

THE NEW CONSTITUTION OF THE PRC:  
Implications for Reunification with Taiwan

The People's Republic of China enacted its fourth constitution in December 1982. It is a much longer, more comprehensive document than the constitutions of 1975 and 1978, and it restores many of the provisions on the rights of citizens contained in the 1954 constitution but omitted in the two intervening versions. On these issues and in overall structure, the new document can be described as a "Great Leap Backward" to the pre-Cultural Revolution days.

The constitution is consistent with the moderate ideas of Deng Xiaoping on most issues. In line with the policy of attracting foreign investments to help with the program of economic modernization, the new constitution clearly allows and protects such investments, including joint ventures with Chinese enterprises. Perhaps the most important aspect of the "Great Leap Backward," however, is the restoration of the provision of the 1954 constitution that "All citizens of the People's Republic of China are equal before the law." (Article 33) The doctrine of "class justice" of the Cultural Revolution years has been replaced.

This constitution emphasizes "socialist legality" and efficiency in government. This, together with its resemblance to the 1954 document in its provisions for the rights of individuals, suggests that China may be entering a period of stability based on greater respect for law. Such a development would ease reunification.

In September of 1981, the PRC published a nine-point plan for reunification with Taiwan that emphasized diplomatic and moral persuasion, rather than military force. While Chinese on Taiwan are as eager as those on the Mainland to see the nation unified, the Nationalist leadership naturally enough wants reunification on their own terms. They see Peking's public willingness to talk, the first of the nine-points in the proposal, as a propaganda offensive aimed at influencing world opinion.

The Taiwan leadership, representing 18 million people, is understandably hesitant to negotiate with the PRC, a nation of one billion. Their sense of relative weakness is heightened by the long-term reduction in the US arms commitment to Taiwan which the PRC won in August 1982. Moreover, although it seems clear that the current regime greatly prefers a peaceful approach, the PRC has not absolutely ruled out the use of force. The ultimate result of the peaceful reunification proposal may thus be to make Taiwan feel that it is more vulnerable to military attack.

On the surface, the nine-point proposal seems irresistible: an abundance of political, economic, military, and personal rights. The Nationalists have some doubts as to whether the promises made in the proposal could possibly be kept, since they contradict the basic law of the PRC, as embodied in the new constitution. Article 5 of that document states that no "law or administrative or local rules and regulations shall contravene the constitution," and that no "organization or individual may enjoy the privilege of being above the constitution and the law." Thus no special arrangements could be made for Taiwan that were not consistent with the constitution.

The centerpiece of the reunification proposal, point three, promises a high degree of political autonomy for Taiwan. But since Taiwan would be a local administration under the central government in Peking, the respective powers of the two regimes would have to be as outlined in Article 3 of the new constitution, which says:

The division of functions and powers between the central and local state organs is guided by the principle of giving full play to the initiative and enthusiasm of the local authorities under the unified leadership of the central authorities.

In other words, once Taiwan recognizes Peking as the central authority in China, the leadership of that central government in all aspects of administration would also have to be accepted.

Article 67 of the constitution bears on this question directly. It states in item 7 that the Standing Committee of the National People's Congress has the power to "annul those administrative rules and regulations, decisions or orders of the State Council that contravene the constitution or the statutes." Thus in theory, even the State Council could not make any regulations for Taiwan that did not conform to the constitution. Item 8 of that same Article similarly gives the Standing Committee the power to annul any unconstitutional local regulations.

This requirement that all local regulations comply with the Constitution makes an examination of that document an essential part of any evaluation of reunification prospects for Taiwan. This new constitution is much more moderate in tone than the previous ones and generally repudiates the radical policies of the Cultural Revolution. However, the preamble, which

covers the whole constitution, makes clear the nature of Chinese state:

The basic task of the nation in the years to come is to concentrate its effort on socialist modernization. Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship and follow the socialist road, steadily improve socialist institutions, develop socialist democracy, improve the socialist legal system and work hard...to turn China into a socialist country with a high level of culture and democracy.

Thus the new Constitution still emphasizes that China is a socialist country and that the CCP is in control. Although mention is made in the document of the Chinese People's Political Consultative Conference, a united-front organization composed of various non-Communist parties which was not mentioned in previous constitutions, the leadership role is reserved for the CCP. The fact that the Consultative Conference was mentioned at all is most likely due to a desire to appeal to intellectuals and others on Taiwan who might be inclined to support reunification on the PRC's terms. The 1981 nine-point program for such reunification seems to address the Kuomintang as an equal, but as we can see from the Preamble, the Constitution does not provide a significant role for parties other than the CCP.

Another pledge in the nine-point program is that Taiwan would have economic autonomy. Deng's policy of promotion of a limited free economy is mentioned in Articles 10, 11, 13, and 15, and private plots, individual enterprises that function as a "complement to the socialist public economy," and ownership and inheritance of some forms of private property are now all permitted. These clauses were not included in the previous two constitutions. But Article 6 of the Constitution states that the socialist economic



system, based on public ownership of the means of production, is the system of the PRC. This system is of course dramatically different from that now practiced on Taiwan. On the question of land use, for example, the new constitution states in Article 10 that "No organization or individual may appropriate, buy, sell, or lease land..." Article 28 further specifies that the state may penalize actions that "disrupt the socialist economy." Given that no local regulations may supersede the Constitution, the leaders on Taiwan may wonder whether a different economic system could be retained.

Furthermore, the State Council itself has the power under Article 89 to directly revise or cancel any "inappropriate" decisions and orders issued by local organs of state administration. Any promise of non-interference in local affairs is thus meaningless. Not only must local regulations not contradict the constitution, they must also be consistent with current policy. Otherwise, the State Council might declare them "inappropriate."

Article 31 specifies that the state can establish "special administrative regions" when necessary. The systems to be instituted in such regions are to be prescribed by law "in the light of the specific conditions." This provision was obviously written with Taiwan in mind. The PRC leadership does understand that special provisions would be necessary for reunification. Peng Chen, in a speech delivered in July 1982 argued that Article 31 had "legalized the basic contents" of the reunification proposal. Since, however, there are so many inconsistencies between the Constitution and the nine-point plan, there is a basis for the Nationalists' continued distrust.

There is also some doubt about whether the guarantees it contains on citizens' rights are adequate. For example, on the question of religious freedom, Article 36 provides that "No state organ, public organization, or individual may compel citizens to believe in or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion." But it goes on to state "No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens, or interfere with the educational system of the state." The fate under reunification of such missionary universities on Taiwan as Tung-hai, a Protestant school, and Fu-ren, a Catholic one, is unclear. Would they be considered obstructions of the educational system? Religious groups on the mainland have for years struggled with the problem of the government's distrust of their international ties. The new constitution also states that religious affairs may not be dominated by any foreign country. Catholics on the island, among others, may well wonder whether they would be ordered to sever their relations with foreign religious institutions.

The leadership in Peking probably sincerely wishes to accomplish reunification without the use of force. The nine-point proposal, together with Article 31 of the new constitution, might be considered a reasonable basis for this. More care should have been taken, however, in the drafting of the other sections of the constitution. The preamble, which in theory has general application, includes clauses on the leadership of the Communist Party and the importance of Marxism-Leninism and Mao Zedong Thought that will make the Nationalists uneasy. It may be difficult in the next few years for

Deng and his followers to balance the policies necessary for a smooth reunification with the rhetoric demanded by the internal political process.

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