and revisit the notion of class struggle.

The PRC charter abandons Sun’s theory of the five powers of the State, and replaces it with a different kind of institutional architecture, in which the Western tripartite theory is practically challenged by the pervasive idea of Party leadership. The control and examination functions are not present as separate powers, but traces of them may survive as a legacy of the Chinese tradition. For

instance, the function of auditing, which in the ROC legal order falls within the competences of the Control Yuan, is here absorbed by the executive power (art. 91). As for the four basic rights, they are not present in the charter, except for the right to vote, limited to the National People's Congress and to the local congresses (art. 3), and to the right to recall, reserved to the National People's Congress (art. 63), and not to the citizens.

As evident, democracy is not conceived here as a procedure or a legal method to structure a governance, but as a philosophical notion, ideally absorbed by the idea of revolution (*gémìng*) as a founding and legitimating myth, culturally intended as a change in a heavenly mandate.⁴³

IV. A GOVERNMENT “FOR THE PEOPLE”: *MÍNSHĒNG ZHŪYÌ*

The principle of *mínshēng zhǔyì* (民生主義) was the last one to be developed by Sun in chronological order. Nevertheless, it is considered by its author “the central force in the cultural progress of society, in the improvement of economic organization, and in moral evolution.”⁴⁴ The concept, commonly translated as livelihood of the people,⁴⁵ was approached by Sun during his stay in the West, influenced by the theories of economist Henry George.⁴⁶ Notwithstanding its foreign origin, the term used to identify the doctrine comes from the Chinese tradition, in order to differentiate it from the idea of socialism (*shèhuì*, 社會).

In order to elaborate his own doctrine, Sun took into consideration both the most successful reforms introduced by Western nations—with particular reference to Germany, Great Britain and the United States, and Marxist theories—however not sharing their conclusions, especially regarding class struggle and surplus value, proposing a harmonic understanding between social classes instead. Nevertheless, Sun's attitude toward socialism is not univocally defined, recognizing in Marx an inspiration for the pathogenesis of the problem, but not for its solution.⁴⁷

A specific issue addressed by the doctrine of *mínshēng* is the land problem, which is solved by establishing a fixed level of pricing of the Chinese lands, while destining every increment in the future lands' price to the State in order to avoid speculation. This proposition is described to be a form of “equalization of land ownership,”⁴⁸ aimed at solving what was perceived to be the biggest problem in China in terms of economic inequality. Another issue refers to the need for China to industrialize and develop a higher national capital, which represents the logic antecedent with respect to redistribution of private wealth, a solution considered to be unsuitable for China.

Notwithstanding its unfinished nature,⁴⁹ the doctrine of livelihood is particularly interesting for multiple reasons, such as the wideness of the spectrum of its analysis, the relations of the doctrine with capitalism and socialism, and the technical ways elaborated by its author to solve the most serious and concrete problems of those turbulent years.

a. IN THE ROC CONSTITUTION

In the ROC constitutional system, the concept of people's livelihood is central.⁵⁰ Both in the preamble of the charter and in the text of the presidential oath, it is reported that one of the fundamental objectives of the State should be to "promote the welfare of the people" (preamble, art. 48), thus assigning to Sun's idea of *mínshēng* a constitutional consecration in a teleological perspective. This aspect is even more emphasized with regard to the economic life of the country. According to the charter, "national economy shall be based on the principle of people's livelihood" (art. 142) with policies and laws in the economic field functioning "to improve their livelihood and develop their productive skills" (art. 153).

The idea of *mínshēng* influences the discipline of rights and liberties as well, going as far as theorizing an open clause according to which all "other freedoms and rights of the people that are not detrimental to social order or public welfare shall be guaranteed under the constitution" (art. 22), with a rather evident influence of American constitutionalism. In a specular way, it is also prescribed that all constitutional freedoms "shall not be restricted by law except such as may be necessary . . . to promote public welfare" (art. 23). The teleological dimension of *mínshēng* is therefore twofold: on one hand, it breaks the strict enumeration of rights and liberties, and, on the other hand, it serves the purpose of containing the excess of freedom when it could represent a menace for collective welfare.

Some of Sun's specific topics are also addressed in the constitution. As for the land, the charter quite faithfully reproduces Sun's theory on the land's fixed value and on its taxation, prescribing that all the land "shall belong to the entire body of citizens" (art. 143), thus postulating a sort of collective property differentiating itself both from the socialist idea of State ownership and from the liberal view on private property. It also introduces a taxation aimed at regulating the value of the land and avoiding speculation (art. 143),⁵¹ acknowledging a direct influence of Sun's lectures on the legal system.⁵² Here, the charter adopts Sun's balances and controls on capitalism, to create a system in which private property and private enterprise are safeguarded, but at the same time restricted by legislative measures aimed at affirming, once again, the principle of livelihood.⁵³ This trend—already visible in the Weimar constitution and in postwar European charters—is not simply the adoption of a Western notion of welfare, but represents a cultural rethinking in order to adapt it

to the Chinese reality. Sun's Confucian idea of interclass cooperation, in opposition to class struggle, was also transposed into the constitution, according to which "capital and labor shall, in accordance with the principles of harmony and cooperation, promote the development of productive enterprises" (art. 154),⁵⁴ to delineate a system in which the East meets with the West to give birth to a new form of governance.

b. IN THE PRC CONSTITUTION

To understand the idea of people's livelihood in the PRC constitutional system,⁵⁵ it is necessary to properly contextualize the legal and political philosophy that serves as basis to its legal architecture. As observed regarding democracy, the PRC charter acknowledges the necessity to grant a progressive transition to the socialist model. Sun's idea of interclass cooperation is thus replaced by the Marxist idea of class struggle, albeit reinterpreted in a Chinese way.⁵⁶ Such a model, with particular reference to the idea of livelihood, is based on "relations of equality, unity and mutual assistance [...] workers, peasants and intellectuals" (preamble).

Apart from the fundamental rights recognized to the citizens by the charters,⁵⁷ the key concepts of realizing this idea of socialist welfare, transforming and reinterpreting the concept of *minshēng*, are two: State-owned economy and socialist market economy.

In the PRC model, the general principle refers to the idea of "socialist public property," defined "sacred and inviolable" (art. 12). Following this line, "mineral resources, waters, forests, mountains, grassland, unreclaimed land, beaches and other natural resources are owned by the State" (art. 9) or by collectives in accordance with the law. Similarly, "land in the cities is owned by the State" (art. 10). Nevertheless, regarding the teleological connection with the idea of the people's livelihood, the charter provides a fundamental clarification: "the socialist economic system . . . is socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people" (art. 6). Even more clearly, State-owned economy is defined as "the socialist economy under ownership by the whole people" (art. 7), with the interests of the people coinciding with the interests of the State. In light of this, there is no need of the mediation of the institutions in an interclass dialogue, because the property of the State is the property of the people, which "pays attention to the interests of the collective and the individual as well as of the State and, on the basis of expanded production, gradually improves the material and cultural life of the people" (art. 14).

A second concept that is worth analyzing is the idea of a socialist market economy.⁵⁸ The concept dates back to 1978, and was introduced by Deng Xiaoping, although the term was officially

coined in 1992 by President Jiang Zemin, and represents a system that progressively accompanied and partially replaced the idea of an exclusively public property in a planned economy. Notwithstanding its apparently oxymoronic nature, this concept represents a hybrid model characterized by the inscription of the idea of market economy into a State-controlled socialist structure, whose dynamics are functionally oriented to the collective interest. This creative innovation allowed the PRC to incorporate ideas and instruments such as private property⁵⁹ and private business activity, which had been once considered contrary to the ideological foundations of a certain vision of socialism. Their potential to produce and generate wealth is therefore exploited, and at the same time oriented, thus balancing the recently affirmed legitimacy of private economic operators with the already mentioned teleological dimension of social and collective welfare. Consequently, “individual, private and other non-public economies that exist within the limits proscribed by law are major components of the socialist market economy” (art. 11), realizing a tacit compromise between economic freedom and public control. It is also possible to consider it a distant reference to Sun’s ideas of the development of State capital, in order to prevent the expansion of private capital with the resulting economic inequalities.⁶⁰

The social and economic vision of the PRC, quite distant from Sun’s original idea of *mínshēng*, postulates the necessity of developing a political and legal system in which collective welfare should be the focal point of the economic doctrine. Once again, this model can be understood as a new synthesis between socialism and market economy, and between ideology and pragmatism, in a process having as points of reference both Deng Xiaoping with its four modernizations and a traditional conception of Chinese property (*yè*, 业) with a social function.⁶¹ Recent statistics⁶² have indeed shown that policies addressed at reducing extreme poverty in the PRC proved to be rather successful, like in the case of the social program known as *di bao* (低保), establishing a minimum level of income,⁶³ but in an ideological context that raised international concerns in terms of respect for human rights and constitutional freedoms.

V. CONCLUSIONS

In light of what has been said, it is possible to draw some conclusions regarding the reception of Sun’s three principles of the people in the two systems.

In the ROC constitution, Sun’s ideas are transposed into legal provisions in a rather faithful way, with special reference to the four basic rights and to the five powers’ structure. The result is a system characterized by multiple checks and balances, in which the people have indeed a rather appreciable incisiveness over the institutions, especially in the case of the right of voting public

servants out of office. At the same time, however, the ROC fundamental law resents from the unsolved question of its territorial delimitation. The dichotomy between what the State was theoretically supposed to be and what practically came to be after 1949, cannot but generate a conceptual tension between its juridical theorization and its political implementation. The dyscrasia between a constitution ideally thought for a unified China and its exclusive application in insular Taiwan raises questions about the future of the legal system itself. In light of this last point, it is Sun's idea of nationalism that is, if not abandoned, at least reinterpreted to fit the dynamic and flexible reality of our contemporaneity.

The legal structure of the PRC shows a social and political progressivism that inevitably proceeds along a (Chinese) socialist eschatology. This is proven not just by the 1982 constitutional provisions, but, widening the spectrum of the analysis, by the alternation of various constitutional drafts along the decades. In this context, even the *San-min* doctrine cannot but be considered as a relevant step in Chinese history, but in need of an ultimate synthesis. Therefore, Sun's three principles impact on PRC constitutionalism at various levels. In some cases, central aspects of their doctrine left relevant traces in actual constitutional provisions, as in the case of nationalism; in some other cases, they are reinterpreted at the point of being transformed into something completely different, as in the case of democracy, in a progressive and gradual process of philosophical and political development that is perceived to proceed along various degrees of self-awareness.

Quite significantly, it is possible to state that the most developed of Sun's principles in a system is the least developed in the other. In particular, Sun's idea of nationalism is almost completely rethought in Taiwan, but is quite faithfully accepted in mainland China, while Sun's views on democracy are committedly transposed into the ROC charter, but substantially abandoned in the PRC. In this light, the doctrine can be also considered as a parameter on which to measure the distances and the similarities between two models sharing a common background but choosing to follow independent destinies.

¹ Diplomat and lawyer, Consul of Italy in Freiburg, Germany. The views expressed in this article are those of the author and do not reflect the official policy or position of any Italian institution or agency.

² See Chih-Yu, "The Style of Chinese Constitutional Development: China and Taiwan", in *International Journal of the Shih Sociology of Law*, vol. XXIII, n. 4, December 1995, at 371-393.

³ See Audrey Wells, *The Political Thought of Sun Yat-sen. Development and Impact*, Palgrave MacMillan, New York 2001, at 61-101 (discussing in-depth analysis of the doctrine).

⁴ See Key Ray Chong, *Sun Yat-sen and the West. Western Influence on His Life and Thought*, Edwin Mellen Press, Lewiston 2010 (noting Western influence on Sun's thought).

⁵ Cf. Marie-Claire Bergère, *Sun Yat-sen*, trans. Janet Lloyd, Stanford University Press, Stanford 2000, at 354.

⁶ See Sun Yat-Sen [1924], *San Min Chu I. The Three Principles of the People*, trans. Frank W. Price, ed. Commission for the Compilation of the History of the Kuomintang, China Publishing Company, Shanghai 1969, at 1.

⁷ Chi Wen-Shun [1986], *Ideological Conflicts in Modern China. Democracy and Authoritarianism*, Transaction Publishers, New Brunswick-Oxford 1992, at 89.

⁸ Cf. Yeh Jiunn-rong, *The Constitution of Taiwan. A Contextual Analysis*. Hart Publishing, Oxford 2016, pp. 3-4.

- ⁹ See Paul B. Trescott, *Jingji Xue. The History of the Introduction of Western Economic Ideas into China, 1850-1950*, The Chinese University Press, Hong Kong 2007, at 57-58 (noting Sun's influence on Taiwan after 1949).
- ¹⁰ See Trescott, *cit.*, at 58-60 (detailing Sun's influence on mainland China).
- ¹¹ See Sun, *cit.*, at 2.
- ¹² See Bruce A. Elleman, *Diplomacy and Deception. The Secret History of Sino-Soviet Diplomatic Relations, 1917-1927*, M. E. Sharpe, Armonk-London 1997, at 60-63 (analyzing Sun's idea of nationalism compared to Western and Soviet positions).
- ¹³ Cf. Ho Wai-Chung, *Culture, Music Education, and the Chinese Dream in Mainland China*, Springer Nature, Singapore 2018, at 38.
- ¹⁴ See Sun, *cit.*, at 36.
- ¹⁵ Cf. Bergère, *cit.*, at 358; Shelley Rigger, "Nationalism versus Citizenship in the Republic of China on Taiwan", in *Changing Meanings of Citizenship in Modern China*, ed. Merle Goldman, Harvard University Press, Cambridge-London 2002, at 355-356. See also Frank Dikötter, *The Discourse of Race in Modern China*, Hurst & Company, London 1992, at 123.
- ¹⁶ Cf. Shelley Rigger [1999], *Politics in Taiwan. Voting for Reform*, Routledge, London-New York 2002, at 60 ff.; Lo Chang-fa, *The Legal Culture and System of Taiwan*, Kluwer Law International, Alphen aan den Rijn 2006, at 48-49. See also John F. Copper, *Taiwan. Nation-State or Province?*, Avalon Publishing, Emeryville 2003 (discussing as a monographic essay).
- ¹⁷ See Ek-hong Ljavakaw Sia, "Crafting the Taiwanese Nation: Exclusivist and Inclusivist Theses of the Post-war Taiwanese Nationalism", in *Taiwan. Self vs. Other*, eds. Jens Damm, Isabelle Cheng, Lit Verlag, Zürich 2016, at 56-84 (detailing the complexity of Taiwanese nationalism).
- ¹⁸ Cf. Zhao Suisheng, *A Nation-State by Construction. Dynamics of Modern Chinese Nationalism*, Stanford University Press, Stanford 2004, at 22-23.
- ¹⁹ See Chen Jianfu, *Chinese Law. Context and Transformation*, Brill, Leiden-Boston 2016, at 144. Legally speaking, the constitution and the Chinese laws "talk of autonomy, not self-determination. [...] Further, the Constitution grants regional autonomy to areas occupied by minorities. This effectively means that minorities have no rights to claim independence or separation from China." See *id.*
- ²⁰ Cf. PRC const., art. 24. See also Christopher Hughes [1997], *Taiwan and Chinese Nationalism. National Identity and Status in International Society*, Routledge, London-New York 2015, at 10 (discussing relationship between nationalism and Chinese communism, influenced by Sun's nationalist ideal and Soviet internationalism).
- ²¹ Cf. PRC const., art. 1, par. 2.
- ²² See Deng Xiaoping, *Build Socialism with Chinese Characteristics*, Foreign Language Press, Běijīng 1985. Cf. Zheng Qian, *The Road to Socialism with Chinese Characteristics*, Paths International, Chicago 2018; Kenneth Karl Klinkner, *Crafting Socialism with Chinese Characteristics. Modernization and Ideology in Post-Mao China*, University of Illinois at Urbana-Champaign, Champaign 1994.
- ²³ See Sun, *op. cit.*, at 51.
- ²⁴ Cf. Wells, *cit.*, at 73-90; See also David J. Lorenzo, *Conceptions of Chinese Democracy. Reading Sun Yat-sen, Chiang Kai-shek, and Chiang Ching-Kuo*, The Johns Hopkins University Press, Baltimore 2013, at 30-84.
- ²⁵ Cf. Sun, *cit.*, p. 58. Cf. Tan Sor-hoon, *Confucian Democracy. A Deweyan Reconstruction*, State University of New York Press, Albany 2004, pp. 132 ff.; Li Chenyang, "Confucian value and democratic value", in *Moral Issues in Global Perspective*, vol. I, *Moral and Political Theory*, ed. Christine M. Koggel, Broadview Press, Peterborough 2006, at 185-186.
- ²⁶ See Sun, *cit.*, at 63.
- ²⁷ Tony See Sin Heng, "On Sun Yat-sen's Three Principles of the People. A Philosophy Approach", in *Sun Yat-sen, Nanyang and the 1911 Revolution*, eds. Lee Lai To, Lee Hock Guan, Institute of Southeast Asian Studies, Singapore 2011, at 32
- ²⁸ See Sun, *cit.*, at 139.
- ²⁹ Cf. Wang S., *cit.*, at 38.
- ³⁰ Cf. Yen Ching-Hwang, *The Chinese in Southeast Asia and Beyond. Socioeconomic and Political Dimensions*, World Scientific, Singapore 2008, at 420; Wang S., *cit.*, p. 208. On the five powers in Sun's constitutional discourse, see Zhao Suisheng, *Power by Design. Constitution-Making in Nationalist China*, University of Hawai'i Press, Honolulu 1996, at 25-26.
- ³¹ See Denny Roy, *Taiwan. A Political History*, Cornell University Press, Ithaca-London 2003, at 76 (noting the mobilization period and its aftermath); Yu Chilik, Kuo Yu-Ying, "Policy analysis in a time of turbulence", in *Policy Analysis in Taiwan*, Policy Press, Bristol 2015, at 3-4. For a critical analysis of Taiwan's democracy, see Shih Chih-yu, "The Global Constitution of "Taiwan Democracy": Opening Up the Image of a Successful State After 9/11", in *East Asia*, vol. XX, n. 3, Fall 2003, at 16-38.
- ³² Cf. He Baogang, "The Three Paradigms of the Taiwan Question", in *Sources of Conflict and Cooperation in the Taiwan Strait*, eds. Yong-nian Zheng, Raymond Ray-kuo Wu, World Scientific, Singapore 2006, at 86.
- ³³ According to the original 1947 draft, President and Vice President were elected by the National Assembly (art. 25, now abrogated). Cf. Lo, *cit.*, at 8-10. See Liao Da-chi, Chang Hui-chih, "The Choice of Constitutional Amendments in a Young

Democracy – From Indirect to Direct Election of the President in Taiwan”, in *Journal of Current Chinese Affairs*, vol. XXXIX, n. 1, 2010, at 111-131.

³⁴ Cf. Tom Ginsburg, *Judicial Review in New Democracies. Constitutional Courts in Asian Cases*, Cambridge University Press, Cambridge 2003, at 112-113; Ernest Caldwell, “The Control Yuan and Human Rights in Taiwan: Toward the Development of a National Human Rights Institution?”, in *Taiwan and International Human Rights. A Story of Transformation*, eds. Jerome A. Cohen *et al.*, Springer, Singapore 2019, at 157-158; Anthony B. L. Cheung, “Checks and Balance in China’s Administrative Traditions: A Preliminary Assessment”, in *Tradition and Public Administration*, eds. Martin Painter, B. Guy Peters, Palgrave MacMillan, New York 2010, at 40-41.

³⁵ See Lorenzo, *cit.*, at 166.

³⁶ Cf. Mao Zedong [1940], “On New Democracy”, in *Selected Works of Mao Tse-Tung*, vol. II, Pergamon Press, Oxford 1975, at 347-348; Rebecca E. Karl, *Mao Zedong and China in the Twentieth-Century World. A Concise History*, Duke University Press, Durham-London 2010, at 59-62; Felix Wemheuer, *A Social History of Maoist China. Conflict and Change, 1949–1976*, Cambridge University Press, Cambridge 2019, at 48 ff.

³⁷ See Li Yizhe, “On Socialist Democracy and the Legal System”, in *On Socialist Democracy and the Chinese Legal System. The Li Yizhe Debates*, eds. Anita Chan *et al.* M. E. Sharpe, New York 1985, at 31-86. See also Peng Zongchao, Ma Ben, Liu Taoxiong, *Chinese Cooperative-Harmonious Democracy*, Routledge, London-New York 2017, at 47-52; Zhang Qianfan, *The Constitution of China. A Contextual Analysis*, Hart Publishing, Oxford-Portland 2012, chap. 4.

³⁸ See “Bourgeois and Socialist Democracies Compared”, in *People’s Daily*, March 1990, quoted in *Chinese Civilization. A Sourcebook*, ed. Patricia Buckley Ebrey, The Free Press, New York 1993, at 503.

³⁹ See Jiang Shigong, “Written and Unwritten Constitutions: A New Approach to the Study Constitutional Government in China”, in *Modern China*, vol. XXXVI, n. 1, 2010, at 12-46. See also Heike Holbig, “China’s Unwritten Constitution: Ideological Implications of a “Non-ideological” Approach”, in *ASIEN: The German Journal on Contemporary Asia*, n. 132, July 2014, at 53-59.

⁴⁰ See Michael Waller, *Democratic Centralism. An Historical Commentary*, Manchester University Press, Manchester 1981

⁴¹ Stephen K. Ma, *Administrative Reform in Post-Mao China. Efficiency or Ethics*, University Press of America, Lanham-New York-London 1996, at 31.

⁴² Cf. Li Ling, “‘Rule of Law’ in a Party-State: A Conceptual Interpretive Framework of the Constitutional Reality of China”, in *Asian Journal of Law and Society*, vol. II, 2015, at 93-113; He Xin, “The Party’s Leadership as a Living Constitution in China”, in *Constitutions in Authoritarian Regimes*, eds. Tom Ginsburg, Alberto Simpser, Cambridge University Press, Cambridge 2013, at 245-263. This point is particularly evident in the evolution of the Chinese presidency, since the introduction of the PRC chairmanship in 1949 to the customary establishment of the “paramount leadership”. See Zhang Runhua, *The Constitutional and Legal Development of the Chinese Presidency. The Emperor’s New Clothes?*, Lexington Books, Lanham 2015.

⁴³ Cf. Elizabeth J. Perry [2002], *Challenging the Mandate of Heaven. Social Protest and State Power in China*, Routledge, London-New York 2015.

⁴⁴ See Sun, *cit.*, at 176.

⁴⁵ Cf. Wells, *cit.*, at 91-101.

⁴⁶ See Bergère, *cit.*, at 167. American influences on Sun’s third principle of the *San-min* doctrine are also relevant. See Chang Chung-tung, “Dr. Sun Yat-Sen’s Principle of Livelihood and American Progressivism,” in *Chinese Studies in History*, vol. XV, n. 3, April 1982, at 4-19.

⁴⁷ See Sun, *cit.*, at 161.

⁴⁸ *Id.*, at 179.

⁴⁹ Due to his death, Sun could not complete his reflections on the idea of *minshēng*. In 1953, Chiang Kai-shek attempted to complete his work, not without anticommunist intentions.

⁵⁰ Cf. Lo, *cit.*, at 48. See also Christian Aspalter [2002], *Democratization and Welfare State Development in Taiwan*, Routledge, London-New York 2019, especially chaps. 3-4. See also Jang Li-ju, Tsai Pei-jen, “Social Welfare and Social Work Development in Taiwan”, in *Social Welfare in East Asia and the Pacific*, ed. Sharlene B. C. L. Furuto, Columbia University Press, New York 2013, at 87-110.

⁵¹ See James R. Brown, “A successful use of taxation to promote land reform: the Taiwan experience”, in *Proceedings of the Annual Conference on Taxation under the Auspices of the National Tax Association*, vol. LX, 1967, at 416-427 (discussing land reform). See also Yu, Kuo, *cit.*, at 4-5.

⁵² Brown, *cit.*, at 417; Trescott, *cit.*, at 57.

⁵³ Cf. ROC const., art. 145. Cf. Ku Yuen-wen, *Welfare Capitalism in Taiwan. State, Economy and Social Policy*, Palgrave MacMillan, New York 1997, at 77.

⁵⁴ See Ku, *cit.*, at 161. According to Ku, and from a critical point of view, “a universal and de-commodified welfare system was rejected and replaced by a high density of social control to carry out the function of social harmony or state legitimacy” See *id.*

⁵⁵ See also Zhang Minjie, “China’s Changing Social Welfare”, in *Social Welfare in East Asia and the Pacific*, *cit.*, at 17-40.

⁵⁶ See Adrian Chan, *Chinese Marxism*, Continuum, London-New York 2003, at 177 (noting the post-1982 Chinese idea of class struggle).

⁵⁷ See also Ann Kent, *China, the United Nations, and Human Rights. The Limits of Compliance*, University of Pennsylvania Press, Philadelphia 1999. Multiple doubts have been raised as for the effectivity of the protection granted to citizens' rights in practice. See *id.*; Sun Pinghua, *Human Rights Protection System in China*, Springer, Berlin-Heidelberg 2014. But see Robert Weatherley, *Making China Strong. The Role of Nationalism in Chinese Thinking on Democracy and Human Rights*, Palgrave MacMillan, New York 2014, at 141-168. Consider also Zhang, *cit.*, chap. 7 (discussing recent improvement in the safeguard of citizens' rights, especially in the post-Tiananmen period).

⁵⁸ See John Wong, *Understanding China's Socialist Market Economy*, Times Academic Press, Singapore 1993; Manoranjan Dutta, *China's Industrial Revolution and Economic Presence*, World Scientific, Singapore 2006, at 55-56, 65-69.

⁵⁹ See Pitman B. Potter, "Public regulation of private relations: changing conditions of property regulation in China", in *The Development of the Chinese Legal System. Change and Challenges*, ed. Yu Guanghua, Routledge, London-New York 2011, at 52-54 (noting the transition to private property); Wang Chuanhui, *The Constitutional Protection of Private Property in China. Historical Evolution and Comparative Research*, Cambridge University Press, Cambridge 2016, especially at 45-97.

⁶⁰ Cf. Sun, *cit.*, at 181.

⁶¹ See also Wang Yang, Li Beini, "Property System in Traditional China and Its Enlightenment", in *Tsinghua China Law Review*, vol. XII, n. 1, 2019, at 87-113 (providing an historical analysis).

⁶² Generally speaking, the overall conditions of the Chinese population have gradually improved during the last years. See Wang Xiaolin, Wang Limin, Wang Yan, *The Quality of Growth and Poverty Reduction in China*, Springer, Berlin-Heidelberg 2014, at 11-54. However, official statistics appear to be biased from different points of view. See Albert Park, "China's poverty statistics", in *China Economic Review*, vol. XII, n. 4, 2001, at 384-398). Cf. Yan Kun, *Poverty Alleviation in China. A Theoretical and Empirical Study*, Springer, Berlin-Heidelberg 2016, especially at 51-86.

⁶³ Cf. Zhu Ling, *Food Security and Social Protection for the Rural Poor in China*, Routledge, London-New York 2017, chap. 14; Chen Shaohua, Martin Ravallion, Wang Youjuan, "Di Bao: A Guaranteed Minimum Income in China's Cities?", World Bank Policy Research Working Paper 3805, Washington, January 2006. For a critical analysis, see Dorothy J. Solinger, "Manipulating China's "Minimum Livelihood Guarantee". Political Shifts in a Program for the Poor in the Period of Xi Jinping", in *China Perspectives*, 2017/2, 2017, at 47-57.