

China and the Globalisation of Constitutions

Constitutional Thought in the Qing Empire (1838-1911)

INAUGURALDISSERTATION

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In memoriam

Luiz Alberto de Vianna Moniz Bandeira (1935–2017),
my father, who, from the very first day of my life, passed on to me our family's
tradition of loving books and knowledge. He did not live to see the completion of
the present thesis, but I hope he would enjoy reading it.

Winfried Brugger (1950–2010),
whose love of legal philosophy and political science always inspired me.

*
**

Dedicated to

Margot Elisabeth Bender de Moniz Bandeira,
my mother, with heartfelt gratitude,

H. R. H. Dom Duarte de Bragança and
Durval de Noronha Goyos jr.,
with friendship and admiration.

*Es schwindet der Geist der Revolution
Und es rufen die edelsten Mantschu:
Wir wollen keine Constitution,
Wir wollen den Stock, den Kantschu!*

Heinrich Heine (1844)

*
**

遠西諸邦日致富強者何也蓋其政體大同小異而歸一之要則在立憲法

Hayashi Masaaki (1873)

*
**

帝國主義者，聚全國人民之眼光使之射於世界之上，高掌遠矚，不爲人侮而常欲侮人，不爲人侵而常欲侵人。……大抵欲行帝國主義者，咸以財富、文化爲先鋒，而以戰鬥爲後盾，此爲今日世界列國之公例。循是者興，無可逃矣。立憲政體者所以厚國民之競爭力，使國家能進行帝國主義者也。

Dashou (1908)

*
**

演述杜爾斯德致中國人書書甚長大致言支那人不可棄其農業立國之美德而學歐人立
憲警察陸軍諸邪說

Qian Xuanton (1908)

PRAEFATIO

Cum in adulescentia doctor fieri animo captus essem, doctoralem dissertationem latino sermone scribere statui, quia grammatici lycei alumnus eram ac linguarum, praecipue uetustarum et illarum quibus rei publicae administratione non utuntur ac dialectus appellantur linguarum, amore iam diu affectus eram. At quamquam constitutiones facultatis philosophiae Uniuersitatis Heidelbergensis id concedunt, dolendum est quod hoc tempore iam unusquisque uulgari lingua scribit, atque doctorales dissertationes latine scribi non iam solent. Ueniam tamen dato, optume amice qui haec legis, ut, si nihil aliud, saltem prooemium huius operis latine scribam.

Uero, hoc opus somnii exitus est, quod ab omni tempore habui. A parua pueritia Asiae Orientalis amore studioque incensus sum. Ex quo cum tredecim annos natus essem a lycei mei bibliotheca libri Caroli Patricii Fitzgeraldi titulo *Sinae: Brevis humanitatis historia (China: A Short Cultural History)* theodiscam uersionem mutuatus sum, libros de Serica historia deuorare coepi. Minus quam anno postea, otioso tempore utensque libris, quos pecunia parentibus mihi in sumptum peculiarem data emeram, mandarinorum dialectum sericae linguae discere orsus sum. Eo tempore foederali magistratu cultus Germaniae adparato certamine linguarum alienarum serica parte interfui, ad quod tractatus de historia Serum scribendus erat et bibliothecam instituti sinologici uniuersitatis Heidelbergensis crebre adhibui. Tres annos post, simili etiam certamine iaponicae linguae interfui. Inde bibliothecae institutorum sinologiae et iapanologiae quasi secundae meae domus factae sunt.

Postquam a lyceo abieram, in uniuersitate primum legibus studui. In iurium studio maxume delectabar rebus ad rem publicam pertinentibus, praesertim civitatis theoria atque iure constitutionum. Tamen, plus quam tantummodo iuribus studere uolui, et continenter Asiae Orientalis rebus particeps eram. Ardens amor rerum praeteritarum et igitur etiam linguarum litterarumque

antiquitatis me ad linguae classicae sericae ab secundo uniuersitatis semestri studendum induxit. Cito, attentionem tam multum Asiae Orientalis quam legum studio dedi.

Itaque, in auctumno a. D. MMXIII fortunatissima mihi accidit res. In Heidelbergense Uniuersitatis Cumuli Praestantiae nomine "Asia et Europa in Orbis Conspectu" (Cluster of Excellence "Asia and Europe in a Global Context") inuestigationis circulo "Ad orbitam notionum historiam" ("Towards a global history of concepts") locus ad doctorale opus faciendum factus est, qui mihi studia mea coniungendi facultatem dedit. Mercede liberalissima Germanici Inuestigationis Concilii (Deutsche Forschungsgemeinschaft) hanc inuestigationem facere potui de iure constitutionali apud Seres regentibus imperatoribus, id est, ante noui rei publicae regiminis principium. Desita hac mercede, ad opus perficendum aliam aequae liberalissimam mercedem ab Instituto Chiang Ching-Kuo accepi, qua toto corde gratus sum.

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Multi, uel potius innumerabiles, sunt praeceptores collegaeque amiceque qui me adiuerunt in hoc doctorali opere, et impossibile est omnibus gratias habere. Curatoribus mei operis doctoralis immortales gratias ago agamque dum uiuam. Apud Uniuersitatem Heidelbergensem, illustrissimi professores Joachim Kurtz et Rudolf G. Wagner, quorum alta sapientia usquequaque lucratus sum, semper pretiosissimis consiliis grauissimoque auxilio succurrerunt. Eis quidem meliores curatores habere haud potuissem. Immortales etiam caro doctori Lothar

Wagner gratias ago, qui me in Sericam linguam classicam litterasque induxit, ob fidelem suum fauorem diuturnamque suam amicitiam. Nobilissimi professoris uniuersitatis Tohoku Anami Yusuke 阿南友亮 auctoritate commoratio in Asia Orientali academice uberrima facta est. Gratias etiam ago praeclarissimo professori Tozawa Hidenori 戸澤英典, meo secundo curatori in Iaponia, ob suum adiumentum subsidiumque.

Communia opera uniuersitatum Heidelbergae Tohokuque perito labore insignissimi professoris Harald Fuess facta sunt, quae leuiter Christina Pietsch administravit. Apud Tohoku, probissima Misumi Taeko 三隅多恵子 me tam bene curauit uti Sendai mihi patria secunda facta est. Apud Heidelbergam, Shupin Lang admodum benigne usquequaque auxilio uenit. Praeterea, sine bibliothecae sinologicae suppetiis inuestigationem agere non potuissem. Ibi, Hanno Lecher, Anne Labitzky-Wagner, Till Linsenmair, Lena Hessel, Daniel Fleck, Aaron Chiang, Sophie Zasche, Teresa Weise, Fei Ruqing, Zhang Bosen, Luca Pisanelli multique alii comissime peritissimeque cottidianae fere preces meae librorum ex aceruis satisfecerunt.

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Rode, Swetlana Torno iocosissimum concilium habere solebam, ut simul in opus doctorale perficiendum animum reciperemus.

Inclutissimus Legum Institutum professor doctor doctorque honoris causa multiplex Peter-Christian Müller-Graff ualde animae meae instinctum adflauit. Instituti Iaponicorum Studiorum emeritus professor Wolfgang Schamoni et doctora Asa-Bettina Wuthenow, sicut Cumuli Praestantiae Yamamoto Takahiro 山本敬洋, beneuole auxilio in quaestiones de Iaponia uenerunt. In rebus Coreae, ope Stefan Knoob et Lee Hyojin 李曉辰 et Jung Jieun 張知恩 et Li Aihua 李愛花 et Michael Kinadeter gratus sum.

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Quoniam hunc librum scribendi propositum exploratio orbi terrestri ponderis promulgatio constitutionis in imperio Tsing fuit, mihi diuersis in bibliothecis acruisque tabularum publicarum totius orbis inuestigationem agendam fuit. Hoc opus quidem sine salutationibus multorum aliorum institutionum in Europa Asiaque Orientale fieri non poterit. Pechini, gratus sum Legum Scholae Uniuersitatis Tsinghuae professori Shen Weixing 申衛星 meoque caro amico Jin Yin 金印, sicut Yang Rujun 楊如筠, qui, in mensibus martii aprilisque MMXI a. D., facultatem mihi dedere ut hospes inuestigans factus sim. Uniuersitas Pechinensis Instituti Historiae praeclarissimus professor Shang Xiaoming 尚小明 grauissimam mihi intelligentiam historiae seri imperii Tsing parauit. Denique, gnaro constitutionis imperii Tsing amico Jiang Nancheng 蔣南成 gratus auxilio suo sum.

Cum Taipeiae in bibliotheca Musei Publici Regiae (*Gugong Bowuyuan* 故宮博物院) fui, memorabilis cum sapientissimo professore Chuang Chi-fa 莊吉發 concursus mihi accidit, qui beneuolissime particulam oceani sui scientiae historiae imperii Tsing impertiit. Cum doctissima Chou Pei-chih 周培之 Serico sermone scriptas fontes primarias saepe tractaui, quo ei gratissimus sum. Gratias etiam ago amicis professoribus Su Hui-chieh 蘇慧婕 Instituti Iurisprudentiae Academiae Sinicae et Chen Wei-yu 陳瑋佑 Publicae Uniuersitatis Formosae (*Guoli Taiwan Daxue* 國立臺灣大學) suorum amicitia subsidioque. Operarii bibliothecarum Uniuersitatis Publicae Formosae Museique Publici Regiae uere comissimi sunt eorum quibus occurri in quaqua parte mundi, et me linguam Hokkien adhibere sinendo laetissimum uti puerulum fecerunt.

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Multi alii boni amici uariis modis mihi adiuuerunt, quorum paucos tantum memorare posse doleo. Habita cum optumo meo amico Nils Pelzer colloquia semper intellegentiam meam de Serum legibus fouere. Cum probissimo amico Milinda Banerjee τῷ Βεγγαλίῳ de cunctis cogitationis historiae partibus infinite collocutus sum. Dilectissimae amicae Madeleine Martinek, Ricarda Milstein, Victoria Ziesenitz, Christina Mauel, Julia Sandner, Meagan Wong partes exempli huius libri legerunt, correctiones fecerunt, deinde pretiosissimas opiniones dederunt. Sedulissimae Victoria Ziesenitz et Zhang Jingshu 張婧姝 et Elifcan Kirma technicis rebus inaestimabiliter subuenerunt.

Scilicet supra memorati amici ab expressis in hoc opere opinionibus dissentire fieri potest, et omnes errores mendaque inter huius libri opercula contenti solum mei sunt. En, legens carissime amice! Quali hunc librum scripsi ardorem capitulum esse spero huiusque libri lectione delectari te exopto.

Egas Moniz Bandeira

Heidelbergae, die mercurii a.d. III non. quinc. anni MMDCCCLXXI a. u. c.

TABLE OF CONTENTS

INTRODUCTION

1. Prelude: “We do Not Want a Constitution, We Want the Stick, the Whip!” ...	1
2. Outline of the Subject: China and the “Constitutionalisation” of the World ..	4
3. Some Theoretical Considerations on Qing China’s Adoption of a Constitution	13
a) Constitutions and the Constitutional State.....	13
b) Accomplishments and Standards: What the Qing Constitutional Movement Was Not	17
c) Crisis and Power: What the Qing Constitution Was.....	22
d) The Qing Constitution, a Failure?	27
4. The State of the Field	30
5. Methods, Sources, and Structure.....	44

CHAPTER ONE.

Constitutions in the World and in China in the 19th Century

1. Prelude: “China’s” Lost Constitution.....	61
2. The Globalisation of Constitutions in the 19 th Century	65
a) “The West” and Russia.....	65
b) The Ottoman and Persian Empires.....	72
3. East Asian Constitutions in the 19 th Century	75
a) Terms for “Constitution” in East Asian Languages	75
b) <i>Guoli</i> 國例 and <i>zhangcheng</i> 章程: Difficulties in Comprehension.....	86
c) Early Chinese Translations of the Constitution of the USA: From the United States to British Singapore to China to Japan.....	93
d) The Japanese Constitutional Process, 1871–1890	103
4. Chinese Knowledge about Constitutions from the 1870s to 1890s	111
a) Timothy Richard’s Translations	111

b)	The <i>Wanguo gongbao</i> and the <i>Stateman's Year-Book</i>	114
c)	News from Japan Coming to China	123
d)	Fu Yunlong and his Books	125
5.	East Asian Constitutions and Early Political Reformism in China in the late 19 th Century	131
a)	Early Calls for Reform in China and their Global Context	131
b)	The 1895 Formosa Republic: A first Constitutional Experiment?	137
c)	A Republic in the Philippines and its Constitutional Implications.....	145
6.	Postlude and Chapter Conclusion: "And the Kindly Earth Shall Slumber, Lapt in Universal Law."	148

CHAPTER TWO.

Constitutional Debates from the 100 Days' Reforms to the Russo-Japanese War

1.	Prelude: China's "Quadriform" Constitution	153
2.	Kang Youwei and the 1898 Reforms	155
a)	Constitutionalism Before the 100 Days' Reforms	155
b)	Doctored Memorials to the Throne?	156
c)	Kang and the Notion of "Constitution"	163
d)	Kang's 1898 Constitutionalism and China's Further Constitutional Reforms.....	170
3.	"Reform of Governance," "Constitutions," and "Constitutionalism"	173
a)	A Short Overview of Political Developments 1898–1903	173
b)	Constitutional Autocracy: the Example of Korea	178
c)	"Constitution" and "Constitutionalism" in China: the Example of Liu Yazi	190
4.	A Global Outlook: Chinese Constitutional Debates in a Changing World..	193
a)	The Japanese Example and Political Pressure for a Constitution.....	193
b)	Kang Youwei, Liang Qichao, and their Magazines	199
c)	The "Association for Studies of the State" (<i>Guoxueshe</i> 國學社)	209

5.	Ku Hung-ming, Taw Sein Ko and International, Multilingual Debates	214
a)	The Chinese “Constitution” Outside of the Qing Empire.....	214
b)	Taw Sein Ko, Li Zhuchi and the Chinese Community in Burma.....	216
c)	Ku Hung-ming’s <i>Papers from a Viceroy’s Yamen</i>	226
6.	Chapter conclusion	230

CHAPTER THREE.

World War Zero: From the Russo-Japanese War to the Russian and Persian Constitutions (1904–1906)

1.	Prelude: <i>Rights under the Fourteenth Amendment</i>	235
2.	The Russo-Japanese War and the Need for a Constitution in China.....	237
a)	1904–1905: The Course of the War and its Effects on China	237
b)	Defeat in War, Post-War Events in Russia, and Their Effect on China	239
3.	China: Pressure for a Constitution and First Mission Abroad.....	244
a)	Sitting in the Same Boat and a Russian Exhortation to China	244
b)	Local Elites, Local Self-Government and Constitutionalism	247
4.	The Chinese Government Before “Constitutional Preparation”	250
a)	Governmental Reactions to the Pressures	250
b)	The “Constitutional Mission”	255
c)	The Mission in Russia	259
d)	Coming Back Home and “Preparing for the Adoption of a Constitution”	268
e)	September 1, 1906: The Decision to Adopt a Constitution.....	272
5.	Russia, Persia and their Further Influences on China.....	278
a)	The Persian Constitutional Revolution	278
b)	Problems with the Adoption of Constitutions	284
c)	Russian and Persian Warnings.....	288
d)	Russia, Persia, and Revolutionary Anti-Constitutionalism	295
6.	Direct Non-Diplomatic Contacts: Russia, China, and beyond	301

a) Chinese Whispers.....	301
b) Zhang Qingtong in Russia	302
c) Tolstoy and Ku Hung-ming.....	312
7. Chapter conclusion	328

CHAPTER FOUR.

Constitutions and Imperialism: China's Constitutional Preparation and its International Insertion

1. Prelude: Showing a "Fine Understanding" in Austria	333
2. First Reforms: Political Events After the Declaration of Intent	337
a) Reform of the Central Government	337
b) Reform of Provincial Government.....	341
c) The Political Consultative Council (<i>Zizhengyuan</i> 資政院)	343
d) The Constitutional Office (<i>Xianzheng biancha guan</i> 憲政編查館).....	346
3. The Second Constitutional Mission and Other Chinese Activities Abroad.	350
a) Sending out a Second Batch of Commissioners.....	350
b) Wang Daxie in Great Britain.....	355
c) Yu Shimei and the Chinese Students in Germany.....	361
d) "China Has Always Had a Constitution"	377
e) Dashou and Li Jiaju in Japan	385
4. The Constitutional Movement and China's Standing in the World	391
a) China and Civilisation: Direct Arguments	391
b) China and Imperialism: Indirect Arguments	393
c) The Hague Peace Conference of 1907 as a Constitutional Impulse	399
5. The International Reception of China's Constitutional Movement	406
a) International Dialogues in Public Opinion.....	406
b) Economic Reactions	412
c) Political and Diplomatic Reactions.....	415
d) Itō Hirobumi and the Chinese Constitution.....	419

e) Chapter Conclusion	438
-----------------------------	-----

CHAPTER FIVE.

“Débris of Paper Constitutions”: The Elaboration of a Constitution for the Qing Empire

1. Prelude: “The Magic Virtue of Words” and “Rococo Constitution-Tinkering”	441
2. China’s First Official Constitutional Document.....	444
a) The Concomitant Adoption of constitutions in the Ottoman and Qing Empires	444
b) On the “Japaneseness” and the “Chineseness” of the Qing <i>Outline of a Constitution</i>	448
c) Chinese Interpretations of the Ottoman Constitutional Revolution.....	455
3. Translations of Foreign Constitutional Texts	465
a) The Appearance of “Comparative Constitutional Studies”	465
b) Collections of Translations and Translations as Monographs.....	468
c) Translations of English Constitutional Texts	471
d) Translated Constitutions of Newly-founded Republican Polities: Philippines and Cuba.....	474
e) Translations of the Constitutional Wave of 1905–1911	477
3. Working on a Final Constitution	484
a) An Overview over the Various Drafts	484
b) Inside the Constitutional Office: Global Perceptions	486
c) The <i>Constitutional Code for the Great Qing Empire</i>	489
d) Zhang Bolie and his Draft	491
4. Kitaoni Saburō, the Pioneer of Constitutions in Modern China.....	495
a) Kitaoni Saburō’s Relevance to Constitutional Studies.....	495
b) Kitaoni’s Personal Background	498
c) Kitaoni’s Interest for the Chinese Constitution.....	501

d) Kitaoni's Work and its Importance.....	508
e) On the Contents of Kitaoni Saburō's Draft.....	516
5. Chapter Conclusion	521

CONCLUSIONS

1. Epilogue: The World Coming to an End.....	525
2. Summary of Results: China and the Constitutionalisation of the World.....	528
a) A History Longer than Imagined.....	528
b) A Constitution as a Political Instrument.....	530
c) China's Constitutional Movement and the Global Constitutional Movement.....	532
d) The Adoption of a Constitution in China and the Already Constitutional Powers.....	536
3. Assessment of the Qing Constitutional Movement: A Local Refraction of a Global Movement.....	538

APPENDIX

Translations of Constitutional Charters into Chinese.....	545
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EPILEGOMENON.....	563
-------------------	-----

DEUTSCHE ZUSAMMENFASSUNG.....	565
-------------------------------	-----

ENGLISH SUMMARY.....	570
----------------------	-----

BIBLIOGRAPHY

1. Sources.....	575
a) Consulted Archives and Other Unpublished Material.....	575
b) Published Material (Books, Articles, Editions of Archival Material).....	577
2. Secondary Literature.....	633

INTRODUCTION

He that mysconceyvoeth, he mysdemeth.

Geoffrey Chaucer (ca. 1400)¹

1. Prelude: “We do Not Want a Constitution, We Want the Stick, the Whip!”

In 1844, Heinrich Heine (1797–1856), one of the most important German poets of the 19th century, well-known for his radical political positions that forced him to spend a large part of his life in exile, published a satirical poem in *Vorwärts!*, a German-language semiweekly newspaper appearing in Paris. In the poem, entitled “The Emperor of China” (*Der Kaiser von China*), Heine pictured the alleged “Emperor” as an impotent drunkard.² His Majesty gives a monologue in which he declares that when he drinks alcohol, all his problems miraculously disappear, and the Empire suddenly blooms and blossoms. One of the miraculous effects imagined by the Emperor is the following:

The spirit of revolution withers

And the noblest Manchu call:

“We do not want a constitution,

We want the stick, the whip!”

Es schwindet der Geist der Revolution

Und es rufen die edelsten Mantschu:

¹ Geoffrey Chaucer, *The Canterbury Tales*, ed. Arthur Clare Cawley (London: Everyman Publishers/Random House, 1992), 288 (The Merchant’s Tale, line 2410).

² First published in the German-language semiweekly newspaper *Vorwärts!* of Paris: Heinrich Heine, “Der Kaiser von China,” *Vorwärts!*, May 11, 1844.

Wir wollen keine Constitution,
Wir wollen den Stock, den Kantschu!³

The author of this thesis must confess that, when he, by chance, came across these verses, he thought for a split second that they were a commentary on the Qing government's efforts to adopt a constitution in the years 1906–1911. But then it crossed his mind that this was impossible—Heine had died half a century before. Of course, Heine was not seriously commenting on Chinese politics; he was not even meaning China. The poem belonged to the collection entitled *Poems for the Times* (*Zeitgedichte*), written between 1839 and 1846, in which Heine deplored the political conditions in Germany, as epitomized by their most well-known verses:

If I think of Germany at night,
Then I lose my sleep,
I can no longer close the eyes,
And my hot tears flow.

Denk' ich an Deutschland in der Nacht,
Dann bin ich um den Schlaf gebracht,
Ich kann nicht mehr die Augen schließen,
Und meine heißen Thränen fließen.⁴

In the China poem, the Emperor, the Manchu counsellors and many others were all codes for the situation in Europe. China had been used as a symbol for absolutism in European literature since the time of lights; and in the satire of the German *Vormärz* period (1830–1848) especially, China is often used as a symbol for reactionary policies.⁵ In Heine's poem, "China" actually stood for "Prussia" and the "Emperor" was none other than Prussian King Friedrich Wilhelm IV (1795–

³ Ibid.; also contained in Heinrich Heine, *Heinrich Heine: Historisch-kritische Gesamtausgabe der Werke*, ed. Elisabeth Genton, 16 vols. (Hamburg: Hoffmann und Campe, 1983), vol. 2, 123 (*Zeitgedichte*, no. 17). All translations in this study are the author's, unless noted otherwise.

⁴ Ibid., vol. 2, 129 (*Zeitgedichte*, no. 24).

⁵ Heine, *Historisch-kritische Gesamtausgabe der Werke*, vol. 2, 746.

1861), who indeed was rumoured at the time to be impotent and fond of drinking. The “noblest Manchu” referred to the board of advisors of King Friedrich Wilhelm IV, which called itself a “camarilla,” was known as arch-conservative and was an important factor in the king’s restorative policies.⁶

Heine’s reference to the constitution has to be read in light of the political circumstances reigning in Germany in the years before the 1848 revolution. The so-called *Vormärz* period was characterised by a number of new constitutional charters in the German states which conferred large powers to the monarch and were often criticised for being mere “sham constitutionalism.”⁷ The monarch referred to in Heine’s poem, Friedrich Wilhelm IV, did not promulgate a constitution, although this had been promised by his father. But at the same time, following the political changes in Great Britain and in France, a liberal constitutional theory began to call for the parliaments to obtain greater powers.⁸

Although the poem “The Emperor of China” had its readership in Europe—it was enjoyed by Karl Marx (1818–1883) and Jenny Marx (1814–1881)—,⁹ there is no record that the verses referring to China were ever read in Qing China; they have hardly found attention in China up to this day. None linked Heine’s satirical words about the constitution to China’s own struggle for constitutionalism. But in hindsight, Heine’s verses are remarkable as probably the first vaticination of China’s own efforts to adopt a constitution, more than 60 years later. In the years after 1906, the same feeling as described by Heine would become very common, namely that the Manchu Court was insincere with its promises of a constitution and instead hoped for the rule of “the stick, the whip.” Heine’s verses

⁶ Ibid., vol. 2, 747.

⁷ Dietmar Willoweit, *Deutsche Verfassungsgeschichte: Vom Frankenreich bis zur Wiedervereinigung Deutschlands*, 5th ed. (Munich: C.H. Beck, 2005), 277, 281.

⁸ Ibid., 284–285.

⁹ Karl Marx and Friedrich Engels, *Werke*, ed. Institut für Marxismus-Leninismus beim ZK der SED, 41 vols. (Berlin: Dietz Verlag, 1981), first supplementary volume (*Ergänzungsband, erster Teil*), 651 (Jenny Marx an Karl Marx in Paris—Trier, vor dem 10. August 1844).

could well have been written by someone supporting the anti-monarchic movement in China in the years before 1911.

But these verses also illustrate a second point. This striking foretelling was only possible because similar problems as encountered by China had been encountered in European constitution-building not too long a time before. It was at the time when Heine wrote his verses that the modern term “constitution” first appeared in Chinese texts. Although the European constitutional struggles referred to by Heine took place over 60 years before Qing China’s constitutional reforms, they did not finish soon thereafter. On a global level, the status and role of constitutions remained unclear for many decades after. Prussia adopted a constitution four years later, in 1848, but a larger European power, Russia, did not promulgate any constitutional document during the whole 19th century. The Qing constitutional reforms did not take place in an environment where constitutionalism was set in stone. Rather, they were part of ongoing global developments.

2. Outline of the Subject: China and the “Constitutionalisation” of the World

From today’s point of view, such a situation as described by Heine seems difficult to imagine. A king like Friedrich Wilhelm IV would no longer simply refuse to adopt a constitution, no matter how autocratic he was. Whatever their form of political organization, virtually all contemporary states have constitutions as the paramount element of their political and legal systems.¹⁰ They have become one of the most salient symbols of modern nation-states.

¹⁰ Apart from the special case of the United Kingdom and its former colonies, a few states have several constitutional documents instead of only one. Sweden’s monarchical constitution is set down in a series of basic laws, most importantly a charter called *Instrument of Government (Regeringsform)*. Of the republican polities, Israel has not managed to adopt a single constitutional charter due to internal political strife, but it has several *Basic Laws* serving as a constitution. Austria’s constitutional law, too, knows several constitutional acts alongside the *Federal Constitutional Law (Bundesverfassungsgesetz)*.

But how has this relatively new legal and political instrument become a near-universal element of modern sovereign states? This study explains this situation as the result of a long-term process which it calls the “constitutionalisation” of the world. In particular, it argues that the efforts of the Qing Empire to adopt a constitution in the first decade of the 20th century played an important role in this constitutionalisation of the world.

Usually, constitutional historiography treats constitutions as a fundamentally European and North American development which was then, *ex post facto*, received in other parts of the world. In this light, the Chinese “constitutional movement” is treated as a national or at best regional East Asian phenomenon, and early Chinese constitutional thought as a derivative discourse aimed at grafting foreign ideas onto Chinese soil. More often than not, constitutionalism is described as a “good shipped from abroad” (*bolaipin/ hakuraihin* 舶來品),¹¹ together with rather sweeping assertions such as that “no one can deny that modern constitutional government in China is a product of learning from the West, that it is a good shipped from abroad.”¹²

However, this study contends that such a view does not do justice to the historical process. Certainly, such an explanation seems quite intuitive at first sight. Late Qing constitutional thought did arise out of the contact with the West and Japan. Chinese intellectuals and officials industriously studied Western and Japanese models, and there is a considerable body of research on Chinese

¹¹ E.g., Qi Sheng 齊盛, “Jindai Zhongguo xianfa de fazhan guiji” 近代中國憲法的發展軌跡 (The development track of modern Chinese constitutions), *Henan Keji Daxue xuebao (shehui kexue ban)* 河南科技大學學報 (社會科學版) 29, no. 5 (2011), 93–97; Zhai Guoqiang 翟國強, “Zhongguo yujing xia de ‘xianfa shishi’: yi xiang gainianshi de kaocha” 中國語境下的“憲法實施”：一項概念史的考察 (“Constitutional implementation” in the Chinese language: An examination in conceptual history), *Zhongguo faxue* 中國法學, no. 2 (2016), 105–120; Ma Xiaohong 馬小紅, “Shilun ‘chuantong’ Zhongguo xianzheng fazhan zhong de shiluo” 試論“傳統”中國憲政發展中的失落 (A tentative discussion of the disappointments in the development of “traditional” Chinese constitutional government), *Faxuejia* 法學家, no. 4 (2008), 1–5. Similarly, William Theodore de Bary, “The ‘Constitutional Tradition’ in China,” *Journal of Chinese Law* 9 (1995), 7, argues that “‘Constitutionalism,’ as we understand it today, is a European-American concept of relatively recent provenance.”

¹² Ma, “Shilun ‘chuantong’ Zhongguo xianzheng fazhan zhong de shiluo,” 1.

receptions of these models. Many—but not all—Qing intellectuals declared that China had never had a constitution, that the origins of the concept lay in ancient Greece and Rome or in medieval England, and that the concept had to be “imported” to China.¹³ “Picking the best policies of foreign countries for adoption” (*ze shan er cong* 擇善而從) was the declared objective of the Chinese government. Not surprisingly, many foreign observers, too, measured the Chinese “constitutional preparation” (*yubei lixian* 預備立憲) with the yardstick of Western forms of government, analysing it as an adoption of Western ideas or describing that the reforms proposed by the Qing government still fell short of “Western constitutional government.”¹⁴

But do these accounts tell the full story? Does this model suffice to explain the emergence of modern Chinese constitutional thought in its entirety? Were non-Western experiences in introducing constitutions merely local or at most regional attempts at grafting western ideas of constitutionalism onto their respective polities?

The answer to these questions must be found by casting an even closer look at the international environment of constitutionalisation in which the Chinese constitutional movement unfolded. The global process of constitutionalisation began in the late 18th and early 19th century, when states without constitutions began adopting full constitutional charters in large numbers. But although the first and most iconic constitutional documents were adopted in Europe and the United States, the process was not at all finished with the US constitution in the Americas

¹³ E.g., Zhou Kui 周達, ed., trans. *Xianfa jingli* 憲法精理 (Essential principles of constitutions) (Shanghai: Guangzhi shuju, Guangxu 28 [1902]), preface (*xu* 序), i b. See further the study primer *Zaoshi bianyishe* 造時編譯社, *Xianfa: Kaoshi wenguan xin liqi* 憲法：考試文官新利器 (Constitution: a new and effective tool for examinations and civil servants) (N.p.: Xuanton 3 [1911]), preface (*xu* 序), ii a.

¹⁴ To name just one example, which already carried such sentiments in its title, see *New York Tribune*, “China’s Constitution: An Attempt to Convey Western Ideas to Minds of People,” October 19, 1908, noticing the *Outline of a Constitution by Imperial Decree* (*Qinding xianfa dagang* 欽定憲法大綱).

and the French Revolution in Europe, or with the reordering of Europe after the Congress of Vienna in 1815.

Although constitutions decisively marked the first decades of the 19th century in Europe, they only became a world-wide *condicio sine qua non* of statehood because of how the concept fared after that period and in other parts of the world—from Eurasia to the two Americas, from Africa to Oceania. Since the late 18th century, constitutional documents have been assiduously produced all over the world. While non-constitutional states adopted new constitutions, those which already had constitutions often abolished their existing ones and promulgated new charters. The total number of constitutional charters can hardly be counted and amounts to, at least, several hundreds. Roberto Gargarella counts 100 constitutions in 19th century Latin America alone.¹⁵ Bodo Dennewitz and Boris Meißner, in a compilation of constitutional texts from the United Kingdom, the United States, France and Russia, count 422 constitutional documents enacted on all continents between 1776 and 1946—rather impressively, about 2,5 per year.¹⁶ In 2013, Yaniv Roznai examined 537 “past and present constitutions.”¹⁷ Collections of constitutional texts have been made since the early 19th century, some of them having attained enormous size, occupying whole cabinets full of microfiches.¹⁸

¹⁵ Roberto Gargarella, “Towards a Typology of Latin American Constitutionalism, 1810-60,” *Latin American Research Review* 39, no. 2 (June 2004), 141.

¹⁶ Bodo Dennewitz and Boris Meißner, eds., *Die Verfassungen der modernen Staaten: Eine Dokumentensammlung*, 4 vols. (Hamburg: Hansischer Gildenverlag, 1947), vol. 1, 14-24. The list is imperfect in several regards. On the one hand, the list is inflated by many constitutions of sub-national entities (such as of the cantons of Switzerland and of states of the United States) and even simple amendments to the constitution of the USA. But on the other hand, the list is also incomplete, particularly outside of Europe. For example, the list does neither include any of the five constitutions promulgated by the Kingdom of Hawai‘i in the 19th century, nor Tonga’s constitution of 1875, nor the 1931 constitution of Ethiopia. In East Asia, while it does include the Japanese constitutions of 1890 and 1946 as well as the various constitutions of the Republic of China, it ignores the various peculiar and short-lived documents that were being promulgated in the region, such as two Qing constitutional outlines of 1908 and 1911, the 1899 constitutional document of Korea and the short-lived 1897 and 1899 constitutions of the Philippines.

¹⁷ Yaniv Roznai, “Unconstitutional Constitutional Amendments: The Migration and Success of a Constitutional Idea,” *American Journal of Comparative Law* 61, no. 1 (2013), 667.

¹⁸ The most complete collection is the one by Horst Dippel and Berend Wispelwey, eds., *Verfassungen der Welt 1850 bis zur Gegenwart* (Munich: De Gruyter Saur, 2002–2007), which occupies a whole

All this shows that the Chinese constitutional movement took place in a vivid and fluid global context of constitution-making. Constitutions and debates on them were not stable at the turn of the 20th century, not even in Europe.¹⁹ As modernity resulted in great political, economic and social upheavals, as well as of crises of identity stemming from the necessity of adaptation to new circumstances, the great political and social crises were accompanied by new constitutional charters across the world. In places as far away as Oceania, between 1840 and 1893, the Pacific kingdom of Hawai‘i passed a total of six constitutions before being formally annexed by the United States.²⁰ Another Polynesian kingdom, Tonga, escaped such a miserable fate. It passed its constitution in 1875, which is valid to this day. There, it was not so much used to prevent annexation by the USA or European powers, but because the instrument proved to be useful in reaching a

cabinet full of microfiches. For another large collection see Albert P. Blaustein and Gisbert H. Flanz, eds., *Constitutions of the Countries of the World*, 20 vols. (Dobbs Ferry, New York: Oceana Publications, 1971–), 20 binders with constitutions valid at the time of publication. See also Karl Zuchardt, ed., *Moderne Staatsverfassungen: Ihr Wortlaut und ihr Wesen, gemeinverständlich dargestellt* (Leipzig: F. Koehler, 1919); Moolamattom Varkey Pylee, ed., *Constitutions of the World*, 2nd ed. (Delhi: Universal Law Publishing, 2003). For a history of constitutional collections see Blaustein and Flanz, *Constitutions of the Countries of the World*, vol. 1, 1-8. Such compilations had their beginnings in the work of Jacques Vincent de la Croix, *Constitutions des principaux états de l'Europe et des États Unis d'Amérique*, 5 vols. (Paris: Chez Buisson, 1791-1793), which was a collection on discourses on the constitutional histories of various countries; the English translation, Jacques Vincent de la Croix, *A Review of the Constitutions of the Principal States of Europe, and of the United States of America*, 2 vols. (London: G. G. J and J. Robinson, 1792), contained an amendment with original texts from the United States, vol. II, 461-553. Real collections began after the Congress of Vienna with Karl Heinrich Ludwig Pölit, *Die Constitutionen der europäischen Staaten seit den letzten 25 Jahren*, 2 vols. (Leipzig, Altenburg: F. A. Brockhaus, 1817). A further list of collections of constitutional texts in European languages is given in Dennewitz and Meißner, *Die Verfassungen der modernen Staaten*, vol. 1, 24. As will be seen in the course of this study, Japanese and Chinese jurists were also assiduous in publishing collections of constitutional texts of various states.

¹⁹ Even today and even in the USA, whose constitution has been in effect since 1789, there is no agreement on what exactly a constitution is. See Zhao Hui, “Rethinking Constitutionalism in Late 19th and Early 20th Century China” (PhD diss., Harvard University, 2012), 7, who tries to contribute an answer by looking at both China and the USA.

²⁰ On the constitutional history of Hawai‘i in the 19th century see Jonathan Kay Kamakawiwo‘ole Osorio, *Dismembering Lāhui: A History of the Hawaiian Nation to 1887* (Honolulu: University of Hawai‘i Press, 2002). Osorio’s skillful book recounts the role of Western-style legal codes in the formation of the modern Hawai‘ian nation under the first three constitutions of 1840, 1852 and 1864. The three further constitutions (two monarchic ones of 1887 and 1893, as well as a republican one of 1894) were already characterised by the loss of sovereignty to the detriment of US American business interests.

compromise between king and the various local chiefs.²¹ The Ottoman Empire enacted its first constitution in 1876, which only lasted for two years. In Japan, the Meiji Emperor (r. 1867–1912), right after ascending to the throne, initiated a programme of profound political reforms, having as its cornerstone the enactment of a constitution in the year 1889/90. King Kojong of Korea declared himself Emperor (under the name Kwangmu) in 1897 and proclaimed a very peculiar constitutional document just two years later, in 1899.

We could go on naming examples, and we will encounter quite a few more in the course of this study in so far as they were relevant to China. In any event, as Benjamin Akzin argued, after the first World War, only two groups of nations remained without written constitutions. On the one hand, there was Great Britain, on the other, there were “countries still in their pre-modern stage, in respect both of their political and of their general social set-up, and without pretensions to modernity: Afghanistan, Ethiopia (then Abyssinia), Saudi Arabia, Thailand (then Siam), Yemen.”²² It was by the first World War, according to Benjamin Akzin, that having “a formal Constitution well-nigh became a universal fashion, a symbol of modernism.”²³

For newly established states—and there were many of them in the 20th century—, constitutions had also become ineluctable; their adoption was a *rite de passage* into formal statehood, as Yash Ghai described in his masterly volume about Oceania.²⁴ The process of constitutionalisation still continued after the first World War, as the states of Akzin’s second group, too, adopted constitutions. Apart from the United Kingdom and some of its former colonies—which is only an apparent

²¹ On the constitutional history of Tonga see Niu, Laki M. “The Constitution and Traditional Political System in Tonga,” in *Law, Politics and Government in the Pacific Island States*, ed. Yash H. Ghai (Suva: University of the South Pacific, 1988), 304–309. For the conclusion presented here, see 306 in particular.

²² Benjamin Akzin, “The Place of the Constitution in the Modern State,” *Israel Law Review* 2, no. 1 (1967), 1.

²³ Ibid.

²⁴ Yash H. Ghai, “Constitution Making and Decolonisation,” in *Law, Politics and Government in the Pacific Island States*, 3.

exception—, ²⁵ we can be quite precise as to when the process of constitutionalisation of the world was fully completed: in 2003. In that year, the last state which had never had a constitution, although it had been sovereign for a long time, adopted its constitutional charter: Qatar.²⁶

It is in Akzin's argument—which this thesis strives to slightly modify, putting it in more precise terms—that the key to answering the question of how constitutions globalised is to be found: this study argues that the victory of constitutionalism as a global concept was decisively marked in the decade before the first World War. In these years, China's constitutional reforms were not singular, but took place as part of a veritable constitutional "fever" on a global scale.²⁷ Four major Eurasian empires that had hitherto lacked constitutional charters promulgated such documents at roughly the same time. Russia proclaimed a basic law on May 6, 1906; Persia followed suit on December 31, 1906. The Ottoman Empire reinstated its 1876 constitution on July 24, 1908. Qing China announced to "prepare for constitutionalism" on September 1, 1906 and

²⁵ It is by no means a paradox that the United Kingdom, being usually given as the only example of a state which does not have a formalised constitutional charter, is commonly held to be the cradle of modern constitutionalism. Some of the world's oldest and most iconic constitutional documents, the *Magna Carta* of 1215 and the *Bill of Rights* of 1688, were adopted very early in England, but the political system defined by these as well as by other, uncoded, legal norms developed so gradually and was so well-engrained at such an early stage that no comprehensive constitutional charter was ever produced. Some of the United Kingdom's former colonies, such as New Zealand and Canada, follow similar patterns. They do have "constitution acts," but having political systems based on the British Westminster system, still retain many uncoded elements.

²⁶ Sometimes, Saudi Arabia is still counted as a state without a written constitution. From a formal point of view, this is not accurate, as the Saudi king has promulgated a constitutional document in 1993 by royal decree, after King Fahd had promised political reforms in the wake of the Iraqi occupation of Kuwait. However, the Saudi Arabian *Basic Law of Government* does not see itself as a constitution; instead, it declares the "Book of God Almighty and the Sunna of his Prophet" to be the constitution of the country. On the Saudi Arabian constitution see A. Michael Tarazi, "Saudi Arabia's New Basic Laws: The Struggle for Participatory Islamic Government," *Harvard International Law Journal* 34, no. 1 (1993), 258–275. See further Tim Niblock, *Saudi Arabia: Power, Legitimacy, and Survival* (London: Routledge, 2006), 104–105, who, using more substantial criteria, argues that the 83 articles of the *Basic Law* are not specific enough to be considered a constitution.

²⁷ The term "constitutional fever" is taken over from the *Kokumin shimbun* 國民新報, an influential newspaper known for its closeness to the Japanese government, which used it to refer to Egypt. See *Kokumin shimbun* 國民新聞, "Ejiputo no kenpōnetsu" 埃及の憲法熱 (Constitutional fever in Egypt), August 22, 1908.

proclaimed its first constitutional draft on August 27, 1908. In addition, “constitution” was a crucial buzzword of political debate in Morocco and in Egypt.²⁸ At the turn of the 20th century, there was, across the world, an awareness of such a “world-wide trend” shaping the modern world.²⁹ But although it became taken for granted that a state would lay down its basic principles in a constitutional charter, the origins of this global phenomenon have scarcely been studied by secondary literature.

This thesis recovers the process of the constitutionalisation of the world through the example of the Qing Empire. Instead of treating late Qing China’s quest for constitution as a national and at best regional phenomenon, it aims to situate China’s adoption of a constitution within global constitutional history, examining the importance of the Chinese experience for the world on the one hand and the impact of the ongoing globalised quest for constitutionalism on China on the other. As this process is one of the key elements in the formation of China as a modern nation-state, besides better understanding the globalisation of constitutions, this study might also be conducive to a second goal. Fitting the Chinese events into an international context will contribute to a better understanding of the options that Chinese politicians and intellectuals had at the turn to modernity and to re-evaluate the transition from Empire to Republic as well as the tortuous constitutional history of China.

A multitude of more specific questions arise out of this research objective, which this thesis intends to look at in more detail. How were Asian and European

²⁸ Egypt was nominally a part of the Ottoman Empire, but highly autonomous; Egyptian officials played an important role in intellectual discourses in the Ottoman Empire.

²⁹ See, e.g., “Lun jinri yi ji she xianfa yanjiuhui (jielu yisi shier yue ershi ri *Shibao*)” 論今日宜亟設憲法研究會（節錄乙巳十二月二十日時報）（Now, it behooves to urgently set up constitutional study groups [abridgedly reprinted from the *Shibao* of January 14, 1906]), *Dongfang zazhi* 東方雜誌 3, no. 2 (Guangxu 32 [1906]), 27; see also the Imperial edict on the opening of the Zizhengyuan in 1911: “Zhongguo dashi ji” 中國大事記 (Record of big events in China), *Dongfang zazhi* 東方雜誌 8, no. 9 (1911). See further *North China Herald*, “Reaction at Peking,” August 29, 1908, 509-510. It is not an exaggeration to say that it was well-perceived across the world, as commentaries from as far as Brazil show. See, e.g., *A Imprensa*, “A China constitucional,” December 28, 1907.

constitutional experiences in the first decade of the 20th century interconnected? How did Chinese officials and intellectuals see and react to the many constitutionalism-related events that were occurring at the same time of their own “constitutional preparation”—especially the constitutional reforms in Russia, Persia, and of the Ottoman Empire? What was the international function and dimension of Imperial China’s constitutional movement? How was it perceived abroad and how did foreign powers react to it? How did Chinese and non-Chinese actors in debates about constitutions interact?

All these questions cannot be answered by only examining the undoubtedly close relations between Japan and China, as has often been done. Certainly, the Chinese government in many regards chose to emulate Japan’s constitution-making process; numerous Chinese intellectuals and officials had close personal connections with Japan. Japan had significant interests in China, and Japanese observers followed China most closely. But, as Joan Judge has shown, even if Japan acted as a shortcut to modernity for Chinese intellectuals, there were considerable frictions underneath.³⁰ Most importantly, it shall be shown that even when Chinese intellectuals chose to make liberal use of Japanese constitutional models, they were well aware of the wider world and stood in a dialogue with it.³¹ In particular, the Qing government, as well as Chinese media and intellectuals, closely followed the concomitant constitutional developments in Russia, the Ottoman Empire and Persia. All these Empires were plagued by various internal and external problems, with which, *mutatis mutandis*, Chinese observers identified themselves, and to which, this study argues, they reacted in diverse, even

³⁰ See, e.g., Joan Judge’s assessment of Douglas Reynold’s overly positive assessments of Sino-Japanese relations in Joan Judge, “Revolution?” Review of *China, 1898–1912: The Xinzheng Revolution and Japan*, by Douglas R. Reynolds, *Sino-Japanese Studies* 6, no. 2 (1999), 10–11.

³¹ Rebecca Karl has shown that, in the last decades of the Qing, Chinese intellectuals, for the first time, began to conceive of the world as a whole, making the modern world visible as a totality. Rebecca E. Karl, *Staging the World: Chinese Nationalism at the Turn of the Twentieth Century* (Durham, [North Carolina] et al.: Duke University Press, 2007), 3–4. The work mainly deals with revolutionaries, but the idea can also be applied to the notion of constitution.

contradictory ways. They used hopes, concerns and disappointments about the Russian, Ottoman and Persian constitutions to reinforce their political agendas, thus aggravating internal tensions in China.

For these reasons, this thesis aims to show that Chinese constitutional thought in late Imperial China must be understood from a wider global perspective than just the immediate emulation of the Japanese model, or the mere “transplantation” of an ultimately European concept “shipped to” and unilaterally “received” in East Asia. The constitutional reforms were also not due to direct outside pressure. Rather, the study intends to show that Chinese intellectuals, whether they were located in China or abroad, developed their constitutional ideas in full own agency according to their domestical and international political agendas. They did so against the background of a concomitant global constitutional “fever” and of a multidirectional debate on the subject. As shall be shown, Chinese intellectuals did not suddenly come up with the concept in the early 1900s; instead, the notion of constitution had gone through a significant trajectory before it became a political objective. When this happened, the Chinese constitutional movement was not an “insertion” of China into the world order, but a symptom of a changing world order, in which constitutional charters were becoming defining elements of a nation-state. The world was changing, and China was changing with it.

3. Some Theoretical Considerations on Qing China’s Adoption of a Constitution

a) Constitutions and the Constitutional State

As Max Weber has noted, a perfect definition of a historical object to be studied cannot be made at the beginning, but must rather come to light during the process

of study itself.³² This all the more true as even in contemporary discourse, “constitution” and “constitutionalism” are multi-faceted, highly polysemic terms.³³ At this point, it shall suffice to delineate the major characteristics of the concept which allowed it to gain traction around the world and particularly in China, some of which have been underrepresented in the conventional framework in which constitutional history is narrated.

At the highest level of normative political order, a polity’s constitution means the set of norms which define its organisation, system of legislation and fundamental tenets.³⁴ As Dennewitz correctly stated, “every state has a constitution, for it is ‘constituted.’”³⁵ In this wide sense of the word, China of course had a constitution before the late Qing constitutional movement. As a matter of fact, this pre-modern constitution of China was extremely complex, providing for a very intricate organisation of the Chinese polity that was nothing like the mere “absolute Caesarism” as it was often portrayed in East and West.³⁶ In this light, it should not be forgotten that late Qing constitutional debate was not only about adopting a constitutional charter, but also about changing China’s traditional constitution.

But the term constitution can also mean the document that codifies these norms.³⁷ As to how these documents emerged, historiography usually narrates the development of “constitutionalism” and the corresponding “constitutional state” (*Verfassungsstaat*). At the same time as legal rationalism called for a legal document

³² Max Weber, *Die protestantische Ethik und der Geist des Kapitalismus*, ed. Dirk Käsler (Munich: Verlag C.H. Beck, 2004), 74.

³³ On the various meanings of “constitution” on the state level see Hermann Heller, *Staatslehre*, ed. Gerhart Niemeyer, 6th ed. (Tübingen: J. C. B. Mohr [Paul Siebeck], 1983), 281–315.

³⁴ Heller, *Staatslehre*, 310–311.

³⁵ Dennewitz and Meißner, *Die Verfassungen der modernen Staaten*, vol. 1, 9 („Jeder Staat hat eine Verfassung, denn er ist ‚in Verfassung‘. Er befindet sich in einem Zustand.“).

³⁶ Refuting the notion of “absolute Caesarism”: Jan Jakob Maria de Groot, *Het kongsiwezen van Borneo: Eene verhandeling over den grondslag en den aard der chineesche politieke vereenigingen in de koloniën, met eene chineesche geschiedenis van de kongsi Lanfong* (The Hague: Martinus Nijhoff, 1885), 82. On “China’s constitutional tradition,” defining constitution in this sense widely as a basic structure of laws, see Bary, “The ‘Constitutional Tradition’ in China.”

³⁷ On this narrower meaning see Heller, *Staatslehre*, 305–315.

delineating the laws governing the state, the limitation of the powers of an erstwhile absolute king made it necessary to fix the division of powers as well as fundamental rights.³⁸ The king—or the president, in the case of presidential republics—would then typically be reduced to executive powers, allowing for popular representation in the legislative branch.

Hence, modern political discourse frequently attributes specific contents to “constitution,” and especially to “constitutionalism.” The “constitutional state” implies a political system that provides for some kind of separation of powers, popular representation and fundamental rights. This tension in the definition of constitution becomes more apparent in German, where some described the Chinese constitutional transformation as the introduction of a *konstitutionelle Verfassung* (“constitutional constitution”),³⁹ a term which, at least in theory, stood in contrast to notions like “absolute constitution” and the like.⁴⁰

The close connection of constitutions with popular representation was not only a feature of constitutional thought in Europe and the Americas, but also in

³⁸ See, e.g., Hans Fenske, *Der moderne Verfassungsstaat: Eine vergleichende Geschichte von der Entstehung bis zum 20. Jahrhundert* (Paderborn et al.: Ferdinand Schöningh, 2001), xii.

³⁹ Just to name two examples from Austrian newspapers, see *Znaimer Tagblatt und Niederösterreichischer Grenzbote*, “Telegramme: London,” June 28, 1905 (announcing that China would introduce a “constitutional constitution” within 12 years), and *Wiener Salonblatt: Österreichisch-Ungarisches Adelsorgan*, “Nekrolog: Kaiser Kuang-Hsü und Kaiserin-Regentin Tz’ë-Hsi von China,” November 21, 1908 (talking about Empress Dowager Cixi’s efforts to initiate a “constitutional constitution”). These two articles from rather small newspapers are not overly remarkable for what they noticed about China, but they show that the term *konstitutionelle Verfassung* was quite natural to German ears of the time. In East Asia, as will be shown, “constitutional” also often referred specifically

⁴⁰ Expressions like “absolute constitution,” “absolutist constitution,” “despotic constitution” and the like were very common in several languages, also to designate European constitutions. Sometimes, they referred to the unwritten constitutions in a wider sense, sometimes to specific constitutional charters. Just to mention one of many English examples, see a speech by the Scottish writer John Stuart Blackie (1809-1895), referring to Prussia and France, *Manchester Guardian*, “Professor Blackie on Forms of Government,” April 25, 1867.

the Middle East⁴¹ and in China,⁴² where the adoption of a constitutional system was often succinctly defined as the introduction of popular representation. Philip Kuhn has stressed this importance of participation in late Qing thought, describing how Liang Qichao came to attack “government by others,” which to him meant any government that “did not rest upon the universal participation of the people.”⁴³

However, the invocation of the power-limiting and representative function of constitutions was often not an objective in itself, but an instrument for other goals, such as, for example, facilitating communication between “high” and “low,” i.e., between the government and the populace. Furthermore, the association of the concept with participatory politics led to tensions across the world: governments sometimes refused to simply call their constitutions “constitutions,” using “constitutional charter” or “basic laws” instead. In East Asia, too, the Emperor of Korea avoided to use the common term *hōnbōp* 憲法 because of its connotations of popular representation. Not all scholars made representative institutions a precondition for constitutionalism, and some expressly denied it.⁴⁴ But in general,

⁴¹ Ami Ayalon, *Language and Change in the Arab Middle East: The Evolution of Modern Political Discourse*, (New York, Oxford: Oxford University Press, 1987), 92, recalls that there was no widely accepted equivalent of the word “constitutional” in Turkish or Arabic in the months leading up to the Ottoman Constitution of 1876. Some of the Young Ottoman intellectuals were calling for a “representative” (*meşveret/mašwara* مشاورة) government; some for a new “order” (*nizam/nizām* نظام); and, most importantly, some, including Midhat Pasha, the head of the movement, were calling for a “conditional” (*meşrūṭiyet/mašrūṭiyya* مشروطية) government. The word translated as “representative,” *meşveret/mašwara/مشاورة* (interchangeable with the term *šūra* شورى), refers to “consultation” and is deeply entrenched in Middle Eastern and Muslim discourse, having been recommended by Mohammed. Consultative bodies under that term had existed in the Middle East, Northern Africa and medieval Islamic Spain. On the term and the intricacies of its adaptation to modern discourse see 119-122.

⁴² As an example, “representational” was the succinct definition of “constitutional” repeatedly given by the US Envoy to China at that time, William Rockhill (1854–1914). United States Department of State, ed., *Papers Relating to the Foreign Relations of the United States with the Annual Message of the President Transmitted to Congress December 3, 1907*, 2 vols. (Washington: Government Printing Office, 1910), vol. 1, 179, 191.

⁴³ Kuhn, Philip A. “The Transformation of the Constitutional Agenda,” in *Origins of the Chinese State* (Stanford: Stanford University Press, 2002), 125.

⁴⁴ Interestingly, such arguments can be often found in writings by British authors. Charles Lewis Tupper (1848–1910) used it when writing about “Indian Constitutional Law” as a “part of the Constitutional Law of the British Empire”: Lewis Tupper, “Indian Constitutional Law,” *Imperial and*

some kind of popular representation, if only for consultative rather than for legislative purposes, was perceived to be the most important feature of the “constitutional” systems being introduced across Eurasia at the turn of the 20th century.

b) Accomplishments and Standards: What the Qing Constitutional Movement Was Not

These further implications of the concept of constitution tend to be overinterpreted as the primary aim of a constitution. In 2013, Peter Häberle, one of the most influential constitutional scholars not only of Germany, but also of the hispanophone and lusophone worlds, published a voluminous book claiming to be a preliminary to a “universal constitutional theory.” However, Häberle limits himself to “democratic constitutions, as they have won out in the free, nowadays not only Western world,” which he sees as “a cultural accomplishment of the Western occident.”⁴⁵ Under these premises, he not only prevents himself from adequately analysing complex political processes engendering constitutions, which far transcend a simplistic teleological movement towards the adoption of the constitutional model delineated by him.⁴⁶ He also effectively shuts out from consideration a large part of the constitutions of the world—which do not conform

Asiatic Quarterly Review, 3rd ser. 15, nos. 29 & 30 (1903), 303–314. For Tupper, constitutional law implied legality, which exempts the structure of government and the use of its powers from the vagaries of personal caprice (304); its most important characteristic was “personal liberty and the protection of the law” (314). In Tupper’s usage, mere despotisms and “primitive governments” were excluded from the definition (303–304). As to why India had not introduced a popular government as other parts of the Empire, Tupper explained this with the existing pre-conditions of India, which had to be respected. Charles Arthur Roe (1841–1926) wrote of the “fetish” of representative government, arguing that colonial South Africa should not be “hustled” into a premature establishment of representative government. Referring to John Stuart Mill, Roe argued that representative institutions were good for homogenous populations, but not for a South Africa inhabited by Dutch and British settlers, not to speak of the indigenous peoples, which were “unfitted by nature” for representative government. Charles A. Roe, “Representative Government in South Africa,” *Imperial and Asiatic Quarterly Review*, 3rd ser. 14, nos. 27 & 28 (1902), 340–352.

⁴⁵ Peter Häberle, *Der kooperative Verfassungsstaat – aus Kultur und als Kultur: Vorstudien zu einer universalen Verfassungslehre* (Berlin: Duncker & Humblot, 2013), 17–18.

⁴⁶ See, e.g., Häberle’s musings on the “Arab Spring,” *ibid.*, 760–779.

to the model—, and makes it impossible to understand why and how the notion of constitutions became globalised.

More generally, in 1984, Gerrit Gong argued in his controversial⁴⁷ work *The Standard of 'Civilization' in International Society* that “by 1905, at the latest, a standard of ‘civilization’ had emerged as an explicit legal principle and an integral part of the doctrines of international law prevailing at the time.”⁴⁸ Gong further defines this standard by five requirements, including the guarantee of basic rights, an organised political bureaucracy and the existence of an effective domestic legal system.⁴⁹ Referring to China, Gong argues that China had not yet “entered” the international society as a full and ‘civilised’ member by the time of the proclamation of the Republic of China in 1912.⁵⁰

Was the adoption of a constitution, planned but not finished during the Qing dynasty, part of a standard of civilisation, which China needed to reach in order to “enter” the community of nations? Kawashima Shin 川島真, in his seminal book on the formation of diplomacy in the Republic of China, seems to agree. He dedicates the second part of his book to the theme of “becoming a civilised State.”⁵¹ When describing this “task” (*bunmeikokka no shimei* 文明国化の使命) faced by Chinese diplomacy, he touches upon China’s participation in the Hague Peace Conference of 1907, mentioning that the Chinese minister called for a constitution in response to China’s treatment as a “third-class country” at the occasion.⁵²

⁴⁷ For reviews of Gong’s book see, among others, Michael Donelan, review of *The Standard of Civilization in International Society*, by Gerrit W. Gong, *Millennium—Journal of International Studies* 13, no. 3 (1984), 339–341; Robert E. Bedeski, review of *The Standard of Civilization in International Society*, by Gerrit W. Gong, *Pacific Affairs* 58, no. 3 (1985), 499–500. Specifically on Gong’s argument about China see Zhang Yongjin, “China’s Entry into International Society: Beyond the Standard of ‘Civilization,’” *Review of International Studies* 17, no. 1 (1991), 3–16.

⁴⁸ Gerrit W. Gong, *The Standard of “Civilization” in International Society* (Oxford: Clarendon Press, 1984), 14

⁴⁹ *Ibid.*, 14–15.

⁵⁰ *Ibid.*, 157–158.

⁵¹ Kawashima Shin 川島真, *Chūgoku kindai gaikō no keisei* 中国近代外交の形成 (The formation of modern Chinese diplomacy) (Nagoya: Nagoya Daigaku shuppankai, 2004), 204–351.

⁵² *Ibid.*, 12.

However, this study argues that, fundamentally, the answer is no. The “standard of civilisation,” championed by Gong and his “English school,” cannot be used as a framework for the constitutionalisation of China. At least, it would be a rather shallow approach to the question—shallow because there are, certainly, many sources from the period which seem to support the notion—such as the Hague conference, which will be analysed in this study, too. However, the main interpretation of such sources in light of the “standard of civilisation” would not do full justice to the matter.

It has to be conceded to Gong that the concept of “standard of civilisation” was not coined by secondary literature; it appeared in debates about the international community since the 19th century. Indeed, early 20th-century sources directly linked the “standard of civilisation” to a state’s political and legal system and thus to its constitution.⁵³ There were also some voices—in several languages—in the literature of the time which specifically argued that China was not considered civilised because it was not constitutional.

However, a number of sharp criticisms of the English school has been offered, such as by Turan Kayaoğlu, who points out the “circularity of its argument combined with the ambiguity of conceptual categories like ‘civilization.’”⁵⁴ Most importantly, Gong takes his own title much too seriously:⁵⁵ Frequently, discourse on standards to be fulfilled by certain nations was then, as it is now,⁵⁶ a powerful

⁵³ E.g., discussing Japan, *Los Angeles Times*, “The Opening of the Japanese Imperial Diet,” December 18, 1904.

⁵⁴ Turan Kayaoğlu, *Legal imperialism: Sovereignty and extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge, New York: Cambridge University Press, 2010), 61.

⁵⁵ Hugh Tinker, review of *The Standard of Civilization in International Society*, by Gerrit W. Gong, *English Historical Review* 102, no. 402 (1987), 261–262.

⁵⁶ Today, “civilisation” has been replaced by notions like “democracy” and “human rights,” with Gerrit Gong himself arguing for an updated “standard of civilisation.” See Jack Donnelly, “Human Rights: A New Standard of Civilization?,” *International Affairs* 74, no. 1 (1998), 1–23, and Gerrit W. Gong, “Empires and Civilizations: The Search for Standards Continues,” 144–146, *International Studies Review*, no. 12 (2010). But as Carol Proner points out, in the reality of international politics, human rights are often used as a façade for ulterior political motives. Carol Proner, *Direitos humanos e seus paradoxos: Análise do sistema americano de proteção* (Porto Alegre: Sergio Antonio Fabris Editor, 2002), 180–182.

piece of rhetoric in the arena of international politics, more often than not invoked to justify ulterior political motives.⁵⁷ What substantially matters are less standards of civilisation than the real relations of power (*tatsächliche Machtverhältnisse*),⁵⁸ even if they might in turn be influenced by the normalising power of norms of international law and political discourse. Although actors of the time indeed took the notion of “civilisation” seriously, it was not, as Barry Buzan and George Lawson have shown, a fixed benchmark, but rather a “moving target” defined variously through race, religion and power capability.⁵⁹ Gong’s theorisation of the notion “standard of civilisation” seems, as Brett Bowden has pointed out, to be directed by a distinct ideological rationale, one that emanates from a certain triumphalism of the West about seeing supposedly Western notions of democracy and liberalism gaining global currency.⁶⁰

In the Chinese case, the correlation of “civilisation” with real relations of power can be seen on the fluctuations in the use of the term. European and Chinese jurists vividly discussed whether China was a *nation civilisé* and whether it was an equal subject of international law. During the Boxer War, when China was at its weakest, the denying side seemed the strongest.⁶¹ But for as weak as China was in

⁵⁷ See, e.g., Prasenjit Duara, “The Discourse of Civilization and Pan-Asianism,” *Journal of World History* 12, no. 1 (2001), 100, who argues that “Western imperial nations invoked the signifier to justify their conquest as a civilizing mission.” See further, arguing that standards of civilisation were used for imperialist purposes in the legal realm, Kayaoğlu, *Legal imperialism*,

⁵⁸ On the notion of real relations of power see Ferdinand Lassalle, “Über Verfassungswesen,” in *Ferdinand Lasalle, Ausgewählte Reden und Schriften.*, ed. Hans Jürgen Friederici (Berlin: Dietz Verlag, 1991), 75.

⁵⁹ Barry Buzan and George Lawson, *The Global Transformation: History, Modernity and the Making of International Relations*, (Cambridge, New York: Cambridge University Press, 2016), 166.

⁶⁰ Brett Bowden, “In the Name of Progress and Peace: The ‘Standard of Civilization’ and the Universalizing Project,” *Alternatives: Global, Local, Political* 29, no. 1 (2004), 43, 46, pointing to Francis Fukuyama’s thesis of the “end of history.”

⁶¹ For example, long and heated debates on the topic were led in the German parliament. See Haus der Abgeordneten, Akten betreffend China, file no. I. HA Rep 169 C Abgeordnetenhaus, Abschnitt 6, Nr. 29 Bd. 1, Prussian Privy State Archives, Berlin, debate of November 19, 1900, 11–39; debate of February 13, 1901, 1341–1368; debate of February 15, 1901, 1371–1388. While the Social Democrats defended China from “continuous maltreatment” (22) and accused the allied intervention to be “barbaric” (29), the majority defended the intervention with the argument that China was not a “civilised nation” and therefore “could not be regarded as equal” (1367–1368). At the same time, renowned jurist Georg Jellinek (1851–1911) also maintained a negative stance; see Georg Jellinek,

the 1900s, with Chinese intellectuals fearing the country's dismemberment by the imperialist powers,⁶² it was never so weak that it had lost its sovereignty. In the following years, the Powers maintained the sovereignty of China and guaranteed its territorial integrity, as this would be the only way to maintain the international balance of powers, secure unimpeded market access for all and prevent the collapse of an entity "too big to fail."⁶³ Furthermore, since 1900, China came a long way in economic and social terms, making the negating position a minority position long before the Xinhai 辛亥 revolution. As Ferdinand von Martitz, a professor of international law in Berlin, remarked in 1907, denying China's position as a subject of international law was a "whimsy" (*Wunderlichkeit*).⁶⁴

Certainly, by 1907, treaties with other powers explicitly stipulated that the official condition for relinquishing extraterritoriality was modernising "Chinese laws" and "the arrangement for their administration." This was mainly because reforms of the judiciary and of certain other laws were of high practical importance to foreign powers and their subjects living in China, who therefore called for their reform.⁶⁵ However, a close look at specific legal reforms reveals a very nuanced image in which by far not all legal reforms had to do with Western-imposed standards: some of them were effected due to internal pressures rather than with

"China und das Völkerrecht," *Deutsche Juristen-Zeitung* 5, no. 19 (1900), 401–404. On the debate see also Ma Derun 馬德潤, *Der Eintritt des Chinesischen Reiches in den völkerrechtlichen Verband* (Berlin: Druck von Emil Ebering, 1907), 10, with further references for both sides.

⁶² On the idea that China would be "carved up" like a melon and its convoluted history see Rudolf G. Wagner, "Dividing up the [Chinese] Melon, guafen 瓜分: The Fate of a Transcultural Metaphor in the Formation of National Myth," *Transcultural Studies*, no. 1 (2017).

⁶³ See Wagner, "Dividing up the [Chinese] Melon, guafen 瓜分," 120–121.

⁶⁴ Martitz made this assessment in his handwritten commentaries on Ma Derun's doctoral thesis, contained in *Erteilung akademischer Würden—Promotionen*, 1907, file no. Juristische Fakultät 282, Archives of Humboldt University, Berlin, 200.

⁶⁵ The practical relevance can be exemplified by an article in the *Imperial and Asiatic Quarterly Review*, which maintained that China had an inferior judicial status and complained that "so corrupt and barbarous is their judicial system that every precaution is taken by self-respecting powers to protect even surrendered Chinese, not to say non-treaty Power subjects, from the torture of Chinese courts." Ex-Official [pseudonym], "Sun Yat Sun, General Gordon, and Li Hung-Chang," *Imperial and Asiatic Quarterly Review*, 3rd ser. 3, nos. 5 & 6 (1897), 56–57.

the aim of pleasing foreign powers,⁶⁶ and some were even shelved due to foreign resistance.⁶⁷ The constitution, at the top of the legal system, was of relevance for foreign powers, but rather indirectly and not necessarily in the sense of a “benchmark of civilisation.” If, despite its lack of a constitution, Russia’s status as a subject of international law was undoubted, why would the constitution be a standard to be achieved by China? It cannot have been, not really at least. This study will corroborate this assertion by not only looking at the Chinese side, but also on international reactions to the Qing constitution.

c) Crisis and Power: What the Qing Constitution Was

If the concept of constitution was neither imposed by the West nor an attempt to reach a certain standard of civilisation nor a mere reception of a fundamentally Western concept, what was it then?

The answer to this question lies in the versatility of the concept. As has been seen, constitutions are more than just written representations of the system of government of a determinate polity. The power-limiting and representative aspect of constitutions, on which the focus is so often cast, is not even sufficient to describe all facets of constitutional history in Europe, let alone to shed light on the process of how “constitution” as a concept and legal instrument became globalised.⁶⁸

In a volume edited in 2014, Markus Prutsch and Kelly Grotke have reevaluated the conventional explanation of constitutional history being simply as

⁶⁶ On the copyright law, which was rather passed due to pressure by Shanghai publishing houses than to foreign pressure, see Nils Pelzer, “Vom Westen aufgezwungen und zur Zensur ausgenutzt? Urheberrecht in China 1910-1949,” *Zeitschrift für Chinesisches Recht* 16, no. 4 (2009), 363.

⁶⁷ German businessmen in China expressly stated that they did not see a patent law as necessary. See Scholz, Abschrift zu II.21067., May 22, 1906, file no. R1501/107614, Prussian Privy State Archives, Berlin, 2. Eventually, the project of a patent law elaborated by the Qing government was shelved due to Western, namely German, resistance. See Qu Chunhai, “Die deutsch-chinesischen Verhandlungen zum Markenschutz am Ende der Qing-Zeit,” in *Preußen, Deutschland und China: Entwicklungslinien und Akteure (1842-1911)*, ed. Mechthild Leutner et al. (Berlin: Lit-Verlag, 2014), 327.

⁶⁸ See Kelly L. Grotke and Markus J. Prutsch, eds., *Constitutionalism, Legitimacy, and Power: Nineteenth-Century Experiences* (Oxford, New York: Oxford University Press, 2014), 3–8, and Zhao, “Rethinking Constitutionalism in Late 19th and Early 20th Century China,” iv.

a teleological development from autocracy to participative democracy. As they argue, the diversity of constitutions as both legal and political instruments “makes constitutions as much a matter of ideological reasoning as of legal reasoning, and exposes them to inherently politicized discourses and controversies.”⁶⁹ Through the examples of several constitutions of the long 19th century, their book has unearthed long-ignored functions of constitutionalism beyond limiting the powers of the ruler. Constitutions, they argue, have been used to establish and maintain a domestically imbalanced status quo and were as much a reactionary tool to counter revolutions as they were a revolutionary tool; they were used to foster nationalism, militarism and imperialism.⁷⁰

Prutsch’s and Grotke’s book focuses on Europe, but it also is a useful explanation for the traction of the concept elsewhere, in particular late Qing China’s adoption of the concept. What has been written above—that the country was an independent actor which actively contributed to the formation of “constitution” as a global concept—has not been written to deny that the international political balance of power of the time was highly skewed. Rather, this study argues that, to a large extent, it is even its consequence, as constitutions came to be seen as a remedy to such imbalances.

Due to their flexibility, but especially due to their use in strengthening rather than limiting the nation-state in an age of imperialism and fierce international competition, constitutions came to be used as answers to the various upheavals of the 19th century in all parts of the worlds. The Chinese constitutional movement was part of a global nationalist movement, accompanied by the rise of a global consciousness across the world.⁷¹ Intellectuals and governments developed constitutions in different social, political and economic environments, but they stood in a constant international dialogue, in which the various versions

⁶⁹ Grotke and Prutsch, *Constitutionalism, Legitimacy, and Power*, 18.

⁷⁰ Ibid., 4.

⁷¹ See Sebastian Conrad and Dominic Sachsenmeier, eds. *Competing Visions of World Order: Global Moments and Movements, 1880s–1930s* (New York: Palgrave Macmillan, 2007), 11, 13.

of constitutionalism fecundated each other. In this sense, this study argues, constitutions did not globalise as a western concept, but as a global co-production.

What exactly the concept of constitution contained, and how it should be put into practice in order to achieve the various goals and hopes attached to it, was a matter of intense debate, and more, of intense local political conflict. Wherever constitutions were suggested as the solution to political problems, their adoption was accompanied by high-flying hopes, but frequently also by scepticism, especially from abroad, and often enough followed by deep disappointments. Wherever monarchies promulgated constitutions from above, they were accused of promoting “sham constitutionalism,” as had been the case in the Germany of Heine’s times.⁷² In the 1900s, the charge was made in Russia—where the Czar had only very reluctantly given a constitution—, and slightly later, also in China.

Secondary literature for the Qing constitution has, for a long time, adopted this interpretation, decrying the Qing government’s “constitutional preparation” as a mere sham staged by an insincere imperial government that was thought to be either procrastinating or even using it as a pretext for tightening dictatorial rule and oppression,⁷³ particularly of the Han majority by the Manchu government.⁷⁴

⁷² See Willoweit, *Deutsche Verfassungsgeschichte*, 277, 281.

⁷³ See, e.g., Li Chien-nung, *The Political History of China, 1840-1928*, trans., eds. Ssu-Yu Teng and Jeremy Ingalls (Princeton: D. van Nostrand, 1968), 208-209; Gao Fang 高放, *Qingmo lixianshi 清末立憲史* (Constitutional history of the late Qing) (Beijing: Huawen chubanshe, 2012), *passim*; Ching Chih-Jen 荊知仁, *Zhongguo lixianshi 中國立憲史* (Constitutional history of China) (Taipei: Lianjing chubangongsi, 1984), *passim* (see in particular 17–26); Pan Wei-Tung, *The Chinese Constitution: A Study of Forty Years of Constitution-Making in China*. Reprint. (Westport [Connecticut]: Hyperion Press, 1983), 11–12.

⁷⁴ Immanuel C. Y. Hsü, *The Rise of Modern China*, 6th ed. (New York, Oxford: Oxford University Press, 2000), 414. According to Hsü, constitutionalism “became an anti-Chinese device of the Manchus,” because with it, the Court aimed to consolidate Manchu domination by “conciliating the public without compromising its own power.”

Such an approach is still seen today, both expressly⁷⁵ and indirectly,⁷⁶ although much of the academic world within and outside of China does no longer fully go along with it.

For the purposes of this study, the—ultimately political—question of whether the constitution proposed by the Qing Court was a sham or not is not overly relevant. As Norbert Meienberger pointed out in the first English-language monograph exclusively dedicated to the concept of constitution in the late Qing, published in 1980, the Court was actually serious in what it was announcing—but in its own way.⁷⁷ In Meienberger's analysis, the government was not merely adopting a foreign model for the purpose of lip-service, but was indeed working on its *own* version of constitutionalism, which may have been different from what the various reformist thinkers or even revolutionaries envisioned.⁷⁸ According to Meienberger, the Qing government's constitutional efforts were a "reform within tradition" with the aim of strengthening the government.⁷⁹ Or as Peter Zarrow expressed in a short essay describing how Chinese officials viewed the new

⁷⁵ See, e.g., Gao Fang's 高放 voluminous book. The work was first published in 1993 as Wei Qingyuan 韋慶遠, Gao Fang 高放, and Liu Wenyan 劉文源, *Qingmo xianzheng shi* 清末憲政史 (History of constitutional government in the late Qing) (Beijing: Zhongguo Renmin Daxue chubanshe, 1993). After the two other authors passed away, the book was republished in 2012 by Gao Fang alone as Gao, *Qingmo lixianshi*. The 2012 edition still brims brims with attributes like "scam" (*qipian* 欺騙, 4–5), "cunning" (*jiaodian* 狡點, 4), "fake constitutionalism" (*jia lixian* 假立憲, 4) and "merely a piece of paper full of empty phrases" (*zhi buguo yi zhi kongwen* 祇不過一紙空文, 177). At the same time, the book itself shows that newer research has come to much more nuanced conclusions. In the epilogue to the 2012 edition, Gao gingerly tries to adjust some of his positions, although he does not go as far as to profoundly reassessment of the constitutional movement. "Objectively and fairly speaking," he now argues, "late-Qing constitution-building cannot be purely described as a hoax (*pianju* 騙局)" (596).

⁷⁶ See, e.g., Chai Songxia 柴松霞, "Lun Qingmo chuyang kaocha dachen Dashou de xianzhengguan" 論清末出洋考察大臣達壽的憲政觀 (On late Qing constitutional commissioner Dashou's views on constitutional government), *Falüshi pinglun* 法律史評論 (2012), 45, talking about "pseudo-constitutional absolutism." See *infra*, chapter 5.4.

⁷⁷ Norbert Meienberger, *The Emergence of Constitutional Government in China (1905-1908): The Concept Sanctioned by the Empress Dowager Tz'u-hsi*, (Bern: P. Lang, 1980), 12. Meienberger's work builds on Meribeth E. Cameron, *The Reform Movement in China: 1898-1912* (New York: Octagon Books, 1963), 100-136, who had come to similar conclusions in 1930.

⁷⁸ Meienberger, *The Emergence of Constitutional Government in China (1905-1908)*, 13.

⁷⁹ *Ibid.*, 13.

constitution, the constitution represented a major break with the past, but also marked continuity and institutionalised existing theories and practices.⁸⁰

Summarising some of the aspects which made a constitution attractive to officials, Peter Zarrow's essay narrates how swiftly official stances on a constitution, at least rhetorically, changed from anathematising to embracing it. In the 1900s, the question quickly became not about whether, but how to adopt a constitution. Against this background, the question of whether the constitution was a sham or not has to be reinterpreted as an element of the political struggle during the transition to a constitutional system.

Among the many goals that Chinese intellectuals and officials hoped that the constitution would achieve, let us at this point just mention one, correlating with the notion of "standard of civilisation." Expanding on an argument made by Chi Yunfei 遲雲飛, Peter Zarrow argued that "the constitution, at least for high officials, ... was to claim equality with the West."⁸¹ Partially, this equality was because the constitution was becoming an internationally recognised symbol of statehood, but more importantly, it was because the constitution would strengthen the nation in political and economic terms.

In Japan, Kawashima Shin and Okamoto Takashi 岡本隆司 went further in their interpretation, suggesting that Chinese intellectuals and officials not only wanted their country to overcome its position of weakness, but also become an assertive international player of its own.⁸² As Kawashima and Okamoto argued,

⁸⁰ Peter Zarrow, "Constitutionalism and the Imagination of the State: Official Views of Political Reform in the Late Qing," in *Creating Chinese Modernity: Knowledge and Everyday Life, 1900–1940* (New York et al.: Peter Lang, 2006), 78.

⁸¹ Zarrow, "Constitutionalism and the Imagination of the State," in *Creating Chinese Modernity*, 78; Chi Yunfei 遲雲飛, "Qingji zhuzhang lixian de guanyuan dui xianzheng de tiren" 清季主張立憲的官員對憲政的體認 (The perception of constitutional government by officials who advocated constitutionalism in the Qing period), *Qingshi yanjiu* 清史研究, no. 1 (2000), 15–17.

⁸² Okamoto Takashi 岡本隆司 and Kawashima Shin 川島真. *Chūgoku kindai gaikō no taidō* 中国近代外交の胎動 (The fetal movements of modern Chinese diplomacy) (Tokyo: Tōkyō Daigaku shuppankai, 2009), 1–4. See also Robert Weatherley, *Making China Strong: The Role of Nationalism in Chinese Thinking on Democracy and Human Rights* (Houndsmills: Palgrave Macmillan, 2014), 36, who argues that late Qing intellectuals discovered that "democracy had helped to make Western nations strong and had

China's building of a modern diplomacy—which was closely interrelated to the constitutional movement—was more than just about the recovery of rights, it was the beginning of China's ambition to become a world power (*"sekai no taikoku" o mezashi* 「世界の大国」をめざし).⁸³

The line might not be easy to draw: if Western countries and Japan pursued assertive, muscular foreign policies, becoming equal to them could easily mean adopting analogous assertive, muscular foreign policies. But however far one wants to go in this assessment, understanding constitutionalism as an instrument to strengthen the state makes it easier to embed it into the larger context of Chinese policies of the time. The constitution was not the only element in this late Qing state-building. The constitutional movement not only followed thirty years of a "self-strengthening" (*zhiqiang* 自強) movement, aimed at the direct modernisation of the military and of economic capabilities.⁸⁴ It was in itself a policy of "self-strengthening."⁸⁵

d) The Qing Constitution, a Failure?

More than the interpretation as a "sham," which has now given way to more nuanced views, a large portion of scholarship analyses the late Qing attempt to adopt a constitution as a "failure."⁸⁶ To an extent, this interpretation is obvious: It is apparent that Qing constitution-making "failed" in so far as the Qing

accounted ... for the success of ... Western imperialism." What appealed to Chinese thinkers was not necessarily democracy in the sense of popular sovereignty, but an increased participation of the people in national affairs, which, eventually, was subsumed under the concept of constitution.

⁸³ Okamoto and Kawashima, *Chūgoku kindai gaikō no taidō*, 1–4. On the close connection between diplomacy and constitutionalism see Kawashima Shin 川島真, "Kōsho shinsei ka no shusshi taishin to rikken undō" 光緒新政下の出使と立憲運動 (Missions abroad under the Guangxu reform of governance and the constitutional movement), *Tōyō gakuhō* 東洋學報 75, no. 3/4 (1994), 329–332.

⁸⁴ See Liao, Sheng-Hsiung, "The Quest for Constitutionalism in Late Ch'ing China: The Pioneering Phase" (PhD diss., Florida State University, 1978), 9–11, with further references.

⁸⁵ See Kawashima. "Kōsho shinsei ka no shusshi taishin to rikken undō," 329–332.

⁸⁶ See for example, the conclusion of Cui Xuesen 崔學森, "Qingting zhixian yu Mingzhi Riben" 清廷制憲與明治日本 (The Qing Court's constitution-making and Meiji Japan) (PhD diss., Peking University, 2015), 1.

government did not survive. Moreover, the fall of the dynasty was closely related to the constitutional movement: although one of the purported objectives of a constitution was bringing the people closer to the government and unifying state and society, it did not help in mitigating internal conflicts, especially between local and central elites, but rather exacerbated them. Many commentators, like Joan Judge⁸⁷ and Zhao Hui,⁸⁸ emphasise that the failure to create a stable constitutional order for China transcended the Qing, pointing to the numerous constitutions passed in the following decades.

This is all true—but hardly surprising. Constitutions are by no means synonyms of stability. For one, “failure” and “success” are very slippery terms, as the national *rota fortunae* relentlessly turns. The Meiji constitution might have looked gloriously successful to a Chinese observer in 1905, when he would have attributed to it Japan’s military victory over Russia—but what would the 1905 observer have said in September 1945?

At any rate, the Chinese “failure” to create a stable constitutional order is not an anomaly, but well-nigh a regular feature in the globalisation of the concept. Benjamin Constant (1767–1830) sharply observed that states whose governments are not founded in traditions or habits, but whose institutions are determined by a mere piece of paper in the form of a written constitution, tend to be less stable and more prone to *coup d’états*.⁸⁹ The adoption of constitutions is precisely an accompanying factor of situations of radical political and social change, like the turn of the 20th century in China.⁹⁰ They are often an attempt to stabilise and

⁸⁷ Judge, “Revolution,” 9.

⁸⁸ Zhao, “Rethinking Constitutionalism in Late 19th and Early 20th Century China,” 2.

⁸⁹ Benjamin Constant, *Principes de politique applicables à tous les gouvernements: Texte établi d’après les manuscrits de Lausanne et de Paris avec une introduction et des notes* (Geneva: Librairie Droz, 1980), 110–115.

⁹⁰ This was generally noticed by contemporaries such as, e.g., the diplomat Wu Tingfang 伍廷芳 (1842–1922), who declared in 1908: “Had I not returned to my country I would not have believed any one who told me of the remarkable changes that had occurred.” John C. O’Loughlin, “Minister Wu Ting-Fang tells of awakening in China,” *Washington Post*, March 22, 1908. On Wu Tingfang see Zhang Yunqiao 張雲樵, *Wu Tingfang yu Qingmo zhengzhi gaige* 伍廷芳與清末政治改革 (Wu Tingfang and political reform in the late Qing) (Taipei: Lianjing chubanshiye, Minguo 76 [1987]).

legitimise a government whenever traditions and habits do not suffice to govern the State—be it a struggling *ancien régime* or an immature *nouveau régime*, be the problems assailing it internally or externally. As soon as they are adopted, their political function makes them vulnerable to power struggles and render constitutional law the second-most fragile area of law after public international law. The lofty hopes elicited by constitutions are more often than not frustrated by the hard realities of politics.

In this light, the contrast painted by Zhao Hui between a failed Chinese constitution-building effort and a “Western Europe of the 17th and 18th centuries” which developed “a meaningful constitutional order,”⁹¹ cannot be maintained in such absolute terms. How did the various German and Italian states, France, or Spain develop meaningful constitutional orders in the 17th and 18th centuries if, in the 18th, 19th and even 20th centuries, each of them saw an avalanche of written constitutions, sometimes accompanied by a vivid alternation between monarchic and republican forms of government? In March 1906, when a Chinese commission was touring the world to study foreign constitutions, the jurist Erich Kaufmann (1880–1972) argued in his doctoral thesis that “the theory of the forms of state” was “still a current problem,” criticising the foundations of contemporary German constitutional theory as being alien to the modern constitutional state (*Verfassungsstaat*).⁹² It was not without reason that Otto Mayer (1846–1924), one of the most important German preceptors of administrative law, used to mock constitutional documents for being fickle results of political moods: “Constitutional law changes, administrative law remains” (*Verfassungsrecht vergeht, Verwaltungsrecht besteht*).⁹³

⁹¹ Zhao, “Rethinking Constitutionalism in Late 19th and Early 20th Century China,” 38.

⁹² „Die Lehre von den Staatsformen ist immer noch ein aktuelles Problem. – Unsere staatsrechtlichen Grundbegriffe haben einen dem modernen Verfassungsstaate fremden und inadäquaten Ursprung.“ Erich Kaufmann, “Studien zur Staatslehre des monarchischen Prinzipes (Einleitung; die historischen und philosophischen Grundlagen)” (PhD diss., Friedrich University of Berlin, 1906), vii.

⁹³ Otto Mayer, *Deutsches Verwaltungsrecht*, 3rd ed., 2 vols. (Munich, Leipzig: Duncker & Humblot, 1924), vol. 1, 9.

For these reasons, this study is not a study of the successes and failures of Chinese constitutions, but an attempt to understand the historical process which led to the concept being embraced in China. In this, the Qing constitutional movement survives until today. The Qing might have failed in establishing a stable and lasting constitutional order, but the Qing constitutional movement did not fail in establishing the concept as an ineluctable element of the modern Chinese state.

4. The State of the Field

Since constitutions are the legal and political cornerstones of modern nation-states, it is not surprising that they have produced copious amounts of scholarly literature. Chinese constitutional history is no exception. At the same time, the constitution's very political function has also decisively shaped the scholarship of the Qing constitutional movement.

Research results have been influenced by the skewed state of preservation of primary sources as well as by political orientations. In the turbulent times after the Qing's demise, not all sources were preserved in a satisfactory manner. The extant material tends to be richer on the "winning," republican side, while there are fewer records of the movement for the transition towards a constitutional monarchy.⁹⁴ As the Qing Dynasty was swept away by the Republic of China, historians preferred to study the revolutionary party,⁹⁵ leading to the mentioned

⁹⁴ Chang Yu-fa 張玉法, "Xuezhe dui qingji lixian yundong de pinggu" 學者對清季立憲運動的評估 (Scholars' evaluation of the constitutional movement in the Qing era), in *Zhongguo jindai de weixin yundong: Bianfa yu lixian yantaohui* 中國近代的維新運動：變法與立憲研討會 (Taipei: Zhongyang Yanjiuyuan jindaishi yanjiusuo, 1981), 135–136.

⁹⁵ On the late Qing revolutionary movement see Feng Ziyou 馮自由, *Zhonghua Minguo kaiguo qian gemingshi* 中華民國開國前革命史 (Revolutionary history before the founding of the Republic of China), 2 vols. (Taipei: Shijie shuju, 2011); Mary C. Wright, *China in Revolution: The First Phase, 1900–1913* (New Haven: Yale University Press, 1971); on the relationship between intellectuals and the revolution Michael Gasster, *Chinese Intellectuals and the Revolution of 1911: The birth of modern Chinese radicalism* (Seattle, London: University of Washington Press, 1969); on Sun Yat-sen see Harold Z. Schiffrin, *Sun Yat-sen and the Origins of the Chinese Revolution* (Berkeley: University of California Press, 1970).

biases which seem to have been perpetuated in not only popular, but even in scholarly historiography.

The revolutionary narrative of the Qing constitutional reform as a “sham” and a “failure” still persists, but due to several factors, paradigms have shifted. More sources have become widely available, historical distance has grown, and the changed political situation, especially after China’s “reform and opening” (*gaige kaifang* 改革開放) policies, contributed to new perspectives. Despite the persistent revolutionary narrative, more recent scholarship has begun to recognise the importance of the decade before the Xinhai Revolution.⁹⁶ Even such an orthodox scholar as Gao Fang 高放 now claims that the *Xinzheng* reforms were the “first reform and opening policies” effected by a Chinese government.⁹⁷ Yuan Weishi 袁偉時, a professor known for his heterodox views criticising official historical narratives,⁹⁸ went so far as to declare that:

The work we have been doing in the 90s, I have looked into it a bit, is largely continuing the unfinished task of the Guangxu and Xuantong Emperors. That we have only continued these endeavors in the 1990s is heartrending, but this is history, this is fact.

⁹⁶ See Douglas Robertson Reynolds, *China, 1898-1912: The Xinzheng Revolution and Japan* (Cambridge, Massachusetts: Council on East Asian Studies, Harvard University; Distributed by Harvard University Press, 1993). Reynolds is one of the most vociferous anglophone proponents of this school. In his over-enthusiastic first book on the topic, he not only claimed that the period from 1901 to 1911 was China’s “golden decade” (5–11), but even that China’s transformation in that time had been “unparalleled in modern world history up to that time” (197). For Reynolds on the constitutional movement see 185–192.

⁹⁷ Gao, *Qingmo lixianshi*, 545–546. Gao acknowledges that, among other reforms, many schools were opened and regulations passed in the *Xinzheng* decade (547–551).

⁹⁸ In 2006, an essay on the topic which criticised history textbooks for their one-sided portrayal of events such as the Boxer War of 1900, provoked the temporary shutdown of “Freezing Point” (*Bingdian* 冰點), the supplement to the *China Youth Daily*. On the incident and Yuan Weishi’s thoughts on the significance of the Xinhai Revolution see Rana Mitter, “The Unanchored Chinese Revolution,” *China Quarterly*, no. 208 (2011), 1009–1020. See also Yuan’s most recent book, Yuan Weishi 袁偉時, *Chi dao de wenming* 遲到的文明 (Belated civilisation) (Beijing: Xianzhuang shuju, 2014).

我們九十年代做的工作，我看了一下，大體是繼續做光緒皇帝、宣統皇帝的未竟事業。到 20 世紀 90 年代才繼續做這些工作，令人痛心，但是這是歷史，這是現實。⁹⁹

Yuan's position, voiced with this degree of directness, is not mainstream in China.¹⁰⁰ But it is indicative of newer positions which tend to see the Qing constitutional movement in a more positive light on the grounds that evolution is preferable to violent revolution, such as the Xinhai Revolution.¹⁰¹ Most importantly, it is of the growing interest for the late Qing constitutional movement fueled by debates about what role the constitution should play within the structure of the Chinese state and what shape contemporary China's constitution should take.¹⁰²

Against this background, the past four decades have seen the appearance of plentiful scholarly research on the late Qing constitutional movement, not only

⁹⁹ More specifically, Yuan was referring to laws such as the trademark law, the patent law and the business law. Yuan Weishi 袁偉時, "Zhongguo ziyou minzhu he fazhi de kaidian yu cuobai: 2002 nian 9 yue 25 ri zai Nanjing Daxue lishixi de baogao" 中國自由民主和法治的開端與挫敗：2002 年 9 月 25 日在南京大學歷史系的報告 (The beginning and defeat of liberal democracy and rule of law in China: A talk held on September 25, 2002, in the Faculty of History of Nanjing University), *Dongfang wenhua* 東方文化, no. 1 (2003).

¹⁰⁰ For direct critics of Yuan's position see Gao Fang 高放, "Qingmo lixian de dangdai zongjie: Jinian xinhai geming yibai zhou nian" 清末立憲的當代總結：紀念辛亥革命一百周年 (A contemporary summary of the adoption of a constitution in the late Qing: Commemorating the 100th anniversary of the Xinhai Revolution), *Zhongguo Yan'an Ganbu Xueyuan xuebao* 中國延安幹部學院學報 4, no. 6 (2011), 87, and Zhu Muzhi 朱穆之, "Daoli ye yao dajia: Guanyu pushi jiazhi wenti de sikao" 道理也要打假：關於普世價值問題的思考 (False truths also have to be combatted: A reflection on the problem of universal values), *Hongqi wengao* 紅旗文稿, no. 5 (2009), 7. For a positive reception of Yuan's position see Du Guang 杜光, "Pushi jiazhi: yi ge shidaoxing de zhongda keti" 普世價值：一個時代性的重大課題 (Universal values: An important task of our age), *Yanhuang chunqiu* 炎黃春秋, no. 1 (2009), 4–5.

¹⁰¹ On the phenomenon in general, see Huaiyin Li, "From Revolution to Modernization: The Paradigmatic Transition in Chinese Historiography in the Reform Era," *History and Theory* 49, no. 3 (2010), 336–360, on constitutional reforms specifically 355–356. For examples of the tendency see, e.g., Li Zehou 李澤厚 and Liu Zaifu 劉再復, *Gaobie geming: Huiwang ershi shiji Zhongguo* 告別革命：回望二十世紀中國 (Bidding farewell to revolution: Looking back at 20th century China) (Hong Kong: Tiandi tushu youxian gongsi, 1996), 65–78, chapter "Revolution and reform—a baleful choice for the century" (*Geming yu gailiang: shijixing de tongku xuanze* 革命與改良：世紀性的痛苦選擇).

¹⁰² See, e.g., on the East Asian region as a whole, Jiunn-Rong Yeh and Wen-Cheng Chang, "The Emergence of East Asia Constitutionalism: Features in Comparison," *Asian Law Institute Working Paper*, no. 6 (2009).

in Mainland China, but also in Taiwan, in Japan, in Korea, in Europe and in the USA. Monographic overviews, apart from Gao Fang's and Norbert Meienberger's above-mentioned one, include Chang P'eng-Yuan's 張朋園 work on the *Constitutionalist Faction and the Xinhai Revolution* (*Lixianpai yu xinhai geming* 立憲派與辛亥革命),¹⁰³ Chang Yü-fa's 張玉法 book on the various constitutional organisations in late Qing times,¹⁰⁴ Ku Wei-Ying's 古偉瀛 publication on the constitution as the "last choice" for the Court,¹⁰⁵ Hou Yijie's 侯宜傑 general history of the constitutional movement in the last decade of the dynasty,¹⁰⁶ and Chi Yunfei's 遲雲飛 general history of Qing "constitutional preparation."¹⁰⁷ In Japan, Sōda Saburō 曾田三郎¹⁰⁸ and Li Xiaodong 李曉東¹⁰⁹ have contributed volumes on the Qing constitutional movement from the perspective of the Meiji reforms, and in the USA, Zhao Hui has written a dissertation on the Qing constitutional movement with the objective of creating a common theoretical framework for Western and Chinese constitutional thought.¹¹⁰

Zhao's general thesis bears some resemblance to the framework presented above. Comparing them to Western political theory from Aristoteles to modern

¹⁰³ Chang P'eng-Yüan 張朋園, *Lixianpai yu Xinhai geming* 立憲派與辛亥革命 (The constitutionalist faction and the Xinhai Revolution) (Taipei: Zhongyang Yanjiuyuan jindaishi yanjiusuo, 2005).

¹⁰⁴ Chang Yü-fa 張玉法, *Qingji de lixian tuanti* 清季的立憲團體 (Constitutional groups in the Qing period) (Taipei: Zhongyang Yanjiuyuan jindaishi yanjiusuo, Minguo 74 [1985]).

¹⁰⁵ Ku Wei-ying 古偉瀛, *Qingting de lixian yundong (1901-1911): chuli bianju de zuihou jueze* 清廷的立憲運動 (1901-1911) : 處理變局的最後抉擇 (The Qing Court's constitutional movement [1901-1911]: The last choice in dealing with the changing situation) (Taipei: Zhiyin chubanshe, Minguo 78 [1989]).

¹⁰⁶ Hou Yijie 侯宜傑, *Ershi shiji chu Zhongguo zhenghi gaige fengchao: Qingmo lixian yundong shi* 二十世紀初中國政治改革風潮：清末立憲運動史 (The wave of political reform in early 20th century) (Beijing: Zhongguo Renmin Daxue chubanshe, 2009).

¹⁰⁷ Chi Yunfei 遲雲飛, *Qingmo yubei lixian yanjiu* 清末預備立憲研究 (Research on Constitutional Preparation in the Late Qing) (Beijing: Zhongguo shehui kexue chubanshe, 2013).

¹⁰⁸ Sōda Saburō 曾田三郎, *Rikken kokka Chūgoku e no shidō: Meiji kensei to kindai Chūgoku* 立憲国家中国への始動：明治憲政と近代中国 (The beginnings of China as a constitutional State: Meiji constitutional government and modern China) (Kyoto: Shibunkaku, 2009).

¹⁰⁹ Li Xiaodong 李曉東, *Kindai Chūgoku no rikken kōzō: Gen Fuku, Yō Taku, Ryō Keichō to Meiji keimō shisō* 近代中国の立憲構想：嚴復・楊度・梁啟超と明治啓蒙思想 (Constitutional ideas in modern China: Yan Fu, Yang Du, Liang Qichao, and Meiji enlightenment thought) (Tokyo: Hōsei Daigaku shuppankyoku, 2005).

¹¹⁰ Zhao Hui, "Rethinking Constitutionalism in Late 19th and Early 20th Century China."

times, Zhao seeks to reevaluate both Meiji-era Japan ¹¹¹ and late Qing constitutionalism, arguing that

the essential goal of constitutionalism, whether it takes place in the East or the West, in the present or the past, is not to move closer to one pole of authoritarianism or the other of limited government, but to strike an ideal balance between the two, depending on the specific context of a state's time and place in history.¹¹²

Zhao argues that “ensuring a secure and strong polity is a precondition, if not one of the ulterior aims, of constitution building for many constitutional thinkers, whether in classical or modern political theory.” In China, due to the weakness of the country in the 19th century, the state-strengthening side was more prominent, while it has been “oft-overlooked” in the West. Still, “just as in China, Western constitution building has been fueled tremendously by the desire for a strong state, and not simply by the concern to protect citizens from government overreach.”¹¹³

Zhao's dissertation is meritorious in showing that current US American constitutional theory does not suffice to capture the Chinese case,¹¹⁴ similarly to how this study argues that, e.g., Peter Häberle's allegedly “universal” constitutional theory is actually rather restricted. But by analysing “writings of Aristotle, Cicero, Machiavelli, Hobbes, Locke, and America's Founding Fathers,”¹¹⁵ as well as thoroughly interpreting the use of the term *xianfa* 憲法 in Chinese texts from the Warring States period,¹¹⁶ her work is a more general statement about political theory than about the emergence of modern constitutions. Qing constitutionalism, she argues, was not really peculiar because political thinkers,

¹¹¹ Ibid., 6, 140–202.

¹¹² Ibid., iv.

¹¹³ Ibid., 4.

¹¹⁴ Ibid., 7–55.

¹¹⁵ Ibid., 3. See also 5, where she speaks of “ancient Greece and Rome, Renaissance Italy, a cleaving 19th century America, and a rotting Qing China.”

¹¹⁶ Ibid., 58–68.

through all times and places, have sought to construct effectively functioning polities, instead of only focusing on how to limit authority. It is, however, less an analysis of how the modern concept of constitution emerged in China, especially not in the context of the globalisation of the concept.

Besides such general works, numerous studies have appeared on hosts of detailed aspects of constitutionalism in late Qing China, as well as on specific intellectual and political actors of the so-called constitutionalist faction (*lixianpai* 立憲派).¹¹⁷ Just to show one example of how detailed research on the constitutional movement has become, one could mention Xu Yao's 徐躍 contribution to a recent study which traces the relationship between constitutional law (*xianfa* 憲法) and constitutionalism (*xianzheng* 憲政/*lixianzhuyi* 立憲主義) in China from its origins to the present day, published in Japan by Ishizuka Jin 石塚迅, Nakamura Motoya 中村元哉, and Yamamoto Shin 山本真. Xu traces the conflict between Chinese traditions and emerging constitutionalism on the example of newly-established village schools in Sichuan. These schools—needed for constitutional preparation—were built on the sites of old temples and graves, and the accompanying felling of sacred trees in the name of constitutionalism engendered many societal and legal conflicts. Xu thereby shows that delays in the plan of “constitutional preparation” were not only caused by the central government, but also due to problems on the local level.¹¹⁸

¹¹⁷ See, e.g., on Liang Qichao 梁啟超 Xiaobing Tang, *Global Space and the Nationalist Discourse of Modernity: The Historical Thinking of Liang Qichao* (Stanford: Stanford University Press, 1996); on Yuan Shikai see Jerome Ch'en, *Yuan Shih-k'ai*, 2nd ed. (Stanford: Stanford University Press, 1972); on Duanfang 端方 see Zhang Jun, “Spider Manchu: Duanfang as Networker and Spindocter of the Late Qing New Policies, 1901-1911” (PhD diss., University of California, 2008); on Wang Rongbao 汪榮寶 see Zhao Linfeng 趙林鳳, *Wang Rongbao: Zhongguo jindai xianfa di yi ren* 汪榮寶：中國近代憲法第一人 (Wang Rongbao: the pioneer of China's modern constitutions) (Taipei: Xinrui wenchuang, 2014). Some figures, however, are still understudied, especially those close to the Manchu Court, like Aisin Gioro Yikuang 愛新覺羅奕劻 and Tieliang 鐵良. See Edward J. M. Rhoads, *Manchus & Han: Ethnic Relations and Political Power in Late Qing and Early Republican China, 1861-1928* (Seattle: University of Washington Press, 2000), 6-7, deploring that scholarly literature about these figures is still scarce.

¹¹⁸ Xu Yao, “Shinshiki gakkō no setsuritsu to kyōzon no shūkan: minzoku o meguru bunka masatsu” 新式学校の設立と郷村の慣習・民俗をめぐる文化摩擦 (The establishment of new-style schools and village habits: cultural frictions surrounding popular customs), in *Kensei to kin-gendai Chūgoku: Kokka*,

If literature on the Qing-time constitutional movement has become so vast that it has been discussed in lengthy specialised articles,¹¹⁹ this leaves us with the question what still needs to be studied about it?

The considerable body of literature on this topic notwithstanding, quite a few questions still remain to be answered. Not surprisingly, in a country of continental vastness such as China, many open questions remain at the local level. Some regions have been well-studied by now,¹²⁰ but many others are still understudied. This is not, however, the main lacuna that the present study intends to fill. Instead, it aims at fitting the Chinese constitutional movement into the global context in which it originated. It is precisely here that more scholarly attention is especially wanting.

Library shelves brim with books about “compared constitutional history” or “European constitutional history.”¹²¹ However, they tend to use narrow definitions that reduce constitutions to the “constitutional state of the pan-European and American type,” which, Peter Häberle claims, is founded on “human rights as cultural anthropological premise, popular sovereignty and division of powers, fundamental rights and tolerance, multiplicity of parties and independence of the Courts.”¹²² Hence, most works on compared constitutional history and, generally, on constitutional history from an international perspective rarely touch upon the emergence of constitutions and of constitutionalism in non-Western countries. When they do, such as, in former decades, Charles Frederick

shakai, kojīn 憲政と近現代中国: 国家、社会、個人, eds. Ishizuka Jin 石塚迅, Nakamura Motoya 中村元哉, and Yamamoto Shin 山本真, 76–102 (Tokyo: Gendai jinbunsha, 2010).

¹¹⁹ E.g. Chang, “Xuezhe dui Qingji lixian yundong de pinggu,” which, remarkably, was written as early as 1981; since then, much more literature has appeared.

¹²⁰ See, e.g., on Zhili, Xu Jianping 徐建平, *Qingmo Zhili xianzheng gaige yanjiu* 清末直隸憲政改革研究 (Research on constitutional reforms in late Qing Zhili) (Beijing: Zhongguo shehui kexue chubanshe, 2008).

¹²¹ Next to the other works mentioned in this introduction see also Heinz Mohnhaupt and Dieter Grimm, *Verfassung: Zur Geschichte des Begriffs von der Antike bis zur Gegenwart (zwei Studien)*, (Berlin: Duncker und Humblot, 1995), the monographic version of the entry “Verfassung” (“constitution”) in Koselleck’s *Geschichtliche Grundbegriffe*.

¹²² Häberle, *Der kooperative Verfassungsstaat*, 18.

Strong's *Modern Political Constitutions*,¹²³ or, more recently, Hans Fenske's *Der moderne Verfassungsstaat*,¹²⁴ they tend to treat constitutions in non-Western countries as an appendix, as receptions of an achievement that had developed earlier in Europe and the USA.

In contemporary constitutional studies, there have been efforts to counterbalance such views. Tom Ginsburg and Alberto Simpser, in their insightful volume *Constitutions in Authoritarian Regimes*, published in 2014, have shown that constitutions outside of such a framework are much more than mere shams and that they actually matter.¹²⁵ For the first time, transcending previous studies with a local and regional focus, they have given a global overview of the functioning of constitutions in states that are disregarded by the traditional framework of constitutional studies.¹²⁶

Yet, Ginsburg's and Simpser's book is not a historical study; it does therefore not answer the question of how constitutions became a globally recognised instrument utilised across all types of government. In historical terms, Grotke and Prutsch's above-mentioned book reevaluates the role of constitutions in Europe, but does not fully describe the globalisation of the term, including the role that China played therein.

¹²³ Charles Frederick Strong, *Modern Political Constitutions: An Introduction to the Comparative Study of Their History and Existing Form* (London: Sidgwick & Jackson, 1939). Strong's book, first published in 1930, was republished and translated numerous times over the next four decades. It has one single chapter on "constitutional experiments among non-European peoples." (290–310). In one single page dedicated to China, Strong not even mentions the Qing constitution. (294).

¹²⁴ Fenske, *Der moderne Verfassungsstaat*. Fenske admits that the "constitutional state" came in different forms and changed itself during history, and at least nominally, follows a global approach (xii). It still puts an emphasis on Europe and the USA, but at least it contains some pages on China, including a short overview of late Qing political history (495–499). However, this sketch does not only contain several factual inaccuracies—it postpones the 1905/06 trip of the five constitutional commissioners and writes of a "ten-year" preparatory plan (497)—, but it also does not say much about origins and features of late Qing constitutional thought.

¹²⁵ Tom Ginsburg and Alberto Simpser, eds., *Constitutions in Authoritarian Regimes* (New York: Cambridge University Press, 2014).

¹²⁶ For a shorter overview, see also Li-Ann Thio, "Constitutionalism in Illiberal Polities," in *Oxford Handbook of Comparative Constitutional Law*, eds. Michel Rosenfeld and András Sajó (Oxford: Oxford University Press, 2012), 133–152.

Specific constitutional histories of China tend to stress the foreignness of the concept—its quality as a “good shipped from abroad”—, treating Chinese constitutional thought as a derivative discourse not very successfully aiming at adapting foreign ideas to China. In this light, there are quite a few works on the reception of various Western models in China.¹²⁷ Most frequently, scholarship stresses the close regional coöperation between China and Japan. This is the case, for example, with the volume *The Reception and Adaptation of Western Constitutionalism in Japan and China* (*Nitchū ni okeru Seiō rikkenshugi no keiju to henyō* 日中における西欧立憲主義の継受と変容), written by a binational team of Japanese and Chinese researchers and published by Takahashi Kazuyuki 高橋和之 in 2014. The research team’s starting point is the question to what extent constitutionalism became a “Japanese” or “Asian” concept, working under the framework of a route of reception West → Japan → China.¹²⁸

Perhaps the most vociferous academic voice emphasising the importance of Sino-Japanese coöperation in constitution-making is Douglas Reynolds. In his sensationalist first book on Sino-Japanese relations, Reynolds identified Japan as the “missing key” of what he calls the *Xinzheng* “revolution.” Reynolds pointed out the dense connections that existed between China and Japan in constitution-making, stressing that most of the officials at the Constitutional Office in Peking had studied in Japan and that the Meiji Constitution was a blueprint for the

¹²⁷ Just to name a few examples, Marianne Bastid, “The Japanese-Induced German Connection of Modern Chinese Ideas of the State: Liang Qichao and the *Guojia lun* of J. K. Bluntschli,” in *The Role of Japan in Liang Qichao’s Introduction of Modern Western Civilization to China*, ed. Joshua A. Fogel (Berkeley: Institute of East Asian Studies, University of California, 2004); Yong Lei, *Auf der Suche nach dem modernen Staat: Die Einflüsse der allgemeinen Staatslehre Johann Caspar Bluntschlis auf das Staatsdenken Liang Qichaos* (Frankfurt am Main: Lang, 2010); for a Xiong Yuezhi 熊月之, “Difficulties in Comprehension and Differences in Expression: Interpreting American Democracy in the Late Qing,” *Late Imperial China* 23, no. 1 (2002); Alison Adcock Kaufman, “One Nation Among Many: Foreign Models in the Constitutional Thought of Liang Qichao” (PhD diss., University of California, 2007).

¹²⁸ Takahashi Kazuyuki 高橋和之, ed. *Nitchū ni okeru Seiō rikkenshugi no keiju to henyō* 日中における西欧立憲主義の継受と変容 (*The reception and adaptation of Western constitutionalism in Japan and China*) (Tokyo: Iwanami shoten, 2014). For the considerations on the route West → Japan → China see v-ix.

Chinese *Outline of a Constitution*.¹²⁹ His exaggeratedly positive and monochrome assessment of Sino-Japanese relations, written in a well-nigh hagiographic tone, has been widely and much criticised,¹³⁰ but his call for further research on “China’s transformation with Japanese participation”¹³¹ has not been left unheard. Numerous scholars have produced valuable studies on Japanese intellectual influences on China,¹³² on Sino-Japanese coöperation in drafting constitutional texts,¹³³ on the relationship of Chinese political reforms with specific Japanese universities,¹³⁴ and on the views of specific Japanese public figures on Chinese constitutionalism.¹³⁵

Japan is indeed a crucial factor in late Qing constitutionalism, and this study acknowledges this. It will show how much of Chinese constitutional knowledge was mediated via Japan, and it will also deepen existing literature on Sino-Japanese relations, such as on Itō Hirobumi’s views of the Chinese constitution and on the Sino-Japanese coöperation in drafting constitutional texts. Yet, the focus on Japan is not enough to describe the global standing of Qing constitutional thought.

The most recent doctoral dissertation on the Sino-Japanese constitutional interchanges is Cui Xuesen’s 崔學森 work on Japanese contributions to Chinese

¹²⁹ Reynolds, *The Xinzheng Revolution and Japan*, 186.

¹³⁰ See, e.g., Judge. “Revolution,” 7–12. See also Li Tingjiang, “Zhang Zhidong and His Japanese Military Advisors: A Preliminary Analysis of Modern Japan’s China Policy,” tr. Douglas Howland, in *Late Qing China and Meiji Japan: Political & Cultural Aspects*, ed. Joshua A. Fogel (Norwalk, CT: EastBridge, 2004), 54–55. See also Urs M. Zachmann, “China’s Role in the Process of Japan’s Cultural Self-Identification, 1895–1904” (PhD diss., University of Heidelberg, 2006), 10.

¹³¹ Reynolds, *The Xinzheng Revolution and Japan*, 196.

¹³² E.g., Li, *Kindai Chūgoku no rikken kōzō*; Sōda, *Rikken kokka Chūgoku e no shidō*.

¹³³ See the yet unpublished Cui, “Qingting zhixian yu Mingzhi Riben.”

¹³⁴ E.g., on Waseda University, Sōda Saburō 曾田三郎, “Qingmo minchu de zhengzhi gaige han Riben Zaodaotian Daxue” 清末民初的政治改革和日本早稻田大學 (Political reform in the late Qing and early republic and the Japanese Waseda University), *Suzhou Keji Xueyuan xuebao (shehui kexue ban)* 蘇州科技學院學報 (社會科學版) 23, no. 1 (2006), 109–113.

¹³⁵ E.g., He Pengju 何鵬举, “‘Chūshin’ to kensei no myōyō: Ōkuma Shigenobu no Chūgoku kensei ron” 「中心」と憲政の妙用：大隈重信の中國憲政論 (The “center” and the mysterious effects of constitutional government: Ōkuma Shigenobu’s evaluation of constitutional government in China), *Hōsei Daigaku daigakuin kiyō* 法政大学大学院紀要, no. 71 (2013), 159–181.

constitution-making. This study will discuss Cui's work in detail when analysing the various draft constitutions of the Qing. For the moment let us just have a glance at his general conclusion: Cui maintains that late Qing constitution-making was contrary to the "spirit of constitutionalism" and the "tide of the time" (*shidai chaoliu* 時代潮流), for its purpose was to maintain imperial rule rather than to protect the rights of the citizens.¹³⁶ We have already discussed that the "spirit of constitutionalism" may be more multifaceted than this description. But have scholars studied in what "tide of the times" the Qing constitutional movement took place?

In a book chapter about Chinese official views on constitutionalism, the far-sighted Peter Zarrow wrote that "this was an era of international constitution-making, as modernising elites from Iran, Portugal and Mexico to the Ottoman and Russian Empires sought to provide clear foundations for the political order."¹³⁷ Zarrow's description is not fully accurate¹³⁸ and does not go into detail about the phenomenon,¹³⁹ but it is one of the few¹⁴⁰ acknowledgements of the "tide of the times." Apart from the Sino-Japanese interactions, research is shallow on the global wave of constitutionalism of which China was a part next to Russia,¹⁴¹ the

¹³⁶ Cui, "Qingting zhixian yu Mingzhi Riben," I.

¹³⁷ Zarrow, "Constitutionalism and the Imagination of the State," in *Creating Chinese Modernity*, 77.

¹³⁸ Portugal (1910) and Mexico (1917) already had had constitutions for decades, but they were replaced by *coup d'états*, civil wars and revolutions. For a paper putting the Portuguese regicide of 1910 and Chinese anarchism into a common global perspective, see Paul B. Spooner, "Anarchism and Assassination: Dom Carlos and the Qing's Zaifeng Regent," *Revista de Cultura*, no. 51 (2016): 33–67.

¹³⁹ At one point (54), Zarrow, "Constitutionalism and the Imagination of the State," in *Creating Chinese Modernity*, argues that "Chinese intellectuals were aware of much of the history of Western constitutionalism, as well as contemporary practice in the West and Japan." This study goes further, as it argues that Chinese intellectuals were aware of constitutional practice in not only the West and Japan, but in also in constitutionalising countries.

¹⁴⁰ The references from constitutional studies provided by Zarrow do not discuss the wave of constitutionalisation of the 1900s in detail. Another rare and rather vague mention of the phenomenon is to be found in Meribeth Cameron's book: "The outcome of the Russo-Japanese War aroused those elements in all Asiatic countries which wished for a more liberalized or more independent regime, as the case might be. China could not escape this epidemic." Cameron, *The Reform Movement in China*, 101.

¹⁴¹ One specific aspect of Russian constitutional influence in China is dealt with in Alison Adcock Kaufman, "One Nation Among Many," 175–180; 192–225.

Ottoman Empire,¹⁴² and Persia.¹⁴³ Even when coming to the conclusion that the Qing constitutional reforms were not a dilatory hoax, but actually “hasty” in comparison to other countries, the comparison is with Japan and “Western” countries, not with Russia, Persia, or the Ottoman Empire.¹⁴⁴ However, as this study intends to show, these were important points of reference at the time, as many Chinese intellectuals and officials evaluated their own speed of constitution-making in comparison to them.

What there is, however, is comparatively plentiful research of *revolutionary* movements from a global perspective. Beginning from his 1912 article “Democracy and Populism in China” (*Demokratiia i narodichestvo v Kitae* Демократия и народичество в Китае), Vladimir Ilyich Lenin (1870–1924) repeatedly drew a connection between the Russian Revolution of 1905 and those of Turkey, Persia and China, which according to him lead to the progress of “hundreds of millions of people.”¹⁴⁵ Lenin’s assessment was later picked up by Chinese historiography,

¹⁴² Karl, *Staging the World*, contains a section (182–192) on the Turkish constitutional revolution of 1908 and its importance for China, which also touches upon the Chinese reception of the Ottoman constitution of 1876. However, it is focused solely on the reception of the Turkish constitution by Chinese revolutionaries. See chapter 5, section 2, for a closer debate.

¹⁴³ On the reception of the Persian constitutional revolution in China, Wang Yidan has penned a book chapter, which however, is highly unbalanced: Wang Yidan “The Iranian Constitution as Reported in the Chinese Press,” in *Iran’s Constitutional Revolution: Popular Politics, Cultural Transformations and Transnational Connections*, eds. H. E. Chehabi and Vanessa Martin (London, New York: I.B. Tauris, 2010), 369–379. See chapter 3, section 4, for a closer debate.

¹⁴⁴ See, e.g., Ji Yunfei 季雲飛, “Qingmo sancǐ gaige zhī bǐjiào yánjiū” 清末三次改革之比較研究 (A comparative study of three reforms in the late Qing), *Nanjing shehui kexue* 南京社會科學 52, no. 6 (1992), 107–113, and Dong Fangkui 董方奎, “Lun Qingmo shixing yubei lixian de biyaoxing ji kenengxing: jianlun Zhongguo jindai minzhuhua de qidian” 論清末實行預備立憲的必要性及可能性：兼論中國近代民主化的起點 (On the necessity and possibility of the implementation of constitutional preparation in the late Qing: at the same time, on the starting point of modern China’s democratisation), *Anhui shixue* 安徽史學, no. 1 (1990), 40–44.

¹⁴⁵ Vladimir Il’ich Lenin Владимир Ильич Ленин, “Demokratiia i narodichestvo v Kitae” Демократия и народичество в Китае (Democracy and populism in China), in *Polnoe sobranie sochinenii* Полное собрание сочинений, ed. Institut Marksizma-Leninizma pri TSK KPSS Институт Марксизма-Ленинизма при ЦК КПСС, 5th ed. 56 vols, vol. 21, 400–406. Moscow: Politizdat, 1966–1981. See further a 1914 essay by him: Lenin, “O prave natsiī na samoopredelenie” О праве наций на самоопределение (About the right of the peoples to self-determination), in *Polnoe sobranie sochinenii*, ed. Institut Marksizma-Leninizma pri TSK KPSS, vol. 25, 269. Lenin expressed the same thoughts again in 1917, in a lecture which he held in Zurich in German language: Wladimir Il’ich Lenin, “Ein Vortrag über die Revolution von 1905,” in *Werke*, ed. Institut für Marxismus-Leninismus

which tried to show the importance of the 1905 Russian Revolution for the Xinhai Revolution, although, as Gotelind Müller-Saini has explained, the direct link posited by Lenin is rather difficult to establish.¹⁴⁶

Accordingly, this study stands on the shoulders of several works which have explored global revolutionary connections. Don Price's 1974 *Russia and the Roots of the Chinese Revolution* provides highly interesting insights into Russian-Chinese relations and Chinese perceptions of China in the years before the Xinhai Revolution.¹⁴⁷ More recently, Gotelind Müller-Saini has published several studies on Chinese perceptions of Russia, and a seminal in-depth monograph on Chinese anarchism, situating it into its global—particularly, but not only, Japanese and Russian—context.¹⁴⁸

However, the focus on revolutions can distract from other issues, such as the importance of the concept of constitution. Rebecca Karl concludes the last chapter of her book on the formation of Chinese nationalism with the argument that "it is no accident that ethno-nationalist revolution came to be a unifying concept taken up within imperialist modernity."¹⁴⁹ Is it? By far not all Chinese intellectuals were revolutionaries—and, as we will see later, not all revolutionaries were ethno-nationalists. It would seem that constitution was an even more

beim Zentralkomitee der SED, 7th ed., vol. 23, 244–262 (Berlin: Dietz Verlag, 1975); Nach dem deutschsprachigen Manuskript. There are some minor variations to this theme of a revolution of the "East": While in 1914, cites the revolutions in the Balkans as being a consequence of the 1905 Revolution, he omits the Balkans in his 1917 speech.

¹⁴⁶ Gotelind Müller, "China and the Russian Revolution of 1905," in *The Russian Revolution of 1905 in Transcultural Perspective: Identities, Peripheries, and the Flow of Ideas*, eds. Felicitas Fischer von Weikersthal et al. (Bloomington: Slavica, 2013), 289. For further Chinese perspectives on Russia, in particular on the Russo-Japanese war of 1904/05, see: Gotelind Müller, "Chinesische Perspektiven auf den Russisch-Japanischen Krieg," in *Der Russisch-Japanische Krieg 1904/05: Anbruch einer neuen Zeit?*, ed. Maik H. Sprotte, Wolfgang Seifert, and Heinz-Dietrich Löwe (Wiesbaden: Harrassowitz, 2007), 203–239.

¹⁴⁷ Don C. Price, *Russia and the Roots of the Chinese Revolution, 1896-1911* (Cambridge [Massachusetts]: Harvard University Press, 1974).

¹⁴⁸ Müller, "Chinesische Perspektiven auf den Russisch-Japanischen Krieg"; Müller, "China and the Russian Revolution of 1905"; Gotelind Müller, *China, Kropotkin und der Anarchismus: Eine Kulturbewegung im China des frühen 20. Jahrhunderts unter dem Einfluß des Westens und japanischer Vorbilder* (Wiesbaden: Harrassowitz Verlag, 2001).

¹⁴⁹ Karl, *Staging the World*, 192.

unifying concept, embraced by both constitutional monarchists and revolutionary republicans, eschewed only by traditionalists and anarchists.

As debates about constitutions were, by their very nature, closely related to debates about the legitimacy of governments, the wave of successful revolutions pointed out by Lenin has largely obfuscated the global wave of constitutionalisation which preceded it.¹⁵⁰ Nader Sohrabi, for example, published several studies¹⁵¹ which have culminated in an important book¹⁵² situating Turkish and Persian constitutionalism within a “global wave” of constitutionalism. But when placing the Turkish and Persian constitutional revolutions in a global context, Sohrabi nearly completely ignores the concomitant non- and pre-revolutionary constitutional thought of late Qing China. For Sohrabi, the Chinese equivalent to the Ottoman and Iranian constitutional revolutions was the 1911 Xinhai Revolution; it was the symptom of a global wave of revolutions “that swept across Russia (1905), Iran (1906), the Ottoman Empire (1908), Mexico (1910), and China (1911).”¹⁵³ Only at one point, Sohrabi mentions the constitutional preparation promoted by the Qing Court as the “beginning of constitutional skirmishes in 1906.”¹⁵⁴

These “skirmishes,” it should be noted, were apparently well-perceived in the Ottoman Empire, paralleling the Chinese interest in the Ottoman constitution and showing the global interconnectedness of constitutional thought at the time. But can the late Qing constitutional movement be reduced to “skirmishes”? After

¹⁵⁰ Spooner, “Anarchism and Assassination,” 46, adds the republican *coup d'état* in Brazil of 1889 to the list of “the most significant of all social revolutions,” which is far-fetched: Neither was the Brazilian coup related to the revolutions of 1905 and after, nor was it, by any measure, a “social revolution.”

¹⁵¹ Nader Sohrabi, “Historicizing Revolutions: Constitutional Revolutions in the Ottoman Empire, Iran, and Russia, 1905-1908,” *American Journal of Sociology* 100, no. 6 (1995), 1383-1447; Nader Sohrabi, “Global Waves, Local Actors: What the Young Turks Knew about Other Revolutions and Why It Mattered,” *Comparative Studies in Society and History* 44, no. 1 (2002), 45-79.

¹⁵² Nader Sohrabi, *Revolution and Constitutionalism in the Ottoman Empire and Iran* (New York: Cambridge University Press, 2011).

¹⁵³ Sohrabi, “Global Waves, Local Actors,” 45; see also Sohrabi, *Revolution and Constitutionalism in the Ottoman Empire and Iran*, 3-23.

¹⁵⁴ Sohrabi, “Global Waves, Local Actors,” 55-56.

all, a constitution had been at the very top of the political agenda for several years. As Sohrabi writes, “revolutions often step in to speedily finish off, *in their own way*, the reformist undertakings of the old regimes.”¹⁵⁵ In Russia (1906), Persia (1906), and the Ottoman Empire (1908), the constitutional revolutions had primarily resulted not in the overthrow of the monarchic governments, but in the proclaiming of constitutions within the monarchical system.¹⁵⁶ In China, “constitutional preparation” was undertaken without a revolution,¹⁵⁷ but it was part of the same co-production. It is in this light that the present study sets out to examine the emergence of the concept of “constitution” in late Qing China.

5. Methods, Sources, and Structure

This study is a history of a legal concept—or at least of a concept that is most frequently comprehended within a legal framework—, but it integrates political, legal, and intellectual history, and the corresponding methodologies. As laws are the primary form whereby States set their norms,¹⁵⁸ most studies written from a legal perspective are still tied to the framework of nation-states,¹⁵⁹ analysing new laws through the analytical framework of “legal transplants” from one state to the other.¹⁶⁰

¹⁵⁵ Sohrabi, *Revolution and Constitutionalism in the Ottoman Empire and Iran*, 33.

¹⁵⁶ It has to be noted that all these monarchical constitutions approved in the “global wave” of 1906–1908 did mostly not prove to be very long-lived. Just as the Qing Empire was replaced by the Republic of China on 1st January 1912, Russia’s constitutional monarchy was eliminated by two consecutive revolutions in March and November 1917. After 16 turbulent years, the Ottoman Empire ceased to exist in 1924, being replaced by the Republic of Turkey. Only the Persian monarchical constitution survived for 73 years until 1979, although the country experienced much turmoil in these seven decades, including civil war, foreign occupation and two coup d’états.

¹⁵⁷ Reynolds, *The Xincheng Revolution and Japan*, 12–14, sees the whole decade of 1901–1911 as a “revolution,” but this is a stretch.

¹⁵⁸ Heller, *Staatslehre*, 253.

¹⁵⁹ See Peter Häberle’s theoretical framework on constitutional receptions in Häberle, *Der kooperative Verfassungsstaat*, 195–211. See also Vlad Perju, “Constitutional Transplants, Borrowing, and Migrations,” in *Oxford Handbook of Comparative Constitutional Law*, eds. Rosenfeld and Sajó, 1304–1327.

¹⁶⁰ On the seminal work about “legal transplants” see Alan Watson, *Legal Transplants: An Approach to Comparative Law*, Second edition (Athens [United States]: University of Georgia Press, 1993). On “transplantation” of constitutional law in general see Perju, “Constitutional Transplants, Borrowing, and Migrations,” in *Oxford Handbook of Comparative Constitutional Law*, eds. Rosenfeld and Sajó, 1304–

In studies of the late Qing constitution, too, the method of comparing the Chinese constitutional texts with their models is still widely used by scholars, such, e.g., as Han Dayuan¹⁶¹ and Cui Xuesen¹⁶² when they analyse the *Qing Outline of a Constitution*. This study, too, will occasionally make supplementary use of comparative approaches when dealing with such texts. However, this method is not sufficient to explain the emergence of constitution as a global concept.¹⁶³

If used indiscriminately, it might even be more harmful than helpful. Michael Baxandall has correctly pointed out that the notion of “influence” is a problematic tool for writing history, for it obscures the creative agency of the “recipient,” who relates himself in a multitude of ways to the material he encounters.¹⁶⁴ It is precisely the over-reliance on the transplantation approach which might have contributed to the unwholesome impression that the late Qing constitutional movement was only a failed Chinese spin-off of an ultimately Western model. Instead, this dissertation defies this notion by applying a process-oriented approach and emphasising the transcultural and dynamic character of constitution-building. Beneath the surface of constitutional texts, there is a vivid background of fluid transcultural interactions that are worth exploring.

1327. On legal transplants and China see the monographs Huang Yuansheng 黄源盛, *Falü jishou yu jindai Zhongguo* 法律繼受與近代中國 (Legal reception and modern China) (Taipei: Yuanzhao chubanshe, 2007), and Liang Zhiping 梁治平, *Lijiao yu falü: Falü yizhi shidai de wenhua chongtu* 禮教與法律: 法律移植時代的文化衝突 (Rites and law: Clashes of culture in an age of legal transplantation) (Shanghai: Shanghai shudian chubanshe, 2013).

¹⁶¹ Han Dayuan 韓大元, “Meiji kenpō no Kintei kenpō taikō ni okeru eikyō” 明治憲法の「欽定憲法大綱」に対する影響 (The influence of the Meiji constitution on the *Outline of a Constitution by Imperial Decree*), in *Nitchū ni okeru Seiō rikkenshugi no keiju to henyō*, ed. Takahashi, 125–134.

¹⁶² Cui, “Qingting zhixian yu Mingzhi Riben,” 166–191.

¹⁶³ For a convincing criticism of the overreliance on comparing constitutional texts see Sōda Saburō 曾田三郎, ed., *Kindai Chūgoku to Nihon: Teikei to tekitai no hanseiki* 近代中国と日本：提携と敵対の半世紀 (Modern China and Japan: half a century of partnership and enmity) (Tokyo: Ochanomizu shobō, 2001), 39. As Sōda writes with respect to the study of Sino-Japanese relations, the Meiji constitution had a considerable breadth, and Meiji politics fluctuated a lot. Therefore, according to Sōda, it is also necessary to analyse how Chinese actors perceived the realities of the Japanese constitutional system.

¹⁶⁴ Michael Baxandall, *Patterns of Intention: On the Historical Explanation of Pictures* (New Haven: Yale University Press, 1985), 58–62.

Constitutional law has to be comprehended as both a discursive system¹⁶⁵ and as a function of politics—i.e. the result of political action transformed into legal form.¹⁶⁶ Basing himself on the line of thought that constitutional law must be understood not merely as a fixed set of norms, but as a process of “law in public action,”¹⁶⁷ Peter Häberle has argued that constitutional studies are cultural studies.¹⁶⁸ Constitutions, Häberle writes, are very close to literature and music, and hence constitutional studies very close to literary and musical studies. Let us, then, do justice to Häberle’s dictum that constitutional preambles are comparable to musical overtures¹⁶⁹ and make proper methodological use of cultural studies.

In his methodology of art history, Michael Baxandall writes that art historians address a relationship between picture and concepts: Whoever makes a picture, addresses “a problem of which his product is a finished and concrete solution.” To understand it, Baxandall argues, the historian “tries to reconstruct both the specific problem it was designed to solve and the specific circumstances out of which he was addressing it.”¹⁷⁰

Mutatis mutandis, this understanding is also applicable for the intellectual side of the present study of constitutional history. But of course, there are substantial *mutanda*. The first *mutandum* is that constitutional history has to

¹⁶⁵ William W. Fisher III, “Texts and Contexts: The Application to American Legal History of the Methodologies of Intellectual History,” *Stanford Law Review* 49, no. 5 (1997), 1073.

¹⁶⁶ See also Heller, *Staatslehre*, 230–231.

¹⁶⁷ See Peter Häberle, “Grundrechtsgestaltung und Grundrechtsinterpretation im Verfassungsstaat – zugleich zur Rechtsvergleichung als ‚fünfter‘ Auslegungsmethode,” *Juristenzeitung* 44, no. 20 (1989), 917. On this basis, Häberle further called for some modifications to the classical legal method, arguing for “constitutional comparison” as a further method of juridical interpretation (916–918). In as far as this affects the juridical method employed in judging cases, the recognition of law as a cultural phenomenon bound to its societal conditions should not be used as an excuse to depart from the traditional legal methods centered around the letter of the law. On the canonical methods of jurisprudence see Karl Larenz, *Methodenlehre der Rechtswissenschaft*, 6th ed. (Berlin et al.: Springer, 1991), 189–365. On specific methodical problems concerning constitutions, including Häberle’s suggestions, see 360–365. At any rate, for historians analysing the development of legal concepts and how they work within a polity, Häberle’s understanding is most appropriate.

¹⁶⁸ See Häberle, *Der kooperative Verfassungsstaat*, 37–41; 117–244, 601–604.

¹⁶⁹ *Ibid.*, 601–604.

¹⁷⁰ Baxandall, *Patterns of Intention*, 11, 15.

account for a substantial amount of political history, which is not concerned with artefacts as such, but rather with the reconstruction of historical actions and events. In this field, what history does is describing historical events together with the structures that engendered it, with a view on understanding the social relations of a certain epoch and understanding the historical process within which they unfolded.¹⁷¹

The distinction between the study of events and the study of actions is not sharp, as Baxandall acknowledges:¹⁷² The objects of this study are mainly historical artefacts, i.e., texts which express different modes of thinking of the time. The study not only analyses them for the events described therein, but mainly for the thoughts contained in them. The intellectuals and officials attached their intention to the composition of these textual artefacts; except for pieces of news in newspapers and magazines, they were not mere documentary by-products of actions and events.¹⁷³ It is these artefacts which were then used as tools in political struggles and thus converted into historical actions.

The second *mutandum* stems from the fact that the analysis of a multidirectional debate expressed in countless texts has to account for considerably more complexity than that of a single artefact. Baxandall analyses pieces of art which refer to foregoing artefacts, but in this case, constitutional debates took place simultaneously in China and in other places of the world, and Chinese intellectuals and officials stood in direct contact with officials and intellectuals abroad.

The work to be done in this study is not only to carve out how Chinese intellectuals worked in the global context to form their own constitutional notions—whether they made use of China’s own traditions, or of Western or Japanese models, or of the news coming from the various other polities that were

¹⁷¹ Luiz Alberto Moniz Bandeira, *O feudo: A Casa da Torre de Garcia d’Ávila: da conquista dos sertões à independência do Brasil*, 2nd ed. (Rio de Janeiro: Civilização Brasileira, 2007), 18.

¹⁷² Baxandall, *Patterns of Intention*, 13.

¹⁷³ See *ibid.*, 14.

constitutionalising themselves at the turn of the 20th century. More than that, the task is to write a “dialogic history”¹⁷⁴ of constitutional law. Hence, in addressing the specific problem and the specific circumstances that lay before the Chinese intellectuals, the study departs from a double global approach, as delineated by Lydia Liu: “to place the study of China and East Asia in a global context and, equally important, to examine global processes in East Asia.”¹⁷⁵

Zhao Hui has already observed the problems that arise from dissociating Chinese and Western constitutional debates, noting that discussions about Chinese constitutional history almost invariably begin with Western constitutional theory and then proceed to narrate what the Chinese borrowed from abroad.¹⁷⁶ Zhao’s methodological answer to these problems involves, for one, analysing in depth the few instances when the term *xianfa* 憲法—used for “constitution” in modern East Asian languages—¹⁷⁷ occurred in ancient China. Further to this, Zhao compares examples of late Qing constitutional thought to a series of examples of Western political thought from the antiquity to the present day. This does not seem to be the most promising approach for this study. In the scope of a study of modern Chinese constitutional thought, ancient Chinese classics should be discussed whenever they are relevant, i.e., not only on the basis of a surface similarity in terminology, but whenever modern thinkers refer to them. But Chinese constitutional thought should be put into the context in which it emerged.

¹⁷⁴ See Charles Henry Alexandrowitz, *The Law of Nations in Global History*, eds. David Armitage and Jennifer Pitts (Oxford: Oxford University Press, 2017), x.

¹⁷⁵ Lydia Liu, *Tokens of Exchange: The Problem of Translation in Global Circulations* (Durham and London), 7.

¹⁷⁶ Zhao, “Rethinking Constitutionalism in Late 19th and Early 20th Century China,” 7. Late Qing scholars sometimes followed a different approach, when studies on the Chinese constitution written by Chinese students often began from China’s pre-constitutional political system. See, e.g., Zhou Zechun 周澤春, *Die Reformen des chinesischen Reiches: in Verfassung, Verwaltung und Rechtsprechung mit Rücksicht auf die entsprechenden Einrichtungen Europas* (Berlin: Druck von Emil Ebering, 1909), and Hawking Lugine Yen, “A Survey of Constitutional Development in China” (PhD diss., Columbia University, 1911).

¹⁷⁷ Zhao, “Rethinking Constitutionalism in Late 19th and Early 20th Century China,” 58-73 (Chapter three: “The Meaning of Constitution in Chinese”), which also has some remarks on the history of the term in Japan.

Therefore, this study has chosen to, from the very beginning, interweave Chinese constitutional thought with the events in the wider world, not depicting Chinese constitutional thought as something that appeared “out of the blue” at the turn of the 20th century, but beginning from the earliest mentions of the concept in Sinitic-language literature in 1838. It is concerned with “rhetorical strategies, translations, discursive formations, naming practices, ..., tropes and narrative modes.”¹⁷⁸ After the concept becomes a political tool for China, the study turns its attention to the political uses to which it was put,¹⁷⁹ explaining the conditions which bore upon the Chinese historical experience.¹⁸⁰

The approach of entangling the Chinese narration with the global one means that the study will keep an eye on global events throughout the late Qing constitutional movement, especially on the events happening in Russia, Turkey, and Persia. While this is not an attempt to create an in-depth study of the forces that shaped constitutionalism in these places, it is this entangled narrative structure which best conveys the embeddedness of Chinese constitutionalism in a global discourse.

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The broad layout of this study, encompassing a longer time period than usual, paying attention to the intellectual and political aspects¹⁸¹ of the constitutional movement, and in particular attempting to fit it into a global picture, necessitate the use of a wide array of sources of a different nature. The selection has been made so as to supplement well-known standard sources with less well-known or hitherto unjustly disregarded ones, sources in Chinese language with sources in various foreign languages, political and diplomatic sources with

¹⁷⁸ Lydia Liu, *Translingual Practice: Literature, National Culture, and Translated Modernity* (Stanford: Stanford University Press, 1995), xviii.

¹⁷⁹ See Margrit Pernau, Helge Jordheim et al., *Civilizing Emotions: Concepts in Nineteenth-Century Asia and Europe* (Oxford: Oxford University Press, 2015), 3.

¹⁸⁰ See Liu, *Translingual Practice*, xviii.

¹⁸¹ See Reynolds, *China, 1898-1912*, 2.

writings of intellectuals, and sources from different sides of the political spectrum, not only from the “constitutional faction” (*xiandang* 憲黨), but also from revolutionaries and even anarchists.

In order to determine the relevance of the sources, the study will consider both qualitative and quantitative factors, i.e., whether a text introduced fresh or unusual ideas to the debate, whether it represented a wider current of thought, and its significance for further discourse. It can at times be quite difficult to gauge how widely certain publications or articles were circulated or read, but this study will consider how often it was published, cited, translated, and advertised.

The political and legal side of the constitutional enterprise is mainly represented by Imperial edicts and memorials of officials to the Throne, now collected in several edited works.¹⁸² These are often-used sources that are plentiful and give a good overview over viewpoints of officials at the time. But as they are highly formalised documents sanitised for official use, they have been supplemented and vivified by diaries, memoirs and letters left by notables of the time. Of the diaries, Wang Rongbao’s 汪榮寶 (1878–1933) diary is very useful, as it is one of the few sources that can give us hints about the drafting of the official constitution. In terms of memoirs, Zhou Zechun’s 周澤春 (1883–1963) recollections

¹⁸² Mainly Gugong Bowuyuan Ming-Qing dang’anbu 故宮博物院明清檔案部, ed., *Qingmo choubelixian dang’an shiliao* 清末籌備立憲檔案史料 (Archival material concerning constitutional preparation in the late Qing), 2 vols. (Beijing: Zhonghua shuju, 1979); Xia Xinhua 夏新華 et al., eds., *Jindai Zhongguo xianzheng licheng: shiliao huicui* 近代中國憲政歷程：史料薈萃 (The historical process of constitutional government in modern China: A collection of sources) (Beijing: Zhongguo Zhengfa Daxue chubanshe, 2004); *Qingmo Minchu xianzheng shiliao jikan* 清末民初憲政史料輯刊, ed. Beitushe yingyinshi 北圖社影印室, 11 vols. (Beijing: Beijing Tushuguan chubanshe, 2006), vols. 1–3. See also Miao Ch’üan-chi 繆全吉, ed., *Zhongguo zhixianshi ziliao huibian: Xianfa pian* 中國制憲史資料彙：憲法篇 (Collection of material on the history of Chinese constitution-making: Part on constitutions) (Taipei County: Guoshiguan, Minguo 78 [1989]), 1–35, which contains but a few official documents. Of the collections compiled in late Qing time, see Zhu Shoupeng 朱壽朋, *Guangxu chao Donghua lu* 光緒朝東華錄 (Continued records of Donghua for the court of Guangxu), ed. Zhang Jinglu 張靜廬. 5 vols. (Beijing: Zhonghua shuju, 1984), *Daqing lichao shilu: Daqing Dezong Jing Huangdi shilu* 大清歷朝實錄：大清德宗景皇帝實錄 (Records of the successive courts of the Qing Dynasty: records of the Jing Emperor Dezong of the Qing Dynasty), and *Daqing lichao shilu, fulu: Daqing Xuantong zhengji shilu* 大清歷朝實錄，附錄：大清宣統政紀實錄 (Records of the successive courts of the Qing dynasty, appendix: Political records of the Xuantong Emperor of the Qing).

are very valuable in reconstructing the activities of the constitutional commission in Berlin.

Such material, however, must be handled with care and interpreted against the political background in which it originated, as it might suffer from the political biases and other defects. The memoirs in particular may be tainted by ideological cross-contaminations due to having been written down decades after the fact. Zhou Zechun, e.g., as shall be shown, was keen to downplay his own role in serving the Qing government. A careful plausibility check will be made when such sources are used.

Further official materials have been collected in several archives across Eurasia. In China, these are the First Historical Archives of China, which keeps the records of the late Qing Constitutional Office (*Xianzheng bianchaguan* 憲政編查館), the Library of the Imperial Palace in Taipei, which, *inter alia*, keeps documents on the constitutional mission of 1905/06, and the Archives of the Institute of Modern History at the Academia Sinica in Taipei, which holds the files of the Qing Foreign Ministry.

The holdings of the First Historical Archives are of importance when assessing the drafting of a constitutional text for China. The diplomatic archives, too, are of interest to this study, as Qing diplomacy was crucial in making constitution a political goal.¹⁸³ In addition to the Qing diplomatic archives, the study includes material from the German, French, British and Japanese foreign ministry archives, as well as the official digest of documents published yearly by the government of the USA. The study could not include documents from all countries with which China had diplomatic relations, but the selection comprises documents from both monarchies and republics, and of the main countries which were taken as main (positive) models in China.

¹⁸³ See Kawashima, "Kōsho shinsei ka no shusshi taishin to rikken undō."

These foreign archival sources—reports written by foreign diplomats stationed in China, their communication with their capitals, with each other as well as with Chinese notables—document official reactions to the Chinese “constitutional preparation.” Their assessments of Chinese events and of each other are not always accurate and often contradictory, and much colouring caused by the respective national interests has to be removed when reading them. But they are interesting due to the political implications they carried. They show how the constitutional preparation mattered on a political and diplomatic level, and they help clarifying to what extent the foreign governments demanded constitutional reforms, hoped for them, or participated in them. Moreover, diplomats routinely referred to press articles, both in Chinese and in foreign-language papers, in their reports and circulated them to their headquarters and to other diplomatic missions. Diplomatic archives, thus, also provide a useful indication into what press articles were read and how they were understood. When newspaper articles have been found in diplomatic archives, this will be accordingly indicated in the footnotes.

Next to official sources, the intellectual side of the constitutional movement is represented by printed books, magazines and newspapers from China as well as abroad. As the wealth of such literature is immense, a selection has been made which takes the political and intellectual relevance of the medium into account, as well as the breadth of the political spectrum. The selection also considers the dialogic structure of the global debate, with its frequent cross-citations, republications and translations.

In our time, many researchers rely on digitised databases to look for their sources, especially of periodical literature. Although this study also makes use of such tools, they do have their own limitations and biases. Therefore, it places an emphasis on such printed books underutilised in current historiography, not all of which are digitised and which are of comparatively difficult access. The overreliance of parts of the literature on databases will become evident when analysing Chinese translations of the constitution of the USA as well as of English

constitutional texts: Several translations which have not appeared in periodicals and are not readily available in databases have been ignored by scholarship, although they can be shown to have been read and discussed at the time.

For the first part of the study, which examines the concept before it was a political slogan, much data is collected from monographs and magazines describing the political systems of foreign countries, many of them published by foreign missionaries active in China. These include the works of Elijah Coleman Bridgman (Bi Zhiwen 裨治文, 1801–1861), José Martinho Marques (Ma Jishi 瑪吉士, 1810–1867), Young John Allen (Lin Yuezhi 林樂知, 1837–1907), and of Timothy Richard (Li Timotai 李提摩太, 1845–1919). Allen's magazine *Wanguo gongbao* 萬國公報 was widely read by Chinese reformists. But even in this early phase, foreign missionaries were not the only ones to write about constitutions—they stood in dialogue with Chinese authors, like Wei Yuan 魏源 (1794–1854) and Liang Tingnan 梁廷柅 (1796–1861), whose works are used, too.

Monographs from the early 20th century include collections translations of foreign constitutions, such as, for example, the compilations by Zhou Kui 周達 (1878–?) and Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九. They also include textbooks of constitutional law published by Chinese students in Japan, such as by Wang Hongnian 王鴻年 (1860–1911) and Bao Tingliang. Finally, two constitutional drafts for the Qing Empire, by Kitaoni Saburō 北鬼三郎 (?–1912) and Zhang Bolie 張伯烈 (1872–1934), were published in book form. The latter also contained a Chinese translation of a Japanese collection of essays on China's constitution, showing the internationality of constitutional debate.

Some of the “hitherto disregarded sources” mentioned above are actually well-known in other fields, but not necessarily in constitutional studies. This is the case of writers who also commented on China's constitution, such as, for example, Lu Xun, who began his literary career at the time of the Chinese constitutional

movement, and Leo Tolstoy, whose “letter to a Chinese gentleman” in particular was read and commented upon across Eurasia.

As to Chinese-language periodicals, next to the *Wanguo gongbao*, the study makes frequent use of the *Shenbao* 申報 and *Eastern Miscellany* (*Dongfang zazhi* 東方雜誌), both widely read at the time and still widely in contemporary research. The *Dongfang zazhi*, created after the model of the Japanese *Sun* (*Taiyō* 太陽) from its beginning, was staunchly pro-constitutional, and has the advantage of carrying many articles republished from other media. The political affiliation of the *Shenbao* was more complicated and changed over time. The paper supported the Qing government and was known to have a rather conservative stance until at least the mid-1900s, when it began supporting the adoption of a constitution,¹⁸⁴ although the conservative fame persisted.¹⁸⁵ Further periodicals used for this study from the camp favouring constitutional monarchy include Liang Qichao’s magazines published in Japan, the *Chinese Progress* (*Shiwu bao* 時務報) and the *China Discussion* (*Qingyi bao* 清議報), as well as the Magazine for Politics and Arts and the Shanghai-based *Journal of Politics and Art* (*Zhengyi tongbao* 政藝通報).

Although in the context of reforming the Qing Empire, “constitution” was most often conceived of as “constitutional monarchy,” constitutional debates were by no means limited to constitutional monarchies. To give a balanced view of how

¹⁸⁴ This is why Guo Wu, *Zheng Guanying: Merchant Reformer of Late Qing China and his Influence on Economics, Politics, and Society* (Amherst, New York: Cambria Press, 2010), 247, writes that the *Shenbao* was an “early reformist mouthpiece” (see his full analysis in 110–119). For closer assessments of the *Shenbao* see Barbara Mittler, *A Newspaper for China? Power, Identity, and Change in Shanghai’s News Media, 1872–1912* (Cambridge [Massachusetts], London: Harvard University Press, 2004), and Natascha Gentz, “Useful Knowledge and Appropriate Communication: The Field Journalistic Production in Late Nineteenth-Century China,” in *Joining the Global Public: Word, Image, and City in Early Chinese Newspapers, 1870–1910*, ed. Rudolf G. Wagner (Albany: State University of New York Press, 2007).

¹⁸⁵ For example, in 1909, the German Consul to Shanghai wrote that the paper was “of little importance” and “wholly backward in its political views.” Deutsche Gesandtschaft in China: Politische Angelegenheiten, file no. Peking II 29, Political Archive of the Federal Foreign Office of Germany, 76. The judgment was highly biased by his own political stances, and the verdict of “little importance” can hardly be upheld in light of the research carried by Mittler, *A Newspaper for China*, and Gentz, “Useful Knowledge and Appropriate Communication,” in *Joining the Global Public*, ed. Wagner.

the term was established in China, it is also necessary to occasionally show opinions voiced in other parts of the political spectrum, by those who opposed a constitutional monarchy, but not necessarily the concept of constitution itself. The *Minbao* 民報 was the main revolutionary opponent to Liang Qichao's reformist magazines, while the *Tianyi* 天義 was one of the most important anarchist magazines, which not only opposed constitutional monarchy, but constitutions as such.

Next to such general-purpose magazines, the study utilises some of the many specialised magazines focussed on constitutional and legal themes, some of which were published abroad. e.g. the magazine edited by Chinese students in Germany, the *Introduction to News on Law and Politics from Europe and America* (*Oumei fazheng jiewen* 歐美法政介聞), the Tokyo-based *Magazine of Law and Politics* (*Fazheng zazhi* 法政雜誌), the *Learned Magazine on Politics and Law* (*Zhengfa xuebao* 政法學報), and the *Miscellaneous Knowledge about Constitutional Government* (*Xianzheng zashi* 憲政雜識).

The Chinese constitutional movement by far transcended Chinese-language sources, and sometimes it is difficult to tell what is “Chinese” and what is “foreign.” Qing subjects expressed their opinions abroad in foreign languages, publishing books and editing foreign-language magazines; overseas Chinese participated in debates both in China and abroad, and Chinese intellectuals and officials read media in languages other than Chinese. This transnational nature of the constitutional movement is reflected in the sources used for this study.

Genealogical inquiry about articles published in the Chinese press leads to sources as varied as the *Boston Daily Globe*, the *American Review of Reviews*, *le Matin* and the *Rassegna Nazionale*, among others. For the Sino-Japanese aspects of the study, not only general press outlets—the *Asahi shimbun* 朝日新聞, the *Yomiuri shimbun* 讀賣新聞, and the *Kokumin shimbun* 國民新聞—but also the more specialised *Revue Diplomatique* (*Gaikō jihō* 外交時報) and the *Chuo Law Review*

(*Hōgaku shimpō* 法學新報) will be used. The *North China Herald* will be most often used as a representative of the foreign-language press produced on Chinese soil.

Non-Chinese language sources will also be used to delineate international dialogues on China's constitution. For example, the Chinese community in Burma was active debating China's political reforms in both English and Chinese. The relevant chapter of this study will, accordingly, use Taw Sein Ko's 杜成誥 (1864–1930) articles published in the London-based *Imperial and Asiatic Quarterly Review*, which was an important platform for English-language debates on China at the end of the 19th century.

Occasionally, in the parts of the thesis dealing with how the Qing Empire's constitutional moves were received abroad, newspapers from afar are used to show the breadth of reporting at the time, such as when Brazilian newspapers exemplify that the Chinese constitution was an event of literally global importance, or when the reproduction of Ye Daqian's 葉達前 *Boston Daily Globe* article in two provincial papers is mentioned. Such uses will be marked as such.

The most problematic use of newspapers, either in Chinese or in foreign languages, in this study is when they are used as secondary sources to reference political events, or even as tertiary sources, i.e., when newspapers refer to other newspapers. Newspapers however, are not always reliable, especially when they are far removed from the original source, and often spread news in the manner of "Chinese whispers." In general, events will be sourced with material as close as possible to the origin, but given that official documentation can be scarce on certain questions, this is not always feasible. Therefore, when newspapers are used in such a manner, the study will justify their use, double-checking them and conducting, again, a plausibility check. Such plausibility checks do not always yield positive results, as will be seen, for example, in the case of the *Yomiuri shimbun's* speculation on why the Chinese constitutional commissioner was recalled to Peking.

A final caution on the sources is in order. Although the constitution, at the turn of the 20th century, became the most hotly-debated political topic, the object

of this study was still mostly an elite debate. Chinese sources do sometimes generously claim that they were speaking for the masses,¹⁸⁶ and an important element of constitutionalism was forming a closer bond between the populace and the government. However, in a country where the official goal of the government was attaining a literacy rate of 5% by the time of the adoption of the constitution, it is safe to assume that a large part of the population was concerned with much more mundane problems than that of the Empire's constitution.¹⁸⁷

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In order to best depict early Chinese constitutional thought as it developed within a global context, a chronological structure has proven to be the most appropriate, taking, however, some occasional liberties for the sake of discussing together what belongs together. Departing from this principle, the study is divided into five chapters. They span approximately seven decades of history, from 1838, when the modern concept was first mentioned in a Sinitic text, up to the last years of the Qing Empire (1908–1911), when the first full drafts of constitutional charters

¹⁸⁶ For example, the third petition for the speedy inauguration of a parliament, in 1910, intended to collect a million signatures in every province from people from all walks of life. "Zhongguo dashi ji" 中國大事記 (Record of big events in China), *Dongfang zazhi* 東方雜誌 7, no. 6 (1910), 86. The real number collected, however, was lower, numbering a little over a million in total. See Gao Fang 高放, *Qingmo lixianshi*, 555.

¹⁸⁷ At the time, some observers did note that the Chinese constitutional movement was a rather elitist enterprise, although their observations, in turn, were likely tainted by their own preconceptions. See, e.g., the remarks of J. O. P. Bland, *Recent Events and Present Policies in China*, reprint (Westport [Connecticut]: Hyperion Press, 1973), 113: "For the masses of the people, the granting of a Constitution meant little or nothing. They welcomed the news of its coming with the detached enthusiasm which they would have accorded to a comet, or any other splendidly intelligible phenomenon." See also Valentine Chirol, "The Chinese Revolution," *The Quarterly Review* 216, no. 431 (1912), 542, remembering Itō Hirobumi's assessment that the Chinese masses were "thrifty and industrious", but always treated as "stupid people" and thus utmosty indifferent to political problems. Although such assessments cannot necessarily be taken at face value, the explanation sometimes found in secondary literature that the end of the Qing Empire was caused by the upper echelons of society ignoring the "power of the people" must be seen with caution. For such an explanation see, e.g., Bian Xiuquan 卞修全, *Jindai Zhongguo xianfa wenben de lishi jiedu* 近代中國憲法文本的歷史解讀 (Historical interpretation of modern China's constitutional documents) (Beijing: Zhishi chanquan chubanshe, 2006), 15.

for China were drafted. The resemblance to the dramatic structure of a classical five-act play is mere coincidence.

The first chapter is devoted to the hitherto severely understudied embryonic phase of the concept in China, which reached from 1838 to the 1890s. It narrates in detail how the concept developed in the 19th century, situating this narration of East Asia within global constitutional history. The chapter produces an extensive list of terms which are used as equivalents for “constitution” in East Asian languages, and discusses their use throughout the 19th century. It also sets out to discover hitherto unknown translations of the United States Constitution, which cast fresh light on early Chinese knowledge about foreign constitutional texts. Finally, the chapter illuminates the circulation of constitutional knowledge in East Asia, which likely contributed to the near-forgotten first Japanese constitution of 1868.

The second chapter is devoted to a transitional phase: the years of 1898 to 1904, when the concept was already used as part of political debates about China. It describes the 100 Days’ Reforms of 1898 under the aspect of what role the concept of a constitution played in it, in particular highlighting the importance of the period as an early point of reference for China’s political reforms. The chapter further describes various debates on the theme of a constitution for China which took place in the following years, showing how the concept established itself as a crucial element of political thought. More than focusing solely on Kang Youwei 康有為 (1858–1927) and Liang Qichao 梁啟超 (1873–1929), it also shows the contributions of several other figures of the time. In particular, the chapter highlights the international dimensions of the debate, including the contributions of authors of Chinese descent to both English- and Chinese language debates. Again, regional connections shall be highlighted, describing the 1899 autocratic constitution of Korea, and its connections to China.

The third chapter describes the crucial years of 1904 to 1906, when the adoption of a constitution became the central theme of Chinese political discourse

and came to be acknowledged as a goal by the Chinese government. The Russo-Japanese War of 1904/05 marked the beginning of a global Eurasian wave of constitutionalism, on which this chapter focuses. It describes the complex interactions that took place between Russia, Persia, and China in constitutional thought. It not only narrates the role that Russia and Persia played in Chinese constitutional debate, but also describes direct interactions between Russian and Chinese intellectuals and officials. The chapter gives a new assessment of the five commissioners' visit to Russia, which has been hitherto neglected in literature, and gives a new, constitutional, interpretation of Leo Tolstoy's correspondences with his Chinese counterparts.

The fourth chapter examines how the concept was treated in China in the years after the declaration of intent (1906–1909), when the concept was already an official policy of the Chinese government, but subject to hot debates about what exactly it meant for China. The chapter takes this occasion to illuminate what role the Chinese constitution played in international politics. In this vein, the second round of constitutional commissions crucial for Chinese constitution-making and the Hague Peace Conference of 1907 are described in detail. Expanding on previous literature, which tends to limit itself to the “receiving” Chinese side, the chapter also reconstructs foreign reactions to the Chinese constitution.

The last chapter, finally, is dedicated to the result of the late Qing constitutional movement: the constitutional texts which were produced in the last years of the Empire. It begins with the *Outline of a Constitution by Imperial Decree*, which, again was promulgated in an international environment of constitutionalisation. The chapter gives an overview over the various translations of foreign constitutions into Chinese in the first decade of the 20th century, an activity which has been hitherto largely disregarded. Of the various constitutional drafts, the chapter shall pay special attention to the one prepared by Kitaoni Saburō, which is an excellent example of the international cooperation surrounding the Qing constitutional movement. The cut-off point for this study is

not the Xinhai revolution as such, but these drafts of a constitution for the Qing Empire, which are the first full-fledged expressions of the process by which constitutions became a central element of the Chinese state.

CHAPTER ONE.

Constitutions in the World and in China in the 19th Century

Constitutio est in lege, more, iudicato, pacto.

Quintilian (ca. AD 95)¹⁸⁸

1. Prelude: “China’s” Lost Constitution

On October 14, 1900, the *Indiana Tribune*, a German-language newspaper based in Indianapolis (USA), published a humorous story about the alleged Emperor of “China,” who was about to fill out the Prime Minister’s post according to the constitution of the land. The satirical story went as such:

Approximately 5,000 years ago, the young energetic Emperor Yuang-Tsching reined in the Middle Kingdom. He was a ruler of great valour and intrepid self-assurance. The Chinese people held him in high regard, as it was, for that matter, its damn duty and obligation. Yuang-Tsching governed strictly according to the constitution inherited from his grandfather—at that time, the Chinese still had a constitution. Later, it was lost. Maybe one finds it again. The constitution stipulated the appointment of a Supreme Mandarin, who should be responsible to the people for all governmental actions. Yuang-Tsching quoth:

“I will be true to the Constitution and appoint a Supreme Mandarin, although I can do it alone quite well.”

¹⁸⁸ “Convention is to be found in laws, customs, legal precedents and agreements.” The translation is adapted from Quintilian and Harold Edgeworth Butler, *The Institutio Oratoria of Quintilian with an English Translation*, 4 vols. (London: William Heinemann Ltd., 1959), vol. 3, 108–109.

But as he thought whom to choose, no one wanted to really please him. Most also thought that if they accepted the high honour, they should also be allowed to interfere a bit with business. For the ministers' responsibility, 5000 years ago in China, was a unique matter. One vote of no-confidence by the parliament cost one one's ears, the second one one's head. But Yuang-Tsching spake:

"If someone interferes with my government, then I don't take joy in the whole Constitution anymore! One million for a Supreme Mandarin who always says "Yes"!

But to the people in China their head was dearer than the million. "Two million and the blue Order of the Dragon!" offered Yuan-Tsching.

Then, one day, a man came to the Imperial palace with a large box and spoke to the Emperor:

"August Yuan-Tsching, a worm asks for permission to be allowed to writhe before you. Allow me, who I am a sordid monster, to pose a question: Does the Constitution require that the Supreme Mandarin be alive?"

"Not that I'd know of!"

"In that case, I have a Supreme Mandarin as you need. Lo and behold!"

And he took from the box a wax figure in beautiful garb, which was enabled by an ingenious mechanism to nod with its head. Besides, it could do nothing but smile politely.

One can cut the ears off and the head too: Spare heads are enclosed!" Said the alien man. "For, august Yuang-Tsching, without head he cannot nod."

Yuang-Tsching was delighted and appointed the wax-man to Supreme Mandarin. The alien received the two million and also 20 taels extra for freight and packaging. Yuang-Tsching was amused and reigned indefatigably to

the best of his people, and the new Supreme Mandarin nodded "Yes!" to everything. The requirements of the Constitution were met. The people were satisfied, back then, 5000 years ago in China. The new Supreme Mandarin even became very popular; in all houses stood miniature images of his. Thence come the nice little Chinese porcelain uncles who nod their heads. The mechanical Chancellor of Emperor Yuang-Tsching is known in history by the name Ho-Eng-Long. This is obviously Old Chinese and means in German more or less: It works this way too!¹⁸⁹

¹⁸⁹ *Indiana Tribune*, "Der Ausweg: Eine 'chinesische' Historie," October 14, 1900. „Vor so was wie fünftausend Jahren regierte im Reiche der Mitte der junge und thatkräftige Kaiser Yuang-Tsching, ein Fürst von großer Tapferkeit und kühnem Selbstgefühl. Das Volk der Chinesen schätzte ihn sehr hoch, wie es übrigens seine verdammte Pflicht und Schuldigkeit war. Yuang-Tsching regierte streng nach der von seinem Großvater ererbten Verfassung – damals hatten die Chinesen noch eine. Später ging sie verloren. Vielleicht findet man sie wieder. Die Verfassung verlangte die Einsetzung eines Ober-Mandarinen, der für alle Regierungs-Handlungen dem Volke verantwortlich sein sollte. Yuang-Tsching sprach:

„Ich will der Verfassung treu sein und einen Obermandarinen ernennen, obwohl ich die Sache recht gut allein machen kann.“

Als er aber nachdachte, wen er wählen sollte, da wollte ihm keiner so recht taugen. Die Meisten meinten auch, wenn sie die hohe Würde annähmen, müßten sie auch ein wenig mit dreinreden dürfen. Denn die Ministerverantwortung vor 5000 Jahren in China war eine eigene Sache. Ein Mißtrauensvotum des Parlaments kostete die Ohren, das zweite den Kopf. Yuang-Tsching aber sagte:

„Wenn mir Jemand beim Regieren dreinredet, dann freut mich die ganze Verfassung nicht mehr! Eine Million für einen Obermandarinen, der immer „Ja“ sagt!“

Aber den Leuten in China war ihr Kopf lieber, als die Million. „Zwei Millionen und den blauen Drachenorden!“ bot Yuang-Tsching.

Da kam eines Tages in den Kaiser-Palast ein Mann mit einer großen Kiste und sprach zum Kaiser:

„Erhabener Yuang-Tsching, ein Wurm bittet um die Erlaubniß, sich vor Dir krümmen zu dürfen. Gestatte mir schäbigem Scheusal eine Frage: Verlangt die Verfassung, daß unser Obermandarin lebendig sei?“

„Nicht, daß ich wüßte!“

„Dann hab' ich einen Obermandarinen, wie Du ihn brauchst. Sieh her!“

Und er packte aus der Kiste eine Wachsfigur in schönen Gewändern, die ein sinnreicher Mechanismus befähigte, mit dem Kopfe zu nicken. Sonst konnte sie nichts als artig lächeln.

„Die Ohren kann man abschneiden und den Kopf auch: es sind Reserveköpfe dabei!“ sagte der fremde Mann. „Denn, erhabener Yuang-Tsching, ohne Kopf kann er nicht nicken.“

Yuang-Tsching war entzückt und machte den Wachsmann zum Obermandarinen. Der Fremde bekam die zwei Millionen und noch 20 Tael extra für Fracht und Emballage. Yuang-Tsching war vergnügt und regierte unermüdlich zum Besten seines Volkes, und der neue Obermandarin nickte zu Allem „Ja!“ Der Verfassung war genügt. Das Volk war zufrieden, damals vor 5000 Jahren in China. Der neue Obermandarin ward sogar sehr beliebt; in allen Häusern hatte man verkleinerte Abbilder von ihm. Daher stammen die netten kleinen chinesischen Porzellanonkels, die mit dem Kopfe nicken und lächeln. Der mechanische Kanzler des Kaisers Yuang-Tsching führt in der Geschichte den Namen Ho-Eng-Long. Das ist natürlich Altchinesisch und heißt auf Deutsch ungefähr: Es geht auch so!“

What does this story tell us? It was—of course, one is tempted to say—not about China nor about the Chinese constitution. 56 years after Heine’s poem and 29 years since the creation of a unified German nation-state in 1871, a fictitious “China” was still used in the same way to satirically comment on the anti-constitutionalism or “sham constitutionalism” of German monarchs. This time, the “Chinese” Ho-Eng-Long was a parody of the German Chancellor Fürst Chlodwig von Hohenlohe-Schillingsfürst (1819–1901), who was chancellor of Germany from 1894 to 1900, at a time when the Emperor, Wilhelm II, had ambitions to fill out the chancellor’s office by himself. Fürst von Hohenlohe-Schillingsfürst is commonly held to have been a powerless figurehead, and he resigned just three days after the article was published, on October 17, 1900.¹⁹⁰

By that time, although they could not necessarily be taken for granted, written constitutions had been enacted in the German Empire and all of its constituent states. But on a global scale, constitutions were not yet a matter of course. In the period between Heine’s 1844 poem and the *Indiana Tribune’s* 1900 story, the process of constitutionalisation of the world had been going on unabatedly, but was yet far from finished. Only a few years before Heine’s poem, in 1838, the modern concept of a constitution had been mentioned in a Chinese-language text for the first time. By the end of the 19th century, the concept had gained considerable currency. What happened in this interim? How did China relate to the constitutionalisation of the world?

Literature on this early history of the concept in China has been rather superficial, for it was only in the last decade of the century that the first Chinese intellectuals began to advocate one for their country. Yet, using hitherto unknown or ignored sources, this chapter argues that the period before the constitutional movement was rather significant in the history of the concept, as it laid the groundwork on which the constitutional movement could unfold. It shows that, despite

¹⁹⁰ See Willoweit, *Deutsche Verfassungsgeschichte*, § 36 I (347–349); Werner Frotscher and Bodo Pieroth, *Verfassungsgeschichte*, 5th ed. (Munich: Beck, 2005), § 15 II (239–241).

considerable difficulties in translation, China was integrated into global circulations of knowledge about constitutions from earlier on than hitherto thought.

2. The Globalisation of Constitutions in the 19th Century

a) “The West” and Russia

There have always been polities which fulfilled some of requirements of a “limited,” “constitutional” government, and there have also been documents having constitutional value for a long time.¹⁹¹ Yet, the notion of there being a separate “constitutional” layer of normative law that organises the state is relatively recent. Constitutional documents became needed to fix a rearranged division of powers, when the sovereigns' erstwhile absolute powers were challenged and gradually limited.

Often, the origins of modern constitutionalism are traced to stem the British *Magna Carta* of 1215, which limited the kingly powers and granted a series of fundamental rights. Similarly, the *Catalan Constitutions*, often overlooked outside of Catalonia, were instituted by the Catalan King together with the Courts of Barcelona beginning from 1283 until the 18th century. In the first constitution of 1283, the King expressly submitted himself to the laws. Typically, in such constitutional frameworks, the king would be limited to act as executive power, while the legislation would be dealt with by parliaments.¹⁹²

¹⁹¹ Sets of written norms which touched upon matters constitutional have always existed across cultures, even if they did not fully match modern definitions of constitution. For Imperial China, Chinese and foreigners alike have attributed constitutional functions to a large number of documents, ranging from the *Spring and Autumn Annals* (*Chunqiu* 春秋) to the Kangxi and Yongzheng Emperors' *Sacred Edict with Amplified Instructions* (*Shengyu guangxun* 聖諭廣訓). Liu Ruji 劉汝驥 arguing in 1906 that the *Spring and Autumn Annals* were the essence of a constitution: Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubel lixian dang'an shiliao*, vol. 1, 108. For Soejima Taneomi 副島種臣 (1828–1905) fearing in 1898 that China could return to the constitution of the *Sacred Edict with Amplified Instructions* see *Asahi Shimbun* 朝日新聞, “Kenpō” 憲法 (Constitution), October 23, 1898.

¹⁹² This division of power was later most famously typified in Montesquieu's theory. See Montesquieu, *L'esprit des lois: suivi de la défense de l'esprit des lois* (Paris: Lavigne, 1844), book 11, chapter 6, 106–114, on the “constitution of England.” Montesquieu, however, was not the first to formulate such thoughts.

But it was much later that constitutional charters began their global career as legal documents superior to all others. Enlightenment thinking and the weakening of religious legitimization called for clear foundations of rulership, and most importantly, constitutions as fundamental legal and political manifestos of nationhood. This happened namely in the latter part of the 18th century, when constitutions received a tremendous impulse with the promulgation of constitutional charters in the United States and in France. The function of a constitutional charter as a founding document of modern nationhood becomes clear through the example of the United States. Rather than a merely internal constitutional document, the United States Constitution was originally an international treaty binding the 13 founding States, which, by force of this treaty, created a union among themselves. The political system of the United States of America as described in this constitution is less of a break with European political traditions than often thought. Its presidential republic is, substantially, a constitutional monarchy (in the Greek sense of “rule by a single ruler”) with a strict separation of powers in the Montesquieuan sense, the main difference being that the hereditary monarch has been replaced by a temporarily elected one.¹⁹³ But next to its basic legal function, the constitutional charter was needed to consolidate the newly-founded polity at the new “great seat of Empire,” and turned into a main element of a “civil religion.”¹⁹⁴

¹⁹³ At that time, the German Emperor was still elected, and elective kingship was perhaps not such an outrageous idea as it seems. In the categorisation of president John Adams and the federalists, both king-governed England and the president-governed United States were “monarchical republics,” whereby “monarchy” referred to the single head of the executive and republic referred to popular representation as provided for by the constitutions of both Britain and the United States. Apud Henry Jones Ford, *The Rise and Growth of American Politics: A Sketch of Constitutional Development* (New York: The Macmillan Company, 1898), 61. Superficially, the wish for dissociation from British royalty prevailed. But beneath the surface it was no far cry, after all, when the journalist Michael Novak (1933–2017) observed in 1974: “Every four years, Americans elect a king—but not only a king, also a high priest and prophet.” Michael Novak, *Choosing our King: Powerful Symbols in Presidential Politics* (New York: Macmillan Publishing, 1974), 3. It is to be noted that in other countries like United Kingdom, Germany and Japan, in diverse historical processes, the king lost even his executive functions to a parliament-controlled cabinet and was confined to a merely representative role, creating parliamentary systems of government.

¹⁹⁴ In 1755, when he was 20 years old, John Adams (1735–1826), the future president of the United States, foresaw that the “great seat of [British] Empire” would be transferred into America. Similarly, much of the British political system of the time was also transplanted to the United States. See John

Gradually, in the 19th century, constitutional charters became one of the defining elements of politics, and constitutionalism gradually became an object of debates around the globe. Substantially, constitutionalism was by no means confined to the democratic meaning mentioned above. It could serve a host of other functions¹⁹⁵, including legitimation of state power, nationalism, imperialism, militarism as well as, conversely, defense against imperialism. Geographically, the debates were not limited to the states of Western Europe and North America, seen as the original domains of constitutionalism, but did also emerge in places traditionally associated with autocracy.¹⁹⁶

As constitutions often resulted from a struggle for power at the top of a polity, and more often than not were reactionary instead of revolutionary documents, constitutionalism was frequently accused of being a “sham,” allegations which often have to be relativized, as they spring from the power struggle itself and fail to situate the constitutions in the context of their historical process.¹⁹⁷

In continental Europe, a large number of new constitutions was introduced in the wake of the 1815 Congress of Vienna, which reorganised the political landscape of Europe after the Napoleonic wars. Art. 13 of the 1815 Constitution of the

Adams, *Papers of John Adams: Volume 1: September 1755–October 1773*, eds. Robert J. Taylor, Mary-Jo Kline, and Gregg L. Lint (Cambridge [Massachusetts]: The Belknap Press of Harvard University Press), 5. On the aspect of “civil religion” see Häberle, *Der kooperative Verfassungsstaat*, 629–631.

¹⁹⁵ See Grotke and Prutsch, *Constitutionalism, Legitimacy, and Power*, *passim*.

¹⁹⁶ Such as the territorially vast Eurasian empires of China, Russia, Turkey and Persia. However, the association of these countries with “absolutism” is not as easy as is sometimes assumed. Thus, writing about China and the Ottoman Empire, Islamoglu argues that the notion of oriental despotism was “instrumental in legitimating European domination of the East,” and that Asia was thought of in the West “as being frozen in an imagined straightjacket of Oriental Despotism.” Huri Islamoglu, “Modernities Compared: State Transformations and Constitutions of Property in the Qing and Ottoman Empires,” *Journal of Early Modern History* 5, no. 4 (2001), 353. Such perceptions of Asia certainly existed. However, alongside them, there was, at least in the case of China, a great number of much more nuanced views, quite a few even attributing certain “republican” or “democratic” elements to the Imperial Chinese polity. On foreign perspectives on the political system of Imperial China see Egas Moniz Bandeira, “Political Reforms in a Global Context: Some Foreign Perspectives on Constitutional Thought in Late Imperial China,” *Contemporary Chinese Political Economy and Strategic Relations* 3, no. 1 (2017), 140–185.

¹⁹⁷ See Dietmar Willoweit, *Deutsche Verfassungsgeschichte: Vom Frankenreich bis zur Wiedervereinigung Deutschlands*, 5th ed. (Munich: C.H. Beck, 2005), 277 on the German constitutions of the *Vormärz* era (ca. 1830–1848).

German Confederation stipulated that every German state had to have a constitution. The adoption of constitutions in many of the German states was a way of self-assertion and political stabilisation, particularly for the smaller ones,¹⁹⁸ while Prussia as the largest state defied Art. 13 and waited for decades more until passing a first constitution in 1848/1850.

Germany's Eastern neighbor, Poland, had briefly adopted a constitution in 1791. In 1815, the Czar of Russia, Alexander I. (1777–1825), became King of Poland in personal union, and granted a constitution to that country in the same year. In Russia, too, constitutional ideas came in vogue very soon after the French Revolution, in spite of the very different historical and social background.¹⁹⁹ But although Czar Alexander I initially favoured constitutionalism, he was reluctant to grant a constitution to Russia as he had done in Poland.²⁰⁰

At the opening of the Polish Sejm on March 15, 1818, Czar Alexander announced that he would also grant a constitution to the Russian Empire in the future, but stressed that this was not possible at the moment, because he deemed Russia not to be mature enough yet:

In this way, you have given Me the means have to show to My Fatherland
that which I have prepared for it already since long years, and of which it

¹⁹⁸ For a collection of primary sources on the emerging constitutions of the various smaller German states see Michael Hundt, ed., *Quellen zur kleinstaatlichen Verfassungspolitik auf dem Wiener Kongress: Die mindermächtigen deutschen Staaten und die Entstehung des Deutschen Bundes, 1813-1815* (Hamburg: Krämer, 1996).

¹⁹⁹ Geoffrey A. Hosking, *The Russian Constitutional Experiment* (Cambridge: Cambridge University Press, 1973), 1–3.

²⁰⁰ On how the Czar was “captivated” by debates about a constitution and hence promoted legal reforms see Tatiana Borisova, “Russian National Legal Tradition: Svod versus Ulozhenie in Nineteenth-century Russia,” *Review of Central and East European Law* 33 (2008), 302. Borisova further asserts (330) that Alexander I. forced the French King Louis XVIII to accept the “Charter of Liberties” in 1814 and sponsored the first constitutional charters of Baden as well as of Württemberg. This description might be slightly exaggerated. The Czar did indeed recognise the French *Charte constitutionnelle* of 1814 and the constitutions promulgated in Southern Germany, but this was probably less an expression of abstract willingness for reform than in sprung from a wish for political stabilization. See Ulrike Eich, *Russland und Europa: Studien zur russischen Deutschlandpolitik in der Zeit des Wiener Kongresses* (Cologne: Böhlau, 1986), 419. For a wider view of Russian policies towards Europe before and after the Congress of Vienna see also Franziska Schedewie, *Die Bühne Europas: Russische Diplomatie und Deutschlandpolitik in Weimar, 1798-1819* (Heidelberg: Universitätsverlag Winter, 2015).

will make use of as soon as the principles of such an important deed will have reached the appropriate maturity.

Такимъ образомъ вы Мнѣ подали средство явить Моему Отечеству то, что Я уже съ давнихъ лѣтъ ему приутоворяю, и чѣмъ оно воспользуется, когда начала столь важнаго дѣла достигнутъ надлежащей зрѣлости.²⁰¹

That the Czar only granted a constitution to Poland, but not to Russia, emanated from a strain of thought that was neither unique nor original to Russia, but was a common feature of constitutionalist discourse: The notion that constitutions had to develop organically from the political conditions and traditions of each country.²⁰² It had emerged earlier in Western Europe and would come to play an important role in constitutional debates throughout the world, from the Ottoman Empire to China. Already Montesquieu had written in his *L'esprit des lois*:

They [the Laws] should be so appropriate to the people for whom they are made that it is a big happenstance if those of one nation can suit another. They must relate themselves to the nature and the principle of the government which is established, or which one wants to establish, be it that they form it, as do the political laws, or be it that they maintain it, as do the civil laws.

Elles doivent être tellement propres au peuple pour lequel elles sont faites, que c'est un grand hasard si celles d'une nation peuvent convenir à une autre. Il faut qu'elles se rapportent à la nature et au principe du gouvernement qui est établi, ou qu'on veut établir, soit qu'elles le forment, comme

²⁰¹ *Sievernaiâ Pochta ili Novaiâ Sanktpeterburgskaiâ Gazeta* Сѣверная Почта или Новая Санктпетербургская Газета, "Izviēstīā vnutrenniā" Извѣстія внутреннія (Domestic news), March 30, 1818 (O.S.), [1].

²⁰² On the Czar's thought of maturity see Borisova, "Russian National Legal Tradition," 330, and Cynthia H. Whittaker, *The Origins of Modern Russian Education: An Intellectual Biography of Count Sergei Uvarov, 1786-1855* (DeKalb: Northern Illinois University Press, 1984), 36–56.

font les lois politiques ; soit qu'elles le maintiennent, comme font les lois civiles.²⁰³

But while French civic nationalism was founded on the rational principles of natural law, German romanticism developed the notion of a nation being an organism, and of law arising organically out of the specific conditions of a nation. In the famous German “codification debate” (*Kodifikationsstreit*) of 1814, Heidelberg Professor Anton Friedrich Justus Thibaut (1772–1840) had demanded the rapid introduction of a civil code for Germany. However, Berlin Professor Friedrich Carl von Savigny (1779–1861) argued against the demand. He explained that the legislator should not create new law, for law, like a country’s language, emanated from the national spirit. It was in decadent cultures that legislators tried to create laws against the national spirit; and he recommended that jurists first thoroughly study the principles of the nation’s existing legal spirit before attempting to create a codification.²⁰⁴ Specifically for the constitution, Hegel expressed such organicist thoughts as the epitome of the “*Volksgeist*”²⁰⁵:

To think of giving to a people a constitution a priori is a whim, even if its contents be more or less reasonable—overlooking precisely that element which renders a constitution something more than a product of thought. Every nation, therefore, has the constitution which suits it and belongs to it.

Einem Volke eine, wenn auch ihrem Inhalte nach mehr oder weniger vernünftige Verfassung a priori geben zu wollen, - dieser Einfall übersähe

²⁰³ Montesquieu, *L’esprit des lois*, 7.

²⁰⁴ For and on Thibaut’s and Savigny’s texts see Hans Hattenhauer and Jacques Stern, *Thibaut und Savigny: Ihre programmatischen Schriften* (Munich: F. Vahlen, 2002). On the “codification debate” from a Japanese perspective see Takii Kazuhiro, *The Meiji Constitution: The Japanese Experience of the West and the Shaping of the Modern State*, trans. David Noble (Tokyo: International House of Japan, 2007), 60–61.

²⁰⁵ Georg Wilhelm Friedrich Hegel, *Grundlinien der Philosophie des Rechts*, 4th ed. (Hamburg: Felix Meiner Verlag, 1955), ed. Johannes Hoffmeister, § 274 (p. 239).

gerade das Moment, durch welches sie mehr als ein Gedankending wäre.
Jedes Volk hat deswegen die Verfassung, die ihm angemessen ist und für
dasselbe gehört.²⁰⁶

In the same vein, decades later, Savigny's successor Rudolf von Gneist (1816–1895) told Itō Hirobumi 伊藤博文 (1841–1909), who later would become the “Bismarck of Japan,”²⁰⁷ i.e., the first prime minister after the adoption of the Meiji Constitution:

A Constitution is not a legal document. It is a spirit, it is the capability of a nation.

憲法は法文ではない。精神である、國家の能力である。²⁰⁸

As it turned out, neither Czar Alexander I nor his successors in the 19th century ever saw Russia to have become “mature” enough for a constitution, nor did they think that a constitutional system would conform to the Russian national spirit. Not long after his speech, Alexander I distanced himself from constitutional ideas due to internal and external unrest which he believed to be the result of too much liberalisation. At the end of the century, one Russian minister vested the official mistrust of constitutions in the following words:

We are distinctly of the opinion that the English system of liberty for the masses is a stupid mistake. The masses are unfit in all countries, and especially in Russia, to judge what is best for themselves ; and it is for the small

²⁰⁶ Ibid., § 274 (239–240). The translation is adapted from: Georg Wilhelm Friedrich Hegel, *Philosophy of Right* (London: George Bell and Sons, 1896), trans. S. W. Dyde, § 274 (282).

²⁰⁷ *New York Times*, “Prince Ito Assassinated: Japanese Statesman Killed This (Tuesday) Afternoon by a Korean at Harbin—The Bismarck of Japan—As Governor General of Korea Won the Hatred of the Natives by Harsh Rule—He had been Recalled—Personal Friend of the Emperor Had Been Principal Figure in Japan's Rise as a World Power,” October 26, 1909.

²⁰⁸ Apud Osatake Takeki 尾佐竹猛, *Nihon kenseishi* 日本憲政史 (History of constitutional government in Japan) (Tokyo: Nihon heironsha, 1930), 338. On Itō's and Gneist's encounter see also Takii, *The Meiji Constitution*, 60–68.

body of educated and trained men, who make a business of ruling, to decide this matter for them.²⁰⁹

Immediately after Alexander's death, the Decembrist revolt of 1825 against his successor, Czar Nicholas I, aimed at a thorough reform of the Russian Empire, including the promulgation of a monarchical or even republican constitution.²¹⁰ The revolt was suppressed. But the calls for a constitution still necessitated a governmental reaction: Labelling the idea of a "constitution" as "foreign," the authorities promoted the establishment of a complete 'legality' embodied in legal codifications as the original and traditional Russian path of development.²¹¹ In the 1830s, Czar Nicholas I promulgated two large codifications of Russian law: the *Complete Collection of the Laws of the Russian Empire* (*Polnoe sobranīe Zakonov Rossiiskoi Imperii* Полное собрание Законовъ Россійской Имперіи) and the *Digest of the Laws of the Russian Empire* (*Svod Zakonov Rossiiskoi Imperii* Сводъ Законовъ Россійской Имперіи). This remained the legal basis of the Russian polity until the first years of the 20th century.

b) The Ottoman and Persian Empires

As a part of a discourse on modernisation, debates on constitutionalism also emerged in Turkey and then, via Turkey, in Persia. Beginning from Sultan Selim III (r. 1789–1808), successive rulers of the Ottoman Empire had tried to introduce reforms aimed at establishing legal-rational norms and centralising the empire.²¹² Sohrabi depicts these reforms in a fashion that could also be used to describe the Chinese constitutional movement:

²⁰⁹ Edward H. Parker, "The Chinese Imbroglio and How to Get Out of It," *Imperial and Asiatic Quarterly Review*, 3rd ser. 10, nos. 19 & 20 (July–October, 1900), 273–274.

²¹⁰ On the Northern and Southern constitutions see Anatole G. Mazour, *The First Russian Revolution 1825: The Decembrist Movement, its Origins, Development and Significance* (Stanford: Stanford University Press, 1963), 86–116.

²¹¹ Borisova, "Russian National Legal Tradition," 321

²¹² On the history of the Ottoman Empire "from reform to revolution" see Sohrabi, *Revolution and Constitutionalism in the Ottoman Empire and Iran*, 34–71.

Through selective borrowing from more successful rivals, the reformers aimed to strengthen the state internally and improve its world standing.²¹³

On December 23, 1876, the Ottoman Empire promulgated a Basic Law and thus “joined the ranks of constitutional governments.”²¹⁴ The new constitution came at a time of massive internal problems and tense relations with the European Powers. The Empire had decreed a default on its debt a year earlier, separatist uprisings were rocking the Balkans, and there was an imminent threat of foreign intervention. But on the other hand, the new constitution was more than just an insincere document to avert foreign threats. Fruit of a substantial movement agitating in favour of the constitution, it could also be seen as a culmination of the internal reform efforts that had been going on for decades.²¹⁵

The reaction to the 1876 Ottoman Constitution in Europe was hostile, being seen as a parody of a constitution, as a fraud unable to resolve the problems.²¹⁶ In Russia, the constitution was met with particularly harsh disapproval. The Russian Czar himself was quoted as saying that the establishment of a constitutional parliamentary system for the whole of the Turkish Empire was an illusion that could

²¹³ Ibid., 34.

²¹⁴ Apud *ibid.*, 42.

²¹⁵ Robert Devereux, *The First Ottoman Constitutional Period: A Study of the Midhat Constitution and Parliament* (Baltimore: The John Hopkins Press, 1963), 251.

²¹⁶ On foreign reactions on the Turkish constitution see *Neue Freie Presse*, “Die Zukunft der Osmanen,” January 3, 1877. However, although there was certainly a multitude of negative reactions to the Ottoman Constitution, the author suspects that the European public opinion towards it was not as unanimously hostile as painted by *Devereux*, for already a very cursory reading of primary sources of 1876 did reveal dissenting opinions and heated debates. A thorough reexamination of foreign reactions to the 1876 Ottoman constitution would be a desideratum for future research. Such dissenting opinions notwithstanding, if *Devereux*’ analysis is at least largely correct, the foreign reaction to the 1876 Ottoman constitution had been much more one-sided than foreign reactions to the Qing Empire’s constitutional efforts in the years from 1905–1911. Foreign stances on the Chinese “constitutional preparation” were much more nuanced, which also reflected some differences in the historical situations. The Qing constitutional plan was devised without any direct pressure from the outside, China had gone a long way in economic and social terms since the calamity of the 1900/01 Boxer War, and the Chinese plan did not include the immediate promulgation of a constitution, but a transitional phase of several “preparatory” years. On the foreign reactions to China’s “constitutional preparation” see Moniz Bandeira, “Political Reforms in a Global Context.”

never work in that country.²¹⁷ With the adoption of a constitution in Turkey, Russia would become the last European power without a constitution, a fact which could arouse further pro-constitutionalist agitation there. Such a situation was unacceptable to the Russian government and in itself could have constituted a *casus belli*, explaining Russian official resistance to it.²¹⁸ And indeed, the dangers to Russia were evidenced when placards appeared in Moscow demanding the Ottoman constitution for Russia, leading to several arrests.²¹⁹

The constitution also lacked the sympathy of the young Sultan, Abdülhamid II (1842–1918; r. 1876–1909), and of the majority of those who held positions of power within the government. In the wake of a disastrous war against Russia, the Sultan prorogued the parliament sine die in February 1878, de facto revoking the constitution and returning to the *ancien régime*. Fleeting as this first constitutional period was, it served as a point of reference for further constitutionalist thought in the Ottoman Empire, as well as for the Young Turk Revolution of 1908.²²⁰

Compared to the Ottoman Empire, Persia had a much lower level of institutional development. Still, the half-century before the Constitutional Revolution of 1906 saw vigorous debate on constitutionalism: Sohrabi counts about 70 relevant books and pamphlets published prior to the revolution.²²¹ Just as their Turkish counterparts, Persian thinkers associated constitutionalism with a strong, legal-rational state. In a context of much less religious diversity than in Turkey, they pursued the same strategy of legitimising constitutionalism by islamising it.²²² This brand of constitutionalism argued that a constitution meant a “conditional

²¹⁷ “619. L’Ambasciatore a Pietroburgo, Nigra, al Ministro degli Esteri, Melegari (2): R. 57. Pietroburgo, 10. dicembre 1876 (per. il 16).” in *I documenti diplomatici italiani: Seconda Serie: 1870–1896, Volume VII (25 marzo–31 dicembre 1876)* (Roma: Libreria dello Stato, 1984), 755.

²¹⁸ Karl Blind, “The Prorogued Turkish Parliament,” *The American Review*, no. 175 (1902), 48–49.

²¹⁹ *Neue Freie Presse*, “Telegramme der ‘Neuen Freien Presse’: Krakau, 2. Januar,” January 3, 1877.

²²⁰ On the years 1876–1878 in Turkey see Devereux, *The First Ottoman Constitutional Period*, in particular 21–33 and 251–256.

²²¹ Sohrabi, *Revolution and Constitutionalism in the Ottoman Empire and Iran*, 299.

²²² *Ibid.*, 299

government" that operated within religious laws.²²³ But although the Persian constitutionalists were initially quite successful in co-opting the country's Islamic clergy, the clergy's support eventually waned when the actual constitution took shape in the mid-1900s.²²⁴

3. East Asian Constitutions in the 19th Century

a) Terms for "Constitution" in East Asian Languages

If constitutions had gained ground, but had not yet universally become a political and legal constitutional instrument in 19th century Europe, how did the concept of a constitution evolve in China?

As already stressed, Imperial China had always had a highly complex system of administration, which had been described in the West under the term "constitution" (in a broad sense) from the late 18th and early 19th century onward.²²⁵ Some Europeans—like Hegel—stressed that Imperial China was an absolute monarchy wherein the emperor had supreme authority over everything.²²⁶ But such one-sided descriptions of the Chinese "constitution" were far from being dominant. More perspicacious observers stated that the perception of an "absolute Cæsarism" was dominant just to deconstruct it by providing a more nuanced counter-argument.²²⁷

They stressed that the emperor had absolute power in theory, but that *in praxi* his rule was hamstrung by a highly organised meritocratic bureaucracy and

²²³ Ibid., 316.

²²⁴ The clergy was neither united nor uniform, however, but showed a complex variety of stances towards constitutionalism. See *ibid.*, 313–322.

²²⁵ E.g., Carl Heinrich Schiller, *Neueste Nachrichten über China und dessen innere Verfassung* (Leipzig: Kleefeldsche Buchhandlung, 1799); A Correspondent, "Art. I. Treaty with the Chinese, a Great Desideratum; Probability of Forming one, with Remarks Concerning the Measures by which the Object may be Gained," *The Chinese Repository*, February 1, 1836; Emilio Castelar, "Crónica internacional," *La España moderna*, noviembre (1898).

²²⁶ See Hegel's chapter on the Chinese "constitution" Georg Wilhelm Friedrich Hegel, *Vorlesungen über die Weltgeschichte: Die orientalische Welt* (Leipzig: Verlag von Felix Meiner, 1919), ed. Georg Lasson, 288–302.

²²⁷ E.g., Groot, *Het kongsiwezen van Borneo*, 82.

that its penetration into the local level was rather weak, leaving considerable autonomy to the local communities. Thus, characterisations of the Chinese “constitution” as having “half-republican,” “republican” or even “democratic” elements were not uncommon in the 19th and early 20th century.²²⁸ Some famous thinkers even went so far as to talk of “the great democracy of China, living in the greatest republic the world has ever seen,”²²⁹ of the “freest democracy in the world”²³⁰ or of a government “more democratic than the Republican Government of France or the United States of America.”²³¹

But the traditional Chinese polity did not know a clear-cut equivalent to the notions of “constitution” and “constitutionalism,” although Chinese and non-Chinese alike did identify constitutional elements and even constitutional documents in it. Thus, in 1810, George Staunton translated the legal Code of the Great Qing (*Daqing lüli* 大清律例), recognising that the government was divided into several branches and asserting that the Qing Code “treats indirectly and incidentally of all the branches of the Chinese constitution.”²³² Most observers saw the

²²⁸ On the theme see Pierre-Étienne Will, “Le despotisme et la Chine démocratique chez les auteurs européens au XIX^e siècle,” in *La Chine et la démocratie*, eds. Pierre-Étienne Will and Mireille Delmas-Marty (Paris: Fayard, 2007). For specific examples see, among others, Taw Sein Ko, “Missionary Troubles in China,” *Imperial and Asiatic Quarterly Review*, 3rd ser. 10, nos. 19 & 20 (1900), 278; Parker, “The Chinese Imbroglia and How to Get Out of It,” 270; *Neuigkeits-Weltblatt*, “Der chinesische Hof,” June 6, 1893, 132; “The Constitution of the Chinese Empire,” *North China Herald*, December 18, 1879; Herbert A. Giles, *The Civilization of China* (London: Williams and Norgate, 1911), 248; Scié-Ton-Fa, “Notice sur le changement de régime (Révolution et République), sur les réformes constitutionnelles et le mouvement législatif de 1911 et 1912: Publié par la société de législation comparée contenant le texte des principales lois votées dans les pays étrangers en 1913,” *Annuaire de législation étrangère* 43 (1914), 592; Min-ch’ien T. Z. Tyau, *China’s New Constitution and International Problems* (Shanghai: Commercial Press Limited, 1918), 3.

²²⁹ Giles, *The Civilization of China*, 248.

²³⁰ Parker, “The Chinese Imbroglia and How to Get Out of It,” 270.

²³¹ Taw Sein Ko, “Missionary Troubles in China,” 278–279.

²³² Georges Thomas Staunton, *Ta Tsing Leu Lee: Being the Fundamental Laws, and a Selection from the Supplementary Statutes of the Penal Code of China; Originally Printed and Published in Peking, In Various Successive Editions, under the Sanction, and by the Authority, of the Several Emperors of the Ta Tsing, or the Present Dynasty. Translated from the Chinese; and Accompanied with an Appendix, Consisting of Authentic Documents, and a few Occasional Notes, Illustrative of the Subject of the Work* (London: T. Cadell and W. Davies, 1810), 1, 16, 18. Zhao, “Rethinking Constitutionalism in Late 19th and Early 20th Century China,” 34, writes “as early as the time of George Staunton and Leon Vandermeersch,” and treats Staunton and Vandermeersch as a tandem several times further (48, 68), overlooking that

traditional constitution in the Confucian classics,²³³ and Soejima Taneomi 副島種臣 (1828–1905), drafter of the first Japanese constitution of 1868, identified the traditional Chinese constitution with the 1670 *Sacred Edict* of the Kangxi Emperor and its 1724 “Amplified Instructions” by the Yongzheng Emperor (*Shengyu guangxun* 聖諭廣訓).²³⁴

But in the course of the 19th century, knowledge about the constitutions that had been and were being adopted elsewhere began coming into China, and Chinese intellectuals increasingly took notice of them. But from the beginning of the 19th century, European missionaries and Chinese officials-intellectuals began publishing descriptions of foreign polities, which included accounts of their political systems. Scholarship has shown how Chinese-language sources of the 19th century understood foreign political systems and how they received European “constitutional” principles, a work which needs not be repeated here.²³⁵

However, what previous scholarship has not completely shown is how these early Chinese-language sources referred to “constitutions” in the narrower sense of the word, finding equivalents for the concepts of “constitution” and “constitutionalism” and integrating these concepts into their own debates. Rao Chuanping 饒傳平 has a list of translations used to match the Western concept of a constitution.²³⁶ But since this list is incomplete and contains a few inaccuracies, it is in order to amend and extend it, and use it for some fresh observations about

Vandermeersch was born in 1928, 118 years after the publication of Staunton’s book. Zhao does not give page numbers for her direct citations either.

²³³ See, e.g., James Wickersham, *Constitution of China: A Study in Primitive Law (A Paper Read at the Meeting of the Washington Bar Association Held in Spokane, July 20, 1898)* (Olympia [Washington]: Wilson & Blankenship, 1898).

²³⁴ *Asahi Shimbun*, “Kenpō.”

²³⁵ For a fuller account see Wang Dezhi 王德志, *Xianfa gainian zai Zhongguo de qiyuan* 憲法概念在中國的起源 (The origins of the concept of a constitution in China) (Jinan: Shandong renmin chubanshe, 2005), 6–18.

²³⁶ Rao Chuanping 饒傳平, “Cong she yiyuan dao li xianfa: Wanqing ‘constitution’ hanyi yu lixian sixiangchao xingcheng kaolun” 從設議院到立憲法：晚清“constitution”漢譯與立憲思潮形成考論 (From the establishment of a parliament to the adoption of a constitution: examination of the Chinese translation of “constitution” and of the formation of constitutional thought in the late Qing), *Xiandai Faxue* 現代法學 33, no. 5 (2011), 29–32. The following list follows Rao’s except indicated otherwise.

the notion of a constitution in 19th-century China. Furthermore, all the words are composed of Sinitic lexemes and could in theory be easily used not only in Chinese, but also in Japanese and Korean. As the debates were transnational, some of these words were indeed used in more than one language, and the list therefore also adds some words that were mainly used in Japanese²³⁷ or Korean:

- a) *Guoli* 國例, “rules of the state,” used by Elijah Coleman Bridgman in the 1838 *Sketch of the United States of America* (*Meilige Heshengguo zhiliu* 美理哥合省國志畧) in the sense of “federal legislation”; in later texts, it could also take on the meaning of “constitution” or be abbreviated to just *li* 例;²³⁸
- b) *Zhangcheng* 章程, “statutes,” also used by Elijah Coleman Bridgman in the 1838 *Sketch of the United States of America*;²³⁹
 - α. used as *zhengzhi zhangcheng* 政治章程, “political statutes,” by the Macanese sinologist José Martinho Marques (Ma Jishi 瑪吉士, 1810–1867) in the *General Description of the Various European Countries* (*Ouluoba geguo zongxu* 歐羅巴各國總敘)²⁴⁰;
 - β. used as *guowu zhangcheng* 國務章程, “statute concerning state affairs,” used in the Chinese version of Frederick Martin’s 1873 *The Statesman’s Year-Book*, translated by Young John Allen (Lin Yuezhi 林

²³⁷ Terms unattested in Chinese-language texts are marked with an asterisk (*) before the Chinese pronunciation. Hozumi Nobushige 穂積陳重, *Hōsō yawa* 法憲夜話 (Nightly conversations at the window of law) (Tokyo: Yūhikaku, Taishō 5 [1916]), 169–173, has a brief discussion of Japanese terms.

²³⁸ Frederick Martin, “Lieguo sui ji zhengyao” 列國歲計政要 (Year-book of the essentials of politics of all states), transl. Young John Allen [Lin Yuezhi 林樂知], and Zheng Changyan 鄭昌棧, in *Jiangnan zhizaoju yishu congbian* 江南製造局譯書叢編, 5 vols., ed. Shanghai Tushuguan 上海圖書館 (Shanghai: Shanghai kexue jishu wenxian chubanshe, 2012), vol. 1, 144, on the 1841 constitution of Norway (calling it *guoli* 國例 on the same page).

²³⁹ Wei Yuan 魏源, *Haiguo tuzhi* 海國圖志 (*Illustrated treatise on the countries of the seas*), 3 vols. (Changsha: Yuelu shushe chubanshe, 1998), vol. 3, 1626. Rao, “Cong she yiyuan dao li xianfa,” 30, claims that it was used for the first time in the 1870s in the *Wanguo gongbao* 萬國公報. This is not correct, cf. *infra*.

²⁴⁰ Wei, *Haiguo tuzhi*, vol. 2, chapter 37, 1108.

樂知, 1837–1907) and Zheng Changyan 鄭昌棧 (?–1902) under the title *Year-Book of the Essentials of Politics of all States* (*Lieguo sui ji zhengyao* 列國歲計政要)²⁴¹;

- γ. used as *guozheng zhangcheng* 國政章程, “Statute concerning national politics,” by the *Chinese Globe Magazine* (*Wanguo gongbao* 萬國公報) in 1875 to refer to a proposal for a constitutional amendment in Spain;²⁴²
- c) *Lizhi* 例制, “regulatory system,” used in the 1840 *Laws of All States* (*Geguo lüli* 各國律例);
- d) *Liguo guitiao* 立國規條, “founding laws of the land,” used by Liang Tingnan in his 1844 *Description of the United States* (*Heshengguo shuo* 合省國說)²⁴³—however, Liang’s text conflates the notions of “constitution” and “federal law”;
- e) *Zhengti* 政體, “body politic,” used by Elijah Coleman Bridgman in his 1861 *Sketch of the American Federation* (*Damei Lianbang zhilüe*/Japanese version: *Taimi Rempō shiryaku* 大美聯邦志畧), a term also popular in Japan;²⁴⁴
- f) *Guofa* 國法, “state law,” used, e.g., in the 1864 translation of Henry Wheaton’s *Elements of International Law* (*Wanguo gongfa* 萬國公法);²⁴⁵

²⁴¹ Martin, Allen, and Zheng, “*Lieguo sui ji zhengyao*,” 171 (referring to Saxe-Meiningen and Anhalt).

²⁴² “Da Risibaniyaguo shi: yi geng guozhang” 大日斯巴尼亞國事：議更國章 (Spanish matters: on the amendment of the constitution), *Wanguo gongbao* 萬國公報 8, no. 352 (1875), 722.

²⁴³ Liang Tingnan 梁廷柌, “*Heshengguo shuo*” 合省國說 (Description of the United States), in *Haiguo sishuo* 海國四說, 2nd ed. (Beijing: Zhonghua shuju, 1997), 72. Liang here misunderstands Bridgman, as we will see.

²⁴⁴ Elijah Coleman Bridgman [Bi Zhiwen 裨治文], *Damei lianbang zhilüe* 大美聯邦志畧 (Sketch of the American federation) (Shanghai: Mohai Shuguan, Xinchou [1861]), 25–26; Bridgman, Elijah Coleman [Bi Zhiwen 裨治文], *Taimi renpō shiryaku* 大美聯邦志畧, ed. Mitsukuri Genpo 箕作阮甫 (Sketch of the American federation) (Tokyo: Kōsa rōsōkan, Meiji shinbi [1871]), 25–26. Rao, “*Cong she yiyuan dao li xianfa*,” 31, asserts that the term *zhengti/seitai* 政體 was a term used in Japan for the English “constitution,” ignoring the Chinese-language uses of the word, including by the very Elijah Bridgman.

²⁴⁵ The preface of the 1844 work published in Canton, *Description of the United States* (*Heshengguo shuo* 合省國說), uses the word: “Before there was a President, there was first the ‘laws of the land’” (*wei you tongling, xian you guofa* 未有統領，先有國法). Liang, “*Heshengguo shuo*,” 50. However, the following sentence only talks about “laws” (*fa* 法), and the book uses *guoli* 國例 for “constitution” on

- g) *Guoxian* 國憲 (*kokken* in Japanese), “state constitution,” a term very popular in Japan, used by Katō Hiroyuki 加藤弘之 (1836–1916) in his 1868 *Sketch of Constitutional Government* (*Rikken seitai ryaku* 立憲政體略);²⁴⁶
- h) *Xianfa* 憲法, “constitution,” first used by Wang Tao 王韜 (1828–1897) in his 1870 *Account of France* (*Faguo zhiliue* 法國志略);²⁴⁷
- i) *Lüli* 律例 (*ritsurei* in Japanese and *lut₂ lai²* in Cantonese pronunciation), “laws and statutes,” used by Fukuzawa Yukichi 福澤諭吉 (1835–1901) in his translation of the US Constitution, published in his seminal work *Things Western* (*Seiyō jijō* 西洋事情) of 1866.²⁴⁸ The term reminisces of the Imperial Law Code of the Qing, the *Daqing Lüli* 大清律例, and Lobscheid’s Dictionary forms an analogous *Dafaguo Lüli* 大法國律例 (*tái Fát, kwok, lut₂ lai²*) as one of the possible translations for the French Constitutional Charte of 1814;²⁴⁹
- j) **Jianguofa* 建國法 (*kenkokuhō* in Japanese), “law establishing the state,” a term used by Inoue Kowashi 井上毅 (1844–1895) in 1875 in his *Constitutions of Kingdoms* (*Ōoku kenkokuhō* 王國建國憲), a translation of the

other occasions. Even when the book talks about *guoli* 國例 for “constitution,” it does conflate it with the more general notion of “federal laws.” Thus, the phrase is not necessarily to be translated with “constitution.”

²⁴⁶ Katō Kōzō [Hiroyuki] 加藤弘藏 [弘之], *Rikken seitai ryaku* 立憲政體畧 (Sketch of constitutional government) ([Tokyo]: Taniyama-rō jōshi, Keiō 4 [1868]), 6a.

²⁴⁷ Rao, “Cong she yiyuan dao li xianfa,” 31, asserts that the term was only reutilised by Zheng Guanying in the 1890s, but that both Wang Tao and Zheng Guanying had but a vague imagination of a “constitution,” and that it was only after the 100-day reforms in 1898 that the term really gained currency. This assertion, which he shares with other Chinese scholars, is not completely correct, for the term was frequently used to refer to the Japanese Constitution in the 1880s and 1890s, as this chapter will show.

²⁴⁸ Fukuzawa Yukichi 福澤諭吉, *Seiyō jijō* 西洋事情 (Things Western) ([Tokyo]: Shōkodō, Keiō 2 [1866]), 18a–36b.

²⁴⁹ William Lobscheid, *English and Chinese Dictionary: With the Punti and Mandarin Pronunciation* (Hongkong: “Daily Press” Office, 1866), 364; William Lobscheid and Tetsujiro Inouye, *An English and Chinese Dictionary* (Tokyo: J. Fujimoto, Meiji 16 [1883]), 232. Rao, “Cong she yiyuan dao li xianfa,” 30, uses a 1897 edition of Lobscheid’s dictionary, but does not come across the term *lüli* 律例, as it is not given under the lemma “constitution,” but under “Charte.” Ira M. Condit, *English and Chinese Dictionary: Huaying zidian* 華英字典 (New York, Shanghai: American Tract Society, 1880), 27, also gives the term *lüli* 律例.

constitutions of Prussia and of Belgium based on the collection of Édouard Laferrière (1841–1901);²⁵⁰

- k) **Genben lüfa* 根本律法 (*konpon rippō* in Japanese), “basic law code,” a term used by Tsuda Mamichi 津田眞一郎 (1839–1903) in his book *Western Constitutional Theory* (*Taisei Kokuhōron* 泰西國法論), a translation of lectures on constitutional law (*Staatsregt*) by the Dutchman Simon Vissering (1818–1888);²⁵¹
- l) **Genben guofa* 根本國法 (*konpon kokuhō* in Japanese), “basic law of the state,” the precursor of Tsuda Mamichi’s *konpon rippō* 根本律法, which he used in 1866 in a handwritten draft of his book;²⁵²
- m) **Chaogang* 朝綱 (*chōkō* in Japanese), “Outline of the court,” a term given by Tsuda Mamichi as an alternative to *konpon rippō* 根本律法;²⁵³
- n) **Chaoxian* 朝憲 (*chōken* in Japanese), “Constitution of the court”: In his handwritten version of 1866, Tsuda had first written *chōkō* 朝綱, but then chose to replace it with *chōken* 朝憲, and reverted to *chōkō* 朝綱 in the printed version;²⁵⁴
- o) *Changli* 常例, “permanent regulations,” used for the 1849 Constitution of Denmark in the Chinese version of Frederick Martin’s 1873 *The*

²⁵⁰ Édouard Louis Julien Laferrière and Inoue Kowashi 井上毅, *Ōkoku Kenkokuhō* 王國建國憲 (Constitutions of kingdoms) (Tokyo: Meihōryō, Meiji 8 [1875]). In his foreword (*jo* 序, 1a), Inoue explains the *kenkokuhō* 建國法 as being the “basic constitution” (*konpon kenpō* 根本憲法). For a French edition of Laferrière’s collection see Édouard Louis Julien Laferrière and Anselme Polycarpe Batbie, *Les Constitutions d’Europe et d’Amérique* (Paris: Cotillon, 1869).

²⁵¹ Simon Vissering and Tsuda Mamichi 津田眞一郎, *Taisei kokuhōron* 泰西國法論 (Western constitutional theory), 2 vols. (Edo: Edo kaiseijo, Keiō 4 [1868]), *kan* 卷 1, 13 and *kan* 卷 2, 13. See also the later edition Simon Vissering and Tsuda Mamichi 津田眞一郎, *Taisei kokuhōron* 泰西國法論 (Western constitutional theory) (Tokyo: Kaisei Gakkō, Meiji 10 [1877]), 40, 92. On the *Taisei kokuhōron* see Saitō Tsuyoshi, “The Creation of the Term Kojin (Individual),” in *The Emergence of the Modern Sino-Japanese Lexicon: Seven Studies*, ed. Joshua A. Fogel (Leiden: Brill, 2015), 16–17.

²⁵² Simon Vissering and Tsuda Mamichi 津田眞一郎, *Taisei kokuhōron* 泰西國法論 (Western constitutional theory) (n.p., Keiō 2 [1866]), vol. 1, chapter 3, sec. 14 (chapter: “Législation/Gesetzgebung/legislation/ wetgeving, *henseihō*” 編制法).

²⁵³ Vissering and Tsuda, *Taisei kokuhōron* (1877), 40.

²⁵⁴ Vissering and Tsuda, *Taisei kokuhōron* (1866), vol. 2, chapter 6, section 5.

Stateman's Year-Book, translated by Young John Allen and Zheng Changyan under the title *Year-Book of the Essentials of Politics of all States*;²⁵⁵

- p) *Mengyue* 盟約, “covenant,” found in Gabriel Lemaire’s (1839–1907) and Prosper Giquel’s (1835–1886) Sino-French dictionary of 1874.²⁵⁶ Later used in an 1881 translation of the United States Constitution made by the Chinese legation in Washington. The word accurately reflects the character of the United States Constitution as an international treaty;²⁵⁷
- q) *Lügang* 律綱, “essential law,” a term given by Zhang Yinhuan 張蔭桓 (1837–1900) as an alternative to *mengyue* 盟約 and used by him elsewhere;²⁵⁸
- r) *Chuangguoli* 創國例, “law establishing the state,” a term given by Zhang Yinhuan to describe the US Constitution;²⁵⁹
- s) *Guoli* 國律, “state law,” used, e.g., by Ma Jianzhong 馬建忠 (1845–1900) in the 1880s in his work *Explorations of Law* (*Falü Tanyuan* 法律探原), and by Fukuzawa Yukichi in his *Things Western*;²⁶⁰
- t) *Guozhang* 國章, “Statute of the state,” used as an abbreviation of *guozheng zhangcheng* 國政章程 (lit b. β.) by the *Wanguo gongbao*, and independently by Fu Yunlong 傅雲龍 (1840–1901) to denote the Constitution of the Republic of Peru;²⁶¹

²⁵⁵ Martin, Allen, and Zheng, “Lieguo sui ji zhengyao,” 122.

²⁵⁶ Gabriel Lemaire and Prosper Giquel, *Dictionnaire de poche Français-Chinois : Suivi d'un dictionnaire technique des mots usités à l'arsenal de Fou-Tcheou* (Shanghai: American Presbyterian Mission Press, 1874), 62.

²⁵⁷ The term is not covered by Rao, “Cong she yiyuan dao li xianfa.” On this translation see Li Wenjie 李文傑, “Shoubu hanyi Meiguo Xianfa wenshi kao” 首部漢譯美國憲法問世考 (Study concerning the first publication of the Constitution of the United States in Chinese translation), *Beida Shixue* 北大史學, no. 15 (2010).

²⁵⁸ Zhang Yinhuan 張蔭桓, *Sanzhou riji* 三洲日記 (Diary from three Continents), 8 vols. (Beijing: Yuedong xinguan, Guangxu bingshen [1896]) vol. 2, 44a; Zhang also uses the term in vol. 3, 33a.

²⁵⁹ Ibid., vol. 2, 43b. Zhang also uses the term in vol. 3, 70a.

²⁶⁰ Fukuzawa, *Seiyō jijō*, 5b. Fukuzawa uses the term to define “constitutional monarchies” (*rikkun teiritsu* 立君定律).

²⁶¹ Fu Yunlong 傅雲龍, *Youli Bilu tujing 4 juan* 遊歷秘魯圖經四卷 (Illustrated experiences of travelling to Peru, in 4 chapters) (n.p., Guangxu 27 [1901]), chapter “System of the Peruvian State” (*Bilu guoxi* 秘魯國系), 8b.

- u) *Benlü* 本律 (*pún-lút* in Hokkien), “foundational law,” given in Gustaf Schlegel’s (1840–1903) Dutch-Chinese dictionary, 1887.²⁶²
- v) *Yuanlü* 原律 (*goân-lút* in Hokkien), “original law,” given in Gustaf Schlegel’s (1840–1903) Dutch-Chinese dictionary of 1887.²⁶³
- w) *Zhidu* 制度, “system,” is one of the terms used in Timothy Richard’s (*Li Timotai* 李提摩太) best-selling translation of Robert Mackenzie’s *The 19th Century: A History* (*Taixi xinshi lanyao* 泰西新史攬要), even when referring to constitutional charters.²⁶⁴ Sometimes, the term is abbreviated to:
- x) *Zhi* 制, “system”;²⁶⁵
- y) *Dianzhang* 典章, “regulations and statutes,” another term used in Timothy Richard’s translation of Robert Mackenzie’s *The 19th Century: A History*;²⁶⁶
- z) *Mo* 謨, “scheme,” another term used in Timothy Richard’s translation of Robert Mackenzie’s *The 19th century: A History* about the French Constitution of 1848;²⁶⁷
- aa) *Zhang* 章, “statute” another term used in Timothy Richard’s translation of Robert Mackenzie’s *The 19th century: A History* about the same French Constitution of 1848²⁶⁸, and in the Chinese version of Frederick Martin’s 1873 *The Stateman’s Year-Book*, translated by Young John Allen and Zheng Changyan under the title *Year-Book of the Essentials of Politics of all States*, referring to the constitution of Saxe-Weimar;²⁶⁹

²⁶² Gustaaf Schlegel, *Nederlandsch-Chineesch Woordenboek met de transcriptie der chineesche karakters in het Tsiang-tsiu Dialekt* (Leiden: Brill, 1886), 1457.

²⁶³ Ibid.

²⁶⁴ Robert Mackenzie, *Taixi xinshi lanyao* 泰西新史攬要 (Essentials of the recent history of the West) (Shanghai: Shanghai shudian chubanshe, 2002), 48, 249, 269, 280.

²⁶⁵ Ibid., 257, 269.

²⁶⁶ Ibid., 13.

²⁶⁷ Ibid., 242.

²⁶⁸ Ibid., 242.

²⁶⁹ Martin, Allen, and Zheng, “Lieguo suiiji zhengyao,” 169.

- bb) *Guozheng* 國政 (*kok-tsèng* in Hokkien²⁷⁰ and *kwok, ching'* in Cantonese²⁷¹ pronunciation), "state governance," used in Timothy Richard's translation of Robert Mackenzie's *The 19th Century: A History* to translate the adjective "constitutional"²⁷² and given, among others, in Lobscheid's English-Chinese dictionary;
- cc) *Guoti* 國體 (*kok-thé* in Hokkien pronunciation), "national body," is another of the terms used in Timothy Richard's translation of Robert Mackenzie's *The 19th Century: A History*.²⁷³ It is also given as translation for "constitution" in Macgowan's English-Amoy Dictionary;²⁷⁴
- dd) *Ju guan zhi quan* 舉官之權, "the right to elect officials," a periphrasis used in Robert Mackenzie's *The 19th Century: A History*;²⁷⁵
- ee) *Guojia dingli* 國家定律, "law of the state," used in Timothy Richard's translation of Robert Mackenzie's *The 19th Century: A History* to refer to the Constitution of the USA;²⁷⁶
- ff) *Dingli* 定例, "regular statute," another term used in Timothy Richard's translation of Robert Mackenzie's *The 19th Century: A History* to refer to the Constitution of the USA;²⁷⁷
- gg) *Kaiguo dingzhi* 開國定制, "regular system founding the state," another term used in Timothy Richard's translation of Robert Mackenzie's *The 19th Century: A History* to refer to the Constitution of the USA;²⁷⁸
- hh) *Liguolü* 立國律, "law establishing the state," used by Chen Jitong 陳季同 (1851–1907) in a translation of the Constitutional Laws of the French

²⁷⁰ John Macgowan, *English and Chinese Dictionary of the Amoy Dialect* (Amoy, London: A. A. Marcal; Trubner & Co., 1883), 82.

²⁷¹ Lobscheid, *English and Chinese Dictionary*, 364, 481.

²⁷² Mackenzie, *Taixi xinshi lanyao*, 256.

²⁷³ *Ibid.*, 303.

²⁷⁴ Macgowan, *English and Chinese Dictionary of the Amoy Dialect*, 82.

²⁷⁵ Mackenzie, *Taixi xinshi lanyao*, 279.

²⁷⁶ *Ibid.*, 377.

²⁷⁷ *Ibid.*, 379.

²⁷⁸ *Ibid.*, 380.

Republic of 1875, published in 1897 in the magazine *International Review* (*Qiushi bao* 求是報);²⁷⁹

- ii) *Guodian* 國典, “code of the state,” used as a translation of the section title “Constitution and government” in the 1897 translation of the *Stateman’s Year-Book*, published in the magazine *The Reformer—China* (*Zhixin bao* 知新報);²⁸⁰
- jj) *Chaozhi* 朝制, “system of the court,” used to refer to Switzerland in the 1897 translation of the *The Stateman’s Year-Book*, published in the magazine *The Reformer—China* (*Zhixin bao* 知新報);²⁸¹
- kk) *Guozhi* 國制 (*kukche* in Korean, *kokusei* in Japanese), “state system,” the name used for the Korean constitutional document of 1899;²⁸² the term does also occur in Chinese²⁸³ and in Japanese;²⁸⁴
- ll) *Xianzhang* 憲章, “constitutional charter,” used, e.g., in 1900 as a course title in the Imperial Tientsin University (*Beiyang Daxuetang* 北洋大學堂).

²⁷⁹ San Chengcha Ke 三乘槎客 [Chen Jitong 陳季同], “Xilü xin yi jüan zhi yi” 西律新譯卷之一 (New translation of Western laws, part 1), *Qiushi bao* 求是報, no. 1 (Guangxu 23 [1897]); the translation continued for two further instalments in nos. 2 and 3 of the magazine.

²⁸⁰ John Scott Keltie and Zhou Lingsheng 周靈生, “Ruishi guo: guodian” 瑞士國：國典 (Switzerland: constitution), *Zhixin bao* 知新報, no. 40 (Guangxu 23 [1897]).

²⁸¹ Ibid.

²⁸² *Kwanbo* 官報, “Taehan’guk kukche” 大韓國國制 (Constitutional document of the Empire of Korea), no. 1346, Kwangmu 03/08/22 [September 26, 1899], 2.

²⁸³ Fu Yunlong 傅雲龍, *Youli Meilijia Hezhongguo tujing 32 juan* 游歷美利加合眾國圖經三十二卷 (Illustrated experiences of travelling to the United States of America, in 32 chapters) (N.p.: Guangxu 15 [1889]) for the US Constitution in 1889 (chapter “On the state,” *guoshi zhi* 國事志) talks about the “system of the United States” (*Hezhongguo zhi* 合眾國制) in his introduction to the translation of the Constitution of the United States. However, he uses the term *mengyue* 盟約 (“covenant”) within the translation. Reid, Gilbert [Li Jiabo 李佳白] and Wang Zhenmin 王振民, *Oumei qiangguo xianfa huibian* 歐美強國憲法彙編 (Western constitutional governments in their application to China) (Shanghai: Methodist Publishing House, 1909), 1, write that the meaning of the word “constitution” translates into *guozhi* 國制, and also calls it “statute concerning national politics” (*guozheng zhangcheng* 國政章程). However, other than in the part concerning definitions, the book uses *xianfa* 憲法 throughout, which had long become the common term.

²⁸⁴ Hozumi, *Hōsō yawa*, 171–172, asserts that the term had been used by Tsuda Mamichi in his *Western Constitutional Theory*. However, both Tsuda’s handwritten as well as the printed versions give *kokken* 國憲 as alternatives to *konpon kokuhō* 根本國法, *konpon rippō* 根本律法, *chōkō* 朝綱, and *chōken* 朝憲. See Vissering and Tsuda, *Taisei kokuhōron* (1866), vol. 1, chapter 3 sec. 14; vol. 2, chapter 6, section 5; Vissering and Tsuda, *Taisei kokuhōron* (1868), *kan* 卷 1, 13 and *kan* 卷 2; Vissering and Tsuda, *Taisei kokuhōron* (1877), 40, 92.

This term later also became the standard translation for (Magna) Carta (*Da Xianzhang* 大憲章);

- mm) *Xiangang* 憲綱, “constitutional outline,” used by Li Shengduo in a memorial to the Court of June 1901;²⁸⁵
- nn) *Liguo lüli* 立國律例, “laws and regulations founding the state,” used as a title for an abridged translation of the Constitution of the United States published in the *Magazine of politics and art* (*Zhengyi tongbao* 政藝通報);²⁸⁶
- oo) Finally, it should be noted that Liang Qichao gives the transcription *kongshijiusong* 孔士九嵩, although he does not use the term in the current text.²⁸⁷

b) *Guoli* 國例 and *zhangcheng* 章程: Difficulties in Comprehension

As can be seen from the list, Elijah Coleman Bridgman, a US American Missionary in China, played a crucial role in pioneering the Chinese-language description of Western political systems. His *Sketch of the United States of America* (*Meilige Heshengguo zhiliue* 美理哥合省國志略) was published in Singapore in 1838 and acquired an enormous significance, as its traces can be seen in various works of the subsequent years that introduced the world to a Chinese readership. For example, it was in large parts literally quoted in the famous *Illustrated Treatise on the Countries of the Seas* (*Haiguo tuzhi* 海國圖志). This was a work published by Wei Yuan in 1843, in the wake of the first Opium War between China and the United Kingdom,

²⁸⁵ Apud Bian, *Jindai Zhongguo xianfa wenben de lishi jiedu*, 19.

²⁸⁶ Deng Shi 鄧實, ed., *Guangxu renyin (28 nian) zhengyi congshu* 光緒壬寅（廿八年）政藝叢書 (Collectanea of politics and arts for the year renyin (28) of the Guangxu Emperor), 4 vols. (Taipei: Wenhai chubanshe, Minguo 65 [1976]), vol. 2, 609–610.

²⁸⁷ Liang Qichao 梁啟超, “Geguo xianfa yitong lun” 各國憲法異同論 (On the differences and commonalities of the constitutions of all countries), in, *Qingyi bao* 清議報. Reprint. 6 vols. (Beijing: Zhonghua shuju, 2006), vol. 1, 739–744; 807–812; reprinted in monograph form under the pseudonym “Chuyang Xuesheng Bianjisuo” 出洋學生編輯所 [Liang Qichao 梁啟超], *Geguo xianfa lue* 各國憲法畧 (Sketch of the constitutions of all countries) (Shanghai: Shangwu yinshuguan, Guangxu 28 [1902]), 1.

based on preliminary research done by Lin Zexu 林則徐 (1785–1850). A second, enlarged, edition was published in 1852.²⁸⁸

The *Sketch of the United States of America* contains rather detailed descriptions of the political and legal systems of the United States of America. Rao—and with him an academic consensus within scholarship—asserts that the word *guoli* 國例 as used in the 1838 *Sketch of the United States of America* (*Meilige Heshengguo zhilüe* 美理哥合省國志略), “clearly refers to” the English concept of “constitution.”²⁸⁹ To make this point, scholarship adduces this passage from the book:

There are three main powers of the State: One is an assembly which makes the laws, the second instructs the masses to respect them, the third investigates those who do not respect them. Thus, there is a Court in the capital, which is composed of seven members in total, assembles in January of every year and interrogates the reason why people did not respect the laws. After

²⁸⁸ For literature expounding early Chinese perceptions of Western political examples see, for example, Wang, *Xianfa gainian zai Zhongguo de qi yuan*, 9–10. See also Xiong Yuezhi’s seminal works on how the concept of democracy was introduced in late Qing China. For an account of Chinese views on the USA specifically see Xiong Yuezhi 熊月之, “Difficulties in Comprehension and Differences in Expression: Interpreting American Democracy in the Late Qing,” *Late Imperial China* 23, no. 1 (2002). See also Xiong Yuezhi 熊月之, “Wanqing ji ge zhengzhi cihui de fanyi yu shiyong” 晚清幾個政治詞彙的翻譯與使用 (The translation and usage of some political terms in late Qing China), *Shilin* 史林, no. 1 (1999), which does not mention “constitutions.” However, the author disagrees with Xiong’s conceptual framework, in which there were “essentially three political systems in the world: absolute monarchy, constitutional monarchy, and republican democracy” (Xiong, “Difficulties in Comprehension and Differences in Expression,” 1), for it equates republicanism with democracy while it contrasts democracy to monarchy. This was a very common framework in the 19th century, but it does neither conform to the political realities of the time, nor to the historical process which engendered them. It would make more sense to contrast “monarchical republics” (with a strong “monarchic” executive, be it a king or a president) with parliamentary democracies where the parliament controls the executive and the “monarch” (king or president) is confined to a ceremonial role. For the categorisation in use at the time see, e.g., Elijah Coleman Bridgman introducing this threefold distinction in Chinese language: Bridgman, *Damei lianbang zhilüe*, 25.

²⁸⁹ Rao, “Cong she yiyuan dao li xianfa”; see also Yang Yusheng 楊玉聖, “Zhongguoren de Meiguo xianfa guan: yi ge chubu kaocha” 中國人的美國憲法觀：一個初步考察 (The Chinese people’s view on the Constitution of the USA: A preliminary examination), *Meiguo yanjiu cankao ziliao* 美國研究參考資料, no. 5 (1989), apud Yang Yusheng 楊玉聖, *Meiguo lishi sanlun* 美國歷史散論 (Essays on the history of the USA) (Changchun: Liaoning Daxue chubanshe, 1994), 130. In English language, Federico Masini, *The Formation of Modern Chinese Lexicon and Its Evolution Toward a National Language: The Period from 1840 to 1898* (Berkeley: California University Press, 1993), 206, adopts the same interpretation.

the hearing, in February or March, they return home. ... But if you are a judge, you cannot assemble to make laws, and neither can the officials who sit in parliament to make laws concurrently act as judges. There are five levels of law in the New Country: One is federal law, which is applied in all the 26 provinces. The second is state law, which is different in every state. The third is county law, which is also different in every county, and only those who live in one follow it. The fourth is municipal law: every municipality sets its own rules, and every inhabitant, on his own, respects its system. The fifth is borough law, which is also set by the boroughs and only binds its members. Within these five laws, again, the lower one cannot contravene the larger one, like the borough is not allowed to contravene municipal law. Federal law is debated in the Senate in the capital and then sent out to each province. Now, we will exhaustively list all main attributions as below: ...

國之大政有三：一則會議製例，二則諭眾恪遵，三則究問其不遵者。是以國都有一察院，院內共七人，以每年正月齊集，究人因何不遵法律之故。審畢，或二三月，然後回家。.....但為審官，則不能會議製例，會議製例官亦不能兼攝審問也。新國制例有五：一曰國例，為二十六部所通行；二曰部落例，各部不同；三曰府例，每府亦不同，惟生於斯者守之；四曰縣例，各縣自立其規，各民自遵其製；五曰司例，亦由司自立，惟所屬者遵之。此五例中又小不能犯大，如司則不得犯縣例焉。國例乃都城議事閣會議，分發各部。今將各大典悉列於左。...²⁹⁰

The list that follows is indeed a rough translation of Article 1, Section 8 of the United States Constitution, which lists the attributions of the Congress. Since *guoli* 國例 has the literal meaning “laws of the land,” it is not far from there to the meaning of “constitution.”²⁹¹

²⁹⁰ Apud Wei, *Haiguo tuzhi*, vol. 3, 1633–1634.

²⁹¹ See, e.g., *ibid.*, vol. 2, 1275: “According to the laws of the Germanic countries, all dukes have to respectively deploy rank-and-file soldiers, and protect the borders together with the king.” (*an*

Nonetheless, the *guoli* here does not “clearly refer to” the US Constitution. In fact, this is quite unlikely. Rather, the passage discusses the general hierarchy of norms in the United States. For it is *all* federal law, not just the constitution that breaks *all* lower law—even a simple federal statute can break a State Constitution. On the sub-State levels, there are no “constitutions” in the United States. Finally, the remark about the Congress debating laws in the capital would not make sense otherwise; after all, the Constitution had only been passed once, and it was passed in Philadelphia rather than in Washington. Thus, while the term *guoli* was later indeed used in the sense of “constitution,”²⁹² this was not yet the case in Bridgman’s book.

Surprisingly, while only Bridgman’s passage about the federal legislation (*guoli* 國例) is taken into account, the instances where the *Sketch of the United States of America* and, by extension, the *Haiguo tuzhi*, really did talk about constitutions, have not yet caught any scholar’s eye. For the genesis of the United States Constitution (*zhangcheng* 章程) is described as follows:

One had to establish a ruler and settle the legal system so as to have sustainably peace and long-lasting governability. If one established a ruler, but it was inherited by someone without virtue, or to someone of utmost brutality, and the country also entered terminal chaos, how would one improve the situation? Hence, in the spring of the 53rd year of the Qianlong Emperor

Rierman guoli, gehou wu ge chu bingding, yu guowang hehui fangbian 按日耳曼國例，各侯務各出兵丁，與國王合會防邊).

²⁹² For example, the *Wanguo gongbao* 萬國公報 in the 1870s published several articles on constitutions of different countries using the term *guoli* 國例, which the magazine itself, in the table of contents, translated into English as “constitution.” However, this “constitution” did not necessarily mean the written charter, but had the wider meaning of “structure of government.” For the article on Russia, see [Frederick Martin], “Da Eguo shi: guoli (lu lieguo sui ji zhengyao xinshu)” 大俄國事：國例 (錄列國歲計政要新書) (Russian affairs: the administrative system, recorded in the new “Year-book of the essentials of politics of all states”), [transl. Young John Allen (Lin Yuezhi 林樂知) and Zheng Changyan 鄭昌校], *Wanguo gongbao* 萬國公報 10, no. 466 (1877). For the article on Turkey see [Frederick Martin], “Tu’erjiguo shi: guoli guanzhi” 土耳機國事：國例官制 (Turkey—an account of the constitution and government, religion and education, revenue and expenditure, &c.), [transl. Young John Allen (Lin Yuezhi 林樂知) and Zheng Changyan 鄭昌校], *Wanguo gongbao* 萬國公報 10, no. 464 (1877).

[1788], the elders of every province assembled in Philadelphia, and jointly promoted Washington to headman. After him, they would publicly elect a virtuous man. He would alternate and not inherit, and not hold office for a long time. They finished deliberating after four months and they dispersed, back to their homes. Every one held the charter they agreed upon and reported back on it to the people in the regions. After discussing again for a year, they came again to Philadelphia and deliberated anew. After that, they ratified it, and publicly elected all civil and military officials.

必立君長，定法制，乃可久安長治。立君而繼嗣不賢，或至暴虐，國亦終亂，將何以善後？於是乾隆五十三年春，各省衿耆會議於費治彌亞，共推華盛頓為首。身後公舉賢者，更代不世及不久任。議四月畢，及散歸，各執所議章程回告部內之人，再議一年，復至費治彌亞再議，然後定，並公舉文武各員。

293

This second passage of Bridgman's book is also the key to why secondary literature up to this day misunderstands *Bridgman's* descriptions of the US American legal system. For the misunderstanding is not new, but stems from 1844. In that year, Liang Tingnan published a book in Canton entitled *Description of the United States* (*Heshengguo shuo* 合省國說). Liang, who extensively cites Bridgman's work, conflated both passages to one, making it unclear whether the text was speaking of federal law or of the US Constitution. His parallel passage, thus, sounds like this:

“At that time, the dust of the war had begun to settle, but the national matters were still disorderly and without proper rule. Immediately, in the 53rd year [of Qianlong = 1788], from spring to beginning summer, an assembly of elders from all provinces convened in Philadelphia. First, they conferred due powers on Washington, and together agreed to pass the founding laws

²⁹³ Apud Wei, *Haiguo tuzhi*, chapter 59, vol. 3, 1626. This study adopts a slightly different punctuation. Xiong, “Difficulties in Comprehension and Differences in Expression” does not use this part of the *Haiguo tuzhi* for his article, but Xiong's focus does not lie on the concept of “constitution.”

of the land. The one adopted on national level is called federal constitution. Those adopted in all provinces are called provincial constitution; are called county constitutions, are called municipal constitutions and are called borough constitutions. After they agreed, still everyone reported back to his province until there was nothing left to discuss. The next year, they met again. Only then they became common practice until now and forever.”²⁹⁴

其時戰塵甫息，國事尚散無統紀。旋於五十三年(...)，自春迄首夏(...)，集各省衿耆會議於費拉地費。先起華盛頓隨宜權理，相與議定立國規條。行於國者，曰國例，行諸省者曰省例，曰府例曰州縣例，曰司例。議訖，仍各還告其省，使無有參差。明年再集，而後常例，至此乃永定焉。²⁹⁵

With the conflation, Liang’s account became nonsensical. For the Philadelphia Convention, presided by George Washington (1732–1799) had indeed drafted the US Constitution from May to September 1787 (a mistake by one year²⁹⁶), but it had not drafted any of the State Constitutions or any other piece of non-constitutional legislation for that matter. Yet, Liang’s text, talking about them being “common practice until now and forever,” evoked the Constitution *per se*. The term *guoli* 國例, whether inspired by Liang or not, continued to be used for “constitution” throughout the 19th century.²⁹⁷

Going back to the *Haiguo tuzhi*, the word therein really used for “constitution,” *zhangcheng* 章程, also appears in another passage, talking about the

²⁹⁴ Liang, “Heshengguo shuo,” 72.

²⁹⁵ Ibid., 72. The parts omitted are commentaries converting Chinese to Western dates and vice versa. The author has adopted a slightly different punctuation.

²⁹⁶ The adoption was in 1788 (Qianlong 53) indeed, while the Philadelphia Convention was held in 1787. Bridgman, *Damei lianbang zhilüe*, 26, is mistaken by one year in the other direction, putting the adoption of the constitution to 1787 (Qianlong 52). Finally, “Xu huanyou diqiu lüeshu di ershiliu ci: jianguo lizheng bing tu” 續環遊地球畧述第二十六次：建國立政並圖 (Continued brief account of a trip across the world, no. 26: founding a nation and establishing a polity, with an illustration), *Wanguo gongbao* 萬國公報 13, no. 642 (Guangxu 7 [1881]), 270b, correctly has the adoption in the year of 1788 (Qianlong 53).

²⁹⁷ E.g., in 1893, Cui Guoyin 崔國因, *Chushi Mei Ri Bi guo riji* 出使美日秘國日記 (Diary of my mission to the United States, Spain and Peru) ([Taipei]: Wenhai chubanshe, n.d.), 220.

constitutional history of ancient Greece. This time, it is not a quote of Bridgman's *Sketch*, but a quote a text written by the Macanese sinologist José Martinho Marques (Ma Jishi 瑪吉士, 1810–1867), the *General Description of the Various European Countries* (*Ouluoba geguo zongxu* 歐羅巴各國總敘):

Many a country applied this political constitution set by Solon.

此梭倫所定政治章程，各國多效之者。²⁹⁸

What is noticeable about these passages is not only the wording. Indeed, the word used here for constitution is the term *zhangcheng* 章程, more than twenty years before the term was used as an equivalent to “constitution” in the *Chinese Global Magazine* (*Wanguo gongbao* 萬國公報), a widely-read magazine edited by another missionary, Young John Allen.²⁹⁹

The term *zhangcheng* is not necessarily a special term for “constitution” in the sense of an elevated law; instead, it is an old term more generally meaning “statute” or “regulatory charter,” and the second passage specifically adds the word “political” to specify the meaning. The word does, however, strongly connote a written statute of law. Marques’ text itself, just a few sentences later, as well as the *Account of the World* (*Yinghuan zhilüe* 瀛寰誌略), a work published in 1849, talk of the Solonian reforms as a reform of the “legal system.”³⁰⁰ Indeed, Solon’s 6th-century-BC constitution reorganised the Athenian political system, but it was not a written constitutional charter in the modern sense. But the phrase “political constitution” (*zhengzhi zhangcheng* 政治章程) in Marques’ text reflects

²⁹⁸ Wei, *Haiguo tuzhi*, vol. 2, chapter 37, 1108.

²⁹⁹ Again, the equivalence to the English word “constitution” is confirmed by the table of contents of the magazine. “Yi minzhuguo yu geguo zhangcheng ji gongyitang jie” 譯民主國與各國章程及公議堂解 (Theory and practice of constitutional and republican governments), *Wanguo gongbao* 萬國公報 7, no. 340 (Guangxu 1 [1875]). On the magazine see Wang Lin 王林, *Xixue yu bianfa: “Wanguo gongbao” yanjiu* 西學與變法：《萬國公報》研究 (Western learning and reform: research on the *Wanguo gongbao*) (Jinan: Qilu shushe, 2004).

³⁰⁰ Apud Wei, *Haiguo tuzhi*, vol. 2, 1108. Xu Jiyu 徐繼畲, *Yinghuan zhilüe* 瀛寰誌略 (Account of the world) (Shanghai: Shanghai shudian chubanshe, 2001), 179–180, see also apud Wei, *Haiguo tuzhi*, vol. 2, 1370.

contemporary Western usages that discussed the “constitutional history” of Ancient Greece, including “Solon’s Constitution.”³⁰¹

Finally, what is especially noticeable about the passage mentioning the US Constitution is that it does clearly indicate the nation-building function of constitutional charters. In the United States, the Constitution was already a time-honoured symbol of the country. In Europe, instead, constitutional charters were still being tortuously negotiated as parts of political struggles, and there were still monarchs—like the King of Prussia mentioned in Heine’s poem—who resisted to the notion.

c) Early Chinese Translations of the Constitution of the USA: From the United States to British Singapore to China to Japan

East Asian perceptions of the United States continued to be shaped by Elijah Coleman Bridgman’s work for decades after the publication of his *Sketch* in 1838. Several other altered versions of his book were published in the following years and decades. The last edition was a version which put a focus on the federal system of the United States. It was published in 1861 in Shanghai under the title *Sketch of the American Federation* (*Damei Lianbang zhilüe* 大美聯邦志畧).

Several scholars have explored how the US Constitution fared in 19th century China, in particular early translations of it. In 1989, Yang Yusheng maintained that the first full translation of the US constitution was published in 1902 by Zhang Zongyuan 章宗元 (1877–?).³⁰² Then, in the 1990s, Wang Lin, in his research about

³⁰¹ For an example of just a few years before the Chinese texts were published see Robert Isaac Wilberforce, *The Five Empires: An Outline of Ancient History* (London: James Burns, [1841]), 88.

³⁰² His article Yang, “Zhongguoren de Meiguo xianfa guan,” is reprinted in Yang, *Meiguo lishi sanlun*, 130–142; for Zhang Zongyuan’s translation see 133–134. Huang Annian has published extensively on the US Declaration of Independence and the US Constitution, including a list of full translations published since 1902 through Republican and People’s Republican times. He does, however, not discuss the 19th-century precursors. The author would like to thank Prof. Huang for kindly sending a list of articles written by him on the subject (written communication of October 9, 2017). Huang Annian 黃安年, “Guanyu ‘Duli Xuanyan’ he ‘Meiguo Xianfa’ zhongyiben” 關於《獨立宣言》和《美國憲法》中譯本 (On the Chinese translations of the “Declaration of Independence” and the “Constitution of the United States”), *Meiguoshi yanjiu tongxun* 美國史研究通訊, no. 1 (1995).

the *Wanguo gongbao*, found out that said magazine had already published a translation of the US Constitution in 1881, asserting that this was the first translation of the US Constitution.³⁰³ Indeed, the Constitution had been published in no. 642 of June 1881, under the title “Continued Brief Account of a Trip Across the World, no. 26: Founding a Nation and Establishing a Polity” (*Xu huanyou diqiu lüeshu di ershiliu ci: Jianguo Lizheng* 續環遊地球畧述第二十六次：建國立政).³⁰⁴

Later, in 2009, Li Wenjie 李文傑 found and discussed another translation of the United States Constitution, made in the same year of 1881 at the Chinese legation in Washington, which Li Wenjie called the “first translation into Chinese of the United States Constitution.”³⁰⁵ In 1880, there had been a large-scale anti-Chinese riot in Denver, so large that it was compared to the “emeutes of the French Commune”³⁰⁶ at the time. The Chinese minister, Chen Lanbin 陳蘭彬 (1816–1895), demanded that the perpetrators be punished, but the US American government replied that it could nothing about it, for the Constitution forbade such interventions by the federal government.³⁰⁷ The Chinese minister thus asked Cai Xiyong 蔡錫勇 (1850–1896), one of the diplomats stationed there, to translate the constitution in order to fully understand it. The translation was then sent to the *Zongli yamen* 總理衙門, where it loafed about for a few years.

Or did it really loaf about at the *Zongli yamen*? No, it was actually read by officials. Two of them later published different versions of the translation in their works. Zhang Yinhuan 張蔭桓 (1837–1900) included it in his diary published in 1896.³⁰⁸ At the end of the translation, Zhang remarked that he did not know

³⁰³ Wang, *Xixue yu bianfa*, 73–74.

³⁰⁴ “*Xu huanyou diqiu lüeshu di ershiliu ci.*”

³⁰⁵ Li, “*Shoubu hanyi Meiguo Xianfa wenshi kao.*”

³⁰⁶ *Chicago Daily Tribune*, “Chit-chat: The Denver Riot—Who Is Liable for the Damage Done? How the Reading Railroad Company Was Forced into Bankruptcy. Senator Hill—The Speakership—Maj. Swaine—The Grant-Chaffee Wedding. The Bernhardt Boom—Sara as Compared with Other Noted Actresses.” November 21, 1880.

³⁰⁷ For the full story see Li, “*Shoubu hanyi Meiguo Xianfa wenshi kao.*”

³⁰⁸ Zhang, *Sanzhou riji*, vol. 2, 43b–63b.

whether the translation had already been published in China or not.³⁰⁹ It had: seven years earlier, in a book published by Fu Yunlong 傅雲龍 (1840–1901) in 1889.³¹⁰ Equally, Li Wenjie and his colleagues have noticed Zhang’s publication, but not the version published by Fu Yunlong, which has not been discovered by secondary literature up to this day. Fu’s translation shall be discussed in the next sub-section.

The translation also made its way to the press: A year later, Cai’s translation was published in the *Chinese Progress* (*Shiwu bao* 時務報), the reformist paper edited by Liang Qichao in Shanghai. The translation came out in six instalments between November 15, 1897 and February 11, 1898³¹¹ in a version virtually identical to the one published by Zhang Yinhuan, complete with amendments and commentaries.³¹²

Another reformist journal, the *British Eastern Asia News* (*Dongya bao* 東亞報), published yet another translation of the US American constitution just half a year later, in 1898. In spite of its odd English name, the magazine was rather a Sino-Japanese coöperation: It was the first Chinese-language magazine edited in Japan,

³⁰⁹ Ibid., 63b.

³¹⁰ Fu, *Youli Meilijia Hezhongguo tujing* (chapter “On the state,” *guoshi zhi* 國事志).

³¹¹ Editions 45–48 and 50–51. Cai Xiyong 蔡錫勇, “Meiguo Hebang mengyue” 美國合邦盟約 (Constitution of the United States of America), in, *Qiangxue bao, Shiwu bao* 強學報·時務報 (Exhortation to learning; The Chinese progress), reprint, 5 vols. (Beijing: Zhonghua shuju, 2010), vol. 4, 3101–3102; 3169–3172; 3237–3242; 3305–3308; 3437–3442; 3513. Hu Qizhu 胡其柱, “Cai Xiyong *Meiguo Hebang Mengyue* yiben kaolun” 蔡錫勇《美國合邦盟約》譯本考論 (Examination of Cai Xiyong’s translation of the *Constitution of the United States of America*), *Xueshu yanjiu* 學術研究, no. 3 (2011), 95, claims that the translation was published on the 10th month of Guangxu 23 (November 5, 1897). This is incorrect. Edition 44 of the *China Progress* (*Shiwu bao* 時務報), published on November 5, 1897, did not contain any part of the translation; the translation began 10 days later. See *Qiangxue bao, Shiwu bao*, vol. 4, 2978.

³¹² The two versions have a slightly different wording here and there. See Hu, “Cai Xiyong ‘Meiguo Hebang Mengyue’ yiben kaolun,” 95. Apart from that, the version printed in the *China Progress* contained one minor omission. Between edition 47 and 48 (3305), the magazine omitted the first sentence of article II, section 1.6 (第六款總統因事開缺或身故或告退或有故未能任事即以副總統為正總統, original: “In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President”). Cf. Zhang, *Sanzhou riji*, vol. 2, 109. In the beginning of edition 50, the magazine stated that the instalment continued the one in edition 49, while in reality it continued edition 48.

more precisely, in Kobe.³¹³ Therein, a certain Kang Tongwen 康同文 from Nanhai 南海, a member of Kang Youwei's family,³¹⁴ translated the Japanese publicist Tsuboya Zenshirō's 坪谷善四郎 (1862–1949) translation of the US Constitution. The first edition of the magazine, of June 29, 1898, carried the introduction,³¹⁵ and the

³¹³ From number 7. onward, the magazine dropped the “British” part and was thenceforth entitled *The East Asia*. All contributors were either Chinese and Japanese, and only one of them – perhaps – had connections to Britain: his name in the magazine started out as Ying Ye Dong 英葉棟, but after the second number, the first syllable, *Ying* 英, which can stand for England, was dropped. On the magazine see Jiang Haibo 蔣海波, “‘Tōahō’ ni kansuru shohoteki kenkyū: Kindai Nitchū ‘shisō rensa’ no senjin toshite” 『東亞報』に関する初步的研究：近代日中「思想連鎖」の先陣として (Initial research on the “British East Asia Magazine”: The vanguard of modern Sino-Japanese “intellectual linkage”), *Gendai Chūgoku kenkyū* 現代中国研究, no. 32 (2013). This translation is also reported in the 1902 catalogue Xu Weize 徐維則 and Gu Xieguang 顧燮光, “Zengban dongxixue shulu” 增版東西學書錄 (Catalogue of books of Eastern and Western learning, augmented edition), in Wang Tao 王韜, Gu Xieguang 顧燮光 et al., *Jindai yishu mu* 近代譯書目 (Beijing: Beijing Tushuguan chubanshe, 2003), 73.

³¹⁴ According to a report written by the prefect of Hyōgo Prefecture, Ōmori Shigekazu 大森重一 (the reading of the name's last syllable is unclear), to the Foreign Minister of Japan, Ōkuma Shigenobu 大隈重信 (1838–1922), Kang Tongwen 康同文 was a nephew (*oi* 甥) of Kang Youwei's, who worked for the *Dongya bao* 東亞報 and was studying Japanese with Yamamoto Ken 山本憲, a Japanese sinologist. While Tong 同 is indeed the syllable used in the Kang clan for the generation following Kang's generation, the report does not clarify how many grades of separation there are between both of them. In the letters of Kang Youyi 康有儀, a cousin of Kang Youwei's, to Yamamoto Ken, there appear to be two distinct “Kang Tongwen” 康同文: one his own son, and one his nephews (*zhi* 姪), styled Jiefu 介甫, who was the one working at the *Dongya bao* 東亞報. For Ōmori's report see Hyōgo-ken Chiji Ōmori Shigekazu (?) 兵庫縣知事大森重一, Kimitsu ju dai 1550 gō: Gaimu Daijin Hakushaku Ōkuma Shigenobu Dono: Shinkoku seihen ni tsuite 機密受第一五五〇號：外務大臣伯爵大隈重信殿：清國政變ニ就イテ (Secret report No. 1550: To foreign minister Count Ōkuma Shigenobu, about the political upheaval in the Qing Empire), Meiji 31/9/27 [September 27, 1898], file no. B03050063900, Diplomatic Archives of the Ministry of Foreign Affairs of Japan, Tokyo. For Kang Youyi's letters with commentary see Lü Shunchang 呂順長, “Kō Yūgi no Yamamoto Ken ni ateta shokan (Yakuchū)” 康有儀の山本憲に宛てた書簡（訳注）(Letters by Kang Youyi to Yamamoto Ken [translations and annotations]), *Shitennojō Daigaku kiyō* 四天王寺大学紀要, no. 54 (2012), C111, 402–403 (n. 13), C112, 404–405 (n. 21); Lü Shunchang 呂順長 and Ōno Yasunori 小野泰教, “Kō Yūgi no Yamamoto Ken ni ateta shokan (Yakuchū, sono san)” 康有儀の山本憲に宛てた書簡（訳注・その三）(Letters by Kang Youyi to Yamamoto Ken [translations and annotations, part 3]), *Shitennojō Daigaku kiyō* 四天王寺大学紀要, no. 60 (2015), C161, 368–369, C165, 372–373, and Lü Shunchang 呂順長 and Ōno Yasunori 小野泰教, “Kō Yūgi no Yamamoto Ken ni ateta shokan (Yakuchū, sono yon)” 康有儀の山本憲に宛てた書簡（訳注・その四）(Letters by Kang Youyi to Yamamoto Ken [translations and annotations, part 4]), *Shitennojō Daigaku kiyō* 四天王寺大学紀要, no. 61 (2016), C176, 262. See also Hu Xiaojin 胡曉進, “Qingmo Minchu Meiguo xianfa zai Zhongguo de fanyi yu chuanbo” 清末民初美國憲法在中國的翻譯與傳播 (The translation and dissemination of the constitution of the USA in China in the Late Qing and Early Republic), *Huadong Zhengfa Daxue xuebao* 華東政法大學學報, no. 3 (2015), 98.

³¹⁵ Tsuboya Zenshirō 坪谷善四郎, “Meiguo xianfa: zonglun” 美國憲法：總論 (The constitution of the USA: general remarks), trans. Kang Tongwen 康同文, *Dongya bao* 東亞報, no. 1 (1898).

text of the constitution was translated in nine instalments, published from the second to the eleventh edition of the magazine.

In spite of the academic flurry surrounding the US Constitution, few have taken due notice of another crucial text, the 1861 *Sketch of the American Federation*.³¹⁶ In Japan, Sasaki Yō 佐々木揚 mentioned it in a 2003 article, without being noticed in China.³¹⁷ In a recent article of 2015 dealing with the evolution of the terms *zhengti* 政體 and *guoti* 國體, Deng Huaying 鄧華瑩 recognised that Bridgman's *zhengti* was translating the US constitution, without noticing that it was actually the earliest translation of the US constitution into Chinese and, in fact, of any constitutional charter.³¹⁸

Most surprisingly, those who specifically ask about the earliest versions of the US Constitution have not yet discovered this text. Hu Qizhu 胡其柱 shortly mentions it, falsely attributing it to William Muirhead (Mu Weilian 慕維廉, 1822–1900) and swiftly dismissing it as “fragmented and vague, not being a complete

³¹⁶ See, of those not mentioned yet, Liu Wei 劉偉 and Fan Jinxue 範進學, “Meiguo xianfa lilun zai Zhongguo de zuichu chuanbo” 美國憲法理論在中國的最初傳播 (The initial dissemination of US American constitutional theory in China), *Shandong shehui kexue* 山東社會科學, no. 5 (2009), who are aware of both Elijah Coleman Bridgman and of the translation published in the *Wanguo gongbao* in 1881, but not of Bridgman's *Sketch of the American Federation*. Discussing Li Wenjie's and Hu Qizhu's articles Hu, “Qingmo Minchu Meiguo xianfa zai Zhongguo de fanyi yu chuanbo.” See also Liu Jianhui 劉建輝, “Demon Capital Shanghai: The ‘Modern’ Experience of Japanese Intellectuals,” *Sino-Japanese studies* 16 (2009). It must be noted however, that all the arguments presented refer to “complete” translations of the US Constitution. They are, thus, not technically false: Bridgman's text does not qualify for being a full translation, as it does not translate the amendments.

³¹⁷ Sasaki Yō 佐々木揚, “Shinmatsu no ‘kenpō’: Nisshin sensō zengo” 清末の「憲法」：日清戦争前後 (“Constitution” in the late Qing: Before and after the Sino-Japanese War), *Kyūshū Daigaku tōyōshironshū* 九州大学東洋史論集 31 (2003), 139.

³¹⁸ Deng Huaying 鄧華瑩, “1834-1898 nianjian ‘guoti’ yu ‘zhengti’ gainian de yanbian” 1834-1898 年間“國體”與“政體”概念的演變 (The development of the concepts of “guoti” and “zhengti” in the years 1834-1898), *Xueshu yanjiu* 學術研究, no. 3 (2015), 99. Furthermore, Xiong Yuezhi's translator Natascha Vittinghoff, in a footnote, translates the chapter title of Bridgman's book, “Jianguo lizheng” 建國立政, as “The constitution.” However, Xiong's article is not concerned with the term “constitution,” but with the term “president,” and he does not indicate that, in the examples he is adducing, he is actually translating the US Constitution back into English. Vittinghoff's *en passant* translation, thus, did go unnoticed by scholarship. See Xiong Yuezhi 熊月之, “‘Liberty’, ‘Democracy’, ‘President’: The Translation and Usage of Some Political Terms in Late Qing China,” trans. Natascha Vittinghoff, in *New Terms for New Ideas: Western Knowledge and Lexical Change in Late Imperial China*, eds. Michael Lackner, Iwo Amelung and Joachim Kurtz (Leiden: Brill, 2001), 83.

direct translation" (*lingsui er mohu, bing fei wanzheng de zhijie duiyi* 零碎而模糊，并非完整的直接對譯).³¹⁹ Hu's article ignores the 1861 *Sketch's* connections to the *Wanguo gongbao* article, and it has not inspired further researchers to continue exploring the matter: a follow-up article by Hu Xiaojin 胡曉進 still discusses the 1881 *Wanguo gongbao* article while ignoring the 1861 sketch. Hu's argument is that while Cai's translation and the *Wanguo gongbao* translation both appeared in 1881, it was the latter one which was the influential one.³²⁰

But in fact, the 1881 article published in No. 642 of the *Wanguo gongbao* was nothing else than a revised copy of a chapter in Elijah Bridgman's 1861 book. Even the subtitle of the *Wanguo gongbao* article is the same as the chapter title in the book:³²¹ "Founding the Nation and Establishing a Polity" (*Jianguo lizheng* 建國立政).

The book chapter began explaining that in the world, there were essentially three modes of government: Absolute monarchies, of which China, Vietnam and Turkey were named as examples; constitutional monarchies in which the monarch and the people held common sovereignty (like England and France); and republics without a hereditary ruler like the United States. The 1881 article maintained this explanation, but changed the examples somewhat. For absolutist countries, the text now gave the three standard examples that would stay very common until the global wave of constitutional upheavals in the 1900s: China and Turkey in Asia, and Russia in Europe. The introduction also reflected the political changes that had happened between 1861 and 1881: After the Third Republic had been proclaimed in 1870, France changed from being an example of a constitutional monarchy to being an example of a republic. Moreover, the perspective was neutralised: The

³¹⁹ Hu, "Cai Xiyong 'Meiguo Hebang mengyue' yiben kaolun," 95–96. Hu does, however, correctly give Bridgman and not Muirhead as the author in the footnotes, 101.

³²⁰ Hu, "Qingmo Minchu Meiguo xianfa zai Zhongguo de fanyi yu chuanbo," 102–103.

³²¹ Bridgman, *Damei lianbang zhilüe*, 24–27.

USA changed from being Bridgman's "my (federated) country" (*Wo [lianbang] guo* 我〔聯邦〕國) to being just the USA (*Meiguo* 美國).

Both texts then proceeded to explain the genesis of the constitution. They were largely the same text, with but minor differences in detail. Both texts used the same word for "constitution:" *Zhengti* 政體. Although this expression came to mean constitution in the broader sense of "form of government," it was clearly used for the written charter, a sense in which would continue to be used in 1860s Japan.³²² Finally, the 1881 text also tacitly corrects the date when the Constitution was established from Qianlong 52 (=1787) to Qianlong 53 (=1788).

The *Sketch*—and, with only minor changes in wording, the 1881 article—went on to translate first the preamble and then the seven original articles of the US Constitution. The translation contains the main parts of the articles, but is abridged and omits sections of less interest to Chinese readers. Thus, Hu (and with him, the other scholars searching for the first "complete" translation) is right in pointing out that the translation is not complete.

But is it also "fragmented and vague?" The 1861 text is indeed a bit more precise than its 1881 clone: While the 1861 text does give commentary-like explanations in fine print (e.g.: "According to a Law given in the year of Qianlong 50, a State is allowed to elect one member [of the House of Representative] per 30.000 inhabitants"³²³), the 1881 text does not make a distinction between main text and commentaries, setting them off with mere spaces. Sometimes, the order of the text is changed: In the original constitution, the composition of the House of Representatives precedes that of the Senate, while in the translation, the Upper House (=Senate) precedes the Lower House (=House of Representatives). But overall, the translation is rather coherent and accurate, translating all seven articles of the US constitution.

³²² Cf. Rao, "Cong she yiyuan dao li xianfa," 31, who ignores that the term was also used in Chinese and not only in Japanese.

³²³ Bridgman, *Damei lianbang zhilüe*, 26; "Xu huanyou diqiu lüeshu di ershiliu ci," 370b.

But in one sense, the *Wanguo gongbao* is more complete than the *Sketch*. While the 1861 version does continue to discuss US American political posts and the judiciary system, the *Wanguo gongbao* does, in the following edition (no. 643, of June 11, 1881), publish still another article, entitled “Constitutional Amendments, with an Illustration” (*Xiuzeng zhengti bing tu* 修增政體並圖). Therein, all fifteen amendments to the US Constitution that had been passed so far were translated, with some abridgments. The translation ended full of praise:

This is the charter that founds the Union. Regardless of whether the President or the Congress or federal officers meet and deliberate about any matter, they have to unwaveringly follow the Charter. All who follow it, thrive, but those who do not follow perish. This is a principle of course. Are the relations of this Constitution not admirable?

此即聯邦立國之章程也不論民主不論公議堂不論聯邦官員會議何事不得確遵章程凡遵之者則興而不遵者則衰此乃一定之理也其政體之關繫豈不偉哉

324

But Bridgman’s 1861 book is not only remarkable for being the first (albeit abridged) translation of the US Constitution; it is also remarkable for being an early example of the international co-production that was the notion of a constitution. It was a Chinese-language book whose precursor had been written by an American missionary and printed in Singapore, and whose 1861 edition, published in Shanghai³²⁵, had been revised by a Chinese scholar from Nanking named Guan Sifu 管

³²⁴ “Xu huanyou diqiu lüeshu di ershiqi ci: xiuzeng zhengti bing tu” 續環遊地球畧述第二十七次：修增政體並圖 (Continued brief account of a trip across the world, no. 27: constitutional amendments, with an illustration), *Wanguo gongbao* 萬國公報 13, no. 643 (Guangxu 7 [1881]).

³²⁵ For importance of Shanghai within East Asia see Liu Jianhui 劉建輝, “‘Modernity’ Comes out of Shanghai: The Foundation and Development of an Information Network in the Bakumatsu-Restoration Period,” in *Historiography and Japanese Consciousness of Values and Norms*, eds. Joshua A. Vogel and James C. Baxter (Kyoto: Kokusai Nihon bunka kenkyū sentā, 2003) and Liu, “Demon Capital Shanghai.”

嗣復 (?–1860).³²⁶ From there, the book went to Japan, where it made a career of its own. The first Japanese edition—it would not remain the only one³²⁷—was published in Tokyo three years later, in 1864. The Japanese book was not a translation, but was edited in the original Chinese with reading marks for Japanese *kanbun* added by the scholar of Western learning Mitsukuri Genpo 箕作阮甫 (1799–1863).

The Japanese edition of the book came at the right time to the right place where it was needed. For in the middle of the 19th century, the political system of the Tokugawa Shogunate fell apart, marking the end of the Edo period. In 1853/1854, Matthew Calbraith Perry (1794–1858), Commodore of the United States Navy, forced Japan to open her ports for foreign commerce. Following this, Japan was forced to sign a series of treaties with highly disadvantageous clauses, the so-called “unequal treaties.” In 1867, the Meiji 明治 Emperor (1852–1912) ascended to the Throne, initiating an extensive programme of political reforms beginning from 1868.

In the midst of this upheaval, it was not in China where the notion was first vigorously used for the sake of internal political reform, but in neighbouring Japan—and Japan would also become the first East Asian state to implement a constitutional charter. Japanese debates about constitutionalism began in the *Bakumatsu* 幕末 period (1853–1868), and continued even more vigorously after the Meiji Restoration.³²⁸

³²⁶ On Guan Sifu and the *Sketch of the American Federation* see Yao Dadui 姚達兌, “Wanqing chuan-jiaoshi Zhongguo zhushou de shenfen rentong wenti: Yi Wang Tao, Guan Sifu, Jiang Dunfu wei zhongxin” 晚清傳教士中國助手的身份認同問題: 以王韜、管嗣復、蔣敦復為中心 (Problems about the personal identification of the Chinese assistants to the late Qing missionaries: Centering on Wang Tao, Guan Sifu, and Jiang Dunfu), *Zhongguo xiandai wenxue yanjiu congkan* 中國現代文學研究叢刊, no. 11 (2014), 36–39.

³²⁷ On the various editions of the book in Japan see Sugii Mutsurō 杉井六郎, “Taimi Renpō shiryaku no honkoku 「大美聯邦志略」の翻刻 (The reprint of the *Sketch of the American Federation*), *Shisō* 史窓, no. 47 (1990).

³²⁸ About Bakumatsu and Early-Meiji discussions on constitutionalism see Banno Junji 坂野潤治, *Mikan no Meiji ishin* 未完の明治維新 (The unfinished Meiji restoration) (Tokyo: Chikuma shobō, 2007).

In March 1868, the newly-ascended Meiji Emperor issued a short five-article *Charter Oath* (*Goseimon* 御誓文), a declaration of intent which set the basis for the subsequent Meiji reforms. Three months later, in June of 1868, the newly-ascended Meiji Emperor proclaimed Japan's first constitution, drafted by Soejima Taneomi 副島種臣 (1828–1905) and Fukuoka Takachika 福岡孝弟 (1835–1919). The document came to be known as *Document on the Government System* (*Seitaisho* 政體書),³²⁹ but its original title was a syllable shorter: *Seitai* (Chinese *zhengti* 政體)³³⁰ — the same *Seitai* used by Elijah Bridgman in his book to describe the Constitution of the United States.

While there is no direct evidence that the title refers to Bridgman's translation, scholarship does suppose that Bridgman's book was widely read by leading Japanese figures of the time, including the drafters Soejima and Fukuoka, as well as others such as Katō Hiroyuki.³³¹ That the book was seen as crucial in the early development of the notion of a constitution in East Asia can also be seen from the writings of Hozumi Nobushige 穂積陳重 (1855–1926), who mentions it as one of the basic examples in his musings about "constitution."³³² It is, thus, quite possible

³²⁹ Wilhelm Röhl, *History of Law in Japan since 1868* (Leiden, Boston: Brill, 2005), 31. On the *Seitai* 政體 see 31–40.

³³⁰ *Seitai* 政體 (Constitution) (Tokyo: Izumiya ichibee, Keiō 4 [1868]).

³³¹ Suzuki Shūji 鈴木修次, "Terminology Surrounding the 'Tripartite Separation of Powers,'" *Sino-Japanese Studies* 14 (2007). Suzuki's article deals specifically with the word *seitai* 政體, but only in the meaning of "forms of government." Albeit expressly mentioning Bridgman, he overlooks that it can also directly refer to a constitutional charter. Instead, Suzuki maintains that the drafters learned the "spirit" of the United States Constitution through books like Bridgman's and Fukuzawa Yukichi's 福沢諭吉 (1835–1901) *Things Western* (84). Both Bridgman's and Fukuzawa's works contained a translation of the US Constitutional charter, and not only a description.

³³² Hozumi, *Hōsō yawa*, 171. Hozumi writes that there had been no adequate translation for the term "constitution," and that Elijah Coleman Bridgman translated it to "established rules to be followed by generations" (*shishou chenggui* 世守成規). Hozumi does not mention that Bridgman translates the text of the United States Constitution, although this does not mean that he oversaw it, for this statement was not necessary in his context. But what is strange is that he gives "established rules to be followed by generations" (*shishou chenggui/seshu seiki* 世守成規) as a translation for the term "constitution," when the real translation was *zhengti/seitai* 政體, and the expression *shishou chenggui/seshu seiki* 世守成規 was merely an attribute of *zhengti/seitai* 政體: "Together, they agreed to adopt a constitution, so that it may be the established rules to be followed by generations in the New Country" (*gongtong yiding kaichuang zhengti, yi wei Xinguo shishou chenggui* 公同議定開創政體。以爲新國世守成規。"). Bridgman, *Damei lianbang zhilüe*, 26.

that the title of the *Seitai* harked back to Bridgman's translation of the United States Constitution. At any rate, it is neither surprising nor uncommon that a constitutional charter was called "form of government," as this is actually the original meaning of the very word "constitution."

The "June Constitution"—as Ernest Satow (1843–1929) translates the *Seitai*³³³—was much more substantial than the Charter Oath, restoring the Council of State (*Dajōkan* 太政官) as the highest office of the state, organising the separation of powers and providing for elections (which were limited to public officials). But—again, in the words of Ernest Satow, —it was "pretty evident that this constitution was not to be the final one, and it seemed ... to contain in itself the elements of change."³³⁴

d) The Japanese Constitutional Process, 1871–1890

A large portion of literature contends that the term *xianfa* 憲法 in its modern sense was first used in Japan.³³⁵ This is not completely accurate: It was actually first used by Wang Tao 王韜 (1828–1897) in 1870, after he returned from a trip to Europe.³³⁶ Although the term did eventually acquire a strong Japanese feeling,³³⁷ it only began to be used in Japan three years later. In 1873, Ōi Kentaburō 大井憲太郎 (1843–

³³³ Ernest Satow, *A Diplomat in Japan: The Inner History of the Critical Years in the Evolution of Japan when the Ports were Opened and the Monarchy Restored, Recorded by a Diplomatist who Took an Active Part in the Events of the Time, with an Account of His Personal Experiences during that Period* (Philadelphia, London: J.B. Lippincott Company; Seeley, Service & Co., Ltd., 1921), 381. It is to be noted that Satow also translates the *Charter Oath* as "March Constitution."

³³⁴ *Ibid.*, 381.

³³⁵ Cui, "Qingting zhixian yu Mingzhi Riben," 17.

³³⁶ See Rao, "Cong she yiyuan dao li xianfa," 31.

³³⁷ See a speech held by Yan Fu 嚴復 (1853–1921) in 1906, entitled "The General Meaning of 'Constitution'" (*Xianfa dayi* 憲法大意), wherein he criticised that, as in ancient times *xian* 憲 meant the same as *fa* 法, *xianfa* 憲法 was a tautology. He remarked that "the new words of today came after having been peddled in Japan, and most of them suffer of this defect." Yan Fu 嚴復, *Yan Fu heji* (*Yan Fu wenji biannian* (2): *Guangxu sanshinian–Xuantong yuannian*), 1904–1909 嚴復合集 (嚴復文集編年(二): 光緒三十年--宣統元年), 1904–1909 (Collected Works of Yan Fu [Works of Yan Fu in Chronological Order (2): Years Guangxu 30 - Xuantong 1], 1904–1909) (Taipei: Gu Gongliang wenjiao jijinhui, 1998), 472. The translation slightly differs from that presented by Zhao, "Rethinking Constitutionalism in Late 19th and Early 20th Century China," 472.

1922) and Mitsukuri Rinshō 箕作麟祥 (1846–1897), the grandson of Mitsukuri Genpo, the man who had annotated Bridgman’s book, used the term in an official translation of a French textbook penned by Émile Delacourtie (1859–?).³³⁸ Moreover, Hayashi Masaaki 林正明 (1847–1885), a young scholar who had been sent for studies in the USA and in Europe, occupied a post in the *Dajōkan* 太政官 upon his return and published several books in 1873, including one entitled *Constitution of England* (*Eikoku kenpō* 英國憲法)³³⁹ and one full translation of the US Constitution (*Gasshūkoku kenpō* 合眾國憲法).³⁴⁰

Generally speaking, in the *Bakumatsu* and early-Meiji debates, Japanese intellectuals strove to create a “prosperous country” (*fukoku* 富國) and a “strong military” (*kyōhei* 強兵).³⁴¹ Such was also the argument made—in literary Sinitic—by Hayashi Masaaki in the foreword to the translation of the US Constitution, an argument that would later also be very prevalent in Chinese discourse. A constitution was the key for a nation to becoming “prosperous and strong” (*fukyō* 富強):

Why is it that all the countries in the Far West are getting more prosperous and stronger by the day? It is because their political systems have more commonalities than differences. The similarities boil down to one point: the adoption of a constitution.

遠西諸邦日致富強者何也蓋其政體大同小異而歸一之要則在立憲法³⁴²

³³⁸ Émile Delacourtie, *Fukoku seiten* 佛國政典 (Compendium of the government of France), trans. Ōi Kentarō 大井憲太郎 and Mitsukuri Rinshō 箕作麟祥, 12 vols. ([Tokyo]: Shihōshō, Meiji 6 [1873]), vol. 1, chapter “Topic” (*Daigen* 題言), 2b. The term *kenpō* 憲法 is usually credited to Mitsukuri rather than to Ōi.

³³⁹ Hayashi Masaaki 林正明, *Eikoku kenpō* 英國憲法 (Constitution of England) (Tokyo: Kyuchidō, Meiji 6 [1873]).

³⁴⁰ Hayashi Masaaki 林正明, *Gasshūkoku kenpō* 合眾國憲法 (Constitution of the United States) (Tokyo: Kyuchidō, Meiji 6 [1873]).

³⁴¹ Secondary literature has debated whether *fukoku kyōhei* was a single slogan or whether *fukoku* and *kyōhei* were two distinct concepts. See Banno, *Mikan no Meiji ishin*, 156–158.

³⁴² Hayashi, *Gasshūkoku kenpō*, 1a.

The debates were not only passively received on the Japanese side. The drafters of the final constitution did actively discuss their constitution with foreign constitutionalist colleagues, first in travels abroad, then in letter correspondence and by hiring European advisors in Japan, like, most famously, Hermann Roesler (1834–1893) and Albert Mosse (1846–1925).³⁴³ In 1871, the Meiji government sent the Iwakura Mission to the United States and Europe with the aim of renegotiating the “unequal treaties.” Although the mission, led by Iwakura Tomomi 岩倉具視 (1825–1883), a minister at the Japanese government, did not succeed with this goal, it succeeded with a second one: to study western societies, including their political institutions, in order to modernise Japan.

Certainly, the conditions under which this process of introducing the Meiji constitution took place were highly specific to Japan. Internally, more than two hundred years of Tokugawa rule had ended, turning the country’s political configuration upside down. Externally, the Meiji reforms, with the constitutional project at the top, were effected under the impression of the “unequal treaties” forced upon Japan and hence aimed at securing Japan’s sovereignty.³⁴⁴

Again, crucial questions in the debates were whether Japan was mature enough for a constitutional system, how a constitution could be made to represent Japan’s specificities and what role education played in this process. Fukuzawa Yukichi, one of the most influential intellectuals of early-Meiji Japan, after travelling extensively on diplomatic missions to the United States and Europe, published in 1868 a seminal book entitled *Things Western* (*Seiyō jijō* 西洋事情). In his book, he explained to the Japanese readership that, according to European political scientists, there were six conditions for civilized politics. The fourth condition was “the

³⁴³ On Rudolf von Gneist’s (1816–1895) correspondence with Japanese leaders about the Japanese constitution see the fresh findings by Takii, *The Meiji Constitution*, 85–87.

³⁴⁴ See Ōishi Makoto 大石眞, *Nihon kenpōshi* 日本憲法史 (Constitutional history of Japan) (Tokyo: Yūhikaku, 1996), 9–12, and Miyazawa Toshiyoshi, *Verfassungsrecht (Kempō)*, trans., ed. Robert Heuser and Yamasaki Kazuaki (Köln et al.: Carl Heymanns Verlag, 1986), 19.

education of talents through the building of schools” (*gakkō o tate jinzai o kyōiku suru koto* 學校ヲ建テ人才ヲ教育スルヲ).³⁴⁵

One of the notions that came up in Japan, too, was that the people had to be equipped with the necessary knowledge (jap. *minchi*/mand. *minzhi* 民智) for a country to develop. Tsuda Mamichi had spent several years in the Netherlands studying political science and constitutional law. Upon his return, in 1868, he published the book *Western Constitutional Theory* (*Taisei kokuhōron* 泰西國法論), a translation of lectures on constitutional law (*Staatsregt*) he heard in the Netherlands by Simon Vissering (1818–1888). When discussing the sovereignty, namely popular sovereignty versus the ruler’s sovereignty, Tsuda wrote:

The degree of that country’s cultural sophistication follows the level of enlightenment of the popular knowledge.

其國人文開闢ノ度民智明發ノ級ニ從ヒ³⁴⁶

Fukuzawa Yukichi himself stressed several times the importance of equipping the people with the right knowledge for the proper functioning of a modern government. Thus, in his 1878 *Primer on People’s Rights* (*Tsūzoku minken ron* 通俗民權論), he declared:

If the people are stupid, then the government will also be stupid. If the people are wise, then the government will also be wise.

人民愚ナレバ政府モ亦愚ナラン人民智ナレバ政府モ亦智ナラン³⁴⁷

³⁴⁵ Fukuzawa, *Seiyō jijō*, 8a.

³⁴⁶ Vissering and Tsuda, *Taisei kokuhōron* (1868), *kan* 卷 1, 8a; Vissering and Tsuda, *Taisei kokuhōron* (1877), 32. The first handwritten manuscript of 1866 has a slightly different wording: 其國人文開闢ノ度民智明弘ノ階級ニ從ヒ. Vissering and Tsuda, *Taisei kokuhōron* (1866), vol. 1, chapter 2, section 16.

³⁴⁷ Fukuzawa Yukichi 福沢諭吉, *Tsūzoku minken ron* 通俗民權論 (Primer on people’s rights) (Tokyo: Yamanaka ichibee, Meiji 11 [1878]), 12.

Another Japanese statesman of the early Meiji period, Kido Takayoshi 木戸孝允 (1833–1877), too, argued for a constitution to be carefully introduced in accordance with the “degree of civilisation” of a country, in an argument that would later also be often heard in Qing China:

...the internal conditions of the country must be profoundly studied, what the people produce must be taken into account, and, most important of all, policies must be suited to the degree of civilization of the people. Again, in ordering the affairs of a nation, its strength must be taken into account. If not, one good will be converted into a hundred evils. ... Those who order the affairs of a nation should remember before taking action, to consider the due sequence of measures, and should proceed by gradual steps in nourishing its strength, for no nation ever attained a perfect state of civilization in a single morning. ...³⁴⁸

...深く内國ノ状態ヲ考へ、廣ク人民ノ生産ヲ顧ミ、其開化ノ度ニ應ジテ能施設スルヲ主トセリ、夫レー國ヲ經理スルニハ必ズ一國ノ力アリ、力ヲ計リテ事ニ處セザレバー利變ジテ百害トナル、.....國事ヲ理ムル者も亦手ヲ下スニハ宜シク其次ヲ繹ヌベク、力ヲ養フニハ宜シク其漸ニ從フベシ、文明ノ至治固ヨリ一朝ノ能ク求メ得ル所ニ非ザレバナリ、.....³⁴⁹

There was wide divergence on how quick or how slow the gradual transition to a full-fledged constitution should be, and in general of what shape the *nascitura* constitution of Meiji Japan should take. But the principles of gradualism and of accordance to the national specificities as such were agreed on. Thus, the Japanese government announced the goal of gradually advancing towards a full-fledged constitutional system and presented a first draft of a (final) constitution in 1878. In

³⁴⁸ The translation follows William T. de Bary, Carol Gluck and Arthur E. Tiedemann, eds., *Sources of Japanese Tradition: Volume Two: 1600–2000* (New York: Columbia University Press, 2005), 681.

³⁴⁹ Apud Kido Kō denki henzanjo 木戸公傳記編纂所, ed., *Kido Takayoshi den* 木戸孝允公傳 (Biography of Kido Takayoshi) (Tokyo: Meiji shoin, Shōwa 2 [1927]), 1567.

1881, the Meiji Emperor announced that a National Assembly would be opened in 1890.

One of the participants of the Iwakura Mission, the young Itō Hirobumi, became the main figure behind the Meiji Constitution.³⁵⁰ In 1882/1883, a further mission, headed by Itō, visited several countries of Europe and the United States with the specific goal of studying the respective constitutions. In 1884, an imperial order created the *Office for the Investigation of Institutions* (*Seido torishirabe kyoku* 制度取調局). The Constitution of the Empire of Japan (*Dainippon kenpō* 大日本帝國憲法) was proclaimed on February 11, 1889 and went into effect in 1890 (Meiji 22), essentially following the German (Prussian) model.³⁵¹

Not all were enthusiastic about this Japanese way of adopting a constitution. For some, it was still too fast, too un-gradual and too close to European models. As would later be the case in China, it was especially foreigners who were often more skeptical about the adoption of a constitution than the Japanese themselves. The British Herbert Spencer (1820–1903), for example, had argued to Mori Arinori 森有禮 (1847–1889), the Japanese minister to London, that Japan should not replace her own institutions, but graft the new ones on the old to a gradually increasing extent. Japan should, thus, only gradually and very carefully introduce a constitution. In 1892, after the adoption of the constitution, he wrote discontented letters to Itō Hirobumi's former private secretary, Kaneko Kentarō 金子堅太郎 (1853–1942), complaining about Japan's "miscarriage" of her constitution and suggesting that Japan restrict the electorate to family patriarchs.³⁵²

³⁵⁰ About the constitution-making process in Japan see Ōishi, *Nihon kenpōshi*, 15–228.

³⁵¹ The original text of the constitution is reproduced in Ienaga Saburō 家永三郎, Matsunaga Shōzō 松永昌三, and Emura Eiichi 江村栄一, *Meiji zenki no kenpō kōsō* 明治前期の憲法構想 (Constitutional ideas in the early Meiji period) (Tokyo: Fukumura, 1967), 335–340. For an English translation of the Constitution, see Takii, *The Meiji Constitution*, 149–161.

³⁵² Herbert Spencer, *The Life and Letters of Herbert Spencer*, ed. David Duncan (London: Methuen & Co., 1908), 319–323, letters of August 21, 23, and 26, 1892 (on the political constitution in particular: 319–320, letters of August 21 and 23).

But in spite of its striking resemblance with the Prussian model, the drafters of the constitution did make some efforts to fit the constitution into the Japanese tradition. In the title of the charter, the term *kenpō* 憲法 won against *kokken* 國憲, the translation preferred by Katō Hiroyuki,³⁵³ and later also won out as the standard equivalent for “constitution” in Korean and Chinese. Zhao Hui raised the possibility that the mere choice of the term *kenpō* 憲法 might have been a reference to Japanese tradition:³⁵⁴ It possibly evoked the *Seventeen Article Constitution* (*Jūshichijō kenpō* 十七條憲法), a collection of philosophical principles put forward by Prince Shōtoku 聖德 (574–622) in 604 AD.³⁵⁵

Substantially, the new Constitution also meant to conform to Japan’s “national polity” (*kokutai* 國體). For Itō and the crafters of the Meiji Constitution, the peoples of Europe had grown accustomed to constitutionalism with time, and there was a religion as a unifying principle. In Japan, Itō concluded, the emperor’s position would be to fill the rule of unifying factor of the newly-emerged Japanese nationhood.³⁵⁶ These thoughts led to the perhaps most emblematic provision of the

³⁵³ Katō, *Rikken seitai ryaku*, 6a.

³⁵⁴ Zhao, “Rethinking Constitutionalism in Late 19th and Early 20th Century China,” 72–73.

³⁵⁵ The *Seventeen-Article Constitution* bore but wee resemblances to modern-day political constitutions. See Shōtoku taishi 聖德太子, *Shōtoku taishi shū* 聖德太子集 (Works of Prince Shōtoku), eds. Ienaga Saburō 家永三郎 et al. (Tokyo: Iwanami shoten, 1975), 12–22 (text); 475–483 (commentary). For an English translation with a short commentary see William T. de Bary et al., eds., *Sources of Japanese Tradition: Volume One: From Earliest Times to 1600*, 2nd ed. (New York: Columbia University Press, 2001), 51–55. See further Asakawa Kan’ichi’s 朝河貫一 (1873–1948) seminal work in Asakawa Kan’ichi 朝河貫一, “The Reform of 645: An Introduction to the Study of the Origin of Feudalism in Japan” (PhD diss., Yale University, 1902), 214–219 and Asakawa Kan’ichi 朝河貫一, *The Early Institutional Life of Japan: A Study in the Reform of 645 A.D.* (Tokyo: Shueisha, 1903), 252–257. Going further back into history, the term *xianfa* 憲法 had already occasionally appeared in texts harking back to the Zhou dynasty, such as the *Discourses of the States* (*Guoyu* 國語) and *Guanzi* 管子. For a discussion of the meaning of *xianfa* in these texts see Zhao, “Rethinking Constitutionalism in Late 19th and Early 20th Century China,” 58–68.

³⁵⁶ See Masao Maruyama, “Denken in Japan,” in *Denken in Japan*, ed., trans. Wolfgang Schamoni (Frankfurt am Main: Suhrkamp, 1995), 43–51, quoting Itō’s speech when introducing the Constitutional draft in 1888 to the newly-founded Privy Council and the Emperor himself. See also Joseph Pittau, *Political Thought in Early Meiji Japan: 1868–1889* (Cambridge [Massachusetts]: Harvard University Press, 1967), 176–178, reproducing the same speech. See also Klaus Antoni, *Kokutai: Political Shintō from Early-Modern to Contemporary Japan* (Tübingen: Eberhard Karls University Tübingen, 2016), 264, who, however, seems to mistakenly refer to the official commentary on the Constitution. Itō’s commentary, however, did not contain such remarks; they rather stem from Itō’s 1888 speech.

Meiji Constitution, its article I. The expression concerning a dynastic rule “for ages eternal” had not existed in previous constitutions—and would later inspire the Korean constitutional document of 1899 as well as Qing China’s official constitutional documents of 1908 and 1911:

The Empire of Japan is reigned over and governed by a line of Emperors
unbroken for ages eternal.³⁵⁷

大日本帝國ハ萬世一系ノ天皇之ヲ統治ス³⁵⁸

Having thus become the central document of a rulership “for ages eternal,” the Meiji constitution was seen as a great success and became an inspiration for many constitutional processes near and far,³⁵⁹ but especially for China. After completing the political reforms and proclaiming a constitution, Japan managed to renegotiate the unequal treaties signed during the 1850s and herself became an imperialist power in East Asia, recognised as a peer by the Western powers. On the surface at least, this constitution proved to be remarkably stable and stayed in effect until the end of the Second World War, although the real form of government changed substantially during these five decades.³⁶⁰ The post-war constitution was formally

For Itō’s commentary see Itō Hirobumi 伊藤博文, *Teikoku kenpō gige; Kōshitsu tenpan gige* 帝國憲法義解・皇室典範義解 (Commentaries on the constitution of the Empire; Commentaries on the royal household law) (Tokyo: Kokka gakkai, Meiji 22 [1889]).

³⁵⁷ The officially sanctioned translation has “... shall be reigned” However, this does not cover the aspect that the provision not only provided for the future, but also stressed that Japan had supposedly been reigned by the same Imperial family since the legendary Emperor Jinmu 神武 (706–585 BC according to the legend). See the English version of Itō’s commentary, Itō Hirobumi 伊藤博文, *Commentaries on the Constitution of the Empire of Japan*, trans. Itō Miyoji 伊東巳代治, 2nd ed. (Tokyo: Chūō Daigaku [Central University], Meiji 39 [1906]), 2–5.

³⁵⁸ Itō, *Teikoku kenpō gige*, 2–4.

³⁵⁹ Here, the case of Ethiopia is particularly noteworthy, whose first constitution of 1931 drew heavily on the Meiji Constitution of 1889, corroborating the hypothesis that constitution-building was much more than just an emulation of Europe. See Donald N. Levine, “Ethiopia, Japan, and Jamaica: A Century of Globally Linked Modernizations,” *International Journal of Ethiopian Studies* 3, no. 1 (2007), 44–45. See further Aberra Jembere, *An Introduction to the Legal History of Ethiopia, 1434–1974* (Münster et al.: Lit Verlag, 2000), 167–172.

³⁶⁰ Röhl, *History of Law in Japan since 1868*, 51.

enacted as an amendment to the Meiji constitution, so that one could even argue that the Meiji Constitution has technically never lost effect.

The Meiji Constitution of 1889 became the very symbol of Japan's rise, not only in China, but also in the West. On the occasion of Itō Hirobumi's death in 1909, the *New York Times* remarked that it had been

... the imperial constitution, by virtue of which Japan took her place for the first time in the rank of modern civilized states.³⁶¹

Certainly, it is doubtful whether the Meiji Constitution, which effectively ended in the catastrophe of the Second World War, was really as successful as it seems. At any rate, although some Chinese and other observers oversimplified matters and boiled down Japan's Meiji-era rise to the introduction of a constitutional system, Japan's rapid development and accession to the circle of great powers was due to a very complex set of factors and not only due to the introduction of a constitutional mode of government. It was not without reason that Japanese intellectuals like Nakamura Shingo 中村進午 (1870–1939) argued against the Chinese tendency to overestimate the role played by the Meiji constitution.³⁶² Maybe, thus, Zhao Hui's underlying assumption that "Meiji constitution building succeeded on its own terms, yet late Qing China's did not"³⁶³ is not fully accurate. Keeping this in mind will be helpful to better understand the alleged failure of the Qing transition.

4. Chinese Knowledge about Constitutions from the 1870s to 1890s

a) Timothy Richard's Translations

Early political reformism in the Qing Empire during the last quarter of the 19th century was most often directed towards the creation of parliaments rather than

³⁶¹ *New York Times*, "Prince Ito Assassinated."

³⁶² Nakamura Shingo 中村進午, "Shinkoku rikken no zento o ayabumu" 清國立憲の前途を危む (L'avenir de la vie constitutionnelle en Chine: Uncertainty about the prospects of constitutionalism in China), *Gaikō Jihō* 外交時報 9, no. 12 (Meiji 39 [1906]), 255–256.

³⁶³ Zhao Hui, "Rethinking Constitutionalism in Late 19th and Early 20th Century China," 6.

the establishment of constitutions. Hence, secondary literature has not usually discussed that news about foreign constitutions were coming in to China long before Kang Youwei's and Liang Qichao *fin-de-siècle* reform plans, and in a more globalised form than commonly thought.

It is true that the Chinese term for "constitution" was not settled before well into the late 1890s, and that not everyone did fully grasp the concept by the 1890s. For example, someone who had difficulties translating the notion of "constitution" in Chinese was Timothy Richard, a Welsh missionary who was a contributor to the *Wanguo gongbao* and decisively contributed to the Chinese reform movement. In 1894, he drafted a book entitled *Policies for a Reform of Governance* (*Xinzheng ce* 新政策), for the first time using the term "Reform of Governance" (*xinzheng* 新政) in a book title.

In the same year, he published a book which immediately became one of the most important works on Western political history and institutions available in China. This was a translation, produced in collaboration with Cai Erkang 蔡爾康 (1851–1921),³⁶⁴ of Robert Mackenzie's oeuvre *The 19th Century: A History*. It appeared in Chinese under the title *Essentials of the Recent History of the West* (*Taixi xinshi lanyao* 泰西新史攬要). Lauded by Liang Qichao in 1896 for its thoroughness in dealing with the West's 19th century reforms that had led to its progress and advantage over Asia,³⁶⁵ myriads of copies of the book were sold in a plethora of editions.³⁶⁶

³⁶⁴ On Cai Erkang see Natascha Vittinghoff, *Die Anfänge des Journalismus in China (1860-1911)* (Wiesbaden: Harrassowitz, 2002), 95–98, with further references.

³⁶⁵ Liang Qichao 梁啟超, "Lun bu bianfa zhi hai (Bianfa tongyi)" 論不變法之害 (變法通議) (On the harms of not conducting reforms [Comprehensive discussion of reforms]), in *Qiangxue bao*, *Shiwu bao*, vol. 1, 75. Liang Qichao here uses an argument that he would later use specifically for constitutions: That the factors defining the West's progress were not ancient, but rather very recent (74–75).

³⁶⁶ Natascha Gentz, "From News, Xinwen 新聞, to New Knowledge, Xinxue 新學: Newspapers as Sources for Early Modern Chinese Encyclopaedias," in Doleželová-Velingerová; Wagner, *Chinese Encyclopaedias of New Global Knowledge*, 59. As Gentz writes, the first edition of 30.000 volumes sold out quickly, another edition of 1898 sold out in two weeks, there were 20 editions in total, and the Hanlin Academy alone ordered 100 copies.

Mackenzie's book does mention constitutions and constitutionalism in various places: from the United States to Switzerland to Russia (not mentioning the Turkish constitution of 1876). The Chinese translation, however, is rather *maladroit*, using a flummoxingly large number of equivalents for the original English, and sometimes two completely distinct terms in the same page or even in the same sentence. Many of these translations are very blurry, for example when they just write about adapting the political "system" when a new constitutional charter was adopted.³⁶⁷ In another case, the translation even renders the desire for a constitution as a desire for "new officials" (*xin zhi guanli* 新之官吏).³⁶⁸

This difficulty in grappling with the concept is certainly due to the translation process. Timothy Richard first provided an oral translation of the original, which Cai Erkang then rendered into literary Sinitic in written form. However, this is only one side of the story. For Richard's translation gets its message of reform to the reader. It does reveal the near-symbiotic connection of constitutionalism to popular representation: in one case, the English original writes that Prussia had "risen ... for the ... purpose of gaining a constitution."³⁶⁹ The Chinese translates this as "demanded the right to elect officials" (*qiu ju guan zhi quan* 求舉官之權).³⁷⁰ And in quite a few cases, the text does make clear the character of constitutions as separate legal texts regulating the polity. This is the case when it talks about European constitutions with terms "new scheme" (*xin mo* 新謨) and "new statutes" (*xin zhang* 新章).³⁷¹ The translation is clearest when talking about that constitution of the United States, for which it uses a number of rather precise terms like "stable law of the state" (*guojia dinglü* 國家定律),³⁷² "stable statute of the United States"

³⁶⁷ Mackenzie, *Taixi xinshi lanyao*, 48 (about Switzerland); 249 (about France); 269 (about France again); 280 (about Germany), 284 (about Saxony and Württemberg).

³⁶⁸ *Ibid.*, 283–284. Cf. Robert Mackenzie, *The 19th Century: A History*, 13th ed. (London, Edinburgh, New York: Thomas Nelson and Sons, 1891), 325.

³⁶⁹ *Ibid.*, 320.

³⁷⁰ Mackenzie, *Taixi xinshi lanyao*, 279.

³⁷¹ E.g., *ibid.*, 242.

³⁷² *Ibid.*, 377.

(*Meiguo dingli* 美國定例)³⁷³ and “stable system founding the country” (*kaiguo dingzhi* 開國定制).³⁷⁴ This difference in clarity is due to the status of the constitution of the United States as the most stable and most visible constitutional charter, in contrast to the rather controversial and unsteady European charters.

That Richard’s and Cai’s translation highly valued the aspect of legal or even constitutional reform is shown in the book’s finishing paragraph. The English version opened with the sentence “the nineteenth century has witnessed progress rapid beyond all precedent.”³⁷⁵ The Chinese version, however, adds a remark that the progress consisted in crafting legal statutes (*zhangcheng* 章程), the term which had been the earliest translation for “constitution” and here, too, probably emphasised the highest legal statutes organising the nation:

The reforms of all the statutes/constitutions in these hundred years have taken place in a miraculous pace that had never existed before.

此百年中所改諸章程，爲自古以來未有之神速。³⁷⁶

b) The *Wanguo gongbao* and the *Stateman’s Year-Book*

Even if it did not necessarily advocate for a constitution in China, Chinese published opinion followed constitutional developments abroad from an early stage. Timothy Richard was not the only missionary who contributed to the dissemination of the notion. As has already been mentioned, Richard was also a contributor to the *Wanguo gongbao* 萬國公報, a magazine founded by Young John Allen which did have a large readership among Chinese intelligentsia at the time.³⁷⁷ Allen placed emphasised matters constitutional both within and outwith the magazine.

³⁷³ Ibid., 379.

³⁷⁴ Ibid., 380.

³⁷⁵ Mackenzie, *The 19th Century*, 460.

³⁷⁶ Mackenzie, *Taixi xinshi lanyao*, 407.

³⁷⁷ On the relevance of the magazine see Hu, “Qingmo Minchu Meiguo xianfa zai Zhongguo de fanyi yu chuanbo,” 106–107, with further references.

According to its own self-promotion, the *Wanguo gongbao* was a magazine “devoted to the extension of knowledge relating to the geography, history, civilization, politics, religion, science, art, industry and general progress of Western countries.” Accordingly, it carried long articles such as the above-cited “Theory and Practice of Constitutional and Republican Governments” (*Yi minzhuguo yu geguo zhangcheng ji gongyitang jie* 譯民主國與各國章程及公議堂解),³⁷⁸ the 1881 translation of the United States Constitution,³⁷⁹ as well as other notes with constitutional news and information.³⁸⁰ And as will be seen, the outlook of the *Wanguo gongbao* was more global, for it did not only carry reports on the already-established constitutional governments.

Next to the magazine, Allen, together with Zheng Changyan, translated an œuvre compiled by the Geneva-born and Heidelberg-educated British writer Frederick Martin (1830–1883): *The Stateman’s Year-Book: Statistical and Historical Annual of the States of the Civilised World*. The Chinese translation was based on the 11th edition of the *Year-Book* for the year 1874.³⁸¹ It appeared under the Chinese title

³⁷⁸ “Yi minzhuguo yu geguo zhangcheng ji gongyitang jie.” The English translation is to be found in the table of contents of the magazine; a more literal translation would be “Translated description of republics and the constitutions and parliaments of all countries.”

³⁷⁹ “Xu huanyou diqiu lüeshu di ershiliu ci”; “Xu huanyou diqiu lüeshu di ershiqi ci.”

³⁸⁰ E.g. “Da Risibaniyaguo shi”; [Martin, Allen, and Zheng], “Tu’erjiguo shi: guoli guanzhi”; [Martin, Allen, and Zheng], “Da Eguo shi: guoli.”

³⁸¹ Frederick Martin, *The Stateman’s Year-Book: Statistical and Historical Annual of the States of the Civilised World for the Year. Handbook for Politicians and Merchants for the Year 1874*, Eleventh Annual Publication Revised After Official Returns (London: MacMillan and Co., 1874). The Chinese preface is a bit ambiguous, for it writes that the original *Year-Book* was “compiled in 1873,” and that now was the year 1874. Martin, Allen, and Zheng, “Lieguo sui ji zhengyao,” 95. The *Year-book*’s 10th edition “for the year 1873” was published in 1873, while the next (11th) was written “for the year 1874” and published in 1874. However, the *Year-book* covers data up to the year *before* it was published. A look on the translated data makes it unequivocal that the basis was the latter (1874) one. Cf., for example, the table on population numbers (xxxvi of the 1874 English edition and 99 of the Chinese edition; for the 1873 English edition with other numbers see Frederick Martin, *The Stateman’s Year-Book: Statistical and Historical Annual of the States of the Civilised World for the Year. Handbook for Politicians and Merchants for the Year 1873*, Tenth Annual Publication Revised After Official Returns (London: MacMillan and Co., 1873), xxxi.

Year-Book of the Essentials of Politics of all States (*Lieguo suiiji zhengyao* 列國歲計政要).³⁸²

Martin's *Year-Book* had entries on most major states of all continents (Europe, America, Africa, Asia and Australasia), including some of the major colonies. In the case of some (but not all) monarchies, entries began with a section about the "reigning sovereign." This section was then followed by a section on the government (when there was no section on the ruling sovereign, the section on the government stood first). Most of the sections on the government were entitled "constitution and government," and contained information on the constitutional characters of each country.

Martin's *Year-Book* talked about "constitutions" both in a broader sense of "mode of government" as well as in a narrower sense of "constitutional charter," and it informed the readers in prominent places—mostly at the beginning of the "government" section—about the constitutional charters or other legal documents of constitutional value that were in force in each country. Some of the section titles did not contain the word constitution (Russia, Turkey and Japan had the title "constitution and government;" in the cases of China, Persia and Siam, the word "constitution" was absent), but even then, the year-book introduced the "fundamental laws" in force.

The Chinese translation placed slightly less emphasis on constitutions than the English original. In a few cases, it omitted the references to the constitutional charter altogether, such as, e.g., of the still lacking constitution of the French Troisième République and of the 1856 charter of constitution of the British colony

³⁸² Martin, Allen, and Zheng, "Lieguo suiiji zhengyao." Iwo Amelung, "Zu den Staatsanleihen während der späten Qing-Zeit," in *Über Himmel und Erde: Festschrift für Erling von Mende*, ed. Raimund T. Kolb (Wiesbaden: Harrassowitz, 2006), 26, writes that the Year-Book was translated from the 1874 English edition. However, the preface to the Chinese edition expressly states that the translation was done in 1874, while the original book had been edited in 1873 ("Currently, we have the year 1874. This book was edited in the year of 1873, i.e., in China, the 12th year of the Tongzhi Emperor": *Zhijin 1874 nian, ci shu xi 1873 nian suoji, ji Zhongguo Tongzhi 12 nian ye*. 至今一千八百七十四年.此書係一千八百七十三年所輯.即中國同治十二年也). Martin, Allen, and Zheng, "Lieguo suiiji zhengyao," 95.

of Natal.³⁸³ These entries tended to stress the parliaments of the respective polities, and in the case of Italy, the 1848 *Statuto fondamentale del regno* became a “parliamentary statute” (*yiyuan zhangcheng* 議院章程), showing the close connection between constitutions and parliaments.³⁸⁴

In other cases, when the English original began with the constitution right away, the translations slightly rearranged the order and inserted a few short sentences introducing the location, population and history of the respective country, which, in the original, only came later in the text. This was the case, for example, in the entry for Liberia. While the English entry began with “the constitution of the Republic of Liberia is on the model of that of the United States of America,”³⁸⁵ the Chinese translation wrote:

“Liberia lies in Western Africa. Her population is entirely of black race. She was founded in 1822 and was proclaimed a republic in August of '47. She was first acknowledged by England, then by France, then by Belgium, Prussia, Brazil, Denmark and Portugal. In '61, the United States also acknowledged her. Her constitution follows the model of the United States, instituting a president and a vice-president. ...”

³⁸³ For the original see Martin, *The Statesman's Year-Book*, 648 (Natal). For the Chinese equivalent see Martin, Allen, and Zheng, “Lieguo sui ji zhengyao,” 305 (Natal). In the case of France, the original stated the form of government was not “embodied as such in a formal constitution” (which only would be passed in 1875), Martin, *The Statesman's Year-Book*, 55, while the translation omitted this, Martin, Allen, and Zheng, “Lieguo sui ji zhengyao,” 128. See also, among others, 176 (principality of Reuss-Greiz) and 203 (Greece).

³⁸⁴ Ibid., 206; Martin, *The Statesman's Year-Book*, 294–295. The section on Italy also omitted the original phrase “by royal decree of October 19, 1870, the Italian constitution was introduced into the newly annexed states of the sovereign Pontiff,” but clarified that the “prescribed rate of one deputy to 40,000 souls” was prescribed “according to the constitution” (*zhao zhang* 照章). The translation also omits the phrase that declares that “the ‘Statuto fondamentale del Regno’ enacts, in its first article, that ‘the Catholic, Apostolic and Roman religion is the sole religion of the State.’”

³⁸⁵ Ibid., 622.

里比利亞.在阿非利加洲西偏.民皆黑種.一千八百二十二年始開闢.四十七年八月立爲民主國.先爲英國所許.次法次比布巴丹葡.六十一年美亦許之.國例照美國立伯理璽正副二人. ...³⁸⁶

But overall, the Chinese version, too, conveyed to its readers the importance of constitutions as the founding and fundamental documents of a polity. In many cases, it translated the word “constitution” –both when meaning the charter and when meaning the structure of government—by the Chinese word “law of the state” (*guoli* 國例). This rendering was not entirely consistent: The translation also likes to use the expression “statute” (*zhangcheng* 章程) or “statute concerning state affairs” (*guowu zhangcheng* 國務章程)³⁸⁷, and in isolated instances, it also uses other

³⁸⁶ Martin, Allen, and Zheng, “Lieguo sui ji zhengyao,” 303.

³⁸⁷ Ibid., 142 (1871 Constitution of Germany), 223 (1815 Constitution of Poland – discussed under the entry for Russia), 316 (New South Wales Constitution Act), 319 (form of government instituted in 1859 in Queensland). In the case of Queensland, there might have been a misunderstanding. The original merely states that the “form of government” of Queensland was established December 10, 1859, on its separation from New South Wales, not expressly referring to a written charter and not mentioning the Letters Patent given by Queen Victoria – the only written document issued in that year with regard to Queensland. The Chinese version, instead, unmistakably speaks of a written statute given in that year. For the original see Martin, *The Statesman’s Year-Book*, 715. See also Martin, Allen, and Zheng, “Lieguo sui ji zhengyao,” 150 for Prussia, 159 for Bavaria, 161 for Württemberg, 163 for Saxony, 169 for Saxe-Weimar (abbreviated to *zhang* 章), 171 for Saxe-Meiningen and Anhalt (both using the long form *guowu zhangcheng* 國務章程), 174 for Lippe (abbreviated to *zhang* 章; the Chinese translation mistakenly writes 1866 instead of 1836), 177 for Hamburg, 178 for Lübeck and Bremen, 179 for Alsace-Lorraine. For some German states, however, the translator used the words *guofa* 國法 and *guozhang* 國章. See also 213 for the Netherlands. The mention of the Polish constitution is also contained in [Frederick Martin, Young John Allen [Lin Yuezhi 林樂知], and Zheng Changyan 鄭昌棧], “Da Eguo shi: guan zhi (lu lieguo sui ji zhengyao xinshu) 大俄國事：官制（錄列國歲計政要新書）” (Russian affairs: the administrative system, recorded in the new “Year-book of the essentials of politics of all states”), *Wanguo gongbao* 萬國公報 10, no. 466 (1877), 216a.

words such as “law of the state” (*guofa* 國法)³⁸⁸, “permanent regulations” (*changli* 常例)³⁸⁹ and “national statute” (*guozhang* 國章).³⁹⁰

At any rate, other than in many parts of Richard’s translation, the renderings of “constitution” in the Chinese *Year-Book* made it quite clear what was being written about. Thus, prominently at the top of the respective articles, the Chinese readers of the *Year-Book* were about the constitutional charters of European (Belgium, Denmark, Germany, etc.), South American (Argentina, Bolivia, Brazil, Chile³⁹¹, etc.), North and Central American (Honduras, Mexico, USA etc.), African (Liberia) and Australasian (New South Wales, Queensland, etc.) political entities.

The *Year-Book* did not only talk about the constitutions of constitutional states, but also of the supposedly absolute monarchies. Not surprisingly, the Chinese translation omitted the two entries about China (where the Great Qing Code, *Ta-tsing-hwei-tien* 大清會典, is identified as containing the “fundamental laws of the country”³⁹²) and Hongkong. In the case of Persia, the Chinese translation inserted the constitution into a sentence that in the original did not mention it. While the original stated that it was “in the power of the Persian monarchs to alter or to overrule the existing law of succession,” the Chinese wrote, before talking about the monarchic succession:

The laws of the land (*guoli* 國例) are in the power of the Shah-in-shah. He can change the constitution (*guofa* 國法). ...

³⁸⁸ For the 1831 constitution of Belgium, for the 1820 constitution of Hesse, for the 1849 constitution of Oldenburg, for the 1832 constitution of Brunswick, for the 1852 *Staatsgrundgesetz* of Saxe-Coburg-Gotha, for the 1831 constitution of Saxe-Altenburg, for the 1852 constitution of Waldeck (the Chinese version mistakenly writes 1851), for the 1849 constitution of Reuss-Schleiz. Martin, Allen, and Zheng, “Lieguo sui ji zhengyao,” 116 (Belgium), 167 (Hesse and Oldenburg), 168 (Brunswick), 172 (Saxe-Coburg-Gotha), 173 (Saxe-Altenburg and Waldeck), 175 (Reuss-Schleiz).

³⁸⁹ For the 1849 constitution of Denmark see *ibid.*, 122.

³⁹⁰ For the 1854 constitution of Schwarzburg-Rudolstadt, the 1857 constitution of Schwarzburg-Sondershausen, and the 1868 constitution of Schaumburg-Lippe. See *ibid.*, 174, 175 and 176, respectively.

³⁹¹ The Chinese translation mistakenly gives 1830 instead of 1833 as the date of promulgation. *Ibid.*, 272; Martin, *The Stateman’s Year-Book*, 510, with the correct date.

³⁹² *Ibid.*, 637. In this, Martin agrees with Staunton, *Ta Tsing Leu Lee*, 1, 16, 18.

The entries about the constitutions of the two other large Eurasian and Eurafasian absolute monarchies—Russia and Turkey—transcended the *Year-Book*. When the Russo-Japanese War of 1877/78 broke out, necessitating information about the two belligerent parties, the two entries were also reproduced in the *Wanguo gongbao*, which used the occasion to advertise the book.³⁹⁴

Russia was described as an autocratic country with an inherited Czarship. Although the English original talked about “absolutism,” the Chinese version did not use the usual translation for it, but calqued the Greek word “autocracy,” following the same path as the Russian word used as a self-description (*samoderzhavie* самодержавие, lit. self-rule). In Chinese, Russia was an autocracy (*zizhu zhi guo* 自主之國), wherein all the autocratic officials governed with the authority of kingly autocracy. The Chinese version at this point stressed that Russia had not set up a parliament (*bu she gongyitang* 不設公議堂), a remark not present in the English original of the text.³⁹⁵

Being based on the *Year-Book* of 1874, the article about the Ottoman constitution did not yet discuss the newly-adopted 1876 constitution. Instead, it described the pre-1876 situation, translating the misconceptions present in the English original. The article stated that the “constitution” (“fundamental laws of the Empire” in the original) was the Koran, next to the “‘Multeka,’ a code formed of the supposed sayings and opinions of Mahomet.” Furthermore, there was also the law code given by the Sultan Solyman the Magnificent (1495/96–1566), but this was only an “emanation of human authority.” However, as both the English and the Chinese versions of the *Year-Book* mistakenly wrote, “the Kuran and the ‘Multeka’

³⁹³ Martin, Allen, and Zheng, “Lieguo sui ji zhengyao,” 313; Martin, *The Stateman’s Year-Book*, 690 (see also 691 for more on the Shah-in-Shah’s role).

³⁹⁴ [Martin, Allen, and Zheng], “Tu’erjiguo shi,” 190.

³⁹⁵ [Martin, Allen, and Zheng], “Da Eguo shi: guoli.” See also Martin, Allen, and Zheng, “Lieguo sui ji zhengyao,” 221–222. For the English original see Martin, *The Stateman’s Year-Book*, 353.

alone” were believed to be “of divine origin, embody the fundamental laws of the state and prescribe the action of the theocratic government.”³⁹⁶

While the original *Year-Book* was an annual affair, the Chinese translation just appeared once in book form. But it did not merely have an immediate impact. 23 years later, in 1897, part of the up-to-date³⁹⁷ version of the *Year-Book*, then being edited by John Scott-Keltie (1840–1927) in coöperation with Isaac Parker Anderson Renwick, was translated into Chinese and published in the magazine *The Reformer—China* (*Zhixin bao* 知新報). Liang Qichao, editor of the magazine, wrote a review of the *Year-Book*, published in the *Shiwu bao* of July 20, 1897 (Guangxu 23/06/21).³⁹⁸

The translation appeared serially beginning from number 24 (Guangxu 23/06/11 = July 10, 1897) up to number 42 (Guangxu 23/12/11 = January 3, 1898) of the magazine, the country entries beginning from number 30 (Guangxu 23/08/11 = September 7, 1897). Saying “country entries” is an exaggeration, for while the full table of contents is published in numbers 24 and 25,³⁹⁹ only the entries for the

³⁹⁶ [Martin, Allen, and Zheng], “Tu’erjiguo shi”; Martin, Allen, and Zheng, “Lieguo sui ji zhengyao,” 253. For the English original see Martin, *The Statesman’s Year-Book*, 445.

³⁹⁷ The basis was the English 1897 version, but it was supplemented by data from the 1896 version, which, again, can be seen from the statistical tables at the beginning. For the 1897 version does not carry tables about the population of all countries in the world, but only about the British Empire. The Chinese population tables generally do use the data provided in the 1896 edition, but in the case of the British Empire itself uses the newer population data given in the 1897 *Year-Book*. See John Scott Keltie and Zhou Lingsheng 周靈生, “Dingyou lieguo sui ji zhengyao jianshou (geguo bijiao minshubiao)” 丁酉列國歲計政要卷首 (各國比較民數表) (Year-book of the essentials of politics of all states for the year dingyou (1897), first part [comparative population tables for all countries]), *Zhixin bao* 知新報, no. 25 (Guangxu 23 [1897]); John Scott Keltie and Isaac Parker Anderson Renwick, *The Statesman’s Year-Book: Statistical and Historical Annual of the States of the World for the Year 1896*, Thirty-third annual publication (London, New York: MacMillan, 1896), xxiv–xxv; John Scott Keltie and Isaac Parker Anderson Renwick, *The Statesman’s Year-Book: Statistical and Historical Annual of the States of the World for the Year 1897*, Thirty-fourth annual publication (London, New York: MacMillan, 1897), xxx.

³⁹⁸ Liang Qichao 梁啟超, “Lieguo sui ji zhengyao xu” 列國歲計政要敘 (Report on the year-book of the essentials of politics of all states), in *Qiangxue bao*, *Shiwu bao*, vol. 3, 2213–2216.

³⁹⁹ John Scott Keltie and Zhou Lingsheng 周靈生, “Dingyou lieguo sui ji zhengyao mulu” 丁酉列國歲計政要目錄 (Table of contents of the “Year-book of the essentials of politics of all states for the year dingyou [1897]”), *Zhixin bao* 知新報, no. 24 (Guangxu 23 [1897]); John Scott Keltie and Zhou Lingsheng 周靈生, “Dingyou lieguo sui ji zhengyao mulu” 丁酉列國歲計政要目錄 (Table of contents of the “Year-book of the essentials of politics of all states for the year dingyou [1897]”), *Zhixin bao* 知新報, no. 25 (Guangxu 23 [1897]).

United States of America and—partially—Switzerland were published. The publication stopped after number 42 of the magazine. Even the entry about Switzerland was not published in full, but stopped abruptly in the midst of its discussion about the military.⁴⁰⁰ According to the table of contents, the first part (*jüan* 卷) would further include an entry about Hawai‘i (*Tanxiangshan guo* 檀香山國), which, however, was not published.

Both Liang’s preface and the directions to the reader did not mention the notion of a constitution, though they stressed that the work explained the workings of parliament in each country.⁴⁰¹ Reflecting the now-popularised categorisation of forms of government, the 1897 translation of the *Year-Book* had a new, clear political set-up. The original was no longer ordered geographically, but alphabetically, with the exception of putting the United Kingdom at the front together with its colonies, thus separating it from the “foreign countries.” In the translation, however, according to the table of contents, the entries on the various countries were set to be ordered according to the form of government of each country, from “republics” (*minzhuguo* 民主國) to “constitutional monarchies” (*junmin gongzhu guo* 君民共主國) to “absolute monarchies” (*junzhuguo* 君主國). The table of contents, this time, even included an entry about the Qing Empire.⁴⁰²

The entry on the United States occupied ten (nos. 30–39) of the 13 numbers of the magazine that carried the two country entries. Just as in the version based on the 1874 *Year-Book*, the entry mentioned the constitution near the beginning, and gave the relevant constitutional norms for certain facts.⁴⁰³ The entry on the

⁴⁰⁰ John Scott Keltie and Zhou Lingsheng 周靈生, “Ruishi guo: bingzhi” 瑞士國：兵制 (Switzerland: military system), *Zhixin bao* 知新報, no. 42 (Guangxu 23 [1898]).

⁴⁰¹ Liang Qichao 梁啟超, “Lieguo suiwei zhengyao xu” 列國歲計政要敘 (Report on the “Year-book of the essentials of politics of all states”), in *Qiangxue bao*, *Shiwu bao*, vol. 3, 2214; Zhou Lingsheng 周靈生, “Dingyou lieguo suiwei zhengyao liyan” 丁酉列國歲計政要例言 (Notes on using the “Year-book of the essentials of politics of all states”), *Zhixin bao* 知新報, no. 24 (Guangxu 23 [1897]), no. 6.

⁴⁰² Scott Keltie and Zhou, “Dingyou lieguo suiwei zhengyao mulu,” *Zhixin bao* no. 24; Scott Keltie and Zhou, “Dingyou lieguo suiwei zhengyao mulu,” *Zhixin bao* no. 25.

⁴⁰³ “By the eighth section of the first article of the Constitution of the United States, Congress is empowered in general ‘to raise and support armies;’ and by the second section of the second army, the President is appointed commander-in-chief of the army and navy, and of the militia when called

United States used the term *guoli* 國例, with the section about state constitutions analogously talking about “statutes of the province” (*shengli* 省例). This reused the term that had—with ambiguous meaning—already appeared in Liang Tingnan’s 1844 *Description of the United States*.⁴⁰⁴

The article about Switzerland used a novel term—*chaozhi* 朝制—, which literally translates as “system of the court” and thus is somewhat odd referring to Switzerland. But the entry spent three pages talking about history and present of the Swiss constitution and the political system by it instated.⁴⁰⁵ Thus, in spite of the terminological uncertainty, the 1897 version of the *Year-Book* still made quite clear that the constitution was at the core of political systems.

c) News from Japan Coming to China

But magazines and translations edited by missionaries were not the only media of transmission. News also came in from Japan. Scholarship, when writing about the origins of the term, usually mentions that it was used by Wang Tao in 1870 and then again by Zheng Guanying 鄭觀應 (1842–1922) in the 1890s.⁴⁰⁶ This evokes the incorrect impression that the term was not used in the meantime. But it was—both in published opinion and in diplomatic correspondence.

For example, the *Shenbao* 申報, a widely-read Shanghai newspaper, reported on Japanese constitutional events from quite early on. In 1883, for example, it published an article about an assembly of 400 people in the village of Wadamura

into the service of the United States.” Scott Keltie and Renwick, *The Stateman’s Year-Book*, 1084. Chinese translation in John Scott Keltie and Zhou Lingsheng 周靈生, “Dingyou zhengyao jüan 1: Meiguo” 丁酉政要卷一：美國 (Essentials of politics for the year dingyou [1897], part 1: USA), *Zhixin bao* 知新報, no. 35 (Guangxu 23 [1897]), 22b.

⁴⁰⁴ John Scott Keltie and Zhou Lingsheng 周靈生, “Dingyou zhengyao jüan 1: Meiguo” 丁酉政要卷一：美國. (Essentials of politics for the year dingyou [1897], part 1: USA), *Zhixin bao* 知新報, no. 31 (Guangxu 23 [1897]), 6a–6b; John Scott Keltie and Zhou Lingsheng 周靈生, “Dingyou zhengyao jüan 1: Meiguo” 丁酉政要卷一：美國 (Essentials of politics for the year dingyou [1897], part 1: USA), *Zhixin bao* 知新報, no. 32 (Guangxu 23 [1897]), 7a.

⁴⁰⁵ Scott Keltie and Zhou, “Ruishi guo: guodian.”

⁴⁰⁶ Rao, “Cong she yiyuan dao li xianfa,” 31; Zhao, *Wang Rongbao*, 244–245.

和田村, Tamba province 丹波國,⁴⁰⁷ which called for “constitutionalism, freedom and people’s rights” (*rikken jiyū minken* 立憲自由民權). As the *Shenbao* frequently carried articles based on the Japanese press, some of the news about European constitutional events came in through a Japanese filter: On one occasion, it referred to a cable that had reached Nagasaki to report about a constitutional amendment in France using the term *xianfa* 憲法.⁴⁰⁸

Among the four articles printed in 1887–1888 about the Japanese Constitution, which was soon to enter in force, one is remarkable for not only summarising the ongoing drafting process of the Meiji Constitution, but also for showing some crucial points of constitutional debate which then would also become important in the Chinese constitutional movement:

(Japanese newspapers:) Our country’s constitution has always been rigid. Recently, it has been slightly modified with reference to the various countries. A draft has been first written by the officials, and it has been approved with corrections by the Ministers in the Cabinet. At present, they are investigating to forthwith hand it over to the commissioners to correct it. Moreover, they have hired German legal consultants to amend it. Among the legal provisions that have been agreed on, the foremost concerns the relations in the Imperial House, which are inherited for ten thousand generations. Therefore, its meaning is particularly precise and its words are extremely rigid. Even if the situation of the times changes, if there is chaos, the subjects become bandits, and children become wicked, committing crimes against those above, the Constitution is utterly respectable and honourable. That which has the capability of preventing this is truly an unalterable norm. Last month, the regulations have been amended. The assembly has entrusted minister plenipotentiary Inoue Kowashi to specially

⁴⁰⁷ *Shenbao* 申報, “Huidang ? sheng” 會黨□盛 (Large assembly of partisans), February 25, 1883.

⁴⁰⁸ *Shenbao* 申報, “Ouzhou jinshi” 歐洲近事 (Recent events in Europe), April 23, 1888.

show the constitutional draft to the plenipotentiary commissioners from all countries. More than only reading it, none of the commissioners from all countries was not full of praise for it, deeming that in the wide universe, constitutions must establish the Imperial house like this. Then it can certainly be relieved!

日本報云本日國憲法向來執一從嚴近今參照各國稍稍變通由各員先立草案再由內閣大臣批閱重加修正目下調查至急付各委員整訂外又聘德國法律顧問官補助之所定法律中第一以皇室關係萬世繼承故其意尤精密其詞極效嚴即使時勢變遷有亂臣賊子作奸犯上而憲法至尊至嚴有足以防制之者誠為不易之規也前月條約改正會議□全權大臣井上毅特持憲法草案以示各國全權委員各國委員披覽之餘靡不贊美以為天下萬千世界得國憲如此設立皇室定能安堵也⁴⁰⁹

It was not only published opinion which was interested in foreign constitutions; the government was, too. As noted, the Chinese legation in Washington had, in 1881, translated the US American Constitution to Chinese in order to better understand it. On the other side of the world, the Chinese legation to Japan reported on the Japanese government's decision to adopt a constitution and convene a parliament as soon as it was taken.⁴¹⁰ In 1889, the Chinese minister, Li Shuchang 黎庶昌 (1837–1896), together with his colleagues from other countries, attended the promulgation of the Meiji Constitution, reporting to the capital on the pompous ceremony.⁴¹¹

⁴⁰⁹ *Shenbao* 申報, "Dongying jiahua" 東瀛佳話 (Good news from Japan), May 2, 1887.

⁴¹⁰ He Ruzhang 何如璋, "Han shu Riben kaishe guohui bing Ying huangsun youli dao Riben ji Chaoxian paiyuan qianlai geshi" 函述日本開設國會並英皇孫遊歷到日本及朝鮮派員前來各事 (Report on the matters of Japan opening the national assembly; the arrival of the English prince on a visit, and the coming of Korean delegates), Guangxu 07/09/21 [November 12, 1881], file no. 01-19-007-02-003, Archives of the Institute of Modern History, Academia Sinica, Taipei.

⁴¹¹ The ceremony, however, was overshadowed by the murder of Mori Arinori 森有體 (1847–1889). See Li Shuchang 黎庶昌, Han shu cangan Riben banbu xianfa dianli bing Sen Youli bei ci qingxing 函述參觀日本頒布憲法典禮並森有體被刺情形 (Letter describing a visit to the ceremony of promulgation of the Japanese constitution and the circumstances of the murder of Mori Arinori), Guangxu 15/02/04 [March 5, 1889], file no. 01-19-007-02-005, Archives of the Institute of Modern History, Academia Sinica, Taipei.

d) Fu Yunlong and his Books

Some of the envoys sent by the Chinese government who personally visited foreign countries also published their experiences. For example, Cui Guoyin 崔國因 (1831 – 1909), the Chinese minister to the USA from 1889 to 1893, concurrently accredited to Spain and Peru, published, upon his return, his *Diary of a Mission to the USA, Spain and Peru* (*Chushi Mei Ri Bi guo riji* 出使美日秘國日記). Therein, he occasionally uses *guoli* 國例 to mention workings of the US American Government under the US Constitution, while also using the word to describe the simple unconstitutional law of Spain.⁴¹² Still, the mentions show that Cui, as other diplomats, understood the political importance of the Constitutional charter.

A much more distinctive figure, in constitutional terms, was Fu Yunlong 傅雲龍 (1840–1901), who is mostly remembered for his visit to Japan in 1889 on behest of the Zongli yamen. However, Fu Yunlong should not only be remembered for his voyage to Japan.⁴¹³ In fact, Fu's visit to Japan was part of a trip to the Americas, where he visited various other countries. Next to a few other works, for each country visited, he penned a book describing it. In every case, the book included a description of the political system of the respective country: Japan,⁴¹⁴ United

⁴¹² E.g. Cui, *Chushi Mei Ri Bi guo riji*, 220 (chapter 2, Guangxu 16/03/04 [April 22, 1890]): "According to the American constitution, the president exercises the joint supreme command over the land and sea forces..." (*kao Meiguo guoli zongtong jian tongling shuilu quanjun* 考美國國例總統兼統領水陸全軍...); see also *ibid.*, 103 (chapter 1, Guangxu 15/12/17 [January 1, 1890]), referring to the US Constitution as *Mei guoli* 美國例. For the reference to Spanish subconstitutional laws (*Riguo li* 日國例), see *ibid.*, 22. (chapter 1, Guangxu 15/09/20 [October 14, 1889]).

⁴¹³ On Fu Yunlong's book about Japan see Douglas R. Reynolds, "Japanese Encyclopaedias: A Hidden Impact on Late Qing Chinese Encyclopaedias?," in Doleželová-Velingerová; Wagner, *Chinese Encyclopaedias of New Global Knowledge*.

⁴¹⁴ Fu Yunlong 傅雲龍, *Youli Riben tujing* 游歷日本圖經 (Illustrated experiences of travelling to Japan) (Shanghai: Shanghai guji chubanshe, 2003).

States,⁴¹⁵ Peru,⁴¹⁶ Brazil⁴¹⁷, Cuba and the British Colony Canada.⁴¹⁸ While Fu's travel description of Japan has been reedited in 2003, his other works are still confined to the rare book collections of some libraries.

Fu visited Japan in 1889, the very year that the Meiji Constitution was promulgated, and the year before the Parliament was convened. His description of Japanese politics is not only centered around the Japanese constitution—it actually *is* the Japanese constitution. For Fu was the first to publish a translation of the Japanese constitution complete with the accompanying Imperial edict—even before it went into effect.⁴¹⁹ The translation of the constitution, thus, takes the part of the description of politics, and is followed by a historical chart putting the histories of Japan and China side by side.

If even his account of the Japanese constitution does not obtain the attention it merits in Chinese constitutional studies,⁴²⁰ his following travels in the Americas are totally ignored. But all the following countries visited by Fu (the USA, Peru, Brazil and Canada) had written constitutional documents. Although Fu does not always mention the word “constitution” when describing them, his descriptions follow the respective constitutions quite closely, and at points were indeed translations of them.

Thus, in his description of the United States,⁴²¹ he first sketches the history of independence of the United States and mentions the drafting process of the “seven articles” of the US Constitution. He then proceeds to offer yet another

⁴¹⁵ Fu, *Youli Meilijia Hezhongguo tujing*, chapter 30.

⁴¹⁶ Fu, *Youli Bilu tujing*, 4a.

⁴¹⁷ Fu Yunlong 傅雲龍, *Youli Baxiguo tujing 10 juan* 游歷巴西國圖經十卷 (Illustrated experiences of travelling to Brazil, in 10 chapters) (n.p., Guangxu 27 [1901]), chapter 8.

⁴¹⁸ Fu Yunlong 傅雲龍, *Youli Yingshudi Jianada tujing 8 juan* 游歷英屬地加納大圖經八卷 (Illustrated experiences of travelling to the English colony Canada, in 8 chapters) (n.p., Guangxu 28 [1902]), chapter 7.

⁴¹⁹ Fu, *Youli Riben tujing*, 343–345.

⁴²⁰ When it is mentioned, it is done as part of etymologies of the word *xianfa* 憲法. See, e.g., Mo Jihong 莫紀宏, “‘Xianzheng’ ci yuansu” “憲政” 詞源溯 (The origins of the word “constitutional government”), *Huanqiu falü pinglun* 環球法律評論, no. 5 (2013), 17.

⁴²¹ Fu, *Youli Meilijia Hezhongguo tujing*, chapter “On the State” (*Guoshi zhi* 國事志).

translation of the United States Constitution. Or was it really yet another translation? In his introduction to the text, Fu does not use the same word for “constitution” as he uses for the Japanese constitution. Instead, in the introduction to the translation, he uses the term “System of the United States” (*Hezhongguo zhi* 合眾國制). But as is so often the case with words for “system of government”—the term refers to the very constitutional charter.

His translation of the Preamble of the Constitution is so free that it is not immediately recognisable:

Translation of the meaning of the Constitution of the United States: The people want to form a perfect Union, promote the welfare and avert harm and then pass it on to Posterity to eternally enjoy the Rights, and thus has three Laws (=Powers).

譯合眾國制意謂民欲聯邦如一興利除害爰及後裔永享權利厥法有三

Fu’s translation is extremely similar to the translation published by Zhang Yinhuan in his diary. Both translations do have section titles, not present in the original Constitution. Both translations carry similar commentaries at similar parts of the text. Fu, within the text of the Constitution and for the 15 amendments, uses the same title for the constitution—“mengyue” 盟約 (“covenant,” reflecting the original character of the constitution as an international treaty)—used by Cai (as reprinted in Zhang’s diary). Also, the two translations do show similar sentence patterns and partially similar word choice. For example, art. II sec. 1.5, “No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President” is translated by Fu as

Only people born and raised in America or who were naturalised before the adoption of this Covenant can become President (*Bolixitiande*).

美利加生長之人或入籍在立盟約之前方得為伯理璽天德⁴²²

In the translation published in Zhang's diary, this part is translated as

Only people born and raised in the United States or those who were naturalised to the United States before the adoption of this Covenant, are eligible to become President (*Zongtong*).

在美國生長之人或入籍美國在立盟約之前者方准為總統⁴²³

Fu does not refer to Cai's translation, declaring it as his own work. But the close resemblance does not surprise. Fu Yunlong was travelling on an official mission for the Zongli yamen, thus having access to Cai's translation. That he included it in his description shows that Cai's translation was not in vain, as it was read by those whom it might have concerned. Again, this version of the US Constitution was made public seven years before previously thought.

Fu did not stay in the USA, but continued his travels. His approach to the Peruvian "system of the state" was different. His book about Peru was much shorter than the ones about Japan, the United States and Brazil. As was the case in most of Spanish America, Peru did have constitutional charters right from the time of independence from Spain, but they were rather fleeting in nature. At the time, the constitution in force was the Political Constitution of 1867, but Fu's chapter on "constitutional" matters⁴²⁴ did not expound it in detail. Instead, Fu concentrated on Peruvian history, and published several lists: A list of Sapa Incas (the kings of the Pre-Columbian Kingdom of Cusco), a list of colonial Viceroys of Peru, and two lists of Presidents of Peru since independence. At the end, Fu adds a chronological list of the crucial events in the history of Peru. Most of the years, again, just contained notes of whom had become president in the respective year (sometimes various presidents in the same year). But there were a few exceptions. One of them,

⁴²² Ibid., chapter "On the State" (*Guoshi zhi* 國事志), 5b.

⁴²³ Zhang, *Sanzhou riji*, vol. 2, 54a.

⁴²⁴ Fu, *Youli Bilu tujing*, chapter "System of the Peruvian State" (*Bilu guoxi* 秘魯國系).

in the year of 1867, was: the “adoption of a constitution” (*li guozhang* 立國章).⁴²⁵ Although Fu here uses yet another term than he had used for Japan and the United States, he did recognise the importance that constitutional charters had for a polity.

After Peru, Fu visited Brazil. Here again, the chapter on politics was very constitutional. He did not explicitly mention the constitutional charter. But where would a Chinese official look to in 1889 when describing the politics of a foreign country? Into the constitution, which Fu’s description follows closely. When Fu visited Brazil, the country was still a parliamentary monarchy. Thus, although his book was only published in 1902, it still describes the monarchical constitution as set down in the *Political Constitution of the Brazilian Empire* of 1824 (amended in 1834), ignoring the coup-d’état of November 1889 which had abolished the parliamentary monarchy and installed a presidential republic with a new constitution in 1891.

Remembering Art. 10 and 11 of the Brazilian Constitution, Fu’s description begins with an enumeration of the four powers of the Brazilian government (in the same order: legislative, moderating, executive and judicial powers),⁴²⁶ and the statement that sovereignty is held by the Emperor and the Parliament.⁴²⁷ His section on governance was subdivided into six sections: a) on the legislative power (title 4 of the Constitution); b) on the moderating power (title 5, chapter 1 of the Constitution); c) on the executive power (title 5, chapter 2 of the Constitution); d) on the judiciary power (title 6 of the Constitution); e) on the regency in case of the Emperor being minor of age (title 5, chapter 5 of the Constitution); f) on the Council of State. The Council of State had been abolished by constitutional amendment of October 12, 1832, but was then reinstated by the simple Law No. 234 of November

⁴²⁵ Ibid., chapter “System of the Peruvian State” (*Bilu guoxi* 秘魯國系), 8b.

⁴²⁶ The four powers were a Portuguese-Brazilian specificity; on top of the Montesquieuan three powers, there was a “moderating” power exerted by the emperor. On the “moderating power” in Brazil see Octaciano Nogueira, ed., *A Constituição de 1824* (Brasília: Escopo Editora, 1987), 23–28.

⁴²⁷ In the original constitution, the Emperor and the Parliament were “Representatives of the Brazilian Nation.” Ibid., 63.

23, 1841. Fu describes the Council of State as set up in the law of 1841, with twelve instead of ten members. After the section on governance, Fu still had a section on provincial governments, inspired on the constitutional amendment law of August 16, 1834, as well as on civil rights (title 8 of the Constitution).

Fu's description of the political system of Canada, too, followed a very constitutional approach.⁴²⁸ Although Canada, being part of the British Empire, follows the Westminster system, it did have a written (albeit inexhaustive) constitution: The British North America Act of 1867, or, in short, the Constitution Act of 1867. Again, Fu's description of Canada's political system were inspired by the Constitution Act of 1867, which he calls "Covenant of Canadian Union" (*Jianada datong zhi yue* 加納大大同之約), alluding to the fact that the Constitution act created the Dominion of Canada by fusing three British provinces (colonies). Fu's description contains translations of a few crucial parts of the Constitution Act, and in some parts interpolates comparisons with China.

5. East Asian Constitutions and Early Political Reformism in China in the late 19th Century

a) Early Calls for Reform in China and their Global Context

But if knowledge about foreign constitutions was coming to China—and, as in the case of Bridgman's *Damei Lianbang zhilüe* 大美聯邦志畧, even spreading from China to Japan—during the whole second half of the 19th century, and if China's own millenary constitution was coming under increasing internal and external pressure, when was it that a constitution in the modern sense—a constitutional system accompanied by a constitutional charter—began to be envisioned for China?

The early descriptions of foreign political systems, beginning from the 1830s, were generally positive, but, as Wang Dezhi observed, they did not

⁴²⁸ Fu, *Youli Yingshudi Jianada tujing*, chapter "Political Affairs of Canada" (*Jianada zhengshi* 加納大政事).

necessarily demand analogous reforms in China herself.⁴²⁹ The reform-movement initiated in the 1860s, known as the self-strengthening movement (*zhiqiang yundong* 自強運動), focused on the military and industrial modernisation on the country. However, as the effects hoped for did not materialize, pressure mounted for political reforms. Thus, it was in the latter quarter of the 19th century—especially in the 1880s and 1890s—that Chinese intellectuals began seriously debating political reforms in their country.⁴³⁰

At this time, constitutional conflicts across the world were still looming: Russia's Emperor refused to adopt a constitution, the first Turkish constitution had been repelled, and Japan was still in the process of establishing her first constitution. What is to be shown here is that these early reformers did not only refer to the already finished models of Western Europe, the USA and Japan, but were also aware of the global developments in constitutionalism at the very time they were writing, in particular of the situations of the other countries that were either still "autocratic" or struggling with constitutionalism.

Some of the traits to be found in many of the global constitutional debates also appeared in China. Early reformist writings commonly attempt to find connections to China's own antiquity.⁴³¹ At the same time, they pay strong attention to the question of whether the people were mature enough for reforms. Questions of maturity and of how to ensure a smooth communication between the government and the people had been debated since the 1870s.⁴³² From the late 1880s, and then with more momentum in the 1890s, the slogan of "popular knowledge" (mand. *minzhi*/jap. *minchi* 民智) also found its way into Chinese discourse. Thus,

⁴²⁹ See Wang, *Xianfa gainian zai Zhongguo de qiyuan*, 13–14.

⁴³⁰ For a very instructive piece on early (pre-1895) Chinese reformism Lloyd E. Eastman, "Political Reformism in China Before the Sino-Japanese War," *Journal of Asian Studies* 27, no. 4 (1968).

⁴³¹ *Ibid.*, 705–707.

⁴³² See Rudolf G. Wagner, "The Free Flow of Communication between High and Low: The Shenbao as Platform for Yangwu Discussions on Political Reform 1872-1895," *T'oung-Pao* 104, 1–2 (2018).

as early as 1887, Huang Zunxian 黃遵憲 (1848–1905) mentioned the term when discussing criminal law:

But Western theorists exclusively esteem criminal law highly. They argue that as the people are increasingly equipped with knowledge, everyone thinks of how to protect their rights. Consequently, litigation necessarily thrives, and legal norms have to become more detailed. They esteem criminal law so highly because they think of it as a tool to govern the country and protect the households, respecting it like a holy scripture or a hagiography. But despite both being law, the reason why Chinese and Western theories differ so much is that one emphasizes on its essence and the other one on its functions. I have done research on Chinese law: That of the Wei and Jin dynasties was more detailed than that of the Han, that of the Tang was more detailed than that of the Wei and Jin, that of the Ming was again more detailed than that of the Tang, and finally our Great Qing Code is, again, more detailed than the Ming Code. The more history accumulates, the more detailed legislation becomes. This is a necessary tendency in the course of events, and even when rulers are sage and ministers wise, laws cannot but multiply with time. When the Westerners argue that the progressive growth of the people's knowledge leads to more and more details in the laws of the land, could this not indeed hold some truth?

而泰西論者專重刑法，謂民智日開，各思所以保其權利，則訟獄不得不滋，法令不得不密。其崇尚刑法以為治國保家之具，尊之乃若聖經賢傳。然同一法律，而中西立論相背馳至於如此者，一窮其本，一究其用故也。余嘗考中國之律，魏晉密於漢，唐又密於魏晉，明又密於唐，至於我大清律例

又密於明。積世愈多即立法愈密，事變所趨中有不得不然之勢，雖聖君賢相不能不因時而增益。西人所謂民智益開則國法益詳，要非無理歟？⁴³³

The notion of equipping the people with knowledge would then become one of the central motives of Qing constitutional discourse. But perhaps the most distinctive proposal of the early political reformers was the introduction of a parliament, which was viewed primarily as a prerequisite of commerce and industry.⁴³⁴ While discussing representative institutions, these early reformers did not necessarily *expressis verbis* mention a constitution, but one figure who did both was Zheng Guanying, a Cantonese entrepreneur who had not passed any imperial examination.⁴³⁵ As an employee of a British trading company, he came across Western conceptions of constitution and parliamentarism at an early age.

In his book *Easy Words* (*Yiyan* 易言),⁴³⁶ which began to be published in 1871, he painted the international scene of the time as a re-edition of the ancient Chinese Warring States period (475–221 BC). Such a linkage between the modern World and the Warring States was not Zheng's concoction, but ubiquitous in late Qing discourse. First used in 1861 by Feng Guifen 馮桂芬 (1809–1874), it was used by more than a dozen authors in the late 19th century.⁴³⁷ In 1881, William Alexander Parsons Martin (Ding Weiliang 丁韞良, 1827–1916), the first head of the

⁴³³ Huang Zunxian 黃遵憲, *Huang Zunxian quanji* 黃遵憲全集 (Complete works of Huang Zunxian), ed. Guojia Qingshi Bianzuan Weiyuanhui 國家清史編纂委員會, 2 vols. (Beijing: Zhonghua shuju, 2005), vol. 2, 1323. The punctuation has been slightly altered.

⁴³⁴ Eastman, "Political Reformism in China Before the Sino-Japanese War," 701.

⁴³⁵ On Zheng Guanying see Johannes Kehnen, *Cheng Kuan-ying: Unternehmer und Reform der späten Ch'ing-Zeit* (Wiesbaden: Otto Harrassowitz, 1975); Wu, *Zheng Guanying*; Ichiko Chūzō 市古宙三, "Tei Kan'ō no Ekigen ni tsuite" 鄭觀應の『易言』について (About Zheng Guanying's *Yiyan*), in *Wada Hakushi koki kinen tōyōshi ronsō* 和田博士古稀記念東洋史論叢 (Tokyo: Kōdansha, Shōwa 35 [1961]).

⁴³⁶ The title is variously translated as *Words on Change*, *On Change*, *Easy Words* or *Easy Remarks*. The translation with "easy" or even "careless" is more appropriate, for Zheng himself explains the title by citing various *loci classici* for the saying "talking is easier than doing." Zheng Guanying 鄭觀應, *Zheng Guanying ji* 鄭觀應集 (Works of Zheng Guanying), ed. Xia Dongyuan 夏東元, 2 vols. (Shanghai: Renmin chubanshe, 1988), vol. 1, 63–64.

⁴³⁷ Yen-p'ing Hao and Erh-min Wang, "Changing Chinese Views of Western Relations, 1840–95," in *The Cambridge History of China: Volume 11: Late Ch'ing, 1890–1911, Part 2*, ed. John K. Fairbank and Kwang-Ching Liu (Cambridge: Cambridge University Press, 1980), 189.

Tongwenguan 同文館 in Peking, presented a paper at an Orientalist Congress in Berlin on *Traces of International Law in Ancient China*.⁴³⁸ The paper was translated into Chinese in 1884 and had a large readership in China, creating an atmosphere of self-confidence about the adoption of modern international law in China,⁴³⁹ and possibly influencing Zheng Guanying's insistence on international law.⁴⁴⁰

In Zheng's account, the seven hegemonic powers of the ancient Chinese Warring States period were akin to the modern seven states of Russia, Britain, the USA, Prussia, France, Austria and Japan. Within these, Zheng likened Russia to the ancient Qin, due to their territorial vastness and strong spirits.⁴⁴¹ But while Martin used the argument to justify China's membership in the community of international nations, for Chinese writers like Zheng it often had a different function. China should adopt modern instruments of statehood in order to survive in a Warring-States like cut-throat competition, and constitutionalism was accordingly one of the main elements in strengthening China's competitiveness. Thus, his assessment of Russia's strength notwithstanding, Zheng devoted a section of his book to the bicameral parliamentary system found in the "Western countries," which, he argued, ensured concord between government and the people and the quality of political measures.⁴⁴² It is not surprising, hence, that such conceptions of international politics remained quite popular in the whole late Qing constitutional discourse.

Zheng went into further details in his later book, *Words of Warning in Prosperous Times* (*Shengshi weiyen* 盛世危言), the first edition of which was published in 1894.⁴⁴³ He expanded his categorisation of European countries according to their

⁴³⁸ William A. P. Martin, "Traces of International Law in Ancient China," *International Review* 14, no. 1 (1883).

⁴³⁹ On Martin's deliberations see Rune Svarverud, *International Law as World Order in Late Imperial China: Translation, Reception and Discourse, 1847-1911* (Leiden, Boston: Brill, 2007), 153-161.

⁴⁴⁰ Wu, *Zheng Guanying*, 127-128.

⁴⁴¹ Zheng, *Zheng Guanying ji*, vol. 1, 66-67.

⁴⁴² *Ibid.*

⁴⁴³ The book actually was a revised and enlarged edition of the former *Yiyan*, and much of the thoughts expressed in it must be dated to the 1880s. After the first edition was published in 1894, a

political importance. Russia still belonged to the first tier, together with Britain, France, Germany and Austria-Hungary; Turkey only belonged to the second tier, on par with Spain and the Netherlands.⁴⁴⁴ Not unlike China, Turkey and Persia were victims of imperialism, in particular from Russia. Zheng wrote much about Turkey, which he deemed to be in particularly bad shape. Plagued by endemic corruption and coffee addiction, she was comparable to China with her problems of widespread corruption and opium addiction.⁴⁴⁵

The year of 1895 changed Zheng's stance towards Russia somewhat. In that year, China first ceded the Liaodong Peninsula to Japan, but promptly obtained it back due to an intervention by Russia, Germany and France. In the revised edition of the *Shengshi weiyan*, Zheng recounted that the Czar of Russia had suggested to the Chinese envoy that China pursue reforms in order to resist foreign pressures.⁴⁴⁶ Zheng took this admonition as a sign of how bad China's situation really was. Although he did not believe that the Russian stance was entirely altruistic, he endorsed the Czar's suggestion. China could otherwise end up like Turkey in the first constitutional era of 1876–1878. According to Zheng's description, Russia had asked five European countries (Britain, Germany, France, Austria, and Italy) to push Turkey to pursue a "reform of governance" (*xinzheng* 新政).⁴⁴⁷ But Turkey

second version substantially enlarged by Zheng himself was published in 1895, and a third edition in 1900, again revised by Zheng himself. Various other unofficial editions were published at the time. On the complicated editorial history of the book see Kehnen, *Cheng Kuan-ying*, 8-12 and Zheng, *Zheng Guanying ji*, vol. 1, 1–15.

⁴⁴⁴ Ibid., 822 (only contained in the 1895 edition).

⁴⁴⁵ Ibid., 363 (on corruption); 403–404 (on addictions). In the 1895 edition, Zheng still considers China's political problems to be less severe than Turkey's; in 1900, he has changed his verdict and declares that the country is in a worse situation than Turkey.

⁴⁴⁶ Ibid., 796-797.

⁴⁴⁷ The term "reform of governance" itself was gaining momentum at that time: In late 1894, Timothy Richard drafted a book *Policies for a Reform of Governance* (*Xinzheng ce* 新政策), and the term that would later be adopted for China's own reform programme beginning in 1901. See Wagner, "The Free Flow of Communication between High and Low" and Andrea Janku, "'New Methods to Nourish the People': Late Qing Encyclopaedic Writings on Political Economy," in Doleželová-Velingerová; Wagner, *Chinese Encyclopaedias of New Global Knowledge*, 343.

“did not listen.” Turkey’s reaction “infuriated” the foreign powers, whence Russia declared war on Turkey.⁴⁴⁸

Although the Czar’s suggestion had certainly not meant the establishment of a constitution, this was, for Zheng, a key part of “self-strengthening.” The reason for the ineffectiveness of China’s administration lay in it not practising a system of constitutional monarchy. Except for Russia and Turkey, there were no civilised countries in the world without a constitutional system. Constitutions were ineluctable even for the few countries that still had autocratic systems of government. Russia itself, Zheng remarked, had long ago considered a constitution, but had just not adopted it yet.⁴⁴⁹

b) The 1895 Formosa Republic: A first Constitutional Experiment?

China’s defeat in the Sino-Japanese War of 1894/95 advanced constitutional discourses in China, although it was not as much of a watershed as it was described by Liang Qichao.⁴⁵⁰ There was already a sizeable number of intellectuals who had written about constitutionalism and who had advocated political reforms in China, and by the mid-1890s, more and more Chinese and foreign observers engaged in

⁴⁴⁸ Zheng’s description did not render the full complexity of the events in the Ottoman Empire, but it did pick up an important aspect of the events. Following an insurrection against Ottoman rule in the Balkans, on December 30, 1875, the Foreign Minister of Austria-Hungary, Count Gyula Andrassy (1823–1890), issued a note containing a sketch of what he deemed to be an acceptable solution of the problem. The note was backed by Russia, England, Germany, France and Italy. Although the Sublime Porte in Istanbul accepted most proposals, including full and complete religious freedom, the note did not help in placating the conflicts. It was under this menace of intervention by the European Powers that the Istanbul government passed the 1876 Ottoman Constitution. The constitution and the fundamental rights granted therein to the peoples of the Balkan were accused of being insincere, and Russia intervened militarily in 1877, achieving an overwhelming victory over the Ottoman Empire. Yet these external factors were not the only ones at play. The 1876 Constitution also reflected internal developments that had been going on in the Ottoman Empire for decades. Devereux, *The First Ottoman Constitutional Period*, 26-27; 88–91.

⁴⁴⁹ Zheng, *Zheng Guanying ji*, vol. 1, 338-339.

⁴⁵⁰ E.g., in Liang Qichao, “Wuxu bianfa ji” 戊戌政變記 (Account of the reforms of 1898), in *Liang Qichao quanji* 梁啟超全集, eds. Yang Gang 楊綱, and Wang Xiangyi 王相宜, 10 vols. (Beijing: Beijing chubanshe, 1999), appendix “Origins of Reform” (*Gaige qi yuan* 改革起源), vol. 1, 234–242; see also the remarks by Eastman, “Political Reformism in China Before the Sino-Japanese War,” 710.

the discussions about what medicine would be able to cure China's sickness.⁴⁵¹ In the years of 1894–1902, foreign observers did not include “constitutionalism” or even “representative institutions” yet in their proposals for China's reform. Thus, while Alexander Michie (1833–1902) saw a “sick man worth many Turkeys”⁴⁵² and hoped for commercial expansion, Mark Bell was even more adamant, suggesting that China be put under Western, i.e., British, tutelage for the sake of national regeneration, because she could not “guide herself on the path of reform and progress.”⁴⁵³ Bell suggested that the Powers form various departments modelled on the Chinese Imperial Maritime Customs' Department, led by Robert Hart.⁴⁵⁴

But reformist, even constitutional ideas were beginning to find their expression in the actual politics of the Qing Empire. In these years, some figures who would profoundly shape the next decades of Chinese politics began to appear: Anti-government secret societies as well as revolutionary groups, and monarchic reformers like Kang Youwei and Liang Qichao.

In November 1894, Sun Yat-Sen 孫逸仙 (1866–1925) founded the *Revive China Society* (*Xingzhonghui* 興中會) in the Republic of Hawai'i. Sun's objective was to topple the Qing Government and establish “a constitution for China.”⁴⁵⁵ As Meribeth Cameron put it, “these men, most of them educated abroad and thus somewhat divorced from the realities of China's condition, were eager to oust the Manchus and to introduce at once institutions which the West had developed only after years of conscious or unconscious preparation.”⁴⁵⁶ As Sun was an enemy of

⁴⁵¹ For one of the many English-language articles written during the Sino-Japanese war about reforms for China see A. Michie, “Our Interest in China,” *Imperial and Asiatic Quarterly Review*, 3rd ser., 1, nos. 1 & 2 (1896). None of the English-language articles of the time included “constitutionalism” or “representative institutions.”

⁴⁵² *Ibid.*, 43.

⁴⁵³ Mark Bell, “China's Future: A Study,” *Imperial and Asiatic Quarterly Review* New series 9, nos. 17 & 18 (1895), 343.

⁴⁵⁴ *Ibid.*

⁴⁵⁵ *Los Angeles Times*, “A Modern Atlas. An Under Secretary Sounds his own Praises. He Pictures Himself as Bearing all the Burdens of the British Foreign Office. An Imperial Zollverein Idea. 'Old-Fashioned Patriot' Explains the 'Salute.' Prof. Howard Opposes George Kennan's Stories of Russian Cruelty. Bismarck Revolutions—Court and Stage.” December 6, 1896.

⁴⁵⁶ Cameron, *The Reform Movement in China*, 200–201.

the state within the borders of the Qing Empire, from the beginning he relied on building a supporting base abroad. Wong Chin Foo 王清福 (1847–1898), a Chinese-born naturalised US citizen, held lectures in the USA to promote his cause to an American audience, and declared to the US American press:

... The 'Hing Chung Woey' Society, to which Sun Yat Sen belonged, is associated with the 'Liberty League of Americanized Chinese,' and with a similar patriotic organization in England. One object is of a secular missionary kind. We wish to open up China to the West and to introduce such constitutional reforms as will put our country on a par of progress with Japan and prevent the dismemberment by foreign powers, which will take place unless China undertakes to reform itself. ... We shall make overtures to the ruling dynasty to adopt our reform principles. If they do not do so they will have to get out. ...⁴⁵⁷

Others were trying to petition the Qing government for reforms. On April 17, 1895, the Qing Empire and Japan signed the Treaty of Shimonoseki, concluding the Sino-Japanese War of 1894/95. On April 22, civil examination candidates led by Kang Youwei directed a petition to the Qing Court demanding reforms, known as the *Gongju shangshu* 公車上書. The petition did not yet contain the word "constitution" or "constitutionalism," but it mentioned the parliaments common in other countries,⁴⁵⁸ and it was influential in mobilising some of the intellectual elites for

⁴⁵⁷ *Chicago Daily Tribune*, "He plans to free China: Wong Chin Foo Talks of the Revolutionary Movement. Peaceable Methods Failing an Appeal for Recognition as Belligerents Will Be Made to America and England-Society Hing Chung Woey Declared to Be a Powerful Organization-One Object Is to Open the Country to Western Civilization," December 6, 1896.

⁴⁵⁸ Kang Youwei 康有為, *Qi ci shangshu huibian; Wuxu zougao* 七次上書彙編：戊戌奏稿 (Collectanea of the seven petitions; Memorial drafts of 1898), ed. Jiang Guilin 蔣貴麟, Kang Nanhai xiansheng yizhu huikan 12 康南海先生遺著彙刊 (十二) (Taipei: Hongye shuju, Minguo 76 [1987]), part 1, 16. See also Rao, "Cong she yiyuan dao li xianfa," 30, footnote 3. See also Chang P'eng-Yuan 張朋園, *Zhongguo minzhu zhengzhi de kunjing: Wanqing yilai lijie yihui xuanju shulun* 中國民主政治的困境，1909-1949: 晚清以來歷屆議會選舉述論 (The difficulties of democratic politics in China, 1909-1949: An exposition of the elections for the various parliaments since the late Qing) (Taipei: Linking, Minguo 96 [2007]), 27–30; Wong Young-Tsu, "Kang Youwei and the Reform Movement of 1898," *The Journal of Asian Studies* 51, no. 3 (1992), 517–518, 521.

reforms. This would not remain Kang's only petition: On May 29, he directed another petition to the Emperor, calling for reforms with the aim of "enriching the country, nourishing the people, educating the officials and training the army" (*fuguo yangmin jiaoshi zhibing* 富國養民教士治兵).⁴⁵⁹

Three days later, the foreign press even rumoured that a petition had reached the Imperial Court from Southern China praying "to introduce constitutional reform," including freedom of the press and of speech, the abolition of the queue and foot binding for women.⁴⁶⁰ It is not clear to what petition the press notice referred. It was not one of Kang Youwei's petitions: Although Kang Youwei was Cantonese and did indeed advocate against foot binding movements, he was physically located in Peking,⁴⁶¹ and his petition does not mention foot binding and the queue.

But although the source of the press notice cannot be verified—and thus it is not clear what "constitutional" reform exactly should be introduced—the notice shows that reformist notions were already quite diffused to local elites, especially in Southern China. This can also be seen in one episode that is not recorded in histories of constitutionalism in East Asia, but which could be possibly seen as the first constitutional experiment related to the Qing Empire: The fleeting Formosa Republic (*Taiwan Minzhuguo* 臺灣民主國) established in 1895.⁴⁶²

⁴⁵⁹ Kang, *Qi ci shangshu huibian*; *Wuxu zougao*, part 1, 50–75. The original found in the First National Archives of China has been reprinted in Kang Youwei 康有為, "Kang Youwei disanci shang Qingdi shu yuanben (Zhongguo diyi lishi dang'anguan)" 康有為第三次上清帝書原本 (中國第一歷史檔案館) (The original of Kang Youwei's third petition to the Qing Emperor [First Historical Archives of China]), *Lishi dang'an* 歷史檔案, no. 1 (1986). Wong Young-Tsu, "Kang Youwei and the Reform Movement of 1898," 517, claims that the third memorial used the word *yiyuan* 議院 for parliament; however, it is not to be found in either version of the memorial. It does show up, however, in other memorials of Kang's.

⁴⁶⁰ *Los Angeles Times*, "A Queer Republic: Affairs in the Island of Formosa. The Japanese land at Keelung—The Chang Tai Chongs and the Li Family—Chinese Advices," June 1, 1895.

⁴⁶¹ Wu Tianren 吳天任, *Kang Youwei xiansheng nianpu* 康有為先生年譜 (Annalistic biography of Mr. Kang Youwei), 2 vols. (Taipei: Yiwen yinshuguan, Minguo 83 [1994]), vol. 1, 112–115.

⁴⁶² On the 1895 Republic of Formosa see the seminal works Harry J. Lamley, "The 1895 Taiwan Republic: A Significant Episode in Modern Chinese History," *Journal of Asian Studies* 27, no. 4 (August 1968), and Wu Micha 吳密察, "1895 nian 'Taiwan Minzhuguo' de chengli jingguo" 一八九五年「台灣民主國」的成立經過 (The establishment process of the "Republic of Formosa" of 1895), *Taida lishi*

What happened there? One of the main provisions of the Treaty of Shimonoseki was article 2b), which ceded the Island of Formosa (Taiwan) together with its outlying islands to Japan.⁴⁶³ Local notables, officials loyal to the Qing court, opposed this cession. Among them were governor-general Tang Jingsong 唐景崧 (1841–1903) and his first-protégé-then-rival Qiu Fengjia 丘逢甲 (1864–1912). In order to avoid annexation by Japan, Tang declared Formosa to be a self-dependent (*zili* 自立) republic on May 25, 1895, with himself as president.⁴⁶⁴

Next to personal ambitions of the notables, the establishment of the Republic was meant to garner support from Western powers for a republican victim of Japanese aggression, as well as to facilitate direct resistance without implicating the Qing Court.⁴⁶⁵ It should be noted, however, that the Republic of Formosa was a lonely enterprise of political elites in Formosa, which did not count on much support from Qing officials in the mainland nor from the local populace. It also failed to solicit support from any other foreign power.⁴⁶⁶

How was the Formosa Republic the first constitutional experiment related to the Qing Empire? Some people close to Qiu Fengjia contend that he had indeed drafted a constitution or that the Republic did have a constitution, assertions to be found in several obituaries appended to Qiu Fengjia's poems. For example, Jiang

xuebao 臺大歷史學報, no. 8 (1981). See also the contemporary account James Wheeler Davidson, *The Island of Formosa Past and Present: History, People, Resources, and Commercial Prospects. Tea, Camphor, Sugar, Gold, Coal, Sulphur, Economical Plants, and Other Productions*. (London et al.: MacMillan et al., 1903), 273–370.

⁴⁶³ The treaty of Shimonoseki is to be found in Meiji 27-8-nen sen'eki Nisshin kōwa jōyaku: 1. Chōinsho; 2. Giteisho. 明治二十七、八年戰役日清媾和條約：一・調印書；二・議定書 (Peace treaty between Japan and the Qing about the war of the years Meiji 27 and 28. 1: Signed documents; 2. Protocol), Meiji 28/04/17 [April 17, 1895], file no. B13090893700, Diplomatic Archives of the Ministry of Foreign Affairs of Japan, Tokyo. Article 2b) is to be found in p. 0297.

⁴⁶⁴ The original of the declaration is to be found in Lian Yatang 連雅堂, *Taiwan tongshi* 臺灣通史 (General history of Taiwan) (Taipei: Taiwan shidai shuju, Minguo 64 [1975]), 106–107; for a translation see Davidson, *The Island of Formosa Past and Present*, 279–280 (which, however, translates *zili* 自立 as “independence,” creating a somewhat wrong impression of the declaration's character. See Lamley, “The 1895 Taiwan Republic,” 752.

⁴⁶⁵ *Ibid.*, 741; see also *Los Angeles Times*, “The Formosan Republic,” July 19, 1895.

⁴⁶⁶ See, e.g., *Chicago Daily Tribune*, “Scoff at the Formosan Republic: Washington Diplomats Take no Story in the Story from Shanghai,” May 26, 1895.

Quan 江璟 (1888–1917), a young admirer of Qiu's, wrote in his *Biography of Qiu Canghai* (*Qiu Canghai zhuan* 丘倉海傳), appended to the first (1913) edition of Qiu's poems:

The loyal gentlemen therein were especially passionate and indignant. They bitterly cursed the Qing Court for turning its back to the Formosan people and strongly approved of the General of the Blue Ocean's [i.e., Qiu Fengjia's] suggestions. Then, by acclamation, they pushed the General of the Blue Ocean to come up with a draft. Thereupon, the General of the Blue Ocean hastily drafted a temporary constitution and suggested that Formosa be a republic. One would elect one president and one vice-president, respectively, and open a parliament as legislating body. He set an official system, separating the name of the ministries of the interior, of foreign affairs, of military affairs and so on. He designed the national flag with a yellow dragon on a blue background and made it the national coat-of-arms. The masses all approved.

其間忠義之士，尤慷慨憤激，痛詈清廷之負台民而力贊倉海之議，乃群推倉海為起草。倉海遂草定臨時之憲法，建議臺灣為民主國。選總統、副總統各一人，開議院為立法機關，定官制分內部、外部、軍部等之名稱。制藍地黃虎國旗，以為國徽。群皆贊成。⁴⁶⁷

Moreover, Qiu Fengjia's son, Qiu Cong 丘琮 (1894–1967), wrote in an obituary published as an appendix to a 1935 edition of Qiu Fengjia's poems:

My late father also said that, since Liu Mingchuan's term as governor [1885–1891, note of the author], new policies like railroads, electric lines, &c. had been introduced in Formosa. Therefore, the gentry's thinking was comparatively modern. Since the Republic was devised, it was first established

⁴⁶⁷ Qiu Fengjia 丘逢甲, *Lingyun Hairi Lou shichao* 嶺雲海日樓詩鈔 (Poems transcribed at the "building of the clouds over the mountains and the sun over the sea"), (Shanghai: Shanghai guji chubanshe, 1982), 756–757.

and then it fell. Even though its period of existence was not long, it had a constitution, a parliament, a postal administration and a currency system. It had enough politics, but regrettably the people still lacked education and were unaware of their ties of nationality.

先父復調臺灣。自劉銘傳任巡撫。鐵路電線等新政。漸次興舉。故士紳思想較新。民主國自籌備。而成立。而敗亡。雖爲時不久。然憲法。議院。郵政。幣制。均具。其政治有足多者。惜人民仍乏教育。不知國族關係。

468

Apart from these mentions, hard evidence for the (draft) constitutional charter of the Republic of Formosa is very thin. No constitutional charter of the Republic or draft constitution has survived.⁴⁶⁹ One has to be suspicious of Jiang's and Qiu's writings, including their insistence on mentioning the constitution, as these texts were written many years later by close confidants. The Qing Court had fallen to the Republic, changing the political set-up completely, and by that time, constitutions were already an ineluctable instrument of governance at the highest level of Chinese politics. Jiang and Qiu certainly spun their texts according to the political changes. Moreover, their term *xianfa* 憲法 was possibly (but not necessarily) anachronistic, as it would only win out as the general equivalent of "constitution" through the activism of Kang Youwei and Liang Qichao. By 1895, the term was already used in Chinese, but had not yet gained universal currency.

However, even as early as 1895, constitutions were known and discussed among the Chinese intelligentsia. The leading figures of the Republic readily adopted the new concepts of political reformism that circulated among China's elites. The other facts mentioned by Jiang are basically true: There was a "president"

⁴⁶⁸ Qiu Cong 丘琮, "Huhuai lu" 帖懷錄 (Memories of my father), in *Qian Taiwan Minzhuguo yijun dajiangjun Canghai xiansheng Qiu gong Fengjia shixuan* 前臺灣民主國義軍大將軍倉海先生丘公逢甲詩選 ([Shanghai]: Shangwu yinshuguan, [1935]), 152.

⁴⁶⁹ The author would like to thank Prof. Wu Micha 吳密察 for kindly confirming this information (written communication of December 26, 2016).

and the “national flag” with the yellow dragon on a blue background. Moreover, the main element of constitutionalism, some kind of popular representation, came up in the new republic, even if, substantially, the new state was a mere “sham affair unworthy of its republican label.”⁴⁷⁰ While the Taipei parliament never convened, a parliamentary assembly in Tainan did meet regularly.⁴⁷¹

If Tang Jingsong and Qiu Fengjia adopted a republic, it is quite likely that they also envisioned that such a republic would have eventually been consummated by a constitutional charter. But it is not unsurprising that a constitutional draft could not be finished in this “most short-lived government that ever existed” and that any draft was lost in these turbulent times, for the Japanese army began landing in northern Formosa a mere four days after Tang’s proclamation.⁴⁷² It is, therefore, not unlikely that Jiang’s assertion was correct, although the constitutional draft has not been left for posterity.

The short-lived Republic of Formosa was not immediately used in further constitutional debates in the Qing Empire. Politicians in Peking like Li Hongzhang 李鴻章 (1823–1901) and Weng Tonghe 翁同龢 (1830–1904) took notice of the “republic” founded by the separatist loyalists. But, their differences in opinion notwithstanding, both of them thought of it as a strange concoction. When Weng heard that Tang Jingsong had become president of an autonomous republic, he exclaimed: “Oh boy! That’s bizarre!” (Yi! Qi yi! 噫! 奇矣!).⁴⁷³ On the same day, Li Hongzhang reacted to an exalted cable of Tang’s about the republic and its

⁴⁷⁰ Lamley, “The 1895 Taiwan Republic,” 741.

⁴⁷¹ See, e.g., two reports in the *North China Herald* with additional information about the “parliament”: “Formosa (From our Correspondent with the Japanese Army),” *North China Herald*, November 1, 1895, 729, and “Tainanfu, South Formosa (From our Special Correspondent with the Japanese Army),” *North China Herald*, November 15, 1895, 815. See also Lamley, “The 1895 Taiwan Republic,” 755, with further references.

⁴⁷² *Los Angeles Times*, “The Formosan Republic.” See also Lamley, “The 1895 Taiwan Republic,” 739.

⁴⁷³ Diary entry of 05/04 (May 27, 1895): Zhongguo Shixuehui 中國史學會, ed., *Zhongri zhanzheng* 中日戰爭 (The Sino-Japanese war), 4 vols. (Shanghai: Shanghai renmin chubanshe; Shanghai shudian chubanshe, 2000), vol. 4, 560.

symbols with the exclamation: “Such strange words are actually out of imagination!” (*ruci qiwen, jing chu yiwai* 如此奇文，竟出意外。).⁴⁷⁴

The cession of Formosa to Japan would later be mentioned again in Chinese constitutional debates, something which has been commonly ignored: The applicability of the Meiji constitution to newly-conquered territories such as a Formosa was an important topic in Japanese discourse, and Chinese debates did occasionally refer to the colonial status of Formosa when debating details of the Qing constitutional plans after 1905.

This likely first constitutional experiment related to the Qing Empire is mainly useful as an example of how much ideas like constitutions were already en vogue as fundamental elements of newly-constituted body politics used for internal and external legitimation, even though the long-constituted government at the central level did not yet think of adopting one for itself.⁴⁷⁵

c) A Republic in the Philippines and its Constitutional Implications

If the experiment of installing a “Republic” in Formosa was a “strange” thing to the political circles in Peking, and if there is no trace of the constitutional charter that was possibly drafted for the “Republic of Formosa,” other republican constitutions were known in China. Translations of the US Constitution, as one of the most salient documents symbolising the very US American state, were early and numerous, and Chen Jitong 陳季同 (1851–1907) published a translation of the

⁴⁷⁴ Ibid., vol. 4, 365 (Guangxu 21/05/04 = May 27, 1895). Lamley, “The 1895 Taiwan Republic,” 704 (footnote 2) mistakenly cites 361 and mixes Weng’s and Li’s speeches up. To show how the Republic was seen by Chinese intellectuals in the following years, Lamley also cites a poem of Liang Qichao’s, written in 1911, exclaiming that the Republic of Formosa had been a “joke.” But the verse (*ji shi zhen ru xi* 即事真如戲) could more likely be understood that the Republic had been an (irreal) “theatre play.” Liang Qichao, “Xin dalu youji jielu” 新大陸遊記節錄 (New abridged record of travels through the continent), in *Liang Qichao quanji*, vol. 2, 1227. For another piece on Formosa see Liu Yazi’s 劉亞子 (1887–1958) 1903 article Liu Yazi 柳亞子, “Taiwan sanbainian shi (1903 nian)” 臺灣三百年史 (1903 年) (A history of Taiwan’s 300 years [1903]), in *Liu Yazi xuan ji* 柳亞子選集, eds. Wang Jingyao 王晶堯 et al. (Beijing: Renmin chubanshe, 1989), particularly 30 on the 1895 republic.

⁴⁷⁵ See Lamley, “The 1895 Taiwan Republic,” 761, for a similar conclusion.

French *Lois constitutionnelles* of 1875 in the *International Review* (*Qiushi bao* 求是報) in 1897.⁴⁷⁶ But translation activity was not limited to the well-known Western and Japanese constitutions. For one should not forget that there actually was another Republic in Asia which entered the constitutional imaginary of China.

The Philippine islands had been governed as a colony of Spain since the 16th century. Revolutionary activities against Spanish rule continued during the whole latter quarter of the 19th century. In 1897, revolutionary leader Emilio Aguinaldo (1869–1964) declared the short-lived Republic of the Philippines (or Republic of Biac-na-Bató), which was disbanded after little more than one month. Aguinaldo and his associates obtained exile in Hong Kong.

But things changed quickly. In April 1898, a war broke out between Spain, the colonial ruler of the Philippines, and her rival, the United States of America. Aguinaldo returned from Hongkong and installed a dictatorial government on May 24. On June 12, 1898, Aguinaldo declared independence from Spain and national sovereignty again, and the Republic of the Philippines in Malolos (or First Philippine Republic) was proclaimed in January 1899. This republic, too, did not succeed. Neither Spain nor the USA recognised it. Instead, Spain had sold the Philippines to the United States, which fought a war against the First Philippine Republic from February 1899.

What is remarkable is that in the Philippines, the notion of a written constitution was so well-entrenched that all these revolutionary efforts were accompanied by constitutional documents.⁴⁷⁷ The Republic of Biac-na-Bató had its own provisional constitution, largely copied from the 1895 revolutionary Constitution

⁴⁷⁶ San Chengcha Ke, “Xilü xin yi jüan zhi yi”; the translation continued for two further instalments in nos. 2 and 3 of the magazine.

⁴⁷⁷ On the political history of the Philippines in the last years of the 19th century, including its constitutional documents, see Maximo Manguiat Kalaw, *The Development of Philippine Politics (1872-1920): An Account of the Part Played by the Filipino Leaders and Parties in the Political Development of the Philippines* (Manila: Oriental Commercial Company, 1926), in particular chapter V (69–98) including the Biac-na-Bató constitution, and chapter VI (99–163) including the revolutionary decree and the Malolos Constitution.

of the Provisional Government of Cuba (or Constitution of Jimaguayú). The “revolutionary government” of June 1898 was accompanied by a constitutional decree. Aguinaldo had been advised to change the dictatorial to a “revolutionary” form by Apolinario Mabini (1864–1903), a trained jurist who later served as the first Prime Minister of the First Philippine Republic. Mabini also penned a Constitutional Program of the Philippine Republic, which, however, did not materialise: The Constitution of the First Philippine Republic (Malolos Constitution), ratified in January 1899, was a different text, drafted by Felipe Calderón (1868–1908) and Felipe Buencamino (1848–1929).

As Rebecca Karl has shown, the Philippine revolution did have a substantial impact in China.⁴⁷⁸ Even its constitutional texts were read in China. The *British East Asia Magazine* (*Dongya Bao* 東亞報)—the same that was at the time publishing a secondary translation of the US Constitution in various instalments—carried a large number of news about the Philippine revolution. The “law” section of the magazine, edited by the Japanese Sumitani Daizaburō 角谷大三郎 (?–1921), were interested in its constitutional implications: Numbers 6 and 8 carried a translation of the decree of June 23 that changed the “dictatorial” government to a “revolutionary” one.⁴⁷⁹ The translation introduced it as the “new republican constitution of the Philippine islands,” giving this document a rather prominent position in Chinese discourse and showing that, even before the beginning of the constitutional movement, there was interest in foreign constitutional documents. This

⁴⁷⁸ Karl, *Staging the World*, 83–115.

⁴⁷⁹ Sumitani Daizaburō 角谷大三郎, “Bilübindao xinli gonghe xianfa (yi xi ba yue si ri *Dongbang Bao*)” 比律賓島新立共和憲法（譯西八月四日東邦報）(The newly adopted republican constitution of the Philippine Islands, translated from the *Tōhō* of August 4), *Dongya bao* 東亞報, no. 6 (Guangxu 24 [1898]); Sumitani Daizaburō 角谷大三郎, “Bilübindao xinli gonghe xianfa (yi xi liu yue ershiliu ri *Dongbang Bao*, xu di liu ce)” 比律賓島新立共和憲法（譯西六月二十六日東邦報，續第六冊）(The newly adopted republican constitution of the Philippine Islands, translated from the *Tōhō* of June 26, continued from no. 6), *Dongya bao* 東亞報, no. 8 (Guangxu 24 [1898]). For (slightly differing) English translations of the decree see Kalaw, *The Development of Philippine Politics*, 423–429 and Sulpicio Guevara, ed., *The Laws of the First Philippine Republic (The Laws of Malolos), 1898–1899* (Manila: National Historical Commission, 1972), 35–40.

interest was not limited to the US Constitution and Japan, but also included the constitutions of not-so-well established polities.

6. Postlude and Chapter Conclusion: “And the Kindly Earth Shall Slumber, Lapt in Universal Law.”

On December 31, 1899, the New York Times published a long article summing up the ending 19th century, painting it as a century of great political, economic and technical advances and awaiting a “still brighter dawn for human civilization” in the upcoming 20th century:

Through agitation and conflict European nations are working toward an ultimate harmony of interests and purposes, and bringing awakened Asia into sweeping current of progress. Light has been let into the “Dark Continent” beyond the ancient borders and is rapidly spreading. America is facing westward and beginning to take its part in carrying the regenerating forces of popular government to the uttermost parts of the earth. Notwithstanding the bloody conflicts through which some of the steps of progress must still be made, the “vision of the world” grows clearer toward the time when—

The war-drum throbbed no longer, and the battle-flags were furled

In the parliament of man, the federation of the world.

There the common sense of most shall hold a fretful realm in awe.

And the kindly earth shall slumber, lapt in universal law.⁴⁸⁰

Nearly a year later, in November 1900, Ariga Nagao 有賀長雄 (1860–1921), a renowned Japanese professor of constitutional law who was also deeply interested in China, published his review of the 19th century in the influential Japanese magazine *Revue Diplomatique* (*Gaikō jihō* 外交時報), entitled “Cent ans de la diplomatie

⁴⁸⁰ *New York Times*, “The Nineteenth Century,” December 31, 1899.

européenne" (*Dai jūkyū seiki gaikō tsūkan* 第十九世紀外交通觀). Ariga's article was then translated into Chinese and published in Liang Qichao's Tokyo-published *China Discussion* (*Qingyi bao* 清議報).⁴⁸¹

The two *revues du siècle*, published from two different perspectives, were different in content, but they also had common arguments. For both, constitutions were a main feature of the 19th century. The *New York Times* saw a struggle "for constitutional liberty and representative government" since the French Revolution and American independence, and stressed the material progress of mankind. Ariga's article identified the following main features of the 19th century: 1. reactionism;⁴⁸² 2. constitutionalism;⁴⁸³ 3. nationalism;⁴⁸⁴ and 4. expansionism.⁴⁸⁵

However, the constitutional observations of the *New York Times* and of Ariga Nagao mainly focused on constitutionalism in Europe in the first half of the 19th century. As this chapter has shown, these accounts have to be extended. By the end of the 19th century, the "constitutionalisation" of the world had extended to all continents, although it had not yet permeated all of them. The *New York Times* overstated the role of "constitutional liberty": Constitutions gained immense traction for their versatility and the multitude of their possible functions. Frequently, they were rather reactionary instead of revolutionary, and were often adopted by governments seeking for ways to defend themselves against internal and external pressures.

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⁴⁸¹ Ariga Nagao 有賀長雄, "Dai jūkyū seiki gaikō tsūkan" 第十九世紀外交通觀 (Cent ans de la diplomatie européenne: One hundred years of European diplomacy), *Gaikō jihō* 外交時報 3, no. 24 (Meiji 33 [1900]). For the Chinese version see Ariga Nagao 有賀長雄, "Di shiji shiji waijiao yilan" 第十九世紀外交一覽 (Overview of diplomacy in the 19th Century), in *Qingyi bao*, 2527–2533; 2587–2590; 2649–2653.

⁴⁸² Ariga, "Dai jūkyū seiki gaikō tsūkan," 1049–1051.

⁴⁸³ Ibid., 1051–1058.

⁴⁸⁴ Ibid., 1058–1067.

⁴⁸⁵ Ibid., 1068–1069.

The concept of a “constitution” appeared in China beginning from the 1830s and 1840s, books about foreign countries talked about constitutions to Chinese readers, even if they sometimes contained a few confusions. The Constitution of the United States of America left a particularly deep impression on China, for it was fundamental importance as one of the founding documents of that country. Furthermore, while the European constitutions of the time usually came and went every few years, the US Constitution was an extraordinarily stable and visible document. The first translation of it was published some 20 years earlier than previously known. Six Chinese-language translations circulated in the course of the 19th century, two more than hitherto acknowledged by scholarship.

The first translation, of 1861, was a prime example of an international co-production. A missionary from the USA had published a Chinese-language book about the USA in Singapore, and the edition which contained the translation had been revised by a Chinese scholar and was published in Shanghai. It was then republished in Japan and had a large readership there. This translation was then republished in 1881 in the *Wanguo gongbao*, again a missionary magazine with a large readership and impact in the Qing Empire.

The second translation was made by the Chinese legation to the United States, and showed how knowledge of the US Constitution had become important for the handling of the bilateral relations. It was published thrice in differing versions, by Fu Yunlong and later Zhang Yinhuan, as well as in the reformist *Shiwu bao*. Finally, Fu Yunlong, who had been sent by the *Zongli yamen*, did not only publish a translation of the US Constitution. He was also the first to publish a translation of the Japanese Meiji Constitution in the very year it was promulgated. His other descriptions of foreign polities, too, were clearly inspired by the respective constitutional charters.

By the last decade of the 19th century, thus, there was a fair amount of knowledge about foreign constitutions and about differences in governance between the different countries among Chinese intellectuals. Yet, constitutions were

far from being universal. As various East Asian cases show, constitutions were needed for the sake of nation-building, for internal and external self-assertion. A constitution was the cornerstone of Japan's Meiji Reforms, the Philippine revolutionaries used the new politico-legal instrument, and Korea used it at a time of an imminent threat of national extinction. But there were still quite a few of polities in East and West, including some of the largest on the face of the planet, that, in light of their own political traditions, had not yet felt the need to adopt a constitution. China was one of them, such as were Russia, Persia and the Ottoman Empire (the latter one having had suspended her constitution after two years in 1878).

But in China, too, the changes of the times more and more necessitated far-reaching changes. It was in the last quarter of the century that Chinese intellectuals began to call for political reforms. These early calls did not necessarily expressly mention the word "constitution," but often advocated for the most salient element of constitutionalism: some kind of parliamentary representation. These calls continued debates that were led in other parts of the world, but at the same time tried to fit them into Chinese traditions.

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This chapter has shown that the pre-history of the concept of a constitution in China is richer and more complex than previously thought. Scholarship has mostly brushed over this embryonic period, because the concept was not yet used as a rallying call for China and was far from finding its reflection in actual Chinese politics, which only happened in the very last years of the century. Yet, understanding this period is of crucial importance, because it shows that the calls at the end of the century did not happen all of a sudden, but were preceded and prepared by a decade-long phase in which awareness of the concept, however tortuously, slowly developed in China. Therefore, this chapter provides an extensive survey of the various ways with which the concept was rendered and how it developed in the 19th century. It also shows that, from the very beginning, knowledge about

constitutions was embedded in a not just one-sided global flow of ideas, in which China participated even before the concept came to the surface as a political instrument. This is the background against which the first attempt at political reforms on the level of the central government of the Qing Empire unfolded in 1898, as well as the subsequent decade of “reform of governance” beginning from 1901.

CHAPTER TWO.

Constitutional Debates from the 100 Days' Reforms to the Russo-Japanese War

凡一國을成立維持코자ᄃᆞ면반다시憲章이有ᄃᆞ니

此憲章이無ᄃᆞ면國家라稱키難ᄃᆞ도다

Söl T'aehŭi (1908)⁴⁸⁶

1. Prelude: China's "Quadriform" Constitution

On July 20, 1898, James Wickersham (1857–1939), a US American judge from the State of Washington, gave a talk at the meeting of the Washington Bar Association, held in the far-western city of Spokane, near the Canadian border. The talk was entitled *The Constitution of China: A Study in Primitive Law*. In his talk, Wickersham vehemently defended the traditional constitution of China. This constitution had been given by Confucius, a “constitutional lawyer of the highest rank” who had reduced China’s unwritten constitution to “written exactitude.”⁴⁸⁷ China was a model to be followed, for:

Her ancient constitution, unchanged by time or revolution, unaltered by advancing civilization or foreign attack, yet controls with its iron barriers and forms the densest and most orderly population in any existing nation. Let him who desires to know something about good government, political

⁴⁸⁶ “If one wants to establish and preserve a state, it certainly will have a constitutional charter, whereas those which do not have this constitutional charter can hardly be called a state at all.” Söl T'aehŭi 薛泰熙, “Hönböp söön” 憲法緒言 (Introduction to constitutional law), *Taehan hyöphoe hoebo* 大韓協會會報, no. 3 (1908), 30. The author would like to thank Dr. Stefan Knoob for his help with interpreting this text.

⁴⁸⁷ Wickersham, *Constitution of China*, 1898), 17, 18.

economy and ethics, study the writings of Confucius, the learned commentator upon and mighty expounder of the Quadriform Constitution of China.⁴⁸⁸

The Chinese constitution, judge Wickersham explained, had existed for 4000 years in total and more than 2000 years in the form given by Confucius, and it could “serve for that many more if not ruthlessly destroyed by the Anglo-Saxon race.”⁴⁸⁹ Wickersham was not alone with his opinion. In this chapter, we will come across the writings of Ku Hung-Ming 辜鴻銘 (1857–1928), who staunchly promoted the Confucian constitution and was the first to vociferously argue against the written constitution of the USA to English-speaking audiences.

Wickersham’s lugubrious vaticination would come true sooner than expected. But it was many Chinese themselves who contributed to ruthlessly destroying China’s traditional constitution. At the very time as he was giving his talk in Spokane, the debates about political change in the last two decades of the 19th century were coming to a head in the 100 Days’ Reforms of 1898. In contrast to most previous scholarship, this chapter argues that the concept of a constitution was already significant by that time. Going further, it shows how the concept established itself as a central element of political discourse for China even before the Russo-Japanese War and the beginning of the “constitutional movement.” Finally, it argues that Chinese intellectuals developed their version of the concept within a globalised constitutional imaginary.

⁴⁸⁸ Ibid., 19.

⁴⁸⁹ Ibid., 18.

2. Kang Youwei and the 1898 Reforms

a) Constitutionalism Before the 100 Days' Reforms

The growing reform sentiment of the 1890s culminated in the "100 Days' Reforms" of summer 1898 (June 11 to September 21, 1898). None of the reform edicts contained any mention of a constitution or of a constitutional parliamentary system. Although there was already much political reformism in China, and although quite some knowledge about foreign constitutions was available, the notion of a constitution was still "too far in advance of the time to be applicable"⁴⁹⁰ to political reform at the highest level of Chinese politics. However, as will be seen, the 100 days reform did have constitutional significance, some of it hitherto unknown to scholarship.

Newer scholarship contends that the notion of a constitution and constitutionalism in a narrower sense only really became mainstream in debates about Chinese politics after Kang Youwei and Liang Qichao were exiled to Japan and from there began advocating for constitutionalism.⁴⁹¹ It is true that Kang's advocacy of constitutionalism was crucial for disseminating the concept. However, by 1898 there was enough of a substratum of knowledge about the notion of a constitution. Furthermore, the notion had begun to be used at the time in regard to China's political situation.

Not only had the *Xingzhonghui* advocated a "constitution for China" from 1895. Another secret society, the "Elder Brothers Society" (*Gelaohui* 哥老會), was agitating against the Qing government, with a strong base in the provinces along the Yangtze River. As the Japanese-language newspaper *Hokushin nippō* 北清日報 noticed in the spring of 1898, the agitation in these provinces was being influenced

⁴⁹⁰ Asakawa Kan'ichi 朝河貫一, "The New Regime in China," *Proceedings of the American Political Science Association* 6 (1909), 124. Asakawa, however, does depart from the assumption that Kang Youwei had proposed the adoption of a constitution in 1898.

⁴⁹¹ Rao, "Cong she yiyuan dao li xianfa," 35.

by Shanghai newspapers. Under the slogan “China should be controlled by the Chinese” (*Shinkoku wa Shinkokujin kore o kanrisubeshi* 清國は清國人之を管理すべし), they were demanding to transform China into a constitutional monarchy modelled on the English constitution (*Eikoku no kenpō ni moshite Shinkoku o rikken seitai koku to nasan* 英國の憲法に模して清國を立憲政體國となさん).⁴⁹²

This is not the place to discuss the activities of societies such as the *Gelaohui* in depth.⁴⁹³ Neither would this particular piece of news be the most authoritative source on it, as it had travelled quite a bit before being published in a medium that was rather removed from the Yangtze River basin. However, it does confirm the findings of chapter one as well as Luke Kwong’s argument that the 1898 reforms were not an unprecedented historical caprice, but the continuation of the self-strengthening movement.⁴⁹⁴ It happened on the basis of strong discussions about political reforms, which included a foundation of knowledge about constitutions among local elite circles.

b) Doctored Memorials to the Throne?

The nature of the 1898 reforms and in particular of Kang Youwei’s role therein has been the object of heated academic debate. Scholars like Luke Kwong have called for downplaying Kang’s role in the movement, believing that Kang himself exaggerated his role afterwards, and even go so far as to deem him to have been but a

⁴⁹² The *Hokushin nippō*’s note was reproduced in *Asahi shimbun* 朝日新聞, “Yōsukō-han no hanchō (Shina no rikKentō)” 楊子江畔の叛徴 (支那の立憲黨) (Insurrection on the margins of the Yangtze River: China’s constitutional party),” April 7, 1898. As *kenpō/xianfa* 憲法 was not necessarily the predominant term in Chinese at the time, there is the possibility that the term itself did not appear in the original Chinese source for the news, but was used as a Japanese description of it.

⁴⁹³ See, e.g., Carl W. Jacobson, “Brotherhood and society: The Shaanxi Gelaohui, 1867-1912” (PhD diss., University of Michigan, 1993); Robert H. Felsing, “The Heritage of Han: The Gelaohui and the 1911 Revolution in Sichuan” (PhD diss., University of Iowa, 1979).

⁴⁹⁴ Luke S. K. Kwong, *A Mosaic of the Hundred Days: Personalities, Politics, and Ideas of 1898* (Cambridge [Massachusetts]: Harvard University Press, 1984), 235–236.

minor figure in the 1898 reforms.⁴⁹⁵ However, Wong Young-Tsu 汪榮祖 has argued that while the reforms were not the creation of Kang alone, he did indeed play a significant role in them.⁴⁹⁶

After having written several petitions to the Throne before, Kang penned a large number of memorials in 1898, some of which served as basis for the Guangxu Emperor's reform edicts. But was Kang, in 1898, already championing a Meiji-style constitutional monarchy with a parliament and division of powers?⁴⁹⁷ Indeed, Kang Youwei at the time repeatedly advocated taking the Meiji reforms as a model for China,⁴⁹⁸ and he also proposed an "institutional office" (*zhiduju* 制度局), reminiscing of the Japanese "Office for the Investigation of Institutions" (*Seido torishirabe kyoku* 制度取調局).⁴⁹⁹

But more than this, for a long time it was said that one memorial by Kang Youwei, dated to the sixth month of Guangxu 24 (July 19–August 16 1898), proposed the adoption of a constitutional system and the inauguration of a national assembly (*ding lixian kai guohui* 定立憲開國會) in China. The memorial was quite bold in its pro-parliamentary stance:

The strength of all countries in East and West is all because they set up a national assembly according to a constitution. In a national assembly, the ruler and the citizens jointly debate a country's politics and laws. For from the theory of the three powers it emanates that a national assembly sets the law, the judges run the judiciary and the government administrates, and

⁴⁹⁵ Ibid., 228.

⁴⁹⁶ Wong, "Kang Youwei and the Reform Movement of 1898," 538–540.

⁴⁹⁷ E.g., Gao, *Qingmo lixian shi*, 62; Meienberger, *The Emergence of Constitutional Government in China*, 16.

⁴⁹⁸ There are a few variations in the exact wording, e.g., in his fifth and six memorials: "Taking the Japanese Meiji politics as the method for politics" (*yi Riben Mingzhi zhi zheng wei zhengfa* 以日本明治之政為政法), and, "taking Japanese Meiji law as law" (*yi Riben Mingzhi zhi fa wei fa* 以日本明治之法為法). See Kang, *Qi ci shangshu huibian*; *Wuxu zougao*, part 1, 99, 103, also contained in Zhongguo shixuehui 中國史學會, Jian Bozan 翦伯贊 et al. eds., *Wuxu bianfa* 戊戌變法 (The reforms of 1898) (Shanghai: Shenzhou guoguang she, 1953), vol. 2, 195, 199.

⁴⁹⁹ See his sixth memorial to the emperor, dated January 29, 1898. Kang, *Qi ci shangshu huibian*; *Wuxu zougao*, part. 1, 105–106.

the monarch, synthesising it, adopts a constitution and is equally governed by it. The monarch is respected as sacred, bears no responsibility, and the government represents it. All the countries of East and West adopt this mode of government. Hence, the monarch and the millions of citizens combine into a unity: how could such a country not be strong? But our country adopts an absolutist government, where one ruler rules his country together with a few high officials: how could such a country not be weak?

東西各國之強，皆以立憲法開國會之故。國會者，君與國民共議一國之政法也。蓋自三權鼎立之說出，以國會立法，以法官司法，以政府行政，而人主總之，立定憲法，同受治焉。人主尊為神聖，不受責任，而政府代之。東西各國，皆行此政體，故人君與千百萬之國民，合為一體，國安得不強？吾國行專制政體，一君與大臣數人共治其國，國安得不弱⁵⁰⁰

Newer research has cast doubt on whether Kang really championed a “constitution” during the 1898 reform. Most of Kang’s memorials of 1898, including the one allegedly demanding a constitution, were not published at the time. For some time, scholarship had maintained that Kang’s petitions were well-known in 1898 in Japan, but this myth has been debunked by Urs Zachmann.⁵⁰¹ What was known in Japan at the time—as it was in China—is that the movement did petition for a popular representation (*minxuan yiyuan/minsen giin* 民選議院).⁵⁰² But overall, the reform movement of 1898 was not much noticed in Japan, and attention to it only

⁵⁰⁰ Kang, *Qi ci shangshu huibian*; *Wuxu zougao*, part 2, 33–34. Also published as Kang Youwei 康有為, *Wuxu zougao* 戊戌奏稿 (Memorial drafts of 1898) (Taipei: Wenhai chubanshe, Minguo 58 [1969]), 76–79. The memorial is also reproduced under the title “Memorial asking for the adoption of a constitution and convening of a national assembly” (*Qing ding lixian kai guohui zhe* 請定立憲開國會摺), in: Zhongguo Shixuehui, Jian et al., *Wuxu bianfa*, vol. 2, 236–237. The punctuation has been slightly changed.

⁵⁰¹ Urs Matthias Zachmann, “China’s Role in the Process of Japan’s Cultural Self-Identification, 1895–1904” (PhD diss., University of Heidelberg, 2006), 204–207.

⁵⁰² *Asahi shimbun* 朝日新聞, “Pekin no ichidai seihen” 北京の一大政變 (A great political upheaval in Peking), October 9, 1898, about a petition by Wang Zhao 王照 (1859–1933).

grew towards their end.⁵⁰³ The memorials were only published in 1911 by Kang himself under the title *Memorial Drafts of 1898* (*Wuxu zougao* 戊戌奏稿).

With this in mind, scholars such as Kong Xiangji 孔祥吉 have argued that Kang doctored much of the memorials in his 1911 publication, especially some of the most fundamental parts, altering the part concerning the “institutional office” and inserting the words “adopt a constitution” and “three powers.”⁵⁰⁴ Scholarship has found one of Kang’s 1898 undoctored memorials talking about a parliament. This memorial mentioned a limited parliament (*yi yuan* 議院) in 1898, but it did not mention constitutionalism. According to it, the emperor could choose to accept or reject the proposals of the chamber; all matters could be debated by those below, but the power to decide still rested above. Overall, the tone of this memorial was much less effusive than the constitutionalist one:

I ask to establish an upper and a lower chamber of a parliament. When there is no particular matter, it elaborates on the affairs of the times, and when there is a particular matter, it assembles to discuss. The matters to be adequately discussed are submitted by the *Zongli yamen*; matters from the provinces are submitted by the Viceroy and Governors. What can be executed is deliberated upon and adopted. What cannot be executed, is discarded. Although the matters are discussed by those below, the right to

⁵⁰³ There was information about the political events in China, but only in fragments, which would only have yielded a fair picture of the reforms if an avid reader had painstakingly pieced them together from the various sources. See Urs Matthias Zachmann, *China and Japan in the Late Meiji Period: China Policy and the Japanese Discourse on National Identity, 1895-1904* (Abingdon: Routledge, 2009), 93. See also Zachmann, “China’s Role in the Process of Japan’s Cultural Self-Identification, 1895-1904,” 204–207, with a more detailed and slightly more negative assessment.

⁵⁰⁴ Kong Xiangji 孔祥吉, *Wuxu weixin yundong xintan* 戊戌維新運動新探 (A new exploration of the reform movement of 1898) (Changsha: Hunan renmin chubanshe, 1988), 184–204. See also Kong Xiangji 孔祥吉, “Wuxu zougao de gaizuan ji qi yuanyin” 《戊戌奏稿》的改纂及其原因 (The falsification of the *Memorial Drafts of 1898* and its reasons), *Lishi yanjiu* 歷史研究, no. 5 (1982), and Kong Xiangji 孔祥吉, “Cong Polan fenmieji kan Kang Youwei wuxu bianfa shiqi de zhengzhi zhuzhang” 從《波蘭分滅記》看康有為戊戌變法時期的政治主張 (Seeing the political standpoints of Kang Youwei at the time of the 1898 reforms from the *Record of the Partition of Poland*), *Renwen zazhi* 人文雜誌, no. 5 (1982). See also Rao, “Cong she yiyuan dao li xianfa,” 26–28.

adopt them or not still rests with the above, so as to avoid the Western mistake of the ruler and the people fighting for power.

擬請設立上下議院，無事講求時務，有事集群會議，議妥由總理衙門代奏，外省由督撫代奏。可行者，酌用；不可行者，置之。事雖議於下，而可否之權仍操於上，庶免泰西君民爭權之弊。⁵⁰⁵

But this was not the only time when Kang mentioned a parliament: he also mentioned it in some of his petitions he had penned before the 100 Days' Reforms. Thus, he had not "dropped" the issue after the fourth petition, as some scholars have claimed,⁵⁰⁶ but indeed continued to advocate it. His fifth petition, penned after the German occupation of Kiaochow Bay in 1897, expressly mentions the word "national assembly" (*guohui* 國會), as the original block-print edition of 1897 shows.⁵⁰⁷

However, Kang's position at that time does indeed seem to have changed somewhat. In a recent article of 2017, Lee Ch'unbok 李春馥 argued that Kang was first inclined towards establishing a German-style parliament before turning to the Japanese model.⁵⁰⁸ This focus on Japan meant that, by 1898, his priority concern was not the parliamentary assembly and not the constitution, but the "institutional office."⁵⁰⁹ In other places, Kang, at first sight, even seems to have opposed the adoption of a parliament. For example, shortly before the 100 Days' Reforms, he explained in the *Guowen bao* 國聞報:

⁵⁰⁵ Guojia dang'anju Ming-Qing dang'anguan 國家檔案局明清檔案館, ed., *Wuxu bianfa dang'an shiliao* 戊戌變法檔案史料 (Archival material on the 1898 reforms) (Beijing: Zhonghua shuju, 1958), 172–173; Kong, *Wuxu weixin yundong xintan*, 192; Mao Haijian 茅海建, *Wuxu bianfa shishi kao chuji* 戊戌變法史事考初集 (Preliminary examination of the historical facts of the 1898 reforms) (Beijing: Sanlian shidian, 2012), 286; citing him Rao, "Cong she yiyuan dao li xianfa," 27.

⁵⁰⁶ See, e.g., *ibid.*, 26.

⁵⁰⁷ Kang, *Qi ci shangshu huibian*; *Wuxu zougao*, part 1, 98; see also Wong, "Kang Youwei and the Reform Movement of 1898," 519, who has checked the original rare block-print edition of 1897.

⁵⁰⁸ Lee Ch'unbok 李春馥, "Musulbyönböpsigi Kangyuwiüi üihoejedo söllip kusanggwa riphönsasang" 戊戌變法시기 康有爲의 議會制度 설립 構想과 立憲사상 (Kang Youwei's ideas on the establishment of a parliament and his constitutional thought at the time of the 1898 reforms), *Tongyang sahak yön'gu* 東洋史學研究, no. 139 (2017), 83–85.

⁵⁰⁹ Chang, *Zhongguo minzhu zhengzhi de kunjing*, 27–30.

The meaning of a parliament is a model that has been explored and thoroughly understood by the ancients. The West adopts it with particular intensity, up to giving the whole sovereignty to the parliament to effectively exert it. But I for my part think that China cannot adopt this. For the countries in the world are not commensurate in situation, national character and geography. One cannot model China on the example of the Westerners.

夫議院之義。爲古者闢門明目達聰之典。泰西尤盛行之。乃至國權全畀於議院而行之有效。而僕竊以爲中國不可行也。蓋天下國勢民情地理不通。不能以西人而例中國。⁵¹⁰

Is there not a contradiction here? Why does he seemingly oppose the adoption of a parliament for China on this occasion but favours a parliament in his various petitions to the Throne? This is no contradiction. For Kang did see a parliament as something positive throughout, and he showed admiration for the Japanese parliament. But, in placing his focus on the “institutional office,” he argued that China was not yet mature enough for a full implementation of the notion. As he expounds in his writings of 1897/98, he thought that the people were not yet “equipped with knowledge” (*minzhi wei kai* 民智未開). Developing this knowledge was of utmost priority. In his *Study of the Japanese Reforms* (*Riben bianzheng kao* 日本變政考) he wrote, contrasting China with Japan, but hinting at limited elections:

But in China the habits are not yet developed, for inside and outside, large and small, have, for the most part, not yet connected China and the foreign countries. Hence, only a strong ruler alone can, with his sovereign rights, provide for decisive and expedient rulership, and then there will be nothing that does not change by itself. But one should carefully select knowledgeable officials, so as to provide for counsel.

⁵¹⁰ Kang Youwei 康有爲, “Da ren lun yiyuan shu” 答人論議院書 (An answering letter to someone discussing parliaments), in *Guowen bao huibian* 國聞報彙編, ed. Ai Yin 愛穎 (Taipei: Wenhai chubanshe, Minguo 76 [1987]), 98-99.

惟中國風氣未開，內外大小多未通達中外之故，惟有乾綱獨斷，以君權雷厲風行，自無不變。但當妙選通才，以備顧問。⁵¹¹

In another passage of the work, talking about Japan's revision of the treaties with the foreign powers, Kang pondered:

But it has to begin with equipping the people with knowledge in large scale. If the people are not equipped with knowledge and suddenly enjoy popular rights, then the whole nation will be ignorant and more conservative than ever, and this will be the way to induce chaos. Hence, the establishment of a nation has to have a parliament as its basis, but a parliament has to have schools as its basis.

然必自大開民智始。民智不開，遽用民權，則舉國聾瞶，守舊愈甚，取亂之道也。故立國必以議院爲本，議院又必以學校爲本。⁵¹²

Secondary literature just cites these passages as they seem to oppose a parliament, omitting the context.⁵¹³ But read in context, they do match the attitude expressed in Kang's petitions to the Throne. The parliaments proposed in the petitions were debating chambers without deciding powers, and in 1898 he put more emphasis on creating an "institutional office." In sum: By 1898, Kang Youwei did envision a popular representation, but his hopes lay on a reform from above and by decree like they were implemented in the 100 Days period.⁵¹⁴ The memorial published later was then possibly doctored so as to expand the role of the parliament, according to the changed overall political situation.

⁵¹¹ Kang Youwei 康有爲, *Riben bianzheng kao; E Bide bianzheng ji* 日本變政考；俄彼得變政記 (Study of the Japanese reforms; Account of the reforms of Peter the Great of Russia), ed. Jiang Guilin 蔣貴麟. Kang Nanhai Xiansheng yizhu huikan 10 康南海先生遺著彙刊 (十), 25.

⁵¹² Ibid., 306.

⁵¹³ Kong, "Cong Polan fenmieji kan Kang Youwei wuxu bianfa shiqi de zhengzhi zhuzhang," 84.

⁵¹⁴ Wong, "Kang Youwei and the Reform Movement of 1898," 539.

c) Kang and the Notion of a “Constitution”

If Kang did have a vision of a popular representation by the time of the 100 Days Reforms, how did the notion of a constitution figure in his thinking of the time? Rao Chuanping has contended that before fleeing the country, Kang rarely used the word, and when he did, he did not really know what it meant. As an evidence, he adduces a note from Kang’s *Record on Japanese Bibliographies* (*Riben shumu zhi* 日本書目志), arguing that Kang, in 1898, did not seem to make a distinction between “constitutional” law (*xianfa* 憲法) and the legal system in general:

Above are seven books about foreign constitutions.

When the masses assemble, then one cannot use laws to govern it. That a clan has a register and a country has laws is a natural principle. Since the Restauration, Japan has studied Western polities to reform her legal system, and the material shows this very clearly!

右外國憲法七種

聚大眾則不能無律法以治之族有譜國有法天之理也日本自維新以來考求泰西之政更立法度講義圖解詳哉⁵¹⁵

However, what Rao leaves out is the rest of the passage:

These four works are the finest: *Comprehensive Constitutional Theory* [*Kokken hanron* 國憲汎論, by Ōno Azusa 小野梓, 1852–1886]; *The Constitutional History of the United States* (sic!) [*Eikoku kenpōshi* 英國憲法史, by Thomas Erskine May, 1815–1886, translated by Shimada Saburō 島田三郎, 1852–1923, and Noritake Kōtarō 乘竹孝太郎, 1860–1909]; *Constitutions of the Various Countries of Europe* [*Ōshū kakkoku kenpō* 歐洲各國憲法, edited by the Genrōin

⁵¹⁵ Kang Youwei 康有為, 11): *Riben shumu zhi* 日本書目志 (Record on Japanese bibliographies), ed. Jiang Guilin 蔣貴麟, Kang Nanhai Xiansheng yizhu huikan Kang Nanhai Xiansheng yizhu huikan 11 康南海先生遺著彙刊 (十一) ([Taipei]: Hongye shuju, [1987]), 227–228. On this Rao, “Cong she yiyuan dao li xianfa,” 27–28.

元老院] and *Comparison of the Constitutions in Force in all Countries* [*Bankoku genkō kenpō hikaku* 萬國現行憲法比較 by Tatsumi Kojirō 辰巳小二郎]. (According to) their *Study on the public and private rights of officials and citizens in Japan and abroad* [*Naigai shinmin kōshiken kō* 内外臣民公私權考 by Inoue Kowashi 井上毅, 1844–1895], the fact that people have rights of self-government and also have laws of mutual restriction is a good method of the West!

國憲汎論美(sic!)國憲法史各國憲法萬國現行憲法比較四種最精矣其内外臣民公私權考人有自主之權又有互制之法泰西之良法哉⁵¹⁶

This short note of Kang's by itself does not suffice to determine whether he did not understand what a constitution was at that point. Certainly, it uses the words "laws" (*lǐfa* 律法) and "legal system" (*fadu* 法度), but this cannot be taken as an indication that Kang did not separate a constitution from ordinary laws. As a constitution is the law that governs the state and the cornerstone of a legal system, it would not be surprising to describe the constitution with these terms.

Certainly, Kang Youwei did not read all the books he listed in the catalogue. This can be seen from the mistakes he made. For example, Amano Tameyuki's 天野為之 (1859–1938) and Ishihara Kenzō's 石原健三 (1864–1936) book on the English Constitution (*Eikoku kenpō seiri* 英國憲法精理) is miscategorised under the books on the Japanese constitution, with the title omitting the reference to England (which is written in smaller size in the Japanese book cover).⁵¹⁷ Thomas Erskine May's (1815–1886) *The Constitutional History of England*, translated into Japanese by Shimada Saburō 島田三郎 (1852–1923) and Noritake Kōtarō 乘竹孝太郎 (1860–

⁵¹⁶ Kang, *Riben shumu zhi*, 229. Kang cites the *Constitutional History of England* (*Eikoku kenpōshi* 英國憲法史) correctly in 228, but miswrites England (*ying* 英) for United States (*mei* 美) in the next page. In 229, Kang omits the term "Europe" from the title of the book *Constitutions of the Various Countries of Europe* (*Ōshū kakkoku kenpō* 歐洲各國憲法) edited by the Genrōin 元老院.

⁵¹⁷ *Ibid.*, 226; for the original book see Amano Tameyuki 天野為之 and Ishihara Kenzō 石原健三, *Eikoku kenpō seiri* 英國憲法精理 (Essential Principles of the English Constitution) (Tokyo: Fuzanbō, Meiji 22 [1889]).

1909), is written correctly in the list (*Eikoku kenpōshi* 英國憲法史), but changed to *Constitutional History of the United States* (*Meiguo xianfashi* 美國憲法史) in the following appraisal.⁵¹⁸

It is not surprising that Kang would not have read the hundreds of books he listed in his catalogue. But he did read their titles, ordered and categorised them. The two categories concerning “constitutional law” (Japanese and foreign constitutions) are just the beginning of the law section of the *Record on Japanese Bibliographies*. The section goes on with books about legal theory, foreign laws, legal history, “currently valid laws” (*xianxing falü* 現行法律), criminal law, civil law, commercial law, &c. What does this tell us about Kang’s conception of a constitution?

If we look further, we will find that Kang did use the word *xianfa* 憲法 in other places before 1898, including his fifth and sixth petition to the Guangxu Emperor. While he does go into more depth in the sixth petition, let us first have a look at the fifth petition. There, he writes, just next to mentioning a parliament:

From then on, the country’s matters should be entrusted to the national assembly for deliberation and execution. Graciously deign to see officials and common people at court and thoroughly change the old customs, keeping your whole mind on reform. Summon the talents of the Empire to deliberate on methods to raise funds and conduct reforms. Select the laws of the various countries and adopt a constitutional separation of public and private [rights]. Inspect in large scale whether the officials of the Empire are virtuous or not. Order all those weary and untalented to go into early retirement while keeping their service grade. Send the princes, high officials and talented people separately overseas, and those who do not yet have experience travelling abroad shall not be allowed to receive an official appointment. Comprehensively calculate the land and human resources in

⁵¹⁸ Kang, *Riben shumu zhi*, 227–228.

order to draft the annual budget. Investigate the achievements and deficiencies of all the countries in order to strive for progress and improvement.

自茲國事付國會議行，紆尊降貴，延見臣庶，盡革舊俗，一意維新，大召天下才俊，議籌款變法之方，採擇萬國律例，定憲法公私之分，大校天下官吏賢否，其疲勞不才者，皆令冠帶退休，分遣親王大臣及俊才出洋，其未游歷外國者，不得當官任政，統算地產人工，以籌歲計豫算，察閱萬國得失，以求進步改良。⁵¹⁹

Here too, Kang did not explain exactly what he meant by *xianfa* 憲法. However, the phrase “adopt a constitutional separation of public and private [rights]” (*ding xianfa gongsi zhi fen* 定憲法公私之分) seems to refer to Inoue Kowashi’s 井上毅 (1844–1895) book *Study on the Public and Private Rights of Officials and Citizens in Japan and Abroad* (*Naigai shinmin kōshiken kō* 内外臣民公私權考), which he cited in his *Record on Japanese Bibliographies*. This strengthens the hypothesis that Kang did have a notion of a “constitution” which was not wholly identical to just “laws” or “legal system.”

Peter Zarrow has pointed out that Chinese reformers of the 1890s were not yet completely informed about Japan, which they did not know from personal experience, and invented Japan as a utopian projection for China.⁵²⁰ But would Kang, who had recommended copying the Meiji reforms, have ignored the most prominent, the most salient element of said reforms?⁵²¹ To answer this, let us have a look at Kang’s writings of 1898. In his sixth petition⁵²² of January 29, 1898, which was

⁵¹⁹ Kang, *Qi ci shangshu huibian*; *Wuxu zougao*, part 1, 98.

⁵²⁰ Peter Zarrow, “Late Qing Reformism and the Meiji Model: Kang Youwei, Liang Qichao and the Japanese Emperor,” in *The Role of Japan in Liang Qichao’s Introduction of Modern Western Civilization to China*, ed. Fogel, 42–43.

⁵²¹ One should also remember that translations of the US American Constitution began to appear in the reformist magazine *The Chinese Progress* (*Shiwei bao* 時務報), closely connected to Kang, at about the same time he penned his fifth petition. Kang did moreover know Zhang Yinhan, who published the translation in his diary. It is not unlikely that Kang read that translation of the US American Constitution, as Hu, “Cai Xiyong *Meiguo Hebang Mengyue yiben kaolun*,” 100, speculates.

⁵²² Kang *Qi ci shangshu huibian*; *Wuxu zougao*, part 1, 101–108.

read by the Emperor,⁵²³ Kang lays down a general program for reform, including the necessity to open an “institutional office” (*zhiduju* 制度局), a cabinet-like office of central importance. Kang developed these ideas in more depth in his book *Study of the Japanese Reforms* (*Riben bianzheng kao* 日本變政考), which forms a tandem with the much shorter *Account of the Reforms of Peter the Great of Russia* (*E Bide Bianzheng Ji* 俄彼得變政記). Kang Youwei presented the two books to the Guangxu Emperor twice, including once together with the sixth petition.⁵²⁴

The book is a chronological account of the reform steps taken in Japan since the first year of Meiji (1868), mingled with Kang’s own commentaries. It focuses heavily on the legal aspect of the reforms, and begins with a full translation of the 1868 *Document on the Government System* (*Seitaisho* 政體書).⁵²⁵ The book provides translations of a host of other legal documents, but not of the 1889 Meiji Constitution. However, even if not giving its full translation, the Meiji Constitution, being the cornerstone of the Meiji reforms, is at the centre of Kang’s account. Kang notices Itō’s travels to Europe in 1883, making clear the close connection between the notions of constitution and parliamentary government:

On the 27th [January of 1882], Councillor Itō received the Imperial task for a journey overseas, and departed on March 14. For the sake of the opening of the Parliament in Meiji 23 (1890), he made a tour through the various countries of Europe, collected models for the upper and lower chambers of parliament, conducted an investigation of constitutional texts, &c. He exclusively prepared for the compilation of a constitution.

⁵²³ Wong, “Kang Youwei and the Reform Movement of 1898,” 520.

⁵²⁴ *Ibid.*, 521. For the book on Russia see Kang Youwei *Riben bianzheng kao*; *E Bide bianzheng ji*, part 2.

⁵²⁵ *Ibid.*, part 1, 19–35.

二十七日，伊藤參議有奉敕出洋之行，於三月十四日出發。蓋以立二十三年國會開設事，巡行歐洲諸邦，參採上下議院模樣，憲法成典調查等，專準備憲法編制也。⁵²⁶

Kang's account then narrated the opening of the "Office for the Investigation of Institutions" (*Seido torishirabe kyoku* 制度取調局) on March 3, 1884, and commented:

Reform all lies in regulations and constitutions. One should collect those from within and outside and debate their advantages, draft regulations and then distribute them in the Empire. ... Now, our China wants to change her legal system in large scale. Japan and our country have the same writing and the same customs, we can collect it to use it. ... When all regulations of the Japanese legal system have been collected, they just need to be debated and put into practice.

變政全在定典章憲法，參採中外而斟酌其宜，草定章程，然後推行天下。……我中國今欲大改法度，日本與我同文同俗，可採而用之。……已盡採日本一切法制章程，待舉而斟酌施行耳。⁵²⁷

The *Study of the Japanese Reforms* continued to note the progress of the drafting of the Meiji Constitution, reported on the lavish promulgation ceremony of the Meiji Constitution on February 11, 1889⁵²⁸, and translated a speech given by Itō Hirobumi on February 13, explaining the constitution in general as well as specific articles of it.⁵²⁹ His last comment reads like this:

Japan conducted reforms for 24 years. Then the constitution became a great accomplishment, the people's habits highly harmonious, public figures sagacious, and the above and the below communicate their circumstances. After this, the Parliament convened, holding exuberant ceremonies. Its

⁵²⁶ Ibid., part 1, 221.

⁵²⁷ Ibid., part 1, 235.

⁵²⁸ Ibid., part 1, 280.

⁵²⁹ Ibid., part 1, 291–294.

monarch, too, gets more respected by the day, and the country gets more peaceful by the day. This is how effective the Japanese reforms have been!

日本變法二十四年，而後憲法大成，民氣大和，人士知學，上下情通，而後議院立，禮樂莘莘，其君亦日益尊，其國日尊安，此日本變法已成之效也。⁵³⁰

After this, he concluded the book calling for the establishment of an “institutional office in order to deliberate on a constitution” (*li zhiduju yi yi xianfa* 立制度局以議憲法).⁵³¹ These passages of the *Study of the Japanese Reforms* match closely Kang’s attitude demonstrated in his other works and petitions. In her dissertation, Zhao Hui argues that “the core of Kang’s constitutional thought wasn’t so much about clarifying what *xianfa* (constitution) was, but using the idea to promote a radical institutional change (*bianfa* 變法).”⁵³² Zhao’s analysis is, *nota bene*, based on Kang’s probably doctored memorial (*Qing ding lixian kai guohui zhe* 請定立憲開國會摺), which suggests that, even if he doctored it to make it sound more effusive, Kang remained fundamentally consistent on this point. For in its analysis of the *Study of the Japanese Reforms* and other writings, which are only mentioned in passing by Zhao,⁵³³ the present study comes to a similar, yet slightly differing, conclusion. Kang did in fact know what a constitution was before and during the 1898 reforms, and he did in fact advocate for it. However, within his “utopian projection,”⁵³⁴ he was not that much interested in a detailed definition, nor did he conceive of the constitution as of a stand-alone instrument. For him, a constitution was the finishing stone of a very profound reform of a country’s legal and institutional system.

⁵³⁰ Ibid., part 1, 335. The source has “比” instead of “此” in the last sentence. The present study takes this to be a typographical mistake.

⁵³¹ Ibid., part 1, 335.

⁵³² Zhao, “Rethinking Constitutionalism in Late 19th and Early 20th Century China,” 76.

⁵³³ Ibid., 76, footnote 191.

⁵³⁴ Zarrow, “Late Qing Reformism and the Meiji Model,” in *The Role of Japan in Liang Qichao’s Introduction of Modern Western Civilization to China*, ed. Fogel, 43.

After the 100 Days' Reforms failed, Kang did play up things to his own advantage and even distorted some facts, although to a lesser extent than scholars as Kong Xiangji, Huang Zhanjian, Luke Kwong and Rao Chuanping have asserted.⁵³⁵ He may have forged or heavily manipulated the specific memorial calling for "the adoption of a constitution and the opening of a national assembly." What Kang did *not* invent, however, was the fact that he did advocate for a constitution shortly before and during the 1898 reforms.

d) Kang's 1898 Constitutionalism and China's Further Constitutional Reforms

Knowledge that Kang advocated for a constitution in 1898 did not appear with the publication of the *Memorial Drafts of 1898* in 1911. It appeared much earlier. In China, this might have been kept in silence as long as he was a *persona non grata*, but in fact, it was frequently mentioned in other sources throughout the period during which the Chinese government attempted to adopt constitutionalism (1905–1911). For example, on July 30, 1905, a diplomatic report sent to Berlin by the German legation to China pointed out that:

In the reform program of the Cantonese Kangyowei, which has been thrown over by the *coup d'état* of September 1898, also figured the transformation of China into a modern-style constitutional state. Such as many other proposals by Kangyowei, which were at the time was called felonious and utopian, have now been adopted by the Chinese government, the controlling circles in China have also now begun to ponder about the question of introducing a constitution.

⁵³⁵ Wong, "Kang Youwei and the Reform Movement of 1898," 539.

In dem Reformprogramm des Cantonesen Kangyowei, das durch den Staatsstreich von September 1898 über den Haufen geworfen wurde, figurierte auch die Umwandlung Chinas in einen konstitutionellen Staat nach modernem Muster. Wie manche anderen damals als verbrecherisch und utopisch bezeichneten Vorschläge Kangyowei's inzwischen von der chinesischen Regierung adoptiert worden sind, haben die massgebenden Kreise in China jetzt angefangen, sich auch mit der Frage der Einführung einer Verfassung zu beschäftigen.⁵³⁶

Similarly, in the USA, on April 1, 1906, the three-time presidential candidate William Jennings Bryan (1860–1925), informed the US American public about recent Chinese developments. He had received from Wu Tingfang 伍廷芳 (1842–1922), former minister to the USA and vice-director of the Board of Foreign Affairs (*Waiwubu* 外務部), a list of reforms recently effected in China. In the resulting full-page article, Bryan also related the 1898 events to constitutional reforms and stated that Empress Dowager Cixi was now “instituting the very reforms for the suggestion of which she so recently imprisoned her nephew.”⁵³⁷ Harvard College student Ye Daqian 葉達前 declared in a widely-published newspaper article of 1908 that “the movement for a constitutional movement in China dates back to 1898, when a coup d’etat was brought about by the radicals led by Kang-Yu-Wei.”⁵³⁸

Not surprisingly, the version of 1898 as being specifically constitutional reforms was also current in Japan, whither Kang had fled in 1898. For example, in April 1909, Ōmura Kin'ichi 大村欣一 reported the story in the journal of the Pan-

⁵³⁶ Report on the deployment of five commissioners for the study of foreign constitutional systems, July 30, 1905, in: Deutsche Gesandtschaft in China, Gesetzgebung, Reformen, Peking II 593, Political Archive of the Federal Foreign Office of Germany, 38.

⁵³⁷ William J. Bryan, “Awakening of Sleeping Giantess: ‘Advance of China is Inevitable, and the World Need Not Fear the Result. She Cannot Grow in Strength Faster Than She Grows in Knowledge,’” *Boston Daily Globe*, April 1, 1906.

⁵³⁸ Ta Ch'ien Yeh, “Chinese Democracy Coming,” *Boston Daily Globe*, October 18, 1908; Ta Ch'ien Yeh, “Chinese Rule: Days of Monarchy Surely Numbered,” *Taney County Republican*, September 16, 1909; Ta Ch'ien Yeh, “Chinese Rule: Days of Monarchy Surely Numbered,” *Colfax Chronicle*, October 16, 1909.

Asianist Japanese *East Asia Common Culture Society* (*Tōa Dōbunkai* 東亞同文會).⁵³⁹

Therein, he wrote in detail about Kang's reformist ideas of 1897 and translated the crucial part of Kang's sixth petition of January 29, 1898⁵⁴⁰: China needed to establish an "institutional office" and adopt a constitution (*seidokyoku o aki kenpō o sadamu* 制度局を開き憲法を定む/orig. *kai zhiduju er ding xianfa* 開制度局而定憲法).

The *Tōa Dōbunkai* article literally made it round the world: That Kang had demanded a constitution in 1898 was immediately retold by Asakawa Kan'ichi 朝河貫一 (1873–1948) in an article about China's constitutional reforms published in the *Proceedings of the American Political Science Association*:

Only the reformatory measures proposed by K'ang Yu-wei included, among other things, the promulgation of a constitution. The idea, however, was couched in very general phrases, and otherwise would, in any form, have been too far in advance of the time to be practicable.⁵⁴¹

The 100 Days, thus, were not only remarkable in themselves for being the first time when constitutionalism played a role in the politics of the Court at Peking. They also became an early point of reference for the constitutional reforms that China would undertake just a few years later.

⁵³⁹ The *Tōa Dōbunkai*, from the beginning, had close connections to the Chinese constitutionalists. See, e.g., Liang Qichao's magazine *China Discussion* (*Qingyi bao* 清議報), which, from the beginning, had plenty of material contributed by the *Tōa Dōbunkai*. On the *Tōa Dōbunkai* see Sven Saaler, "Pan-Asianismus im Japan der Meiji- und der Taishō-Zeit: Wurzeln, Entstehung und Anwendung einer Ideologie," in *Selbstbehauptungsdiskurse in Asien: China – Japan – Korea*, ed. Iwo Amelung et al. (Munich: Iudicium, 2003), 145–146, with further references.

⁵⁴⁰ Ōmura Kin'ichi 大村欣一, "Shinkoku rikken yobi no enkaku" 清國立憲預備の沿革 (The development of constitutional preparation in the Qing Empire), *Tōa Dōbunkai hōkoku* 東亞同文會報告, no. 113 (1909), 5. For the original see Kang, *Qi ci shangshu huibian*; *Wuxu zougao*, part 1, 104 (see also 105–106 for the twelve sub-bureaus of the "institutional office").

⁵⁴¹ Asakawa, "The New Regime in China," 124.

3. “Reform of Governance,” “Constitutions,” and “Constitutionalism”

a) A Short Overview of Political Developments 1898–1903

The reforms of 1898 were rigorously suppressed after 103 days. Kang Youwei and his disciple Liang Qichao were exiled to Japan, and a number of reformers was executed. But debates about reforms continued within and outside of China. Many felt the same as a “special contributor” who wrote in the *Los Angeles Times*:

The constitution of China was framed 2000 years ago. It must have had some merit to have survived so long, but the time has come for modification if not for radical change.⁵⁴²

The political crackdown, too, was only temporary. Political reforms were only halted for a short period of a little more than two years. In 1900, the *Boxer* rebellion rocked Northern China. In an undeclared war, foreign armies invaded Peking, and the Imperial Court fled to the city of Xi’an. The Boxer Rebellion once more evidenced the Qing Empire’s political and military weakness, and it severely damaged its international prestige. After the rebellion had been quelled and the Court returned to the capital, the Chinese government could not but consider political reforms again.

On January 29, 1901, Empress Dowager Cixi 慈禧 (1835–1908) issued an edict calling for political reforms in China.⁵⁴³ The edict did not envision a break with the past, but rather preserving the past by adapting the governance to the requirements of the time.⁵⁴⁴ It stressed that, while the “eternal principles” (*changjing* 常經) of the Chinese state were unchangeable, “methods of governance”

⁵⁴² *Los Angeles Times*, “Looking Forward: The Map of Asia in the Twentieth Century.” October 30, 1898.

⁵⁴³ Gugong Bowuyuan Ming-Qing dang'anbu 故宮博物院明清檔案部, ed., *Yihetuan dang'an shiliao* 義和團檔案史料 (Archival material concerning the Boxers), 2nd ed., 2 vols. (Beijing: Zhonghua shuju, 1979), vol. 2, 915. For a translation see Douglas Robertson Reynolds, *China, 1898-1912: The Xinzhen Revolution and Japan* (Cambridge [Massachusetts]: Harvard University Press, 1993), 201–204.

⁵⁴⁴ Meienberger, *The Emergence of Constitutional Government in China*, 20.

(*zhifa* 治法) were indeed prone to political reforms. While the Chinese, stressed the edict, had theretofore learned superficialities like foreign languages and technology, this was not enough:

These are but surface elements of the West and have nothing to do with the essentials of Western learning.

此西學之皮毛而非西學之本源也⁵⁴⁵

What the Chinese had failed to learn, the Court argued, was the core of Western government. One should not only learn technical details, but also the principles which had made Western countries strong. To this end, Cixi emphasised, it was perfectly permissible to “take the strengths of foreign countries in order to amend China’s shortcomings” (*qu waiguo zhi chang nai ke bu Zhongguo zhi duan* 取外國之長乃可補中國之短). This was a formula closely reminiscent of the Meiji Emperor’s poem which became the motto of the Meiji reforms:

By taking what is good and discarding what is bad, may we make Japan into a nation not inferior to foreign countries!

よきをとり悪しきを捨てて外國に劣らぬ國となすよしもがな⁵⁴⁶

The edict of January 29, 1901, instituted the “reform of governance” (*xinzheng* 新政).⁵⁴⁷ The following years saw a series of reforms in the educational, military, com-

⁵⁴⁵ Zhu Shoupeng 朱壽朋 and Zhang Yuying 張毓英, eds., *Donghua xulu* 東華續錄 (Continued records of Donghua) (Shanghai: Shanghai guji chubanshe, 2002), 227 (chapter Guangxu 164, 3a); the English translations follows Reynolds, *The Xinzhen Revolution and Japan*, 203.

⁵⁴⁶ Meiji Tennō 明治天皇, *Meiji Tennō gyosei: Yamatogokoro* 明治天皇御製：やまと心 (Poems by the Meiji Emperor: The spirit of Yamato), ed. Sasaki Nobutsuna 佐々木信綱 (Tokyo: Hakubunkan, Taishō 3 [1914]), 8.

⁵⁴⁷ The term *xinzheng*, too, meant a continuity to the 100 Days’ Reforms, for it had already been in use during the past decade (see chapter 1); for an official document using it see, e.g. the Imperial edict of Guangxu 24/7/10 [August 26, 1898] in Zhu and Zhang, *Donghua xulu*, 66 (chapter Guangxu 147, 5).

mercial and industrial spheres. Some institutions were also created for this objective, although a larger reform of administration was only tackled in 1906 within the context of “constitutional preparation.”

On April 21, 1901, the government established a reform authority under the name “Office of Political Affairs” (*Duban zhengwu chu* 督辦政務處), composed of high-ranking reformist members of the government.⁵⁴⁸ In 1902, the government established a legislating office (*Falü guan* 法律館), which however only began operating in 1904 and was reorganised in 1907 under the name “Office for the Revision of Laws” (*Xiuding falü guan* 修訂法律館).⁵⁴⁹ On an international level, recognition for reform of the legal—in particular judicial—system was readily obtained, which was of special significance for a possible abolition of extraterritoriality. Several treaties signed by China with foreign powers stipulated that these powers would give assistance to judicial reforms and relinquish extraterritorial rights if “the state of the Chinese laws, the arrangement for their administration, and other considerations” were satisfying.⁵⁵⁰

⁵⁴⁸ Ibid., 247 (chapter Guangxu 166, 11). According to the edict, Yikuang 奕匡 (1838–1917), Li Hongzhang 李鴻章 (1823–1901), Ronglu 榮祿 (1836–1903), Kungang 崑岡 (1836–1907), Wang Wenshao 王文韶 (1830–1908) and Lu Chuanlin 鹿傳霖 (1836–1910) were appointed as its members. Liu Kunyi 劉坤一 (1830–1902) and Zhang Zhidong 張之洞 (1837–1909) were associate members. This means that all three members of the Council of State (*Junjichu* 軍機處) at that time (Ronglu, Lu Chuanlin, and Wang Wenshao), were appointed to this body. On the body’s composition see Meienberger, *The Emergence of Constitutional Government in China*, 20.

⁵⁴⁹ On the “Legal Office” see Joseph Kai Huan Cheng, “Chinese Law in Transition: The Late Ch’ing Law Reform, 1901–1911” (PhD diss., Brown University, 1976), chapter five: “The Work of the Fa-Lü-Kuan,” 122–195.

⁵⁵⁰ The first of these treaties was the commercial treaty signed with the United Kingdom on September 5, 1902. In Art. XII, the United Kingdom declared that it would give every assistance to a reform of the judicial system which would bring it into accord with that of Western Nations. The United Kingdom further declared that “she will also be prepared to relinquish her extra-territorial rights when she is satisfied that the state of the Chinese laws, the arrangement for their administration, and other considerations warrant her in so doing.” John V. A. MacMurray, ed., *Treaties and Agreements With and Concerning China, 1894–1919: A Collection of State Papers, Private Agreements, and Other Documents, in Reference to the Rights and Obligations of the Chinese Government in Relation to the Foreign Powers, and in Reference to the Interrelation of Those Powers in Respect to China, During the Period from the Sino-Japanese War to the Conclusion of the World War of 1914–1919*. 2 vols. (New York: Oxford University Press, 1921), vol. 1, 342–356; Art. XII is in 351. Cf. Art. XI of the treaty of commerce and navigation with Japan of October 1903 (414). The only difference to the British clause was that it read “reform its judicial system and bring it into accord with that of Japan and Western nations.” Cf. further Art XV of the commercial treaty with the United States of America of October 1903 (431), and Art. X of the

More specifically, the edict of January 29, 1901 did also have a constitutional meaning, for it facilitated political debate and elicited demands for political reform. With its official sanctioning of learning political ideas from the West, the edict also brought ideas of a parliament and of a constitution back to the surface in what officials and politicians demanded.

The edict itself had set a period of two months for memoranda with detailed proposals for memorials to be handed in. Although the limit could not be held by people writing from the more outlying provinces or from abroad, it engendered a large number of policy proposals.⁵⁵¹ In April 1901, Zhang Zhidong 張之洞 (1837–1909), sent a telegram to his colleagues, including Liu Kunyi 劉坤一 (1830–1902), proposing the adoption of a parliament.⁵⁵² Zhang and Liu then sent three joint memorials to the throne—known as the “Joint Memorials of Jiang and Chu” (*Jiang Chu huizou* 江楚會奏)—, which were probably the most influential reactions to the edict of January 29.⁵⁵³ Therein, Zhang and Liu basically called to learn from the West and especially from Japan, which was culturally closest to China.⁵⁵⁴

It was also not long until the term “constitution” and “constitutionalism” appeared in official communication. Li Shengduo 李盛鐸 (1859–1937), the Chinese

treaty of friendship, commerce and navigation with Sweden of July 1908 (745). Sweden had a slightly different formula, stating: “However, as China is now engaged in reforming her judicial system it is agreed that as soon as all other Treaty Powers have agreed to relinquish their extra-territorial rights, Sweden will also be prepared to do so.”

⁵⁵¹ See Meienberger, *The Emergence of Constitutional Government in China*, 20.

⁵⁵² Apud Bian, *Jindai Zhongguo xianfa wenben de lishi jiedu*, 18.

⁵⁵³ For the original three memorials see Liu Kunyi 劉坤一 and Zhang Zhidong 張之洞, *Jiangchu huizou bianfa san zhe* 江楚會奏變法三摺 (Joint memorials of Jiang and Chu) ([Taipei]: Wenhai chubanshe, [1977]). Abridged English translations are to be found in Ssu-Yu Teng and John K. Fairbank, eds., *China's Response to the West: A Documentary Survey 1839–1923*, 7th ed. (Cambridge [Massachusetts], London: Harvard University Press, 1979), 197–198; 199–200; 200–205.

⁵⁵⁴ Zhang and Liu were respectively Viceroy of the two Hu provinces (Hubei and Hunan) and Viceroy of the two Yangtze provinces (Jiangnan and Jiangxi)—incidentally just those regions were the *Gelaohui* 哥老會 had been agitating for the “English constitution” since at least 1898, according to *Asahi shimbun*, “Yōsukō-han no hanchō.” On the aspect of learning from Japan see Matsui Naoyuki 松井直之, “Shinmatsu-Minsho-ki no Chūgoku ni okeru rikkenshugi no keiju: Ariga Nagao no Tennō-kikansetsu ni chakumokushite: 清末民初期の中国における立憲主義の継受: 有賀長雄の天皇機関説に着目して (The reception of constitutionalism in the late Qing and early republican China: With a focus on Ariga Nagao's teaching of the Emperor as a State organ), in *Nitchū ni okeru Seiō rikkenshugi no keiju to henyō*, ed. Takahashi, 100.

Minister to Japan who, together with Kang Youwei, had been one of the founders of the “Society for the Protection of the Country” (*Baoguoahui* 保國會) in 1898, wrote in a memorial of June 1901 that, when a country promoted a radical institutional reform (*bianfa* 變法),

there is none that does not give the most weight to the constitution (*xiangang* 憲綱) so as to erect the foundations of the country.

無不首重憲綱，以爲立國基礎。⁵⁵⁵

Li, thus, clearly stressed the nation-building function of constitutions. A year later, in 1902, the politicians Sheng Xuanhuai 盛宣懷 (1844–1916)⁵⁵⁶ and Zhu Fuxian 朱福詵 (1841–1919)⁵⁵⁷ proposed to send delegates abroad in order to learn about constitutions and employ the insights in China. Sheng, in his memorial, briefly discussed the various types of government, the legal systems of various countries, and which ones could be applied in China. The USA, France and Great Britain had a different national essence (*guoti* 國體) than China, while Russia was too unstable internally. Sheng, thus, held that the constitutions most worthy of imitation were the ones of Japan and Germany:

Only Japan and Germany are similar to us, and also only the laws of Japan and Germany are suitable and applicable to us.

惟日德與我相同亦惟日德之法於我適宜而可用⁵⁵⁸

⁵⁵⁵ Apud Bian, *Jindai Zhongguo xianfa wenben de lishi jiedu*, 18–19.

⁵⁵⁶ Sheng Xuanhuai 盛宣懷, *Yuzhai cungao chukan* 愚齋存藁初刊 (First printing of the drafts contained at the “Dimwit’s studio”) (N.p: Sibulou, [1939]), vol. 4 (*jüan* 卷 6), 16b–17a.

⁵⁵⁷ Apud Bian, *Jindai Zhongguo xianfa wenben de lishi jiedu*, 19.

⁵⁵⁸ Sheng, *Yuzhai cungao chukan*, vol. 4 (*jüan* 卷 6), 16b.

Even more than Japan, Sheng stressed the importance of Germany: He demanded that one send scholars to Germany, establish many schools of the German language in the provinces (*gesheng duo she Dewen xuetang* 各省多設德文學堂) and broadly translate German books (*guang yi De shu* 廣譯德書).⁵⁵⁹

b) Constitutional Autocracy: The Example of Korea

The years following the edict of January 29, 1901, saw a large-scale production of translations of foreign constitutional charters, which were published in many different forms and media. But in order to avoid redundancies, let us appreciate this phenomenon later. Translation activity only increased after the adoption of constitutional preparation as an official policy, and it will behoove us to cast a closer look at the translations of foreign constitutional charters together with the various attempts to create a constitutional charter of China's own.

Instead, dear reader, let us have a look at another deep implication of Li Shengduo's and Sheng Xuanhuai's words. They show how constitutional documents, by the turn of the 19th century, were in the process of making themselves indispensable as political and legal instruments in both hereditary-monarchic and presidentialist polities. They were still a few years away from becoming universal elements of statehood, but they were already the method of choice when rapid social, economic and geopolitical transformations necessitated political reforms and new or renewed legitimization for the governments.

Usually, this came hand in hand with some kind of redistribution of political powers, whence "constitutional" acquired its narrower meaning implying limitation of powers and representation. However, this should not distract us from the fact that this was only a derivative function and that constitutions had a much broader legitimising utility. Hence, constitutional charters were also needed and utilised in autocratic regimes, sometimes even without any division of powers.

⁵⁵⁹ Ibid., vol. 4 (*jüan* 卷 6), 17a.

The clearest example for this can be found in China's neighbour, Korea, which promulgated a constitutional document of its own just one year after China went through the tumultuous events of 1898. Even in this study of China's constitutional movement, it is worthwhile devoting some attention to the Empire of Korea for several reasons. First, the genesis of the Korean constitutional document was closely connected to China: It was drafted on the basis of a Chinese translation of a European textbook of international law against the geopolitical background of Korea's relation to China and to Japan. Second, as the document confirmed the Korean Emperor's absolute power, it has been scarcely noticed in Korean historiography and ignored altogether in regional and global constitutional histories. However, it is precisely this intense conservatism of the document which shows that representation and limitation are not necessarily primary objectives of constitutions and that they do not necessarily stand in opposition to autocracy. Third, Chinese intellectuals perceived the Korean constitution and used it in their arguments according to their own political needs. They argued that Korea had remained an autocratic polity, but mainly, they emphasised that the constitution had done nothing to remedy the country's political weakness.

Until the late 19th century, Korea had been an independent kingdom under the suzerainty of the Chinese Empire. The traditional constitution of the Kingdom of Korea had been described by the *Imperial and Asiatic Quarterly Review* as follows:

"Like all Eastern kingdoms, Korea is an absolute monarchy, in which, theoretically the king is supreme lord of life, land and property,—everything and everyone being subject directly, indiscriminately and indefinitely to his will or caprice. But practically, the government is oligarchical, in which, however, the still, small, yet powerful voice of the people makes itself occasionally heard. The king is aided by a Supreme Council of Three, called the Ministers of the Right, Left and Centre : the last is the Premier of the

country. This Council receives daily reports from the seven Departments which supervise the business of the state. ...”⁵⁶⁰

At the end of the 19th century, just as in China and in Japan, knowledge about foreign political systems was coming into the country, and the idea of a constitution that separates different branches of government also gained important traction in Korea. Thus, the *Capital Gazette* (*Hansŏng sunbo* 漢城旬報), a weekly newspaper published in literary Sinitic language by the Korean Government in 1883–1884, published various articles introducing foreign countries to a Korean audience, including one article on the “Constitutional Polities of Europe and the USA” (*Kumi riphŏn chŏngch’e* 歐米立憲政體).⁵⁶¹

As Koreans began to reevaluate the international position of their country, breaking away from the traditional Chinese suzerainty, and trying to establish Korea as an equal next to China and Japan, such considerations began to have practical consequences. From the late 1870s and 1880s, King Kojong 高宗 (1852–1919, r. 1864–1895, 1897–1907) had tried some policies of “enlightenment” and “self-strengthening.” Beginning from 1894, a year of “intrigue, war, and rebellion,”⁵⁶² he enacted the so-called *Kabo* 甲午 reforms.⁵⁶³

From July 1894, Kojong approved 208 separate laws reorganising all realms of Korean life, which were a part of a total of 660 reform documents.⁵⁶⁴ The laws

⁵⁶⁰ “Korea and the Far East: I. Existing Material Regarding Korea,” *Imperial and Asiatic Quarterly Review*, new ser. 7, nos. 13 & 14 (1894), 252.

⁵⁶¹ “Kumi riphŏn chŏngch’e” 歐米立憲政體 (Constitutional polities of Europe and the USA), *Hansŏng sunbo* 漢城旬報, no. 10 (Chosŏn kaeguk 493 [1884]). On the early reception of the US American Constitution in Korea see Kim Hyojŏn 김효진, “Miguk hŏnbŏbironŭi ch’ogi suyong” 美國憲法理論의 初期受容 (1) (Early acceptance of American constitutional theory” *In’gwŏn’gwa chŏngŭi* 人權과正義, nos. 336–337 (2004).

⁵⁶² “Note of the Editor,” in: Edward H. Parker, “The Conscience of Corea,” *Imperial and Asiatic Quarterly Review*, 3rd ser. 2, nos. 3 & 4 (1896), 297.

⁵⁶³ On the *Kabo* reforms see Carter J. Eckert et al., eds., *Korea, Old and New: A History* (Seoul, Cambridge [Massachusetts]: Ilchokak, Harvard University Press, 1990), 222–230; Bruce Cumings, *Korea’s Place in the Sun: A Modern History*, updated ed. (New York: W.W. Norton, 2005), 120–123; Kyungmoon Hwang, *Rationalizing Korea: The Rise of the Modern State, 1894–1945* (Oakland [California]: University of California Press, 2016), 29–30.

⁵⁶⁴ Eckert et al., *Korea, Old and New*, 225. Eckert claims 210 laws, Cumings, *Korea’s Place in the Sun*, 120, claims 208.

abolished the practice of *Sippenhaft*, class distinctions, slavery and the traditional exam system. At the top of the state, the reform edicts created a new State Council with seven/eight⁵⁶⁵ ministries on the Japanese model. A Royal Household Department was created to separate state affairs from palace affairs, and a Privy Council established.⁵⁶⁶ Local administration was reformed, with the aim of strengthening the central government and replacing local governors with new, more reform-minded forces⁵⁶⁷

In the wake of these reforms, on January 7, 1895, King Kojong enacted the so-called 14 model articles (*Hongbŏm sipsa-cho* 洪範十四條). These articles, written in literary Sinitic, were referred to as constitution at the time and after.⁵⁶⁸ In fact, they were a manifesto serving as a basis for the mentioned political reforms as well as for the national self-affirmation of Korea. Their first article declared was clear in this regard:

Any thoughts of dependence on the Qing shall be cut, and the foundations for sovereignty and independence shall be firmly established.

割斷附依清國慮念。確建自主獨立基礎。 ⁵⁶⁹

Soon after, the political situation of Korea changed radically. In February 1896, King Kojong fled to the Russian legation, staying there for a year, after his spouse, Queen Min, had been assassinated. Some of the reformist politicians were killed in the struggles and others fled the country.⁵⁷⁰ Mainly as a response to internal pressures and foreign encroachment, King Kojong proclaimed the Empire of Korea in 1897, styling himself as Emperor Kwangmu 光武.⁵⁷¹

⁵⁶⁵ Seven according to Eckert et al., *Korea, Old and New*, 226; Eight according to Cumings, *Korea's Place in the Sun*, 120.

⁵⁶⁶ Eckert et al., *Korea, Old and New*, 226.

⁵⁶⁷ *Ibid.*, 226.

⁵⁶⁸ *Washington Post*, "Mediation May Fail: Korea Framing a Constitution," November 16, 1894.

⁵⁶⁹ The 14 model articles are recorded in *Kojong Daehwangje sillok* 高宗大皇帝實錄, chapter 32, 69.

⁵⁷⁰ Eckert et al., *Korea, Old and New*, 231.

⁵⁷¹ On Kojong's rise from King to Emperor see Andre Schmid, *Korea Between Empires, 1895-1919* (New York: Columbia University Press, 2002), 72–78 and Cumings, *Korea's Place in the Sun*, 123–124.

But constitutional agitation continued in spite of the political changes. For example, Philip Jaisohn (Sö Chaep'il 徐載弼, 1864–1951), a Korean who had earlier fled to the USA and had come back as an US American citizen, founded the “Independence Club” (*Tongnip hyöphoe* 獨立協會) in 1896. Connected to the club were newspapers like the *Tongnip sinmun* (獨立新聞) and the *Capital Gazette* (*Hwangsöng sinmun* 皇城新聞). The *Tongnip* came up with Western liberal ideas, whereas the *Capital Gazette* was edited by Confucianist reformers within the club.⁵⁷² From early 1898, the Club began to openly campaign for a national legislature as a means to “bring the government and the people closer together,” proposing that the Privy Council be transformed into a parliament. The Club continued with similar campaigns throughout the year, and promoted a movement for achieving a constitutional monarchy in October.

Emperor Kojong shortly yielded to the pressure, issuing new Privy Court regulations in November 1898, but on the other hand ordered the Club’s dissolution and the imprisonment of several of its leaders, alleging that the Club was plotting to replace the monarchy with a republic.⁵⁷³ Public pressure, including street manifestations in Seoul, led to the Club’s temporary reestablishment, but the Club was suppressed for good on December 26.⁵⁷⁴ As Eckert et. al. write in their history of Korea,

now lacking any external mechanism of restraint, Kojong’s conservative government thenceforth deteriorated into a wanton autocracy of sycophantic opportunists surrounding a fickle ruler.⁵⁷⁵

Yet, in spite of his autocratic rule, in 1899, the Emperor enacted a short constitutional document consisting of nine articles, this time written in Korean, the *Taehan’guk kukche* 大韓國國制. Again, one of the main goals of the document was

⁵⁷² Eckert et al., *Korea, Old and New*, 234.

⁵⁷³ Ibid., 235.

⁵⁷⁴ Ibid., 235–236.

⁵⁷⁵ Ibid., 236.

establishing Korea's national independence. Its first article, unparalleled in any other of the Constitutions passed at that time in East Asia, stated:

Korea is a sovereign and independent state recognised by the international community.

大韓國은世界萬國의公認되온바自主獨立^호온帝國이니라.⁵⁷⁶

At the same time, the charter was also an attempt to legitimise the emperor's rule. The two following articles dealt with the emperor's status within the country and made it a distinctly "anti-constitutional" constitution, if one understood "constitutional" as "representative:"

Art. 2: The polity of the Great Empire of Korea is an autocratic government that in the past has been transmitted for five hundred years and in the future will be eternally immutable.

Art. 3: The Emperor of Korea enjoys the unlimited powers of the sovereign, i.e., what is called in public international law 'making his own constitution/political system (*chǒngch'e* 政體).'

第二條大韓帝國의政治는由前則五百年傳來^호시고由後則亘萬世不變^호오
실專制政治이니라.

第三條大皇帝게옵셔는無限^호온君權을享有^호옵시니公法에謂^호바自立
政體이니라⁵⁷⁷

Looking closely at the text, one finds that it follows the teachings of a Swiss professor at the University of Heidelberg: Johann Caspar Bluntschli (1808–1881),

⁵⁷⁶ "Taehan'guk kukche," 2.

⁵⁷⁷ Ibid.

whose books on public law and public international law were translated into Chinese and Japanese and were hugely influential in East Asia.⁵⁷⁸ However, it does not follow his teachings on constitutional law, but on international law, with the intention of securing national sovereignty.

Bluntschli's 1868 compendium on public international law, *Das moderne Völkerrecht der civilisierten Staaten als Rechtsbuch dargestellt*, was translated from the French edition of the book (*Le droit international codifié*) into Chinese in 1880 by a team led by William Alexander Parsons Martin. The version in literary Sinitic, entitled *Compendium of Public International Law* (*Gongfa huitong* 公法會通),⁵⁷⁹ was circulated widely in East Asia. Amongst the many reprints of the book, there was also a 1896 edition prepared by the Korean Ministry of Education.⁵⁸⁰

In § 68 of his textbook, Bluntschli explained that a state had five sovereign rights: a) adopting its own constitution; b) the right to independently legislate; c) the right to self-government and self-administration; d) the right to freely appoint officials; e) the right to nominate diplomatic representatives. The footnote then vividly and lengthily explained that constitutions organise the internal workings of a state and that interventions in the internal constitutional affairs of another state had to be abhorred:

⁵⁷⁸ E.g., on Bluntschli's and Liang Qichao, see Bastid, "The Japanese-Induced German Connection of Modern Chinese Ideas of the State," in *The Role of Japan in Liang Qichao's Introduction of Modern Western Civilization to China*, ed. Fogel, 105–124; Lei, *Auf der Suche nach dem modernen Staat*.

⁵⁷⁹ First edition: Johann Caspar Bluntschli, *Gongfa huitong* 公法會通 (Compendium of public international law), trans. William Alexander Parsons Martins [Ding Weiliang 丁韪良] et al., 5 vols. ([Beijing]: Tongwenguan, Guangxu gengchen [1880]).

⁵⁸⁰ Johann Caspar Bluntschli, *Kongbōp hoet'ong* 公法會通 (Compendium of public international law), trans. William Alexander Parsons Martins [Chōng Wi-ryang 丁韪良] et al. ([Seoul]: Hakpu p'yōnjipkuk, Kōnyang 1 [1896]). On the book and its East Asian translations and editions see Svarverud, *International Law as World Order in Late Imperial China*, 96–97; 273–274. Svarverud writes (97) that Bluntschli's book, already in 1897, was applied as basis for the first Korean law based on Western legal theory and practice. The constitutional charter was promulgated in 1899, but in fact, Bluntschli's role did also play a role in Kojong's elevation from King to Emperor in 1897. See further Tae-gyun Park, "Reception of International Law in the Late Chosŏn Dynasty," *Journal of International and Area Studies* 11, no. 3 (2004), 42–43.

Just as my neighbours do not have the right to prescribe style and *intérieur* of my house, neighbouring states do not have any right to make prescriptions about the constitution of a foreign state.

So wenig meine Nachbarn berechtigt sind, den Styl und die Einrichtung meines Hauses mir vorzuschreiben, so wenig haben die Nachbarstaaten ein Recht, über die Verfassung eines fremden States Vorschriften zu geben.⁵⁸¹

Looking more closely at the translation as previous scholarship has, one will not only come across Bluntschli, the French- and Chinese-mediated Swiss professor at Heidelberg. One will also be reminded of the Chinese-language work of the US American missionary Elijah Coleman Bridgman. For Bluntschli's translators at the *Tongwenguan* chose to translate the word "constitution" with the same word as Bridgman had: *zhengti* (kor. *chǒngch'e* 政體). Bluntschli's use of "constitution" had in mind written constitutional charters, as is visible from his choice of words (e.g., "interference in the elaboration of a constitution," German: "Einmischung in die Verfassungsarbeiten," French: "ingérence dans les travaux d'une assemblée constituante"). At the same time, it was applicable to the political system of a state in the broad sense. The Chinese translation left this "constitutional assembly" untranslated and blurred the references to written constitutions somewhat, although they still made it clear that "adopting a constitution is a necessary right of a state" (*Shi dingli zhengti, wei guo zhi yaoquan ye/Si chǒngnip chǒngch'e, wi kuk chi yogwǒn ya. 是定立政體。爲國之要權也。）。Hence, in the Korean constitutional charter of 1899, the word *chǒngch'e* 政體 acquired a more general meaning of political system.⁵⁸²*

In sum, what the 1899 constitutional charter did was fixing in paper form Bluntschli's five sovereign rights of a state. Art. 3, for example, which conferred to

⁵⁸¹ Johann Caspar Bluntschli, *Das moderne Völkerrecht der civilisierten Staaten als Rechtsbuch dargestellt* (Nördlingen: C.H. Beck'sche Buchhandlung, 1868), 85; Johann Caspar Bluntschli, *Le droit international codifié*, 5th ed. (Paris: Guillaumin, 1886), 90.

⁵⁸² Bluntschli, *Das moderne Völkerrecht der civilisierten Staaten*, 85; Bluntschli, *Le droit international codifié*, 89–90. For the Chinese translation of the passage see Bluntschli, *Gongfa huitong*, vol. 1 (*ren* 仁), *jūan* 卷 1, 23; Bluntschli, *Kongbōp hoet'ong*, vol. 1 (*ch'ŏn* 天), 20b–21a.

the emperor the “unlimited powers of the sovereign,” was the Korean expression of Bluntschli’s § 68a). At the same time as it tried to confirm Korea’s right to establish her own political system and constitution, it also added an element that had been alien to Bluntschli’s textbook: that of locating such a right in the person of the emperor and providing internal legitimation for him.

The *Taehan’guk kukche* was a “constitution” in the sense of a document setting down the fundamentals of the state. The title, *kukche* 國制, literally translated as “system of the state,” did mean constitution, but it avoided using the term used by the Meiji Constitution, associated with representative constitutionalism. Accordingly, the *Taehan’guk kukche* did not mark a transformation of Korea into a “constitutional” state in the narrow sense, for it still conferred absolute power to the emperor.

On an international level, trying to secure Korea’s international sovereignty by promulgating a document with merely internal validity was not a very promising enterprise. The document did not much to raise Korea’s international standing. It was hardly noticed outside of Korea, and when it was, then not in a positive light. The *Washington Post* remarked:

It is a one-man document. The Emperor is the one-man, and all the rest of the people are ignored. The government, being theoretically an absolute monarchy, his high-mightiness, the Emperor, has all the rights and prerogatives of which the constitution takes any note. ... An American trolley line in robust health is more likely to have more lasting effect on the kingdom of Korea than a nine-article constitution formulated by a lot of antiquated gentlemen in flowing silk gowns and sugar-loaf hats. ... The trolley line did not really need to be mentioned in the new Korean constitution. It has its own by-laws and treasury. And it will “get there” after a short period, when the despot-worshipping constitution is a very dead letter.⁵⁸³

⁵⁸³ *The Washington Post*, “Constitution Versus Trolley,” October 4, 1899.

In the same vein, Itō Hirobumi remarked to Emperor Kwangmu in 1905:

Yours is not a constitutional government.

貴國ハ憲法政治ニアラス⁵⁸⁴

This peculiar charter, not having changed the ruler's position at all, is not given much significance in Korean historiography—general histories of the era ignore it,⁵⁸⁵ leaving it to specialised literature.⁵⁸⁶ But the *Taehan'guk kukche* does provide an important lesson in constitutional history: In spite of totally contravening the notion of a constitutionalism as representative government, the notion of having a written constitutional text expressing the structure of the state was already so widespread by that time that even an Emperor like Kojong perceived it as a useful tool for legitimising his state externally as well as legitimising the *ancien régime* internally. Or as Emperor Kojong himself declared:

Where there is a country, a constitutional document has to be promulgated, in order to make clear the workings of politics and of the ruler's powers. Only then can one make the people respect it without contravention.

有國者必頒示國制以明政治及君權之如何然後可使臣民式遵無違矣⁵⁸⁷

⁵⁸⁴ Apud Harada Tamaki 原田環, “*Taikankoku kokusei to dainiji Nikkan kyōyaku hantai undō: Taikan Teikoku no kuni no arikata*” 大韓帝国国制と第二次日韓協約反対運動：大韓帝国の国のあり方 (The *Taehan'guk kukche* and the movement opposing the second treaty between Japan and Korea: The national *raison d'être* of the Korean Empire), in *Dainiki Nikkan rekishi kyōdō kenkyū hōkokusho: Dai 3 bunka kaihen* 第二期日韓歴史共同研究報告書：第3分科会篇 (Tokyo: Nikkan bunka kōryū kikin, 2010), 12. The translation follows Takii Kazuhiro, *Itō Hirobumi: Japan's First Prime Minister and Father of the Meiji Constitution*, trans. Takechi Manabu, ed. Patricia Murray (London and New York: Routledge, 2014), 186.

⁵⁸⁵ Neither Ki-Baik Lee, *A New History of Korea*, trans. Edward W. Wagner and Edward J. Shultz (Cambridge [Massachusetts]: Harvard University Press, 1984), nor Eckert et al., *Korea, Old and New*, nor Schmid, *Korea Between Empires* nor Cumings, *Korea's Place in the Sun*, nor Hwang, *Rationalizing Korea*, mention it.

⁵⁸⁶ See, e.g., Harada, “*Taikankoku kokusei to dainiji Nikkan kyōyaku hantai undō*,” with a focus on its role in the protectorate treaty between Japan and Korea of 1905.

⁵⁸⁷ Chōng Kyo 鄭喬. *Taehan kyen'yōn sa* 大韓季年史 (Chronological history of Korea). 2 vols. (Seoul: Kuksa p'yōnch'an wiwōnhoe, 1957), vol. 2, 24–25 (entry for Kwangmu 03/08/17 = September 21, 1899). The edict further contains a Sinitic translation of the first three articles of the constitutional document.

In spite of the 1899 charter, constitutional debates did continue in Korea in the first years of the 20th century. Korean intellectuals continued to form several groups that pressed for political reforms. In particular, the dismantled Independence Club lived on as some former members founded the “Society for Common Progress” (*Kongjinhoe* 共進會) in December 1904, which then evolved into the “Society for the Study of Constitutional Government” (*Hŏnjŏng yŏn’guhoe* 憲政研究會) in 1905. Another society was the “Society for Popular Representation” (*Inmin taeŭihoe* 人民代表會).⁵⁸⁸ These groups were soon disbanded, as they did not please the officials running the Korean administration nor the Japanese Residency-General to Korea. In sum, political participation and awareness grew in the last years of monarchic Korea. But due to growing repression, the newer organisations devoted themselves to areas less prone to repression, namely to commercial, educational and religious enterprises.⁵⁸⁹

Throughout the late 19th and early 20th centuries, Chinese political debates were widely read in Korea. This discursive connection persisted even after Korea decided to cut the traditional links of dependence to China, and in spite of China’s defeat in the Sino-Japanese war of 1894/95 and of the chaos of 1900/01. It was not only limited to mediating, e.g., Bluntschli’s writings to a Korean audience. As Chinese thinkers were looking for ways to restore China’s power and prosperity after all the internal turmoil and external encroachment, their Korean counterparts were

⁵⁸⁸ See Lee, *A New History of Korea*, 327, who translates the name as “Society of Spokesmen for the People.”

⁵⁸⁹ The most nuanced view on the evolution of political participation in late Chosŏn Korea is given by James B. Palais, “Political Participation in Traditional Korea, 1876-1910,” *The Journal of Korean Studies*, no. 1 (1979). Note that the emperor changed his attitudes from 1904, beginning to see political organisations as useful to maintain national independence, but that he had not enough influence anymore to cause a change in policies (118). On the subject of political organisations see also Lee, *A New History of Korea*, 327–328. Cf. Myung-kim Park, “The Distinctiveness of Republicanism in Modern Korea: Ideas and Constitutions,” in *Republicanism in Northeast Asia*, ed. Jun-Hyeok Kwak and Leigh Jenco (Abingdon: Routledge, 2015), 122, with further references, who argues that there was a “fervent initiative from below.” Yong-duck Jung, “Stateness in Transition: The Korean Case in Comparative Perspective,” *Zeitschrift für Staats- und Europawissenschaften* 3, no. 3 (2005), 413–414, on the other hand, has written that the absence of public participation and public apathy in face of the Korean government’s top-down reforms were one of the main reasons for the demise of the Chosŏn dynasty.

interested in what they had to say. In the first years of the 20th century, it was especially Liang Qichao who had a large readership in Korea, including both his own writings as well as translations of other writings which were included in his publications. The Korean publications included both reprints of the original and translations into Korean. Liang's impact in Korea is difficult to measure and discern from internal developments and readings of Japanese and Western writers. At any rate, Liang provided Koreans with rhetorical tools to support their respective claims.⁵⁹⁰

Looking at the other direction, the Korean struggles were noticed in China, even though Korea did not serve as a positive constitutional example. The Korean constitutional process did not have too much of a direct, positive impact on China, in spite of the proximity to China and the close connection of Korea's constitutional process with Korea's national self-assertion as an independent state on a par with China and Japan. A Korea which was struggling with survival as an independent nation could hardly be taken as a positive model like Japan. Likewise, given its suboptimal success, the constitution of 1899 could not become a basis for Chinese constitutionalists, not even for conservative circles who strove to secure a strong constitutional role for the monarch. But Korea's fate of weakness, loss of sovereignty and imminent demise did arouse interest in a China similarly concerned about her future as a sovereign power.⁵⁹¹ In constitutional matters, the country did appear, next to other examples like Russia, as a negative example in Chinese arguments, as was the case, among others, in Liu Yazi's 柳亞子 (1887–1958) work.

⁵⁹⁰ On Korean visions of China see, among others, Kyung-moon Hwang, "Country or State? Reconceptualizing "Kukka" in the Korean Enlightenment Period, 1896–1910," *Korean Studies*, no. 24 (2000), 5 and 9–10; See also Bai Yuchen 白玉陳, "Lun Liang Qichao 'Xinmin' sixiang zai jindai Chaoxian de chuanbo ji yingxiang" 論梁啟超 "新民" 思想在近代朝鮮的傳播及影響 (On the dissemination and influence of Liang Qichao's "new citizen" thought in modern Korea), *Keji xinxi* 科技信息, no. 3 (2010).

⁵⁹¹ See, e.g., for Liang Qichao's views on Korea, Bai Yuchen 白玉陳, "Liang Qichao Chaoxianguan de bianqian ji yuanyin fenxi" 梁啟超朝鮮觀的變遷及原因分析 (Analysis of the changes and causes of Liang Qichao's views on Korea), *Dangdai Hanguo* 當代韓國, no. 2 (2009).

c) “Constitution” and “Constitutionalism” in China: The Example of Liu Yazi

King Kojong’s strategy of adopting an openly autocratic constitutional charter, thus, remained an exception at the turn of the 20th century. In East Asia too, “constitutional” (*lixian* 立憲) tended to become limited to constitutional hereditary monarchies in opposition to absolute monarchies. The term tended not to refer to presidential systems: As all presidentialisms were “constitutional” by default, it was not needed for differentiation.⁵⁹² This went hand in hand with the popular categorisation according to which there were mainly three types of government: absolute monarchies, constitutional monarchies and republican democracies.⁵⁹³ In this context, although dethroning the existing imperial government would also entail a written constitutional charter, the call for “constitutionalism” mostly came to refer to a reform of the existing monarchy. The call for a radical change of government, then, also meant opposing “constitutionalism” in the sense of a “constitutional Qing Empire.”

In the years prior to 1905, constitutionalism was not yet an official policy. Later, when the Russian constitution failed to mitigate the tensions in that country, and when the Qing Court’s policy of “constitutional preparation” came to be perceived as ambiguous as well, such sentiments would become much stronger. However, there were early precursors of this anti-constitutionalism even before these events. This position, too, was one that was shaped by global events.

An example of this is the young Liu Yazi, who would become a prominent poet in Republican times. In 1903, at the age of 16, he published an article in the

⁵⁹² E.g., Yu Kil-chun 俞吉濬 (1856–1914), one of the foremost late Chosŏn intellectuals, explicitly states that presidentialisms were also governed by constitutions and at the same time uses the term “constitutional” to refer to monarchies. Yu Kil-chun 俞吉濬, “Segye taeseron” 世界大勢論 (Treatise on the great trends of the world), in *Yu Kil-chun chŏnsŏ* 俞吉濬全書 (Seoul: Ilchogak, 1971), vol. 3, 19.

⁵⁹³ E.g., Bridgman, *Damei lianbang zhilüe*, 24. See also “Lun Zhongguo wu guoquan” 論中國無國權 (On China not being sovereign), *Dongfang zazhi* 東方雜誌 1, no. 5 (1904), 83, giving the *trias classica*: a) autocratic (*zhuanzhi* 專制); b) republican (*gonghe* 共和); c) constitutional (*lixian* 立憲). The present study disagrees with this categorisation.

magazine *Jiangsu* 江蘇, wherein he strongly criticised the craze for constitutionalism that was taking over published opinion in China.⁵⁹⁴ Liu was aware that his position opposing constitutionalism (*lixian* 立憲) was widely anti-mainstream at that time, and that the audience might think that he had gone crazy and was still holding on to autocracy.

But for Liu, calling for constitutional reforms under the Qing Court was futile. Liu's argument stemmed, among others, from Korea's 1899 constitutional charter, the *Taehan'guk kukche* 大韓國國制. As he argued, one could adopt an autocratic constitution like Korea had done, but such would not really solve China's problems or improve her situation:

If you only let those fellows who despotically cling to their power use the same method as the man in the ancient state of Chu who raised apes and tormented them so much that they revolted against him, this will create a political system where an ape is crowned. If you add an octroyed constitution on top of the common autocratic and corrupt laws in order to deceive the countries of the world, is that not the same as revering Korea and executing her bad policy—that of an ugly girl who tries to become beautiful, but instead just further uglifies herself?

徒使擅權據位之徒，出其狙公飼狙之手段，造成沐猴而冠之政體，於尋常專制腐敗法律之中，添一欽定憲法，以飾大地萬國之瞻聽，毋亦崇拜朝鮮，而為斯效顰之下策乎⁵⁹⁵

The problem, for Liu, was not even one of preparing the people for constitutionalism by “equipping them with knowledge.” Even though the United Kingdom was the motherland of the Magna Carta (*xianzhang zhi muguo* 憲章之母國) with a highly

⁵⁹⁴ Liu Yazhi 柳亞子, “Zhongguo lixian wenti (1903 nian 9 yue)” 中國立憲問題（1903年9月）(China's constitutional question), in *Liu Yazhi xuan ji*, 22–25.

⁵⁹⁵ *Ibid.*, 23.

educated people, this was of no good for Ireland with her Celtic population revolting against the crown:

Therefore, one says that if the people is not equipped with knowledge, then there is no so-called constitutionalism. But when the people is already equipped with knowledge, constitutionalism is not what is wanted either.

由是言之，民智不開，則無所謂立憲。民智既開，立憲又非所願矣。⁵⁹⁶

The problem, rather, was primarily one of ethnicity. Liu argued that constitutional monarchy, as it existed in the West and in Japan and was being envisioned as a solution for China, was only a transitional form of government (*guodu zhi zhengti* 過渡之政體). It was established under intelligent, meritorious and moral kings of the same race who reacted to the demands of the people. In China, however, there were no such rulers of the same race (*tongzhong tongbao zhi wang* 同種同胞之王), such as there were no such rulers in Poland and in India.

China was governed by five Million Manchu who were of a different ethnicity with different interests, feelings, history and customs. Under these circumstances—and citing the failure of the 100 Days' Reforms as an example—, Liu deplored that constitutionalism was only “a fata morgana of an imaginary flower, a somniloquy” (*konghua zhi huanying er, shuimeng zhi yiyu er* 空花之幻影耳，睡夢之囈語耳。). Parts of the Empire were under foreign jurisdictions. What good was constitutionalism if China had already perished, with the Taiwanese singing praise of the Meiji Emperor and the Hongkongers of Queen Victoria? China could only choose between committing suicide or fighting for a restoration of Han sovereignty. To this effect, Liu, full of pathos, evoked various revolutionaries around the world:

I dare to straightly tell my compatriots: Today, ye shall not talk about reforms, ye shall only talk about Restoration! Today, ye shall not talk about

⁵⁹⁶ Ibid., 23.

warmth, ye shall only talk about destruction! ... Do ye not see that having escaped the stinking shackles of the Turk and avenged a millenary national enemy, there is Greece! Do ye not see that having warded off the wolfish meddling of Austria and erected a grand ambition on the peninsula, there is Italy! I want my compatriots to learn from this! I want my compatriots to learn from this! Else, there was a Kossuth in Hungary, there was an Aquino in the Philippines, and there was a Kruger in Transvaal! ... And else, I want to be Urabi of Egypt, I want to be Kościuszko of Poland! ...

吾敢正告我同胞曰：公等今日其勿言改革，唯言光復矣。公等今日其勿言溫和，唯言破壞矣。…不見夫脫突厥腥膻之羈絆，報千年之國仇者，有希臘乎！不見夫拒奧地利亞虎狼之干涉，建半島之雄圖者，有伊大利乎！我願我同胞學之，我願我同胞學之！不然，則爲匈牙利之噶蘇士，則爲菲立賓之阿圭拿，則爲杜蘭斯哇之古魯家。…又不然，則吾願爲埃及之亞刺飛，吾願爲波蘭之高節公。…⁵⁹⁷

4. A Global Outlook: Chinese Constitutional Debates in a Changing World

a) The Japanese Example and Political Pressure for a Constitution

Liu Yazhi was not the only one to refer to Korea; in another example to be discussed in chapter 3, Korea was used as an exhortation to China not carry out constitutional reforms without adequate accompanying policies. However, Liu's staunch anti-constitutionalist, yet not anti-constitutional, ideas were far from being mainstream, as he himself acknowledged. Revolutionary ideas like Liu's would gain more traction a few years later, but for the time being the mainstream called for a reform of

⁵⁹⁷ Ibid., 24. Liu's exhortation reminds one of Mao Zedong's saying: "Revolution is not a dinner party, or writing an essay, or painting a picture, or doing embroidery. It cannot be so refined, so leisurely and gentle, so temperate, kind, courteous, restrained and magnanimous. A revolution is an insurrection, an act of violence by which one class overthrows another" (革命不是請客喫飯，不是做文章，不是繪畫繡花，不能那樣雅致，那樣從容不迫，文質彬彬，那樣溫良恭儉讓。革命是暴動，是一個階級推翻一個階級的暴烈的行動。). See Mao Zedong 毛澤東, *Mao zhuxi yulu* 毛主席語錄 (Quotations from Chairman Mao) (Beijing: Zhongguo Renmin Jiefangjun zong zhengzhibu, 1965), 11.

the monarchy from within, for transforming it into a “constitutional monarchy.” For this, rather than Korea in its deplorable state, Chinese intellectuals had an effulgent example: Japan.

Japan’s spectacular rise made it a paramount object of study and a preëminent destination for Chinese who wished to acquire modern knowledge. The crackdown on the 100 Days’ Reforms did not prevent Chinese officials from studying *in situ* what they could adapt for China, including several members of the Imperial Hanlin Academy (*Hanlin yuan* 翰林院). One of the first officials who travelled to Japan for such a purpose, accompanying minister Li Shengduo to study the Japanese educational system from 1898 to 1903, would later play a decisive role in the Chinese constitutional movement: Li Jiaju 李家駒 (1871–1938). In 1907, Li was made minister of China to Japan, in 1908, commissioner for constitutional research in Japan, and in 1911, one of the two main drafters of the constitution. His later colleague as a main drafter, Wang Rongbao 汪榮寶 (1878–1933), too, studied at Waseda University, staying in Japan from 1901 to 1904.

We shall come back to Wang in a minute. But let us first have a quick look at Li’s mission to Japan, not because it was of constitutional significance, but to the contrary, because it testifies of an early stage before the constitution came to be widely embraced by Chinese officialdom. Whereas there is no extant diary of his from the time when he was a constitutional drafter, he did leave a diary from the years 1898–1903, with the memorials which he submitted to the emperor. The diary is today preserved at the National Library of China in Peking.⁵⁹⁸ It is worth taking a quick look to see what Li had to say about Japan’s political system.

Li’s early stay in Japan did not instill in him the constitutional fervour characteristic of other Chinese observers of Japan: although he was all in favour of learning details of Japanese administration, his diary, which is by no means restricted to educational matters, does not explicitly discuss Japan’s constitution or

⁵⁹⁸ Li Jiaju 李家駒, *Li Jiaju riji* 李家駒日記 (Diaries of Li Jiaju) (N.p.: Guangxu 24–29 [1898–1903]), shelfmark t4746, National Library of China, Beijing.

the notion of constitutionalism. Instead, Li mentioned the Japanese parliament, but not in a positive manner. In a memorial sent to Peking in 1899, Li drew the following balance of Japan's transformation:

In sum, Japan planned its self-strengthening for the sake of self-maintenance; its modelling on Western countries has had successes and drawbacks. Matters such as modernising the military, revitalising schools, agriculture, industry and trade have been successes. The convening of a parliament and the increase of the tax burden have been drawbacks.

大抵日本爲圖自強以爲自守其取法西國有得有失修武備興學校與農工商訛務此其得也設議院厚稅斂則其失也⁵⁹⁹

As this brief excerpt shows, Li was still far from being the leading constitutional figure of China which he would become less than a decade later. His negative stance towards the Japanese parliament in this memorial still corresponded to the general political climate in Peking, where the 100 Days' Reforms had just been stopped and new reforms not yet announced.

But Li Jiaju's words also remind us of how fast things were changing. Liang Qichao was already there since 1898. As Sheng Xuanhuai and Zhu Fuxian had proposed, Chinese students went in droves to Japan in the first years of the 20th century.⁶⁰⁰ Chinese residents of Japan edited many Chinese-language magazines, such as Liang Qichao's *China Discussion* (*Qingyi bao* 清議報) and *New Citizen Journal* (*Xinmin congbao* 新民叢報), or the *Collectanea of Translated Books* (*Yishu huibian* 譯書彙編) and its successor, the *Learned Magazine on Politics and Law* (*Zhengfa xuebao* 政法學報).

⁵⁹⁹ Li Jiaju, Li Jiaju 李家駒, "Youzhengye Zhai zaji" 有正業齋雜記 (Miscellaneous notes from the "Studio of decent undertakings"), in *ibid.*, Guangxu 25/2/22 (April 2, 1899).

⁶⁰⁰ On Chinese students in Japan see the classical work Sanetō Keishū 実藤惠秀, *Zōho Chūgokujin Nippon ryūgakushi* 増補中国人日本留学史 (History of Chinese students in Japan, enlarged edition) (Tokyo: Kurushio shuppan, 1981)

Next to the magazines, Chinese subjects residing in Japan also published a large number of books. For example, one of the Chinese students, Wang Hongnian 王鴻年 (1860–1911), who would later become an assistant to the Chinese constitutional commission in Tokyo, published one of the first Chinese textbooks of constitutional law in 1902. In the preface to the book, which was actually a compilation of lectures he had heard in Tokyo, Wang gave an early explanation of why a constitution could gain so much traction among Chinese intellectuals. Yes, it was because it would help to regain sovereign rights—such as extraterritoriality—, but not only. Yes, it would assure the well-being of the people, but according to Wang, this was just one aspect of the overarching aim: assuring that China become a powerful nation in terms of *realpolitik*. As Wang wrote, the constitution would:

... mend the numerous affairs of the state, rouse and refine the military forces, take back autonomous rights, and increase the prosperity of the subjects, in order to attain the goal of becoming an independent and autonomously powerful nation.

裁改庶政鼓鍊兵力收回自主之權利增殖臣民之隆福以達國家獨立自強之目的。⁶⁰¹

Under the impression of such wondrous effects promised so soon after the Boxer *débâcle*, constitutionalism became one of the hottest topics in Chinese political debate. A few years later, a member of the Hanlin Academy who travelled to Japan would become one of the most vociferous and persistent official advocates of constitutional monarchy: Zhang Jian 張謇 (1853–1926), who travelled east between May and July 1903.⁶⁰² Zhang's primary object of study was quite down-to-earth:

⁶⁰¹ Wang Hongnian 王鴻年, *Xianfa fali yaoyi* 憲法法理要義 (Essentials principles of constitutional law) (Tokyo: Wang Tizhai, Meiji 35 [1902]), 1b–2a.

⁶⁰² For his diary in the time when he was in Japan see Zhang Jian 張謇, *Zhang Jian quanji* 張謇全集 (Complete works of Zhang Jian), 7 vols. (Nanjing: Jiangsu guji chubanshe, 1994), vol. 6, 480–515. Cf. Gao, *Qingmo lixian shi*, 265, labelling him “head of the constitutional faction.” On Zhang Jian, see Marianne Bastid, *Aspects de la réforme de l'enseignement en Chine au début du XXe siècle, d'après des écrits de Zhang Jian* (Paris, the Hague: Mouton, 1971).

He went to study Japan's agriculture and primary schools.⁶⁰³ But in contrast to Li Jiaju's erstwhile disregard for the constitution, Zhang incessantly lobbied with other politicians for the adoption of a constitutional mode of government after coming back to China.⁶⁰⁴

Upon his return, he had several books printed in Chinese language and distributed to the Court:⁶⁰⁵ the Constitution of Japan and Itō Hirobumi's commentaries on it, a book by Kudō Takeshige 工藤武重 (1869–1936) on the history of the Japanese parliament (*Riben yihui shi* 日本議會史)⁶⁰⁶, Britiffe Constable Skottowe's (1857–1925) *A Short History of Parliament* (*Yingguo guohui shi* 英國國會史, translated via the Japanese version by Takada Sanae 高田早苗 (1860 – 1938)⁶⁰⁷, and a book

⁶⁰³ Zhang Jian 張謇, "Seweng ziding nianpu (Minguo 14 nian qianyinben)" 耑翁自訂年譜 (民國十四年鉛印本) (Seweng's self-arranged annalistic biography: 1925 typographic edition), in *Wanqing mingru nianpu* 晚清名儒年譜, ed. Chen Zuwu 陳祖武 (Beijing: Beijing Tushuguan chubanshe, 2006), 327, also in Zhang, *Zhang Jian quanji*, vol. 6, 864.

⁶⁰⁴ See, e.g., his notes in Zhang, "Seweng ziding nianpu," 329–331; also contained in Zhang, *Zhang Jian quanji*, vol. 6, 865–866. See also his son's account in: Zhang Xiaoruo 張孝若, "Lixian yundong ji ziyiju chengli" 立憲運動及諮議局成立 (The constitutional movement and the establishment of provincial assemblies), in *Xinhai geming* 辛亥革命, ed. Zhongguo shixuehui 中國史學會, 8 vols. (Shanghai: Shanghai renmin chubanshe, 1957), 158–159.

⁶⁰⁵ Zhang, "Seweng ziding nianpu," 330–331, also contained in Zhang, *Zhang Jian quanji*, vol. 6, 865–866; see also Zhang, *Zhang Jian quanji*, vol. 1, 104–105.

⁶⁰⁶ Original: *Teikoku gikaishi* 帝國議會史; the Chinese translation was then published in 1905 by the *Jiangsu Tongzhou hanmolin bianyiyin shuju* 江蘇通州翰墨林編譯印書局. On the Chinese translation see Pan Xiyan 潘喜顏, "Qingmo lishi yizhu yanjiu (1901–1911): Yi Yazhou shichuan yizhu wei zhongxin" 清末歷史譯著研究 (1901–1911) : 以亞洲史傳譯著為中心 (Research on translations of history books in the late Qing (1901–1911), with a focus on translations of histories of Asia) (PhD diss., Fudan University, 2011), 194–195.

⁶⁰⁷ So far, no one has traced back the exact genealogy of this Chinese translation. Original: Britiffe Constable Skottowe, *A Short History of Parliament* (London: Swan Sonnenschein & Co., 1892). Japanese version: Britiffe Constable Skottowe, *Eikoku kokkaishi* 英國國會史 (A history of the English parliament), trans. Takada Sanae 高田早苗, 3rd ed. (Tokyo: Tōkyō Senmon Gakkō shuppanbu, 1900). The Japanese version had three editions, 1897, 1899 and 1900. The Chinese translation was then published in 1905 by the *Jiangsu Tongzhou hanmolin bianyiyin shuju* 江蘇通州翰墨林編譯印書局. On the Chinese translation, without mentioning the origins of the book, see Pan, "Qingmo lishi yizhu yanjiu," 195. On Takada Sanae and his Japanese translation, without mentioning the Chinese translation, Sun Hongyun 孫宏雲, "Xueshu liansuo: Gaotian Zaomiao yu Oumei zhengzhixue zai jindai Riben yu Zhongguo de chuanbo" 學術連鎖：高田早苗與歐美政治學在近代日本與中國之傳播 (Academic connections: Takada Sanae and the dissemination of European and American political science in modern Japan and China), *Zhongshan Daxue xuebao* (Shehui kexue ban) 中山大學學報 (社會科學版) 53, no. 245 (2013), 57.

that derived modern constitutional principles from China's own traditions, entitled *Ancient Meanings of Constitution* (*Xianfa guyi* 憲法古義).⁶⁰⁸ Zhang's lobbying did not go unnoticed, and years later he boasted that Empress Dowager Cixi herself had exclaimed in 1904, upon receiving the copy of the Constitution of Japan which he had sent to the Court, that the fact that Japan had a constitution was very good for the state (*Riben you xianfa yu guojia shen hao!* 日本有憲法於國家甚好).⁶⁰⁹

Zhang's promotion of constitutionalism speaks of the enthusiasm that the Japanese experience evoked with Chinese intellectual elites and of the hopes that it elicited of China being able to quickly and sustainably overcome its hardships if it followed a constitutional path. Could Zhang's advocacy be an example of what *Reynolds* called the "golden decade" of Sino-Japanese relations?⁶¹⁰

For many, Japan was a "shortcut to modernity,"⁶¹¹ and a model to be followed in constitutional matters. If one leaves aside those who advocated for a complete removal of the ruling dynasty and only looks for those who wanted to reform it, Japan and Germany were the most prominent models for those who called for a strong monarch, while some who wished for a weak position of the monarch referred to the British constitution. However, many, if not most, constitutionalists made a broader argument: they adduced examples from different polities to show that constitutionalism *in general* was superior to absolutism.⁶¹²

⁶⁰⁸ Xianshi sheng 銜石生 [pseudonym], *Xianfa guyi* 憲法古義 (Ancient meanings of constitution) (Shanghai: Dianshiqi shuju, Guangxu 31 [1905]).

⁶⁰⁹ Zhang, "Seweng ziding nianpu," 330; Zhang, *Zhang Jian quanji*, vol. 6, 865–866.

⁶¹⁰ Reynolds, *The Xinzhen Revolution and Japan*, 3.

⁶¹¹ Most Chinese intellectuals who wrote about Japan believed in a kind of cultural identity between China and Japan, most notably because of a supposedly "common writing" (*tongwen* 同文), which, they reasoned, made it much easier to acquire modern knowledge via Japan than directly from the West. On the issue of "common writing" see Douglas Howland, *Borders of Chinese Civilization: Geography and History at Empire's End* (Durham, London: Duke University Press, 1996), 54–65.

⁶¹² Wei Chunhui 衛春回, "Zhang Jian lixian sixiang pouxi" 張謇立憲思想剖析 (Analysis of Zhang Jian's constitutional thinking), *Jiangsu Shifan Daxue xuebao* (*Shehui kexue ban*) 浙江師範大學學報 (社會科學版) 29, no. 130 (2004), 38.

b) Kang Youwei, Liang Qichao, and their Magazines

While studies of China's constitutional history describe how various Chinese advocated for learning from Japanese, German or British models, what needs to be shown with more clarity is that even these mentions of monarchic Japan, Germany, Great Britain or of the republican United States or France occurred within a more global context. Chinese intellectuals and officials were aware of constitutions and constitutional developments elsewhere, too, even if this awareness was often filtered through a Japanese lens. More often than not, as Wei Chunhui 衛春回 has noted, the point transcended Japan, being that constitutionalism in general was a more advanced mode of government.⁶¹³

Not surprisingly, what mostly complemented the view of Japan and the constitutional powers of the West was an awareness of other unconstitutional states, namely of Russia and the Ottoman Empire, with which China was perceived to be in a similar situation. For the view of these states being remnants of autocracy was not peculiar to Zheng Guanying. Neither was it a view exclusive to China: it conformed to the common schemes presented in textbooks of political science at the time—both in Europe and East Asia—, which, when explaining the different types of polities, liked to use Russia and China as examples for absolute monarchies.⁶¹⁴ Such mentions of Russia and Turkey, often containing further information or commentary, appeared all over the place in books and articles explaining constitutionalism to Chinese readers at the turn of the century.

⁶¹³ Ibid., 38.

⁶¹⁴ See, e.g., Carl Gareis and Paul Hinschius, *Allgemeines Staatsrecht; Allgemeine Darstellung der Verhältnisse von Staat und Kirche* (Freiburg [Breisgau]: Mohr, 1887), 39. Gareis classifies Russia, the Ottoman Empire, Persia, China, Japan and China as “autarchies” (absolute monarchies). Based on Gareis in Japan: Ichiki Kitokurō 一木喜徳郎, *Kokuhōgaku* 國法學 (Science of the law of the State) (N.p.: n.d. [ca. 1899]), 39-40. Ichiki only takes Russia and China as examples, given that Japan had established a constitution in the meanwhile. As stated before, these were schematic categorisations in textbooks of political science and public law, but there were much more nuanced descriptions of China's political system elsewhere.

Kang Youwei and Liang Qichao 梁啟超 (1873–1929) intensified their advocacy for a constitution after their exile in 1898. In Yokohama, Liang Qichao began publishing the *Qingyi bao*, whose hundred editions ran from December 23, 1898 (Guangxu 24/11/11) to December 21, 1901. The magazine was published thrice a month and contained plenty of news and political debates from China and the world, some of it original, and some of it translated from Japanese and Western sources.

From Japan, Kang and Liang travelled to Canada in 1899, where they founded the *Protect the Emperor Society* (*Baohuanghui* 保皇會).⁶¹⁵ Kang continued touring the world and returned to Canada three times between 1899 and 1909, playing a crucial role in organising a global constitutionalist-reformist movement within the Chinese diaspora. These activities, consequently, rapidly outgrew Canada and became truly global: With the political objective of restoring the Guangxu Emperor's power under a constitutional monarchy, the *Baohuanghui* opened, until 1905, more than 160 branches in the Americas, Asia, Africa and Australia.⁶¹⁶

Kang's activities in Canada drew keen interest not only from the Chinese diaspora. Kang, who was under British protection, met local dignitaries and the Japanese consul, and local newspapers like the *Daily Colonist* and the *Victoria Daily Times* reported broadly on him. This, again, found its way back to the Chinese language through Liang's *Qingyi bao*. The magazine summarised a report written by the *Victoria Daily Times* upon his arrival in April 1899.⁶¹⁷ Kang had become more

⁶¹⁵ On Kang's activities in Canada and with the Chinese diaspora see Chen Zhongping, "Kang Youwei's Activities in Canada and the Reformist Movement Among the Global Chinese Diaspora, 1899-1909," *Twentieth-Century China* 39, no. 1 (2014) and *Times Colonist*, "Victoria as a Political Centre for Chinese Reforms," June 24, 2012.

⁶¹⁶ See Chen, "Kang Youwei's Activities in Canada and the Reformist Movement Among the Global Chinese Diaspora," 3.

⁶¹⁷ "Wanguo jinshi: Qingguo buchen xingzong (yi xi 4 yue 14 ri Yuduoli Taimushi bao)" 萬國近事：清國逋臣行踪（譯西四月十四日域多利泰晤士報）(Recent news from all countries: The whereabouts of an exiled Qing official [Translated from the *Victoria Times* of April 4]), in, *Qingyi bao*, 878–880. The *China Discussion* writes that the article is translated from the *Victoria Times* of April 14, 1899. According to Professor Chen Zhongping, this is a mistake, for the original source is to be found in the paper's edition for April 8, 1899 (written communication received on November 3, 2017). For another lengthy article published on April 8, 1899 see *Victoria Daily Colonist*, "A Ruler in Exile: Kang Yu-Wei, Leader

optimistic about the level of education of the Chinese people: Although reforms were officially stalled, the people had acquired enough knowledge for them to be successful (*minzhi yi kai* 民智已開).⁶¹⁸ Hence, he could boldly repeat his assertion that China could reform within three years and become a strong power within ten years. In the next edition, the *Qingyi bao* translated an article of the Japanese-language *Vancouver Weekly Report* (*Bankūbā shūhō* バンクーバー週報)⁶¹⁹, narrating how Kang was received at the station by the Japanese consul Shimizu Seizaburō 清水精三郎 and the interpreter Nakanishi Jūtarō 中西重太郎 (1875–1914). The article recounter Kang's hopes for reform in China, the first of which was "establishing a country with a constitutional mode of government." (*yu kai lixian zhengti zhi guo* 欲開立憲政體之國).

The *Qingyi bao* not only translated articles concerning the reformists own enterprises, but also all sorts of other news which showed the importance of constitutions. In 1901, it translated Article 19 of the constitution of California—however, declaring it to be a chapter of the constitution of the United States of 1788—, which provided that Chinese immigrants be expelled and new Chinese immigrants not be accepted. Liang appended a commentary to the translation deploring the blatant discrimination suffered by the Chinese in the USA.⁶²⁰ To Chinese readers, the article not only showed the calamitous consequences that constitutional regulations elsewhere could have for themselves, but certainly also their immense importance in enforcing the policies of strong and powerful states.

of the Pro-English Reform Party of China, in Victoria; Looks to British Intervention as the Only Salvation of His Country." April 8, 1899.

⁶¹⁸ "Wanguo jinshi: Qingguo buchen xingzong," in, *Qingyi bao*, 879.

⁶¹⁹ "Wanguo jinshi: Qingguo buchen xingzong erzhi (yi Wengehua zhoubao di 94 hao) 萬國近事：清國逋臣行踪二誌（譯溫哥華週報第九十四號）(Recent news from all countries: Second record of the whereabouts of an exiled Qing official [Translated from the *Vancouver Weekly Report* no. 94]), in *Qingyi bao*, 933–934.

⁶²⁰ "Zhaiyi Beimei Hezhongguo quzhu Huaren xianfa yi zhang" 摘譯北美合眾國驅逐華人憲法一章 (Abridged translation of the chapter of the constitution of the USA concerning the deportation of Chinese), in *Qingyi bao*, vol. 5, 5036–5038. The source for the *China Discussion* translation is James Bryce, *The American Commonwealth*, 2 vols. (New York: MacMillan and Co, 1893), vol. 1, 724.

On a much more uplifting note, a curious example of a news of constitutional relevance published in the *Qingyi bao* was an article about the “world’s smallest republics” (*shijie zui xiao zhi minzhuguo* 世界最小之民主國).⁶²¹ Although the article was not marked as a translation, it reproduced a curiosity article about the “world’s smallest republics” that was being published in several versions over and again in the US American press.⁶²²

The *Qingyi bao* article presents the four allegedly sovereign states of Tavolara (*Dawolala* 達窩拉拉), Goust (*Eside* 俄斯德), the Qualla Reserve (*Jialangsabu* 加郎撒布) and San Marino (*Sangmali* 桑瑪里, the only undoubtedly independent state out of the four). In a tone of admiration, it describes their location, population and their political systems, for “perusal of those surveying countries” (*yi gong changguozhe zhi kaojian yan* 以供覘國者之考鑑焉). Although the article only mentions constitutions in passing, it does help to solidify the notion of a constitution as the crucial document of a successful modern state. The Tavolarans, the article

⁶²¹ Liang Qichao 梁啟超, “Shijie zui xiao zhi minzhuguo” 世界最小之民主國 (The world’s smallest republics), in, *Qingyi bao*, vol. 3, 2524–2526.

⁶²² Similar articles presenting curious tiny republics appeared from 1894. The earliest such article is probably *Boston Daily Globe*, “Some Tiny Republics: Most of Them in Europe or on Islands of the Seas. In Area the Smallest is a Trifle More Than a Square Mile. Tavolara Has Less Population Than Any Other Recognized Country.” April 8, 1894. See also the two articles by a certain R. W. M’Alpin of October 20, 1895. R. W. M’Alpin, “Little Republics: Some Small Nations not Mentioned in School Books. Active, Ably Governed Republics That Consist of Fifty-Five Citizens or Upwards. North Carolina Boasts of an Independent Nation Within Her State Line.” *The Atlanta Constitution*, October 20, 1895 and R. W. M’Alpin, “Our Boys and Girls: Little Republics. Small Nations not Mentioned in School Books: Active, Ably Governed Republics that Consist of Fifty-Five Citizens or Upward—North Carolina Boasts of an Independent Nation Within Her State Line,” *Los Angeles Times*, October 20, 1895. One article quite close to the *China Discussion* article is *Boston Daily Globe*, “Republics: Tiny Ones About Which Very Little is Known. Tavolara Has a Population Not Exceeding 60 People. Goust’s Area is but One and a Quarter Square Miles. Perfectly Organized One in North Carolina. Each a Kingdom in Itself With President and Council.” December 17, 1899. Published three months before the *China Discussion* article, it does carry all “republics” mentioned in the Chinese article, including the Qualla Reserve. It also does give the same population for Goust (140), while others do give 130. The *China Discussion* article, however, has a longer introduction than the *Boston Daily Globe*, and omits Andorra. It also differs in the details of the text. It is not unlikely that the translation was not direct, but made through a Japanese intermediary source. One indication for this could lie in the somewhat garbled transcription of “Qualla Reserve”: The *-sabu* of *Jialangsabu* is closer to a Japanese transcription **risābu* (リサーブ) than to the English original.

reported, had become loath of being monarchically governed by the House of Sardinia, and accordingly fought for their independence “in a few wars.”

While the original article wrote that it was recognised by Italy and that the other powers “would have recognized it also if they had known of its existence,” Liang Qichao’s translation presented the “country’s” widespread international recognition as a *fait accompli*. What Liang Qichao took over from the original was the emphasis on the constitution as the basis for Tavolara’s success:

In the year 1886, it eventually adopted a constitution and became a distinct republic. Since then, it has gradually improved its polity. Italy has recognised it, and the powers have followed suit in recognising it. Eventually, it has become a completely perfect independent country.

至千八百八十六年。遂制定憲法。為一箇之民主國。爾來著著改進國政。意大利首認之。列國相繼認之。遂成為完全無缺之獨立國。⁶²³

The *Qingyi bao* did not only translate. It was also a platform for various fundamental articles written by Liang, the prolific writer, himself. The twelfth and thirteenth edition of the magazine, published on April 20 and 30, 1899, respectively, carried a seminal article on constitutionalism written by Liang: *On the Differences and Commonalities of All Countries’ Constitutions* (*Geguo xianfa yitong lun* 各國憲法異同論).⁶²⁴ In 1902, the article was republished in the law section of the *Economic Magazine*

⁶²³ Liang Qichao 梁啟超, “Shijie zui xiao zhi minzhuguo” 世界最小之民主國 (The world’s smallest republics), in *Qingyi bao*, vol. 3, 2526. As a contrast, the parallel passage in *Boston Daily Globe*, “Republics,” was: “In 1836 King Charles Albert of Sardinia granted the island of Tavolara to a family of the name of Bartoleoni, but in less than half a century the inhabitants threw off the yoke of monarchy and took to themselves the right to be governed by themselves. This little war did not alarm the world, and was quite a peaceful one. King Paul I reigned until 1882, and on his deathbed requested that none of his kin should succeed to the throne, and as no one claimed the honor, four years later the people decided to draw up a constitution, and Tavolara has been a very successful little republic since. // Twelve years ago its independence was recognized by Italy, and, it is to be presumed, other powers would have recognized it also if they had known of its existence.” In comparison, the *China Discussion* article, cut a large part of the story how Tavolara had become independent.

⁶²⁴ Liang, “Geguo xianfa yitong lun,” vol. 1, in *Qingyi bao*, 739-744; 807-812.

(*Jingji congbao* 經濟叢報)⁶²⁵ and published in book form under the title *Sketch of the Constitutions of All Countries* (*Geguo xianfa lüe* 各國憲法畧).⁶²⁶

As the title of the article indicated, Liang pursued a comparative approach, mentioning a host of European countries, including Portugal, Denmark, Switzerland and Belgium. He described how countries tended to move from absolutism to constitutionalism, but also stressed that in nearly all countries, this transition had been very difficult and very recent:

In the other countries, too, turmoils have succeeded one another, and the form of government has changed frequently. The achievement of constitutionalism in the various countries has been a matter of not more than merely a few decades.

其餘各國。亦相繼騷亂。政體頻變。蓋各國憲政之成就。不過數十年耳。⁶²⁷

The only exception to this was England, whence Liang reminded the readers of the weaknesses of constitutional documents thought up by jurists without a basis in the political culture of the country:

Moreover, the constitutional governments of the various countries have mostly been formed in scholarly debates. But England's constitutional government has progressed from the realities. Thus, one frequently looks at other countries as superior to her. But the English frequently eye the other countries' constitutions as paper constitutions, and presumably laugh at the weakness of their efficacy.

⁶²⁵ Liang Qichao 梁啟超, "Geguo xianfa yitong lun" 各國憲法異同論 (On the differences and commonalities of the constitutions of all countries), *Jingji congbao* 經濟叢報, nos. 2–3 (Guangxu renyin [1902]), section "law" (*falü* 法律), 1–4; 1–5.

⁶²⁶ [Liang], *Geguo xianfa lüe*.

⁶²⁷ Liang, "Geguo xianfa yitong lun," in *Qingyi bao*, vol. 1, 740.

又各國之憲政。多由學問議論而成。英國之憲政。則由實際上而進。故常視他國為優焉。英人常目他國之憲法。為紙上之憲法。蓋笑其力量之薄弱也。⁶²⁸

Liang complemented his descriptions of constitutional countries by mentioning those that had remained unconstitutional. He made use of the classification of China, Russia and Turkey as examples of absolutism, stressing that Japan was the only Asian state to have a constitution, while in Europe, all states had one, except for Russia and Turkey. Liang even noticed the first Ottoman constitutional period: Turkey had once adopted a constitution and convened a parliament amidst turmoil, but had then repealed it and was still an autocratic country.⁶²⁹

In the edition of June 7, 1901, Liang published another important article continuing his argument on constitutions.⁶³⁰ He therein argued that constitutional monarchy was the best mode of government, for in republics, political changes were too frequent and elections too fierce, while in absolute monarchies, the people viewed the Court like a gaoler and the Court had to protect itself from the people like from bandits. This was the case in Russia, and Liang Qichao stressed twice in the article that Russia's situation was not as good as it seemed. Equally, Turkey was the "sick man" of Europe and victim of imperialist aggression:

In the past 50 years approximately, the whole of Europe has become constitutional. Only Turkey is left, and all countries see it as a sick man and think daily of partitioning it. Only Russia is left, and although the country is awe-inspiringly mighty to the outside, three generations of her Emperors

⁶²⁸ Ibid., vol. 1, 741.

⁶²⁹ Ibid., vol. 1, 741; reprinted in book form as [Liang], *Geguo xianfa lüe*, 1. See also Zhongguo zhi Xinmin 中國之新民 [Liang Qichao 梁啟超], "Lun zhuanzhi zhengti you bai hai yu junzhu er wu yi li" 論專制政體有百害於君主而無一利 (On autocratic governments having a hundred disadvantages for the ruler and not a single advantage), *Xinmin congbao* 新民叢報, no. 21 (1902), 31.

⁶³⁰ Aiguo zhe 愛國者 [Liang Qichao 梁啟超], "Li xianfa yi" 立憲法議 (Discussion on the adoption of constitution), in, *Qingyi bao*, vol. 5, 5089–5098.

have been assassinated. Until today, he cannot sleep in peace, as if the country was full of [assassins like] Chu Ni.

距今五十年頃。而全歐皆立憲矣。尚餘一牛[sic!]耳其。則各國目之為病夫。日思豆剖而瓜分之者也。尚餘一俄羅斯。雖國威赫赫於外。然其帝王之遇刺者三世矣。至今猶鉏麤滿地。寢息不安。⁶³¹

In such a context, what was to be done? Could China follow suit and adopt constitutionalism as well? Yes, but first, the people had to be “slightly more equipped with knowledge” (*minzhi shao kai* 民智稍開). As Kang, Liang took Japan’s Meiji reforms as a model for China, and proposed a concrete plan of action. The Emperor should first issue an edict proclaiming China to be a constitutional empire “unchanging for all times” (*ding Zhongguo wei junzhu lixian zhi diguo, wanshi bu ti* 定中國為君主立憲之帝國。萬世不替。). This formula resembled Art. 1 of the Japanese constitution, but referred to the Chinese monarchical constitution as a whole, not just to the emperor’s rule. Thereafter, China should send commissioners to Europe, the United States and Japan to study the respective constitutions; it should then open a compilation office and translate the original constitutions of all countries. Finally, as Kang had done, Liang also entered the business of proposing a concrete timeframe for reforms, this time specifically for the transition to constitutionalism. While he argued that 10 years were possible, he preferred a less hurried deadline of twenty years.

⁶³¹ Ibid., vol. 5, 5094–5095. The other mention of Russia (without the Ottoman Empire) is in 5089. The mention of Chu Ni is an allusion to a story told in the *Zuozhuan* 左傳, wherein the hitman Chu Ni was sent to murder Zhao Dun 趙盾, an upright official. Chu Ni came very early in the morning and found Zhao Dun sitting on the floor dozing off, already fully clothed for the Court ceremony he was going to attend. However, the allusion does not entirely fit what Liang’s argument: Chu Ni was sent by an autocratic ruler to slay an upright official. However, he did not carry out the order, leaving his target unscathed—so impressed was Chu Ni by Zhao Dun’s dutifulness. Despite of using this allusion, Liang did not want to stress the Russian Czar’s virtue, nor the possibility that he would survive assassination attempts unscathed. For the original story see Yang Bojun 楊伯峻, ed., *Chunqiu Zuozhuan zhu* 春秋左傳注 (The Spring and Autumn Annals and the Commentary of Zuo, with annotations), 2nd ed., 4 vols., (Beijing: Zhonghua shuju, 1995), 698–699.

After discontinuing the *Qingyi bao*, Liang edited another magazine in Tokyo, the *Sein min choong bou* (*Xinmin congbao*), wherein he continued to expound his views on absolutism and constitutionalism in a global context. In the *Xinmin congbao*, Liang published several very effusive articles condemning autocracy and demanding a transition to constitutionalism.

In his 1902 essay “On Autocratic Governments having a Hundred Disadvantages for the Ruler and Not a Single Advantage” (*Lun zhuanzhi zhengti you bai hai yu junzhu er wu yi li* 論專制政體有百害於君主而無一利), Liang explained that the Europe and Japan of more than hundred years prior were like China. After adducing several examples of ruling houses with succession problems and rulers who had suffered violent fates in their offices (like Charles I of England and Louis XVI of France), he repeated what he had said about the remaining autocratic country, Russia: the Czar could not sleep easily for a single night due to the constant threat of assassination.⁶³² In another essay published in the same year, “A history of the evolution of autocratic politics in China” (*Zhongguo zhuanzhi zhengzhi jinhua shi* 中國專制政治進化史), Liang more clearly combined this view with his understanding of evolutionary theory, meaning a movement of progress towards a certain goal.⁶³³ To this effect, Liang expressly cited Ichiki Kitokurō’s 一木喜徳郎 (1867–1944) categorisation of “monocracies” versus “pleneocracies,” itself a distinction borrowed from the German author Carl Gareis (1844–1923), who both had taken China and Russia as examples of “autarchies.”⁶³⁴

Following Liang’s interests, the magazine was keenly interested in the affairs of autocratic Russia. As other Chinese-language papers of the time, the

⁶³² [Liang], “Lun zhuanzhi zhengti you bai hai yu junzhu er wu yi li,” 31.

⁶³³ *Zhongguo zhi Xinmin* 中國之新民 [Liang Qichao 梁啟超], “Zhongguo zhuanzhi zhengzhi jinhua shi” 中國專制政治進化史 (A history of the evolution of autocratic politics in China), *Xinmin congbao* 新民叢報, no. 8 (1902), 19. For a brief discussion of the sundry Chinese positions on constitutionalism and evolutionary theory see James Reeve Pusey, *China and Charles Darwin* (Cambridge [Massachusetts]: Harvard University Press, 1983), 337–338.

⁶³⁴ [Liang], “Zhongguo zhuanzhi zhengzhi jinhua shi,” 22. For Ichiki’s original, see Ichiki, *Kokuhōgaku*, 39–40; for the German source see Gareis and Hinschius, *Allgemeines Staatsrecht; Allgemeine Darstellung der Verhältnisse von Staat und Kirche*, 39.

Xinmin congbao, too, did carry many articles taken from other media, discussing the affairs of China and of the world, such as Russia. For example, in 1903, the magazine translated an article from the *American Review of Reviews* by Nahum Isaac Stone (1873–1966). The original title was “Political Conditions in Russia,” but in Chinese, it appeared under the title “Can Russia be a Constitutional Country?”⁶³⁵ In the article, Stone, a native of Odessa, expresses the view that the constitutional movement had grown so strong that it had become impossible for the Russian government to suppress it; the days of absolutist government were numbered. The translator added a comment that the Chinese people also longed for freedom, and that the Russian situation served as a warning.

Liang himself also issued his views on Russia personally. In these first years of the 20th century, he produced a copious amount of text about Russia, and wrote extensive articles dedicated to that country specifically. In one article of 1902, Liang elaborated on the news he had about Russia’s precarious internal situation, and expressed utter elation about the prospect of a revolution ending autocratic and instating constitutional rule:

Bang! A Russian revolution! Shazam! Russia finally cannot avoid revolution! Yeah! Russia can hardly not have a revolution!⁶³⁶

⁶³⁵ Nahum Isaac Stone [Yenu Ai Situn 耶努埃斯頓], “Eguo sui ke wei lixianguo hu (*Meiguo pinglun zhi pinglun*)” 俄國遂可爲立憲國乎 (美國評論之評論) (Can Russia be a constitutional country? *American Review of Reviews*), *Xinmin congbao* 新民叢報, no. 30 (1903); original in: Nahum Isaac Stone, “Political Conditions in Russia,” *American Review of Reviews* 27, 4 (1903). It may be noted that the Chinese version only names the *American Review of Reviews* (*Meiguo Pinglun zhi Pinglun* 美國評論之評論) as source text. However, the rendering of the author’s name (N. I. Stone) in Chinese (*Yenu-ai-situn* 耶努埃斯頓) raises the question of whether the article was not rather indirectly translated through a still unidentified Japanese medium, a hypothesis supported by the fact that the magazine was printed in Yokohama. A Japanese version would have probably transcribed the initials N. I. as **Enu Ai* *エヌ・アイ, resulting in the Chinese rendering *Yenu Ai* 耶努埃. This Chinese transcription would seem slightly odd if converted directly from English.

⁶³⁶ Liang Qichao 梁啟超, “Geming! Eluosi geming!” 革命! 俄羅斯革命! (Revolution! Revolution in Russia!), *Xinmin congbao* 新民叢報, no. 9 (Guangxu 28 [1902]), 72. The emphasis and exclamation marks are original. On the article see further Kaufman, “One Nation Among Many,” 199, explaining how Liang’s position reflected a general perception of Russia’s weakness: Former Chinese Russia analysts had stressed the feats of a great Czar like Peter the Great, but such could be hardly expected from Nicholas II in view of the present conditions in Russia.

咄、俄羅斯革命！吁、俄羅斯遂不免於革命！嘻、俄羅斯殆不可以不革命！

But Liang's political stances changed much during the years, as did his perceptions of Russia.⁶³⁷ Later, Liang would change his mind to defend an "enlightened autocracy" (*kaiming zhuanzhi* 開明專制) instead of immediate constitutional rule. In spite of his previous verbosity on Russia, he mysteriously stopped talking about Russia in 1905, when the revolution he had predicted and so yearned for in his 1902 article actually occurred.⁶³⁸ But by that time, others in China did have much more to say about Russia.

c) The "Association for Studies of the State" (*Guoxueshe* 國學社)

Kang Youwei's and Liang Qichao's fame became so stellar that they are used as the default representatives and drivers of constitutional thought in the years post-1898. But one should not forget that others contributed to the debates as well. In the first years of the 20th century, quite a few associations were founded with the aim of translating foreign works, which contributed much to disseminating constitutional thought in China.⁶³⁹ One of these associations, e.g., was the "Association of the Collectanea of Translated Books" (*Yishu huibian she* 譯書彙編社), whose magazine was mentioned above. Another one was the "Association for Studies of the State" (*Guoxueshe* 國學社), whose members combined quite a few influential works before and after its foundation.

The "Association for Studies of the State" was founded in Tokyo in 1903 by Chinese students at Waseda University in Tokyo, namely Wang Rongbao, Ye Lan 葉瀾 (1875-?), Zhang Zhaotong 張肇桐 (1881-1938), Qin Yuliu 秦毓蓂 (1880-1937), Ji Jing 稽鏡,⁶⁴⁰ Dong Hongwei 董鴻禕 (1878-1916), Wang Junji 王雋基, Zhou Kui 周

⁶³⁷ Müller, "China and the Russian Revolution of 1905," 287. On Liang's views of Russia see further Kaufman, "One Nation Among Many," 175-180; 192-225.

⁶³⁸ On this see *ibid.*, 193-195.

⁶³⁹ On this see, e.g., Bian, *Jindai Zhongguo xianfa wenben de lishi jiedu*, 30.

⁶⁴⁰ On translations done by Ji Jing see Gu Zhuxuan 顧祝軒, "Chūgoku ni okeru minjihō no keiju to 'dōteki shisutemu ron' (2): Nitchū ryōkoku no hōkeiju ni tsuite no hansei mekanizumu no kaimei"

達 (1878–?), and Huang Duo 黃鐸. According to its statutes, the association's objective was "compiling teaching materials for primary and middle schools and translating the famous works of East and West."⁶⁴¹

Indeed, the association's members were quite active in publishing and popularising the concept of a constitution in the first years of the 1900s. Perhaps the association's most influential member was Wang Rongbao, who later would become one of the men entrusted with drafting the final constitution for the Qing Empire. In 1903, he published, together with Ye Lan, a work entitled *New Erya* (*Xin Erya* 新爾雅)⁶⁴² in Tokyo. In the following years, several further editions of the book would appear in Chongqing and Shanghai.

While the *New Erya*'s title refers to the *Erya* 爾雅, a glossary from the 3rd Century BC, it is a taxonomically arranged encyclopedia of modern concepts. It begins with entries on "politics" (*zheng* 政) and "law" (*fa* 法), discussing "constitutions" in the politics part. Its discussion is rather unspectacular, proceeding from the definition of the state to forms of government, which it separates into the two types of absolute (*zhuanzhi* 專制) and constitutional (*lixian* 立憲) governments. The *New Erya*'s definition of constitutionalism was conventional in stressing its function of popular representation:

中国における民事法の継受と「動的システム論」(二): 日中両国の法継受についての反省メカニズムの解明 (The reception of civil law in China and the "theory of moving systems": Explanation of the mechanisms of reflection on legal reception in Japan and China), *Waseda hōgaku* 早稲田法学 78, no. 1 (2002), 57.

⁶⁴¹ On the "Association on Studies of the State" see Zhao, *Wang Rongbao: Zhongguo jindai xianfa di yiren*, 86–87. On Waseda University and the political reforms in China see Sōda, "Qingmo Minchu de zhengzhi gaige han Riben Zaodaotian Daxue," 109–113 (mentioning Wang Rongbao, but not Zhou Kui).

⁶⁴² The original edition of 1903 is reprinted in Wang Rongbao 汪榮寶 and Ye Lan 葉瀾, "*Shin Jiga*" to sono goi: kenkyū, sakuin, eiinbon tsuki 『新爾雅』とその語彙: 研究・索引・影印本付 (The *Xin Erya* and its vocabulary: research, index and facsimile), ed. Shen Guowei 沈国威 (Tokyo: Hakuteisha, 1995). For the 1906 edition see Wang Rongbao 汪榮寶 and Ye Lan 葉瀾, *Xin Erya* 新爾雅 (The new Erya), 3rd ed. (Shanghai: Wenming shuju, Guangxu 32 [1906]). On the work see Wang and Ye, "*Shin Jiga*" to sono goi, 1–67; Li Hsiao-t'i, "Late Qing Encyclopaedias: Establishing a New Enterprise," in Doležalová-Velingerová, Wagner, *Chinese Encyclopaedias of New Global Knowledge*, 41–44, and Milena Doležalová-Velingerová, "Modern Chinese Encyclopaedic Dictionaries: Novel Concepts and New Terminology (1903–1911)," in Doležalová-Velingerová; Wagner, *Chinese Encyclopaedias of New Global Knowledge*, 299–301.

Those who adopt a constitution and a parliament to organise the governing bodies of a state and let the people collaborate and participate are called constitutional governments.

立憲法議會。以組織國家統治之機關。使人民協贊參與者。是之謂立憲政體。⁶⁴³

The book goes on to discuss two forms of constitutional governments—“monarchic” and “democratic” ones. It discusses the standard examples of constitutional countries—Germany, the United Kingdom, Japan, the USA and France.⁶⁴⁴ In all of these cases (except for the United Kingdom with her unwritten constitution), the text discusses the respective constitutional charters as basis for governmental action. Thus, when arriving at the “law” section, the *New Erya* rigorously discusses notions such as written law (arisen in accordance with the constitutional charter) and customary law; legal transplantation (*jishou* 繼受) and many others.⁶⁴⁵ Its legal definition of “constitution” is rather succinct:

What is called a *constitution* is the adoption of a fundamental charter immutable for ten thousand generations, such as to be the source of all laws of a country and to solidify a political system that has rights and limitations.

立萬世不易之憲典。以爲國家一切法度之根源。鞏固有權限之政體者謂之憲法。⁶⁴⁶

What is remarkable about this definition is that it inconspicuously incorporates the Japanese notion of an immutable polity into a general definition of constitution. While in Japan, the slogan “immutable for ten thousand generations” (*bansei ikkei* 萬世一系) had referred to the Imperial dynasty and had been used to define the country’s very essence (*kokutai* 國體), Wang Rongbao’s Chinese equivalent (*wanshi*

⁶⁴³ Wang and Ye, *Xin Erya*, 9.

⁶⁴⁴ *Ibid.*, 9–11.

⁶⁴⁵ *Ibid.*, 27.

⁶⁴⁶ *Ibid.*, 29.

bu yi 萬世不易) was now an attribute of the constitution itself, which would stabilise the state for the future. Wang Rongbao did not elaborate much on this, but referred to the “politics” part of his encyclopedia for the rest, showing the eminently political character of constitutions.

While Wang Rongbao and his *New Erya* (*Xin Erya* 新爾雅) are comparatively well-remembered, one should not forget the other members of the group of Waseda students, such as Zhou Kui from Hunan. Although barely noticed by later generations,⁶⁴⁷ Zhou’s books were rather influential in shaping Chinese constitutional discourse at the turn of the century. In 1902, he translated a compendium of foreign constitutions under the title *Account of the Constitutions of the World* (*Wanguo xianfa zhi* 萬國憲法志).⁶⁴⁸ Zhou also published two other books in Shanghai. One, issued in 1902, was limited to England, published under the title *Account of the Constitution of England* (*Yingguo xianfa zhi* 英國憲法志). The third book, issued in 1902 and reissued in 1903, had a broader approach and was entitled *Essential Principles of Constitutions* (*Xianfa jingli* 憲法精理).⁶⁴⁹ Zhou’s contribution in providing textual translations of foreign constitutions to the Chinese public will be delineated in chapter five, together with the analysis of the other constitutional translations that accompanied the Qing Empire’s constitutional movement. What shall be shown at this point is the stance Zhou held in his books on the global process of “constitutionalisation.”

The *Essential Principles* was an introduction to elements of constitutionalism based on Japanese sources. It exemplified every element with excerpts from various constitutions, and expressly stressed that theories of constitutionalism were not united in Europe.⁶⁵⁰ Both of Zhou Kui’s books carried a near-identical

⁶⁴⁷ For a short biographic note on him see Sun Jilin 孫繼林, “*Jingguo meitan de fanyizhe Zhou Kui*” <<經國美談>>的翻譯者周達 (Zhou Kui, the translator of the *Keikoku bidan* [Beautiful stories of classical countries]), *Shinmatsu shōsetsu kara* 清末小説から, no. 25 (1992), 10–11.

⁶⁴⁸ Zhou Kui 周達, trans., *Wanguo xianfa zhi* 萬國憲法志 (Account of the constitutions of the world) (Shanghai: Guangzhi shuju, Guangxu 28 [1902]).

⁶⁴⁹ Zhou, *Xianfa jingli*.

⁶⁵⁰ *Ibid.*, *shang* 上, 2a.

large and extensive list of all constitutional countries in the world with their dates of promulgation. These were ordered according to regions (Europe, the Americas, and Asia, whose sole representative was Japan), and included not only the famous ones, but also those of countries such as Haiti, Uruguay and Liechtenstein. The list made comments on some constitutions, calling the Netherlands the “most perfect country within the group of constitutional monarchies,” and deeming the 1831 constitutional charter of Belgium to be the most perfect one, for “the country’s founding was recent.” Moreover, the text mentioned special cases: The United Kingdom and Sweden were constitutional, but did not have written charters; Canada had a written constitution, but was not an independent state; and of some constitutional countries, such as Colombia and Costa Rica, the book did not know the dates of promulgation.⁶⁵¹

As usual, Japan is mentioned as the —only— Asian example of a constitutional state, while Russia and Turkey are used as counter-examples.⁶⁵² In his evaluation of Turkey and Russia, Zhou was more vociferous than Zheng Guanying. While Zheng had still described Russia and Turkey as civilised exceptions to constitutionalism, Zhou dismissed both as uncivilised. The *Essential Principles* expressly linked constitutionalism to “civilisation,” for the teaser on the book cover adamantly stated that “except for barbarian autocratic countries,” there was not a single country on earth that was not constitutional. The preface to the *Account of the Constitutions of the World*, written by Zhao Bizhen 趙必振, was very clear in its assessment of the Ottoman Empire and Russia:

If I look around at all the countries in the world, the countries which use autocracy to exert their uncivilised barbarian *ancien régime* are so scarce they can be counted on the fingers of one hand, like Turkey and Russia.

⁶⁵¹ Ibid., *shang* 上, 2b–4b; see also Zhou, *Wanguo xianfa zhi*, appendix (*fulu* 附錄): “Chronological table of the adoption of the constitutions of the various countries” (*lieguo xianfa chengli nianbiao* 列國憲法成立年表).

⁶⁵² Zhou, *Xianfa jingli*, *shang* 上, 4b. Zhou, *Wanguo xianfa zhi*, appendix (*fulu* 附錄), 2b.

They are rare like stars in the morning sky. What could one still say about Turkey? Or take Russia: Although at the surface it seems to be looking proudly at the world, I heard the comments of specialists in surveying countries, and her internal situation is precarious like a pile of eggs. It is, again, clear that it will not be able to conserve her autocratic form of government.

吾遍觀地球萬國。以專制政體行其土番野蠻之舊制者。寥寥可屈指而計。若土耳其。若俄羅斯。不過晨星而已。土耳其復何足道。若俄羅斯之表面。雖似雄視於地球。然吾聞之善覘國者之言。其內情則危如累卵。期不能保此專制政體。又可知也。⁶⁵³

Thus, autocracy in China, Russia and Turkey alike was untenable, and was doomed to extinction:

If the peoples of China, Russia and Turkey do not perish, it is ineluctable that they, too, will be governed by constitutions.

中國俄羅斯土耳其諸國民。苟其不亡。亦將受治於憲法。而不可避者也。

⁶⁵⁴

5. Ku Hung-ming, Taw Sein Ko and International, Multilingual Debates

a) The Chinese “Constitution” Outside of the Qing Empire

Previous sections introduced foreign missionaries who explained Western concepts to a Chinese audience, Chinese intellectuals who learned from Japan, and Chinese intellectuals like Kang Youwei who organised pro-constitutional groups among *émigré* communities across the world. Yet, this fails to capture the complexity of international interactions that shaped constitutional debates at the turn of the 20th century.

⁶⁵³ Zhou, *Wanguo xianfa zhi*, 1a.

⁶⁵⁴ Zhou Kui, *Xianfa jingli*, preface by the author (*zixu* 自序), 1b.

For in the 1890s, the political future of China was not only debated by subjects of the Qing Empire in Chinese language. The debate about all manner of “reforms” in China was transnational and transcultural, being were also conducted between Qing and non-Qing subjects. Non-Qing subjects, at least in principle, did extend much support for such reforms understood in a broad sense. As an example, in the summer of 1898, the British Prime Minister, Lord Salisbury (1830–1903), declared:

If I am asked what our policy in China is, the answer is very simple. It is to maintain the Chinese Empire, to prevent it from falling into ruins, to invite it into paths of reform, and to give it every assistance which we are able to give it to perfect its defence or increase its commercial prosperity.⁶⁵⁵

On the other hand, this support was not unqualified, and accompanied by warnings that reforms might be too hurried, as expressed by Archibald Little:

Reforms too hurried lead to reaction, as we have recently seen in the case of the poor young Emperor and his adviser and protégé, Kang-yu-wei, the so-called “modern sage” — and as our own European history most emphatically teaches us.⁶⁵⁶

This debate about “reforms” mostly meant reforms of the administration, particularly the fiscal administration, which mattered the most to foreign interests, but also military, educational, juridical and rural reforms.⁶⁵⁷ Mentions of constitutional government or of a “constitution” in the narrower sense were still rare—but not

⁶⁵⁵ *Times*, “Lord Salisbury on Foreign Affairs,” June 30, 1898; also apud Archibald Little, “‘The Break-Up of China’—Lord Charles Beresford,” *Imperial and Asiatic Quarterly Review*, 3rd ser. 8, nos. 15 & 16 (1899), 128.

⁶⁵⁶ Archibald Little, “The Partition of China,” *Imperial and Asiatic Quarterly Review*, 3rd ser. 7, nos. 13 & 14 (1899), 59.

⁶⁵⁷ See, e.g., Sinicus [pseudonym], “Chinese Reform and British Interests,” *Imperial and Asiatic Quarterly Review* 3rd ser. 7, nos. 13 & 14 (1899), 318–321; Taw Sein Ko, “The Chinese Problem and its Solution,” *Imperial and Asiatic Quarterly Review*, 3rd ser. 11, nos. 21 & 22 (1901), 81.

unheard of—, as long as this was not yet on the official Chinese agenda. Nonetheless, occasionally, albeit not necessarily explicitly stating the words “constitution” or “constitutionalism,” non-Chinese language sources of the late 19th century touched upon one of its main elements: representative institutions.

Some of these debates were led by missionaries, who were active in two directions. Just as they had been crucial in disseminating knowledge about foreign constitutions to China, they were also important in translating back Chinese discourse to English. For example, in July 1891, the US American missionary Alvin Pierson Parker (1850–1924) reviewed, in the *Chinese Recorder and Missionary Journal*, the diary of China’s envoy to France, Zeng Jize 曾紀澤 (1839–1890). Therein, he recounted how Li Hongzhang showed Zeng a letter by Ma Jianzhong talking about the advantages and setbacks of European modes of government.⁶⁵⁸ And ten years later, on December 1, 1901, the same Alvin Pierson Parker was the first Westerner to notice that many a Chinese-language press outlet was favouring constitutional reform, with the notable exception of the *Shenbao* 申報.⁶⁵⁹

b) Taw Sein Ko, Li Zhuchi and the Chinese Community in Burma

Another important factor in the international debates on the Chinese constitution were the Chinese *émigré* communities: They were active both in Chinese-language debates and in explaining China to non-Chinese audiences. Let us take the Chinese community in South East Asia as an example. One intellectual who was active across linguistic, cultural and national boundaries was Taw Sein Ko 杜成誥 (1864–1930). In fact, he was not only active among the Chinese communities in Burma, which contributed to the pro-constitutional press of China. Taw probably was also

⁶⁵⁸ Alvin Pierson Parker, “The Diary of Marquis Tseng,” *Chinese Recorder and Missionary Journal*, July 1, 1891, 300.

⁶⁵⁹ Alvin Pierson Parker, “The Native Press in Shanghai : Our Relation to It and How We Can Utilize It,” *The Chinese Recorder and Missionary Journal*, Dec 1, 1901, 579.

the first to suggest in English language to a British audience that China adopt not only representative institutions, but also a constitutional charter.

Taw was a “Burmese gentleman”⁶⁶⁰ of half-Chinese (Hokkien) origin, a member of the Royal Asiatic Society who made his career in the British colonial administration in Burma and is today known for being Burma’s first archeologist. But Taw also had a life-long connection to China. From 1896 to 1898, he spent two years in China, where he had been sent to in order to study Chinese language and Chinese affairs. In China, he became acquainted with Li Hongzhang, and after his return to Burma, he was appointed Examiner in Chinese and Acting Advisor on Chinese Affairs.⁶⁶¹ Taw maintained his status as a China specialist long afterwards: From at least 1913 to 1918, he wrote annual reports to the British authorities on Chinese newspapers published in Burma, which were actually more a platform to express his views on Chinese politics than to accurately report on the Sino-Burmese press.⁶⁶²

During his 1896–1898 stay in China and afterwards, he published a series of articles concerning China in the London *Imperial and Asiatic Quarterly Review*. This magazine was a central British platform for debate on Chinese and Asian political issues around the turn of the century, even if the number of articles on China declined in the years after the Boxer Uprising. Taw’s articles were later reprinted and circulated in both English and Chinese.⁶⁶³ In his first article of 1897, Taw argued that:

China must move with the times. The majority of her institutions and methods of government are an anachronism in the nineteenth century, and how

⁶⁶⁰ *Times*, “International Oriental Congress,” September 7, 1892.

⁶⁶¹ Penny Edwards, “Relocating the Interlocutor: Taw Sein Ko (1864-1930) and the Itinerancy of Knowledge in British Burma,” *South East Asia Research* 12, no. 3 (2004), 298.

⁶⁶² *Ibid.*, 307–308.

⁶⁶³ For the English reprint see Taw Sein Ko, *Suggested Reforms for China* (Woking: Oriental University Institute, 1898), collected in the Morrison Papers at the *Tōyō bunko* 東洋文庫 in Tokyo; see also Edwards, “Relocating the Interlocutor,” 298.

they have most signally failed is evidenced by the present political condition of her former dependencies, viz., Burma, Siam, Annam, Cambodia, and Corea, which all modelled their laws and institutions upon her own.⁶⁶⁴

Lest it lose its sovereignty and integrity and be partitioned by foreign Powers, “certain internal reforms must be elaborated and carried through in spite of any possible opposition.”⁶⁶⁵ Thus, already in this 1897 article, Taw suggested “representative institutions of a simple kind.”⁶⁶⁶ He repeated the importance of “representative institutions” in later articles, putting them at the same level as technological advances.⁶⁶⁷ Taw pointed out that the Chinese emigrants who lived in European colonies showed a marked tendency to improve their status, whence he concluded that what made the difference for their success were Western laws and institutions.⁶⁶⁸

Such arguments were not mainstream amongst his British audience. As to the specific question of representative institutions, the British audience was not convinced that these were easily feasible, not even in European countries.⁶⁶⁹ For China specifically, the British Judge Frederick Samuel Augustus Bourne (1854–1940) dismissed such ideas stressing that they were “entirely alien to the Chinese mind.”⁶⁷⁰ It was the Shanghai-based English-language *North China Herald* that made the connection to the notion of a constitution in July 1900:

The Chinese moreover are not yet fit for political freedom as represented by the ballot box,... / ... And since China is not ripe for a constitution, the

⁶⁶⁴ Taw Sein Ko, “Suggested Reforms for China,” *Imperial and Asiatic Quarterly Review*, 3rd ser 4, nos. 7 & 8 (1897), 37.

⁶⁶⁵ *Ibid.*, 37.

⁶⁶⁶ *Ibid.*, 37.

⁶⁶⁷ Taw Sein Ko, “Western Education in China,” *Imperial and Asiatic Quarterly Review*, 3rd ser. 5, nos. 9 & 10 (1898), 66; see also Taw, “Suggested Reforms for China,” 267, 273.

⁶⁶⁸ Taw Sein Ko, “New China,” *Imperial and Asiatic Quarterly Review*, 3rd ser. 6, nos. 11 & 12 (1898), 77–78.

⁶⁶⁹ See, e.g., Charles A. Roe, “Representative Government in South Africa,” about the difficulties of constitutional government in a South Africa colonised by English and Dutch settlers (340–352), also adducing the example of Austria (345).

⁶⁷⁰ *North China Herald*, “Can China Progress?,” May 15, 1899, 875.

form of absolute power but under certain restrictions must be maintained.⁶⁷¹

But for Taw, too, the simple remodelling of the political system would not suffice without the right conditions. His series integrated the principle of “learning from other countries” with the idea that a constitution should gradually evolve from the internal conditions of the country. While pointing out that “what is best in each of these nations [i.e., England, Russia, France, Germany, USA] might be utilized in molding the future of China and in bringing her into line with Western countries”,⁶⁷² Taw deemed that in-depth reform was easier in Japan, for the institutions of that country had been imported from China anyway, while the Chinese ones were autochthonous and time-honoured. After all, “a yak on the Thibetan plateau cannot cast off its valuable fur, which is part and parcel of its body, with the facility of a man changing his coat.”⁶⁷³ Thus, he warned

... lest the novelty of new measures should blind Chinese statesmen and their foreign advisers to the excellence of some of the indigenous institutions. It should be recognised that every new form of Government to be practical, satisfactory, and permanent, must be a development from that which precedes it, and must absorb whatever is lasting and wholesome in the constitution of its predecessor ; and further, that, for the attainment of this end, it is desirable to retain those features which have stood the test of time, and harmonize with the genius and the traditions of the race.⁶⁷⁴

Synthesising arguments from English and Chinese-language debates, Taw sketched a far-reaching reform programme. For one, there was the question of religion as a unifying national factor. Indeed, the question of such a unifying national

⁶⁷¹ *North China Herald*, “A Chance for a New China,” July 25, 1900, 174.

⁶⁷² Taw, “Suggested Reforms for China,” 267.

⁶⁷³ Taw Sein Ko, “Reformed China and her Destiny,” *Imperial and Asiatic Quarterly Review*, 3rd ser. 16, nos. 31 & 32 (1903), 96.

⁶⁷⁴ Taw, “Suggested Reforms for China,” 273.

factor had been of crucial importance in the framing of the Meiji Constitution, and Taw recalled that Japan was trying to form a state religion for such a purpose. Taw advocated that China, too, needed a state religion, most likely Confucianism, in order to secure “national unity, progress, and civilization.”⁶⁷⁵ However, on the other hand, Taw repeatedly criticised Confucianism.⁶⁷⁶ Taw thought that China was hamstrung by the officials’ overly high regard for the Confucian classics, which resembled “the attitudes of the Hindus to their Vedas, and of the Muhammadans to their Koran.” One problem, for instance, was that of the Chinese diplomats posted abroad being literati who liked to show patriotism by vilifying others on account of their allegedly lewd social mores. But, as Taw summarised, equating technical and political aspects of modernity, the ancient philosophers “knew and taught nothing about railways, telegraphs, steamboats or representative institutions.”⁶⁷⁷

Secondly, Taw argued, the Manchu and the Han needed to be merged into one, recalling that the Chinese were not unique in this aspect, as the British Royal family was also of partly German descent.⁶⁷⁸ In a country “where there is no representative Government,” the ruler must pay attention to what was going on in the Empire.⁶⁷⁹ The question of nobility was a central one. Taw was of the opinion that the “progress of a nation has always been through the stages of primitive barbarism, class communism, feudalism and monarchical or imperial federation.”⁶⁸⁰ Consequently, next to arguing that the capital should be transferred to Nanking from Peking,⁶⁸¹ Taw picked up an argument that had already been voiced by Ellis Ashmead Bartlett (1849–1902) in the wake of the Sino-Japanese war⁶⁸²: that one of

⁶⁷⁵ Ibid., 38.

⁶⁷⁶ See, e.g., *ibid.*, 270–271.

⁶⁷⁷ Taw, “Western Education in China,” 66.

⁶⁷⁸ Taw, “Suggested Reforms for China,” 38–39.

⁶⁷⁹ Ibid., 39–40.

⁶⁸⁰ Ibid., 272.

⁶⁸¹ Ibid., 271–272.

⁶⁸² Ellis Ashmead Bartlett, “The War Between China and Japan,” *Imperial and Asiatic Quarterly Review*, new ser. 9, nos. 17 & 18 (1895), 3.

China's biggest weaknesses was the lack of feudalism and a landed aristocracy which could secure the throne.⁶⁸³ Taw suggested that the central government create the "nucleus of an aristocracy in China by conferring grants of land upon officials of approved loyalty and long service, whose relatives and dependents could be relied upon in the hour of need."⁶⁸⁴

With the beginnings of a feudal system representative institutions of a simple kind might be introduced with great advantage. ... Village and town Councils might be formed might be formed to attend mainly to sanitary and educational matters. ... For this purpose local councils will be extremely useful. Further, the principle of representative government should be encouraged and fostered till its highest end has been consummated, viz., the voice of the chosen of the people being heard in the counsels of the Empire.⁶⁸⁵

As to the administration, Taw argued, there was too much decentralization and no proper supervision or control.⁶⁸⁶ Here, Taw made a suggestion which would be realized—in a different form—a few years later: that China send officials abroad to study foreign systems of administration:

It is generally admitted that the Provincial Governments are strong, while the Central Government at Peking is weak. It is expedient that the relations between the Imperial and the Provincial Governments should be clearly defined, If it is considered to be derogatory to borrow the services of experienced Indian officials to help in the reformation of the internal administration of China, the Chinese government might well send a Commission to India to study and report on her administrative methods, which have now become the marvel of the civilized world. Some years ago Russia

⁶⁸³ Taw, "Suggested Reforms for China," 272–273.

⁶⁸⁴ *Ibid.*, 273.

⁶⁸⁵ *Ibid.*, 273.

⁶⁸⁶ *Ibid.*, 40.

sent a similar Commission to study the workings of the Indian Post Office, and Australia also sent one to report on Indian irrigation. In the construction of works of public utility ... India presents an unrivalled field of observation....⁶⁸⁷

A financial reform was of utmost importance, from the Imperial Household to the lower ranks of the Mandarinate, including the abolition of sinecures and dismissal of unpaid retainers.⁶⁸⁸ For Taw, it was especially the revenue system that could become a catalyst for the introduction of representative institutions and of further legal reforms.

It appears to be high time for the provincial authorities to avail themselves of the assistance of the foreign Customs officials in adopting other reforms in addition to those that are purely fiscal. The Customs Department ... may be looked upon ... as an efficient medium for the introduction of Executive, Legislative and Administrative Reforms. ... The creation of a Legislative Council by the Inspector-General, and the confirmation of all laws made by sovereign authority, would afford an object-lesson to the Chinese government as to the manner and method of making laws and regulations for the Empire. The secret of the stability of a Government and the contentment and the prosperity of its subjects is the establishment of the supremacy of law, and the secret of the marvelous success of the British Government both at home and abroad is its capacity for making excellent laws and regulations after due consultation, deliberation and discussion....

In the matter of creating a Legislative Council for the Empire, the expedience of the Tsungli Yamen undertaking the discussion of all Bills, draft regulations, and annual Budgets might be considered. The members of the Yamen are all high officials holding substantive administrative appointments

⁶⁸⁷ Taw, "New China," 74.

⁶⁸⁸ Taw, "Suggested Reforms for China," 269.

elsewhere, and having the right of access to the Emperor ; and of all Mandarins they are the most permeated with Western ideas and sentiments. It may also be considered whether each Viceroy should not be assisted by a Provincial Legislative Council.⁶⁸⁹

This suggestion received mixed responses. For Archibald Little (1837–1922), the Imperial Maritime Customs, being led by Robert Hart (1835–1911), were a “brilliant object-lesson,”⁶⁹⁰ while the *North China Herald* replied in a leading article of August 29, 1898 that the legislation that had come out of the Inspectorate-General did not make it “very much enamoured of this suggestion.”⁶⁹¹

But most importantly, Taw noted, the “salvation of China” would consist in the improvement of her educational methods, for this was what made nations like Germany and Japan great.⁶⁹² In this field, Taw became personally involved. Still in 1897, he endorsed Gilbert Reid’s (1857–1927) newly-founded school at Peking, the *International Institute*, in a letter to the *North China Herald*.⁶⁹³ And after returning to Rangoon, in 1900, he was one of the founders of a Chinese learned society in Burma, the “Rangoon Society for Broad Equipment with Knowledge” (*Yangguang guangzhi xuehui* 仰光廣智學會).

The society’s manifesto was not only local news, but also published in Liang Qichao’s *The Reformer—China* (*Zhixin bao* 知新報) and in the *Lujiang bao* (*Law Kang Po* 鷺江報), a magazine edited by James Sadler, a missionary resident in Amoy.⁶⁹⁴ In line with what Taw had criticised in the *Imperial and Asiatic Review*, the society criticised that the “empty texts of neo-Confucianism were truly not on par with the Westerner’s substantial learning.” Hence, its main activity was organising regular lectures with the aim of spreading knowledge. The society deplored that

⁶⁸⁹ Taw, “New China,” 72–73; 74–75.

⁶⁹⁰ Little, “The Partition of China,” 58–59, not mentioning Taw directly.

⁶⁹¹ *North China Herald*, “New China,” August 29, 1898, 373–374.

⁶⁹² Taw, “Suggested Reforms for China,” 41.

⁶⁹³ Taw, “The International Institute at Peking,” *North China Herald*, July 2, 1897, 31.

⁶⁹⁴ For the *Lujiang bao* version see Li Zhuchi 李竹痴, “Guangzhi xuehui xu” 廣智學會序 (Introduction to the “Society for broad equipment with knowledge”), *Lujiang bao* 鷺江報, nos. 42–43 (1903), 20, 20.

China gone from a country that deemed itself to be refined to an uncivilised, nay barbaric country:

In the past, it called itself the eminent country of East Asia and a great power of the world, but now, it is reduced to a semi-sovereign state (...) and expelled from the community of nations, not being allowed to enjoy equal rights; in the past, it called herself a nation of rites, but now, it is scolded as an uncivilised nation; in the past, we looked down on others as barbarians, but now, others scold us as barbarians.

向自稱爲東亞洲之望國地球之大國者今且削爲半主之國(…)擯於萬國公會之外不得享平等之權利矣向自稱爲禮義之邦今且罵爲不教之邦矣向之視人爲野蠻今則人罵我爲野蠻矣⁶⁹⁵

The society vowed to change this situation, and the manifesto's very name alluded to the trope of "equipping the people with knowledge" (*kai minzhi* 開民智):

For it wants to broadly open the intelligence of our Chinese people in order to express the mind of revitalising China.

蓋欲廣開我華民之智慧以表興華之寸心⁶⁹⁶

The society's manifesto, written in 1900, did not yet explicitly call for a constitution. It cannot, thus, be ascertained whether the notion was by then already in the horizon of the society's members or not. But it certainly was in 1903, when the manifesto was published again in the *Lujiang bao*. One of the other founders of the society, Li Zhuchi 李竹痴, sent a letter to the magazine, which was published a few editions before the manifesto. Therein, he wrote:

⁶⁹⁵ Li, "Guangzhi xuehui xu," no. 42, 20a.

⁶⁹⁶ Ibid., 20b. Li Zhuchi 李竹痴, also published another article in 1900 in the *China Discussion*. It advertised their library, the "Rangoon English-Chinese library" (*Yangguang Yinghua cangshulou* 仰光英華藏書樓), which also had as its objective "equipping the people with knowledge" so that the country could thrive. Li Zhuchi 李竹痴, "Yangguang Yinghua cangshulou xiao qi" 仰光英華藏書樓小啓 (Small information about the Rangoon English-Chinese library)," in, *Qingyi bao*, vol. 3, 2943–2944.

But what are the fundamentals for this? It is putting the national matters in order. It is adopting a constitution. It is reforming internal politics. It is convening a parliament. Then, it is reforming the military equipment, reshuffling the officialdom, instituting a Board of Commerce, choosing a Board of Revenue, changing the laws, striking up diplomatic relations, founding schools, interrupting the official examinations, creating new citizens and cultivating public virtue. Although the various affairs of the state are many, they fundamentally boil down to the putting the national matters in order, adopting a constitution and reforming a parliament as their guiding line.

本源維何定國是也立憲法也修內政也開議院也次則改武備易官制立商部選理財換律例聯外交開學堂停科舉新國民修功德維新之庶政雖多而要之以定國是立憲法開議院爲綱領⁶⁹⁷

Equally, the early English-language articles written by Taw Sein Ko between 1897 and 1901 did not yet explicitly mention the word “constitution,” although they showed his admiration for rule of law and representative institutions in the British sense, which should be gradually introduced. It was in 1903, in the last article of his series, that Taw became the first writer in an English language medium to explicitly demand a “constitution” in the sense of a constitutional charter for China. In that article, entitled “Reformed China and her Destiny,” Taw painted a very positive picture of the impact that the introduction of “Western laws and institutions” had had on Japan. He did not explicitly mention the Meiji Constitution, but alluded to it by mentioning its drafters and writing that the “Island Empire” was “under a lasting obligation to Marquis Ito, Marquis Yamagata, and Count Inouye,

⁶⁹⁷ Li Zhuchi 李竹痴, “Yu bengan shu” 與本館書 (Letter to the editor), *Lujiang bao* 鷺江報, no. 39 (1903), 21b.

headed by the Mikado (...)."⁶⁹⁸ Taking a very optimistic outlook, in particular seeing Cixi in a positive light, he anticipated similar changes in China, and demanded that:

What is now required at Peking is the drawing up of a constitution detailing the various departments of the Government and the duties of the officers in each. The Six Boards should be remodeled ; special attention should be given to the working of the Boards of War and Revenue, and two new Boards – viz., those of Reform and Legislation – should be added. ... For the consideration and adoption of useful reforms the creation of an additional Board is necessary. Haphazard measures, assented to in haste, may prove to be inexpedient and cause unrest and disaffection. A legislative Board is also essential.⁶⁹⁹

c) Ku Hung-ming's *Papers from a Viceroy's Yamen*

If there was much cautious support for "modernising reforms" in China, the Penang-born and British-educated Ku Hung-ming spent his life arguing against such ideas: the West should not support reforms in China, but "let the Chinaman alone."⁷⁰⁰ When Ku's name appears in conjunction with constitutional history, it is usually in connection with a memorial he wrote in 1907 opposing constitutional reforms.⁷⁰¹ However, his name should be mentioned much earlier, for throughout the 1900s, he was the eminent figure of the strain of thought opposed to a modern constitution.

⁶⁹⁸ Taw, "Reformed China and her Destiny," 95–96.

⁶⁹⁹ Ibid., 96

⁷⁰⁰ Ku Hung-ming, *Papers from a Viceroy's Yamen: Chinese Plea for the Cause of Good Government and True Civilization in China* (Shanghai: Shanghai Mercury, 1901), v.

⁷⁰¹ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, vol. 1, 307–313. The memorial also interested the British legation to Peking, which attached a copy of it into its files: Miscellaneous China, FO 233/131, National Archives, Kew, 13–18.

As early as 1901, Ku was the first self-identified Chinese to argue in English language against not only China adopting a constitution, but fundamentally criticising modern paper constitutions. Ku's thoughts are also remarkable because they exemplify how constitutionalism was not a concept with unanimously positive connotations, but also represented militarism and oppression. Thus, it was his 1901 considerations which, in 1906, became the centre of a correspondence with the Russian anarchist writer Leo Tolstoy (cf. *infra*, chapter three, section 5). The 1907 memorial, too, was a development of his 1901 as applied to the Chinese situation.

Ku's favourite medium of expression were contributions to English-language newspapers, several collections of which were published as book. Becoming mainly known for his English-language literary production, his books were translated into and had considerable success in several European languages. Ku did also contribute to Chinese-language discourse, but his Chinese-language work is meagre compared to his English-language production, and he never managed to secure an influential role in the Chinese public apparatus. Often reduced to a "defense of China against European ideas," as expressed by the title of a German-language collection of his essays,⁷⁰² his staunchly traditionalist thought was actually much more nuanced. As Gotelind Müller-Saini has pointed out, he defended his interpretation of Confucianism to a Western audience with frequent recurrences to Western literary and religious tradition, and believed that there was a fundamental resemblance of the "true" Eastern and Western cultures. The real dichotomy for him was rather between this "true" and popular, "riffraff" culture.⁷⁰³

⁷⁰² Ku Hung-ming, *Chinas Verteidigung gegen europäische Ideen: Kritische Aufsätze*, ed. Alfons Paquet (Jena: Eugen Diederichs, 1911). Further editions appeared in 1917 and 1921.

⁷⁰³ On Ku see Gotelind Müller, "Gu Hongming (1857-1928) und Chinas Verteidigung gegen das Abendland," *Orientierungen: Zeitschrift zur Kultur Asiens*, no. 1 (2006). See particularly 16 and 20–21 for the conclusion here presented. See also Uwe Riediger, "Ku Hung-ming: Umriss eines Lebens (–1928)," *Oriens Extremus* Vol. 31 (1987-1988). For Ku arguing that the real conflict was not between the yellow race and the white race, but a *Kulturkampf* between mediaevalism and liberalism within European culture see Ku Hung-ming, "Civilization and Anarchy: Or the Moral Problem of the Far Eastern Question," in *Papers from a Viceroy's Yamen*, 183. For Ku identifying Leo Tolstoy's Christianity with true Confucianism see Ku Hung-ming, *Et nunc, reges, intelligite: The Moral Causes of the Russo-Japanese War* (Shanghai: Shanghai Mercury, 1906).

In 1901, Ku published his first larger collection of essays in book form, *Papers from a Viceroy's Yamen, a Chinese Plea for the Cause of Good Government and True Civilization in China*, at Shanghai Mercury Press. Most of the *Papers* had been previously published in the *Japan Mail* in Yokohama, with the exception of one paper, entitled "Defensio Populi ad Populos," which had been published in Shanghai in 1891.⁷⁰⁴ In one of the *Papers*, the "Latter-Day Notes on the Chinese Question," published in the *Japan Mail* of May 25, 1901, Ku analyses the situation of the USA. For him, the fundamental problem of the contemporary USA was precisely her "early log-cabin Constitution." Highlighting the special, even religious importance of the Constitution for the United States, Ku deplored that its word was "fetishly worshipped" by the US Americans.⁷⁰⁵ At the same time, Ku also stressed that the constitution was a means of political and social domination:

Constitution means property, the property of the lawyer, and the rich man who pays the lawyer.⁷⁰⁶

This, explained Ku, also had effects at the level of international politics. Ku recognised that constitutions, progress and civilisation were often seen as going hand in hand, and were notions ever more fundamental in international political relations. As Ku writes, the US American lawyer is sent abroad as a diplomat and applies the "abstruse" law with the constitution on top to the United States' relations with the Philippines or with China. But, as Ku points out, what in the United States is called the "law of Progress and Civilization," is actually quite the opposite:

But the Chinese with their peculiar "savez" find out that law according to the Constitution, progress, and civilization, means robbery; and robbery,

⁷⁰⁴ Ku, *Papers from a Viceroy's Yamen*, i.

⁷⁰⁵ Ku Hung-ming, "Latter-Day Notes on the Chinese Question (first published 25th May 1901.)," in *Papers from a Viceroy's Yamen*, 161, explicitly calls the constitution a "Church" erected by lawyers. See also 152–153 ("fetishly worship") and 157 ("log-cabin").

⁷⁰⁶ *Ibid.*, 161.

although it be of the poor by the rich, or of the weak by the strong, is clear against the law of God's justice.⁷⁰⁷

The religious worship of the constitution might have been a special development in the USA, but in sum, it was but “the latest development of the vulgar musket worship of Europe.”⁷⁰⁸ To Ku Hung-ming, the real, admirable US American civilisation lay in the “school house and the Church,” and the US Americans should rather read their constitution under this light than pattern the school-house and the Church after the constitution:

Indeed, it is piteous to see the American people with their belief in their Constitution. “He will never march, an't please your honour, in this world,” said the Corporal in Sterne's novel. “By God, he will march,” said my Uncle Toby. In his perplexity, Uncle Sam called in the aid of lawyers. But lawyers do not, as a rule, declare the law of God or of God's justice but only the law according to the Constitution. The people, “the masses,” of course, do not know the abstruse law according to the Constitution. Thus the lawyers had a good time of it to themselves. In short, the lawyers make and interpret the abstruse law according to the Constitution to suit themselves and anybody who is rich enough to pay them.⁷⁰⁹

Given his disdain for the “abstruse law” represented by the written constitution, it would not have crossed Ku's mind to demand a “constitution” for China—of whatever type of government it be. However, from European discourse, Ku was familiar with the various possible definitions of “constitution.” Thus, applying an understanding of God that transcended Christianity, he argued that the “true constitution” was “God's justice.” Using such a definition, Ku's conclusion is consequent: Such a “true constitution” had already been delineated in the high cultures

⁷⁰⁷ Ibid., 159–160.

⁷⁰⁸ Ibid., 161–162.

⁷⁰⁹ Ibid., 158 (n° 18). See also 157 (“school-house,” “Church”).

of both China and the West. Hence, the notion of a “constitution” could also be applied to China. Indeed: In another paper of his 1901 collection, Ku argued that China *was* already a “constitutional” government. The journalist Valentine Chirol (1852–1929), reflecting his own stance that China should slowly progress towards a modern constitution, wrote that Ku was an “earnest advocate of constitutional evolution in the direction of representative institutions by no means altogether alien to Chinese traditions.”⁷¹⁰ However, this was a highly biased assessment. Ku had defended that China had already been constitutional because the emperor depended upon the public opinion of the educated classes.⁷¹¹ However, he did not argue in favour of modern representative institutions. As a cultural universalist, he defended the “high cultures” of both East and West against the increasingly influential “riffraff” culture.⁷¹² It was China’s traditional Confucian constitution as an emanation of this high culture which, for Ku, had to be the basis for any good governance.

6. Chapter Conclusion

By the time Ku wrote his essays, a constitution had not only been known as a foreign constitutional device—for example, as part of US American law. Intellectuals had already been advocating it for China since several years. Although none of the reform edicts of 1898 mentioned the words “constitution” or “constitutionalism,” the concept was already current in reformist circles. Kang Youwei, one of the masterminds of the reforms, used it before the reforms, seeing a constitution as the capstone of a grand reform of the country, such as Japan had done in the Meiji reforms, from 1868 to 1890.

⁷¹⁰ Chirol, “The Chinese Revolution,” 546.

⁷¹¹ Ku Hung-ming, “For the Cause of Good Government in China,” in *Papers from a Viceroy’s Yamen*, 65. Ku repeated this in Ku, *Chinas Verteidigung gegen europäische Ideen*, 69, where he stated that China was “constitutional as Britain.”

⁷¹² Müller, “Gu Hongming und Chinas Verteidigung gegen das Abendland,” 16.

Even if frustrated, the 100 Days' Reforms became a point of reference for the further reforms that China underwent in the first decade of the 20th century. The crackdown of 1898 was only temporary, and after the Boxer uprising, the Court itself called for reforms in the beginning of 1901. Shortly after, all manner of reforms began to be debated, and the adoption of a constitution took centre stage.

Constitutions were political and legal instruments that provided the foundation of a nation's rule whenever a nation-state was created or a state underwent a profound transformation. As such, they could be and were applied in all types of polities, even in autocracies. For example, the Korean Empire promulgated an openly autocratic constitutional charter in 1899. Having the objective of defending Korea in the international arena as well as legitimising the internal *ancien régime*, it was based on Johann Caspar Bluntschli's writings, mediated via his translation into the Chinese language. As such, the autocratic Korean constitution is an example of the entangled constitution-making process that made constitutions a necessary element of a modern state.

However, except for the United Kingdom, where the (partially unwritten) constitution was result of a centuries-long transformation, those states which had not yet adopted constitutional charters by the turn of the 20th century were deemed to be absolute monarchies. The meaning of "constitutional" as an adjective, thus, tended to be more specific than that of "constitution" as a noun, a tension that Liu Yazi noticed as early as 1903. Not all intellectuals hoped for written constitutions: Thus, in 1901, Ku Hung-ming vociferously criticised the written constitution of the USA in an English-language article. But in China, with the governmental sanction of January 29, 1901, debates about reform flared up. Demands for political reform mostly came to mean reforming the absolute monarchy by transforming it into a "constitutional" one.

Given Japan's perceived tremendous success as a newly-created nation state, Japan was a large source of inspiration for such a transformation. Debates on constitutionalism in China were often toned through a Japanese lens, as many of

its participants were located in Japan and many of the contributions were published in Japan or translated from Japanese sources. But they were by no means conducted with blinkers restricting the view to Japan. One example of how entangled the debate would be the Chinese community in Burma, whose representatives, Taw Sein Ko and Li Zhuchi, proposed a constitution in 1903 to both English- and Chinese-speaking audiences.

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In her far-sighted dissertation on *Foreign Models in the Constitutional Thought of Liang Qichao*, Alison Kaufman has analysed Liang Qichao's interpretations of the constitutional situations of the United States, Russia, and Japan, working out "Liang's empathy towards the circumstances of nations around the world."⁷¹³ Kaufman's work defends Liang from the many critiques directed at him by scholars as Philip Huang, Hao Chang, Benjamin Schwartz, and Joseph Levenson, who had accused him of "perverting the principles of Western liberalism for distinctly illiberal purposes."⁷¹⁴ As Kaufman rightly explains, Western constitutional thought was not monolithic, and Liang's thinking did correspond to many strands of political thought in other places of the world, making such critiques much more an expression of our own *Zeitgeist* than of Liang's.⁷¹⁵

Certainly, for Chinese intellectuals like Liang Qichao, the various polities of the world, both historical and contemporary, became models to be "emulated, adapted, or avoided."⁷¹⁶ Specialised literature will find, among others, traces of "neo-Confucianism, Spencerian evolutionism, Anglo-American and German-Continental strains of constitutional thought, and Japanese constitutionalism" in the writings of various Chinese thinkers.⁷¹⁷ But what is more important here is more

⁷¹³ Kaufman, "One Nation Among Many," 258.

⁷¹⁴ Ibid., 2.

⁷¹⁵ Ibid., 2, 258–259.

⁷¹⁶ Ibid., 7.

⁷¹⁷ Ibid., 28.

general aspect: China's adoption of a constitution was a "shared journey into modernity":⁷¹⁸ China stood in the middle of a world "constitutionalising" itself, in the same boat as other non-constitutional countries such as Russia and the Ottoman Empire. Several factors made large portions of the Chinese elite begin to consider the adoption of a constitution in the years 1898–1904. Chinese intellectuals not only constantly searched for the right elements of Chinese, Japanese and European political theory to be applied to China, but also had an increasingly keen perception of the world, including of places with no or just recently adopted constitutions, and kept calibrated their thoughts with current affairs.

Hence, against the background of Russia's well-perceived fragile internal situation, an event broke out which confirmed these debates of the very first years of the century and served as a catalyst of constitutional transformation across Eurasia: "World War Zero,"⁷¹⁹ or the Russo-Japanese War of 1904/05.

⁷¹⁸ Ibid., 258.

⁷¹⁹ See the book title of: John W. Steinberg and David Wolff, eds., *The Russo-Japanese War in Global Perspective: World War Zero* (Leiden, Boston: Brill, 2007).

CHAPTER THREE.

World War Zero: From the Russo-Japanese War to the Russian and Persian Constitutions (1904–1906)

Une bonne constitution ne peut suffire à faire le bonheur d'une nation.

Une mauvaise peut suffire à faire son malheur.

Guy Carcassonne (2004)⁷²⁰

1. Prelude: Rights under the Fourteenth Amendment

In 1904, an alumnus of the new-style Peiyang University (*Beiyang Daxue* 北洋大學) in Tientsin became the first ever Chinese student to receive a fellowship from Columbia University in New York. The student, named Yen Chin-yung (Yan Jinrong 嚴錦鎔),⁷²¹ enrolled at the faculty of political science,⁷²² where he stayed for about a year. After the completion of his degree, he was instructed to continue his studies in Germany and France.⁷²³

Why is a simple student like Yen so remarkable? Not so much because of his connections to China's constitution. Rather, three years after Ku Hung-ming's publications, he was the first Chinese to substantially contribute to scholarship of

⁷²⁰ "A good constitution cannot suffice to create the happiness of a nation, but a bad constitution can suffice to create its misfortune." Guy Carcassonne, *La constitution*, 6th ed. (Paris: Seuil, 2004), 33.

⁷²¹ Sometimes written 嚴錦榕.

⁷²² *New York Times*, "Chinaman Wins Fellowship: Chin Yung Yen of Tien-Tsin is Learned on Constitutional Law," April 20, 1904. Yen is hardly known by Chinese secondary literature, but for a few mentions in passing. See, e.g., Zhu Zhihui 朱志輝, "Liang wei Meiguoren yu Qingmo Minchu de Zhongguo falü jiaoyu" 兩位美國人與清末民初的中國法律教育 (Two US Americans and legal education in late Qing and early republican China), *Huanqiu falü pinglun* 環球法律評論, no. 3 (2005), 358. Zhou Mian 周棉 and Wang Rongguo 王榮國, "Qingmo liuxue Oumei yundong xilun" 清末留學歐美運動析論 (Analysis of the late Qing movement to study abroad in Europe and America), *Lishi dang'an* 歷史檔案, no. 1 (2016), 110–111, with further references, have a list of Peiyang University students who went to the USA which does not include Yen.

⁷²³ *Ibid.*, 70. In Berlin, Yen was enrolled from winter semester 1905/06 in the national economy course. See *Amtliches Verzeichnis des Personals und der Studierenden der königlichen Friedrich-Wilhelms-Universität zu Berlin: Auf das Winterhalbjahr von 16. Oktober 1905 bis 15. März 1906* (Berlin: Universitäts-Buchdruckerei von Gustav Schade [Otto Francke], 1905).

the constitution of the United States. From the beginning, he set out to study constitutional law, and he graduated in the following year of 1905 with a doctoral dissertation on the “Rights of Citizens and Persons under the Fourteenth Amendment.”⁷²⁴

Although Yen’s stay at Columbia had been funded by the US American side, Yen’s studies were backed by the Chinese government. At this time, “World War Zero” was still raging, and although “constitution” was already a hot topic in China, it was still far from being officially embraced by the Chinese government. Yen could have chosen, as many other Chinese students abroad, to write a dissertation about his home country, China, but he did not. His contribution is remarkable as it shows that, long before China adopted a constitution of its own, Chinese actors were not only not only passively receiving Western models, but also actively contributing to them.

But let us return to China’s own constitution and what was going on during and after “World War Zero.” This was a crucial time in global constitutional history, but not so much because of the United States or because any of the constitutional States of the West. These years were crucial because of several traditional autocracies which were “sitting in the same boat” as China. This chapter argues that the Russo-Japanese War was not as much a surprising turning-point which made the Chinese government strive for constitutionalism as it was a confirmation of the debates on political systems that were already been lead in the foregoing years. However, throughout Eurasia, it gave an important impulse to a wave of constitutionalism that affected the whole landmass in the following years. The Chinese constitutional movement cannot be understood in isolation, but only as a part of this transcontinental wave.

How did Chinese intellectuals and officials perceive the Russian and Persian constitutional upheavals of 1905 and 1906? What lessons did they draw for

⁷²⁴ Chin-yung Yen, “Rights of Citizens and Persons under the Fourteenth Amendment” (PhD diss., Columbia University, 1905).

their own country? As this chapter argues, observation of what was going on in Eurasia was an important part of China's own constitutional movement, and the lessons learnt by Chinese intellectuals and officials were complex, ranging from enthusiasm to caution. In the particular case of Russia, debates went far beyond mere mutual perceptions, as Tolstoy's contacts with Chinese correspondents show. Tolstoy's letter to Ku Hung-ming has gained considerable literary fame, but it has been ignored in constitutional studies. This chapter shows that the letter's main argument was actually about constitutionalism, namely that rather than limiting power, these correlated with aggression. The letter's impact, it will be shown, was even wider than hitherto thought, and its reception in China reflected the political stances of the media who printed it.

2. The Russo-Japanese War and the Need for a Constitution in China

a) 1904–1905: The Course of the War and its Effects on China

On February 8, 1904, the Russo-Japanese War broke out. In that war, the Russian Empire suffered a serious defeat against Japan, a country much smaller in terms of area as well as population. More often than not, the war of 1904/05 is described as the turning point which propelled constitutionalism to the very top of the political agenda, pushing the public in favour of constitutionalism and making the Chinese government accept it as a goal, for the War had taught the lesson that what had made Japan beat Russia was constitutionalism.⁷²⁵

This is true insofar as the war provided the immediate stimulus for elaborating a constitution. However, having the words of Zhou Kui, Liang Qichao and other intellectuals in mind, at least to the reform-oriented circles, the outcome of the war was not that much of a surprise as it is sometimes depicted.⁷²⁶ It rather

⁷²⁵ See, among many, Pan, *The Chinese Constitution*, 3–4, and Cameron, *The Reform Movement in China*, 101. See also Price, *Russia and the Roots of the Chinese Revolution*, 138, who writes that the Russian defeat had removed the last argument in favour of autocratic government.

⁷²⁶ See, e.g., Weatherley, *Making China Strong*, 53, talking about Japan's "unexpected" victory.

seemed like a confirmation of what Chinese intellectuals had been saying for quite a few years: Autocracy was inferior to constitutionalism, and autocratic countries would have to adopt constitutionalism sooner or later. Moreover, Chinese observers also perceived many similarities between Russia and China. The paper *Zhejiang Chao* 浙江潮, edited by Chinese students in Tokyo, summarised these in 1903 when reporting on efforts to introduce a constitution by the Russian Ministers Sergey Witte (1849–1915) and Vyacheslav von Plehwe (1846–1904): Both had vast territories, sturdy populations, hardy and industrial populations, a monarch with vast and long-standing powers, and similar interests.⁷²⁷ Thus, a year later, the Russian defeat against Japan served more as a powerful example in the debate than as a catalyst for it. The debates about constitutionalism were well underway already before and during the early days of the Russo-Japanese war.⁷²⁸

This role of the Russo-Japanese War as a litmus test of pre-existing pro-constitutional arguments can be seen by how her performance in the war was debated. Although from the outset, Russia suffered defeats against Japan in several battles, at the beginning there was some apprehensiveness about the possibility of Japan losing the war, thus blemishing the very system of constitutional government. In March/April, the *Zhongwai Ribao* 中外日報 published an article, later re-published in the monthly magazine *Eastern Miscellany* (*Dongfang zazhi* 東方雜誌) of April 10, 1904 (Guangxu 30/02/25), on Russia's influence on China. The *Eastern Miscellany*, edited by the *Commercial Press* (*Shangwu yinshuguan* 商物印書館) in Shanghai, had been recently founded on the model of the Japanese *Sun* (*Taiyō* 太

⁷²⁷ “Eluosi jiang zhiding xianfa” 俄羅斯將制定憲法 (Russia is about to draw up a constitution), *Zhejiang chao* 浙江潮, no. 2 (1903), 9.

⁷²⁸ According to Vladimir Tikhonov, Korean observers did not perceive Russia's pre-war weakness. Attributing the Russian defeat merely to Japanese bravery and Japan's success in modernisation, they did not see any structural fragility on the Russian part. This is a surprising contrast to their Chinese counterparts like Zhou Kui and others, especially given that Korean intellectuals had access to not only Japanese sources, but also to Chinese publications like that of Liang Qichao, who himself elaborated on Russia's weakness. Vladimir Tikhonov, “Images of Russia and the Soviet Union in Modern Korea, 1880s–1930s: An Overview,” *Seoul Journal of Korean Studies* 22, no. 2 (2009), 219–220.

陽). It soon became one of the most widely-read magazines advocating constitutional reform, also reprinting many articles published in other papers across the country.

The article pondered that both Japan and China were to be dreaded by China, but Russia was much more so. It dreaded that if Russia managed to still win the war, this would be a blow to the Chinese reform movement. One of the negative consequences of a such a Russian victory would be the waning of the reform impetus of the Chinese government. If Russia won, the Chinese people would fall into even more awe before the white, thinking that they were superior by nature. Just about everything would fall into the state of hopelessness:

If Russia wins, then our government's opinion will certainly be that the reason why China is weak is not the non-adoption of constitutional government, but that authoritarian rule is not yet perfect.

若俄勝敗。則我政府之意。必以爲中國所以貧弱者。非憲政之不立。乃專治之未工。⁷²⁹

b) Defeat in War, Post-War Events in Russia, and Their Effect on China

These fears did not come true. By the beginning of 1905, the situation of Russia was so bleak that it chose to negotiate peace. In the wake of the very unpopular war with Japan, several internal problems of Russia resulted in severe social and political unrest, which came to be known as the Russian Revolution of 1905. After a month of negotiations conducted in Portsmouth (United States), Russia signed a peace treaty with Japan on September 5, 1905, having been able to negotiate surprisingly positive conditions.

⁷²⁹ "Lun Zhongguo suo shou Eguo zhi yingxiang (lu eryue Zhongwai ribao)" 論中國所受俄國之影響 (錄二月中外日報) (On the Russian influence received by China: reprinted from the *Zhongwai ribao* of February), *Dongfang zazhi* 東方雜誌 1, no. 2 (Guangxu 30 [1904]), 37.

Indeed, the war had been won by Japan, a country much smaller in area, population and number of soldiers. The litmus test had been passed, in accordance with the writings of constitutionalists like Zhou Kui and others. Japan's victory could now be handily explained by the fact that Russia was an autocratic state while Japan had already evolved to a constitutional monarchy. Thus, as has been commonly noted, the Russo-Japanese war was interpreted as a war between both systems, autocracy and constitutionalism. Such as some recalled that, merely ten years before, a newly-constitutional Japan had defeated autocratic China, Chinese writings brimmed with assertions like:

That fact that Russia was crushed by Japan—it was not Russia losing against Japan, but an autocratic country losing against a constitutional country.

彼俄之見衄於日也非俄之敗於日也乃專制國之敗於立憲國也⁷³⁰

This was not a war between Japan and Russia, but a war between the two systems of constitutionalism and autocracy.

此非日俄之戰，而是立憲專制二政體之戰也⁷³¹

In China, public opinion did not dwell at the mere news that Russia lost the war. Certainly, there was much less specific reporting on the Russian revolution of 1905 as compared to the war as such, with a relative scarceness of articles on Russia beginning from 1905. Most conspicuously, Liang Qichao, who had been an avid commentator of Russian developments, with a few exceptions ceased to comment on Russia beginning from 1905, well before the Duma was convened. This may

⁷³⁰ “Lun lixian wei wanshi genben (lu yisi qiyue ershisan deng ri *Nanfang bao*)” 論立憲為萬事根本（錄乙巳七月二十三等日南方報）(On the adoption of a constitution being the foundation for everything [contained in the *Nanfang bao* of August 23, 1905]), *Dongfang zazhi* 東方雜誌 2, no. 10 (Guangxu 31 [1905]), 171.

⁷³¹ See, e.g., “Lixian jiwen (*Dongfang zazhi* linshi zengkan xianzheng chugang)” 立憲紀聞（東方雜誌臨時增刊憲政初綱）(Records of constitutionalism [Special edition of the *Eastern Miscellany*: a first outline of constitutional government]), in *Xinhai geming*, ed. Zhongguo shixuehui, vol. 4, 12.

have been because the anti-Qing revolutionaries in Tokyo began to hail the Russian revolution and he did not want to engage in an unwinnable argument with them. Or else, it may have simply been that events in Russia were so confusing and full of tensions that it was difficult for Liang to base his arguments on them. Liang's *Xinmin congbao* 新民叢報, too, spent several months at the end of 1905 and beginning of 1906 without reporting in detail on Russia.⁷³²

But even if in less quantity, Chinese-language media did in fact also take the internal developments of that Russia into account when debating constitutionalism, namely the unrest that was occurring there in 1905. More specifically, the possibility that Russia introduce a constitution, which had been discussed by Chinese-language media since before the war, had become concrete in the course of the year 1905. Chinese-language media noticed that Russia also was trying to adopt constitutionalism, again publishing both translated information as well as its own considerations.

In Russia, too, autocracy was blamed for the defeat, and the heavy political pressure also included the call for constitutional changes. From the beginning of the year, the Russian government pondered about convening a deliberative parliamentary assembly. Within the government, those who lobbied for a reform of the political system were mainly Sergey Witte, president of the Council of Ministers, and Alexey Sergeyevich Yermolov (1847–1917), minister of agriculture, with Yermolov presenting a draft constitution by March (Old Style Calendar: February) 1905. The plans were being elaborated at the ministry of the Interior, led by Alexander Grigorevich Bulygin (1851–1919). On August 19 (O.S. August 6), then, the

⁷³² On Chinese perceptions of the Russian Revolution of 1905 specifically see Müller, "China and the Russian Revolution of 1905," in particular 281 and 284–285. Müller differentiates between general media, which was rather indifferent to the revolution, and reformist and revolutionary, which showed a different response to it. See also Price, *Russia and the Roots of the Chinese Revolution*, 138. On Liang see also Kaufman, "One Nation Among Many," 193–195.

government approved a scheme to convoke a limited national assembly, which came to be known as the Bulygin Duma.⁷³³

The Bulygin Duma was never convened. Political strife and a massive strike in October continued to torment the Russian government, and on October 30, 1905 (O.S. October 17, 1905), the Czar agreed to more far-reaching concessions by issuing the so-called October Manifesto. The manifesto provided for some basic civil liberties as well as for the creation of an advisory and legislative body elected by universal male suffrage, the State Duma. After a few months, on May 6, 1906 (O.S. April 23), the Czar promulgated a formal constitutional charter, the Fundamental Laws of the Russian Empire.

All of Russia's steps towards constitutionalism were noted in China, not only the final constitution of 1906. Often, reflecting the high importance of concept of constitution in China, Chinese media stressed the constitutional aspect even more than its sources. For example, the plan for a constitution drafted by minister Yermolov was published in the Parisian newspaper *Le Matin* on March 6, 1905.⁷³⁴ The French notice then found its way into the United States, where it was republished in the *Wall Street Journal* on March 7 and in the *Boston Daily Globe* on March 8.⁷³⁵ On May 18, 1905, it arrived in China: In its edition for the 4th month of Guangxu 31, the *Wanguo gongbao* published Yermolov's plan in Chinese under title "Russia Drafts a Charter for the Adoption of a Constitution" (*Eguo nixing lixian zhi zhangcheng* 俄國擬行立憲之章程), giving French press as the source but probably indirectly translating from the *Boston Daily Globe*.⁷³⁶

⁷³³ For the full original text of the legal documents promulgated on August 19 see "Uchrezhdeniē Gosudarstvennoī Dumy" Учреждение Государственной Думы (The establishment of the National Duma), *Niva Husa* 36, 34–35 (1905), 678, 699.

⁷³⁴ *Le Matin*, "La Constitution Russe: On affirme que le tsar a approuvé le projet de Constitution présenté par M. Yermoloff, et a chargé M. Bouliguine d'en assurer l'exécution," March 6, 1905.

⁷³⁵ *Wall Street Journal*, "Russia's Proposed Constitution: Points in the Document Submitted by Yermoloff," March 7, 1905; *Boston Daily Globe*, "Constitution Offered: Draft as Submitted by Minister Yermoloff—Boulaguine Declared That Rescript Must Be Published," March 8, 1905.

⁷³⁶ "Eguo nixing lixian zhi zhangcheng" 俄國擬行立憲之章程 (Russia drafts a charter for the adoption of a constitution), *Wanguo gongbao* 萬國公報, no. 196 (1905). The indirect translation can be seen from

The Chinese version somewhat modifies the function of Yermolov's draft for a constitutional charter. After transcribing the plan in 13 numbered points (the French and English sources were not numbered), the translator still briefly reproduced the contents of the Czar's rescript given on March 3 (O.S. February 18). In the rescript, the Czar declared that he wanted, "with the help of God, to convene the worthiest men ... to participate ... in the elaboration of legislative measures." Both in this rescript as in nos. 1 and 3 of Yermolov's draft, the translation interprets the convening of an assembly that would contribute to the "legislative measures" or of "laws" as an assembly that would "adopt a constitution" (*dìnglǐ xiānfǎ* 定立憲法). That is, the Chinese translators were so enthusiastic about a constitution that they elevated the proposed Bulygin Duma from a mere debating body to an *Assemblée Constituante*. Similarly, a few months later, when the Bulygin Plan was officialised in legal form, the *Shanghai Journal of Politics and Art* (*Zhengyi tongbao* 政藝通報) published its first 25 articles as if they were the text of the newly-adopted Russian constitutional charter.⁷³⁷ This was very premature: The translator *Wanguo gongbao* had been right in ending the note commenting that the Czar's intentions were unsteady, and that the application of the plan was unfathomable.⁷³⁸

the paragraph division (which is equal to the one in the *Boston Daily Globe* but different from *Le Matin* and the *Wall Street Journal*) as well as from the phrasing.

⁷³⁷ "Eguo xinban xianfa wen" 俄國新頒憲法文 (Text of Russia's newly promulgated constitution), *Zhengyi tongbao* 政藝通報, 16–17 (1905).

⁷³⁸ It is possible that the origin for the text of the rescript and the skeptic conclusion lay in the following article, which stated that the Czar's actions were apparently contradictory, but that in reality, there was no promise of a constitution in the Imperial rescript: *Chicago Daily Tribune*, "Czar Yielding to People's Demand: Imperial Rescript Promises an Assembly of Elected Delegates to Consider Legislation. Not a Lawmaking Body. Representatives May Only Meet and Express Their Views Upon the Needs of the Empire. Early Manifesto Causes Anger. Text of the Decree. People to Elect Assembly. Dramatic Scene at Signing. Not a General Assembly. What the Rescript Means. Czar Misunderstood Abroad. Trust Be Read Together. Anger at First Manifesto. No Hint of a Constitution. Text of First Ukase. Appeals to His People." March 4, 1905.

3. China: Pressure for a Constitution and First Mission Abroad

a) Sitting in the Same Boat and a Russian Exhortation to China

If Russia had lost the war on account of autocracy, its drive toward a constitution was, for many constitutionalists, a further confirmation of the tide of the time. China and Russia were sitting in the same boat, doing what had to be done at the beginning of the 20th century. In February 1906, this feeling was succinctly worded in a lesson on Russian history entitled “About Comparing our Country’s and Russia’s Adoption of a Constitution” (*Lun woguo yu Eguo lixian zhi bijiao* 論我國與俄國立憲之比較) reprinted in the educational magazine *Tongxue bao* 通學報:

In the world of the 20th century, there can be absolutely no place for autocratic forms of government. Hence, the rise of the idea of constitutionalism in Russia; hence the rise of the idea of constitutionalism in our country.

二十世紀之世界。必不容有專制政體之足地也。於是俄國立憲之議起。於是我國立憲之議起。⁷³⁹

Yan Fu himself drew this comparison between Russia and China in a widely-published article which appeared in the *Zhongwai Ribao*, in the *Tientsin Education Magazine* (*Jiaoyu zazhi* 教育雜誌) as well as in the *Eastern Miscellany*:

When the literati hear this, they too say: This is not a war between Japan and Russia, but a war between the two arts of governing, constitutionalism and absolutism. Since army and navy clashed, Japan had not lost once, and Russia has not won once. Until now, not only the Russian people are standing up in droves and fighting for constitutionalism, also the literati in our country have realised this matter’s urgency. Thus, more and more people contend for the idea of constitutionalism, with far-reaching plans and

⁷³⁹ “Lun woguo yu Eguo lixian zhi bijiao” 論我國與俄國立憲之比較 (About comparing our country’s and Russia’s adoption of a constitution), *Tongxue bao* 通學報 1, no. 2 (1906), 57. The main article had been extracted from another unnamed paper.

timely announcements. Beginning from the diplomats stationed abroad, to the officials in the border regions, up to, currently, some from within the circles of high officials and princes at the Court: they, too, are gradually adopting this standpoint.

知微之士聞也之。亦曰。此非日俄之戰也。乃立憲專制二治術之戰也。自海陸交綏以來。日無不勝。俄無不敗。至於今。不獨俄民羣起而爲立憲之爭也。卽吾國士夫。亦知其事之不容已。是以立憲之議。主者俞多。遠猷辰告。始於出使諸公。繼者乃有疆吏。而今樞臣親懿之中。亦稍稍持其說矣。⁷⁴⁰

Actually, to many, Russia and China were not simply sitting in the same boat. Many complained that China was not doing enough and interpreted the internal developments of Russia as a further call for action to China. For example, the aforementioned lesson reprinted in the *Tongxue bao* ended with indignation:

Alas! The Russians have demanded constitutionalism, and now they have achieved success. There is only us left as an autocratic polity! If we work with fervent determination to be a great power, how could we not be as powerful as the Han?

嗚呼、俄人要求立憲、今日成功而去矣、專制之政、僅餘我耳、發憤爲雄、何渠不若漢⁷⁴¹

⁷⁴⁰ [Yan Fu 嚴復], "Lun guojia yu wei lixian yiqian you keyi xing biyi xing zhi yaozheng (lu yisi bayue ershier ri *Zhongwai ribao*)" 論國家於未立憲以前有可以行必宜行之要政 (錄乙巳八月二十二日中外日報) (On the state having optional and mandatory fundamental policies to carry out before adopting a constitution: reprinted from the *Zhongwai ribao* of September 20, 1905), *Dongfang zazhi* 東方雜誌 2, no. 12 (Guangxu 31 [1906]), 203. See also Yan Fu 嚴復, "Lun guojia yu wei lixian yiqian you keyi xing biyi xing zhi yaozheng" 論國家於未立憲以前有可以行必宜行之要政 (On the state having optional and mandatory fundamental policies to carry out before adopting a constitution: continuation of the former article), *Jiaoyu zazhi* 教育雜誌, no. 13 (1905), 55. The article was continued in no. 14 of the magazine.

⁷⁴¹ "Lun woguo yu Eguo lixian zhi bijiao," 7.

Concretely referring to the Russian strikes as well as the October Manifesto, the *Eastern Miscellany* lamented:

The Russian people have united across the whole country and handed in petitions to the sovereign, and they went on strike in large numbers. ... Now, Czar Nicholas II has acceded to the demands of his people to convene a parliament and hold elections for members of parliament. From now on, the Russian people, which have lived under absolutist rule, have all obtained the right to enjoy constitutionalism. However, our country's people are still keeping silent, sitting tacitly there waiting for the government to establish a constitution.

.....俄民之聯絡全國。上書國主。紛紛罷市。.....今者俄皇尼古拉士第二已准其人民之要求。設立國會。選舉議員。從茲向受專制之俄民。皆獲享立憲之權利矣。而我國民乃箝口結舌。默坐以俟政府之立憲。⁷⁴²

Against the backdrop of Russia not only losing the war, but also moving towards a constitution, many—but not all—Chinese intellectuals came to the conclusion that a speedy adoption of constitutionalism would not only be beneficial to China, but that it was even the one crucial key to solving all the problems China had. Such a sentiment is expressed in an article published in the 10th edition of *Guangxu* 31 (1905) of the *Eastern Miscellany* under the title “On the Adoption of a Constitution being the Foundation for Everything” (*Lun lixian wei wanshi genben* 論立憲爲萬事根本). The article cited the following two main advantages of constitutionalism: 1., only with a constitution could a country protect its citizens on its own (*bi lixian ranhou neng zi bao qi min* 必立憲然後能自保其民);⁷⁴³ 2., only with a constitution could the country perform well in foreign relations (*bi lixian erhou keyi shan chu*

⁷⁴² Juemin 覺民 [pseudonym], “Lun lixian yu jiaoyu zhi guanxi” 論立憲與教育之關繫 (On the relationship between the adoption of a constitution and education), *Dongfang zazhi* 東方雜誌 2, no. 12 (Guangxu 31 [1906]), 244–245.

⁷⁴³ “Lun lixian wei wanshi genben,” 171.

waijiao 必立憲而後可以善處外交).⁷⁴⁴ In detail, the article discussed the implications for requiring soldiers, for state debt and for compulsory education. Could a non-constitutional country be successful in its enterprises? Could a non-constitutional country forbid vices like smoking opium? No, deemed the article.

b) Local Elites, Local Self-Government and Constitutionalism

At the same time, a further argument was also often heard: Constitutional government had to be built on the basis of local self-government, as professed the title of an article published in the *Nanfang bao* 南方報 and republished in the *Eastern Miscellany* (*Lun lixian dang yi difang zizhi wei jichu* 論立憲當以地方自治為基礎).⁷⁴⁵ Japan provided an important example, as that country had worked with local self-government since the beginning of the Meiji period. According to that model, some representatives of the local gentry could be elected to take care of local matters. With this training at the local level, one would learn how to work for the common good and discard private interests. Political experience, it was frequently argued, needed to be built at every level from the village to the province for a representative system to be able to work at the national level.⁷⁴⁶

But not only Japan—Russia, too, provided a powerful argument in this sense. For although Russia was “the extreme of autocracy” (*zhuanzhi jidian* 專制極點), as the *Eastern Miscellany* wrote⁷⁴⁷, it had had in place a type of local self-government since the 1860s, the so-called *zemstvo* system, which helped point to Chinese observers the direction to go. In November 1904, *zemstvo* representatives met

⁷⁴⁴ Ibid., 172.

⁷⁴⁵ “Lun lixian dang yi difang zizhi wei jichu (lu yisi 8 yue 23 ri *Nanfang bao*)” 論立憲當以地方自治為基礎 (錄乙巳八月二十三日南方報) (On the adoption of a constitution having to be based on local autonomy [contained in the *Nanfang bao* of September 21, 1905]), *Dongfang zazhi* 東方雜誌 2, no. 12 (Guangxu 31 [1906]).

⁷⁴⁶ See, e.g., Shunxiu 舜修 [pseudonym], “Lun lixian dang you yubei” 論立憲當有預備 (On the adoption of a constitution having to be prepared), *Dongfang zazhi* 1 東方雜誌 3, linshi zengkan xianzheng chugang 臨時增刊憲政初綱 (Guangxu 32 [1906]), 47.

⁷⁴⁷ Ibid., 47.

for a national conference in St. Petersburg, giving them high national and international visibility. In 1905, the *Foreign Affairs Magazine* (*Waijiao bao* 外交報), introduced Russian self-government in detail to Chinese readers by translating an article that first had appeared in the *North American Review* in the wake of the conference. The English original, written by Hannis Taylor, carried the title “Representative Government for Russia,” while the Chinese translation was entitled “It Behooves Russia to Adopt a Constitution” (*Lun E yi lixian* 論俄宜立憲). As the article argued, the system of local self-government could be the basis for the adoption of parliamentary government in Russia. Taylor’s article ended full of pathos, asserting that “if to-day Russia had such a parliament, whose elongated fingers could reach down into the pockets of consenting millions, the brilliant adversary now defying her would be as helpless as a cripple in the grasp of a Titan.”⁷⁴⁸ The Chinese translator, who both in the title and here substituted “constitutional” for “representative” agreed in his short commentary, naming the benefits that were also hoped in China to stem from the adoption of a constitution:

…For if internal politics are reformed, who would dare to despise that?
And the quelling of foreign calamities can also be foreseen!

……蓋內政修明。誰敢蔑侮。外患之弭可預知也。⁷⁴⁹

Against this backdrop, many representatives of local elites jumped onto the bandwagon of constitutionalism. Zhang Jian 張謇 (1853–1926), who had travelled to Japan in 1903, was one of those who lobbied incessantly for reforms. Among many other activities, for example, he drafted a memorial demanding the adoption of a

⁷⁴⁸ Hannis Taylor, “Representative Government for Russia,” *North American Review*, no. 180 (1905), 27.

⁷⁴⁹ “Lun E yi lixian (ji Meiguo 1905 nian 1 yue *Nahumei Bao*)” 論俄宜立憲（即美國一千九百五年一月拿呼美報）(It behooves Russia to adopt a constitution [From the US American *North American Review* of January 1905]), *Waijiao bao* 外交報, no. 105 (1905), 21.

constitution for the Viceroys Zhang Zhidong 張之洞 (1837–1909) and Wei Guangtao 魏光燾 (1837–1916).⁷⁵⁰ In his defence of constitutionalism, Zhang Jian not only used the known argument that Japan's victory over Russia was a victory of constitutionalism over autocracy. In his preface to the Chinese version of the *History of the Japanese Parliament* (*Riben yihui shi* 日本議會史), he also made use of the Russian local self-government argument. Of dozens of independent states in the world, only three were still autocratic: China, Russia and Turkey.⁷⁵¹

Three? Wait, no! There were only two and a half! The only full autocracies were China and theocratic Turkey, which actually had adopted and subsequently discarded a constitution decades ago. Russia however, due to her system of self-government, was already “half-constitutional” (*ban lixian* 半立憲). It was poised to reform by the demands of the people, whereas Turkey would have to change on account of her enemies.⁷⁵² Which, Zhang implied, was better for China to emulate: Russia or Turkey?

The traction that calls for a constitution gained among powerful local leaders was not purely due to patriotism and concern about the country's future. Additionally, many local rulers understood the adoption of a constitution as a chance to solidify or even enlarge their already quite extensive powers. The tensions that such ambitions engendered were patent at an early date. They can be seen on the example of a conversation held in the spring of 1906 about China's search of a constitution by the Viceroy of the two Yangtze Provinces, Zhou Fu 周馥 (1837–1921), with the British minister, Ernest Satow.⁷⁵³ Zhou Fu complained that orders from

⁷⁵⁰ Zhang, “Lixian yundong ji ziyiju chengli,” in *Xinhai geming*, ed. Zhongguo shixuehui, vol. 4, 158–159.

⁷⁵¹ Zhang, *Zhang Jian quanji*, vol. 5, 230–231.

⁷⁵² Ibid.

⁷⁵³ See the records of the meeting in Satow's diary—Ernest Satow, *The Diaries of Sir Ernest Satow, British Envoy in Peking (1900–06)*, ed. Ian C. Ruxton. 2 vols. (Morrisville: Lulu Press, 2006), vol. 2, 290–291 (May 9, 1906)—, as well as in his report to Foreign Secretary Edward Grey: Ernest Satow, *The Semi-Official Letters of British Envoy Sir Ernest Satow from Japan and China (1895–1906)*, ed. Ian C. Ruxton (Morrisville: Lulu Press, 2007), 600–601 (2. Satow to Grey, May 11, 1906). The author would like to thank Professor Ian Ruxton of Kyushu Institute of Technology for the material.

the capital were difficult to carry out because the notables had not been consulted, and suggested that the Court might convoke a select number of local notables to Peking to consult them beforehand.

The British envoy, however, disagreed. Satow maintained that it was no use merely adapting a foreign set of institutions and that China should rather be remodelled on Chinese lines. In his opinion, the most pressing reforms were those of currency and judicial procedure, and to that effect he suggested that once a year, the Viceroys and Governors could hold a short meeting in the capital to discuss matters of importance to the Empire. However, Satow objected to anything that went beyond this: He strongly advised Zhou Fu against his plan of holding a vice-roy's and governor's conference in Peking, being worried that in such way the local notables might usurp the real power of the country. The viceroys and governors already had too much power, and while separated, they could do little harm, if they came together, even if as a merely advisory body, they could turn into a revolutionary assembly similar to the *États Généraux* during the French Revolution: They would exercise a popular influence that the Court could not withstand.

4. The Chinese Government Before "Constitutional Preparation"

a) Governmental Reactions to the Pressures

Satow's words to Zhou Fu proved to be prophetic. But it was not only the local elites, large parts of the political elite in the capital had also begun to seriously consider constitutional reforms, people who could hardly be qualified as rebels as the reformers of 1898 had been.⁷⁵⁴ Several ministers memorialised from abroad asking for reforms, such as Sun Baoqi 孫寶琦 (1867–1931), minister to France, early in 1904.⁷⁵⁵ Several of the Manchu princes in the capital, too, seemed to support the

⁷⁵⁴ See Meienberger, *The Emergence of Constitutional Government in China*, 24.

⁷⁵⁵ Sun Baoqi 孫寶琦, "Chushi Faguo dachen Sun shang Zhengwuchu shu" 出使法國大臣孫上政務處書 (Letter from Minister to France Sun to the Office of Political Affairs), *Dongfang zazhi* 東方雜誌 1, no. 1 (1904), 1a–3b; Sun Baoqi 孫寶琦, "Chushi Faguo dachen Sun shang Zhengwuchu shu" 出使法

idea of a constitution. By mid-1905, the *North China Herald* perceived “a distinct atmosphere of enlightenment and intelligence in official circles in Peking,” caused by students who had returned from Japan and Western countries.⁷⁵⁶

At the same time, there was a perceived lack of information on what constitutionalism would exactly mean for China. Even if the general goal of constitutionalism was seen as positive, exactly how and in what speed China should proceed, was another matter. On June 18, 1904, the Tientsin paper *Dagongbao* 大公報, published an article entitled “On the Essentials for China’s Adoption of a Constitution” (*Lun Zhongguo lixian zhi yaoyi* 論中國立憲之要義), which was republished some two weeks later, on July 8, 1904, in the *Eastern Miscellany*.⁷⁵⁷ The article was informed on the different constitutions of the world and argued that China could only consider monarchical constitutions.

But what monarchical constitution? The article discussed the three most likely examples of constitutional monarchies: Japan, Germany and England. But it came to the conclusion that none was fully applicable to China. Great Britain had an unwritten constitution based on the natural development of the customs, but these customs were hardly copiable by China. This notwithstanding, the text showed an awareness that the English Constitution was not entirely unwritten, for in another paragraph, it literally quoted Art. 61 of the English Constitution, i.e., of the Magna Carta.⁷⁵⁸ Germany was a confederation of states and thus different from

國大臣孫上政務處書 (Letter by the Minister to France Sun to the Office of Political Affairs), *Dongfang zazhi* 東方雜誌 1, no. 7 (1904), 80–85. See also a report jointly sent by the ministers to England, France, Belgium and Russia on March 22, 1904 (Guangxu 31/02/06), which, however, did not specifically mention the term “constitution”: Hu Weide 胡惟德, “Zhu E gongshi Hu Weide wanglai dianwen lu” 駐俄公使胡惟德往來電文錄 (Telegram sent by the minister to Russia, Hu Weide), in *Jindaishi ziliao* (zong 92 hao) 近代史資料 (總 92 號) (Beijing: Zhongguo Shehui Kexueyuan chubanshe, 1997), 117–118.

⁷⁵⁶ *The North-China Herald*, “Pour Encourager les Autres,” July 21, 1905, 143.

⁷⁵⁷ “Lun Zhongguo lixian zhi yaoyi (lu wu yue chu wu ri *Dagongbao*)” 論中國立憲之要義 (錄五月初五日大公報) (On the essentials of Chinese constitutionalism [contained in the *Dagongbao* of June 18]), *Dongfang zazhi* 東方雜誌 1, no. 5 (1904), 49–52.

⁷⁵⁸ *Ibid.*, 50–51. The quote is from the translation published in Zhou, *Wanguo xianfa zhi*, which itself is based on Tsuboya Zenshirō 坪谷善四郎, *Bankoku kenpō* 萬國憲法 (Constitutions of all countries) (Tokyo: Hakubunkan, Meiji 21 [1888]), 26.

China. Japan, finally, was very similar to China: the Japanese were of the same race, used the same letters and were located in the same continent. Moreover, the politics and customs were not too different from China's. But still, there was one decisive difference: In Japan, the imperial family had stayed the same since the inception of the country. In China, however, there were dynasties. Against this background of there not being a perfect model for China, the article recommended that the Chinese first examine the form of the national essence and the costumes of the people before turning to study foreign monarchical constitutions for concrete inspiration.⁷⁵⁹

In 1905, the Court at Peking was still concerned with similarly fundamental questions: If pressure for constitutional government more and more felt in Chinese politics, was constitutionalism really such a worthwhile thing to pursue? How should one react to the many demands for it?

The Court at Peking seemed to be still reluctant to apply the notion to China. Empress Dowager Cixi, who had earlier reportedly exclaimed that a constitution had been good for Japan, by mid-1905 was rumoured to still have spoken favourably of the idea as such—but to deny its applicability to China:

Fancy! Even Yik'uang (Prince Ching) [奕劻, 1838–1917, note of the author] seems to have joined the ranks of those fellows and bedraggled himself in the same mire. He has also asked for national representation. Well, a parliament is really a good thing, but it is fitted for foreign countries and not for China. ...⁷⁶⁰

This exclamation attributed to Cixi was a rumour, which could or could not have been uttered by her. However, she and her Court were certainly impressed by the calls for constitutionalism, and could not afford to ignore them anymore. The Chi-

⁷⁵⁹ "Lun Zhongguo lixian zhi yaoyi," 49–50.

⁷⁶⁰ *The North-China Herald*, "The Westernising of the Chinese Army," July 14, 1905, 110.

nese government, hence, take the course of studying foreign constitutions for inspiration: It dispatched high-ranking officials abroad for study, just as Japan had done a few decades earlier with the Iwakura (1871) and Hirobumi (1883/1883) missions.

By imperial edict of July 16, 1905, four commissioners were named for the task with the aim of “thoroughly examining foreign politics and picking their best for adoption by China” (*kaoqiu yiqie zhengzhi yi qi ze shan er cong* 考求一切政治以期擇善而從),⁷⁶¹ and a fifth commissioner was added by imperial edict of July 27, 1905.⁷⁶² Even if the terms “constitution” and parliament did not appear in the text, they were implicitly meant by the edict. With the mission, the Court could, at the same time, collect information about constitutions, mitigate the internal pressure and prevent agitation by students returning from abroad.⁷⁶³

The edicts of July were not yet a decision in favour of the adoption of constitutionalism, but instead one in favour of a further examination of the question.⁷⁶⁴ But in the following months, the government’s stance seems to have evolved somewhat. The Court, including Cixi, were not only impressed by the result of the Russo-Japanese war, but also by the massive troubles in Russia, which resulted in

⁷⁶¹ Gugong Bowuyuan Ming-Qing dang’anbu, *Qingmo choubei lixian dang’an shiliao*, vol. 1, 1. Zhu, *Guangxu chao Donghua lu*, vol. 5, 5364. For an English translation see Meienberger, *The Emergence of Constitutional Government in China*, 24. According to Bian, *Jindai Zhongguo xianfa wenben de lishi jiedu*, 21, the decision was taken on July 9, referring to the *Shibao* 時報 of August 5, 1905; it seems, however, that Bian was mistaken by a week in converting the Chinese calendar. For a short contemporary characterisation of the four original members of the mission see *North China Herald*, “A New Departure,” July 21, 1905, 143.

⁷⁶² *Daqing Dezong Jing Huangdi shilu*, chapter 546, 22.

⁷⁶³ For more information on the study trip see Pan Chong 潘崇, “Qingmo wudachen chuyang kaocha yanjiu” 清末五大臣出洋考察研究 (Research on the overseas investigation of the five commissioners) (PhD diss., Nankai University, 2010); Son Ansök 孫安石, *Shinmatsu no seiji kōsatsu godaijin no haken to rikken undō* 清末の政治考察五大臣の派遣と立憲運動 (The deployment of the five commissioners for political investigation in the late Qing and the constitutional movement), *Chūgoku: shakai to bunka* 中国：社会と文化, no. 9 (1994), 187–211; E-tu Zen Sun, “The Chinese Constitutional Missions of 1905–1906,” *The Journal of Modern History* 24, no. 3 (1952); Meienberger, *The Emergence of Constitutional Government in China (1905–1908)*; Amy Epstein Gadsden, “Building the Rule of Law in Early Twentieth Century China (1905–1926)” (PhD diss., University of Pennsylvania, 2005), 16–46.

⁷⁶⁴ See Meienberger, *The Emergence of Constitutional Government in China*, 25.

the Manifesto of October 30, 1905.⁷⁶⁵ It was by that time that the Court seems to have really taken the decision to eventually promulgate a constitution. Not only was such rumoured by the press in the first half of the month.⁷⁶⁶ On November 18, 1905, an Imperial Edict gave orders to the Committee of Ministers (*Zhengwuchu* 政務處) to prepare an “outline of constitutional government” (*lixian dagang* 立憲大綱). The order remained unspecific, but it was the first time that the government officially embraced constitutionalism.⁷⁶⁷

On the same day, the Committee of Ministers sent a circular telegram to the provincial governors admonishing them to respect the orders from Peking and making clear what the government was about. China would *not* be taking the same course as Russia with her October Manifesto, much to the opposite. In Russia, the government had just decided to abolish autocratic government as a reaction to popular pressure, in order to placate internal rebellion. In China however, would first collect information and then build a constitutional system as a basis for reform and self-strengthening.⁷⁶⁸ A week later, on November 25, 1905, Cixi issued a further edict ordering the Committee of Ministers to establish an “Office for Investigation of Politics” (*Kaocha zhengzhi guan* 考察政治館), entrusting it not only with the task of collecting laws of foreign countries, but also with deliberating on their advantages and disadvantages as well as putting their findings down in written form.⁷⁶⁹

⁷⁶⁵ See, e.g., *Boston Daily Globe*, “Constitution for China,” November 23, 1905; see also William J. Bryan, “Awakening of Sleeping Giantess.”

⁷⁶⁶ *North China Herald*, “A Parliament for China Assured,” November 10, 1905, 324.

⁷⁶⁷ Zhu, *Guangxu chao Donghua lu*, vol. 5, 5434; Zhu and Zhang, *Donghua xulu*, 535 (chapter Guangxu 197, 6).

⁷⁶⁸ *Shibao* 時報, Guangxu 31/10/22 (November 18, 1905), apud Pan, “Qingmo wudachen chuyang kaocha yanjiu,” 114.

⁷⁶⁹ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubel lixian dang'an shiliao*, vol. 1, 43. Two directors were appointed by edict of June 6, 1906: Bao Xi 寶熙 (1868–1942) and Liu Ruozeng 劉若曾 (1860–1929). Also contained in Zhu and Zhang, *Donghua xulu*, 586 (chapter Guangxu 200, 19).

b) The “Constitutional Mission”

At that time, preparations for the fact-finding mission were still underway. It had been set to leave on September 24, 1905, but the departure was delayed because a bomb rocked the special train of the five commissioners.⁷⁷⁰ The bomb, which injured two of the commissioners, caused the replacement of two commissioners, who were appointed on October 26, 1905.⁷⁷¹ All five commissioners favoured political reforms on the one hand, but were on the other hand still closely related to the dynasty and thus loyal to it. But only one of them, who had been appointed due to the reshuffling of October 26, had personal experience abroad. The reader already knows him from chapter 2: it was Li Shengduo, the former Chinese minister to Japan, who, in 1901, had been one of the first officials to mention constitutions as the basis for institutional reforms in his communication with the Throne.⁷⁷² Scholarship has it that he was appointed minister to Belgium while serving on the mission and then stayed in Belgium. But actually, he, who was characterised as a capable diplomat, had already been appointed minister shortly before his appointment as a constitutional commissioner, and was scheduled to leave for Europe together with the travelling commission anyway.⁷⁷³

Due to the delay, the study tour began in December. The commissioners travelled in two groups, each with a large entourage: 1) Duanfang 端方 (1861–1911) and Dai Hongci 戴鴻慈 (1853–1910) left Peking on December 2 and boarded their

⁷⁷⁰ For a more detailed description of the bomb outrage see Meienberger, *The Emergence of Constitutional Government in China*, 26–27. The perpetrator, the anarchist Wu Yue 吳樾 (1878–1905), was later celebrated as a martyr by both Republicans and Communists. See also Gadsden, “Building the Rule of Law in Early Twentieth Century China,” 19

⁷⁷¹ See Zhu and Zhang, *Donghua xulu*, 531; Zhu, *Guangxu chao Donghua lu*, vol. 5, 5426. About the personal changes see Meienberger, *The Emergence of Constitutional Government in China*, 27.

⁷⁷² Gadsden, “Building the Rule of Law in Early Twentieth Century China,” 19–20, miswrites him as Li Shengde. Meienberger, *The Emergence of Constitutional Government in China*, 27–29 and Sun, “The Chinese Constitutional Missions of 1905–1906,” 253–255, offers closer characterisations of the participants.

⁷⁷³ See *North China Herald*, “General News,” October 20, 1905, 165. See also Sun, “The Chinese Constitutional Missions of 1905–1906,” 255, and, citing Sun, Meienberger, *The Emergence of Constitutional Government in China (1905–1908)*, 30 (on the point of “while serving on the mission”).

ship in Shanghai on December 19; 2) Zaize 載澤 (1868–1929), Shang Qiheng 尚其亨 (1859–1920), and Li Shengduo left Peking on December 11 1905 and boarded their ship in Shanghai on January 14, 1906.⁷⁷⁴ In total, about 80 assistants started the tour (33 in the first and 47 in the second group), but the number varied during the trip, as some members left the party and others joined.⁷⁷⁵ Officially, the commissioners and their entourage officially visited a total of 14 countries in Asia, America and Europe: Austria, Belgium, Denmark, France, Germany, Hungary, Italy, Japan, the Netherlands, Norway, Sweden, Switzerland, the United Kingdom and the USA. While the first group led by Dai Hongci and Duanfang visited all 14 countries, the later party led by Zaize limited itself to Japan, the USA, the United Kingdom, France and Belgium.⁷⁷⁶

But actually, as the commissioners travelled from Europe back to China, it should be noted that they passed through some more places. Dai's group passed through several parts of the British Empire, namely the protectorate of Egypt, British India (including Aden, Ceylon) and the Straits Settlements Crown Colony. The stay in these places, too, did carry fresh experiences for the commissioners. It was the fate of Egypt that made a particularly deep impression on Dai. After emitting a sorrowful sigh that Egypt as a country of ancient civilisation had not been able to become strong (*wenming guguo bu neng ziqiang, zhi yu ruci, ke wei gantan!* 文明古國不能自強至於如此可為感嘆)⁷⁷⁷, he reported the words of an Egyptian officer. The

⁷⁷⁴ Bian, *Jindai Zhongguo xianfa wenben de lishi jiedu*, 21, gives December 7 as the date when the first group left Peking. This seems to be mistaken, see *North China Herald*, "The Lingering Commissioners," December 8, 1905, 549. For the other dates see Chai Songxia 柴松霞, "Chuyang kaochatuan yu Qingmo lixian yanjiu" 出洋考察團與清末立憲研究 (Research on the overseas investigation commissions and the late Qing establishment of a constitution) (PhD diss., China University of Political Science and Law, 2009), 70, 120, and Meienberger, *The Emergence of Constitutional Government in China*, 29, each with further references.

⁷⁷⁵ *North China Herald*, "The Attaches of the Travelling Mission," December 22, 1905, 689. See also the report about the Chinese study commission, May 26, 1906, in Peking II 593, Political Archive of the Federal Foreign Office of Germany, 171–174.

⁷⁷⁶ Sun, "The Chinese Constitutional Missions of 1905–1906," 255. The original assignments differed somewhat, see 253.

⁷⁷⁷ Dai Hongci 戴鴻慈, *Chushi jiuguo riji* 出使九國日記 (Diary of a mission to nine countries), ed. Chen Siyi 陳四益 (Changsha: Hunan renmin chubanshe, 1982), 261.

dialogue between the Egyptian officer and Dai Hongci shows the entanglement of discourses on political reforms. For the Egyptian man had been to Japan and had:

... told that China's self-strengthening should be modelled on Japan and that it could not exclusively trust the Europeans. He said this full of anguish. Disastrous policies are near, and one should take the recent history as an alert. One reminisces about Egypt as a millennia-old country, but as of now, her breathing has well-nigh faded away. Would there be natural disasters and human catastrophes for which there are no remedies? They only manage things with foreign officials, they don't have budgetary rights, and the subjects are dispersed and distant, indifferent and not patriotic. The state of utter neglect there is pitiful to the extreme. That military officer is a man from a perished country, the bereavement of his words is appropriate. I record this in written in order to warn my country's people.

謂中國自強，當取法日本，不可專信歐人，語甚痛切。覆轍在邇，殷鑒匪遙。追維埃及以千年古國，奄奄至今，豈有天災人禍不可救藥？徒以客卿用事，財政無權，而臣民渙離，漠不愛國，致忽焉之慘有餘矣。彼兵官身爲亡國人，宜其言之沉痛也。書誌之，以警吾國民。⁷⁷⁸

E-tu Zen Sun argues that the two group's intense programme of rushing through the European capitals without staying too long in most of them was not only due to the plan of collecting information about constitutions, but also due to the strategy of letting the world know that the Chinese government was interested in reforms.⁷⁷⁹ This argument is based on a misdated telegram sent to Peking by the envoy to the Hague Conference—which only took place long after the commission's trip, in 1907 (cf. *infra*, chapter 4).⁷⁸⁰ However, the Chinese side was indeed active

⁷⁷⁸ Ibid., 263.

⁷⁷⁹ Sun, "The Chinese Constitutional Missions of 1905–1906," 255.

⁷⁸⁰ Ibid., 252, dating the telegram as July 24, 1905 (Guangxu 31/06/21). However, in reality the telegram was dated exactly two years later, namely July 30, 1907 (Guangxu 33/06/21). See Wang Yanwei 王彥威 and Wang Liang 王亮, eds., *Qingji waijiao shiliao* (Historical material concerning

in letting the world know that China was modernising, also in view of a hoped abolition of extraterritoriality. Just to name an example, Liou Sché-Schun (Liu Shixun 世式訓, 1869 – 1929), the newly-arrived Minister of China to France, made the headlines of the French press in October 1905 with an interview given to the *Écho de Paris*. Shortly before the visit of the studying commission, which he announced to the French public at the end of his interview, he stressed that China was striving for the abolition of extraterritoriality. Although he did not refer to a constitution—which was not yet officially intended—he pointed out and that new codes of law, the organization of the police and a better justice system would contribute to its disappearance.⁷⁸¹

When they arrived in Japan, the United States and Europe, the travelling commission did indeed gain a lot of attention. The delegation's interests were very broad and by no means limited to just the respective constitutional charters. Sometimes, the main objective of the tour—the study of constitutions—did not take centre stage, as the group seemed to be more interested in their host countries' industries than in their political systems. Their hosts, too, seemed eager to show them concrete industries rather than to explain legal principles.⁷⁸²

According to the plan devised by the Chinese government, the task was mainly to study the conditions of state and constitutional law. But the gen-

diplomacy in the Qing period), 10 vols. (Taipei: Wenhai chubanshe, Minguo 74 [1985]), vol. 7, 3252 (chapter 203, 17).

⁷⁸¹ Henri de Noussane, "Un curieux entretien avec S. E. Liou Sché-Schun, Envoyé extraordinaire et Ministre plénipotentiaire de Chine en France: 800 millions de mains jaunes. — Le réveil de la Chine! — Les futurs conseillers du Céleste-Empire. — Le nouveau Code chinois et la question de l'extra-territorialité. — Rapports de la Chine avec la Russie, l'Allemagne et la France. — La Mission exceptionnelle qu'on attend," *L'Écho de Paris*, October 10, 1905. The connection of constitutional reforms with the question of extraterritoriality was explicitly made in early republican times by Tchou, Louis Ngaosiang [Chu Ao-Hsiang], *Le régime des capitulation et la réforme constitutionnelle en Chine* (Cambridge: Cambridge University Press, 1915).

⁷⁸² Report about the Chinese study commission of May 26, 1906, in: Gesetzgebung, Reformen, file no. Peking II 593, 171.

tlemen soon inclined to the industrial aspects. Of course, this was supported in all kinds possible, for it was here that practical successes were to be expected in the future.

Die Aufgabe war nach dem von der chinesischen Regierung aufgestellten Plan in erster Linie die staats- und verfassungsrechtlichen Verhältnisse zu studieren; die Neigungen der Herren richteten sich jedoch bald mehr nach der industriellen Seite, die natürlich in jeder Weise unterstützt wurde, da hier praktische Erfolge für die Zukunft zu erwarten waren.⁷⁸³

Nonetheless, the commission did also pursue their main task of collecting information about constitutional matters. The commissioners held many talks with a variety of interlocutors; they collected written reports and did also leave some of their staff on spot to continue collecting information after their departure.⁷⁸⁴ Most of the constitutional mission has been well-covered by literature, and needs not be repeated at this point. There is one aspect of the mission, however, which has hitherto only received fleeting attention: the visit to Russia.

c) The Mission in Russia

The study group did place an emphasis on Japan, Great Britain, Germany, the United States and France, staying comparatively long in these places. Yet, one should not neglect the instructiveness of the stay in Russia for the group, as it was the only country toured that did not have an established constitutional government, but was just in the process of establishing one. Commissioner Duanfang himself stressed that China should pay extraordinary attention to Russia in the moment as it was organizing constitutional politics.⁷⁸⁵

⁷⁸³ Ibid., 171.

⁷⁸⁴ Meienberger, *The Emergence of Constitutional Government in China*, 30.

⁷⁸⁵ Duanfang 端方, *Duan Zhongmin gong zougao* 端忠敏公奏稿 (Drafts of memorials by Mr. Duan Zhongmin), 4 vols. ([Taipei]: Wenhai chubanshe, [1967]), vol. 2, 679.

Secondary literature on the study tour has mostly focused on the tour's experiences of Japan, Western Europe and the United States.⁷⁸⁶ There is no specialised literature on the constitutional commissioners in Russia,⁷⁸⁷ and general literature on the commission tends to mention Russia only in passing. Richard Horowitz, for example, briefly compared how the commissioners perceived Russia and the other countries visited. "By contrast," he writes, "the report from Russia, the one state visited that retained an autocratic system, emphasized the problems of internal disorder following the Russo-Japanese war."⁷⁸⁸

Thereby, Horowitz implies that the report from Russia strengthened the group's pro-constitutional stance, in continuation of what Chinese intellectuals had long been arguing. By contrast, Gao Fang claims that the constitutional commissioners learned from Russia that one should increase the oppressing capability of the armed forces while using constitutionalism as a tool for deception of the people.⁷⁸⁹ Both interpretations do not correspond to the situation of the time and to the extant primary sources. Let us have a closer look.

Horowitz' premise that Russia retained an autocratic system is not fully accurate. As we have seen above, Russia had just promulgated a constitution in April and was, in this sense, at least incipiently constitutional. Yet, the constitution

⁷⁸⁶ Next to the general literature on mission, see, for its visit to Germany, Chai Songxia 柴松霞. "Qingmo wudachen dui Deguo xianzheng de kaocha" 清末五大臣對德國憲政的考察 (The late Qing five commissioners' investigation of Germany). *Zhengfa luntan* 政法論壇 29, no. 1 (2011), 133–141.

⁷⁸⁷ For a brief record of the visit in the context of Sino-Russian relations see Nikolai A. Samoilov Николай А. Самойлов, *Rossiiā i Kitai v XVII–nachale XX veka: Tendentsii, formy i stadii sotsiokul'turnogo vzaimodeistviia* Россия и Китай в XVII–начале XX века: Тенденции, формы и стадии социокультурного взаимодействия (Russia and China from the 17th to the beginning of the 20th century: Tendencies, forms and stages of socio-cultural interactions) (St. Petersburg: Izdatelnyi dom Sankt-Peterburgskogo Gosudarstvennogo Universiteta, 2014), 112. For another, somewhat biased, account, see Gao, *Qingmo lixian shi*, 104. Pan, "Qingmo wudachen chuyang kaocha yanjiu," also includes some information on Russia, including Witte's recommendation of a 50-year-transitional phase, 174–175. See, however, Egas Moniz Bandeira, "China and the Political Upheavals in Russia, the Ottoman Empire, and Persia: Non-Western Influences on Constitutional Thinking in Late Imperial China, 1893–1911," *Journal of Transcultural Studies*, no. 2 (2017), 58–62, for a preliminary account.

⁷⁸⁸ Richard S. Horowitz, "Breaking the Bonds of Precedent: The 1905–6 Government Reform Commission and the Remaking of the Qing Central State," *Modern Asian Studies* 37, no. 4 (2003), 791.

⁷⁸⁹ Gao, *Qingmo lixian shi*, 508.

came amidst serious unrest. Although the Russian October Manifesto had initially succeeded in quelling popular unrest, the successes were only temporary. After a few months, strikes and violence reoccurred, and the Russian government returned to martial law, suppressing the newly-granted civil rights and executing large numbers of people. Parliamentary elections held in this situation, in March and April 1906, were won by moderate socialists and liberals who demanded more reforms. The session of this first parliament ran from April 27, 1906 to July 21, 1906.

Against the backdrop of these political developments in Russia, the Chinese minister to Sankt Petersburg, Hu Weide 胡惟德 (1863–1933), had sent a letter asking the group to come earlier. The group as a whole could not rearrange its schedule, although some assistants indeed were sent earlier to Russia in order to do preparatory work.⁷⁹⁰ The group arrived in St. Petersburg from Budapest on May 19, 1906, less than two weeks after the promulgation of the constitution. It stayed 8 days in Russia, before departing to The Hague.

In principle, the commissioners shared the sentiments of the public, i.e., that Russia's autocracy had caused the country's weakness and that it would hence also follow the path of constitutionalism. In a competitive world, military might and economic prowess were indispensable, and both could only be assured by a constitutional system. As Duanfang wrote in his report:

By the wideness of its territory and the largeness of its population, Russia is among the top of the world. But alas, if you talk about a strong army, then the military competitiveness was not sufficient to stand against one newly-emerged Japan. ... This has no other reason but that autocratic regimes cause a double danger for their rulers and countries. Among all strong countries of East and West, only Russia has been autocratic regime,

⁷⁹⁰ Ibid., 677–678; Cai Erkang 蔡爾康, Dai Hongci 戴鴻慈 and Zaize 載澤, *Li Hongzhang lipin Oumei ji; Chushi jiu guo riji; Kaocha zhengzhi riji* 李鴻章歷聘歐美記；出使九國日記；考察政治日記 (Record of Li Hongzhang's visit to Europe and the United States; Diary of a mission to nine countries; Diary of the investigation of politics and administration), eds. Zhang Xuanhao 張玄浩 et al. (Changsha: Yuelu shushe, 1985), 488.

but this has also only been like that in the past. For in Russia now, on account of the lost war, her military and people are deducing the causes of the defeat and jointly searching for the path for revitalisation. As the time is pressing, they are planning to convert to a constitutional regime, and among all countries, there will be no longer any remnant of autocratic regimes.

以俄國土地之廣人民之眾幾爲世界之冠而以言乎兵強則軍事之競爭曾不足敵一新起之日本……此無他專制政體有以使其君與國之兩危也夫東西洋各強國中其僅一俄國爲專制政體亦惟前日爲然耳且俄國今者因戰敗之後其君與民皆推其所以失敗之原因共求所以振興之道方日汲汲然謀改爲立憲政體各國中將無復有專制政體之存餘。⁷⁹¹

Another common point that was confirmed during the group's sojourn in Russia was that of patriotism being of utmost importance to a successful constitutional government. On the evening of May 24, the group met the British diplomat Sir Cecil Spring Rice (1859–1918), whom they asked about constitutions, and who first told them to their consternation that in Russia, disliked ministers were killed. He did not want to give specific advice to the group, for England should not recommend anything to China "as if she should recommend umbrellas to the people in the Desert of Gobi, because it rained in England." The one advice he gave however, matched exactly what many Chinese and foreigners deemed to be China's greatest fault: "a country was always well governed if there were people in it who loved their country more than themselves."⁷⁹²

However, these were not the only impressions Duanfang, Dai Hongci and their entourage got during their stay in Russia. The unrest that Russia was suffering and the difficulties it was experiencing with its transition to constitutionalism also made an impression on them. On May 24, the group had an audience with

⁷⁹¹ Duanfang, *Duan Zhongmin gong zougao*, 694–695.

⁷⁹² Cecil Spring Rice, *The Letters and Friendships of Sir Cecil Spring Rice: A Record*, ed. Stephen Gwynn (London: Constable and Company Ltd, 1930); vol. 2, 44–45.

Sergei Witte, the Russian statesman who had been the mastermind behind the October Manifesto and the Russian constitution that had just been promulgated a few weeks earlier. After the adoption of the constitution and before the Chinese commission's visit, Witte had been ousted from his post as Prime Minister, to be replaced by the conservative Ivan Logginovich Goremykin (1839—1917). According to Duanfang's record, Witte told him and his colleagues that:

'Although this country has been preparing for constitutionalism for over a hundred years, the people is still not fully equipped with knowledge, and it is very hard to adjust it at once. Probably, with the present declaration, the current government cannot but succumb to public opinion, but it will definitely not be able to satisfy its wishes. He [Witte] is deeply worried that convulsion will hard to be dispersed.' This is the real state of Russia's current preparation for constitutionalism.

該國預備立憲已逾百年究之民間知識猶未盡開一時甚難合度大抵此次宣布在政府不能不曲從輿論而斷不能滿其所欲深慮亂事難以消泯此俄國現籌立憲之實在情形也⁷⁹³

Although Witte left detailed recordings about his dealings with Li Hongzhang 李鴻章 (1823–1901), his memoirs and personal notes do not contain any record of his encounter with the constitutional commissioners.⁷⁹⁴ It cannot be fully ascertained to what extent Duanfang's (and his colleague Dai Hongci's) accounts of the en-

⁷⁹³ Duanfang, *Duan Zhongmin gong zougao*, 679; Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, vol. 1, 19.

⁷⁹⁴ Sergei Iľevich Witte Сергей Юлевич Витте, *Iz arkhiva S. Iľ. Vitte: Vospominaniia*. Tom 1: *Rasskazy v stenograficheskoi zapisi* Из архива С.Ю. Витте: Воспоминания. Том 1: Рассказы в стенографической записи (From the archive of S. Y. Witte: memoirs. Tome 1: stories in stenographic record), 2 vols. (St. Petersburg: Dmitrii Bulanin, 2003); Sergei Iľevich Witte Сергей Юлевич Витте, *Iz arkhiva S. Iľ. Vitte: Vospominaniia*. Tom 2: *Rukopisnye zametki* Из архива С.Ю. Витте: воспоминания. Том 2: Рукописные заметки (From the archive of S. Y. Witte: memoirs. Tome 2: handwritten notes) (St. Petersburg: Dmitrii Bulanin, 2003). Records of Witte's encounter with the constitutional commissioners have not yet been found in the Russian archives either (personal communication with Professor Nikolay Samoylov, January 30, 2016).

counter accurately reflected what was debated at the meeting. Within Russia's ruling circles, Witte had been one of the main drivers for political reform, but he was not satisfied with the developments in his country. On the other hand, Duanfang's words about "preparation for constitutionalism" match very closely tropes that were current in China by that time, but at the same time also corresponded to Russian and Western notions that a country's constitution had to emerge organically from the country's traditions.

How, then, did Duanfang's and Dai's impressions of Russia's unrest despite the recent adoption of a constitution influence their thoughts about the introduction of a constitution in China? Gao Fang's claim—that the constitution should be used as a deceptive tool together with an increase in the oppressing capability of the armed forces—⁷⁹⁵ is drawn from further remarks by Duanfang in the report describing his encounter with Witte. At the end of the text, he writes that, despite the defeats and troubles and the fact that Russia was still militarily exhausted, the country was putting great efforts into the recovery of its military forces. China should not underestimate this in her own considerations, Duanfang concluded.⁷⁹⁶

Gao's interpretation, however, albeit not entirely impossible, is rather boldly extrapolated from Duanfang's words. It was quite natural that Duanfang would pay attention to matters military as well, and note what China had to learn from Russia in this field. After all, the version of constitutionalism that the Court was devising primarily aimed at using the modern technique of a written constitution to restore China as a prosperous polity.⁷⁹⁷ It was clear that one of China's overarching goals was strengthening the military, particularly considering China's weakness in the international scenario.

But as concerned Russia's overall situation, Duanfang described in a neutral tone—and not inaccurately—how the internal and external troubles had led

⁷⁹⁵ Gao, *Qingmo lixian shi*, 508.

⁷⁹⁶ Duanfang, *Duan Zhongmin gong zougao*, 680.

⁷⁹⁷ Meienberger, *The Emergence of Constitutional Government in China*, 88–89.

the Russian government to adopt a constitution, and how the stabilisation of the government's power had led to its not meeting the requirements of the people and the parliament. Even if the October Manifesto and the 1906 constitution were a *coup de théâtre* to deceive the people, Duanfang does not paint this policy as being successful. His account of the strikes, of the tensions between the government and the parliament and of Witte's pessimism is written in an objective tone. Due to the rather unsatisfactory state of things as he himself described, it is likely that he had doubts about the correctness of Russia's approach to constitutionalism.⁷⁹⁸ In another memorial summing up his thoughts on constitutionalism, already cited above, Duanfang stresses that Russia was the only country that was still introducing constitutionalism and had not yet left autocracy; he narrates how autocracy not only caused the Russian Czar's personal unsafety, but also the country's weakness, vociferously endorsing a transition from personal rule to rule by law.⁷⁹⁹

Hence, the lesson that Duanfang and Dai Hongci learned from their stay in Russia was probably a different one: It was a variation of the exhortation to only gradually adopt a constitution, however combined with the understanding that the government could not wait until cornered as Russia's. As a matter of fact, the sojourn in Russia was not the only time during the trip that the commissioners heard the gradualist argument. During their stay in Rome, which took place shortly after the week in Russia, a member of the Italian Upper House spoke to the Chinese visitors about schools, newspapers and "equipping the people with knowledge," finally telling them that one should proceed according to the idea of gradualism (*yi jianjin wei zhuyi* 以漸進爲主義). Trying to forcibly introduce constitutional government would be of great harm.⁸⁰⁰

But although the commissioners heard such arguments in other places as well, it was in Russia that they did have a vivid example of how constitutionalism

⁷⁹⁸ Duanfang, *Duan Zhongmin gong zougao*, 679.

⁷⁹⁹ *Ibid.*, 694–696.

⁸⁰⁰ Dai, *Chushi jiuguo riji*, 252.

could go wrong. In his account of the meeting with Witte, Dai Hongci narrated that the Russian delegation had told the commissioners to be very cautious. China should first set the laws of the country, then the ruling classes and the people should respect them, and only then could China think of constitutionalism. Witte estimated that 50 years would be needed for the task, which could not be abbreviated: If the government pressed forward without a fundament, it could stumble; if, on the other hand, it did not meet the demands of the people, there could be violence.⁸⁰¹

In principle, Dai he agreed that a constitutional system could not easily be introduced in China, even less so than in Russia. In one point, Russia was in a disadvantageous position, if compared to China: In spite of a good elite education, Dai remarked, the masses of the people in Russia were illiterate and even much poorer than in China. A similar impression was conveyed to the Qing Court by Hu Weide, who cabled to Peking about how the harsh conditions of life of Russian peasants left them without time to read books and newspapers, resulting in the majority of the population being poorly educated and illiterate.⁸⁰²

Yet, in general, Russia could more expediently adopt constitutionalism as China, Dai argued. Russia shared a border with the European powers, the politics had much in common with them, and her “qualification for constitutionalism” was higher than China’s.⁸⁰³ Dai concluded that in order to ensure the adoption of a constitution in China, “preparation” was needed, and one pressing matter would be to improve education in general and legal training in particular, sending batches of students abroad.⁸⁰⁴ After all, Dai stressed,

⁸⁰¹ Cai, Dai, and Zaize, *Li Hongzhang lipin Oumei ji; Chushi jiu guo riji; Kaocha zhengzhi riji*, 485.

⁸⁰² Hu Weide 胡惟德, *Ezhu lixian yanshuo yishi lianri kai yi ge duan you qing daidi zhe jian you* 俄主立憲演說儀式連日開議各端又請代遞摺件由 (Concerning the Russian Emperor's speech on the adoption of a constitution, the ceremony and the assembly with the duration of several days; and a request to retransmit), Guangxu 32/07/23 [September 11, 1906], file no. 02-12-006-03-015, Archives of the Institute of Modern History, Academia Sinica, Taipei, 1-2.

⁸⁰³ Cai, Dai, and Zaize, *Li Hongzhang lipin Oumei ji; Chushi jiu guo riji; Kaocha zhengzhi riji*, 487.

⁸⁰⁴ *Ibid.*, 485-486.

But if you establish a constitution with empty words, wherein the citizens do not have general knowledge nor legal thinking, then there is no one to deliberate on the laws nor to observe them. The evils of such an approach are about the same as not having a constitution at all.

顧空言立憲，而國民無普通智識與法律思想，則議法與奉法，略無其人，弊與不立憲維均。⁸⁰⁵

However, Dai and Duanfang were of the opinion that China could not postpone the matter for fifty years. After coming back to China, they spoke of “10 or 15” years of preparation in a telegram to the governors⁸⁰⁶, or else of “15 or 20” years⁸⁰⁷ in a court memorial. Directly referring to Russia in a telegram of August 1, 1906, directed to the provincial governors, they stressed that the chaos of that country had to be avoided by China. The Chinese government should stay in charge and could not wait until it was overrun by popular pressure. In this, the group’s findings confirmed what the Chinese Committee of Ministers had already stressed in its circular telegram of November 18, 1905. Or, as Duanfang and Dai told the governors:

Japan’s constitutionalism emanated from the Court’s far-sightedness, while Russia’s constitutionalism originated from the people’s demands. It can serve as a prefatory reflection that one was a success and the other one a failure.

對於日本立憲出於朝廷之遠見，俄羅斯之立憲由於人民之要求，一得一失可爲前鑒。⁸⁰⁸

⁸⁰⁵ Ibid.

⁸⁰⁶ *Shibao* 時報, Guangxu 32/06/24 [August 13, 1906], apud Pan, “Qingmo wudachen chuyang kaocha yanjiu,” 175.

⁸⁰⁷ Gugong Bowuyuan Ming-Qing dang’anbu, *Qingmo choubei lixian dang’an shiliao*, vol. 1, 367.

⁸⁰⁸ *Shibao* 時報, Guangxu 32/06/24 [August 13, 1906], apud Pan, “Qingmo wudachen chuyang kaocha yanjiu,” 175.

d) Coming Back Home and “Preparing for the Adoption of a Constitution”

The commissioners returned to China in July 1906. Upon their return to Peking, they fervently demanded the establishment of a constitution and the convocation of a parliament, with Zaize “persistently” demanding constitutionalism during his audiences in Court.⁸⁰⁹ In total, they submitted nine memorials to the court, part of which was not penned by them or the team. Rather, Duanfang had Xiong Xiling 熊希齡 (1870–1937), a participant of the study tour, hire a prominent ghostwriter – the ostracised Liang Qichao, who helped out with several texts. Large parts of literature maintain that Yang Du 楊度 (1875–1931), too, participated in the elaboration by proxy of a constitutional programme, but Pan Chong, in a doctoral dissertation about the constitutional mission, contends that there is no evidence for this.⁸¹⁰

In the constitutional programme thus elaborated, Japan seems to have remained the overall favourite as a positive model for China. In one of memorial, Zaize expressly referred to the Japanese constitution and to Itō Hirobumi and Hozumi Yatsuka 穗積八束 (1860–1912), with whom the group had conferred at Tokyo. Stressing that the objective of the constitution was strengthening the ruler’s power, Zaize listed 17 prerogatives⁸¹¹ that the Japanese constitution left to the ruler. These

⁸⁰⁹ See, e.g., Gugong Bowuyuan Ming-Qing dang’anbu, *Qingmo choubelixian dang’an shiliao*, vol. 1, 173–176. Also contained in *Xinhai geming*, ed. Zhongguo shixuehui, vol. 4, 27–30. See also the petition to the Throne of August 25, 1906: Gugong Bowuyuan Ming-Qing dang’anbu, *Qingmo choubelixian dang’an shiliao*, vol. 1, 367–383, and Duanfang, *Duan Zhongmin gong zougao*, 689. On Zaize’s “persistency” see *The North-China Herald*, “Governmental Reforms,” August 3, 1906, 265.

⁸¹⁰ Liang Qichao himself claims that he wrote a programme of some 200’000 words. See Ding Wenjiang 丁文江, *Liang Rengong xiansheng nianpu changbian chugao* 梁任公先生年譜長編初稿 (First draft of a long version of an annalistic biography of Mr. Liang Rengong), 2 vols. (Taipei: Shijie shuju, Minguo 51 [1962]), vol. 1, 205–206. On the production of the memorials see Pan, “Qingmo wudachen chuyang kaocha yanjiu,” chapter 7–2–1, 214–225; on the memorials as such chapter 7–2–2, 225–253. On Yang Du not having participated in the scheme see 219; 224. On the topic of “writing by proxy” see also Zhou Qiuguang 周秋光, “Xiong Xiling yu Qingmo lixian” 熊希齡與清末立憲 (Xiong Xiling and the late Qing adoption of a constitution), *Hunan Shifan Daxue xuebao* 湖南師範大學學報, no. 5 (1996), 78–82, 109, and Zhang Jun, “Spider Manchu,” 183–184, who, however, talks of a programme of “two million words,” ten times the amount claimed by Liang himself.

⁸¹¹ Gugong Bowuyuan Ming-Qing dang’anbu, *Qingmo choubelixian dang’an shiliao*, vol. 1, 173–174. Also contained in *Xinhai geming*, ed. Zhongguo shixuehui, vol. 4, 27–28.

were first concrete proposals that should later develop into the *Outline of a Constitution*. Cixi, on her part, is said to have shown “considerable enthusiasm for the scheme” which promised to solidify her position.⁸¹²

Next to the points of fortifying the ruler’s position, for the Chinese, constitutionalism certainly also had the advantage of harmonising China’s *Regierungsform* (*zhengti* 政體) with that of the great powers of the time. Thus, Zaize lists three great advantages of a constitution: 1. Cementing the Imperial Throne (*huangwei yonggu* 皇位永固); 2. lessening foreign calamity (*waihuan jianqing* 外患漸輕); 3. enabling to quell internal strife (*neiluan ke mi* 內亂可弭).⁸¹³ In regard to no. 2, Zaize writes that:

Today, the reason why the foreigners insult us is not only our country’s weakness. It is also the eccentricity of our form of government, of which they hence say it is an ‘autocracy’, of which they say it is ‘half-civilised’, and which cannot be treated on the same level.

今日外人之侮我，雖由我國勢之弱，亦由我政體之殊，故謂為專制，謂為半開化，而不可以同等之國相待。⁸¹⁴

If China adopted constitutional government, Zaize argued, China’s foreign relations would significantly improve:

Once we adopt constitutional government, then those who despise us will respect us and change their policies of invasion into peaceful diplomatic relationships.

⁸¹² See *North China Herald*, “Governmental Reforms,” 265. The latter part of the affirmation—that the constitution would strengthen her position—lends credibility to the affirmation.

⁸¹³ Gugong Bowuyuan Ming-Qing dang’anbu, *Qingmo choubei lixian dang’an shiliao*, vol. 1, 175. Also contained in *Xinhai geming*, ed. Zhongguo shixuehui, vol. 4, 28–29.

⁸¹⁴ Gugong Bowuyuan Ming-Qing dang’anbu, *Qingmo choubei lixian dang’an shiliao*, vol. 1, 175. Also contained in *Xinhai geming*, ed. Zhongguo shixuehui, vol. 4, 28–29.

一旦改行憲政，則鄙我者轉而敬我，將變其侵略之政策為平和之邦交。⁸¹⁵

The study mission also led to the publication of two works describing and analysing their findings: *The Essentials of Government in Various Countries* (*Lieguo zhengyao* 列國政要) and the *Essentials of European and American Politics and Administration* (*Oumei zhengzhi yaoyi* 歐美政治要義).⁸¹⁶ The first work was a long collection of material on different aspects of governance, beginning with the constitution. The parts concerning the constitution reveal a focus markedly different from the usual spotlight on Japan as is seen in the memorial penned by the leader of the second group, Zaize, upon his return to China. In spite of the professed preference for Japan, the outlook of the work was much more global—and also took into account recent events. This probably has to do both with the fact that Duanfang and Dai Hongci's group did not place a focus on Japan, but also with the principle of "choosing the best for adaption" (*ze shan er cong* 擇善而從).⁸¹⁷ Regarding the constitutional charter, the commissioners put a strong focus on Italy, to which they devoted the first three chapters of the work. One chapter is dedicated to a comparison of Italy with nine other countries. Much attention is also devoted to the fresh Russian constitution, which takes up three chapters as well. One chapter each is dedicated to Prussia, the USA and Austria.⁸¹⁸

The other work, the *Essentials of European and American Politics* (*Oumei zhengzhi yaoyi* 歐美政治要義), had been ghost-drafted by Liang Qichao.⁸¹⁹ It was a more condensed book, focused on what was immediately to be known by those

⁸¹⁵ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubelixian dang'an shiliao*, vol. 1, 175. Also contained in *Xinhai geming*, ed. Zhongguo shixuehui, vol. 4, 28–29.

⁸¹⁶ For detailed analyses of the *Oumei Zhengzhi Yaoyi* and the *Lieguo Zhengyao*, see Meienberger, *The Emergence of Constitutional Government in China*, 33–38; Gadsden, "Building the Rule of Law in Early Twentieth Century China," 24–43; Zhao Hui, "Rethinking Constitutionalism in Late 19th and Early 20th Century China," 87–98.

⁸¹⁷ See also Gadsden, "Building the Rule of Law in Early Twentieth Century China," 24.

⁸¹⁸ Duanfang 端方 and Dai Hongci 戴鴻慈, *Lieguo zhengyao* (132 juan) 列國政要 (一百三十二卷) (*Essentials of government in various countries*, in 132 chapters) (n.p., Guangxu 33 (1907), chapters 1–3 (Italy), 4 (Prussia), 5 (USA), 6 (Austria), 7 (Italy and Others: 10 countries), 8–10 (Russia).

⁸¹⁹ Pan, "Qingmo wudachen chuyang kaocha yanjiu," 224. On the work see 253–275.

crafting China's reform.⁸²⁰ It did not translate whole laws as the *Lieguo zhengyao* did, but it used various norms to exemplify the matters at hand. In spite of the participation of Liang Qichao in its drafting, the work does not place the limelight on Japan, but resorts to constitutions that otherwise were less well-known. For example, the considerations on constitutional modification were exemplified not only by Art. 107 of the Constitution of Prussia, but also—incorrectly—by § 65 of the Constitution of the Grand-Duchy of Baden.⁸²¹ The *Oumei zhengzhi yaoyi* uses yet another variant of the three-pronged division of political systems, but this time, for constitutions. It distinguishes between constitutions given by the majesty, coöperative constitutions given by the majesty together with the people and democratic constitutions given by the people alone. Coöperative constitutions were the most frequent ones, while constitutions by *octroi* such as the Russian one or the one given by the German states were very few. The book does expressly recommend coöperative constitutions, as constitutions by *octroi* were prone to instability.⁸²²

Two weeks after the second group of envoys returned from their study trip, on August 25 or 26, 1906 the Court established a commission composed of the most important figures in Court to evaluate the reports of the Constitutional Commissioners.⁸²³ The commissions held sessions on August 27 and 28, 1906.⁸²⁴ The main

⁸²⁰ The work was submitted to the Throne with a covering memorial dated October 23, 1906.

⁸²¹ Dai Hongci 戴鴻慈 and Duanfang 端方, *Oumei Zhengzhi Yaoyi* 歐美政治要義 (Essentials of European and American Politics and Administration) (Shanghai: Shangwu yinshuguan, Guangxu 33 [1907]), 23b–24a. The correct norm would have been § 64 of the Constitution of Baden, which stipulated that laws modifying the constitution needed at least a two-thirds majority in each of the two chambers.

⁸²² *Ibid.*, 18–19.

⁸²³ Zhu, *Guangxu chao Donghua lu*, vol. 5, 5561. For an English translation of the edict see United States Department of State, ed., *Papers relating to the foreign relations of the United States with the annual message of the president transmitted to Congress December 3, 1906*, 2 vols. (Washington: Government Printing Office, 1909), vol. 1, 348–349. There is some inconsistency on the date of the edict; Meienberger, *The Emergence of Constitutional Government in China*, 41, gives the August 25 as most likely date.

⁸²⁴ The content of the meetings were soon published for the Chinese public. One version is given in Jiaoyu pinwu gongsi 教育品物公司校, ed., *Yubei lixian yijianshu* 豫備立憲意見書 (Book of opinions on preparing the adoption of a constitution), 2 vols. (N.p.: Guangxu 32 [1906]), chapter “Conference of Ministers” (*tingchen huiyi* 廷臣會議). Another version—slightly differing in wording—is given in the special edition of the *Eastern Miscellany*: “Lixian jiwen,” in *Xinhai geming*, ed. Zhongguo shixuehui, vol. 4, 13–17.

theme of the discussions was the level of instruction of the people needed for the constitution, and at what speed China should proceed. The ministers Sun Jianai 孫家鼐 (1827–1909), Rongqing 榮慶 (1859–1917) and Tieliang 鐵良 (1863–1939), however, were rather cautious, doubting that the level of education of the people.

Tieliang posed a series of critical questions about the adoption of constitutionalism, pondering, among others, that in most countries, constitutions had arisen out of popular demands or even revolts. Yuan Shikai 袁世凱 (1859–1916), who together with Yikuang (Prince Qing, 慶親王奕劻, 1838–1917), Xu Shichang 徐世昌 (1855–1939) and Zhang Boxi 張百熙 (1847–1907) pleaded for faster change, responded to this that China was indeed different: Elsewhere, rights had been given to an enlightened people, while in China, one would first gradually lead the people to knowledge (*shi min zhishi jian kai* 使民知識漸開).⁸²⁵ Eventually, the members of the commission reached the consensus to ask the Throne for the adoption of constitutionalism, which they did a day later, on August 29, 1906, in a conference with the Empress Dowager Cixi.⁸²⁶

e) September 1, 1906: The Decision to Adopt a Constitution

Given the decisions taken at these meetings, the Court announced its decision to promote constitutional reforms after a period of “constitutional preparation” on September 1, 1906.⁸²⁷ The edict took up the findings of the travelling commissioners, stating that politics and laws of different countries had a tendency to influence

⁸²⁵ Ibid., 16; Jiaoyu pinwu gongsi, *Yubei lixian yijianshu*, chapter “Conference of Ministers” (*tingchen huiyi* 廷臣會議), 4b.

⁸²⁶ *The North-China Herald*, “The Question of a Constitution,” August 31, 1906, 544, referring to the *Universal Gazette* (*Tianxia Xinwen* 天下新聞). Although the news is already quite removed from its source, its veracity is confirmed by the edict issued two days later.

⁸²⁷ Gugong Bowuyuan Ming-Qing dang’anbu, *Qingmo choubei lixian dang’an shiliao*, vol. 1, 43–44; for English translations of the edict see United States Department of State, *Papers Relating to the Foreign Relations of the United States 1906*, 349–350; Meienberger, *The Emergence of Constitutional Government in China*, 42–44. For a German translation of the edict see Heinrich Betz, “China: 1907–1908,” in *Jahrbuch der Internationalen Vereinigung für Vergleichende Rechtswissenschaft und Volkswirtschaftslehre: VIII. Band. 2. Abteilung. Zweiter Teil* (Berlin: Verlag von Julius Springer, 1908), 3119–3121.

each other. In light of the commissioners' recommendations, further investigation was needed, and the country had to "prepare the foundations of constitutionalism" (*yubei lixian jichu* 預備立憲基礎).

This "constitutional preparation" was a very broad enterprise permeating all parts of the state, with the constitution being the coronation of an extensive and ambitious state-rebuilding project. The edict envisioned a complete overhaul of Chinese states in several steps: The first reform should concern the public service, which should be followed by the compilation of various laws for the Empire.⁸²⁸ After this, the educational system, finances as well as the military and police forces should be reformed.

About the constitution to be eventually implemented, nothing concrete was specified. Nor was a concrete time frame given. The edict just stated that the process of constitutional preparation should be finished after "several years" (*shunian* 數年), at which point a date for the implementation of a constitution would be decided. This wording has aroused some contention. The *North China Herald* contends that on the August 29, the Court had first decided to grant a constitution and parliamentary representation after three years, beginning in the year Guangxu 35 (1910), but that Tieliang asked Cixi to change the word "three" to "several."⁸²⁹ Later, Immanuel Hsü speculated that Cixi had "shrewdly omitted to specify the date of promulgation."⁸³⁰

⁸²⁸ The British legation reported to London a "revision of the dynastic laws of the Empire" as being the second step of reforms: Ian Nish, ed., *British Documents on Foreign Affairs: Reports and Papers from the Foreign Office Confidential Print Part I: From the Mid-Nineteenth Century to the First World War, Series E: Asia, 1860–1940. Volume 14: Annual Reports on China, 1906–1913*, (Lanham: University Publications of America, 1993), 17. What was meant by the decree, however, was not a revision of the Imperial family's house law, but instead the compilation of modern-style civil, criminal etc. codes, as can be seen by the wording, "carefully codify all the laws" (*jiang gexiang falü xiangshen liding* 將各項法律詳慎釐訂).

⁸²⁹ *The North-China Herald*, "The Question of 'Time,'" September 7, 1906, 571.

⁸³⁰ Hsü, *The Rise of Modern China*, 414.

How exactly the wording “several years” found its way into the decree cannot be exactly reconstructed. In contrast to those of the previous meetings, the exact contents of the final conference of August 29 are not well-reported. What is said, however, is that extraordinarily wild discussions arose, and that constitutional commissioner Zaize’s speech was particularly passionate (*zhengyi shen lie yu chang-shi butong Ze gong yu you ji* 爭議甚烈與常時不同澤公語尤激).⁸³¹

The controversy is very likely to have centered around the time frame to be given to the adoption of a constitution. As Yuan Shikai had stated in the foregoing conference, the Court was operating without outside pressure (*wu waili zhi xiangpo* 無外力之相迫).⁸³² Hence, the pace had to be chosen by intrinsic considerations, and a compromise between the varying interests had to be found. The three years as suggested by the *North China Herald* would have been a very optimistic time frame. Although Kang Youwei had yore fantasised of China’s transformation within “three years,” Dai Hongci and Duanfang had envisioned 10 to 20 years for constitution-making after returning from the study tour.⁸³³ Given the different opinions on the speed to be taken by China “several” years seems to have been a compromise solution. The *North China Herald* at that time saw this as unsatisfactory and disappointing, but as the United States Legation at Peking noted, even a “few years” might have been too few to carry out such an “enormous” programme of state reconstruction.⁸³⁴

The interpretation of the word “several” notwithstanding, the decree was greeted with much fanfare and government propaganda. Such euphoria was not uncommon when new constitutions were introduced at the turn of the 20th century,

⁸³¹ Jiaoyu pinwu gongsi, *Yubei lixian yijianshu*, chapter “Conference of Ministers” (*tingchen huiyi* 廷臣會議), 6b.

⁸³² Ibid., chapter “Conference of Ministers” (*tingchen huiyi* 廷臣會議), 4b.

⁸³³ Gugong Bowuyuan Ming-Qing dang’anbu, *Qingmo choubei lixian dang’an shiliao*, vol. 1, 367. As can be seen from the given examples, all sorts of predictions about the number of years required for “constitutional preparation” circulated. Yet another number—12 years—is given by Znaimer Tagblatt und Niederösterreichischer Grenzbote, “Telegramme: London.”

⁸³⁴ *North China Herald*, “The Question of ‘Time’”; United States Department of State, *Papers relating to the foreign relations of the United States 1906*, 349.

as they were overestimated as keys to national success. Even in the far-away Ottoman Empire, Young Turk intellectuals enthusiastically hailed the Chinese declaration. Identifying China with their own imperiled nation, they predicted that a constitutional China would thenceforth be able to withstand foreign encroachment.⁸³⁵

In China, celebrations were held throughout the country in the days and weeks after September 1. Tens of thousands participated in them, including literati, merchants, students and officials. Respects were paid before the Imperial tablets. Music was played, including the national anthem and songs composed specifically for the occasion. In various aspects, these celebrations stressed the international aspects of China now entering the ranks of constitutional states. Thus, “foreign” music was played at the assemblies, and flags of the world’s countries decorated the halls where celebrations were held. Probably, however, not too much thought was invested in the selection of flags, as they even included that of the Empire of Korea, the ailing constitutional autocracy (see the illustration on the following page).

Many of these celebrations were held in schools, and many of the speeches held at them stressed the importance of education for the adoption of constitutionalism.⁸³⁶ Accordingly, propaganda for the new constitutional policies soon became part of the educational curriculum, emphasising its value for regaining national strength. A new textbook for primary schools edited right after the decree explained why the adoption of a constitution was so significant:

⁸³⁵ Apud Nader Sohrabi, “Global Waves, Local Actors,” *Comparative Studies in Society and History* 44, no. 1 (2002), 55–56.

⁸³⁶ For descriptions of such celebrations see *Shenbao* 申報, “Kaiming nüxiao kaixue zhisheng” 開明女校開學誌盛 (Record of the beginning of classes at Kaiming Girls’ School), September 10, 1906; *Shenbao* 申報, “Yihui qing wanshou zhu lixian” 醫會慶萬壽祝立憲 (The Medical Association celebrates the anniversary of the Empress Dowager and expresses good wishes for the adoption of a constitution), November 27, 1906; *North China Herald*, “At the Celebration on Sunday,” September 14, 1906, 636; *North China Herald*, “The Chinese Press Association Celebration,” September 21, 1906, 692; *North China Herald*, “Kyangin: Constitution Decree Celebrations,” October 5, 1906, 13; *North China Herald*, “Nanking: A Celebration of the New Constitution,” October 12, 1906, 13.

As prosperous and strong countries of the world, one has to infer England, the USA, France, Germany, Russia and Japan. Of these six countries, the USA and France are constitutional democracies and England, Germany and Japan are constitutional monarchies. Only Russia is an autocratic state, and now is also switching to a constitution. That being the case, constitutional monarchy is indeed the most suited for today's world.

世界富強之國。必推英美法德俄日。六國之中美法爲民主立憲。英德日本爲君主立憲。惟俄爲專制國。今亦改行憲法。然則君主立憲。實最宜於今日世界也。⁸³⁷

In the schools, various odes were composed at the occasion, employing all pathos possible to celebrate China's rejuvenation and bright future as a strong nation. The text of at least three such songs has survived. Lesson 5 of the aforementioned textbook was dedicated to a composition which praised the Emperor for having overturned 4000 years of history and being more august than even the revered ancient emperors Yao 堯 and Shun 舜.⁸³⁸ Another ode composed by commercial students in Yangzhou 揚州 praised the commissioners' *tour du monde* and rejoiced about the prospect of China's illnesses being finally cured.⁸³⁹ A song sung at a girl's school in Songjiang 松江 compared China's ill fate under autocracy with Turkey, but ended with the bright prospect of China rising up to Japan and the Western powers—all thanks to the policy of constitutionalism:

⁸³⁷ Gao, Zhang, and Jiang, *Gaodeng xiaoxue guowen jiaokeshu*, 2b.

⁸³⁸ *ibid.*, lesson 5: "Song Celebrating the Establishment of a Constitution" (*Qingzhu lixian ge* 慶祝立憲歌).

⁸³⁹ "(Jiangsu) Ji huanying lixian ge" (江蘇) 紀歡迎立憲歌 (Jiangsu: Record of a song welcoming the adoption of a constitution), *Guangyi congbao* 廣益叢報, no. 119 (1906), 5–6.



Celebrating the edict of September 1, 1906. Gao Fengqian 高鳳謙, Zhang Yuanji 張元濟, and Jiang Weiqiao 蔣維喬, *Gaodeng xiaoxue guowen jiaokeshu* 高等小學國文教科書 (National language textbook for senior elementary schools) (Shanghai: Shangwu yinshuguan, Guangxu 33 [1907]), vol. 1.

Do not do empty talk! Everyone cast the spirit of China! The *Bushidō* will go beyond the Pacific Isles! The industry will boom and the aggressive Europeans will be startled! Perfectly refine the nation's culture! May China live forever!

莫空論各鑄中國魂武士道超出東洋島實業興咄咄歐人驚完國粹中國萬萬歲

840

5. Russia, Persia and their Further Influences on China

a) The Persian Constitutional Revolution

At virtually the same time as the Chinese constitutional debates led to the Qing government's declaration of September 1, 1906, the wave of constitutionalism that swept Eurasia also caused political upheavals in the Muslim world.⁸⁴¹ Against the background of a vigorous constitutional debate in the preceding half-century and of the Russo-Japanese war of 1905, the so-called "constitutional revolution" of Persia led to the adoption of a constitution in that country during the year 1906.⁸⁴²

Protests against the government broke out in late 1905 on the cause of tariffs to be collected. In the summer of 1906, a multitude of opposition protesters sought sanctuary on the grounds of the British legation to Teheran—their numbers rose to about 13,000 on August 1.⁸⁴³ In their legation sanctuary, some members of the opposition added the adoption of constitutional government to their list of demands to the government. On August 5, Mozaffar ad-Din (1853–1907, r. 1896–

⁸⁴⁰ *Shenbao*, "Kaiming nüxiao kaixue zhisheng."

⁸⁴¹ In 1911, Syed Abdul Majid called it a "wave of awakening." Syed A. Majid, "The Moslem Constitutional Theory and Reforms in Persia, Turkey and India," *Imperial and Asiatic Quarterly Review*, 3rd ser. 31, nos. 61 & 62 (1911), 66.

⁸⁴² For a contemporary account, see *North China Herald*, "A Constitution for Persia," September 21, 1906, 682–683. See also *North China Herald*, "The Problem of Persia," May 15, 1909, 2179, May 11. More on the Constitutional Revolution in Persia in Sohrabi, *Revolution and Constitutionalism in the Ottoman Empire and Iran*, and Amir H. Ferdows, "The Origins and Development of the Persian Constitutional Movement" (PhD diss., Indiana University, 1967).

⁸⁴³ Mansour Bonakdarian, *Britain and the Iranian Constitutional Revolution of 1906–1911: Foreign Policy, Imperialism, and Dissent* (Syracuse: Syracuse University Press, 2006), 54, with further references.

1907), ceded to the pressure and announced the adoption of a constitution as well as the convening of a national assembly, or *Madjlis*. The constitution was passed a few months later, on December 31, 1906, partially modelled on the Belgian constitutional charter. The adoption of the constitutional charter did not end Persia's problems either, and the situation remained highly volatile in the following years. Persia continued to be an object of imperialist policies by the United Kingdom and Russia. The new Shah, Mohammad Ali (1872–1925, r. 1907–1909), briefly abolished the constitution and the majlis, which was then reinstated in 1909.

The Chinese study commissions did not pass through Persia, there was no mutual diplomatic representation as was the case with Russia, and there was less information on Persia in China than on Russia. Yet, one should not underestimate the role played by Persia either. Russia and China, for many observers, might have been sitting in the same boat of trying to change autocracy into constitutionalism. But in at least two aspects, Persia's situation was closer to China's than that of Russia and thus provided a more pressing object lesson. Chinese-language publications on Persia frequently stressed that it was a venerable country of ancient civilisation. The *Wanguo gongbao*, at one point, affirmed that, according to Herodotus, two hundred years before Confucius Persia already had had a noblemen's assembly and thus the seeds of constitutional government, but that it lamentably had lost that tradition.⁸⁴⁴

The second aspect that made Persia interesting to the Chinese resulted from the first one: The pitiable weakness of the ancient and venerable *Hochkultur* of Persia. Another article translated and discussed in the *Wanguo gongbao* went as far as to affirm that Persia had been in steady decline and permanent convulsion since

⁸⁴⁴ "Bosi lixian zhi nan" 波斯立憲之難 (The difficulties of establishing a constitution in Persia), *Wanguo gongbao* 萬國公報, no. 220 (1907), 66–67.

the defeats in the Graeco-Persian Wars in the 5th Century BC.⁸⁴⁵ This decay translated into a tremendous weakness in the international arena. Russia had lost the war against Japan, but was still a mighty great power. Persia, however, while being an ancient *Hochkultur*, was verging on extinction at the hands of imperialist powers, mainly Great Britain and the very Russia. In a China that was itself both venerable and suspicious of imperialist encroachment, the effect of venerable Persia's constitution on its relations with the imperialist powers could not fail to have an effect.

Thus, it is not surprising that, even if somewhat less as compared to Russia, news about the Persian constitutional revolution swiftly arrived in China and had an important impact on Chinese debates. Wang Yidan, in a book chapter about Chinese perceptions of the Persian constitution, has noticed the interest aroused in China by the Persian constitutional revolution.⁸⁴⁶ Wang's article, however, is somewhat imbalanced, for it does not capture the whole complexity of how the Persian constitutional revolution was perceived in China.

Wang cites examples from the *Eastern Miscellany* and the *Zhengyi tongbao*, both favouring constitutional reforms, and from the revolutionary *Minbao* 民報, but in last analysis, he is solely concerned with the relationship of the Persian constitutional movement with the *Xinhai* Revolution. Wang contends that the Persian constitutional revolution "inspired the Chinese revolutionary democrats who played an important role in the Chinese Xinhai Revolution (1911–1912) afterwards."⁸⁴⁷ As he writes, the "Iranian Constitutional Revolution has been regarded

⁸⁴⁵ MacGillivray, Donald [Ji Lifei 季理斐], and Fan Yi 范禕, "Bosi lixian zhi pinglun" 譯譚：波斯立憲之評論 (Translated debates: an assessment of Persian constitutionalism), *Wanguo gongbao* 萬國公報, no. 213 (1906).

⁸⁴⁶ Wang Yidan, "The Iranian Constitution as Reported in the Chinese Press," in *Iran's Constitutional Revolution: Popular Politics, Cultural Transformations and Transnational Connections*, ed. H. E. Chehabi and Vanessa Martin, Iran and the Persianate world v. 28 (London, New York: I.B. Tauris; in association with Iran Heritage Foundation, 2010), 369–379.

⁸⁴⁷ *Ibid.*, 369.

by Chinese scholars as the beginning of Awakening in Asia, and the Chinese Xinhai Revolution as the high tide of it.”⁸⁴⁸ “The Chinese revolutionaries,” Wang concludes, “regarded the Iranian constitutionalists as their comrades.”⁸⁴⁹

Wang acknowledges that the two revolutions followed two different paths, for the Persians introduced a constitutional monarchy, while the Xinhai Revolution abolished monarchy and instituted a republic. But had the Qing Empire not tried to introduce a constitutional monarchy for several years before the Xinhai Revolution? Had the adoption of a constitution not set the political agenda of the Qing Empire for nearly a decade? Indeed, Wang is right in asserting that Chinese revolutionaries did regard the Iranian constitutionalists as their comrades. But this is, by far, not the whole story that the extant primary sources—including those adduced by Wang himself—tell us. The effect of Persia’s constitutional revolution was much more complex and was felt on all sides of the debate.

For one, not only revolutionaries, but also those committed to constitutional reform of the Chinese monarchy were interested in the news from Persia, as Wang’s own examples show. The fact that another ancient autocratic Empire had chosen to the path of adopting a constitution increased the pressure on China to follow suit. It was an encouragement for political change in China, not only for a revolution, but also for constitutional reforms from above.

In the *Wanguo gongbao*, Young John Allen and Fan Yi reproduced several opinions on the Persian adoption of a constitution, concluding that in the 20th century, there could be no more autocratic countries. Yes, as Persian constitutionalism was still in its infancy, results could not be immediately reaped. But the events showed that the Persians were not willing any longer to accept oppression.⁸⁵⁰ In another commentary in the *Wanguo gongbao*, Donald McGillivray (Ji Lifei 季理斐,

⁸⁴⁸ Ibid., 369.

⁸⁴⁹ Ibid., 379.

⁸⁵⁰ Allen, Young John [Lin Yuezhi 林樂知] and Fan Yi 范祿, “Yitan: Bosi lixian zhi yilun” 譯譚：波斯立憲之異論 (Translated debates: a different assessment of Persia’s establishment of a constitution), *Wanguo gongbao* 萬國公報 18, no. 214 (1906), 52.

1862–1931) and Fan Yi compared China's constitutional situation to that of Persia. They were not convinced by the argument that the constitution was the finishing stone of state rebuilding. Yes, Japan had taken until the year of Meiji 23 to adopt a constitution, but was the contemporary China still at the beginning of the Meiji Era? How come China had not yet opened any popular representation as Persia was doing, if such was the goal of constitutionalism? In sum, MacGillivray and Fan Yi felt that the Chinese intention of constitutional preparation left big question marks open, and that China's future was in danger.⁸⁵¹

Being of interest to Chinese intellectuals, the Persian constitution of December 31, 1906 was expediently translated into Chinese. It appeared in at least two versions in at least three magazines in 1907. One version was first published in the *Eastern Miscellany* and then republished in the *Official Gazette of Sichuan* (*Sichuan guanbao* 四川官報). The second one was published in the *Zhengyi tongbao*. Both translations differed in wording, but were near-identical in structure, for they abridged exactly the same articles (the *Eastern Miscellany* version, additionally, omitted art. 51). It is possible that this was due to both being translated from the same intermediary source.

Both editions contained praise for Persia's rapid adoption of a constitutional charter, indirectly exhorting China to follow suit. The *Eastern Miscellany*, then reprinted in the *Sichuan Official Gazette*, was a bit more reserved, stating that Persia's speed had exceeded expectations:

Since Persia announced last autumn that it would adopt a constitution until now, there has been no record of this. But the parliament has already been convened and a constitutional charter has already been adopted. The speed of their reform has partially exceeded people's expectations. Here, we abridgedly translate the text of the constitution as follows, as a resource for research.

⁸⁵¹ MacGillivray and Fan, "Bosi lixian zhi pinglun."

波斯自去年秋季頒詔立憲以來迄今未及一載而議院已立憲法已成其改革之速有出人意表者茲將其憲法條文節譯如下以資研究⁸⁵²

The *Zhengyi tongbao* was more explicit, also taking side in the Chinese debate of whether the people were yet prepared for a constitution or not. According to the Journal, this did not matter. What was important was that the government was pressing forward with reforms from above. In Persia, the level of instruction was lower than in China, so for China it should be even more possible to press forward:

Our country has adopted constitutionalism at the same time as Persia. But the Persian national assembly is earlier than ours, and the constitutional charter has been completed earlier than ours. Today, we have found the original text of the 51 paragraphs of the Persian Constitution and translated it specially to show it to our countrymen. Our countrymen should know that the level of the Persian people is not as high as ours, and yet the constitution they have adopted does not differ from the constitutions of the countries of America and Europe. Hence, one can see that that country's government is honestly striving for the happiness of the citizens.

我國與波斯同時立憲。而波斯議會較我先。立憲法較我先成。今覓得波斯憲法原文五十一條特譯出以示國人。吾國人當知波斯國民之程度。不及我國。而所立之憲法與歐美各國憲法無異。可見該國政府。實心爲國民求幸福也。⁸⁵³

⁸⁵² "Geguo neiwu huizhi" 各國內務彙誌 (News about the domestic politics of all countries), *Dongfang zazhi* 東方雜誌 4, no. 6 (1907); "Jingwai xinwen: Bosi xianfa" 京外新聞：波斯憲法 (News from outside the capital: The Persian constitution), *Sichuan guanbao* 四川官報, no. 25 (1907), 4b.

⁸⁵³ Deng Shi 鄧實, ed., *Guangxu dingwei (33 nian) zhengyi congshu* 光緒丁未（卅三年）政藝叢書 (Collectanea of politics and arts for the year dingwei (33) of the Guangxu Emperor), 6 vols. (Taipei: Wenhai chubanshe, Minguo 65 [1976]), vol. 3, 1920–1923.

b) Problems with the Adoption of Constitutions

However, Chinese observers did not only see Persia as an exhortation. On the other hand, they also recognised that Persia's rapid promulgation of a constitution did not provide immediate help, or even saw the problems of Persia's constitutional change as a warning to China. Similarly complex was the role that news from Russia's constitutional attempts played in influencing Chinese intellectuals and politicians. It was more than just removing the last argument for autocratic government⁸⁵⁴ and exhorting China to follow suit.

Within the camp of those arguing in favour of a constitution, as has been stated above, there were different interpretations about whether the Chinese were ripe for a constitution and about how fast should China proceed. The Chinese government, seeing the problems existing in Russia in spite of the fast-paced adoption of a constitutional charter, decided to proceed slowly and—in contrast to that country—first carefully “prepare for constitutionalism” before adopting a constitutional charter.

But not only the government, others, too, saw problems in trying to introduce a constitutional system too quickly. European and Japanese observers were more often than not skeptical about the plans, just as had been the case some twenty years before regarding the adoption of the Meiji Constitution. For example, Nakamura Shingo 中村進午 (1870–1939), at the end of 1906, published an article in the *Revue Diplomatique* (*Gaikō jihō* 外交時報) entitled “Fearing for the Prospects of Constitutionalism in China” (*Shinkoku rikken no zento o ayabumu* 清國立憲の前途を危ぶむ). Therein, he pointed out that Japan's success had not been merely due to the constitution. Referring to examples of states that had perished in spite of a constitution or that were struggling in spite of having recently introduced a constitution, he warned the Chinese against too much *naïveté* about constitutionalism being the main key to national success:

⁸⁵⁴ Price, *Russia and the Roots of the Chinese Revolution*, 138.

Hasn't constitutional Hawai'i disappeared? What about constitutional Transvaal? What about constitutional Russia? What about constitutional Persia?

立憲せる布哇亡びざりしか。立憲せるトランスヴァールは如何。立憲せる露國は如何。立憲せる波斯は如何。⁸⁵⁵

Nakamura was referring to passionately exuberant voices that painted the adoption of a constitution as the one and only key for a golden future; he was referring to the sort of enthusiasm as was expressed, for example, in the songs sung to celebrate the constitutional edict of September 1, 1906. But not all voices were arguing that the constitution be applied rapidly and unthoughtfully.

On Japanese territory, the most famous advocate for reforms, Liang Qichao, had changed his stance and begun advocating “enlightened autocracy” (*kaiming zhuanzhi* 開明專制) instead of sudden political reform.⁸⁵⁶ Equally on Japanese territory, the young Lu Xun 魯迅 (1881–1936), who would become one of the most prominent 20th-century Chinese writers, was dedicating his earliest essays to China's spiritual problems. He took a different, but equally constitution-skeptical stance: Although he was not opposed to constitutions and parliaments as such, he deemed them to be mere outward, superficial symbols unable to solve China's deeper spiritual problems.⁸⁵⁷ In his essay *On Imbalanced Cultural Development* (*Wenhua pianzhi lun* 文化偏至論), he adduced the example of Spain and Portugal, which were not in good shape despite being having been constitutional for a long time. Hoping for a constitution to save China was even more futile, and he harboured disdain for those who clung to such superficialities:

⁸⁵⁵ Nakamura, “Shinkoku rikken no zento o ayabumu,” 255–256.

⁸⁵⁶ See his essay on the topic: Liang Qichao 梁啟超, “Kaiming zhuanzhi lun” 開明專制論 (On enlightened autocracy), in *Liang Qichao quanji*, vol. 3, 1231–1550.

⁸⁵⁷ William R. Schultz, “Lu Hsün: The Creative Years” (PhD diss., University of Washington, 1955), 90. The full detailed analysis of Lu Xun's article is to be found in 88–95.

To what purpose should we grasp at the superficial aspects of Western culture and cling to its external trappings, as those who talk vainly of finance and weaponry, parliaments, and constitutions would have us do? If the lust for power and profit eats so easily away at the mind, obscuring right and wrong, and rendering all designs and espousals entirely misplaced, think how much more damage will be wrought by those already motivated by base interests, who will have ready recourse to the name of ‘modern civilization’ as a cover for their relentless pursuit of private designs.

奚事抱枝拾葉，徒金鐵國會立憲之云乎？夫勢利之念昌狂於中，則是非之辨為之昧，措置張主，輒失其宜，況乎志行汙下，將借新文明之名，以大遂其私慾者乎？⁸⁵⁸

Concerns were voiced on Chinese territory, too. In an article of January 14, 1906 that was later reproduced in the *Eastern Miscellany*, the *Shibao* 時報 subscribed to the position later criticised by Nakamura that constitutionalism was not only a “global trend” (*shijie geguo zhi qushi* 世界各國之趨勢), but paramount for becoming a strong nation:

If the internal strength of a country is not at its full, then it will not suffice to ward off intrusions by foreign powers. ... Since the development of nationalism, the *intelligentsia* of our country has dreaded the downfall of the country’s standing and has been anxious about recovering extraterritorial rights and resisting foreign humiliations. ... Now, if you want to amass power with the aim of promoting self-strengthening, then there is nothing more important than constitutionalism to eradicate the chronic diseases of

⁸⁵⁸ Lu Xun 魯迅, “Wenhua pianzhi lun” 文化偏至論 (On imbalanced cultural development), in *Fen* (1907–1925) 墳 (1907–1925) (Beijing: Renmin wenxue chubanshe, 1951), 39. On Spain and Portugal see 51. The translation follows Jon Eugene von Kowallis, “Lu Xun’s Early Essays and Present-Day China,” *Studia Orientalia Slovaca* 12, no. 1 (2013), 15.

2000 years and planning all sorts of reforms. This is also common knowledge.

國之內力不充。則不足以抵外力之侵入。……自民族主義發達以來。我國志士。憫國勢之陵夷。皇皇然以收回利權。抵制外侮。……今欲儲實力以圖自強。莫要於立憲。以除二千年之痼疾。而謀百度之維新。此亦人所共知。⁸⁵⁹

However, the *Shibao* did also acknowledge that there were different sides on the debate, some arguing that the Chinese were already enlightened enough for a speedy adoption, and others arguing that China still was not ripe for constitutionalism. The paper argued that not enough thought had yet been spent on China's constitutional future, and, pointing out that Japan's speedy introduction of constitutionalism had only been possible due to "study circles" (*xuehui/gakkai* 學會), it called for further research.⁸⁶⁰

Months later, as a reaction to the constitutional edict of September 1, the Shanghai Librarian's Guild (*Shanghai shuye shanghui* 上海書業商會), discussed the question in its recently-founded and soon-to-be-discontinued organ, the *Books Monthly* (*Tushu yuebao* 圖書月報). On October 28, 1906, the article was republished in the *Shenbao*. The article argued that the most important was fostering real national strength—with the Librarian's Guild contributing to the spiritual strength of the nation. If no such national strength was fostered, a constitution was of no use, as had been the case in the Philippines. Remarkably, the piece did not distinguish between the different kinds of failed paper constitutions, as it not only adduced the revolutionary document of the Philippines, but also the autocratic constitution of Korea. For if the national strength was fostered, having or not having a constitution was well-nigh irrelevant. Superficially adopting a constitution was of no help:

⁸⁵⁹ "Lun jinri yi ji she xianfa yanjiuhui," 27.

⁸⁶⁰ *Ibid.*, 27, 32–33.

If one vainly admires the beautiful word 'adopting a constitution,' but does not foster the citizen's strength, we fear, one will be but one constitutional country more in the year-books of the world, following Korea, Persia and Russia.

若徒慕立憲之美名。不培國民之實力。恐將隨朝鮮波斯俄羅斯之後。徒於世界年鑑上多一立憲國而已。⁸⁶¹

c) Russian and Persian Warnings

The observation of the constitutional struggles in the aforementioned countries at times led to rather conservative conclusions being voiced even in otherwise reform-oriented, pro-constitutional media. Even if some, like Liang Qichao, ignored Russia, other reformers kept explicitly mentioning the concomitant constitutional upheavals in Eurasia. Often, the experiences that Russia and —slightly later— Persia made with adopting constitutions were a call for caution or for a slower pace in China.

For example, this was the case for the *Wanguo gongbao* 萬國公報, which had published the Yermolov plan in May 1905. It remained seized of constitutional developments, publishing several articles on the situation in Russia. On December 11, 1905, Young John Allen and Fan Yi 范禕 published an editorial on the Russian situation referring to an article which, again, had travelled from Europe to North America to Asia. On September 1, Federico Paltrinieri had published an article in the Florence magazine *Rassegna Nazionale* under the title "The Situation of Russia—a Warning to Italy" (*I fatti di Russia: Ammonimento per l'Italia*).⁸⁶² In October, the

⁸⁶¹ Bo Hong 伯鴻, "Duiyu lixian Yuzhi jinggao tongye" 對於立憲 諭旨敬告同業 (Information for the our industry about the Imperial edict on the establishment of a constitution), *Tushu yuebao* 圖書月報, no. 2 (1906), 4; [Bo Hong 伯鴻], "Duiyu lixian Yuzhi jinggao shuye (lu tushu yuebao)" 對於立憲 諭旨敬告書業 (錄圖書月報) (Information for the publishing industry about the Imperial edict on the establishment of a constitution [from the *Books Monthly*]), *Shenbao* 申報, October 28, 1906.

⁸⁶² Federico Paltrinieri, "I fatti di Russia: Ammonimento per l'Italia," *Rassegna Nazionale* 27, 145 (September 1, 1905).

New York *Literary Digest* presented the gist of the article in English, but reversing by 180 degrees whom was warning whom: “A Warning to Russia from Italy.”⁸⁶³

The *Wanguo gongbao* editorial of December 1905, then, began by presenting the gist of the *Literary Digest* version of the article. Again, it only referred to the original Italian source, but not to the North American *entrepôt*. The English title given in the table of contents of the *Wanguo gongbao* was a mere variation of the one given in the “Literary Digest: Italy’s Warning to Russia.” But the Chinese title, once again, reflected the special importance that the notion of “constitutionalism” was experiencing in China. Just as, for example, the Chinese title of Nahum Stone’s article published in the *Xinmin congbao* had directly referred to “constitutionalism” where the original had not, the Chinese title of Paltrinieri’s article added a “constitutionalism” not existent either in the Italian nor English versions: “A Warning about Russia’s Adoption of a Constitution” (*Eguo lixian zhi tisi* 俄國立憲之提撕).⁸⁶⁴

The content of the article showed an even stronger adaption of the source for Chinese constitutional discourse. The double translation and interpretation left little of Paltrinieri’s original intention. Paltrinieri’s Italian essay did barely mention constitutions; it was rather a stirring appeal for the building of Italian nationalism. It did, however, refer to Japan, whose fast-paced career was an example not only in China, but even in the heart of Europe. Paltrinieri explained that Italy had been created decades ago, but that it lacked the right national spirit, causing her to be in a deplorable state:

By assembling the citizens in the severe classes of the school of Duty, toughening their hearts and fibres to the sublime examples given by so many idols, such as Tito Speri, of the Fatherland, Italy will be able to soar to the

⁸⁶³ “A Warning to Russia from Italy,” *Literary Digest* 31, no. 15 (1905).

⁸⁶⁴ Young John Allen 林樂知 and Fan Yi 范滌, “Eguo lixian zhi tisi” 俄國立憲之提撕 (A warning about Russia’s adoption of a constitution), *Wanguo gongbao* 萬國公報 17, no. 203 (1905). The English title “Italy’s Warning to Russia” is given in the English table of contents at the beginning of the magazine.

moral highness to which Japan has arrived, and have the same triumphs as her vis-à-vis every new and more concupiscent longing of the Powerful!

Adunando i cittadini fra le severe aule della scuola del Dovere, temprandone cuore e fibra ai sublimi esempi lasciati dai tanti idolatri, come Tito Speri, della Patria, potrà l'Italia portarsi all'altezza morale a cui è giunto il Giappone e avere gli stessi trionfi suoi di fronte a ogni nuova e più concupiscente bramosia di Potenti!⁸⁶⁵

The *Literary Digest* was astounded at the horrifying state of the Italian body politic even fifty years after unification. It translated the parts of the essay that argued that the leaders of the Italian *Risorgimento* had been much more able than the revolutionary leaders of contemporary Russia, but that the people had stayed as before—"the masses impulsive and ignorant, the ruling classes cynical, corrupt, immoral."⁸⁶⁶ Russia was not ripe for a revolutionary movement; democratic ideas were prematurely infused into a Russia where there were not the necessary conditions:

Every revolutionary movement is vain unless it has been preceded by a long, patient, and tedious work of moral and civil education.

Vana è ogni impresa di rivolgimento politico se non è preceduta da un'opera paziente, lunga affanosa, di educazione morale, civile.⁸⁶⁷

In China, the discourse about the necessary education for the people was familiar. However, the Chinese editorial did not connect it to a "revolutionary movement" as the English source—but to the establishment of constitutional government:

⁸⁶⁵ Paltrinieri, "I fatti di Russia," 116.

⁸⁶⁶ "A Warning to Russia from Italy"; The equivalent Italian original is to be found in Paltrinieri, "I fatti di Russia," 143.

⁸⁶⁷ "A Warning to Russia from Italy"; Paltrinieri, "I fatti di Russia," 143.

Hence, if Russia truly wishes to reap the benefits of constitutional government, it must not only immediately bolster education and let the people's intelligence and knowledge rise, but also not lose the fundamentals of constitutional government after it had gradually been able to disseminate education.

是故俄國而誠欲收憲政之實效則必急興教育使人民之智慧與學問非惟日以發達亦且漸能普及而後不失憲政之基本⁸⁶⁸

From this word of warning to Russia that the *Literary Digest* had attributed to Paltrinieri, Young John Allen and Fan Yi derived a word of warning for a China in which constitutionalism was already the hottest stuff in town. China had three problems: The people was changing, but the government was not (*xia bian er shang bu bian* 下變而上不變); the external appearance was changing but not the substance (*wai bian er nei bu bian* 外變而內不變); and the country was changing, but people did not know why (*bian er bu zhi suo yi bian* 變而不知所以變). Not surprisingly, thus, Allen's and Fan's recommendation for China introducing constitutional government was:

Only education can be the foundation for everything.

惟有教育一事可爲一切之根基⁸⁶⁹

After the May constitution had been promulgated, the *Waijiao bao* commented that never had a constitution been adopted from one day to the other (*cong wei you zhao ling xi xing* 從未有朝令夕行), not giving any credibility to the Czar coming up with the constitution off the cuff (*yi fanshou er wei zhi* 一反手而爲之).⁸⁷⁰ And even the usually pro-constitutional *Eastern Miscellany* came to perceive that the situation in

⁸⁶⁸ Allen and Fan, "Eguo lixian zhi tisi," 16b.

⁸⁶⁹ Ibid., 17b.

⁸⁷⁰ "Lun Eguo lixian (yi Riben Mingzhi 39 nian 8 yue *Taiyangbao*)" 論俄國立憲 (譯日本明治三十九年八月太陽報) (On Russia's adoption of a constitution [Translated from the Japanese *Taiyō* of August 1906]), *Waijiao bao* 外交報, no. 155 (1906), 21b (the translator's comment to the translated article).

Russia was complicated. Russia was not introducing constitutionalism carefully and therefore could not hope for its benefits. Instead, the paper argued, “constitutionalism needed preparation first,” anticipating the Chinese government’s stance:

The Russian popular revolt has been going on for years running. But what is the origin of this saying? Where does it actually emanate from? We think that there is probably one big cause for it. What is this cause? It is to be felt in the mark left by the outcome of the Sino-Japanese war. This is definitely an outer stimulus and does not come from the swelling of the people’s force. It certainly evokes the empty word of constitutional government and does not see through the spirit of constitutional government. Their goals are purely objective not subjective. To hope for constitutionalism from such a standpoint, isn’t this already a fundamentally large mistake?

近歲間俄國之民變連年也。然則此說之起。果何所自乎。曰、是蓋有一絕大之動機焉。動機惟何。即感於日俄勝負之跡是。...是固因外界之戟刺。而非由民力之膨脹也。是固震驚憲政之虛名而非洞澈憲政之精髓也。其目的固純爲客觀的而非主觀的也。以斯觀念而企望立憲其根本上不已大謬誤乎。⁸⁷¹

Not surprisingly, the *Eastern Miscellany* suggested some well-known points to solve the problem: 1. Spread education in order to nurture citizens. The beauty of constitutionalism lay therein that the National Assembly had legislative power, so one had to educate the people accordingly.⁸⁷² 2. Send people to all countries to study their constitutions; Japan was especially close to China.⁸⁷³ 3. First establishing local assemblies so as to foster the people’s political experience at the lower administrative levels.⁸⁷⁴

⁸⁷¹ Shunxiu, “Lun lixian dang you yubei,” 45.

⁸⁷² Ibid., 45.

⁸⁷³ Ibid., 46–47.

⁸⁷⁴ Ibid., 47, also referring to Russia (cf. supra).

Months later, when news from Persia came to China, there was not only praise for Persia's speed. One article which made the round in China was an analysis first published in the Tokyo *Nichi nichu shimbun* 日日新聞 of August 9, 1906, four days after Mozaffar ad-Din announced the adoption of constitutional government. It was republished in the *Zhongwai ribao* 中外日報, in the *Waijiao bao* and in the *Tongxue bao* 通學報 under the title "On Persia's Adoption of a Constitution" (*Lun Bosi lixian* 論波斯立憲). The *Nichi nichu shimbun* drew a very lugubrious picture of Persia of a country whose ancient grandeur had all but vanished, where the people had no national conscience and the state was not able to uphold order. The reformers were blindly copying Japan (*maomaoran xiaofa Riben* 貿貿然倣法日本), and their efforts were absolutely hopeless (*bi wu xiewei zhi xiwang* 必無些微之希望).⁸⁷⁵

Both the *Waijiao bao* and the *Tongxue bao* added short commentaries to the *Nichi nichu shimbun*, and both agreed that Persia's experience was of utmost instructiveness for China. The *Waijiao bao* commented the article with a slight distaste for the *Nichi nichu shimbun*'s extreme attitude of insulting and ridiculing Persia.⁸⁷⁶ But it agreed that representative government was not easily done, concluding that Persia should serve as a lesson to China. The *Tongxue bao* did not comment directly on the issue of constitutionalism, but it argued that Persia's struggle was not "a fire raging on the other side of the river" (*dui'an zhi huozai* 對岸之火災). China should learn from Persia, lest it became like it:

⁸⁷⁵ "Lun Bosi lixian (ji Riben Mingzhi 39 nian 8 yue 9 ri Dongjing Riri xinwen)" 論波斯立憲即日本明治三十九年八月九日東京日日新聞 (On Persia's adoption of a constitution [From the Tokyo *Nichi nichu shimbun* of August 9, 1906]), *Waijiao bao* 外交報 6, no. 154 (1906), 30a–30b; "Lun Bosi lixian (yi Riben Dongjing Riri xinwen; Zhongwai ribao)" 論波斯立憲 (譯日本東京日日新聞; 中外日報) (On Persia's adoption of a constitution [Translated from the *Nichi nichu shimbun* of Tokyo, Japan; *Zhongwai ribao*]), *Tongxue bao* 通學報 2, no. 9 (251–248), 248.

⁸⁷⁶ "Lun Bosi lixian," *Tongxue bao*, 30b.

Thus, we have specially translated and published it in the magazine in order to tell our government and our people not to admit that the Eastern neighbour view us the same as Persia.

故特譯登報端以告我政府我國民毋使東鄰之視我與波斯等⁸⁷⁷

What was hinted at in the *Tongxue bao*'s commentary came out more clearly in other publications: The aspect of imperialism. In 1907, the *Zhengyi tongbao*, for example, published a series of articles "On What Determines Survival or Demise" (*Jiuwang jue lun* 救亡決論). In one of the articles, it commented on the situation of Persia:

Look at Poland, which had established a constitution before vanishing. By now, venerable Persia has also established a constitution, but the competition for spheres of influence between England and Russia is not much different from the past, and Germany's power is even poised to increase in response to the constitution.

顧波蘭未亡曾布憲法白頭波斯其在今日亦成憲矣而英俄角獵不殊於昔甚者德之勢力且應憲而增⁸⁷⁸

Wang Yidan translates this passage as "the competition for spheres of influence ... has been contained to a great extent." This is, however, the exact opposite of what the passage actually said.⁸⁷⁹ The *Zhengyi tongbao* did not depict the Persian constitutional revolution, or rather the adoption of a constitution, as having fulfilled the hopes put in it of containing imperialist encroachment—much to the contrary. Mentioning Persia next to the pitiable fate of Poland, that European country that had vanished in spite of having been at the vanguard of constitutionalism, it was

⁸⁷⁷ "Lun Bosi lixian," *Waijiao bao*, 248.

⁸⁷⁸ Wang Deyuan 汪德淵, "Jiuwang jue lun 2" 救亡決論二 (On what determines survival or demise, 2), *Zhengyi tongbao* 政藝通報 6, no. 5 (1907), 3a. Also contained in Deng, *Guangxu dingwei zhengyi congshu*, 1485.

⁸⁷⁹ Wang, "The Iranian Constitution as Reported in the Chinese Press," 375,

rather a stern warning against the notion that a constitution would be the key to secure China's survival.

d) Russia, Persia, and Revolutionary Anti-Constitutionalism

By 1906, there were already some heavy criticisms in Chinese-language published opinion that the government was playing for time and not willing to introduce real constitutionalism.⁸⁸⁰ This notwithstanding, the proportion of published opinion that was categorically opposed to any action taken by the central government was still much lower in China than in Russia. In China, published opinion was initially not as dismissive of every move of the central government as a façade for further oppression, and as has been seen, not only the government, but even published voices of the pro-reform press took the ineffectiveness of the October Manifesto and of the 1906 Constitution as a warning against too abrupt reforms.

On the other side of the political spectrum, the revolutionaries, too, were keenly interested in concomitant revolutionary activities. For them, too, constitution and constitutionalism were crucial keywords—which they fiercely opposed, insofar as they meant constitutional monarchy. On this side of the political spectrum, constitutional developments elsewhere, thus, flew into Chinese-language discourse as anti-constitutionalism. This was especially true for the persisting unrest in Russia and the violent reaction by the Russian government, which served as a catalyst of mistrust against the Chinese government.

⁸⁸⁰ See the early revolutionary pamphlet “Heavenly Demands” (*Tiantao* 天討), edited by Zhang Binglin 章炳麟 (1869–1936) in 1907: Zhang Binglin 章炳麟, “Tiantao (*Minbao* linshi zengkan)” 天討 (民報臨時增刊) (Heavenly demands [Special edition of the *Minbao*]), in *Xinhai geming*, ed. Zhongguo shixuehui, vol. 2, 368: “It is [constitutionalism] only by name, not by substance” (*buguo shi you ming wu shi* 不過是有名無實); 372–373 “Therefore, preparing for constitutionalism is just a substitute word for preparing to discriminate against the Han” (*suoyi yubei lixian, jiu shi yubei paihan de daimingci* 所以預備立憲，就是預備排漢的代名詞). For another late Qing example of such an argument see also Gao Lao 高榮, “Gemingzhan shi ji” 革命戰事記 (Record of events of the revolutionary war), *Dongfang zazhi* 東方雜誌 8, no. 9 (1911), 8. On Zhang Binglin see Kauko Laitinen, *Chinese Nationalism in the late Qing Dynasty: Zhang Binglin as an Anti-Manchu Propagandist* (London: Curzon Press, 1990).

Such can be seen in the Tokyo-based revolutionary *Minbao* 民報 magazine the organ of the Chinese United League (*Tongmenghui* 同盟會) led by Sun Yat-Sen 孫逸仙 (1866–1925). When Russian and Persian constitutional upheavals were unfolding in 1906, the magazine did not immediately pay much specialised attention to Persia, publishing only one dedicated article in 1910.⁸⁸¹ But it was all the more interested in Russia: If the Russian Imperial government had granted a constitution without changing its dictatorial rule, was not the same to be expected in China?

In 1906, not long after the Russian government had passed its constitutional charter, the magazine published a long report of the recent constitutional events there, written by Zhu Zhixin 朱執信 (1885–1920) under his *nom de plume* “Qu Fei” 去非.⁸⁸² Stressing that having a constitutional charter and being a constitutional country were not necessarily the same thing, the article posed the question of how Russia had developed after the adoption of a constitutional charter. To answer the question, it narrated the conflicts between the emperor and the newly-convened congress (Duma). The account first translated a motion by the Duma of May 13,

⁸⁸¹ Minyi 民意 [Wang Jingwei 汪精衛, and Hu Hanmin 胡漢民], “Bosi geming” 波斯革命 (The Persian revolution), *Minbao* 民報, no. 25 (1910).

⁸⁸² Qu Fei 去非 [Zhu Zhixin 朱執信], “Eguo lixian hou zhi qingxing” 俄國立憲後之情形 (The situation of Russia after the adoption of a constitution), *Minbao* 民報, no. 6 (1906), 18. The pseudonym “Qu Fei” 去非 appears in a few revolutionary papers of the time, such as the *Minbao*, the *Zhongxing ribao* 中興日報 and the *Tianyi* 天義. It was shared as a pseudonym by Hu Hanmin 胡漢民 (1879–1936) and Zhu Zhixin, at least in the *Minbao* and in the *Zhongxing ribao*. The article here discussed is directly attributed to Zhu Zhixin. Literature about the *Tianyi* usually does not identify the “Qu Fei” publishing in that magazine with any concrete persona, but it is not unlikely that it was also Hu Hanmin and/or Zhu Zhixin. There is, moreover, a pseudonym “Qu Feizi” 去非子 used by Liu Shipei 劉師培 (1884–1919). On the *Minbao* article in question see Zhai Haitao 翟海濤, “Fazheng ren yu Qingmo fazhi biange yanjiu: Yi Riben fazheng suchengke wei zhongxin” 法政人與清末法制變革研究：以日本法政速成科爲中心 (Research on academics of law and politics and the late Qing reform of the legal system: Centering on the fast-track classes for law and politics in Japan) (PhD diss., East China Normal University, 2012), 169. See further, on Hu Hanmin and the *Zhongxing ribao*, Peng Jian 彭劍, “Qingji xianzheng da bianlun: Yi Zhongxing ribao, Nanyang zonghui xinbao zhi lunzhan wei zhuti de tantao” 清季憲政大辯論：以《中興日報》、《南洋總彙新報》之論戰爲主體的探討 (The big debates on constitutional government in the Qing era: An exploration on the subject of the war of opinions between the *Zhongxing ribao* and the *Nanyang zonghui xinbao*) (PhD diss., Central China Normal University, 2005), 134–135. See further on the pseudonym Qi Zhou 祁州, “Hu Hanmin, Wang Jingwei: Zaonian de shengsi zhi jiao” 胡漢民、汪精衛：早年的生死之交 (Hu Hanmin and Wang Jingwei: The friendship for life and feath in their early years), *Zongheng* 縱橫, no. 8 (1997), 57.

1906 answering to the Czar's speech on the Duma's opening and demanding far-reaching political and land reforms.⁸⁸³ It then went on to translate Prime Minister Ivan Goremykin's answer rejecting all these demands. The *Minbao* narrated the disappointment with the answer, which betrayed the promise made in the October Manifesto to grant amnesty. The events confirmed the article's premise that a paper constitution was not worth much. One might still not have been able to concretely judge on the quality of the fresh Russian constitutional charter, but:

... it can be said with certainty that the *narodniks'* indignation reaches the point of turmoil throughout the country and certainly cannot be dissolved by a mere measly paper constitution.

……民黨之不平及全國之亂脈則斷不以區區一紙之憲文而披靡消解可決言耳⁸⁸⁴

Indeed, in the years following the October Manifesto and the May Constitution, repression in Russia mounted again, and the number of death sentences rose sharply from between 10 and 26 in 1905 to between 144 and 236 in 1906 and to around 1000 in 1908.⁸⁸⁵ Against this backdrop, two years later, the *Minbao* made one of its heaviest attacks on the Russian constitutional efforts and drew graphic conclusions for China. In the editions for July and August 1908, it published two

⁸⁸³ The Russian original of the Throne address was published, together with the Emperor's speech, in *Tronnaiā riēch' Gosudariā Imperatora. Otvētnyi adres" Gosudarstvennoi Dumi. Zasiēdanie Gosudarstvennoi Dumi 13 maiā 1906 goda. Tronная рѣчь Государя Императора. Ответный адресъ Государственной Думы. Засѣдание Государственной Думы 13 мая 1906 года.* (Throne speech of the Emperor of the Nation. Answering address of the National Duma. Session of the National Duma of May 13, 1906) (St. Petersburg: Obshchestvennaiā pol'za, 1906). The Chinese translation was probably made through some intermediary and takes some liberties as to the original.

⁸⁸⁴ Qu Fei, "Eguo lixian hou zhi qingxing," 18.

⁸⁸⁵ Nikolai Stepanovich Tagantsev" Николай Степановичъ Таганцевъ, *Smertnaiā Kazn': Sbornik statei* Смертная казнь: Сборникъ статей (The death penalty: collection of articles) (St. Petersburg: Gosudarstvennaiā tipografiā, 1913), 89–92 (chapter "Data on the application of the death penalty in Russia").

articles translating excerpts from Maurice Baring's (1874–1945) book *A Year in Russia*, originally published in New York in 1907.⁸⁸⁶ In fact, the *Minbao* articles, signed by a translator with the pseudonym "Blood and Tears" (*Xuelei* 血淚), were not faithful translations. Rather, they were—in parts very loose—adaptations accompanied by prologues, intermissions and epilogues, all made to convey the magazine's own intentions, which differed substantially from Baring's.⁸⁸⁷

Baring's book is a first-hand account of the political events in Russia between August 1905 and August 1906, describing the struggles between the various political factions for Russia's political course and analysing them within their historical context. Baring analysed that the revolutionary movement had by no means collapsed, in spite of the government's apparent success in pushing it back.⁸⁸⁸ In

⁸⁸⁶ Maurice Baring, *A Year in Russia* (New York: E. P. Dutton and Company, 1907); Maurice Baring, "Lü E zaji" 旅俄雜記 (Miscellaneous notes on travelling in Russia), *Minbao* 民報, no. 22 (Meiji 41 [1908]); Maurice Baring, "Lü E zaji (xü ershi'er hao)" 旅俄雜記 (續二十二號) (Miscellaneous notes on travelling in Russia, continued from no. 22), *Minbao* 民報, no. 23 (Meiji 41 [1908]). On the article from a perspective of revolutionary movements see Price, *Russia and the Roots of the Chinese Revolution*, 157–158.

⁸⁸⁷ Literature has not yet offered a detailed analysis of the Chinese translation. The *Minbao* translated them as follows:

- 1) The first heading of the article in *Minbao* 22, "Trends of Thought in the Russian Capital" (*Ejing zhi sichao* 俄京之思潮, 85–8), is a translation of the first article of chapter X ("Current Ideas in St. Petersburg – St. Petersburg, January 27th," 97–100).
- 2) The second heading of the article in *Minbao* 22, "Political Parties in Russia" (*Eguo zhi dangpai* 俄國之黨派, 88–93), is a translation of the first part of the first article of chapter 12 ("The Political Parties – Moscow, March 11th," 128–32), enlarged by a prologue probably penned by the translator.
- 3) The article in *Minbao* 23, published under the collective heading "The Russian Revolution and Constitutionalism" (*Eguo geming yu lixian* 俄國革命與立憲, 59–70), consists of a prologue (probably penned by the author, 59–60) and three sub-headings, and a commentary by the author. The three sub-headings are:
 - a) "Elections of the Delegates" (*Daiyishi xuanju* 代議士選舉, 60–4), is a translation of the first article of chapter 14 ("The Elections – Moscow, March 19th," 152–6), with an insertion (62–3) and an epilogue probably penned by the translator.
 - b) "The Opening of the Parliament" (*Yihui kaihui* 議會開會, 64–7) mixes an abridged translation of the first part of the first article of chapter 17 ("The opening of the Duma, St. Petersburg, May 14th," 191–4), with an insertion compiled by the translator (65–6), with a translation of part of the second article of chapter 14 ("The elections – Moscow, April 8th," 158) and an epilogue probably penned by the author.
 - c) "The Dissolution of the Parliament" (*Yihui jiesan* 議會解散, 67–9) is a loose narration of a part of chapter 24 ("The Dissolution of the Duma, St. Petersburg, July 25th," 281), with a prologue probably penned by the author.

⁸⁸⁸ Baring, *A Year in Russia*, 99–100.

the conclusion to the book (not translated into Chinese), Baring described two sides of the conflict. The defenders of autocracy, he wrote, argued that Russia was an Oriental country and that Western institutions were not suitable for her, with words such as these:

‘We must have a Constitution, just as we have an army and a navy, because the idea soothes the revolution-haunted breasts of foreign financiers, but we shall never have a real Constitution because we don’t want one. Reforms? Oh yes, as many as you please, on paper, signed and countersigned, but they will remain a dead letter, because they are not adapted to the character and the spirit of the nation. ... Russia is like China, you can draw up a Constitution for Russia ; but when it is carried out, you will find that the only practical difference between the old state of affairs and the new is that the writing-table of the Minister of Foreign Affairs is to be oblong instead of round.’⁸⁸⁹

Baring himself tended to disagree with this position, although he was not much emotionally invested in this judgement. A few years before, he would have agreed, and he still thought that this group might be correct, but contact to the other group of Russians had made him change his opinion. According to the second opinion, the comparison with China was wrong because China was a highly literate nation. In Russia, however, the autocratic régime was not “the natural expression of national characteristics but a fortuitous disease” that had sprung from comparatively recent changes in Russian history.⁸⁹⁰ The proponents of this second opinion, favoured by Baring, replied to the defendants of autocracy:

⁸⁸⁹ Ibid., 304.

⁸⁹⁰ Ibid., 305–6.

‘If it is true that what you represent is really Russia, we have no further wish to remain Russian, and the day you are proved to be in the right, we will emigrate and settle in Turkey, in Persia, or in China.’⁸⁹¹

The *Minbao* does not directly translate these reflections. Instead, the translator interpolates his—very resolute—opinion into Baring’s text, writing that the Russian government had “guilefully established fake constitutionalism in order to appease the ignorant people.”⁸⁹² As the translator exclaims in another passage attributed to Baring:

Alas! How can a so-called constitutional country be so barbaric?

嗚呼。所謂立憲國者。竟如是野蠻乎。⁸⁹³

The explicit equation of the worrisome Russian situation with China was made in the front pages of the magazine. One of the two introductory images to the August edition was a shocking photo showing atrocities committed by Russian soldiers (see the following page). The caption read: “This is the woeful scene of slain corpses laid out to the public after Russia established a constitution. You who are hoping for a constitutional government, why do you not take this as a warning?”⁸⁹⁴

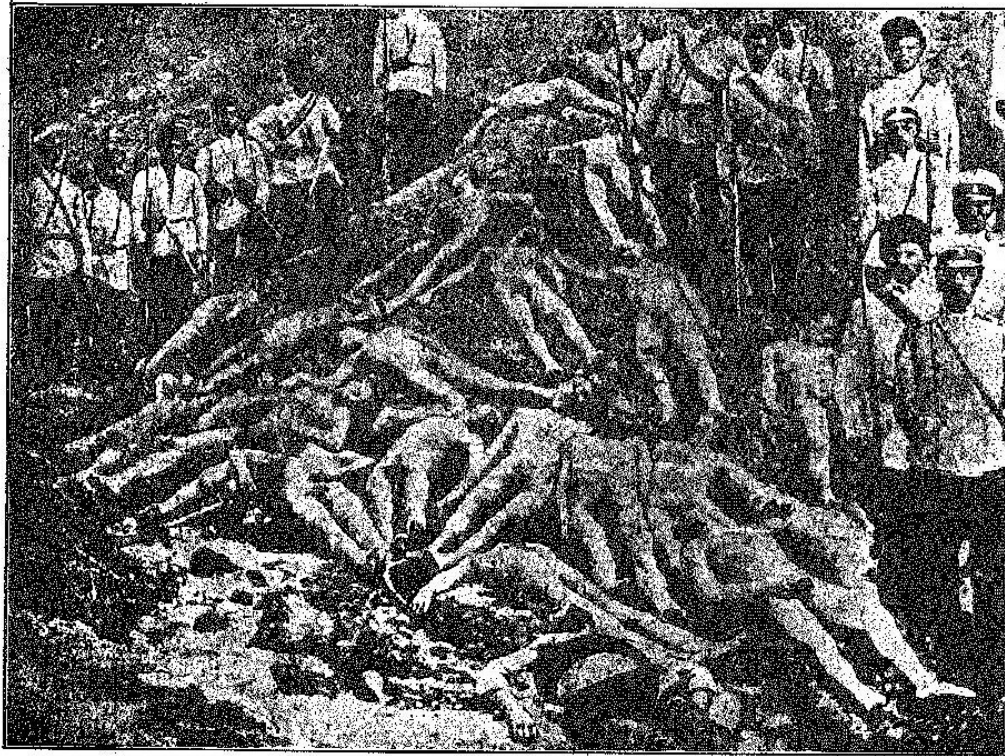
⁸⁹¹ Ibid., 307.

⁸⁹² Baring, “Lü E Zaji (xü ershi’er hao),” 62; see also 61, 68.

⁸⁹³ Ibid., 61.

⁸⁹⁴ “Lixianguo pushi tu” 立憲國暴屍圖 (Image of corpses laid out in a constitutional State), *Minbao* 民報, no. 23 (Meiji 41 [August 1908]).

此俄國立憲後殺人暴屍之慘狀也立憲者盡鑒諸



立憲國之暴屍圖

Illustration in the August 1908 edition of the Minbao.

6. Direct non-diplomatic contacts: Russia, China and beyond

a) Chinese Whispers

The mentioned examples show how Chinese-language media perceived news from Russia and Persia, having often come through the intermediation of Japanese, European and North American media. But rather than just being a merely one-sided and passive reception of events elsewhere, Chinese constitutional thought was embedded in a multilateral discourse which included the other Eurasian empires that were “constitutionalising” themselves at the time. In the case of China and Russia, there were also other direct and indirect contacts beyond the visit of Duanfang, Dai Hongci and their entourage to Russia.

For example, it was not only Russian news which came through Japan and the West to China. Often, Russia also served as a bridge from China to Central Europe: Knowledge about the Chinese constitutional reforms often arrived in Europe via Russia. Thus, when the Chinese government, in 1908, unveiled the basic tenets of a future constitution—the so-called *Outline of a Constitution* (*Qinding xianfa dagang* 欽定憲法大綱)—, the news was received in Central Europe via St. Petersburg.⁸⁹⁵ And in the manner of Chinese whispers, several Japanese newspapers reported the news on the basis of German newspapers, incorrectly claiming that the “full text of a draft of the Chinese constitution” (*Shinkoku kenpō sōan zenbun* 清國憲法草案全文) had been unveiled in the Russian capital.⁸⁹⁶ In 1911, the Austro-Hungarian colonel Stanislaus Napoleon Ritter von Ursyn-Pruszyński (1857–1930) based himself on Russian sources for his book *Basic Elements of the New Chinese Polity* (*Grundelemente der neuen chinesischen Staatsform*), which itself was received with much interest in the gazettes of the time.⁸⁹⁷

b) Zhang Qingtong in Russia

The direct and multilateral dialogue that involved China and Russia can be best shown by the correspondence held by the Russian writer Leo Tolstoy (1828–1910)

⁸⁹⁵ E.g. *Grazer Tagblatt*, “Verfassung in China!,” November 28, 1908, evening edition; *Pilsner Tagblatt*, “Politisches vom Tage: Der chinesische Verfassungsentwurf,” November 29, 1908.

⁸⁹⁶ *Yomiuri shimbun* 讀賣新聞, “Berurin denpō (misoka): Shinkoku kenpō sōan” 伯林電報 (三十日) : 清國憲法草案 (Telegrams from Berlin, 30th: Draft of a constitution for the Qing Empire),” December 1, 1908; *Asahi shimbun* 東京朝日新聞, “Berurin denpō (Nichidoku Yūhōsha toritsugi): Shinkoku kenpō sōan happyō” 伯林電報 (日獨郵報社取次) : 清國憲法草案發表 (Telegrams from Berlin [via the Nippo-German Postal Agency]: Publication of a draft of a constitution for the Qing Empire), December 1, 1908.

⁸⁹⁷ Stanislaus Napoleon Ritter vom Ursyn-Pruszyński, *Grundelemente der neuen chinesischen Staatsform: nach russischen Quellen zusammengestellt* (Wien, Teschen, Leipzig: Verlag von Karl Prochaska, 1911). Reviews and discussions were published in papers of very divergent political inclinations. Among others, see: *Danzer's Armee-Zeitung*, “Vom politischen Erwachen Chinas,” January 5, 1911; *Arbeiter-Zeitung* (Morgenblatt)—*Zentralorgan der österreichischen Sozialdemokratie*, “Verfassung in China,” February 17, 1911; *Arbeiterwille—Organ des arbeitenden Volkes für Steiermark und Kärnten*, “Eine neue Verfassung für China,” February 25, 1911; *Das Vaterland—Zeitung für die österreichische Monarchie* (Morgenblatt), “Literatur: Grundelemente der neuen chinesischen Staatsform,” March 14, 1911; *Pilsner Tagblatt*, “Chinesisches Wahlrecht,” April 1, 1911.

with Chinese counterparts, the opinions Tolstoy expressed therein, and how they were discussed across Eurasia.

Tolstoy was noted as a religious anarchist, whence his name is noted in the studies about Chinese anarchism, but not in constitutional studies.⁸⁹⁸ But his anarchism was actually the flip-side of an anti-constitutional attitude, which stood in dialogue with Chinese constitutionalists and anti-constitutionalists alike. This also serves to show how fundamental opposition to the concept of constitutions was not limited to arch-reactionary circles in China, but was also discussed across national borders.

Tolstoy had had letter contact with Japanese counterparts for some time, but not with Chinese.⁸⁹⁹ The first Chinese who contacted him was a man named Zhang Qingtong 張慶桐 (1872–?). Zhang had gone to Russia in 1899 as part of a batch of students sent by the *Tongwenguan* 同文館. Later, he enrolled in the law faculty of Saint Petersburg State University, where he studied with Friedrich Fromhold Martens (1845–1909) and graduated at the end of 1905.⁹⁰⁰ In Russia, Zhang did not only have contact with Leo Tolstoy, but with a whole range of high-ranking Russian counterparts. He himself, however, did highly value his corre-

⁸⁹⁸ On this subject see Müller, *China, Kropotkin und der Anarchismus*, 193.

⁸⁹⁹ Romain Rolland, “La réponse de l’Asie à Tolstoy,” *Europe—Revue Mensuelle*, 67 (numéro spécial consacré à Tolstoï) (1928), 39.

⁹⁰⁰ On Zhang Qingtong see Yan Guodong 閻國棟, “Goutong Zhong E wenhua de xianqu: Zhang Qingtong shengping shiji buju” 溝通中俄文化的先驅：張慶桐生平事跡補苴 (A pioneer of communication between the Chinese and Russian cultures: Setting right the achievements of Zhang Qingtong’s life), *Eluosi wenyi* 俄羅斯文藝, no. 2 (2009), and Zhang Zhongxing 張中行, “Zhang Qingtong” 張慶桐, *Dushu* 讀書, no. 12 (1989). In the first years of the 20th century, there were not only large numbers of Chinese students in Japan, the United States and Western Europe. Some Chinese were also studying in Russia. For example, two students in Russia who were members of Duanfang’s constitutional mission: Yue Zhaoyu 岳昭燭 (1879–?) and Bo Shan 柏山. Zhang Qingtong was not a member. See Zhao Huixia 趙惠霞 and Zhou Mian 周棉, “Guiguo liuxuesheng dui Qingmo yubei lixian de canyu he yingxiang” 歸國留學生對清末預備立憲的參與和影響 (The participation and influence of the returned students abroad on the late Qing constitutional preparation), *Tianjin Shifan Daxue xuebao* (shehui kexue ban) 天津師範大學學報 (社會科學版), no. 252 (2017), 18.

spondence with Tolstoy, as can be seen from his travel memories, in which he publishes a fac-simile of the original letter sent to him by Tolstoy, as well as a photo of Tolstoy. These are the only illustrations in the whole book.⁹⁰¹

Mostly finished in 1906, the memoirs were published in 1912 under the title *Impressions of Travels in Russia* (*Eyou shugan* 俄遊述感). In the book, Zhang not only describes his own experiences in Russia, but also gives an account of the political and legal history of Russia. For example, he recounts an event of great interest for Chinese and Korean intellectuals at the turn of the 20th century: The partition of Poland in the second half of the 18th century, in which the Polish constitution of 1793 played a central role.⁹⁰²

Zhang also translates some sections of the *Instruction* of Catherine II, a 1767 document given to the commission in charge of composing a new Code of Laws. The *Instruction* departed from the view of law as an instrument through which government exercises its authority. As such, it was a Russian reflection of the ideas of enlightenment, but was actually closer to the German cameralist jurist of the time than to the French philosophers of enlightenment.⁹⁰³ Out of 526 original sections (without supplements), Zhang (abridgedly) translates 12. The selection made by Zhang shows that the document, while defending autocracy as the best form of government for Russia, also demanded the rule of law and stipulated that all men were equal before the law.⁹⁰⁴ The selection also closely resonated with the Chinese constitutional debate being led at that time. For example, one of the translated sections—no. 58—showed that the notion of “equipping the people with knowledge” had already been central to the Russian reforms of the 18th century. Such a sentence could also have been used in a purely Chinese text on constitutionalism:

⁹⁰¹ Zhang Qingtong 張慶桐, *Eyou shugan* 俄遊述感 (Impressions of travels in Russia) (N.p.: [1912]), between 26 and 27.

⁹⁰² *Ibid.*, 8.

⁹⁰³ Geoffrey A. Hosking, *Russia: People and Empire 1552–1917* (Cambridge [Massachusetts]: Harvard University Press, 1997), 99.

⁹⁰⁴ Zhang, *Eyou shugan*, 9–11. Zhang translates sections. 9, 11, 33, 34, 38, 39, 41, 58, 59, 210, 240, 245.

In order to introduce better Laws, it is essentially necessary to prepare the Minds of the People for their Reception. (...)

Для введенія лучшихъ законовъ необходимо, потребно умы людскіе къ тому приуготовить. (...)

開通民智爲施行良好法律必要之預備⁹⁰⁵

Being interested in the reform processes in both countries, Zhang also contributed to introducing China to a Russian audience. In 1904/05, together with a Russian friend, Arseniy Nikolaevich Vosnesenskiy (1881–1937), Zhang translated into Russian a study that Liang Qichao had written about Li Hongzhang: *Record of the Important Matters of China in the Past 40 Years (or: Li Hongzhang)* (*Zhongguo sishinianlai dashi ji [yiming Li Hongzhang]* 中國四十年來大事記[一名李鴻章]). Li Hongzhang had been a reformer, although not a specifically constitutional one, for he had died in 1901. Accordingly, the book did not place a focus on constitutions. However, it did mention it as an objective to be attained by modern states and as the differential which made Japan strong and China weak:

Nonetheless, the one point where Itō had an advantage over Li was that he once had travelled to Europe for study and knew the origins of politics. That is why Itō could craft a constitution as a plan for Japan's lasting stability, while Li Hongzhang only patched up holes, uglifying things, just as

⁹⁰⁵ Ibid., 11. For the Russian version see Catherine II, *Nakaz" eiā Imperatorskago Velichestva Ekateriny Vtoryiā Samoderzhitsy Vserossiiskiiā. Danniī kommissii o sochinenii proēkta novago ulozheniā. (S" prinadlezhashchimi k" tomu prilozheniām)* Наказъ ея Императорскаго Величества Екатерины Вторыя Самодержицы Всеросіискія. Данный коммисіи о сочиненіи проэкта новаго уложенія. (Съ принадлежащими къ тому приложеніями.) ([Moscow]: [pechatan" pri senatiē], [1767]), 12. The document was originally penned in French by Catherine, but translated by her into Russian and first printed in Russian and German in Moscow in 1767. The English version follows the contemporary translation, see Catherine II, *The Grand Instructions to the Commissioners Appointed to Frame a New Code of Laws for the Russian Empire. Composed by Her Imperial Majesty Catherine II. Empress of all the Russias: To Which is Prefixed, a Description of the Manner of Opening the Commission, with the Order and Rules for Electing the Commissioners*, trans. Michael Tatischeff (London: Printed for T. Jefferys, 1768), 80.

someone who attempts to draw a tiger and only brings a dog to paper, at the end achieving no results.

雖然，伊有優於李者一事焉，則曾游學歐洲，知政治之本原是也。此伊所以能制定憲法爲日本長治久安之計，李鴻章則惟彌縫補苴，畫虎效顰，而終無成就也。⁹⁰⁶

Vosnesenskiy's and Zhang's translation appeared at the press of Vladimir Antonovich Berezovskii (1852–1917) in Saint Petersburg under the title *Li Hongzhang or the political history of China in the last 40 years (Likhunchzhan" ili politicheskaiâ istoriâ kitaiâ za posliedniâ 40 liêt Likhunchzhan' ili politicheskaya istoriâ Kitaya za posliedniâ 40 liêt)*. In the preface to the translation, Zhang struck the chord of national strengthening. He stressed how the two countries were intimately related, and what happened in the one could have an impact in the other. China, he explained to the Russian audience, needed to rise, for only then would there be a stable peace and only then would the great spirit of the Hague Conference be realised if everyone had equal forces.⁹⁰⁷

⁹⁰⁶ The original is to be found in Liang Qichao, "Zhongguo sishi nian lai dashi ji (yiming Li Hongzhang)" 中國四十年來大事記（一名李鴻章）(Record of the important matters of China in the past 40 years [or: Li Hongzhang]). In *Liang Qichao quanji*, 510–54 (the cited part is to be found in 551). It is also to be found in the Russian translation in Arsenii Nikolaevich Voznesenskiĭ, Арсеній Николаевич Вознесенскій and Zhang Qingtong 張慶桐, *Likhunchzhan" ili politicheskaiâ istoriâ kitaiâ za posliedniâ 40 liêt Likhunchzhan' ili politicheskaya istoriâ Kitaya za posliedniâ 40 liêt* (Li Hongzhang or the political history of China in the last forty years) (St. Petersburg: V. Berezovskii, 1905), 267–268.

⁹⁰⁷ Ibid., xiii. Zhang also has a Chinese version of the preface in his memoirs. See Zhang, *Eyou shugan*, 53–58.



Cover of the 1905 Russian version of Li Hongzhang or the political history of China in the last 40 years
by Liang Qichao, stored at Tōyō Bunko 東洋文庫 in Tokyo

Zhang wanted the book to widely circulate within Russian society and had copies of it given to politicians, journalists and literati. In his memoirs from Russia, he describes *in extenso* how he translated and distributed the book, noting not without satisfaction that the newspapers of Saint Petersburg and Moscow had extensively commented on it.⁹⁰⁸ Zhang had personal audiences with several of the recipients and left detailed notes about what he discussed with them. Among the recipients of the book were:

⁹⁰⁸ Ibid., 58 ("politicians, journalists and literati") and 74 ("newspapers of Saint Petersburg and Moscow").

- Sergei Witte, Chairman of the Committee of Ministers until November 1905 and Prime Minister beginning from November 1905. Zhang writes that upon receipt of the book, Witte told Lu Zhengxiang 陸徵祥 (1871–1949), a diplomat posted at the Chinese legation and later minister of China to Russia, that Russia was experiencing great changes at that time which originated in the Far East. Allegedly, Witte gave a copy to the Czar, who thanked Zhang by bestowing him a 3rd degree Order of Stanislaus. It must be added, however, that this was the lowest degree of the order, bestowed in large numbers. Witte does not mention Zhang in his memoirs, and as yet there is no independent confirmation of Zhang’s version.⁹⁰⁹
- Count Wladimir von Lambsdorff (1845–1907), foreign minister of Russia, with whom Zhang had an audience.⁹¹⁰
- Georgij Antonovich Planson (1859–1937), a Far East specialist at the ministry of foreign affairs and delegate to the Peace conference at Portsmouth. In his audience with Zhang, the two men talked about Far Eastern politics.⁹¹¹
- Ivan Jakovlevich Korostovec (1862–1933), another Far East specialist at the ministry of foreign affairs and delegate to the Peace conference at Portsmouth, who would be later sent as minister to the Qing Empire. Korostovec had been stationed to the Kwantung Leased Territory and participated at the Boxer War. He told Zhang about his experiences in the Boxer War, in terms that Zhang found “utterly laughable” (*lingren fajue* 令人發噱).⁹¹²

⁹⁰⁹ Ibid., 58–60.

⁹¹⁰ Ibid., 60–63.

⁹¹¹ Ibid., 63–66.

⁹¹² Ibid., 66–67. Yan, “Goutong Zhong E wenhua de xianqu,” 114, has Korostovec as minister to China. However, he would only become minister to the Qing Empire late, namely from 1909 to 1911.

- Prince Esper Esperovich Ukhtomskii (1861–1921), a writer about the Far East who had accompanied Czarevich Nicholas II on his great eastern tour of 1890-1891. Zhang and Ukhtomskij did not meet personally.⁹¹³
- Friedrich Fromhold Martens (1845–1909), Zhang's professor of international law in St. Petersburg. Zhang did hold Martens in high regard, for Martens heavily criticised the "the use of military force by civilised nations to compel countries to develop," and thus criticised the Western powers' imperialist policies towards China. Zhang visited Martens at his home and discussed various matters with him, including international politics.⁹¹⁴
- Count Alexander von Benckendorff (1849–1917), minister of Russia to the United Kingdom. In their audience, Benckendorff was mainly interested in Sino-Japanese relations, asked why China had rather sided with Japan in the Russo-Japanese and whether he knew many specialists of the Far East in Russia, a question which Zhang replied to negatively.⁹¹⁵
- The writer Leo Tolstoy.

It is Zhang's correspondence with the latter which shows that the translation of Liang Qichao's book into Russian was not merely an introduction to China for Russian audiences. The Chinese government had just sent the constitutional commission overseas, and by distributing the book to Russian political and opinion leaders, Zhang was also indirectly exhorting the Russians to effect similar reforms as the Chinese.

His letter to Leo Tolstoy, dated December 1, 1905, has survived, together with Tolstoy's answer. In fact, the letter has survived in two quite divergent versions. One version was translated by Zhang himself into Chinese and published in his travel account. In this version, Zhang talks about Russian imperialism, which

⁹¹³ Zhang, *Eyou shugan*, 67.

⁹¹⁴ *Ibid.*, 67–70.

⁹¹⁵ *Ibid.*, 71–74.

led the Chinese people to “become indignant—nay, infuriated—and think of Russia as a truly wolfish country” (*woguo min fen qie nu, yiwei E zhen hulanguo* 我國民憤且怒以爲俄真虎狼國). However, Zhang contends that the deeds of Russian foreign policy could not be imputed to the people, for people and government had to be thought of separately, and both peoples had to find ways to become closer to each other.⁹¹⁶

But there is another interpretation of Zhang’s words which comes to light in the much longer version of his letter preserved at the recipient’s side. This version confirms the political intentions of distributing the book. Therein, Zhang writes that:

By translating the work of Liang Qichao, we intend, on the one hand, to show the ethical structure of the Chinese to the Russian people, but also to influence the Russian government in the sense that it forsakes the political principles which are harming us in the same way as the Russians.

... In the system of government of Russia and, still until recently, of China, government and people constituted two separated factors, and without doubt, it was unjustified to judge the entire people on single deeds of its government. ... For the actions of the government, the whole people was made co-responsible, even if it did not have a clue about the measures.⁹¹⁷

Hence, with these words about the separation of the government from the people, Zhang was also talking about the introduction of a “constitutional” (representative) system. The reference to the recent change in the state of things in China was probably a hint on the decision to send travelling commissioners abroad in order to study constitutionalism.

⁹¹⁶ Ibid., 22.

⁹¹⁷ Paul Birukoff, ed., *Tolstoi und der Orient: Briefe und sonstige Zeugnisse über Tolstois Beziehungen zu den Vertretern orientalischer Religionen* (Zürich et al.: Rotapfel-Verlag, 1925), 127.

This is also how Tolstoy understood Zhang's letter: as intending to promote Western-style reforms. Disagreeing with Zhang's words, Tolstoy denied that this was the right way to go. In his answering letter, dated December 4, 1905, after expressing his joy to have received a letter by a Chinese, he showed strong opposition to such modernisation. Also hinting at the proposed political and constitutional reforms for China, he wrote:

It seems to me from your letter that you are positive towards the proposed reforms in Chinese politics and society, Certainly, one will be able to agree with reforms which support the natural growth, the development and cultural perfection of a people, but it would be a mistake to copy things foreign, to introduce ways of life into China, whose inadequacy in Europe and in America has long since revealed itself to every pervasive mind. Reforms must grow by themselves out of the nature of a people and yield something wholly new, which does not resemble in any way the institutions of other peoples. ... God beware lest China follow the ways of Japan. ... I completely agree with you that there is a spiritual link between both great peoples, the Russian and the Chinese, and that they must coöperate, but not in form of political alliances or treaties between the governments. Both, in particularly their agrarian populations, must develop a new way of life independently from the government, but not chase after all sort of liberties, freedoms of thought and speech, popular representations and the like, instead, they should pursue that real freedom which lies therein that they can live without the need of a government and without recognising anything above them but the moral law.⁹¹⁸

⁹¹⁸ Leo Tolstoy, *Polnoe sobranie sochinenii* Полное собрание сочинений (Complete collected works), ed. Chertkov, Vladimir Grigor'evich (Moscow, Leningrad: Gosudarstvennoe izdatel'stvo khudozhestvennaia literatura, 1956), vol. 76, 62–64. A facsimile of Tolstoy's handwritten letter is published in Zhang's memoirs, Zhang, *Eyou shugan*, between 26 and 27. Zhang translates it into Chinese in 22–24. At the time Derk Bodde published his groundbreaking study on Tolstoy and China, the original Russian version had not yet been published, so he had to refer to the abridged German translation

Although Zhang noticed Tolstoy's earnestness and deep feelings for China, his answer did not change Zhang's reform-mindedness. Zhang returned to China at the end of 1905, where he first took an official position at the public works administration of the Beiyang provinces. Later, he joined the Chinese delegation to the 1907 Peace Conference at the Hague, where his Saint Petersburg friend, Lu Zhengxiang, had become minister.⁹¹⁹ After returning to China, he frequently discussed matters with Wang Rongbao, one of the men who was entrusted with drafting the definitive Qing constitution.⁹²⁰

c) Tolstoy and Ku Hung-ming

Tolstoy reiterated his anti-constitutional stance in 1906, when he wrote a letter to a man already known to the reader: Ku Hung-ming. Ku stayed true to his thoughts expressed in 1901 and was now staunchly opposed to China's constitutional reforms. Thus, he had copies of two of his books sent to Tolstoy through the Russian Consulate-General: The already-mentioned *Papers from a Viceroy's Yamen* and the smaller *Et nunc reges, intelligite! The Moral Causes of the Russo-Japanese War*.⁹²¹

in: Birukoff, *Tolstoi und der Orient*, 128–129. See Derk Bodde, *Tolstoy and China*, with the collaboration of Galia Speshneff Bodde (Princeton: Princeton University Press, 1950), 47–48.

⁹¹⁹ Yan, "Goutong Zhong E wenhua de xianqu," 110. His participation in the Hague conference, however, was rather minor. On the Chinese delegation and Zhang's standing see Tang Qihua 唐啓華, "Qingmo Minchu Zhongguo dui 'Haiya Baohehui' zhi canyu (1899–1917)" 清末民初中國對“海牙保和會”之參與（1899–1917）（China's participation in the “Hague Peace Conferences” in the late Qing and early Republic, 1899–1917), *Guoli Zhengzhi Daxue lishi xuebao* 國立政治大學歷史學報 23, May (2005), 60.

⁹²⁰ He is mentioned 16 times in Wang's diary from 1909–1912. But although Wang mentions meeting Zhang for discussions or even “long discussions,” he remains silent about the contents of these meetings. Wang Rongbao 汪榮寶, *Wang Rongbao riji* 汪榮寶日記 (Diaries of Wang Rongbao), eds. Han Ce 韓策, Cui Xuesen 崔學森, and Wang Xiaoqi 王曉秋 (Beijing: Zhonghua shuju, 2013), 494.

⁹²¹ Bodde, *Tolstoy and China*, 50. For the books sent by Ku see Ku, *Papers from a Viceroy's Yamen*, and Ku Hung-ming, *Et nunc, reges, intelligite: The Moral Causes of the Russo-Japanese War*. On *Nunc reges, intelligite!* see Hatakeyama Kaori 畠山香織, “Ko Kōmei no ‘Nichi-Ro sensō no tōtokuteki gen'in’ ni tsuite” 辜鴻銘の『日露戦争の道徳的原因』について (On Ku Hung-ming and his *Moral causes of the Russo-Japanese war*), *Kyoto Sangyo University essays*, Humanities ser. 41, no. 3 (2010).

The latter publication, *Et nunc, reges, intelligite*, did not directly touch upon constitutions. It was, again, a republication in book form of a piece Ku had published in the *Japan Mail* in December 1904. In the thin booklet, published in 1906 by the *Shanghai Mercury*, Ku explored the moral causes of the Russo-Japanese War and argued that the war was just a misunderstanding. Ku flatteringly wrote that there was only one man who had suggested the true way to end the war—a way which was Christian, but at the same time also the true Confucian method: Leo Tolstoy.⁹²² He ended the essay—hence its title—directly calling the Emperors of Japan and of Russia to reach an armistice.⁹²³

But ignoring the flattering, Tolstoy writes⁹²⁴ that it was especially the *Papers from a Viceroy's Yamen* which caught his interest. It was this book which contained Ku's polemical assessment of the Constitution of the USA. From the outset, thus, the correspondence of the two men had constitutionalism as one of its main elements. Ku's conclusion in the essay about the USA stood in harmony with Tolstoy's religious anarchism:

The true state or constitution now is not the modern lawyer's Constitution. The true state now and at all times is the state that makes and declares the true law of God's justice.⁹²⁵

It is not surprising, thus, that Ku wrote a very positive open letter in response, on which he worked during most of the second half of September 1906.⁹²⁶ Later discussions of the correspondence generically state that Tolstoy argued against modernisation and proposed his religious anarchism instead. But as will be shown here,

⁹²² Ku Hung-ming, *Et nunc, reges, intelligite*, 2.

⁹²³ *Ibid.*, 38–39.

⁹²⁴ Leo Tolstoy, 1. *Pis'mo k" kitaiŕsu (Oktiābr' 1906 g.)*. 2. *Kitaĭskaiā mudrost' . Mysli kitaĭskikh" myslitelei* 1. *Письмо къ китаѣцу (Октябрь 1906 г.)*. 2. *Китайская мудрость. Мысли китайскихъ мыслителей*. (1. *Letter to a Chinese gentleman (October 1906)*. 2. *Chinese Wisdom. Thoughts of Chinese thinkers*) (Moscow: Posrednika, 1907), 1.

⁹²⁵ Ku, "Latter-Day Notes on the Chinese Question," in Ku Hung-ming, *Papers from a Viceroy's Yamen*, 170.

⁹²⁶ Bodde, *Tolstoy and China*, 50. For the text of the letter in the *Jubilee Edition* see Tolstoy, *Polnoe sobranie sochineniĭ*, vol. 36, 290–299.

the core of Tolstoy's answer, as well as of Ku's submission, is an anti-constitutional argument, which was also perceived as such at the time.

Lu Xun mentioned constitutions next to financial and military matters, despising those who hoped for such superficial things to save China, but he did not attack the concept of a constitution as such. In contrast to him, Tolstoy went much farther. In his letter, Tolstoy argued that if man were to submit to a human institution like a constitution rather than to the natural or divine order, he would always be a slave. To Tolstoy, constitutions, as well as a modern military and modern industries were signs of human depravation. The moral decay of autocracies had been resolved in the West by popular representatives charged with limiting the government, but this system had just meant the expansion of violence from one autocrat to more people. Japan had followed the same path, to its own detriment:

Japan has done this, has introduced a Constitution and extended the Army and Fleet, and developed industry, and the result of all these inseparably interconnected measures is already obvious [sic!] The condition of its people more and more approaches the position of the European nations, and this position is extremely urdensome [sic!].

Японія сдѣлала это, ввела конституцію и усилила войско и флот и развила промышленность, и послѣдствія этихъ всѣхъ неразрывно связанныхъ между собою мѣръ уже явны. Положеніе ея народа все болѣе и болѣе приближается къ положенію народовъ Европы, а положеніе это очень тяжелое.⁹²⁷

To this, Tolstoy juxtaposed the main four Empires that still did not have a constitution: China, Russia, Persia and Turkey. These should solve the evils of despotism by other means than the West. They should free themselves from human authority

⁹²⁷ Tolstoy, 1. *Pis'mo k' kitaiŭsu*, 9. The English translation follows the 1907 book edition: Leo Tolstoy, "Letter to a Chinese Gentleman," in Leo Tolstoy, *The Russian Revolution* (Christchurch, Hants., Strand, London: Free Age Press, 1907), 83. The first English edition of 1906 has some slight differences in punctuation.

and submit themselves to divine authority. Tolstoy's anarchist stance was even explicitly a comment on the Chinese constitutional movement as well as on Russia's adoption of a constitution:

[5] This solution, which at first sight appears the simplest and most natural, is not only a superficial one, but very silly, and, according to all I know about China, it is altogether alien to the wise Chinese people. To organise such a constitution, such an army, perhaps also, such a conscription, and such an industry as the Western nations have got would mean to renounce all that by which the Chinese people have lived and are living. It would be to renounce their past and to renounce their rational, peaceful, agricultural life, that life which constitutes the true and only way of Tao, not only for China, but for all mankind.

[7] We Russians first of all should not obey the existing authorities, but we also should not do that which is being attempted amongst us by unenlightened people, as amongst you, by the party of reform, — we should not imitate the West : we should not substitute one Power for another and organise a constitution, whether it be monarchical or republican

[5] Рѣшеніе это, кажущееся съ перваго взгляда самымъ простымъ и естественнымъ, есть рѣшеніе не только легкомысленное, но очень глупое и по всему тому, что я знаю о Китаѣ, совершенно несвойственное мудрому китайскому народу. Завести такую же конституцію, такое же войско, можетъ-быть, и такую же общую воинскую повинность, такую же промышленность, какъ у западныхъ народовъ, значило бы отречься отъ всего того, чѣмъ жилъ и живетъ китайскій народъ, отречься отъ своего прошедшаго, отречься отъ разумной, миролюбивой, земледѣльческой жизни, той жизни, которая составляетъ истинный и единый путь, Тао, не только для Китая, но для всего человѣчества.

[7] Не надо намъ, русскимъ, прежде всего, повиноваться существующей власти, но также не надо намъ и дѣлать того, что затѣваетъ у насъ, такъ же какъ и у васъ, партія реформъ, неумные люди; не надо, подражая Западу, замѣнять одну власть другою, учреждая конституцію, какую бы то ни было, монархическую или республиканскую.⁹²⁸

While Tolstoy's position might have been a minority, it was heard throughout Eurasia. Tolstoy's letter immediately found wide circulation. His letter was not only published in the original Russian,⁹²⁹ but also swiftly translated into various European and Asian languages: From 1906 to 1911, the letter was published at least 12 different times in at least 6 different languages. It was first published in French edition no. 47 of the *Courrier Européen*, which appeared on November 30, 1906.⁹³⁰ A day later, on December 1, 1906, it appeared in German—namely in the leading Vienna paper, the *Neue Freie Presse*.⁹³¹ The first English edition appeared on the same day in the London *Saturday Review*.⁹³² A few days later, a Russian retranslation from the French version appeared St. Petersburg daily *Novoe vremya* of December 4, 1906 (O.S. November 21).⁹³³ The original Russian was then published in 1907 as part of a booklet containing the letter and a collection of ancient Chinese

⁹²⁸ Tolstoy, *Pis'mo k' kitaitŝu*, 8–9 [5], 11 [7]. English: Tolstoy, "Letter to a Chinese Gentleman," in Tolstoy, *The Russian Revolution*, 83 [5], 85 [7].

⁹²⁹ Tolstoy, *Pis'mo k' kitaitŝu*.

⁹³⁰ Leo Tolstoy, "Lettre a un Chinois," *Le Courrier Européen*, November 30, 1906.

⁹³¹ Leo Tolstoy, "Brief an einen chinesischen Gentleman," *Neue Freie Presse*, December 1, 1906. The standard scholarly Tolstoy edition (*Jubilee Edition*), Tolstoy, *Polnoe sobranie sochineniĭ*, vol. 36, 695–696, mistakenly claims that the letter appeared in German in the *Freie Neue Presse* of "November 1906." The secondary literature has copied the mistake, see Bodde, *Tolstoy and China*, 32 (N. 7, making clear that he is citing the 1936 edition), and Uwe Riediger, "Ku Hung-ming," 200 (footnote 14, not making clear he is not citing from the original). Another German translation is to be found in Birukoff, *Tolstoi und der Orient*, 130–142.

⁹³² Leo Tolstoy, "Letter to a Chinese Gentleman," *Saturday Review* 102, no. 2666 (1906). The author would like to thank Ronan Farrell for pointing out this edition to him.

⁹³³ *Novoe vremya*, no. 11026, November 21, 1906, cit. in Tolstoy, *Polnoe sobranie sochineniĭ*, vol. 36, 696. That it was a back-translation is stated in the first Russian original edition of 1907. Tolstoy, *Pis'mo k' kitaitŝu*, 1.

wisdom edited by Tolstoy.⁹³⁴ Its English edition was also published as part of a 1907 book entitled *The Russian Revolution*, which contained various essays of Tolstoy's and was edited by the Free Age Press, an organ closely connected to him.⁹³⁵ Four years later, in 1911, a book edition then also appeared in German. It was published by the philosopher Eugen Heinrich Schmitt (1851–1916), who also edited other works by Tolstoy. It was also included in a number of Tolstoy anthologies, such as in Germany, in 1911, 1922, 1925 and 1928.⁹³⁶ In fact, both Tolstoy and Ku Hung-ming remained rather popular in a Europe that had witnessed the horrors of World War I.⁹³⁷

Eugen Heinrich Schmitt, the German book editor, even made the constitutional aspect the absolute centrepiece of his 1911 edition of the letter, publishing the whole book under the subtitle *Exposition of the Dangers of Representative Constitutions*.⁹³⁸ In his preface, Schmitt expanded Tolstoy's argument that the limitation of the ruler's power by constitution just led to an increase of the people participating in tyranny. The people newly-empowered by constitutionalism would then begin to prey on and plunder other peoples. The Middle and the Far East were then being the main victims of such a constitutionalism-induced exploitation:

⁹³⁴ Ibid.

⁹³⁵ Leo Tolstoy, "Letter to a Chinese Gentleman," in Tolstoy, *The Russian Revolution*. On Tolstoy's English "home editor," the Free Age Press, and his translator Vladimir Chertkov see Michael J. d. K. Holman, "Translating Tolstoy for the Free Age Press: Vladimir Chertkov and his English Manager Arthur Fifield," *The Slavonic and East European Review* 66, no. 2 (1988).

⁹³⁶ Martin George et al. trans., eds., *Tolstoj als theologischer Denker und Kirchenkritiker* (Göttingen: Vandenhoeck & Ruprecht, 2014), 741–742. The 1925 anthology is Birukoff, *Tolstoi und der Orient*, which formed a basis for many studies on Tolstoy and China.

⁹³⁷ On Ku Hung-ming's popularity see Müller, "Gu Hongming (1857–1928) und Chinas Verteidigung gegen das Abendland," 8–9.

⁹³⁸ Leo Tolstoy, *Brief an einen Chinesen, Darlegung der Gefahren repräsentativer Verfassungen: Mit einem Anhang von Sprüchen chinesischer und buddhistischer Weisheit*, trans. Albert Skarvan, ed. Eugen Heinrich Schmitt (Hannover: Adolf Sponholtz Verlag, 1911). The book was published by Adolf Sponholtz Verlag, a rather large editor from Hannover; the book's circulation can be surmised by the fact that it was sold all over the German-speaking world, as is evidenced by a note in the regional paper of Laibach (Ljubljana), in today's Slovenia. *Laibacher Zeitung*, "Neuigkeiten am Büchermarkte," June 13, 1911, 1274.

But actually, this merely led to an increase of the number of those people who participated in the violent rule, and of their material advantages of exploiting the honestly working people. That is, this led to more exploitation by the ruling, parasitical classes—i.e., such peoples begin to suck out and plunder other peoples. Currently, according to Tolstoy, the Orient and also the Far East are the chief object of such exploitation.

Dies führte aber eigentlich nur zu einer Vermehrung der Zahl derjenigen Menschen die an der Gewaltherrschaft teilnehmen und an ihren materiellen Vorteilen in der Ausbeutung der ehrlich arbeitenden Menschen, also zu einer grösseren Ausbreitung der herrschenden, der parasitären Schichten – Es gehen also solche Völker darauf aus, andere Völker auszusaugen und auszuplündern. Gegenwärtig bilde der Orient und auch der ferne Osten das hauptsächlichste Objekt einer solchen Ausbeutung.⁹³⁹

Tolstoy's letter did not only contribute to debates about constitutionalism in Europe. In Chinese language, Tolstoy's letter was published at least four times before the proclamation of the republic. All of these translations were abridged, although secondary literature has mistaken some to be full translations. In 1907/08, the letter was published thrice in the Tokyo-based anarchist magazine *Tianyi* 天義. Mostly, just one of these three translations is remembered, and one of these had been hitherto completely unidentified. Three years later, in 1911, Tolstoy's letter was partially reprinted in the *Eastern Miscellany*, the pro-reform general magazine of Shanghai.⁹⁴⁰ There was also a further, republican-time partial translation published in the *Eastern Miscellany* of 1928.⁹⁴¹

⁹³⁹ Tolstoy, *Brief an einen Chinesen*, vii-ix.

⁹⁴⁰ Leo Tolstoy, "Eguo dawenhao Tuersitai bojue yu Zhongguo moujun shu" 俄國大文豪託爾斯泰伯爵與中國某君書 (Letter of Russian literary master, Count Tolstoy, to a certain Chinese gentleman), *Dongfang zazhi* 東方雜誌 8, no. 1 (Xuantong 3 [1911]).

⁹⁴¹ Leo Tolstoy, "Tuersitai de liang feng xin" 託爾斯泰的兩封信 (Two letters by Tolstoy), trans. Wei Li 味荔 [pseudonym], *Dongfang zazhi* 東方雜誌 25, no. 19 (Minguo 17 [1928]).

The first, hitherto unidentified, partial translation of Tolstoy's letter into Chinese was published in the 5th edition of the *Tianyi* magazine, which appeared on July 10, 1907.⁹⁴² However, not even the translator was aware that he was publishing the "Letter to a Chinese Gentleman"—the article was not introduced as Tolstoy's letter to Ku Hung-ming, but as a reply letter by Tolstoy to the publishers of the Japanese newspaper *Hōchi shimbun* 報知新聞. Scholarship has maintained the misunderstanding up to this day—but in fact, the two letters were just one.

What had happened? On March 28, 1907 (N.S.), Minoura Katsundo 箕浦勝人 (1854–1929), member of the Japanese parliament and editor of the *Hōchi shimbun*, had written a letter on behalf of his newspaper to ask Tolstoy about his views of Japan.⁹⁴³ The question by Katsundo did actually not stand alone, but was apparently part of a series, in which he, e.g., also asked members of the German *Reichstag* und of all the *Landtage* what they thought about Japan.⁹⁴⁴

Tolstoy responded, in German language, to Minoura's letter on May 3, 1907 (April 20 O.S.). But he did not write another essay for the occasion, instead referring to his letter to Ku Hung-ming, which he had composed a few months earlier:

Replying to your question, I send you my letter to a Chinese, whence you shall see my views on the peoples of the far east. The letter—in English—is enclosed in a book wrapper.

⁹⁴² Leo Tolstoy, "Jieyi E Duerside da Riben Baozhi Xinwenshe shu" 節譯俄杜爾斯德答日本報知新聞社書 (Abridged translation of a letter by the Russian Tolstoy to the Japanese Hōchi News Agency), trans. Qu Fei 去非 [Zhu Zhixin 朱執信? Hu Hanmin 胡漢民?], *Tianyi* 天義, no. 5 (1907). The magazine containing the article is reprinted in Kobayashi Jitsuya 小林實彌, ed., *Tengi* 天義 (Tokyo: Daian, 1966).

⁹⁴³ Leo Tolstoy, *Polnoe sobranie sochineniĭ*, vol. 77, 90. On Tolstoy and Japan see Rolland, "La réponse de l'Asie à Tolstoy," 39–42; Claus M. Fischer, *Lev N. Tolstoj in Japan (Meiji- und Taishō-Zeit)*, (Wiesbaden: Otto Harrassowitz, 1969); Aleksandr Iosifovich Shifman Александр Иосифович Шифман, *Lev Tolstoj i vostok* Лев Толстой и восток (Leo Tolstoy and the East), 2nd ed. (Moscow: Nauka, 1971). None of these mentions the Japanese translation of Tolstoy's letter to a Chinese. Shifman mentions the letter to the *Hōchi Shimbun* (288), but focuses on Tolstoy's postscript and ignores the letter to a Chinese.

⁹⁴⁴ *Rus' Pysb*, "Vniēshniiā izviēstiiā" Внѣшнія извѣстія [Foreign news], December 5, 1907.

Als Antwort auf Ihre Frage send'ich Ihnen meinen Brief an einen Chinesen, aus welchem Sie meine Ansicht über die Völker des fernen Ostens ansehen werden. Der Brief, englisch, folgt unter Kreuzbande.⁹⁴⁵

To this, Tolstoy only added a postscript reiterating his view that Japan was on the wrong track and should not follow the way of the Western nations:

P.S. In general, I believe that the oriental peoples—Chinese as well as Japanese—will have a great influence on the history of mankind. But only in case these peoples shall find they own original way and do not, as it unfortunately happens today, particularly with the Japanese, see the perverse situation of the Christian nations as worthy of imitation.

P.S. Im allgemeinen glaube ich, dass die Oestlichen Volker Chinesen so wie Japaner, einen grossen Einfluss auf die Geschichte der Menschheit haben werden. Aber nur im Falle, wenn diese Völker ihren eigenen originalen Weg einschlagen werden und nicht wie es leider heute geschieht, besonders bei den Japaner (sic!), den verkehrten Zustand der christlichen Nationen als nachahmungswertes Ideal ansehen.⁹⁴⁶

From the Japanese *Hōchi shimbun*, Tolstoy's letter to Ku Hung-ming found its way to the *Tianyi*. There, in no. 5, it was mistakenly published as an original letter sent to the *Hōchi shimbun*: "Abbreviated translation of a letter by the Russian Tolstoy replying to the Japanese Hōchi News Agency" (*Jieyi E Duerside da Riben Baozhi Xinwenshe shu* 節譯俄杜爾斯德答日本報知新聞社書). The translator was probably Hu Hanmin 胡漢民 (1879–1936) or Zhu Zhixin, as the article was published under their shared *nom de plume* Qu Fei 去非.

⁹⁴⁵ Tolstoy, *Polnoe sobranie sochineniĭ*, vol. 77, 89–90. The letter is also contained Birukoff, *Tolstoi und der Orient*, 163–164 (with a slightly different wording). Tolstoy's letter to Minoura dated April 20, 1907 (O.S. = N.S. May 3, 1907). However, Tolstoy converts the date to May 2 on a few instances.

⁹⁴⁶ Tolstoy, *Polnoe sobranie sochineniĭ*, vol. 77, 89–90.

The letter had not only been somewhat shortened in its *odysseia*, but, given the double translation, it had also been somewhat distorted.⁹⁴⁷ But its similarity to the original was still more than conspicuous. By the time of its publication in the *Tianyi*, the translator must have had read Tolstoy's letter to Ku Hung-ming from another source, and could not fail to notice the resemblance. He added a note at the end of his translation, stating:

This letter fits perfectly to what is said in the letter to the Chinese.

此書與致支那人書所言相表裏⁹⁴⁸

Well, it *was* the letter to the Chinese. Of the four translations of the letter into Chinese, the first one in no. 5 of the *Tianyi* was the most conspicuous one in regard to the notion of constitutionalism. For Tolstoy's letter was published in a medium of which one of the main themes was constitutionalism—but in a negative form. The *Tianyi* was an anarchist magazine published in Tokyo by He Zhen 何震 (ca. 1884–ca. 1920), the wife of Liu Shipai 劉師培 (1884–1919), in the years 1907 and 1908.⁹⁴⁹ As the magazine proclaimed, its main objectives were “realising internationalism,” “overthrowing all political systems of the present time” and “realising absolute equality of men and women.”⁹⁵⁰ Accordingly, the magazine was also staunchly

⁹⁴⁷ The letter omitted the original sections nos. 1 and 2, beginning with no. 3 and omitting parts of the following text as well. As an example of the inaccuracies, e.g., the original section no. 5 begins stating that in China, a reform party was demanding the adoption of Western methods like Western government. In the translation, however, many “Japanese” citizens were demanding reform. Tolstoy, “Jieyi E Duerside da Riben Baozhi Xinwenshe shu,” 37, reprinted in *Tengi*, ed. Kobayashi, 101.

⁹⁴⁸ Tolstoy, “Jieyi E Duerside da Riben Baozhi Xinwenshe shu,” 38. Reprinted in *Tengi*, ed. Kobayashi, 102.

⁹⁴⁹ For a detailed introduction of the *Tianyi* and its topics see Müller, *China, Kropotkin und der Anarchismus*, 179–200.

⁹⁵⁰ The list of objectives was published at the beginning of each number, beginning from no. 8–10, in order to facilitate international interchange in a network of revolutionary magazines. See *ibid.*, 200. For the list of objectives, e.g., in the last edition no. 16–19, in *Tengi*, ed. Kobayashi, 492 (in original orthography): “1. To realize internatioBalism, abolishing all the national and racial distinctions. 2. To revolt against Nall the authorities of the world; 3. To overthrow all the Political systems of the Present time. 4. To realize communism. 5. To realise absolute equality of man and Asia woman.”

anti-constitutional, for constitutions were representations of authority and of a political system:

Now, government is the source of all evil. No matter whether you talk about monarchies or about democracies, no matter whether you talk about constitutionalism or republicanism: As soon as you have a government, this is tantamount to providing a tool for killing people and a mechanism for corruption.

蓋政府者萬惡之源也不必論其為君主為主不必論其為立憲為共和既有政府即不啻援以殺人之具與以貪錢之機⁹⁵¹

For the *Tianyi*, this was also true for the reforms that China was undertaking at that time. For example, *Tianyi* no. 8-10 carried a long editorial vociferously arguing against the ongoing Chinese “reform of governance” (*xinzheng* 新政). Although the rejection of reforms did not mean a defense of the *status quo*—for the ultimate goal was the abolition of government—, reforms would make things even worse than they were, as the magazine emphasised in bold:

Reforms are inferior to conserving the *status quo*; constitutionalism is inferior to autocracy!

維新不如守舊立憲不如專制⁹⁵²

It is not surprising, thus, that the letter, when first published in this magazine, was perceived mainly as a commentary against constitutionalism. Not unlike Schmitt would do later, Qu Fei, in *Tianyi* no. 5, strongly stressed the anti-constitutional thrust of the letter—his way of doing it was by setting of sentences with bold and large letters, such as it was done in many other articles of the magazine. Tolstoy’s

⁹⁵¹ “Shiping” 時評 (Commentary on current events), *Tianyi* 天義, no. 4 (1907), 34.

⁹⁵² Shen Shu 申叔 [pseudonym], “Lun xinzheng wei bingmin zhi gen” 論新政為病民之根 (On the reform of governance being the root of the people’s sickness), in *Tengi*, ed. Kobayashi, 193.

already-cited sentence that “this solution ... is not only a superficial one, but very silly,” is rendered in bold and large font as:

... in fact, is man’s big superstition, it is called utter stupidity

實曰人之大迷信也謂之至愚⁹⁵³

In the original, “this solution” referred to “substituting a representative government for a despotic one.” Here, the word “representative” is translated with “constitutional” (*lixian* 立憲), confirming the connotation of “representative” that lay in most uses of the word “constitutional”. In the conclusion, Qu Fei directly highlighted the word for “constitutional government” (*xianzheng* 憲政) twice. First, Tolstoy’s sentence that China was not “yet depraved by military, constitutional, and industrial life” is highlighted. In the last highlighting, the translation changes the wording again. In the original, Tolstoy recommends that Western peoples “free themselves from the error of human authority, not by that artificial and delusive method consisting in the imaginary limitation of power, and in representation by which Western nations have endeavored to free themselves, but should solve the problem of Power by another more radical and simple plan.” The Chinese recommendation, instead, is more concise:

The peoples of Europe should free themselves from their **delusive method of constitutional politics in favour of a radical and simple method**. [highlighting in the original]

歐洲諸國民宜舍其立憲政治之苟安方法以求其急進之根本的方法⁹⁵⁴

The other two translations of the letter in the *Tianyi* are less spectacular, as none of them uses the highlighting technique used in Qu Fei’s version. But both preserve

⁹⁵³ Tolstoy, “Jieyi E Duerside da Riben Baozhi Xinwenshe shu,” 37, reprinted in *Tengi*, ed. Kobayashi, 101. English: Tolstoy, *The Russian Revolution*, 83.

⁹⁵⁴ Tolstoy, “Jieyi E Duerside da Riben Baozhi Xinwenshe shu,” 38, reprinted in *Tengi*, ed. Kobayashi, 102. English: Tolstoy, *The Russian Revolution*, 88.

the letter's main parts about constitutions. The next translation appeared in *Tianyi* no. 11–12, a joint edition which appeared on October 30, 1907.⁹⁵⁵ Apart from being abridged, it is somewhat more faithful to the original than the doubly-translated Qu Fei version. "Constitution" is translated directly as "constitution" (*xianfa* 憲法), while Tolstoy's references to "representative" government are left as such in Chinese (*daiyi* 代議) and are not interpreted as "constitutional" (*lixian* 立憲) or "constitutional government" (*xianzheng* 憲政) as in the *Tianyi* no. 5 text.

The last publication of the letter in no. 16–19 of *Tianyi*, published on January 15, 1908. Incidentally, this edition of the *Tianyi* did not only contain Tolstoy's letter to Ku Hung-ming, but also the first Chinese-language translation of chapter 1 of the *Communist Manifesto*, as well as a translation of the beginning of Tolstoy's "The Meaning of the Russian Revolution." Tolstoy had referred to this essay in his (original) letter to Ku, and it was published in the same English book edition of 1907. However, the translation of the "Meaning of the Russian Revolution" stopped at section II, not arriving at Tolstoy's thoughts about representative governments, constitutions, and the situation of the Oriental peoples.⁹⁵⁶

⁹⁵⁵ Leo Tolstoy, "E Duersituo zhi Zhinaren shu jieyi" 俄杜爾斯托致支那人書節譯 (Abbreviated translation of a letter written by the Russian Tolstoy to a Chinese gentleman), trans. Chen Chu 忱芻, in *Tengi*, ed. Kobayashi. Chinese-language secondary literature tends to ignore this translation as well, e.g., Guo Yanli 郭延禮, *Zhongguo jindai fanyi wenxue gailun* 中國近代翻譯文學概論 (The modern translated literature of China: an introduction) (Wuhan: Hubei jiaoyu chubanshe, 1998), 394–395; Wang Yong 王勇, "Dongfang zazhi yu xiandai Zhongguo wenxue de fasheng" 《東方雜誌》與現代中國文學的發生 (The *Eastern Miscellany* and the emergence of contemporary Chinese literature) (PhD diss., Nankai University, 2012), 293–295, and Huang Guangtao 黃光濤, *Wenhua guaijie Gu Hongming* 文化怪傑辜鴻銘 (Ku Hung-ming, an eccentric hero of culture) (Beijing: Zhonghua shuju, 1995), 233; Kong Qingmao 孔慶茂 and Zhang Xin 張鑫, *Zhonghua Diguo de zuihou yi ge yilao: Gu Hongming* 中華帝國的最後一個遺老：辜鴻銘 (The latest relic of the Chinese Empire: Ku Hung-ming) (Nanjing: Jiangsu wenyi chubanshe, 1996), 248. See also Müller, *China, Kropotkin und der Anarchismus*, 193.

⁹⁵⁶ Marx, Karl, and Friedrich Engels, "Gongchandang xuanyan" 共產黨宣言 (The communist manifesto), trans. Min Ming 民鳴 [pseudonym], in *Tengi*, ed. Kobayashi. On this translation of the *Communist Manifesto* see Chen Liwei 陳力衛, "Gongchandang xuanyan de fanyi wenti (you banben de bianqian kan yici de jianruihua)" "共產黨宣言"的翻譯問題(由版本的變遷看譯詞的尖銳化) (Questions about the translations of the *Communist Manifesto* [Seeing how the translated terminology became sharper from the evolution of the versions]), *21 shiji* 二十一世紀, no. 93 (2006), 101–102. Leo Tolstoy, "Eguo geming zhi zhiqu" 俄國革命之旨趣 (The meaning of the Russian Revolution), in *Tengi*,

Instead, the *Tianyi* continued with the “Letter to a Chinese Gentleman,” printing a translation made from the English version. The introductory note states that the letter had already been abridgedly presented in the *Tianyi*, and that the magazine would now print a full translation (*quanwen* 全文). It is, indeed, quite faithful and unabridged—until it abruptly stops at the end of section four.⁹⁵⁷ Thus, this translation contains Tolstoy’s thesis of representative governments meaning an expansion of tyranny from one power-holder to many, but it does not contain its application to the “constitutions” of Japan, China and Russia.

It is not fully clear why the translation stopped in the middle of the letter in spite of the introductory note. It might have been that it was meant to be continued in a later edition, although it is not indicated that the edition was yet unfinished, as would usually have been the case. No. 16–19 happened to remain the last number of the *Tianyi*, as the magazine was forbidden in wake of the publication of the *Communist Manifesto*. But de facto, the magazine was succeeded by the magazine *The Chinese Anarchist News: Equity* (*Heng bao* 衡報), which, however, did not complete the translation of Tolstoy’s letter either.⁹⁵⁸

Even if the translations in *Tianyi* no. 11–12 and no. 16–19 did not graphically highlight the sentences about “constitutionalism” in the same form as the unmarked translation in *Tianyi* no. 5, Tolstoy’s letter did not fail to convey the meaning that he was primarily arguing against constitutionalism. In 1907 and 1908, Liu Shipai, husband of the *Tianyi*’s editor He Zhen, and Zhang Ji 張繼 (1882–1947), were the main organisers of a series of lectures in Tokyo. On March 8, 1908, a cousin of He Zhen, Wang Gongquan 汪公權 (?–1909), lectured on Tolstoy’s “Letter

ed. Kobayashi. English Leo Tolstoy, “The Meaning of the Russian Revolution,” in Tolstoy, *The Russian Revolution*. The Russian original is reprinted in the *Jubilee Edition: Tolstoy, Polnoe sobranie sochineniĭ*, vol. 36, 315–362.

⁹⁵⁷ Leo Tolstoy, “Zhi Zhongguoren shu” 致中國人書 (Letter to a Chinese gentleman), trans. Chen Chu 忱芻 [pseudonym], in *Tengi*, ed. Kobayashi. This is the most well-known of the *Tianyi* translations. See, e.g., Guo, *Zhongguo jindai fanyi wenxue gailun*, 384, and, based on him, Wang, “*Dongfang zazhi yu xiandai Zhongguo wenxue de fasheng*,” 294, who ignore the translation in no. 11–12. Müller, *China, Kropotkin und der Anarchismus*, 193, treats this translation as being complete.

⁹⁵⁸ On the *Tianyi*’s prohibition and its successor magazine see *ibid.*, 200–204.

to a Chinese Gentleman.” One of the listeners, the young student Qian Xuanton 錢玄同 (1887–1939), who later was to become an important linguist, left the following note in his diary:

[Wang Gongquan] lectured on Tolstoy’s “Letter to a Chinese Gentleman.” The letter is very long; it mainly says that the Chinese must not abandon their good virtue of basing the state upon agriculture and learn the Europeans’ hogwash teachings of constitutionalism, police and armies.

演述杜爾斯德致中國人書甚長大致言支那人不可棄其農業立國之美德而學歐人立憲警察陸軍諸邪說⁹⁵⁹

The translation of Tolstoy’s letter to Ku Hung-ming, published in March 1911 in the reform-oriented *Eastern Miscellany* stood in contrast to the publications in *Tianyi*.⁹⁶⁰ In fact, Tolstoy had already been presented to the magazine’s readership one edition earlier, in January 1911, as a giant of Russia’s anarchist party (*Eguo wuzhengfudang zhi juzi* 俄國無政府黨之巨子) and as someone who was revered as a contemporary sage (*jin shengzhe* 今聖者) in the West. The second of the two notes about Tolstoy ended up discussing Russia’s constitution, citing a newspaper that Russia had “never had a real constitution,” and explaining this with an unnamed English newspaper’s opinion that the Russian constitution was “nothing but a technique of deception and a snare” (*wuyi yu mishu yu xiankang er* 無異於迷術與陷阱耳). The note did not report on Tolstoy’s radical anti-constitutional views. It did, however, carry the standard pro-constitutional tone that a constitution was desirable, but the constitution of Russia was not a real one. It was a tone of disappointed

⁹⁵⁹ Qian Xuanton 錢玄同, *Qian Xuanton riji* 錢玄同日記 (Diaries of Qian Xuanton), 12 vols. (Fuzhou: Fujian jiaoyu chubanshe, 2002), vol. 2, 524. Liu Guifu 劉貴福, “Qian Xuanton yu Liu Shipai” 錢玄同與劉師培 (Qian Xuanton and Liu Shipai), in *Zhongguo jindaishi shang de jijin yu baoshou* 中國近代史上的激進與保守, ed. Zheng Dahua 鄭大華 and Zou Xiaozhan 鄒小站 (Beijing: Shehui kexue wenxian chubanshe, 2011), 250, has a slightly different transcription of Qian’s handwriting, which does not affect the meaning: “演述托爾斯德致中國人書甚長大致言支那人不可棄其農業立國之美德而學歐人之立憲警察陸軍之邪說。”

⁹⁶⁰ Tolstoy, “Eguo dawenhao Tuoersitai bojue yu Zhongguo moujun shu.”

with the continued oppression in Russia in spite of the nominal adoption of a constitution, ending with a sigh of sorrow (*yixi, bei fu!* 噫嘻悲夫).⁹⁶¹

Although Chinese secondary literature sometimes treats the translation in the *Eastern Miscellany* as a full translation of the letter, in reality it only translated the first five of nine sections of the letter.⁹⁶² Maybe, in this case, this had to do with the contents of the letter and the general stance of the magazine. The first sections of the letter are a sketch of the situation as seen by Tolstoy, whence, beginning from sections 5/6, he develops his invective against modernisation and makes his Christian anarchist plea. Even in the translated parts up to section five, the translation omitted all negative references to constitutions and constitutionalism. Thus, the *Eastern Miscellany* translated Tolstoy's analysis that the Western peoples had introduced representative institutions, but omitted the following sentence about this merely being an expansion of violence. In the version of this reform-oriented magazine, the "reckless" reform party intends to change the autocratic system into a "republican" (instead of a "constitutional") system. One cannot fully rule out that these changes and the further omissions were unintentional, but they effectively deprived the Chinese translation from its contributions to constitutional debate.

As far as is known, Ku Hung-ming did not directly answer to Tolstoy's epistle. He did, however, write another short letter to Tolstoy in 1908 congratulating him on his 80th birthday. Therein, he deplored again the international state of things where might was the only thing revered. Tolstoy explained that all of the major world religions had truth in them and hoped for a unified world religion to solve the problems.⁹⁶³

⁹⁶¹ "Zazu" 雜俎 (Hodgepodge of news), *Dongfang zazhi* 東方雜誌 7, no. 12 (Xuantong 2 [1911]), 60–61.

⁹⁶² Guo, *Zhongguo jindai fanyi wenxue gailun*, 394–95; Wang, "Dongfang zazhi yu xiandai Zhongguo wenxue de fasheng," 293–295. Correctly Huang, *Wenhua guaijie Gu Hongming*, 233.

⁹⁶³ Ku Hung-ming, *Gu Hongming wenji* 辜鴻銘文集 (Collected works of Ku Hung-ming), ed. Huang Xingtao 黃興濤. 2 vols. (Haikou: Hainan chubanshe, 1996), vol. 1, 234–235.

While Ku's congratulatory letter did not refer to their former correspondence, he did, however, comment on Tolstoy's letter in his later writings. Opposing representative systems, Ku shared Tolstoy's objections to the ongoing constitutional reforms.⁹⁶⁴ However, he was not convinced by Tolstoy's proposed solution. In his essay "The Story of a Chinese Oxford Movement," first published in 1909 and then republished in several English and German editions, he judged that Tolstoy's suggestions were akin to the solution propagated by the Buddhists: Seeing that the world was bad, they practiced the tonsure and secluded themselves in a monastery, boycotting the outer world. This approach, however, could not improve what they criticised, and at some point, the monastery would be burnt down by the depraved outer world. Ku, on the other hand, had the hope of applying the Confucian teachings to constructively changing the world for the better through moral integrity. Instead of boycotting, Ku wrote, a man of virtue should lead a simple and earnest life so as to be able to convince the people of what is right.⁹⁶⁵

7. Chapter Conclusion

When the Russo Japanese War broke out, debates about constitutionalism were already well underway in China. To many intellectuals, the global era of autocracy was nearing its end. Russia's fragility, as well as the possibility that it might adopt a constitution, had been known before the war. Chinese intellectuals stressed that there were only a few remnants of autocracy—such as China, Russia and Turkey. The defeat of one of them by Japan confirmed this discourse, and political pressure rapidly mounted for the adoption of a constitution, both from intellectuals as well as from officials.

Pressure for constitutionalism mounted not only in China. 1905 was the beginning of a veritable Eurasian-wide wave of constitutionalism, of which the

⁹⁶⁴ See his explanations in Ku, *Chinas Verteidigung gegen europäische Ideen*, 68–70, and his constitutional memorial in Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubelixian dang'an shiliao*, vol. 1, 307–313.

⁹⁶⁵ Ku Hung-ming, *Chinas Verteidigung gegen europäische Ideen*, 131–133.

Chinese constitutional movement was a part. Russia was in severe turmoil and tackled her serious internal crisis with a manifesto promising basic liberties and the creation of a national assembly, followed by the swift adoption of a constitutional charter in May 1906. These measures, however, were only temporarily able to mitigate Russia's problems, and political strife resurfaced soon after. Soon after, turmoil erupted in another autocratic empire: Persia. There, protests broke out in late 1905 and led to the promise of a constitution in August 1906 as well as the adoption of a constitutional charter in December 1906, which did not end the country's problems either.

Beyond the direct impact of the war, these other events going on in Eurasia played far more complex role in Chinese constitutionalism than has been hitherto acknowledged, e.g., by Wang Yidan's article on Chinese perceptions of Persia, or by the writers who touch upon the five commissioners' visit to Russia. The Court at Peking reacted to the calls for constitutionalism by sending abroad a batch of high-ranking officials accompanied by a large entourage to learn about foreign political systems, just as Japan had done some decades earlier. In September 1906, it announced its decision to first carry out "constitutional preparation," with the aim of adopting a full constitution after several years. The Chinese government decided to follow the model of Meiji Japan, which had adopted a constitution as the finishing stone of a thorough national reformation. But at the same time, it decided also to proceed differently than Russia was doing: it would proactively search to adopt a constitution, but not do so without the necessary preparation.

On the one hand, thus, Russia's, and slightly later Persia's, experience, provided a stimulus for China herself adopting a constitution: If some of the last remnants of autocracy were adopting a constitution, there was pressure on China to follow suit and swiftly adopt a constitution, too. But on the other hand, both Russia's and Persia's difficulties were well-perceived in China, and led even some pro-constitutional voices to advocate for a slower, more gradual transition. On the other side of the political spectrum, amongst those who opposed any monarchy at

all, a constitutional charter was not worth much, and “constitutional reforms,” be they in Russia or in China, were a sign of hypocrisy, a cover-up for continued oppression.

These were not one-way perceptions, but quite entangled debates, as can be best exemplified by the example of Leo Tolstoy. He first disagreed with a Chinese student who had translated Liang Qichao into Russia and distributed his translation within Russia, implying that both Russia and China should embark on modernising reforms. Shortly after, an open letter he wrote as a reply to Ku Hung-ming found tremendous repercussion in both Europe and in East Asia. In Chinese language, it was published in both pro-constitutional and in anarchist media. In fact, one of the main, if not the main, objective of the letter was opposing the constitutional wave that had already reached Russia, China and Persia—and soon after would reach the Ottoman Empire.

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As stated in the introduction to this dissertation, current scholarship has been mostly concerned with the global revolutionary wave which began with the Russian revolution of 1905. Highly insightful scholarship has been produced in particular on Sino-Russian revolutionary connections, such as Don Price’s 1974 *Russia and the Roots of the Chinese Revolution* and Gotelind Müller-Saini’s 2001 oeuvre on Chinese anarchism.

But what about the concept of constitution? In contrast to Russia and Persia, China did not suffer a revolution in 1905/06, but the element that unified the three was the embracement of a constitution. In a recent book on the trope of “making China strong,” Robert Weatherley wrote that the “focus of Qing attention shifted firmly toward Japan after 1905.”⁹⁶⁶ This can only be upheld in a very narrow sense, insofar as Japan became the most favoured positive model for Chinese constitution-making. But apart from this, the events following “World War Zero” were an

⁹⁶⁶ Weatherley, *Making China Strong*, 53.

intensification of the constitutional “shared journey to modernity,” in which China, Russia, and Persia marched towards the adoption of a constitution in closely inter-related processes, and, in the case of Russia and China, in direct mutual dialogue.

Against the background of the nearly-simultaneous events in Russia, China, and Persia, it would by no means be an exaggeration to state that the years 1905 and 1906 were a crucial moment not only of Chinese, but even of global constitutional history.

CHAPTER FOUR.

Constitutions and Imperialism: China's Constitutional Preparation and its International Insertion

憲政施行二十年。
此間更見國光宣。
死餘老骨傾杯酒。
恩賜堂中會衆賢。

Itō Hirobumi (1908)⁹⁶⁷

1. Prelude: Showing a “Fine Understanding” in Austria

In 1905, one of the countries visited by the five constitutional commissioners was the Austro-Hungarian Empire. Before they arrived, the social democratic newspaper *Salzburger Wacht* commented full of irony:

That the Chinese come to Austria, of all places, to study the constitution, shows a fine understanding. Our constitutional situation is truly Chinese, and in copying it, the Chinese differ the least from old habits.

Daß die Chinesen gerade nach Oesterreich kommen, um die Verfassung zu studieren, zeigt ein feines Verständnis. Unsere Verfassungszustände

⁹⁶⁷ “Constitutional government has been carried out for 20 years. / In this meanwhile, I have even more witnessed the propagation of the nation's glory. / Having escaped death, my old bones pour out a glass of saké, / Assembling with the sages at the Imperial Hall.” Itō Hirobumi 伊藤博文, *Hōzō Tō kō shison* 補增藤公詩存 (Poems left by Prince Itō, expanded edition) (Tokyo: Hakubunkan, Meiji 43 [1910]), 62. The poem was written at the occasion of a commemoration of the 20th anniversary of the finalisation of the draft of the Meiji Constitution. In 1907, the Meiji Emperor had gifted the hall where the draft of the constitution had been passed to Itō. In 1908, to celebrate the 20th anniversary, the hall was relocated to Itō's residence in Ōi 大井, near Ōmori 大森 station, and renamed “Imperial Hall Commemorating the Constitution” (*Kenpō kinen onshikan* 憲法紀念恩賜館). For its inauguration, a large celebration with over a thousand guests was held. More than a year later, Itō hosted the Chinese constitutional commissioner, Li Jiaju, in this hall, an event which will be discussed in this chapter. In 1918, the constitutional memorial was relocated back to central Tokyo.

sind echt chinesisch und in der Nachahmung derselben entfernen sich die Chinesen am wenigsten von den alten Gewohnheiten.⁹⁶⁸

Again, the traditional Chinese constitution was used as a symbol of autocracy, and again, it was used to criticise European politics. But much beyond the ironic commentary on the domestic situation, the note also unwittingly touched upon other important aspects of China's constitutional movement. Austria was not such an odd place to visit for the Chinese delegation. Its quality as an "Empire" actually made it one of the places of most interest for a Chinese government which was keen on securing China's own status as an "Empire." Most Chinese officials and intellectuals wanted to change their old habits in so far as this would further this and other goals. But the new constitution and the new institutions still had to be justified in face of the venerated old habits and institutions.

As described in the previous chapter, the constitutional mission led to a commitment to constitutionalism on the part of the Chinese government, which stood next to fresh constitutional charters in Russia and in Persia. Both nationally and internationally, the next results in terms of constitutional texts followed two years after, in 1908 and 1909, years which saw an official outline and several unofficial drafts being produced in China, and the erstwhile suspended constitution being reinstated in the Ottoman Empire.

Hence, dear reader, let us use this break to postpone the treatment of the national and international constitution-making events for a while, and have a closer look at further international interactions that were going on in the meanwhile. For despite the pause of big official declarations, the year of 1907 was also constitutionally important. Constitutional debates went on unabated, increasing the pressure on the Qing government, and the Chinese government decided to send more commissioners abroad. These should study in more depth the constitutions of Japan, Germany and England. As the second constitutional mission has

⁹⁶⁸ *Salzburger Wacht*, "Chinesen kommen Oesterreich studieren!," September 7, 1905.

received relatively little scholarly attention, this study adds fresh aspects on their work on the ground, showing the complexities of their activities. The constitutional commissioners were not solitary delegates quietly studying the constitutions of their host countries; rather, they were embedded in complex networks engaged in ongoing dialogues about a constitution for China. At the same time, they, their aides and other Chinese abroad were all active in making China's voice heard.

Furthermore, the reports of the commissioners on the constitutional systems of Japan and of Germany were of high importance for the debates they engendered in China and for their influence on the further drafting process. Having hitherto only received insufficient attention in secondary literature, they need to be explained in more depth, as they express two fundamental aspects of Chinese constitution-making. First, references to external models and to a global wave of constitutionalism does not suffice to fully understand China's constitutional process. Internally, China had a venerated 2000-year-old political tradition of its own. A radical change of paradigms like the proposed adoption of a constitutional system with a written constitutional charter necessarily had to be negotiated with China's own traditions, that is, as the *Salzburger Wacht* put it, with China's old habits. This conundrum has usually been analyzed from the angle of how China's traditions were used to support reformist ideas. Here, it shall be shown that, at least in the field of constitutional law, this was only one side of the medal. The other side was that the argument that China always had a constitution of its own was also used to argue against the adoption of a new constitution, or in favour of less radical and more gradual changes.

Second, the report on Japan is remarkable for its description of the external function of the constitutional plan. The aspect of how constitutional reforms influence international relations has accompanied us since the beginning of this thesis, from Japan over the case of Korea's peculiar constitution to the early exhortations for constitutionalism used in China up to the arguments used by the

five commissioners upon their return to China. In 1907, a truly global event took place which took on a localised constitutional importance for China: The Second Hague Conference of 1907. It was one of the first occasions to unite diplomatic representatives from across the globe in a single venue, fostering unprecedented transcultural intellectual exchanges. As will be seen, although the conference at first sight had little to do with constitutions, it provided an important stimulus in favour of the adoption of a constitution in China.

Thus, let us use this chapter to take an even closer look on what exactly the constitution was supposed to mean and what it really meant for China's international relations. To this effect, the chapter argues that the adoption of a constitution was supposed to have two main international functions. Directly, it was hoped that having a constitution would be helpful for being respected and taken seriously in the international community. But even more frequent was the indirect argument. A constitution would help China becoming "wealthy and prosperous," which in turn would enable the country to get the upper hand in international politics. Or, as the constitutional commissioner to Japan candidly expressed it: a constitution would enable China to become an imperialist power by itself.

But this is what a constitution was supposed to mean for China. As the constitutional plan did not work out as planned, what did it really mean? That is, how was the Chinese constitutional movement, now an official policy, received abroad, in particular by diplomats and politicians? Did they hail China's constitutional movement as a move towards their own standards of political organisation? Or were they skeptical that China could succeed in quickly doing so, just as Herbert Spencer had been skeptical with respect to Japan?

2. First Reforms: Political Events After the Declaration of Intent

a) Reform of the Central Government

Although the Court indeed began to “prepare for constitutionalism” right after it issued its intention to do so on November 1, 1906, heavy in-fighting between the relevant players in the central and in the local governments made the process tortuous and produced a series of half-baked compromises which left most actors dissatisfied. As the details of internal politics have, for the most part, been researched and discussed in detail by secondary literature, only a short account of the events shall suffice at this place, namely in as far as it is necessary to understand the further constitution-making process. Furthermore, such an account elucidates the nature of the Chinese constitutional plan as an all-encompassing reform designed to strengthen the state internally and internationally.

One day after the declaration of intent, on September 2, 1906, the Court issued a second edict designating two commissions, one to deliberate on the reform process and the second one to review the results of the first.⁹⁶⁹ The cast for the two commissions united most important figures from Peking as well as from provincial politics, showing the importance conferred to the project by the Court.⁹⁷⁰ The first commission met two days after, on September 4, in the Summer Palace, and set up a “compilation bureau” on September 6. The bureau was staffed with a high number of specialists, including Wang Rongbao 汪榮寶 (1878–1933), who had published the *New Erya* (*Xin Erya* 新爾雅) and would later become one of the main drafters of the constitution.⁹⁷¹

⁹⁶⁹ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, vol. 1, 385; a translation of the edict can be found in United States Department of State, *Papers Relating to the Foreign Relations of the United States 1906*, vol. 1, 351.

⁹⁷⁰ See also Meienberger, *The Emergence of Constitutional Government in China*, 48–49. Hsü, *The Rise of Modern China*, 414, on the contrary, stresses that “conflict of interests and fear of criticism led to the exclusion of several offices from the commission.

⁹⁷¹ The reform of central government and the work of the commission is described in great detail in Jiaoyu pinwu gongsi, *Yubei lixian yijianshu*, chapter “Reforming the Official System” (*Gaiding guan zhi* 改訂官制). Cf. “Lixian jiwen,” in *Xinhai geming*, ed. Zhongguo Shixuehui, vol. 4, 17–20.

But in spite of this set-up and the widespread enthusiasm for the adoption of a constitution, as soon as concrete preparatory reforms were envisioned, these encountered heavy obstacles: Too many interests were at stake; fears about losing power, privileges and positions led to proposals being instantly met with opposition. Objections were raised not just from within the commission, but from scholars and officials in various levels of government, including the provinces.⁹⁷²

In particular, the reforms further evidenced the stark contradictions that existed between central power and local government, a basic contradiction which would eventually lead to the downfall of the Empire. Support from provincial leaders for constitutional reform came in a situation in which the central government was glaringly weak. Ernest Satow had already perceived the strong centrifugal tendencies present in the country and advised Zhou Fu against establishing a provincial representation in Peking. Now, he also agreed with Sheng Xuanhuai 盛宣懷 (1844–1916), the vice-director of the Board of Works (*gongbu* 工部), that a “real central government” was absent; and he agreed with the US American minister William Rockhill that “what the Powers should do is to strengthen the central government not scold it and so weaken its prestige in the eyes of the provincials.”⁹⁷³ Given the central government’s weakness, it was not surprising that it first aimed at strengthening itself before introducing constitutional government. Zaize 載澤 (1868–1929) and Tieliang 鐵良 (1863–1939), two powerful Peking figures, came up with proposals to strengthen the central level on the cost of the viceroalties, but were met with fierce opposition from Yuan Shikai, the powerful viceroy of Zhili.

Against this background, the commission decided to leave provincial administrations for a later stage of reforms and limit itself to reforming the central government, which meant restructuring the current administrative system as well as creating new constitutional organs. A series of arguments was brought

⁹⁷² *North China Herald*, “Not Easily Moved.” September 28, 1906, 788.

⁹⁷³ Satow, *The Diaries of Sir Ernest Satow*, vol. 2, 200, 270.

forward against the reform in general and against some of the specific proposals brought forward by the commission. Next to the more technical arguments, e.g., that it would overburden the already strained state finances,⁹⁷⁴ one should mention here the more fundamental objections. For any reform that tried to adapt ideas coming from abroad necessarily caused frictions with China's own time-honoured traditions. Thus, some argued that the proposed reforms were too disruptive a break with China's past and that they were too mechanical a copy of foreign models. Ke Shaomin 柯劭忞 (1850–1933), a member of the Hanlin Academy, expressed this in a memorial. Therein, he contrasted China with Japan, delineating the differences between both, and coming to conclusion that China could not replicate the results of Japan's reforms without going through the work that was needed to reach these results. Japan's reforms had not been easy, and China had not yet done the amount of work that had been done by Japan:

I think that the Court's reforms are mainly drawing on Japan, but our country's political system is something completely different from Japan's. When Japan recollected the powers of the military government (*bakufu*) and reformed the feudal system, she had to do away with the old defects in order to respect the sovereign and protect the people. But their reforms of the officialdom were only then implemented one after the other, after their adaptation of the West had still been delayed for several years and they had sent out ministers several times to examine the countries of Europe and America. For reforms are not as easy as this.

臣竊維朝廷變法，多採取於日本，然我國家之政體則與日本迥不相同者。日本收幕府之權，革封建之制，不得不更張舊弊，以尊主而庇民。然其改定官制，效法泰西猶遲至數年之久，屢遣大臣考查歐美各國，而後次第舉行，蓋更張之不易如此。⁹⁷⁵

⁹⁷⁴ E.g., Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, vol. 1, 448.

⁹⁷⁵ Ibid., vol. 1, 410 (Guangxu 32/08/10 = 27th September 1906).

The final edict, by which the Court promulgated the reform of central government, came out on November 6, 1906.⁹⁷⁶ One day later, the Court announced the roster of the newly arranged ministries.⁹⁷⁷ The ministries were renamed and reorganised, and the official separation between Manchu and Han posts was lifted. A cabinet—often considered a central part of constitutional government—was not created, but it did have a reflex in the edict: Ministers were thenceforth to become part of a Committee of Ministers to be regularly summoned to the court.⁹⁷⁸ Although staying short of a cabinet, all top-level government agencies were for the first time assembled in one political organ, showing a gradual approach to the constitutional question.⁹⁷⁹

The edict did not create independent judicative and legislative branches of government, but it did lay some foundations for such. Thus, the edict expressly separated the administration of justice, to be carried out by the Ministry of Justice, from jurisdiction, to be carried out by the new Court of Judicial Review (*Daliyuan* 大理院). Furthermore, the edict envisioned the creation of the Court of Audit as well as of the Political Consultative Council (*Zizhengyuan* 資政院). The latter decision, which was carried out in the years to come, would have a particularly deep impact on late-Qing constitution making.

As the edict stayed short of the first proposals and left many government organs untouched, it left many in the pro-reform camp discontented. Many judged the reform in a rather negative way, deeming that it was a merely superficial reshuffle and pointing out that the abolition of the Manchu-Han distinction

⁹⁷⁶ Ibid., vol. 1, 471–472 (dated Guangxu 32/9/20); Zhu and Zhang, *Donghua xulu*, 586–587 (chapter Guangxu 202, 11–14, dated Guangxu 32/9/21, but referring to Guangxu 32/9/20). For a German translation see Betz, “China: 1907–1908,” in *Jahrbuch der Internationalen Vereinigung für Vergleichende Rechtswissenschaft und Volkswirtschaftslehre*, 3122–3124. Gao, *Qingmo lixian shi*, 133, erroneously gives Guangxu 32/9/12 and erroneously converts this to November 16, 1906.

⁹⁷⁷ Zhu and Zhang, *Donghua xulu*, 587 (chapter Guangxu 202, 14).

⁹⁷⁸ The committee itself, the *Huiyi zhengwuchu* 會議政務處, was established by a separate edict of November 9, 1906. Ibid., 588; Zhu, *Guangxu chao Donghua lu*, vol. 5, 5583. Not included in Gugong Bowuyuan Ming-Qing dang’anbu, *Qingmo choubei lixian dang’an shiliao*.

⁹⁷⁹ See Meienberger, *The Emergence of Constitutional Government in China*, 68.

even increased Manchu representation in the central government.⁹⁸⁰ However, the reform was not only empty words. It did also promote some substantial changes and have some immediately palpable consequences. The number of officials sacked from their posts was in the four digits, which caused considerable discontent in the officialdom.⁹⁸¹ As the legation of the USA cabled to Washington, the reform of November 6 1906 had been a compromise between reformers and conservatives,⁹⁸² a compromise, however, which left many unsatisfied.

b) Reform of Provincial Government

After the reform of central government, the second step of reforms aimed at provincial reforms. But whereas the reform of central government had been decided within two months, eight months passed until a reform of the provincial governments was agreed on. In the first half-year of 1907, there was a long period of public silence about constitutional reforms. Press outlets speculated that they had ended and that reactionaries had gained the upper hand and driven back reformers.⁹⁸³ For example, the *North China Herald*, in February 1907, considered China to have fallen back to reaction and exhorted the foreign powers to reconsider their attitude towards China, which due to the reform impetus of the past year had improved to the point of seeking “to treat with China as with one of themselves.”⁹⁸⁴

⁹⁸⁰ For a very negative evaluation see Hsü, *The Rise of Modern China*, 414. For some non-Chinese perspectives see Egas Moniz Bandeira, “Political Reforms in a Global Context,” 150–154, with further references.

⁹⁸¹ *North-China Herald*, “The Recent Changes in Peking,” November 16, 1906, 400; *North China Herald*, “Flooding the Provinces with Officials,” December 7, 1906, 551. See also Gao, *Qingmo lixian shi*, 547–548.

⁹⁸² United States Department of State, *Papers Relating to the Foreign Relations of the United States 1906*, 352.

⁹⁸³ Already in January 1907, the *North China Herald* considered the reform of provincial government to be definitely shelved. *North China Herald*, “The Situation in China,” January 25, 1907, 161. Cf. Tchou, *Le régime des capitulation et la réforme constitutionnelle en Chine*, 145–146, who dates the victory of the reactionaries to December 1906. See also Gao, *Qingmo lixian shi*, 138, whose 600–page work on late Qing constitutionalism completely overgoes this half year.

⁹⁸⁴ *The North-China Herald*, “Found Waiting,” February 1, 1907, 213–214.

The editorial in the North China Herald is of interest because it expresses its hope that China would pursue governmental reforms, treating the adoption of a constitution as a benchmark that enabled the country to take part as an equal in international relations. Although such a viewpoint was common, it will be seen that many foreign observers did not share the hope for a quick realisation of reform plans. Furthermore, the newspaper's depiction of what had caused the reforms to slow down was too simplistic, as it was not simply a matter of reactionaries versus reformers.

There were several factors behind the official silence in the first half of 1907. The scope of reform was larger than that of the central government, and communication with the provinces, especially the more remote ones, also took quite some time.⁹⁸⁵ Behind the doors, discussions, political maneuvering and intrigues were going on.⁹⁸⁶ Yuan Shikai pressed for a fast pace, but his viceroy colleague Zhang Zhidong, by 1907, was by and large urging for circumspection, deeming that administrative reforms were not necessary for constitutional government.⁹⁸⁷ As further figures of the central and provincial governments opposed the reform plans, Cixi came up with an idea to overcome the impasse. She would

⁹⁸⁵ See Meinenberger, *The Emergence of Constitutional Government in China*, 63–64.

⁹⁸⁶ On the various intrigues of the year 1907 see, e.g., Pan Ming 潘鳴, "1907 nian difang guanzhi gaige fang'an chouyi yanjiu" 1907 年地方官制改革方案籌議研究 (Research on the consultations about the plan to reform the system of local officialdom in the year 1907), *Qingshi yanjiu* 清史研究, no. 2 (2011); Li Xizhu 李細珠, "Wanqing difang dufu quanli wenti zaiyanjiu (Jianlun Qingmo 'neiwai jieqing' quanli geju de xingcheng) 晚清地方督撫權力問題再研究 (兼論清末 '內外皆輕' 權力格局的形成) (Renewed research on the question of the powers of the local viceroys in the late Qing; At the same time, a discussion of the formation of the structure of 'simultaneous weakness of both the central and the local governments' in the late Qing), *Qingshi yanjiu* 清史研究, no. 3 (2012); Xie Weiyuan 謝未淵, "Zailun dingwei nian Yuan Shikai 'neidiao'" 再論丁未年袁世凱 "內調" (Further discussion of Yuan Shikai's "transfer to the capital" in 1907), *Huazhong Shifan Daxue yanjiusheng xuebao* 華中師範大學研究生學報 18, no. 4 (2011).

⁹⁸⁷ On Zhang Zhidong's positions on the administrative reforms of 1906/07 see Li Xizhu 李細珠, *Zhang Zhidong yu Qingmo xinzheng yanjiu* 張之洞與清末新政研究 (Research on Zhang Zhidong and the reform of governance in the late Qing) (Shanghai: Shanghai shudian chubanshe, 2003), 321–336. On his shifting position towards the speed of constitutional reforms see further Deng Hongzhou 鄧紅洲, "Zhang Zhidong 'conghuan' 'congsu' lixianlun 張之洞 '從緩' '從速' 立憲論 (Zhang Zhidong's theories of 'rapid' and 'slow' adoption of a constitution), *Jindaishi yanjiu* 近代史研究, no. 3 (1998), 204–207 (on the year 1907).

make use of a method of testing reforms which is commonly used in China to this day: experimental legislation.⁹⁸⁸

The reform of provincial government structure was promulgated on July 7, 1907.⁹⁸⁹ It was to be tested in the three Manchurian provinces for a period of 15 years, and Zhili and Jiangsu were also allowed to adopt the reform. The reform proved to be another compromise between the various conflicting positions. In the same way as the reform of November 1906, this reorganisation, too, was criticised as being mostly limited to a mere renaming of offices,⁹⁹⁰ but it did in fact also have some substantial effects. Several administrative posts at the local administrations designed for new tasks were created. The viceroys' and governors' positions remained *in statu quo ante*, but the judiciary power was rudimentarily separated from the executive power.⁹⁹¹ The idea of adopting bodies of local self-government was not yet officially adopted, but was still on the table and would be officialised further a few months later.

c) The Political Consultative Council (*Zizhengyuan* 資政院)

With the reform of provincial governments, "constitutional preparation" became visible again.⁹⁹² Beginning from June 1907, discussions about a further reorganisation of central government and the adoption of a cabinet system publicly flared

⁹⁸⁸ On experimental legislation in present-day China see Madeleine Martinek, *Experimental Legislation in China Between Efficiency and Legality: The Delegated Legislative Power of the Shenzhen Special Economic Zone* (Cham: Springer, 2018).

⁹⁸⁹ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubi lixian dang'an shiliao*, vol. 1, 510–511 and 503–510 (Yikuang's and Sun Jianai's preceding memorial). For an English translation see United States Department of State, *Papers Relating to the Foreign Relations of the United States 1907*, vol. 1, 179–180. The solution of experimental legislation had already been announced two months earlier, in *Jingbao* 京報, November 17, 1907, translated in: Deutsche Gesandtschaft in China: Gesetzgebung, Reformen, Peking II 594, Political Archive of the Federal Foreign Office of Germany, Berlin, 50. For details of the reform see Meinenberger, *The Emergence of Constitutional Government in China (1905–1908)*, 64.

⁹⁹⁰ See Gao, *Qingmo lixian shi*, 141.

⁹⁹¹ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubi lixian dang'an shiliao*, vol. 1, 510.

⁹⁹² Reporting that Yuan Shikai and Zhang Zhidong were now in agreement, and that the reformers had won the trust of Cixi, see *North China Herald*, "Peace in the Grand Council," October 11, 1907, 93.

up again.⁹⁹³ These did not end up in a cabinet being created, but they still lead to some reorganisation of the central administration, which not only continued the reforms initiated on November 1906, but were also of immediate constitutional importance.

The edict reforming the central government in November 1906 had foreseen the creation of a proto-parliamentary body, the Political Consultative Council, as a place to “broadly collect public speech” (*bocai qunyan* 博采羣言).⁹⁹⁴ An edict of September 20, 1907 put this stipulation into practice, creating the Council and appointing Pulun 溥倫 (1874–1927), a Manchu, and Sun Jianai, a Han, as its two directors. The decree expressly stated that a parliament could not yet be created in China, but that the Council would be its precursor as long as constitutionalism was still being prepared.⁹⁹⁵ Again, such a plan was inspired by Japanese models: There, in the 8th year of Meiji (1875), the government had instated the Council of Elders (*Genrōin* 元老院), which was later tasked with preparing a constitutional charter and was abolished together with the convening of the National Diet.⁹⁹⁶

It would take a further three years, until 1910, for the Political Consultative Council to be convened as a parliamentary assembly at the national level. After all, just as had happened in 1870s Japan, provincial assemblies had to be

⁹⁹³ See, e.g., *North China Herald*, “A Proposed Amalgamation,” June 21, 1907, 711–712; *North China Herald*, “The Proposed Cabinet,” September 6, 1907, 556.

⁹⁹⁴ Gugong Bowuyuan Ming-Qing dang’anbu, *Qingmo choubei lixian dang’an shiliao*, vol. 1, 472.

⁹⁹⁵ Zhu and Zhang, *Donghua xulu*, 645 (chapter Guangxu 209, 5); also contained in Gugong Bowuyuan Ming-Qing dang’anbu, *Qingmo choubei lixian dang’an shiliao*, vol. 2, 606.

⁹⁹⁶ Later, the memorial submitting the proposal for an organic law expressly recounted the history of the Japanese precursors to the National Diet. *Ibid.*, vol. 2, 627. See also *Münchener Allgemeine Zeitung*, “Verfassungspläne in China,” October 20, 1907. This article, which stresses the parallel to the *Genrōin*, is interesting because it expressly takes a minority position, defending the measure against much-seen Chinese criticisms of it being a dilatory *coup de théâtre*. The *Münchener Allgemeine Zeitung* was the leading German daily newspaper of the time, playing a significant role in the formation of public opinion in Germany. The article was included in the diplomatic correspondence of the German Foreign Office—where the author of this study found it—, showing that it found some circulation among circles professionally concerned with China. *Deutsche Gesandtschaft in China: Verfassung, Parlament, Peking II* 595, Political Archive of the Federal Foreign Office of Germany, Berlin, 349.

convened before and the respective elections had to be carried out. However, the organ did already play an important role in its formative years. In 1907, it was noted that its members would be meeting six times *per mensem*,⁹⁹⁷ and in 1908, Pulun, Sun Jianai and their team were involved in devising the *Outline of a Constitution*, together with the Constitutional Office.⁹⁹⁸

As for the lower levels of administration, an edict of October 19, 1907 officially provided for provincial assemblies (*ziyiju* 諮議局) to be established, which in turn, should care for the establishment of assemblies (*yishihui* 議事會) in the lower administrative units.⁹⁹⁹ These provincial assemblies should be a basis for the Political Consultative Council, serving as a talent pool for it (*wei Zizhengyuan chucai zhi jie* 爲資政院儲材之階) and as gathering points of public opinion (*caiqu yulun zhi suo* 採取輿論之所).¹⁰⁰⁰ The regulations for them issued on July 22, 1908 as well as other official documents of the time made clear that these local assemblies were not yet like national parliaments, but that they were confined to a deliberative role.¹⁰⁰¹ They were “forerunners” (*xiansheng* 先聲)¹⁰⁰² of such, and should be transformed into provincial legislative organs after the convening of the National Assembly.¹⁰⁰³ But even just the “right to express proposals” (*jianyan zhi quan* 建言之權)¹⁰⁰⁴ should have a tremendous impact on late Qing politics. The

⁹⁹⁷ *North China Herald*, “The Imperial Assembly,” November 1, 1907, 287.

⁹⁹⁸ In March 1908, however, the *North China Herald* reported that no results had been achieved yet: *North China Herald*, “The Tzechenyuen,” March 6, 1908, 555. That assessment was premature.

⁹⁹⁹ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, vol. 2, 667.

¹⁰⁰⁰ *Ibid.*, vol. 2, 667.

¹⁰⁰¹ See the *Xianzheng biancha guan fuyi ziyiju quanxian zhepian* 憲政編查館復議諮議局權限折片 (Memorial by the Constitutional Office reviewing the powers of the provincial assemblies), in *Zhongguo di er lishi dang'anguan* 中國第二歷史檔案館, ed., *Zhonghua Minguo shi dang'an ziliao huibian (di yi, er ji)* 中華民國史檔案資料匯編 (第一、二輯) (Collection of archival material on the history of the Republic of China, parts 1 and 2) ([Hangzhou]: Jiangsu guji chubanshe, 1991), part 1, 113–121 (here, particularly 116).

¹⁰⁰² Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, vol. 2, 689.

¹⁰⁰³ *Zun zhi fu Hanlinyuan sidu xueshi Wu Shijian qing shenming ziyiju quanxian zhe* 遵旨覆翰林院侍讀學士吳士鑑請申明諮議局權限摺 (Memorial obeying an Imperial ordinance, replying to Wu Shijian, Hanlin Academician Reader in waiting, who asked for an explanation of the powers of the provincial assemblies), 1910, in the files of the Ministry of War (*Lujunbu dang'an* 陸軍部檔案), Second Historical Archives of China, Nanjing, cit. in: Gao, *Qingmo lixian shi*, 252.

¹⁰⁰⁴ *Daqing Dezong Jing Huangdi shilu*, chapter 593, 20.

decree of October 19, 1907 made another small step towards an independent legislature by decreeing that the provincial assemblies could direct memorials to the Political Consultative Council, thus creating a communication channel to the emperor and reducing their dependence from the governor.¹⁰⁰⁵ When the provincial assemblies were convened in 1909 and the Political Consultative Council in 1910, they made extensive use of their “right to speak”. Severely pressuring the Court, they became one of the immediate causes of its demise.

d) The Constitutional Office (*Xianzheng biancha guan* 憲政編查館)

The Political Consultative Council was created with the main objective of it developing into a constitutional parliament as the central element of constitutional government. But in mid-1907, a second organ was created which had a more immediate function in carrying out the preparation for constitutional government. The relevant existing institutions were not equipped for their tasks. The “Office for the Investigation of Government and Administration” (*Kaocha zhengzhi guan* 考察政治館), created in 1905, was a rather transitory body concerned with the collection and assessment of intelligence. The reform commissions created on September 2, 1906 were rather *ad hoc*, non-institutionalised bodies. What was needed, however, was a fully equipped body to draw up regulations.

On August 13, 1907, Yikuang and his colleagues presented a joint memorial in which they suggested to upgrade the “Office for the Investigation of Government and Administration” to “Compilation Office for a Constitutional Government” (*Xianzheng biancha guan* 憲政編查館, henceforth: “Constitutional Office”) and to subordinate it to the Council of State (*Junjichu* 軍機處).¹⁰⁰⁶ The Throne consented to the proposal of creating the Constitutional Office on the same day.¹⁰⁰⁷ The subordination to the Council of State, however, should only be temporal,

¹⁰⁰⁵ See also Meienberger, *The Emergence of Constitutional Government in China*, 74.

¹⁰⁰⁶ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, vol. 1, 45.

¹⁰⁰⁷ Ibid., 45–46. Translated in United States Department of State, *Papers Relating to the Foreign Relations of the United States 1907*, 191.

that is, until a parliamentary body, the “Political Consultative Council” (*Zizhengyuan* 資政院), be established. This probably meant that, in order to balance the powers, a cabinet and a parliamentary body should be established at the same time, and that the Compilation Office would then be subordinated to the newly-founded cabinet.¹⁰⁰⁸ Indeed, the later creation of the Political Consultative Council was not immediately accompanied by a cabinet—but when a cabinet was created in 1911, the Constitutional Office was abolished as an independent organ and incorporated in the cabinet’s sub-structure.

Let us take a closer look into the set-up of the Constitutional Office, for it reveals a lot about what a constitution meant to China and what objectives constitutional reform had. Yikuang and his colleagues presented a proposal for an organic law of the Constitutional Office on August 24, 1907, which was approved and officialised by the Throne on the same day.¹⁰⁰⁹ According to Art. 3 of the organic law, it was divided into two departments: one for compilation (*bianzhiju* 編制局) and one for statistics (*tongjiju* 統計局). Further to these two main departments, the Constitutional Office had three bureaus, including a library and a translation bureau, tasked with translating foreign writings (Art. 10). The Constitutional Office could also send people abroad or to provinces, and consult with the Chinese ministers abroad and the provincial governors at any time (Art. 13).

What does this reveal to us? As can be seen from the document, the attributions of the Constitutional Office went far beyond the mere compilation of a constitutional text for China. First, more than just an office to draft a constitutional charter, it was designed to create a whole modern legal system for China. The constitution, as had been envisioned in Chinese constitutional thinking since the 1890s, would be the finishing stone to this very thorough enterprise. This is expressed in the introducing memorial, wherein Yikuang and his colleagues ar-

¹⁰⁰⁸ Meienberger, *The Emergence of Constitutional Government in China*, 69.

¹⁰⁰⁹ Gugong Bowuyuan Ming-Qing dang’anbu, *Qingmo choubei lixian dang’an shiliao*, 47–48 (covering memorial); 49–51 (proposal); *Daqing Dezhong Jing Huangdi Shilu*, chapter 576, 24 (approval by the Throne).

gued that all constitutional countries were countries ruled by law, and that hence laws had to be created in the first place. Accordingly, the compilation department was subdivided into three divisions according to the hierarchy of their subject matters: a) One responsible for matters constitutional; b) one concerned with (i.e., non-constitutional) law codes; c) one concerned with single laws and administrative regulations.

Second, the high-level inclusion of a statistical department seems odd for an organ concerned with the adoption of a constitution and needs further explanation. But expressing the high relevance of statistics for constitutional work, it is precisely this set-up which reveals that the objective of the constitution-making process went far beyond technical legal work. Rather, it was a project of utmost political importance, meaning not only internal politics, but also geopolitics.

The statistical department was charged with collecting both internal statistics as well as statistical data on foreign countries (Art. 4). The first attribution is the most straightforward one: Internal statistics were urgently needed, among others, for preparing the representative assemblies.¹⁰¹⁰ On October 22, 1907, Yikuang expanded the architecture for collecting statistics by proposing to establish offices for investigation at provincial level.¹⁰¹¹ He referred to Germany, where the Ministry of Justice had offices in every *Land*, and Japan, where there were statistical offices at three levels. The court approved of the proposal on the same day and ordered the establishment of investigation offices at provincial level as well as of statistical departments in every ministry.¹⁰¹²

But it is the collection of international statistics which reveals the global political dimension of Chinese constitution-making. The main function of a constitution was strengthening China internally, so that it could succeed in a com-

¹⁰¹⁰ On the statistical department see Andrea Bréard, "Reform, Bureaucratic Expansion and Production of Numbers: Statistics in Early 20th Century China" (Habilitationsschrift, Technical University of Berlin, 2008), 22–25.

¹⁰¹¹ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, 51–52.

¹⁰¹² Ibid., 52–53.

petitive world. Therefore, the Chinese government had to be able to quantify its own strength and the strength of the other states, especially the constitutional ones. This global comparison is the function emphasised by the memorialists as the main goal of collecting both internal and external statistics:

As to the matter of statistics, it is how we assess the surpluses and deficiencies in the country's accounts and the strengths and weaknesses of the country's power, comparing them in order to determine the direction of policies. Thus, it behooves to internally examine the country's situation and externally survey the global competition. Henceforth, all ministries and central organs and all provinces shall list the matters for which they are responsible in detail and periodically send them to our office. Our office shall compile all lists in order to assess how the country's present situation is faring.

至統計一項，所以驗國計盈絀，國勢強弱，參互比較，以定施政之方。故宜內考全國之情勢，外覘世界之競爭，此後各部院、各省應就其所管之事，詳細列表按期咨送臣館，臣館總彙各表即以推知國家現勢之若何。¹⁰¹³

The creation of the Constitutional Office was a further step for gradually turning the administration more efficient. But more than a mere renaming and reorganisation, the establishment of the Constitutional Office was an institutional cornerstone introducing a new phase in late Qing constitution making. It created a stable and specialised body devoted to not only compile the empire's constitutional charter, but to direct the Empire's entire constitutional policy. It also demonstrated that the Qing Court attached importance to the goal of constitutional preparation, this being a means to reconduct China to a strong place in the international community.¹⁰¹⁴

¹⁰¹³ Ibid., 48.

¹⁰¹⁴ Zhao, *Wang Rongbao*, 140. See also Bian, *Jindai Zhongguo xianfa wenben de lishi jiedu*, 33.

3. The Second Constitutional Mission and Other Chinese Activities Abroad

a) Sending out a Second Batch of Commissioners

The sending of commissioners abroad in 1905/06, the creation of the Constitutional Office and of the Political Consultative Council all followed Japanese models. For all the known reasons, Japan seemed to be the most natural positive model for China to base its constitution on. Calls for following the Japanese model were frequently heard, and in September 1906, the *North China Herald* reported that 90% of the members of the reform commission, the others being “perhaps only a few unimportant exceptions,” advocated to stay as close as possible to the Japanese model.¹⁰¹⁵

But the status of Japan as a blueprint was not as set in stone as it would seem from the surface. The Japanese model was attractive to members of the Court, for it preserved the supreme power in the hands of the Throne, while the Qing ministers abroad would have tended more towards an English model. Germany, being the main source of the Japanese constitution, could not be ignored either.¹⁰¹⁶ But there still was a need for further technical information on constitutional government, for the constitutional commissioners of 1905/06 had been rather generalist missions and had left much technical work to be done.

Yuan Shikai conveyed this need to the Court in a memorial submitted on July 28, 1907. Therein, writing that “in the past decades, there is not a single country in the world which has not proclaimed a constitution,” he demanded to send commissioners to Germany and Japan. As these countries were the most

¹⁰¹⁵ *North China Herald*, “China's Future Government,” September 28, 1906, 762. See also Li, *The Political History of China*, 209–210. For just one example of a Chinese intellectual see Luo Zhenyu 羅振玉, *Tiaocha zhengzhi guanjian* 調查政治管見 (Parochial views on investigation of politics and administration), file no. 09-01-01-0001-006, First Historical Archives of China, Beijing, [1], who expressly demanded that a constitution had to “thoroughly consult Japan” (*Xianfa bi xiang xun Riben* 憲法必詳詢日本).

¹⁰¹⁶ See also, reporting on different opinions in China, *North China Herald*, “The Deliberations in Peking,” September 13, 1907, 621.

similar to China, China should adopt a constitution similar to theirs. Moreover, he suggested to send members of the Imperial family to Germany and England to learn about politics and military matters.¹⁰¹⁷

The Court reacted to Yuan Shikai's suggestions a little more than one month later, issuing two edicts on September 9, 1907 which surpassed Yuan's suggestions. One of the edicts allowed all members of the Imperial family aged twenty to thirty to study abroad for periods of three years.¹⁰¹⁸ This edict does not seem to have made too much of an impact. A day later, on September 10, the press rumoured that Prince Chun intended to undertake a study trip to Europe of his own.¹⁰¹⁹ It cannot be ascertained whether the rumour was true, but if the Prince, who had travelled to Europe in 1901 and who would become Prince-Regent of China in 1908, really had this intention, he did not realise it.

A member of the Imperial family who did travel abroad was Pulun, the director of the Political Consultative Council who would later be named one of the main drafters of the constitution. Pulun spent about three weeks in Japan in December 1907, and some press outlets reported that among his travel objectives was the study of Japanese methods of government.¹⁰²⁰ However, there is no basis for this assertion, as his journey was not due to the edict of September 9. Instead, it was a return visit to a visit to China by the Japanese Prince Fushimi Hiroyasu 伏見宮博 (1875–1946). It is not impossible that Pulun had conversations about Japanese politics during his stay, but if he had, he did not conduct profound studies. The party was not constituted of constitutional specialists: Only Cao

¹⁰¹⁷ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubai lixian dang'an shiliao*, 202–203. See also Shen Tongsheng 沈桐生, ed., *Guangxu zhengyao* 光緒政要 (Essentials of politics of Guangxu), 5 vols. (Taipei: Wenhai chubanshe, Minguo 58 [1969]), vol. 5, 2156. Bian, *Jindai Zhongguo xianfa wenben de lishi jiedu*, 39, misdates the memorial to July 17, 1907. Gao, *Qingmo lixian shi*, 194, claims that even his call for more detailed study of the Japanese and German constitutions was done for the motive of finding therein elements that could be used to increase his own power.

¹⁰¹⁸ *Daqing Dezong Jing Huangdi shilu*, chapter 577, 4. Gao, *Qingmo lixian shi*, 195, transforms "aged 20 to 30" (*nianjie ershi sui yishang, sanshi sui yixia* 年屆二十歲以上。三十歲以下。) into "aged 11 to 33".

¹⁰¹⁹ *North China Herald*, "A Visit to Europe," September 13, 1907, 620.

¹⁰²⁰ E.g., *North China Herald*, "Prince Pu Lun," November 22, 1907, 490.

Rulin 曹汝林 (1877–1966) worked at the Constitutional Office.¹⁰²¹ Moreover, the trip is characterised as the return of a courtesy (*tōrei/dali* 答禮), and the extant archival material does not indicate study. In its core, thus, the visit was a diplomatic cordiality.¹⁰²²

The second edict of September 9, on the other hand, was of high constitutional importance. It appointed three “constitutional commissioners” (*kaocha xianzheng dachen* 考察憲政大臣) to study technical details of not only the Japanese and German, but also the English constitutions. Dashou 達壽 (1870–1939), an official at the Ministry of Education (*xuebu* 學部), was sent to Japan. Yu Shimei 于式枚 (1853–1916) from the Ministry of Post and Communications (*youchuanbu* 郵傳部) was appointed to Germany. Wang Daxie 汪大燮 (1860–1929), a diplomat at the Ministry of Foreign Affairs (*waiwubu* 外務部), was sent to the United Kingdom, where he had served as minister before.¹⁰²³

The choice of only Germany and Japan, as well as of the United Kingdom did, in fact, raise contemporary criticisms, reflecting an increasing mistrust in the Court’s intentions. On September 11, 1907, the Shanghai *Shenbao* 申報 published an editorial discussing several points of criticism and defending the Qing government from them.¹⁰²⁴ The defense revealed the ambitions that were attached to constitutionalism in China. The editorial raised the question why the choice of destinations for this constitutional mission was much narrower than the 1905/06

¹⁰²¹ A list of six members of his delegation who obtained orders from the Japanese government is to be found in Hayashi Tadasu 林董 and Saionji Kinmochi 西園寺公望, *Shinkoku tōreishi Furin Bairoku Denka zuiin Shinkoku gaimubu rōchū Ri Shinfun gai gomei jokun no ken* 清國答禮使溥倫貝勒殿下隨員清國外務部郎中李清芬外五名叙勳ノ件 (File about decorations for the official at the Foreign Ministry, Li Qingfen, and five other members of the entourage of his Highness Prince Pulun’s courtesy visit), December 10, Meiji 40 [1907], file no. A10112634900 [kun 勳 00183100], National Archives of Japan, Tokyo.

¹⁰²² Dispatch no. 134, December 13, 1907, N. S. Chine 183, Diplomatic Archives of the Ministry of Foreign Affairs of France, Paris, 68–69.

¹⁰²³ Zhu and Zhang, *Donghua xulu*, 643 (chapter Guangxu 209, 1); also contained in *Daqing Dezong Jing Huangdi shilu*, chapter 577, 5–6. Bian, *Jindai Zhongguo xianfa wenben de lishi jiedu*, 40, errs by two months (November 1907).

¹⁰²⁴ *Shenbao* 申報, “Lun xinjian Ri Ying De kaocha xianzheng dachen” 論新簡日英德考察憲政大臣 (On the newly selected constitutional investigation commissioners to Japan, England and Germany), September 11, 1907.

mission. The answer, the *Shenbao* explained to the public, was that China was only about to reform its form of government (*zhengti* 政體) but not its form of state (*guoti* 國體). Not only Republican polities were out of consideration, but also the other smaller kingdoms of Europe—for they were only “kingly constitutional systems” (*wangguo lixian zhi* 王國立憲制) and not “imperial constitutional systems” (*diguo lixian zhi* 帝國立憲制). China could only model itself on Empires, but not on kingdoms, the *Shenbao* judged, i.e., only on the mentioned three as well as Austria-Hungary. Setting a different emphasis than Yuan Shikai’s memorial, however, the editorial did expressly state that all the three countries differed from each other and from China—China could not even necessarily copy Japan.

Such debates notwithstanding, the mission of 1907 gained much less celebrity and is much less well-documented than the study trip of 1905/06. At the time, it did not attract the same level of attention in the press and in diplomatic reports, and it has been ignored by many later scholars. Meienberger, for example, writes that their journeys were certainly “far less important than the missions” of 1905/06.¹⁰²⁵ Gao Fang sees the fact that the Court sent only three second-tier officials with a narrow focus to only a few countries as proof that it was not a serious enterprise.¹⁰²⁶ However, the importance of the 1907 missions was considerably larger than Meienberger and Gao Fang assumed. As Reynolds has pointed out,

Deliberations in the months that followed and the concrete results show that it was these missions that gave final shape to constitutional thinking and planning. The lack of fanfare may well have been calculated.¹⁰²⁷

Indeed, in contrast to the first commission, the second mission was mainly technical rather than political. Unlike their predecessors, the three commissioners were not a travel party marketed with considerable fanfare, but instead heads of

¹⁰²⁵ Meienberger, *The Emergence of Constitutional Government in China*, 57, footnote 8.

¹⁰²⁶ Gao, *Qingmo lixian shi*, 195–196.

¹⁰²⁷ Reynolds, *The Xinzheng Revolution and Japan*, 189.

permanent bureaus in Tokyo, Berlin and London.¹⁰²⁸ They travelled with much smaller entourages than their predecessors, but each of them still had a staff on the ground to assist them. Neither were the three commissioners as inept as they might seem, or, in the case of Wang Daxie, even seemed to contemporaries. As Chai Songxia 柴松霞 has pointed out, the three 1907 constitutional commissioners were much more well-versed in the topics they studied than their predecessors.¹⁰²⁹ Wang Daxie had extensive experience abroad, having been minister to the Court of St. James and having in that function been involved in the first study commission's visit to England. Dashou, a man of considerable learning himself, was later replaced by Li Jiaju 李家駒 (1871–1938), who had been appointed minister to Japan in 1907 and was named one of the two main drafters of the final constitution in 1911.

The most reliable account of the missions as a whole is Tu Ying-jhen's master's thesis, which, in addition to published documents, mainly relies on archival material of the Palace Museum in Taipei to describe what the results of the three commissioners' work as presented to the Court at Peking.¹⁰³⁰ Most detailed attention has been spent on the most fruitful of the three missions—the one to Tokyo—, in particular by scholars describing Sino-Japanese interactions in the late Qing.¹⁰³¹ Moreover, Chai Songxia has written a doctoral thesis on the late Qing constitutional missions with strong focus on Germany.¹⁰³²

This study adds some fresh aspects to these three missions, in particular about their work on the ground. Despite the lack of official fanfare, all three missions were engaged in public diplomacy explaining China and China's constitutional reforms. Previous chapters have discussed cases of Chinese intellectuals

¹⁰²⁸ See Zhou, *Die Reformen des chinesischen Reiches*, 84.

¹⁰²⁹ Chai, "Chuyang kaochatuan yu Qingmo lixian yanjiu," 6, 170–171.

¹⁰³⁰ Tu Ying-jhen 杜映臻, "Ta shan zhi shi: Qingmo zhengzhi kaocha yu xianzheng kaocha" 他山之石：清末政治考察與憲政考察 (Polishing gems with foreign stones: political investigation and constitutional investigation in the late Qing)" (M.A. diss., National Taiwan Normal University, Minguo 98 [2009]).

¹⁰³¹ E.g., Sōda, *Rikken kokka Chūgoku e no shidō*, 70, 75.

¹⁰³² Chai, "Chuyang kaochatuan yu Qingmo lixian yanjiu."

(or intellectuals identifying themselves as Chinese) who made contributions to debates about constitutionalism in languages other than Chinese or outside of China, such as Ku Hung-Ming, Taw Sein Ko, and Zhang Qingtong. This sub-chapter adds some contributions made by the constitutional commissions or students associated with them in Japan, Germany and England. Furthermore, even though there was no permanent constitutional commission in the United States, there were quite a few Chinese intellectuals who explained China's constitutional reforms to a North American audience, as students or visitors. This sub-chapter will take the opportunity to also take a look on their activities.

b) Wang Daxie in Great Britain

Wang Daxie's mission to London was the least significant and the one that left the least traces.¹⁰³³ Although short notes in the Chinese- and English-language general press reported about his leaving and departure, his journey received but fleeting attention at the time, in contrast to, e.g., Dashou's mission. His one-year stay in London, from April 29, 1908 to March 29, 1909,¹⁰³⁴ seems to have been so unremarkable to his contemporaries that his *curriculum vitae* prepared for the files of the French Foreign Ministry in May 1910 merely describes it as "upon his return to Peking, the Emperor decided, nonetheless, that another function would be attributed to him."¹⁰³⁵

Even if Wang Daxie only had subpar success in London, a look at the closer circumstances of his mission does reveal a few things about the interna-

¹⁰³³ Tu, "Ta shan zhi shi," 184–185. Tu has amassed the largest number on Chinese-language sources on Wang Daxie's journey. Yet, Tu's master's thesis devotes each more than 20 pages to Yu Shimei's and Dashou's mission, but it spends merely 7 pages on Wang Daxie. Chai, "Chuyang kaochatuan yu Qingmo lixian yanjiu," 171, only dedicates a single sentence to Wang Daxie's mission (171), although she does write more about his contributions to the first mission.

¹⁰³⁴ On the date of his arrival see note sent by the Chinese legation attached to file no. 14686, April 29, 1908, FO 372/99, National Archives, Kew. On the date of his departure see *Times*, "Court Circular," March 31, 1909.

¹⁰³⁵ « À son arrivée à Péking, l'Empereur decida, toutefois, qu'une autre fonction lui serait attribuée. » Dispatch no. 170: Wang-Ta-Sié, ministre de Chine au Japon, May 26, 1910, 513 PO/A 241bis, carton 40, dossiers 1 a/b, Diplomatic Archives of the Ministry of Foreign Affairs of France, Nantes.

tional dimension of constitutional preparation. Wang's lacklustre performance was neither due to his personal abilities, nor can it be fully attributed to England being of lesser importance as a constitutional model than Japan and Germany. Wang had served as minister to London from 1905, had then been appointed vice-president of the Chinese foreign ministry in November 1906 and had just returned to Peking in May 1907.¹⁰³⁶ When the position for a commissioner to England was opened due to Yuan Shikai's memorial of July 28, Wang, "a thin, gentle, distinguished, pleasant" man with "slightly melancholic airs,"¹⁰³⁷ indeed had the best credentials to obtain this job. He had fresh first-hand experience of England and had impressed the constitutional commission of 1905/06 with his smooth handling of their visit.¹⁰³⁸

But it was precisely this sudden decision from above to attribute to him "another function" which might have confused his English hosts and hampered his success. His British counterparts misjudged his trip and only gave him a rather cold reception. It is worthwhile noting their reaction in more detail, because it shows that the global dialogue on China's constitution did also have its limitations. On May 2, 1908, the Chinese minister, Li Jingfang 李經方 (1855–1934), asked the Foreign Office on behalf of Wang Daxie, who would be residing "for some years in England in order to study Constitutional government," for an audience with Foreign Secretary Edward Grey (1862–1933).¹⁰³⁹ But the English thought that Wang's trip to England was only a pretext. Furthermore, due to his lacking language skills, he had not impressed the British as much as he had the Chinese constitutional commissioners. One of the officers at the Foreign Office wrote:

¹⁰³⁶ November 1906: Zhu, *Guangxu chao Donghua lu*, vol. 5, 5582. May 1907: *North China Herald*, "H.E. Wang Ta-Hsieh," May 17, 1907, 372.

¹⁰³⁷ («Un chinois du type maigre, doux [?], distingué, sympathique, l'air légèrement mélancolique.») The characterisation of Wang Daxie is from dispatch no. 170, 513 PO/A 241bis, carton 40, dossiers 1 a/b, Diplomatic Archives of the Ministry of Foreign Affairs of France, Nantes.

¹⁰³⁸ Tu, "Ta shan zhi shi," 181.

¹⁰³⁹ The matter is recorded in the handwritten minutes at file no. 15339, May 2, 1908, FO 371/429, National Archives, Kew, 486.

I understand that Wang's presence in Peking at the Wai-Wu-Pu, where he is a director, is not required—so he has been sent on an invented mission. He does not speak or understand a word of English, so his studies, to be effective, may be somewhat protracted!

The next diplomat added:

The mission is absurd, his absence from Peking being the object. But I do not think he would stay more than a minute.

Finally, Edward Grey was asked whether he would “see him for one minute,” whereto he answered in the positive. An audience was accordingly scheduled for May 8, 1908, of which there are no known minutes left. Wang also had an audience with King Edward VII to present his letter of credence on May 16, 1908.¹⁰⁴⁰ The meeting, which lasted about 15 minutes, does not seem to have gone too much beyond the usual cordialities.¹⁰⁴¹ Maybe, the King's words to Wang even bore a doubting undertone reminiscing of what the diplomats had discussed at the Foreign Office:

[His Majesty] told me that English constitutional government has been 800 years of continuities and changes, of gains and losses, that its historical threads were utterly complicated, that I should examine it according to convenience, and that he sincerely wished that everything work out as hoped for, and the like.

謂英國憲政垂八百年因革損益頭緒頗繁考察隨宜深盼一切如願等語¹⁰⁴²

¹⁰⁴⁰ File no. 16395, May 15, 1908, FO 372/99, National Archives, Kew.

¹⁰⁴¹ Buckingham Palace, “Court Circular,” May 16, [1908]. The meeting is also mentioned in King Edward VII's diary with the words “Received Chinese Ambassador and Special Chinese Envoy (who has come over to study British Constitution).” The author would like to thank the Royal Household, represented by Mrs. Lynne Beech, for kindly sending the Court Circular and the excerpt of King Edward's diary, and for informing the duration of the meeting (personal communication of April 6, 2018).

¹⁰⁴² Wang Daxie 汪大燮, Juzou di Ying chengdi guoshu riqi yi zhe chaogao zicheng you 具奏抵英呈遞國書日期一摺鈔稿咨呈由 (Copy of a memorial about the arrival in England and the date of the

The assessment of the diplomats at the Foreign Office was probably mistaken. Although Wang's sudden re-appointment to a post abroad right after having returned to China raised suspicions, he was the natural candidate for a mission which was not invented, but stood in connection to the other two constitutional missions to Japan and Germany. His lacking language skills were not an absolute obstacle either: As a matter of fact, Yu Shimei, too, was a "thorough Chinese" (*Stockchinese*) with no knowledge of the German language whatsoever.¹⁰⁴³ But just as Yu, Wang had several aides to assist him in his work.¹⁰⁴⁴ The rejection by the very motherland of constitutionalism does not mean that the Foreign Office was disinterested in the constitutional events in China. But it is a further element which shows that the adoption of a constitution in by China was not carried out because of the traditional constitutional powers, but even despite them.

The lack of access to high-ranking British counterparts hampered Wang's performance in England, but it does not mean that he and his team did nothing while in London. Wang and his team played a role in fortifying the Chinese official network abroad. For example, they assisted another Chinese delegation that was en route to the International Prison Congress, which was about to take place in the United States in 1910, and was conducting a legal study of its own in

presentation of the letter of credence), Guangxu 34/07/10 [August 6, 1908], file no. 02-12-014-01-010, Archives of the Institute of Modern History, Academia Sinica, Taipei.

¹⁰⁴³ Unidentified German newspaper article to be found in *Erteilung akademischer Würden — Promotionen*, 1909, file no. Juristische Fakultät 286, Archives of Humboldt University, Berlin, 26.

¹⁰⁴⁴ According to Wang's communication with Peking, he took three aides with him: Wu Zhenlin 吳振麟, an official at the Ministry of Agriculture, Ministry and Trade (*nonggongshangbu* 農工商部) and at the statistics department of the Constitutional Office; Shen Chenghu 沈成鵠 (1878–?), a provincial official from Hubei, and Ji Shan 繼善, an official at the Imperial Parks Administration (*fengchenyuan* 奉宸苑). Wang Daxie 汪大燮, *Juzou suidai renyuan zhe luzhi chaogao zicheng you* 具奏隨帶人員摺錄旨鈔稿咨呈由 (Copy of a memorial containing a record of the entourage), Guangxu 34/02/14 [March 16, 1908], file no. 02-12-014-01-002, Archives of the Institute of Modern History, Academia Sinica, Taipei. The *Shenbao* noticed that Wang was travelling with six others, which could have been either a mistake or a number which included further members for which Wang did not need to ask for dispense. *Shenbao* 申報, "Jingshi jinshi" 京師近事 (Recent events in the capital), April 2, 1908. According to *The Times*, "Court Circular," Wang left with only two secretaries.

Europe before that.¹⁰⁴⁵ Some figures closely related to the commission held public lectures in England.¹⁰⁴⁶ The commission was also closely watched by and had close relations to the community of Chinese students in England.¹⁰⁴⁷ Their magazine, the *Chinese Student's Union Quarterly*, took Wang Daxie's photo as a frontispiece carried an article about *Constitutional Government for China*.¹⁰⁴⁸ The article directly discussed the provincial assemblies to be elected in China and made its own detailed suggestions. It was not a mouthpiece of the Chinese government: It criticised the electoral regulations and suggested that elections should take place from the village level. In contrast to Chinese government position, it deemed that specific legislation should be given only after the constitution be adopted. However, one omission is striking: Although in China many were demanding English-style reforms¹⁰⁴⁹ and although the article was written by Chinese students in England, what it did not do was referring to English experiences.

Wang and his team did also tackle their primary task of studying the English constitution. In the one year of their mission, he and his team did actually produce a substantial output. They penned 14 works on the English constitutional system and its history, including one with the full translations of the major English constitutional texts (the *Magna Carta*, the *Petition of Right* and the *Bill of*

¹⁰⁴⁵ The delegation consisted of Xu Shiying 許世英 (1873–1964) and Xu Qian 徐謙 (1871–1940), and had already collaborated with the constitutional commission while in Germany. On this see Zhou Zechun 周澤春, "Sishi nian waijiao jilue" 四十年外交紀略 (節錄) (A chronicle of 40 years of diplomacy [abridged]), *Jindaishi ziliao* 近代史資料, no. 2 (1957), 101. In England, Xu Shiying was even reported to be a member of the constitutional commission. See *Times*, "Economics In Old China," April 9, 1909.

¹⁰⁴⁶ See *Times*, "The China Society," November 14, 1908, for a lecture by the Chinese diplomat Ivan Chên (Chen Yifan 陳貽範, 1870–1919) on "climbing the Chinese social ladder." See *Times*, "Economics In Old China," and *North China Herald*, "Economics in Old China," May 15, 1909, for a paper by Xu Shiying read at the China Society.

¹⁰⁴⁷ See also *Times*, "Court Circular," noticing that a large number of Students came to see of Wang Daxie and his assistants when they departed back to England.

¹⁰⁴⁸ T. F. Lam, "The Establishment of a Constitutional Government for China," *The Chinese Students' Union Quarterly* (*Liuying xuehui bao* 留英學會報) 1, no. 1 (1909). On the Chinese Students' Union Quarterly and other English-language student magazines such as *China's Young Men* (Shanghai), *The World's Chinese Students' Journal* (Shanghai) and *The Chinese Students' Bulletin* (USA) see *North China Herald*, "Progress and Politics in China," December 11, 1909, 573.

¹⁰⁴⁹ Already in 1898 see *Asahi shimbun*, "Yōsukō-han no hanchō."

Rights),¹⁰⁵⁰ which Wang submitted to the Throne in 1909 after his return from England.¹⁰⁵¹

Wang Daxie, who had been shunned by his British counterparts, did not write any memorial of importance detailing what lessons were to be drawn from the English constitution. Furthermore, the English model was of less practical interest than the Japanese and German ones. Yet his expertise on England was not completely ignored either. The Court showed interest in his work, as he submitted his books to the Throne and answered questions on the British parliament asked to him by Prince Regent Zaifeng 載灃 (1883–1951).¹⁰⁵² In 1911, Wang made his findings publicly accessible, publishing them commercially in a collec-

¹⁰⁵⁰ Wang Botang 汪伯唐 [Wang Daxie 汪大燮], “Kaocha Yingxian yaomu dawen” 考察英憲要目答問 (Questions and answers on important contents of constitutional governments), in *Yingguo xianzheng congshu* 英國憲政叢書 (Book series on English constitutional government). 3 vols. (Shanghai: Shangwu yinshuguan, 1911), vol. 2, 8–21 (*Magna Carta*); 21–24 (*Petition of Right*); 24–31 (*Bill of Rights*).

¹⁰⁵¹ The 14 books were: 1. *Questions and Answers on Important Contents of Constitutional Governments* (*Xianzheng yaomu dawen* 憲政要目答問); 2. *Fundamentals of English Constitutional Government* (*Yingguo xianzheng yaoyi* 英國憲政要議); 3. *History of Continuity and Change in the English Constitution* (*Yingxian yingeshi* 英憲因革史); 4. *Fundamentals of English Cabinet Politics* (*Ying zhengshu gangyao* 英政樞綱要); 5. *Fundamental Record of the English Privy Council* (*Ying Shumiyuan jiyao* 英樞密院記要); 6. *Thorough Examination of English Offices and Ministries* (*Ying caobu tongkao* 英曹部通考); 7. *Thorough Examination of the English parliament* (*Ying guohui tongkao [dian]* 英國會通考[典]); 8. *Basics of the English Electoral Law* (*Ying xuanjufa zhiyao* 英選舉法志要); 9. *Detailed Regulations Concerning the English Parliament’s Legislation and Debating* (*Ying guohui lifa yishi xianggui* 英國會立法議事詳規); 10. *On the Development and System of English Financial Administration* (*Ying licai yange zhidu kao* 英理財沿革制度考); 11. *On the Development of English Courts* (*Ying fating yange kao* 英法庭沿革考); 12. *Examination on the Present-day Judicial System [Brief Examination of the Judicial System]* (*Sifa jinzhi kao [Sifa kaolue]* 司法今制考[司法考略]); 13. *Basics of Popular Government in England and Wales* (*Yingwei minzheng jiyao* 英威民政輯要); 14. *Outline of English Politics Regarding the Governance of Colonies* (*Ying zhishu zhenglue* 英治屬政略). Chushi Yingguo dachen Wang Daxie zhe kaocha Yingguo xianzheng bianji geguo jin-cheng you 出使英國大臣王大燮摺考查英國憲政編輯各國進呈由 (Memorial by constitutional commissioner to England, Wang Daxie, on his compilations of investigation about constitutional government in England and in all countries), in the files of the Council of State (*Junjichu dang, Yuezhe bao* 軍機處檔·月摺包), file no. 188712, Xuanton 2/6/14 [July 20, 1910], apud Tu, “Ta shan zhi shi,” 183–184 (with short commentaries on each of these books). Cf. *Daqing Xuanton zhengji shilu*, chapter. 10, 3–4, and Liu Jinzao 劉錦藻, ed., *Qingchao xu wenxian tongkao* 清朝續文獻統考 (Thorough examination of documents, continued for the Qing dynasty), 4 vols. (Taipei: Xinxing shuju, Minguo 52 [1963]), chapter 396, 11471, who give slightly differing titles for some books.

¹⁰⁵² This is only known through second-hand noticing in *North China Herald*, “Chinese News (Translated from the Chinese Press),” May 1, 1909, 277. However, albeit its lesser direct importance as a model, England was still the motherland of parliamentarism, and it seems likely that figures like Zaifeng were indeed interested in it, and that he conducted the reported audience.

tanea entitled *Book Series on English Constitutional Government* (*Yingguo xianzheng congshu* 英國憲政叢書).¹⁰⁵³

c) Yu Shimei and the Chinese Students in Germany

The commissioner to Germany, Yu Shimei, departed on November 29, 1907, and returned on June 11, 1909. “Commissioner to Germany” was his official designation, but it was somewhat imprecise. Rather, he was officially tasked with studying the constitution of the Kingdom of Prussia and not so much that of the federal level, the Empire of Germany. This was because the Qing government was not interested in the constitution of a federation of states, as the Empire of Germany, but instead deemed Prussia as a unitary state to be more akin to China.¹⁰⁵⁴

Why is Yu Shimei’s stay in Berlin remarkable? First, it is a good example showing that the constitutional commissioners did not conduct their studies in a vacuum, just passively learning about the constitutions of their host countries and reporting it back to Peking. Instead, Yu Shimei found in Berlin a Chinese community that was already very active in discussing what constitution China should adopt. These members of the Chinese community were in dialogue with their German counterparts, and Yu, upon his arrival, integrated himself seamlessly into this complex intellectual network.

So, how did this community into which Yu arrived look like? Most Chinese students in Berlin were enrolled in law.¹⁰⁵⁵ Some of them were inclined to-

¹⁰⁵³ Wang, *Yingguo xianzheng congshu*.

¹⁰⁵⁴ Zhou, *Die Reformen des chinesischen Reiches*, 85, footnote 64.

¹⁰⁵⁵ The best account of Chinese students in Germany is Thomas Harnisch, *Chinesische Studenten in Deutschland: Geschichte und Wirkung ihrer Studienaufenthalte in den Jahren von 1860 bis 1945* (Hamburg: Institut für Asienkunde, 1999). See in particular 108–119 for late Qing university students. For an overview of Chinese students in Germany see Du Weihua 杜衛華, “1898–1918 nian Deguo Bolin Daxue Zhongguo liuxuesheng yanjiu” 1898–1918 年德國柏林大學中國留學生研究 (Research on Chinese students at the University of Berlin in Germany, 1898–1918), *Jiangsu Shifan Daxue xuebao* (*Zhexue shehui lexue ban*) 江蘇師範大學學報 (哲學社會科學版) 39, no. 4 (2013). The tables given by Du, however, should be taken *cum grano salis*. For example, the transcription Tso Tschun Tschou is not identified as Zhou Zechun 周澤春. Instead, Chou Fu–Tjee (who allegedly studied from winter semester 1905/06 to summer semester 1914) is identified as Zhou Zechun, based on his style names (*zi* 字) Zhou Fujie 周福介 and Zhou Fengjie 周鳳介. Also, the table knows a Chow Yin–Tje (who

wards the revolutionary party under Sun Yat-Sen, while others promoted the reforms that were being undertaken by the Chinese government. The latter had already been studying the German situation and had already begun to solve some of the tasks assigned to Yu Shimei, i.e., translating the Prussian constitution and commentaries to it.

In 1905, Sun Yat Sen visited Europe from the United States. The visit gained celebrity because when in Belgium, Sun met Belgian socialist leaders Émile Vandervelde (1866–1938) and Camille Huysmans (1871–1968) and tried to join the Second International.¹⁰⁵⁶ Berlin students Zhu Hezhong 朱和中 (1881–1940) and Bin Bucheng 賓步程 (1880–1943) invited him to come to Berlin. Sun stayed in Berlin for 12 days and discussed the Chinese constitution with the Chinese students. He presented his idea of a constitution of five powers (*wuquan xianfa* 五權憲法) and did have success among some of the students in Berlin, as the Berlin section of the *Tongmenghui* functioned for a few years. Zhu Hezhong, it is to be

allegedly studied from winter semester 1911/12 to summer semester 1914), who is taken to be “probably another person.” However, the lists of students of Berlin University reveal a slightly different picture. There is a student named Chou In–Tjee from winter semester 1905/06 to summer semester 1909. Again, from winter 1911/12 to 1913/14, there is a student named Chow Yin–Tjee. Chow Yin–Tjee lived at the same address (Kurfürstendamm 218) as the former Chou In–Tjee until winter 1911/12 and then moved to a new address (Sybelstraße 48/49). It is, thus, highly likely, that the 1911 Chow Yin–Tjee is just a reenrolled Chou In–Tjee with a slightly different transcription. There is no Chou Fu Tjee in the Berlin University documents. Most likely, Chou “Fu” Tjee is a misinterpretation for Chou In Tjee, since “In”, in *Fraktur* type, looks rather similar to “Fu” (Chou In Tjee, cf. Chou ʃu ʒjee). Between 1907 and 1910, Tschou Tso Tschun (Zhou Zechun) lived at exactly the same address as Chou In Tjee. It is unlikely that the student lists would have a double recording for these two students; rather, it seems probable that these two students just happened to live at the same place. See *Amtliches Verzeichnis des Personals und der Studierenden der königlichen Friedrich-Wilhelms-Universität zu Berlin: Auf das Winterhalbjahr von 16. Oktober 1905 bis 15. März 1906*, 85, and all following volumes of the series until *Amtliches Verzeichnis des Personals und der Studierenden der königlichen Friedrich-Wilhelms-Universität zu Berlin: Auf das Sommerhalbjahr von 16. April 1914 bis 15. August 1914* (Berlin: Universitäts-Buchdruckerei von Gustav Schade [Otto Francke], 1914), 98.

¹⁰⁵⁶ See Paul B. Spooner, “Sun Yat Sen and the Second International. Portugal e China: Duas revoluções, dois centenários—II,” *Revista de Cultura*, no. 37 (2011), Paul B. Spooner, “Sun Yat-sen and the Second International: His Activities in Europe, Winter-Spring 1905,” *Chinese Cross-Currents* 8, no. 4 (2011).

noted on the side, continued to be a specialist for German constitutional law in Republican times, translating and publishing the Weimar Constitution in 1923.¹⁰⁵⁷

However, Sun's promotion of his constitutional model did not convince all students present at the *Tongmenghui* meetings. Ma Derun 馬德潤 (1871–1931), a student from Hubei who had come to Germany to study law in 1903, instead held that China should model itself on the German and Prussian constitutions. A discussion arose, and another student, Xue Xianzhou 薛仙舟 (1878–1927), praised the constitution of the United States in opposition to the monarchical constitution of Germany. Although Sun Yat-Sen personally tried to win him over, even proposing to make him head of the *Tongmenghui* branch office, Ma stayed unconvinced and distanced himself from the revolutionaries.¹⁰⁵⁸

Instead, he identified himself with the “Young Chinese” reformers. In particular, he praised the reformers around Kang Youwei and Liang Qichao, two “very meritorious men whose intelligence stood on one level with their patriotism.”¹⁰⁵⁹ In 1906, he published a booklet in German, entitled *China: Explanations by Ma Do Yün* (*China: Erläuterungen von Ma Do Yün*), defending the Chinese against accusations of being the “barbarians of East Asia.”¹⁰⁶⁰ Therein, he explained how Chinese students had come to European countries to “study their constitutions and profit from the progresses of knowledge, of industry and of

¹⁰⁵⁷ Hong Meng, *Das Auslandsstudium von Chinesen in Deutschland (1861-2001): Ein Beispiel internationaler Studentenmobilität im Rahmen der chinesischen Modernisierung*, (Frankfurt am Main: Peter Lang, 2005), 64–65, without giving references, contends that Zhu Hezhong had warm words for the Prussian constitution and recommended that China use it as a model. According to Zhu's memoirs, however, it was the opposite: Ma Derun opposed Zhu's revolutionary activities by pointing to the German and Prussian models. See Zhu Hezhong 朱和中, “Ouzhou Tongmenghui jishi” 歐洲同盟會紀實 (Record of the *Tongmenghui* in Europe), in *Xinhai geming huiyilu* 辛亥革命回憶錄, ed. Zhongguo renmin zhengzhi xieshang huiyi quanguo weiyuanhui wenzhong ziliao yanjiu weiyuanhui 中國人民政治協商會譯全國委員會文史資料研究委員會, 8 vols. (Beijing: Wenshi ziliao chubanshe, 1981), vol. 6, 9. On Zhu Hezhong and the *Tongmenghui* in Berlin see Erich Gütinger, *Die Geschichte der Chinesen in Deutschland: Ein Überblick über die ersten 100 Jahre seit 1822* (Münster: Waxmann, 2004), 167, 224–226, with further references.

¹⁰⁵⁸ Zhu, “Ouzhou Tongmenghui jishi,” 8–9.

¹⁰⁵⁹ Ma Derun 馬德潤, *China: Erläuterungen von Ma Do Yün* (Berlin: National-Zeitung G.m.b.H., 1906), 49.

¹⁰⁶⁰ *Ibid.*, 6.

commerce.”¹⁰⁶¹ Most importantly, the model for bringing China’s polity to the same level of the great powers was “small Japan, which had become an exemplary state in the shortest of times” (“das kleine Japan, das in kleinster Zeit ein Musterstaat geworden”).¹⁰⁶²

Despite his praise for Liang and Kang and of his public criticism for the conservatives in Court who had suppressed the 1898 movement, Ma was closely involved with the Chinese government. When the first study commission visited Europe, he accompanied them on their visits to Germany, Austria and Russia.¹⁰⁶³ Ma stayed on to finish his legal studies, with the full support of the Chinese legation.¹⁰⁶⁴

Ma did not conduct his studies in isolation from the international intellectual community. That he was well-connected in international academic networks is evidenced by his membership in the International Association for Comparative Legal Studies and National Economy (*Internationale Vereinigung für Vergleichende Rechtswissenschaft und Volkswirtschaftslehre*), where he was a member together with Zhou Zechun¹⁰⁶⁵—who wrote his thesis on constitutional law—and Wang Chonghui 王寵惠 (1881–1958), the Chinese student who produced a successful English translation of the German Civil Code.¹⁰⁶⁶

¹⁰⁶¹ Ibid., 85.

¹⁰⁶² Ibid., 86. On “following the path of” and “imitating” Japan see 80–81.

¹⁰⁶³ Ma, *Der Eintritt des Chinesischen Reiches in den völkerrechtlichen Verband*, 79.

¹⁰⁶⁴ For example, the Chinese legation to Germany officially requested the faculty of law to dispense Ma Derun from the exegesis of a Latin text, a usual requirement in legal doctoral examinations. The faculty granted the request by 5:4 votes. See Promotionen, 1907, file no. Juristische Fakultät 282, Archives of Humboldt University, Berlin, 194–195 and 206. On Ma’s passing having been made easy for diplomatic reasons see Zhou, “Sishi nian waijiao jilüe,” 100–101. The Chinese minister did also write a similar letter for Zhou Zechun; but Zhou’s requests were indeed not granted. He was even failed in his first Latin exegesis, having to write a second one. See Promotionen 1909, file no. Juristische Fakultät 286, Archives of Humboldt University, Berlin, 24, and his exegesis attached to the files.

¹⁰⁶⁵ Chinese sources date his birth as 1880, but he himself writes in his curriculum for his doctoral degree that he was born on 19th February 1883. See Hubei sheng difangzhi bianzuan weiyuanhui 湖北省地方志編纂委員會, ed., *Hubei shengzhi: renwu* 湖北省志：人物, 2 vols. (Wuhan: Hubei renmin chubanshe, 2000), vol. 2, 1037, and Zhou, *Die Reformen des chinesischen Reiches*, [95].

¹⁰⁶⁶ Zhou, “Sishi nian waijiao jilüe,” 99.

Furthermore, questions concerning China were also not only discussed within the Chinese community, but they were also of interest to German academia. In the winter semester of 1906/07, one of his professors, Ferdinand von Martitz (1839–1921), gave a coursework to his class on the question of China's standing in public international law. Ma was the only student in the seminar to submit the term paper, in which he argued that China had already become a full-fledged member of the international community. Martitz fully supported the argument and found high words of praise for the essay, although he expressly remarked that it was not yet up to doctoral standards. Yet, Ma was so flattered by the praise that he nonetheless submitted the essay in unchanged form as his doctoral dissertation.¹⁰⁶⁷

In fact, Ma was not the first Chinese to obtain a doctoral degree in Germany, as Li Fuji 李賦基 (1885–?) had earned a doctorate in physics in Bonn half a year earlier.¹⁰⁶⁸ However, Li's doctorate was ignored at the time. The public, instead, thought Ma to be the first Chinese to obtain such a degree in Germany, and paid quite some attention to it. Ma's defense, held on June 11, 1907, was very well-attended by students and members of the Chinese community. Not only the Chinese minister to Germany was present, but even the minister to Austria personally travelled to Berlin. Again, it was the German side which damped the Ma's "Young Chinese" reformist zeal, by recurring to the organicist notions so current at the time. The dean of the faculty of law, Heinrich Brunner (1840–1915) held a speech in which he stressed that China should promote reforms, but that they would be of more value if they were connected to China's own history.¹⁰⁶⁹

¹⁰⁶⁷ See von Martitz' opinion in Promotionen 1907, file no. Juristische Fakultät 282, Archives of Humboldt University, Berlin, 198. On Ma Derun's significance in public international law see the seminal work of Svarverud, *International Law as World Order in Late Imperial China*, 260–263.

¹⁰⁶⁸ See Harnisch, *Chinesische Studenten in Deutschland*, 109, with further references, and Meng, *Das Auslandsstudium von Chinesen in Deutschland*, 61–62.

¹⁰⁶⁹ On Ma's defense see *Neue Freie Presse*, "Die Promotion eines Chinesen," July 19, 1907, Abendblatt, 1.

Ma not only published the thesis in German, as required. In the same year, he also published a faithful Chinese translation at the *Shanghai Commercial Press*.¹⁰⁷⁰ The Chinese translation was further valorized by having a preface penned by the Chinese minister to Germany, Sun Baoqi 孫寶琦 (1867–1931), who argued that China would at last be unanimously recognised as being on equal terms in international law, just as the Ottoman Empire and Japan had been.

Ma held the opinion that China could only be respected by the foreign powers if it thoroughly changed its administration.¹⁰⁷¹ Accordingly, Ma did not only work on public international, but also on constitutional law. His work bridged the first and the second constitutional missions. Ma himself writes in his curriculum handed in for the doctoral degree that he had elaborated a first translation of the Prussian constitutional charter, together with a commentary.¹⁰⁷² This, however, was not his solitary enterprise, for Ma closely worked together with other Chinese students.

In 1908, Ma appeared in a Berlin-produced Chinese-language legal magazine: the *Introduction to News on Law and Politics from Europe and America* (*Oumei fazheng jiewen* 歐美法政介聞). Written by Chinese students in Germany, the magazine was published by the *Shanghai Commercial Press*. Ma Derun and Zhou Zechun were the main editors, and in addition to them, the publication also contained contributions by Shi Yu 施愚 (1875–1930),¹⁰⁷³ Hu Jun 胡鈞 (1869–1944), and

¹⁰⁷⁰ The German book was published as Ma, *Der Eintritt des Chinesischen Reiches in den völkerrechtlichen Verband*; the Chinese as Ma Derun 馬德潤, *Zhongguo he yu guoji gongfa lun* 中國合於國際公法論 (Shanghai: Shangwu yinshuguan, 1907).

¹⁰⁷¹ Ma, *China*, 79.

¹⁰⁷² Ma, *Der Eintritt des Chinesischen Reiches in den völkerrechtlichen Verband*, [79]. Also in Promotionen 1907, file no. Juristische Fakultät 282, Archives of Humboldt University, Berlin, 190.

¹⁰⁷³ Shi Yu does not seem to appear in student lists of Berlin University; but according to the reports sent to Peking by Yu Shimei, he had been studying in Germany for three years. Yu Shimei 于式枚, *Juzou xie'en you kaocha Pu De xianfa chengli qingxing you xianfa jieshi you zou diao Shi Yu gezhe pianchao gao zi cheng you* 具奏謝恩又考查普德憲法成立情形又憲法解釋又奏調施愚各摺片抄稿咨呈由 (Copy of various memorials, expressing thanks; furthermore, describing the situation of investigation of the Prussian and German constitutions, furthermore, a commentary on the constitutions, furthermore, on the promotion of Shi Yu), *Guangxu* 34/08/24 [September 19, 1908], file no. 02-12-026-01-015, Archives of the Institute of Modern History, Academia Sinica, Taipei.

Zuo Deming 左德明. The magazine was run under the roof of the “Chinese Scholar’s Association” in Berlin (*Chinesische wissenschaftliche Vereinigung*, *Bolin Zhongguo xuehui* 柏林中國學會). Its printing costs were subsidised, among others, by Sun Baoqi, the Chinese minister, and Zhao Erxun 趙爾巽 (1844–1927), who had been Viceroy of Huguang until March 1908. Such support notwithstanding, the publication ran into financial problems and was discontinued after but a few issues.¹⁰⁷⁴

The magazine carried mainly translations of articles on all domains of jurisprudence and law. These included such varied contents as Montesquieu’s *Lettres Persanes*, a translation of the newly-adopted German Civil Code (*Bürgerliches Gesetzbuch*) and a piece by Alfred von der Leyen (1844–1934) on railway politics (*Eisenbahnpolitik*). It also contained some specifically constitutional articles, i.e., the beginnings of Paul Schubart’s commentaries on the constitution of the German Empire and of Georg Mayer’s textbook of German constitutional law (*Lehrbuch des deutschen Staatsrechts*).

This was the shape of the Chinese legal community in Berlin when Yu Shimei arrived, in April 1908. Upon his arrival, he closely worked with the Chinese students who were editing the magazine and made them members of his standing commission. At the time of his departure, it was staffed with five men, including Zhou Zechun and Shi Yu.¹⁰⁷⁵ Ma Derun likely was also a member of the standing commission. In spite of having graduated in the summer of 1907, he stayed on working in Berlin until 1909, which is why he also still appeared to-

¹⁰⁷⁴ According to Zhou Zechun’s memories, it was discontinued after “less than 10 issues.” However, this seems to be an exaggeration, as only three issues are preserved at the University of Peking Library. Zhou, “Sishi nian waijiao jilüe,” 100. On the *Chinesische wissenschaftliche Vereinigung* and support by Sun, Zhao and others see the magazine itself: “Oumei fazheng jiewen jianzhang” 歐美法政介簡章 (Succinct notes on the *Introduction to news on law and politics from Europe and America*), *Oumei fazheng jiewen* 歐美法政介聞, no. 1 (Guangxu 34 [1908]); “Oumei fazheng jiewen jianzhang” 歐美法政介簡章 (Succinct notes on the *Introduction to news on law and politics from Europe and America*), *Oumei fazheng jiewen* 歐美法政介聞, no. 2 (Guangxu 34 [1908]).

¹⁰⁷⁵ See the article from an unnamed newspaper contained in Promotionen 1909, file no. Juristische Fakultät 286, Archives of Humboldt University, Berlin, 26.

gether with the other Berlin students in the *Oumei fazheng jiewen*.¹⁰⁷⁶ In 1909, both Ma Derun and Shi Yu went back to China to work at the Constitutional Office.

Next to Ma and Shi, one other figure was of particular constitutional importance: Zhou Zechun. Zhou's position was somewhat peculiar and even contradictory, as he had been among the founders of the *Tongmenghui* in Europe, but then later also collaborated with the Imperial government. In his memoirs, written in the 1950s, Zhou Zechun recounts that Yu Shimei approached him and tried to recruit him, offering him a salary. Zhou Zechun downplays his role, stating that he had mainly translated material concerning administrative law. Apart from attending a few parties, Zhou wrote, he had not had too much involvement in diplomatic negotiations. He had merely gone to the German Foreign Office and to the Privy Council to collect some documents.¹⁰⁷⁷ Indeed, Yu Shimei, in one of his reports to the throne, credits Shi Yu for having compiled the material, not mentioning Zhou. Yu praises Shi's experience and states that he had often discussed constitutional matters with him.¹⁰⁷⁸

However, Zhou Zechun's role in the constitutional commission was not as minor as he painted it in the 1950s. Zhou was officially a member of the standing constitutional commission, with a visiting card of his own,¹⁰⁷⁹ and the press iden-

¹⁰⁷⁶ On Ma continuing working in Berlin see Hubei sheng difangzhi bianzuan weiyuanhui, *Hubei shengzhi: renwu*, vol. 2, 1009. A newspaper article reproduced in Promotionen 1909, file no. Juristische Fakultät 286, Archives of Humboldt University, Berlin, 26, states that the standing commission had consisted of five members. As there were five contributors to the *Oumei fazheng jiewen*, at least one of them was probably not a member of the study commission. On the dissertations of Ma Derun and Zhou Zechun see Felix Kraushaar, *Aufbruch zu neuen Ufern: Die privatrechtlichen und rechtshistorischen Dissertationen der Berliner Universität im ersten Drittel des 20. Jahrhunderts im Kontext der Rechts- und Fakultätsgeschichte* (Berlin: Berliner Wissenschaftsverlag, 2014). Kraushaar writes (107) that Ma was appointed member of the standing commission after the end of his doctorate, referring to Ma's curriculum vitae contained in Promotionen 1907, file no. Juristische Fakultät 282, Archives of Humboldt University, Berlin, 190. However, in his curriculum, Ma was referring to the travelling study commission of 1906, not to the standing commission of 1908.

¹⁰⁷⁷ Zhou, "Sishi nian waijiao jilüe," 100.

¹⁰⁷⁸ Yu, Kaocha Pu De xianfa chengli qingxing 考查普德憲法成立情形, file no. 02-12-026-01-015, Archives of the Institute of Modern History, Academia Sinica, Taipei, [7].

¹⁰⁷⁹ Promotionen 1909, file no. Juristische Fakultät 286, Archives of Humboldt University, Berlin, clipped to 24. See also Hubei sheng difangzhi bianzuan weiyuanhui, *Hubei shengzhi: renwu*, vol. 2, 1037. Cf. Zhu, "Ouzhou Tongmenghui jishi," 10–11.

tified him as one of the key members of the commission.¹⁰⁸⁰ Corresponding to his close involvement with the commission, chose the Chinese reforms in “constitution, administration and jurisprudence” as the subject of his doctoral thesis, which he defended in Berlin two years after Ma Derun, in November 1909.¹⁰⁸¹ Sun Baoqi’s successor as minister to Germany, Yinchang 蔭昌 (1859–1928), in a recommendation letter to the dean of the faculty of law, wrote that Sun had noticed Zhou’s qualities and that he had therefore appointed him to the constitutional investigation team¹⁰⁸²

In his dissertation, Zhou first outlined the history of the traditional Chinese constitution and administration and then outlined the various reforms undertaken since the last years of the 19th century. After translating the Chinese government’s detailed constitutional plans, Zhou ended with describing in great detail the activities of the permanent constitutional commission. Stressing that he himself was a member of the commission, Zhou translated the instructions that they had received from Peking.¹⁰⁸³ In his work, Zhou repeatedly stressed the principle of organicism. China should not blindly copy a single foreign model, and it should not do away with “the existing institutions ingrained in the popular conscience” (*die im Volksbewußtsein verwurzelten bestehenden Einrichtungen*).¹⁰⁸⁴ Yet, Zhou supported the adoption of a constitution on generally Western models:

Coming from their erstwhile exclusive estimation of their own culture, the Chinese have not committed the opposite mistake of uncritically adopting everything occidental. But as they have deemed the constitutions of the

¹⁰⁸⁰ On a certain Mr. Dau (=Zhou) being fluent in German and thus a key member in the commission, see the article from an unnamed newspaper contained in Promotionen 1909, file no. Juristische Fakultät 286, Archives of Humboldt University, Berlin, 26. “Dau” is identified as “Tchou” in handwriting next to the article.

¹⁰⁸¹ Zhou’s thesis was published as Zhou, *Die Reformen des chinesischen Reiches*.

¹⁰⁸² Promotionen 1909, file no. Juristische Fakultät 286, Archives of Humboldt University, Berlin, 24.

¹⁰⁸³ Zhou, *Die Reformen des chinesischen Reiches*, 84–88.

¹⁰⁸⁴ *Ibid.*, 12.

European states to be good, they regard it as expedient to give to their country a constitution and administration on European models.

Die Chinesen sind aus ihrer früheren Alleinschätzung der eigenen Kultur nicht in den entgegengesetzten Fehler der kritiklosen Annahme alles Westländischen verfallen, da sie aber die Verfassungen der europäischen Staaten für gut befunden haben, halten sie es für zweckmäßig, ihrem Lande eine Verfassung und Verwaltung nach europäischem Muster zu geben.¹⁰⁸⁵

This was also what struck Zhou's supervisor, the renowned jurist Gerhard Anschütz (1867–1948). Although he noticed Zhou's tendency to be over-positive about his fatherland, he did not hold it against him. He remarked that the reforms effected in China since the late 1890s placed administrative reforms before constitutional reforms, and aimed more for a constitutional monarchy than for parliamentarism. They, thus, seemed to follow the same pattern as envisioned erstwhile in Prussia by Karl Freiherr vom und zum Stein (1757–1831) and Carl August Fürst von Hardenberg (1750–1822). He was astounded that the Chinese plans foresaw that China, by 1916, would be a "civilised and constitutional state" (*Kultur- und Verfassungsstaat*) with all the elements present in Western constitutional states. It would have, among others, administrative justice, provincial parliaments and a bicameral parliament on a national level. The second chamber would even be elected by universal suffrage as opposed to the Prussian three-class system. Anschütz ended with the exclamation: "hence, toute la lyre!" (*also, toute la lyre!*).¹⁰⁸⁶

Second, Yu Shimei's reports from Berlin reveal the tensions that necessarily arose between the principle of organic development of a constitution and the demands for the quick adoption of a constitution using foreign models. On the

¹⁰⁸⁵ Ibid., 90.

¹⁰⁸⁶ The expression "Kulturstaat" is from Zhou's dissertation. Ibid., 90.

question of organicism, Yu seemed much more cautious than the Chinese students who were studying in Berlin. In China, this made him a symbol of staunch anti-constitutionalism. On the day of his departure, he handed in a memorandum to the throne demanding that no time frame be given for the introduction of constitutional government.¹⁰⁸⁷ During his stay in Germany, Yu further expanded his ideas. In one report sent to Peking from Berlin in summer 1908, he stressed that China had to develop its own constitution instead of looking for it abroad (*xianfa zizai Zhongguo, bu xu qiu zhi waiyang* 憲法自在中國不須求之外洋). He pointed out that there was no point for China copying the West:

Chinese law is all set from above and complied with by below, whereas Western law is set from below and respected by above. I have taken the texts of the various countries' constitutions and thoroughly read them with reference to each other. There are legal provisions which already exist in China and do not need to be declared. There are matters which originally do not exist in China and must not be copied. There are superficial and laughable things, there are contradictory and shocking things, there are things which are objected to in this country and allowed in that country, there are things which are approved on one day and rejected on the other.

中法皆定自上而下奉行西法則定自下而上遵守嘗取各國憲法條文逐處參校有其法爲中國所已有而不須申明者有其事爲中國所本無而不必仿造者有鄙陋可笑者有悖誕可駭者有此國所拒而彼國所許者有前日所是而後日所非者

1088

¹⁰⁸⁷ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, vol. 1, 305–307. Also contained in Xia et. al., *Jindai Zhongguo xianzheng licheng*, 66–68.

¹⁰⁸⁸ *Daqing Dezong Jing Huangdi shilu*, chapter 592, 4–5 (recorded for Guangxu 34/05/20 = June 18, 1908). The version in Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, 336–338 (recorded for Guangxu 34/03/17 = April 17, 1908), differs slightly.

Yu was the object of much criticism from various media regarding his stances on the constitutional strategy to be taken by China.¹⁰⁸⁹ However, he was not fundamentally opposed to adopting a constitution as such. In fact, Yu's very organicist ideas were not a pure Chinese production, but emerged and were reinforced in contact with European thought. In Berlin, he had an audience with the German Emperor, who stressed that the German constitution contained many things which were not transferable to China, to begin with the electoral system. China should, Yu Shimei was told, choose what was useful in it.¹⁰⁹⁰ In another memorandum, Yu gives his own version of Herbert Spencer's advice to Japan:

The English scholar Spencer once questioned the Japanese Dr. Kaneko Kentarō. He thought that in all countries, constitutionalism emerged from force, and that Japan had always been a dictatorial form of state. If the people had been at ease with its civilisation, how had this law emerged all of a sudden? Kaneko Kentarō then told him that after the Restoration, one had abolished the feudal domains (*han*) and changed the system in a process of 20 consecutive years. It had not emerged suddenly. Spencer then said that one state's constitution and subordinated laws must have the same quality as the said state's history and form of state. Otherwise, its adoption will be unthinkable difficult, and the long-running faults will not be able to be corrected and prevented.

英儒斯賓塞爾嘗詰日本博士金子堅太郎以為各國立憲皆由逼迫而成日本向為獨裁之國體民安其化何以平地湧現此法金子堅太郎乃告以維新以後廢藩改制所由來前後歷二十年並非突然也而起斯賓塞爾又言一國之憲法及附屬

¹⁰⁸⁹ *North China Herald*, "To Study the German Constitution," August 1, 1908, 322.

¹⁰⁹⁰ This is the version that circulated in the Chinese press, namely in the *Shuntian Shibao* 順天時報 of July 14, 1908 and in the *Shibao* 時報 of July 20, 1908. Both articles are contained, in translated form, in Peking II 595, Political Archive of the Federal Foreign Office of Germany, Berlin, 278 (*Shuntian Shibao*) and 272, 274 (*Shibao*). Given the strong organicist inclinations of German jurists, this is quite plausible.

法律必須與本國之歷史及國體有同一之性質否則實行之際困難不可思議流弊尤不可勝防¹⁰⁹¹

What would, then, be a bad and what would be a good constitution for China? Yu explained that constitutionalism could be done badly: It could give too much space to reformist and revolutionary forces, and lead to a revolution as in France.¹⁰⁹² Another negative example used by Yu was the constitution of the USA, where the constitution had led to a concentration of power in the hands of a party oligarchy, to the detriment of the people.¹⁰⁹³ But Yu also had a positive example: constitutionalism could be done well and cautiously as in Japan. That country's constitution, he deemed, used Western words but was Eastern in nature (*sui xiguo zhi mingci, reng dongyang zhi xingzhi* 雖西國之名詞，仍東洋之性質). The key to understanding Yu's position for China is his stressing of the fact that "Chinese law is all set from above." The Easternness of the Japanese constitution was, thus, the fact that it was octroyed by the emperor. It was what Anschütz called a "constitutional monarchy."

Yu Shimei's stance prompted various public reactions against him. Chen Jingren 陳景仁, an official of the Ministry of Justice and member of Liang Qichao's "Political News Society" (*Zhengwenshe* 政聞社), sent a telegram to the court expressly opposing Yu and demanding a parliament within three years. The court reacted by sacking Chen Jingren on July 25 and forbidding the *Zhengwenshe* on August 13, 1908.¹⁰⁹⁴ This, again, provoked harsh criticisms in the press, and furthered the notion that constitutional preparation was just lip ser-

¹⁰⁹¹ Yu Shimei 于式枚, Junjichu dangce: kaocha xianzheng dang, jüan 1 軍機處檔冊：考察憲政檔，卷一 (Files of the Council of State: Files on constitutional investigation, tome 1), file no. 652000001, Guangxu 34/06/09 [July 7, 1908], National Palace Museum Library, Taipei, 22.

¹⁰⁹² Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, vol. 1, 337.

¹⁰⁹³ Yu, Kaocha xianzheng dang, file no. 652000001, National Palace Museum Library, Taipei, 22–23.

¹⁰⁹⁴ *Daqing Dezong Jing Huangdi shilu*, Guangxu chapter 593, 24–25. Also contained in Zhu and Zhang, *Donghua xulu*, 725 (chapter Guangxu 217, 15); Zhu, *Guangxu chao Donghua lu*, vol. 5, 5951. See also Zhang Qizhi 張豈之, Chen Zhenjiang 陳振江 and Jiang Peiben 江沛本, *Zhongguo lishi: Wanqing Minguo shi* 中國歷史：晚清民國史 (History of China: History of the late Qing and of the Republic) (Taipei: Wunan tushu gufen youxian gongsi, 2002), 181.

vice. For example, the *Eastern Miscellany* was just one of the organs chiding Yu. The section “on constitutional government” (*Xianzheng pian* 憲政篇) not only criticised Chen’s sacking. It also derided Yu as being the “strangest man” (*zui qi zhe* 最奇者) for his position that one should look for a constitution within China, and for his heavily attacking foreign constitutions.¹⁰⁹⁵ Two editions later, the *Eastern Miscellany* expanded this criticism by publishing a lengthy anonymous open letter to Yu Shimei.¹⁰⁹⁶

However, Yu’s position was quite complex, and in fact neither one of wholesale acceptance nor one of wholesale rejection of everything he found in Germany. For even his highly organicist standpoint involved comparing different constitutions and pondering whether they fit China’s conditions. Yu, thus, came to recommend the adoption of certain Prussian institutions, precisely for the sake of preserving China’s specific conditions. From summer 1908 to summer 1909, Yu filed the results of his and his team’s work to Peking, sending a number of reports on the Prussian constitution and aspects of the German constitutional system. These included elaborations on German and Prussian constitutional history,¹⁰⁹⁷ on the Prussian constitutional charter,¹⁰⁹⁸ on Prussian central and local administration¹⁰⁹⁹ and on the Prussian parliament and electoral laws.¹¹⁰⁰

Next to the description of the German situation, the reports also included Yu’s comments on it and their value for China. For example, on explaining dif-

¹⁰⁹⁵ “Xianzheng pian” 憲政篇 (On constitutional government), *Dongfang Zazhi* 東方雜誌 5, no. 7 (Guangxu 34 [1908]), 12.

¹⁰⁹⁶ “Jiangsu moujun zhi Yu Shimei shu” 江蘇某君致于式枚書 (Letter by a certain gentleman from Jiangsu to Yu Shimei), *Dongfang Zazhi* 東方雜誌 5, no. 9 (Guangxu 34 [1908]).

¹⁰⁹⁷ Yu Shimei 于式枚, “Kaocha xianzheng dachen Yu Shimei zou kaocha Pulushiguo ji Deyizhi lianbang xianfa chengli qingxing zhe (bingdan er jian)” 考察憲政大臣于式枚奏考察普魯士國及德意志聯邦憲成立情形摺 (併單二件) (Memorial by constitutional commissioner Yu Shimei about his investigation of the circumstances of the establishment of the constitutions of Prussia and of the German federation, with two tables), *Zhengzhi guanbao* 政治官報, no. 350 (Guangxu 34 [1908]), 5–22. Contained in Peking II 595, Political Archive of the Federal Foreign Office of Germany, Berlin, after 260a.

¹⁰⁹⁸ *Daqing xuantong zhengji shilu*, chapter. 8, 15–17.

¹⁰⁹⁹ *Ibid.*, cap. 13, 5–8 and 8–11.

¹¹⁰⁰ *Ibid.*, cap. 13, 31–32 and 32–33.

ferent kinds of electoral systems, he criticised the Prussian practice of connecting voting rights to the amount of personal wealth. The right to vote or not, he argued, should be tied to whether one had personal wealth or not, but not to the quantity of that wealth.¹¹⁰¹

On the question of provincial and local government, however, Yu compared the regulations that were being issued in China with the Prussian ones. He began one of his two memoranda on the issue stating that the regulations for the provincial assemblies, promulgated on July 22, 1908, were “not compatible with the Prussian system of local assemblies” (*Yu Puguó difāng yìhuì zhìdù bù fú* 與普國地方議會制度不符).¹¹⁰² He went on to heavily criticise the Chinese regulations, holding that they were giving too much power to the provincial parliaments to the detriment of the provincial governors. At the end, he supported his argument by claiming that he had shown the Chinese rules to German experts, much to their disapproval:

But they have been promulgated since half a year already. Why, then, have there not been dissenting opinions in China and abroad? Recently, Western trends have become ever stronger, but Western scholarship is still not familiar [to the Chinese, who] think that [the regulations] must be those which are commonly applied in the Western countries. I have seen the Prussian doctors read these regulations, and there was no one who did not laugh out of surprise! What I recount now are not the words of a single man, but are the opinions of all Western legal scholars. [I say this] not to slander Western law, but to defend it!

¹¹⁰¹ Ibid., cap. 13, 33.

¹¹⁰² Ibid., chapter 13, 8.

然而頒行已半年。而中外無異議者何也。近日西風益競。而西術猶疏。以為必西國所通行耳。臣見普國諸博士閱此章程。莫不駭笑。臣今所陳。非一人之言。皆西國法學家之說。乃辯護西法。非詆訾西法也。¹¹⁰³

Yu Shimei's verdict concerning the regulations on the local self-government at municipal level, adopted on January 18, 1909, was quite different. In that case, he argued, the Prussians were known to be more obedient than the French and the English, which was also a function of its legal system. Now, this was very congruent with China's own needs, and Yu lauded the new Chinese regulations for being congruent in meaning to the Prussian laws (*yu Puguo faling tongyi* 與普國法令同意). Yu, thus, advocated to adopt German law at this level, with the paradoxical aim of countering the gradual advance of (other) Western influences:

But recently western learning has been booming. At a time when we should pick German ideas and legislation in order to master it, we really must take precautions against its [the Western learning's] gradual advance.

惟近日西學大盛。應采德國主義立法以制之時。誠不可不豫防其漸。¹¹⁰⁴

Yu, a year earlier, had been criticised for stressing that China should not look for foreign models. Now, his remarks making the Prussian regulations concerning subnational administration a benchmark for China led to him being criticised precisely for looking for a foreign model. Tang Shouqian 湯壽潛 (1856–1917), one of the founders of the "Society for Constitutional Preparation" (*Yubei lixian gonghui* 豫備立憲公會), wrote a memorandum, widely reported about in the press, in which he attacked Yu Shimei for not knowing about constitutional government in China (*bu shi Zhongguo zhi xianzheng* 不識中國之憲政). According to Tang, China needed to curtail the power of the provincial governors, not to preserve

¹¹⁰³ Ibid., chapter 13, 11.

¹¹⁰⁴ Ibid., chapter 13, 8.

it.¹¹⁰⁵ The Shanghai paper *Xinwen bao* 新聞報 wrote in the same vein: China could not compare to Germany, as Germany's regulations only worked there because of Germany's talent for self-government. China could not use the German system because it was more akin to Russia, as both had a traditional propensity for autocracy and were multi-racial states. The paper analysed that Yu just wanted to use the German system to fortify the traditional Chinese autocracy and fawn on the prince-regent. That was, however, not what China should do. Instead, China should develop its own system of administration.¹¹⁰⁶

d) "China Has Always Had a Constitution"

Yu Shimei's argument that the constitution had to be looked for within China had much wider implications than the pure organicist assumption that a constitution had to be developed out of the existing institutions in China. In a country with a millenary political tradition which was to be radically changed in a short period of time, references to foreign examples alone did not suffice. Rather, the notion of constitution also had to be analysed in view of one's own tradition. This was all the more important in a culture which valued its own classics and ancestors as much as China. Hence, in the late 19th and 20th centuries, Chinese intellectuals tended to look for ancient Chinese parallels or even origins of many branches of "modern" learning (*xixue zhongyuan* 西學中源).

The constitution was no exception to this intellectual trend. Scholarship on this phenomenon has stressed that the recourse to the venerable classics was used to legitimise modern phenomena from railroads to political institutions.¹¹⁰⁷ But there was more to it: The connection between the classics and modern phe-

¹¹⁰⁵ Tang Shouqian 湯壽潛, "Jiangxi tixueshi Tang Shouqian zougao jielu" 江西提學使湯壽潛奏稿節錄 (Abridged record of the memorial by Tang Shouqian, commissioner for education in Jiangxi), *Dongfang Zazhi* 東方雜誌 7, no. 1 (1910), 8.

¹¹⁰⁶ *Xinwen Bao* 新聞報, November 4, 1909. Contained in translation in Peking II 595, Political Archive of the Federal Foreign Office of Germany, Berlin, 54.

¹¹⁰⁷ On the tendency in general see Michael Lackner, "Ex Oriente Scientia? Reconsidering the Ideology of a Chinese Origin of Western Knowledge," *Asia Major* 21 (2008).

nomena was also made to protect these at a time when their authority stood under heavy attack. Hawkling Lugine Yen (Yan Haoling 嚴鶴齡, 1879–1937), a Chinese doctoral student at Columbia University, explained this psychological phenomenon in his thesis entitled “A survey of constitutional development in China.”

1108

In a very similar fashion to Zhou Zechun, Yen’s book was a constitutional history of China from antiquity to contemporary times, wherein the “movement for a written constitution,” beginning from 1905, was just the last episode. Without mentioning the Russo-Japanese war, Yen explained that the new constitutional movement had been a fruit of a long process engendered by revolutionary acts, by the introduction of new learning through translation and by trips of princes and high officials abroad.¹¹⁰⁹ Such a macroscopic approach was so interesting to his contemporaries that the book not only travelled across the globe, but also survived the downfall of the Chinese monarchy in 1912: In 1917, the South Manchurian Railway Company, which was key in playing out Japanese imperialist interests in Manchuria, translated and published the book in Japanese.¹¹¹⁰

¹¹⁰⁸ Thesis: Yen, “A Survey of Constitutional Development in China”; book publication: Hawkling Lugine Yen, *A Survey of Constitutional Development in China* (New York: Columbia University, 1911). For some background on Yen’s sojourn in the USA, and declarations by him on the prospective constitution for China see *Washington Post*, “German Chinese Students,” June 27, 1909.

¹¹⁰⁹ Yen, *A Survey of Constitutional Development in China*, chapter V.1 and V.2, 111–121. “Peaceful constitutional revolution”: 111.

¹¹¹⁰ Hawkling Lugine Yen, *Shina ni okeru kenpō no hattatsu kaiyō. Furoku: Shina kenpō no hattatsu* 支那ニ於ケル憲法ノ發達概要。附録：支那憲法ノ發達 (A survey of constitutional development in China. Appendix: Constitutional development in China) (Tairen: Nanmanshū Tetsudō Kabushiki Kaisha sōmubu kōshakyoku, [1917]). The Japanese edition was a simple reproduction. It did not provide any independent introduction or preface, and it is unlikely that the Railway Company had direct contact to Yen, as the book ignored his Chinese name: The author is given as Chinese, but his name is merely a Katakana transcription of his English initials: *Eichi Eru Wai* エイチ・エル・ワイ. It appended, however, a short piece translated from the *North China Daily News*. Written by Louis Rhys Oxley (L.R.O.) Bevan, a scholar who had already published on late Qing constitution-making, the text introduced the main developments since the adoption of a republic. For Bevan’s production before the demise of the Qing see Louis Rhys Oxley Bevan, *Constitution Building in China* (Shanghai: North-China Daily News and Herald Ltd., 1910), reprinted from the *North China Daily News* and the *North China Herald*.

In the introduction to his thesis, Yen argued that China had a constitution defined as a “body of customs, traditions, precedents,” and that the Confucian Classics were equivalent in function to the Christian Scriptures, the British Magna Carta and the US American Constitution. But, as Yen wrote, the changed political, social and economic conditions severely endangered the legitimacy of the Classics, and for many Chinese

their hold on the minds of the people has been shaken, their venerableness derided, and they have been again and again charged with responsibility for the present degeneration and decay of China. However, the best scholarship of the country inclines to believe that the Classics will survive this rude treatment, and in time, after having discarded their dilapidated garment will come out triumphant in the winning garb of “new learning.”¹¹¹¹

But the legitimising function of the Chinese classics was only one side of the medal. At least in the case of constitutions, the argument that China already had a constitution was used in *both* positive and negative and, as the case of Yu Shimei evidences, also in intermediary ways. That is, the argument was used to *legitimise* the new concept, in the sense of “we already had something as a constitution in the past; hence, introducing the concept anew does not dishonour our ancestors.” However, it was also to call for more caution in the sense of organicism or even to *delegitimise* the adoption of a constitution, in the sense of “we already have our own constitution, hence there is no need to take over the novel concept.”

Yu’s predecessors, the constitutional commissioners of 1906, had used the classics in a legitimising way after returning from their trip. For example, to argue for a parliament as a part of a constitutional system, Duanfang adduces, in a row, the *Book of Documents*, the *Book of Odes* (*Shijing* 詩經), the *Book of Rites* (*Lijing*

¹¹¹¹ Yen, *A Survey of Constitutional Development in China*, 13–14.

禮經), Confucius and Mencius.¹¹¹² The argument was then also officially used by the Constitutional Office. When presenting statistical tables to the Court, it explained that “although the name ‘autonomy’ was coined in the West, its substance was generated in China” (*zizhi zhi ming, sui qi yu Taixi, er shi pidai yu Zhongguo* 自治之名。雖起於泰西。而實胚胎於中國。). In that case, as rather often when such claims were made, the authors referred to the *Rites of Zhou* (*Zhouli* 周禮), the 2nd century BC classic on administrative organisation.¹¹¹³

Such a mode of argumentation was so productive that it was not only used to back up arguments in memorials, but could fill whole books. The prime example of the legitimising version of “China has always had a constitution” was one of the books submitted to the Court by Zhang Jian, carrying the telling title *Ancient Meanings of Constitution* (*Xianfa guyi* 憲法古義). In great detail, the author used examples from ancient Chinese history to show how all features of modern constitutionalism could be backed up by the classics of Chinese history. The book was structured like a normal textbook of constitutional law, devoting its first part to the head of the state, the second part to the parliament, and the third part to the rights of the citizens. It did not hide that the various concepts also had a history in the West, but always managed to find parallels in China’s own traditions. As an example, the entry about the right of personal autonomy (*benshen zizhu* 本身自主) declared:

The Westerners’ notion of personal autonomy begins with the natural human rights of the social contract theory. But in China, the *Great learning* teaches to “illustrate illustrious virtue” and the *Doctrine of the mean* [writes

¹¹¹² Duanfang, *Duan Zhongmin Gong zougao*, [1967]), 709–710.

¹¹¹³ “Xianzheng biancha guan zou zunban minzheng caizheng tongji biao shi chouju liyao zhe bing dan si jian” 憲政編查館奏遵辦民政財政統計編訂表式酌舉例要摺并單四件 (Memorial by the Constitutional Office concerning the arrangement of statistical forms in civil and fiscal affairs with a deliberately selected essential guide, and four attachments), in *Qingmo Minchu xianzheng shiliao jikan*, ed. Beitusheng yingyinshi, vol. 3, 295–296.

that] “what Heaven has conferred is called the Nature”; all these are also notions of natural human rights.

西國人身自主之說。始於民約論之天賦人權。而中國大學在明明德。中庸天命之謂性。亦皆天賦人權之說。¹¹¹⁴

But if the staunch supporters of a rapid adoption of a constitutional system were well-versed in the classics, those favouring a gradualist and organicist approach were not less proficient in them. Thus, when Yu Shimei’s demanded that no time frame be given for the adoption of a constitution, he also fielded literally the entirety of Chinese history to support his position:

Therefore, we know one has to take that which is existent in one’s country as the basis and pick what is existent in other countries in order to support it, and while seeking for its substance [one must] not merely tinker with its name. The old system of China is originally constitutional; the Imperial system in particular is extremely well-regulated! The *Rites of Zhou* talk about a ‘constitution’, it talks about ‘constitutional’ orders and ‘constitutional’ prohibitions, it talks about ‘constitutional’ states. The traditions tell that one should take the established constitution of the former kings as a teaching, and Confucius balanced the disadvantages and advantages of the four ages [Emperors Yu, Xia, Shang, and the Zhou dynasty; note of the author] to hand it down as a constitution for myriads of generations. “Constitution” is a Chinese term; and it is old! The proclama-

¹¹¹⁴ Xianshi sheng, *Xianfa guiyi*, chapters 3 and 5. The translation of the passages of the cited classics follows James Legge, *The Chinese Classics with a Translation, Critical and Exegetical Notes, Prolegomena, and Copious indexes: Vol. 1 Containing Confucian Analects, the Great Learning, and the Doctrine of the Mean* (Oxford: Clarendon Press, 1893), 356, 383. It is to be noted that the equation of Confucian thought with natural law was not only present in Chinese, but also in Western writings. In Séraphin Couvreur’s 1895 translation, the term *xing* 性, rendered as “Nature” by Legge, is translated as “lex naturalis”/“loi naturelle.” Séraphin Couvreur, ed., *Les quatre livres with translation in French and Latin, avec un commentaire [sic!] abrégé en chinois, une double traduction en français et en latin et un vocabulaire des lettres et des noms propres* (Taipei: Kuangchi Press, 1972), 28.

tions made by the Yin¹¹¹⁵ and the agreed laws of the Han era are especially close to the so-called constitutionalism of Europe and America; this extent [of constitutionalism] has been existent all through the Tang and Song up to the Ming dynasties. Of those who could bequeath a livelihood for hundreds of years and make peace possible for decades, there has not been a single one who did not take the submission to popular sentiments and the [free] expression of political debates as basic tenets of ideal governance.

是知必以本國所有者為根據，而采取他國所有以輔益之，在求其實而不徒震其名。中國舊章，本來立憲，皇朝制度，尤極修明。周官言憲法，言憲令，言憲禁，言憲邦。傳稱監於先王成憲，仲尼損益四代之制，以垂萬世之憲。憲法為中國之名，古矣。殷人作誓，漢代約法，尤與歐美所云立憲者相似，唐宋迄明，規模具在，其能貽數百年之基業，成數十年之太平者，無不以順民情申清議為致治之本原。¹¹¹⁶

As this example shows, creating connections to China's own past for whatever kind of argumentative goal was particularly easy in the case of constitutions. Not only is the broad definition of "constitution" applicable to Imperial China as much as it is to any polity, but also was the term used for the modern concept, *xian* 憲, current in ancient literature in the meaning of an "exemplary laws." When he wrote that "the traditions tell that one take the established constitution of the former kings as a teaching," he was making an undeclared allusion to the chapter "Commands of Yue" (*Yue ming* 說命) of the *Book of Documents* (*Shujing* 書經), which teaches its readers to "model yourself on the established laws of the former kings, and you will be forever irreproachable" (*Jian yu*

¹¹¹⁵ On the proclamations made by the Yin kings see Séraphin Couvreur, ed., *Li Ki ou mémoires sur les bienséances et les cérémonies. Texte chinois avec une double traduction en français et en latin*, tome premier, 2nd ed. (Fuzhou: Imprimerie de la mission catholique, 1913), 244–245. It is noteworthy that Yu's reference to the *Book of Rites* (*Liji* 禮記) was probably not the most convincing one in the eyes of educated Chinese of his time: "When the Yin made their solemn declarations, the people began to revolt" (*Yin ren zuo shi er min shi pan* 殷人作誓而民始畔).

¹¹¹⁶ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, vol. 1, 305. This study slightly diverges on the punctuation of the text.

xianwang chengxian, qi yong wu qian 監于先王成憲其永無愆).¹¹¹⁷ What the *Book of Documents* meant had substantially but little to do with modern constitutional charters. Yet, for Yu Shimei, the equal terminology was important, and he emphasised the equivalence to modern constitutions when he exclaimed that “constitution” was an old Chinese term (*xianfa wei Zhongguo zhi ming, gu yi!* 憲法爲中國之名古矣).

This approach was befitting of Yu’s not completely opposing, yet rather conservative and organicist stance. As has been seen, Yu Shimei’s stance towards China’s adoption of a constitution was complex and was not simply naysaying, as parts of the press painted him. He favoured an organicist approach, but praised the Japanese constitution for having managed to conserve Japan’s spirit, and was not fundamentally opposed to China also adopting a constitution as long as it were a fundamentally Chinese constitution. But the argument of China already having a constitution was also used for making even more far-reaching arguments, namely to fundamentally deny the need for the adopting a constitution in the modern sense.

We have already seen Ku Hung-Ming arguing in English against the adoption of a written constitution because China already was constitutional. Ku repeated the argument to the Chinese in a memorial of 1907, again playing with terminology and definitions. He explained that it behooved to China to promulgate the “established laws” (of the former kings) in order to preserve the legal system and solidify the fundamentals of the state (*yi shen chengxian yi cun gangji er gu bangben* 宜申成憲以存綱紀而固邦本). Ku, thus, used the term *xian* 憲 in its classical sense, but carefully avoided its modern sense. Instead, he preferred to use the word “system” (*zhi* 制), which was what defined how a polity was governed and was the instrument whereby individual aspirations were stopped

¹¹¹⁷ See Séraphin Couvreur, ed., *Chou King: Les annales de la Chine* (Paris: Éditions You-Feng, 1999), 160. Couvreur translates *chengxian* 成憲 with the expressions “perfectas leges”/“règles et exemples admirables.”

(*suoyi dujue renyu* 所以杜絕人欲). Now, China could not take over the systems of the Western countries, for they had only very recently overcome feudalism. Now, they had become stronger, but they were chaotic polities with imperfect administrations, just as the Warring States in China's history.¹¹¹⁸

We can find several other examples of such argumentation among the memorials sent to the Court by censors and other officials, examples which were even much more explicit in stating that China was the cradle of constitutionalism and therefore needed not learn from the West. Huang Yunfan 黃運藩, an otherwise unremarkable candidate to be secretary in the Grand Secretariat, submitted a memorial which also played with modern and classical usages of the word *xian* 憲. Huang argued that even if the Western countries had gradually constructed constitutional systems to govern themselves (*you jian li zhi xian neng zhi qi guo* 有漸立之憲能治其國), their chaotic histories could not be a model. All matters of civilisation in the various countries had come from China, and foreigners who had been to China acknowledged that China's civilisation was the most advanced one. Thus, Huang concluded that "China has had its own supreme law and there is no need to copy foreigners" (*Zhongguo zi you xian, wuyong fangxiao wairen* 中國原自有憲，無庸仿效外人).¹¹¹⁹

Huang was playful and at the same time careful with his wording, as he used the Classical word *xian* 憲 for both the Western constitutional systems and for the Chinese traditional constitution. But one also finds even more specific texts, which, unequivocally using the modern terms, claimed that ancient China indeed had a "constitution" and "constitutionalism," and thus needed not to reborrow it. At the time when the five commissioners were travelling, censor Liu Ruji 劉汝驥 submitted a memorial arguing against the Courts' willingness to investigate constitutionalism. The main thrust of his argument was that if applied elsewhere, (Western) constitutionalism had advantages and disadvantages, but if

¹¹¹⁸ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, vol. 1, 307–308.

¹¹¹⁹ Ibid., 233–235.

applied in China, it only had disadvantages (*lixian zhi shuo ... shi zhi woguo ze you bai hai er wu yi li* 立憲之說……施之我國則有百害而無一利).¹¹²⁰

Liu went on to attack the common assumption that the result of the Russo-Japanese war showed that China had to adopt a constitution. Why? Because China was “definitely the motherland of constitutionalism” (*fu woguo gu lixian zhi zuguo ye* 夫我國固立憲之祖國也). To support his arguments, Liu, too, adduced examples from all epochs of Chinese history, stating that the *Spring and Autumn Annals* attributed to Confucius contained the essential meaning of a constitution (*Chunqiu yi shu ... you wei xianfa jingyi* 春秋一書……尤為憲法精意). He did not only refer to the venerable antiquity, but also to more recent history. According to Liu, the philosopher Huang Zongxi’s 黃宗羲 (1610–1695) teaching that “the Empire is the host and the ruler is the guest” (*tianxia wei zhu jun wei ke* 天下為主君為客) was a legitimate continuation of constitutionalism (*lixian zhi diru* 立憲之嫡乳).¹¹²¹ Although periodically abolished by individual rulers such as Qin Shihuang 秦始皇 (259–210 B.C.) or Wang Mang 王莽 (45 B.C. – 23 A.D.), Liu argued, China had been guided by its own Confucian constitution since antiquity. Coming from such a background, what need was there for adopting the novel concept of the Europeans? There was none, Huang Yunfan, Liu Ruji and other conservative officials deemed.

e) Dashou and Li Jiaju in Japan

Of the three missions of the second round, the one to Japan was the one that spent the longest time on the ground. It was also the mission that attracted the most interest and it was, by far, the most influential one, as it had a profound impact on the further Qing constitution-making. The results of the second round

¹¹²⁰ Ibid., 107–108. On this particular memorial see also Zarrow, “Constitutionalism and the Imagination of the State,” in *Creating Chinese Modernity*, 70.

¹¹²¹ Ibid., 107–110. It was not only Liu Ruji who paralleled Huang Zongxi’s teachings and constitutionalism; Western sinologists also noticed resemblances. See Bary, “The ‘Constitutional Tradition’ in China,” 22–34.

of commissioners became the basis for the *Outline of a Constitution by Imperial Ordinance* (*Qinding xianfa dagang* 欽定憲法大綱) of August 27, 1908,¹¹²² and the second commissioner to fill the post, Li Jiaju, was appointed one of the drafters of the final constitution in 1911.

Dashou left China on November 29, 1907, on the same day as Yu Shimei left to Germany, and arrived in Tokyo on December 16. He first settled in the premises of the Chinese legation, but later rented a small house in the central quarter of Akasaka-Hinokichō 赤坂榎町 for his studies.¹¹²³ He took with him two secretaries of notable constitutional knowledge: Li Jinghe 李景銖 and Wang Hongnian; who had written the early Chinese-language textbooks of constitutional law mentioned in chapter two. Next to these two, he was also accompanied by a certain Zhu Linzao 朱麟藻 from the Ministry of War (*lujunbu* 陸軍部). The *Asahi Shimbun* writes that Dashou came with six others; such discrepancies in the numbers of aides also exist with the other two delegations. In Dashou's case, it could be the newspaper's exaggeration, or else the number could refer to other non-technical staff.¹¹²⁴

In stark contrast to Wang Daxie's fate in England, Dashou received highest-level support from the Japanese government. The Chinese side accorded with former prime minister Katsura Tarō 桂太郎 (1848–1913) that Itō Hirobumi should be responsible for the Chinese constitutional commission. At that time, Katsura and Itō were deeply concerned with the constitutional reforms in China. Katsura, temporarily out of office between 1906 and 1908, was dissatisfied with the China

¹¹²² Takahashi, *Nitchū ni okeru Seiō rikkenshugi no keiju to henyō*, 93.

¹¹²³ Telegram no. 2393/08, March 23, 1908, in Peking II 595, Political Archive of the Federal Foreign Office of Germany, Berlin, 295–296; *Asahi shimbun* 朝日新聞, "Jinji" 人事 (Personal matters), January 13, 1908.

¹¹²⁴ *Asahi shimbun* 朝日新聞, "Shinkoku kōsatsu kensei taishin shimei" 清國考察憲政大臣使命 (The mission of the Qing constitutional commissioner), December 18, 1907. The *Asahi shimbun* also miswrites the names of both aides: Li Jinghe is written as Li Jingbo 李經鉞, and Wang Hongnian is mistaken for Wang Kangnian 汪康年 (1860–1911). Such mistakes are not rare in Japanese newspapers, and are a reminder that press reports should be read *cum grano salis*. *Asahi shimbun* 朝日新聞, "Kensei shisatsu daijin (Kōbe)" 憲政視察大臣 (江戶) (The commissioner for constitutional investigation [Kobe]), December 11, 1907.

policy of the present government under Saionji Kinmochi 西園寺公望 (1849–1940), and was trying to influence the bilateral relationship even while out of office. Itō felt that the Chinese government was acting dangerously and repeatedly, yet unsuccessfully, tried to offer his services as a personal adviser to Empress Dowager Cixi herself. However, Itō was not personally present in Tokyo, as he was in Seoul acting as Resident-General to Korea. Itō, thus, entrusted Dashou to his close confidant Itō Miyoji 伊東巳代治 (1857–1934).¹¹²⁵

Dashou had been tasked by the Constitutional Office with studying six areas: Constitutional history, constitution, legislation, administration, jurisprudence and finance.¹¹²⁶ After consultation with Itō Miyoji, the areas were slightly changed: The first was redefined as “Japanese constitutional history,” the second as “comparative constitutional law” (*geguo bijiao xianfa/kakkoku hikaku kenpō* 各國比較憲法), and the third as “parliament”.¹¹²⁷ The constitutional commissioner would take lessons on these subjects, for which further prominent teachers were found: Hozumi Yatsuka 穂積八束 (1860–1912) and Ariga Nagao 有賀長雄 (1860–1921), two distinguished professors of constitutional law,¹¹²⁸ and Ōta Minesaburō 太田峯三郎 (1863–1914), the chief secretary of the House of Peers.

Dashou did not only study Japanese constitutional law during his stay in Japan. As the Japanese constitution was a product of several European constitutions, he deemed that one had to first grasp the history and background of the Japanese as well as of the European constitutions before delving into concrete

¹¹²⁵ Sōda, *Rikken kokka Chūgoku e no shidō*, 71, with further references.

¹¹²⁶ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubelixian dang'an shiliao*, vol. 1, 523.

¹¹²⁷ Sōda, *Rikken kokka Chūgoku e no shidō*, 71, with further references. See also Tu, “Ta shan zhi shi,” 158, with further references.

¹¹²⁸ On Ariga Nagao and China see Matsui, “Shinmatsu-Minsho-ki no Chūgoku ni okeru rikkenshugi no keiju” in *Nitchū ni okeru Seiō rikkenshugi no keiju to henyō*, ed. Takahashi, in particular 114-115. Matsui argues that the *Staatsform* of monarchy or republic was not crucial in Ariga's understanding of constitution, so that he could be a constitutional adviser to *both* the Imperial and the Republican government. See further Sun Hongyun 孫宏雲, “Qingmo yubei lixian zhong de waifang yinsu: Youhe Changxiong yi mai” 清末預備立憲中的外方因素：有賀長雄一脈 (Foreign factors in late Qing constitutional preparation: the network of Ariga Nagao), *Lishi yanjiu* 歷史研究, no. 5 (2013).

details of the Japanese constitution and comparing constitutions of different countries. Furthermore, one had to understand specific constitutions through the lens of the corresponding scholarship.¹¹²⁹

As the Chinese constitutional reforms mattered much to the Japanese public, Dashou's visit attracted considerable public interest. Dashou not only took lessons with renowned teachers, he and his successor were also given receptions attended by high-ranking politicians, and the Japanese press diligently reported on their works. Dashou was also engaged in presenting China to the Japanese public: The first text he produced after arriving in Japan was a Japanese-language preface to a book edited in 1908 under the title *China's Constitutional Question* (*Shinkoku rikken mondai* 清國立憲問題).¹¹³⁰ Therein, Dashou stressed the similarity of China and Japan in national character, customs, writing and race, making the two countries close like "teeth and lips" (*shinshi-hosha* 唇齒輔車). As Japan was only a little bit (*ichinichi no chō* 一日の長) ahead of China in constitutional reform, it was the ideal model for China, Dashou pondered.¹¹³¹

The book itself was the materialisation of Japanese interest for constitutionalism in China: It contained articles by 18 of the most important intellectual and political figures of Japan, many of whom also published elsewhere on the Chinese constitutional enterprise. The authors included Ariga Nagao, Nakamura Shingo, Ōkuma Shigenobu 大隈重信 (1838–1922),¹¹³² Itagaki Taisuke 板垣退助 (1837–1919), Ukita Kazutami 浮田和民 (1859–1946), Katō Takaaki 加藤高明 (1860–1929) and Inukai Tsuyoshi 犬養毅 (1855–1932). It is not surprising that such a book collecting so many names of weight aroused interest with the Chinese side: One year later, Zhang Bolie 張伯烈 (1872–1934), a Chinese student in Japan,

¹¹²⁹ See *ibid.*, 158–159 (who, however, gives an incorrect reference).

¹¹³⁰ Doi Yōjirō 土肥洋次郎, ed., *Shinkoku rikken mondai: Taika ronsō* 清國立憲問題：大家論叢 (China's constitutional question: Collection of essays by experts) (Tokyo: Shinkan kenkyū mondaikai, Meiji 41 [1908]), 1–10.

¹¹³¹ *Ibid.*, 3–4.

¹¹³² On Ōkuma Shigenobu's position vis-à-vis Chinese constitutional government see He "'Chūshin' to kensei no myōyō," 159–181.

translated the Japanese contributions—but not Dashou’s preface—and appended them to his private draft of a constitution (see *infra*, chapter V.3.b).¹¹³³

Most of the texts tried to draw lessons from Japan’s own experience for China and gave advice to the Chinese on how they should proceed with their constitutionalism, but also showed the diversity among Japanese approaches. Nakamura Shingo published a revised version of his 1906 article in the *Gaikō jihō*, reiterating his verdict that constitutionalism was not the key for national success.¹¹³⁴ Again, he finished his piece with the recommendation that the Chinese stop their disruptive thoughts and instead extend the constitutional plan to a “future of a hundred years” (*hyakunen no mirai* 百年の未來), for this was the “only safe means” (*yuiichi no anzen hōben* 唯一の安全方便) to achieve “passive happiness” (*shōkyokuteki no kōfuku* 消極的の幸福).¹¹³⁵

Other contributions did not go as far, but still favoured a gradual approach. Most texts, like that of Ukita Kazutami, stressed that a constitutional system could only work if China created the right conditions for it. Ukita, who for Japan advocated a policy of “constitutionalism to the inside and imperialism to the outside” (*uchi ni rikkenshugi, soto ni teikokushugi* 内に立憲主義、外に帝國主義), wrote that he very much hoped that China could adopt a constitutional system. However, China had to popularise education, reform the legal, currency and measurement systems, and improve transportation first.¹¹³⁶

The book with Dashou’s preface was already outdated when it was published in July 1908. Something very unusual had taken place in the meanwhile: he was no longer the constitutional commissioner in Tokyo, for a sudden reshuffle four months earlier had put an end to his short tenure in this position. On March 19, 1908, Hu Weide, the Chinese minister to Russia, was posted as new

¹¹³³ Zhang Bolie 張伯烈, *Jiading Zhongguo xianfa cao'an* 假定中國憲法草案 (Hypothetical draft of a constitution for China) (Tokyo: Dokusō bessho, 1909), 75–148.

¹¹³⁴ Doi, *Shinkoku rikken mondai*, 96.

¹¹³⁵ *Ibid.*, 100. Cf. Nakamura, “Shinkoku rikken no zento o ayabumu,” 258, where the ending only slightly differs in wording.

¹¹³⁶ Doi, *Shinkoku rikken mondai*, 226–232.

minister to Japan.¹¹³⁷ The minister to Japan, Li Jiaju 李家駒 (1871–1938), however, was not removed from Tokyo, as would have been usual. Instead, on March 23, 1908, he was made constitutional commissioner in Tokyo, and Dashou, instead, was ordered back to Peking.¹¹³⁸ The reshuffle, for which no reasons were given, was so unexpected that it prompted the Japanese press to speculate: Dashou, the *Yomiuri shimbun* 讀賣新聞 noted, had been recalled because he had not yet written “a single report” since coming to Japan.¹¹³⁹ This is unlikely, as it was still too early for any of the three commissioners to have written substantial reports by that time. Maybe, the reason was simply the effect that the remotion had: It gave the important post of constitutional commissioner to the more high-ranking Li Jiaju.

Dashou had been taking lessons with Itō Miyoji since February and asked to conclude the current unit, which would also mark the first half of the accorded workload.¹¹⁴⁰ His study ended with the 30th lesson in end of May 1908. Li Jiaju took the remaining 30 lessons beginning from November, finishing in July 1909 and returning to China in autumn 1909. Li kept Li Jinghe as a secretary, but replaced the other two assistants with two new ones: Zeng Yijin 曾儀進 and Zhou Peibing 周培炳.¹¹⁴¹ These three were the main responsible for translating and writing up a series of books about the Japanese constitutional system, which were presented as a result of the research. Next to a series of books on the Japa-

¹¹³⁷ Zhu and Zhang, *Donghua xulu*, 693 (chapter Guangxu 214, 19).

¹¹³⁸ Ibid., 695. (chapter Guangxu 214, 22).

¹¹³⁹ *Yomiuri shimbun* 讀賣新聞, “Tatsuju kakushoku riyū” 達壽氏革職理由 (The reason for Dashou’s removal), April 8, 1908. Takahashi, *Nitchū ni okeru Seiō rikkenshugi no keiju to henyō*, 107, writes that Dashou stopped his classes in May because he had received a new post in Peking. However, the post was only officially given to him a month after his remotion.

¹¹⁴⁰ Sōda, *Rikken kokka Chūgoku e no shidō*, 71, with further references.

¹¹⁴¹ Li Jiaju 李家駒, Li Dachen zou chazheng suiyuan fenbie xiaochai liuchai bing lin yuan jiechong gechai fengzhi yi dao 李大臣奏查政隨員分別銷差留差並遴員接充各差奉旨一道 (Memorial by Minister Li about the entourage of the political examination commission, of which some already have accomplished their mission and some will stay on mission, together with the appointment of members to take over the respective positions according to Imperial orders), Guangxu 34/07/09 [August 5, 1908], file no. 02-12-042-03-022, Archives of the Institute of Modern History, Academia Sinica, Taipei.

nese constitutional system, both commissioners also expounded their findings to the Throne in the form of court memorials.¹¹⁴²

4. The Constitutional Movement and China's Standing in the World

a) China and Civilisation: Direct Arguments

Both Dashou and Li Jiaju would remain figures of high significance for further late-Qing constitution-making. Dashou not only served at the Ministry for Inner Asiatic Affairs (*lifanbu* 理藩部)¹¹⁴³, but also worked at the Constitutional Office. It was him who gave a copy of Kitaoni Saburō's 北鬼三郎 (?–1912) draft constitutional charter to one of the main drafters, Wang Rongbao. Li Jiaju was made one of the other five main drafters. Such further contributions shall be discussed later, in the respective sections. But for now, let us take Dashou's reports from Japan as occasion to illuminate one of the most important factors of why China needed a constitution and what kind of constitution it needed: A constitution would help improve China's international standing.

Sometimes, Chinese intellectuals and officials voiced a direct argument: The constitution was needed because it would directly help in dealing with the foreign powers, or even because it was a condition for China being recognised as a respected participant in the concert of nations. As the reader will remember, Zaize had used this argument upon his return from abroad: According to his explanation, it was the eccentricity of China's form of government, denounced abroad as "half-civilised," which hampered China's international relations. His colleague Duanfang had hoped that a constitution would "let China enter the row of civilised states" (*shi Zhongguo lieru yu shijie ge wenming guo* 皇上如欲使中國列入於世界各文明國).¹¹⁴⁴

¹¹⁴² *Daqing Dezong Jing Huangdi shilu*, chapter 594, 13.

¹¹⁴³ Zhu and Zhang, *Donghua xulu*, 706 (Guangxu chapter 215, 22).

¹¹⁴⁴ Duanfang, *Duan Zhongmin Gong zougao*, 708.

Zaize's and Duanfang's colleague as a constitutional commissioner, Shang Qiheng, when talking about the constitution, came up with what Peter Zarrow calls the "most lyrical descriptions of constitutionalism."¹¹⁴⁵ While Zaize and Duanfang argued the lack of a constitution made China an uncivilised polity, Shang's argument aimed at the level of the people, which would be made civilised by a constitution. Shang was one of the clearest proponents of the equation of "constitutional" with limitations, which, he explained, guaranteed peacefulness in both domestic and international politics:

"Constitution" has the meaning of limitation: Every case of social intercourse has limits—it is not permitted to infringe on other people's liberties. Each case of international intercourse has limits—it is not permitted to infringe on other country's liberties. The law commonly respected in one country is called "constitution," the law commonly respected by all countries is called "international public law," but their meanings are actually interchangeable.

憲法者有限制之義，人與人交際各有限制，不得侵他人之自由，國與國交際各有憲制，不得侵他國之自由。一國共守之法曰憲法，萬國共守之法曰公法，其義實相通焉。¹¹⁴⁶

In fact, one could perhaps even go so far to argue that Shang was an early Chinese precursor to the controversial political science notion of "democratic peace." Shang argued that there was a kind of "constitutional peace." It was because European States had constitutions, he argued, that peace was not endangered, even though their territories were so close to each other (*jiangyu mijie bichang wu jing* 疆域密接乚邕無驚).¹¹⁴⁷ We will see, however, that the "lyrical" aspect of constitu-

¹¹⁴⁵ Zarrow, "Constitutionalism and the Imagination of the State," in *Creating Chinese Modernity*, 75.

¹¹⁴⁶ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubai lixian dang'an shiliao*, vol. 1, 260.

¹¹⁴⁷ *Ibid.*, vol. 1, 261.

tionalism, focusing on limitations imposed by legal norms, was not enough to explain Shang Qiheng's thesis of "constitutional peace." There was more to it.

b) China and Imperialism: Indirect Arguments

Just as the theory of "democratic peace" is shaky at best,¹¹⁴⁸ Shang's "constitutional peace" did not hold true. Most importantly, as Shang acknowledges, constitutions were an internal question of every nation. We have seen it in Bluntschli's textbook, translated into literary Sinitic and used as Art. 1 of the Korean constitution. The same was reiterated several times repeated by Chinese authors: In 1902, Wang Hongnian, explained not in his textbook of constitutional law, but in another textbook on international law which he compiled from Japanese sources, that constitutional changes were internal matters and did not have a direct impact on a country's international status.¹¹⁴⁹ In 1906, the *Waijiao bao* wrote the same in an article penned on the occasion of the five commissioners' trip.¹¹⁵⁰

Therefore, the link between China's constitution and its international relations could only be indirect. In most lines of argumentation, this meant that a constitution was what made a state economically, politically and militarily strong. The reader will remember that, as early as 1873, Hayashi Masaaki had deemed the constitution to be the secret for "wealth and power" (*fukyō* 富強). In the first years of the 20th century, Japan had adopted a constitution and become an imperialist power. Now, it was the turn of Chinese intellectuals to come up with equivalent arguments. We have already encountered them in the course of this

¹¹⁴⁸ The notion has produced an enormous amount of literature; for overviews with convincing counter-arguments see Ralph Rotte, "Der Liberale und Demokratische Frieden als »neues Paradigma« der Internationalen Politik? Theoretische und empirische Probleme," *Zeitschrift für Politik*, new ser., 49, no. 4 (2002), 380–404; Anna Geis and Wolfgang Wagner, "How Far is it From Königsberg to Kandahar? Democratic Peace and Democratic Violence in International Relations," *Review of International Studies* 37, no. 4 (2011), 1555–1577.

¹¹⁴⁹ Wang Hongnian 王鴻年, *Guoji gongfa zonggang* 國際公法總綱 (General outline of international public law) (Tokyo: Wang Hongnian, Meiji 35 [1902]), 88. On this book by Wang Hongnian see the description in Svarverud, *International Law as World Order in Late Imperial China*, 278.

¹¹⁵⁰ "Lun lixian yu waijiao zhi guanxi," 2–3.

study, e.g., when commissioner Duanfang stressed the importance of a constitution for the country's military and economic strength (*bingqiang guofu* 兵強國富).¹¹⁵¹ Equally outspoken in this respect was the *Waijiao bao*, which connected it to the policy of self-strengthening, adopted since the 1860s: "The crux of whether our country will strengthen itself or not is decided by the adoption of a constitution" (*wuguo ziqiang bu ziqiang zhi ji ze duanran qujue yu lixian* 吾國自強不自強之機。則斷然取決於立憲。).¹¹⁵²

The incentives for seeing the constitution as a mere shibboleth to civilisation would have been the highest when talking about extraterritoriality. After all, several foreign powers had promised to relinquish extraterritoriality if China reform its legal system. These provisions, however, concerned practical questions of how legal procedures were handled in the Chinese judiciary. They were not aimed at China's political system and accordingly not at the adoption of a constitution. Therefore, Chinese debate often used the indirect argument when talking about how the constitution would help relinquishing extraterritoriality. Such was the lament of the *Shibao*, republished in the *Eastern Miscellany*:

The intellectuals of our country deplore the decay of the country's clout, but they are irresolute about taking back its rights and stopping foreign humiliation. ... Now, if you want to amass power with the aim of promoting self-strengthening, then there is nothing more important than the adoption of a constitution.

我國志士。憫國勢之陵夷。皇皇然以收回利權。抵制外侮。……今欲儲實力以圖自強。莫要於立憲。¹¹⁵³

It is in this vein that Shang Qiheng's reading of constitutionalism far transcended his "lyrical" vision of a constitutional peace effected by legal limitations on pow-

¹¹⁵¹ Duanfang, *Duan Zhongmin Gong zougao*, 692.

¹¹⁵² "Lun lixian yu waijiao zhi guanxi," 2–3, 4.

¹¹⁵³ "Lun jinri yi ji she xianfa yanjiuhui," 27.

er. His memorial showed a strong substrate of *realpolitik* thinking, which reflected a specifically Chinese interpretation of a Western authority on international law. Again, Johann Caspar Bluntschli's textbook on international law was used to support a constitutional argument. Bluntschli's § 61 taught that the weakness of a nation did not lead to its demise, and that, consequently, strong states had no right to destroy weak nations. But for a Chinese official like Shang, clearly, such an assurance could not be trusted. What he cited, instead, was Bluntschli's caveat: according to the common principle of all fields of law, "public international law only protects those capable of living" (*das Völkerrecht schützt nur lebensfähige Staaten*).¹¹⁵⁴ Bluntschli's original German text specifically meant moribund nations, but the Chinese version cited by Shang acquired a much wider meaning: "A State has to protect itself; only then will public international law protect it." (*guo bi zi hu, gongfa fang hu zhi* 國必自護公法方護之).¹¹⁵⁵ Bluntschli's original paragraph was thought of as a protection for weak nations, with but a cautious exception. For Shang, however, it became an imperative to reach equal strength with the great powers. A constitution would not only protect China because it created legal limitations, as Peter Zarrow implied, but also because it "put (the country) in a place where it could not be humiliated, increasing the country's power and solidifying its sovereignty" (*ju yu bu ke wuru zhi jing, er zhang wo guoshi, gu wo guoquan* 居於不可侮辱之境，而張我國勢固我國權).¹¹⁵⁶

It was Shang's successor Dashou whose long report of August 7, 1908 gave the most remarkable explanation of this aspect of constitutionalism.¹¹⁵⁷ It is worth having a closer look at it, for it is unique for its outspokenness in defining the goal of constitutionalism as being an aggressive, imperialist foreign policy. Its

¹¹⁵⁴ Bluntschli, *Das moderne Völkerrecht der civilisierten Staaten*, 83.

¹¹⁵⁵ Bluntschli, *Gongfa huitong*, vol. 1 (*ren* 仁), jüan 卷 1, 22; Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubelixian dang'an shiliao*, vol. 1, 261.

¹¹⁵⁶ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubelixian dang'an shiliao*, vol. 1, 260.

¹¹⁵⁷ *Ibid.*, vol. 1, 25–41. Also included in Xia et al., *Shiliao huicui*, 55–66. See also Li Jiaju's report of one year later in Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubelixian dang'an shiliao*, vol. 1, 523–536.

outspokenness notwithstanding, it was not an outlying opinion in an age characterised by imperialism. It lay in the range of what would be expected in China as a definition of national strength, and similar suggestions, although less outspoken, did appear in other writings of the time (see chapter 5.2 for further examples).

For Dashou, the main function of the constitution was the competitiveness it gave to a nation. He explained that the world was a world of international competition. Furthermore, the nature of the competition had changed: It was no longer simply a competition between rulers, but between nations as a whole. Nations competed mainly in three areas: military, economic and cultural. Without a constitution, Dashou considered, the government was imperfect and could not adequately devise policies, and the people, restrained by autocratic government, also had no means to develop themselves. A constitution, however, being an instrument of nationalism and bringing people and government closer together, helped foster all three elements. Under a constitution, the people had the duties to pay taxes and serve in the military. As the people could partake in politics, its identification with the nation would grow, making the military stronger. Similarly, constitutionalism would strengthen the country in economic matters. In times of peace, Dashou argued, the state would reward colonists and protect commerce, and in times of war, people would be glad to contribute to their nation with war loans. As to the benefits of a constitutional system for culture, Dashou summarised them with an allusion to the *Book of Documents* (*Shujing* 書經): the nation's "fame and influence would reach to the four seas" (*sheng jiao qi yu sihai* 聖教迄於四海).¹¹⁵⁸ What Dashou meant was: Compulsory education, organised and funded locally, but supervised by the central government, would nurture literature, religion, morals, habits and ideas. The nation would promote

¹¹⁵⁸ Couvreur, *Chou King*, 88–89.

these not only in the country itself, but also in the colonies and even beyond its borders.¹¹⁵⁹

But what makes Dashou's memorial memorable is that he was unabashed about defining the goal of all these policies. Scholarship has, hitherto, only discussed what kind of a constitution Dashou wanted: according to Chai Hongxia, it was a "pseudo-constitutional absolutism,"¹¹⁶⁰ whereas Peter Zarrow more nuancedly writes that he wanted to place the emperor above politics while guaranteeing the "unity of rulers and ruled."¹¹⁶¹ However, scholarship has not touched upon his international vision for China. Let us do this now.

Not surprisingly, one of Dashou's examples was the result of the Russo-Japanese war: constitutionalism had let Japan become a successful imperialist nation. Equally, in Dashou's explanation, a constitution was not only about making China prosperous and defending it against foreign encroachment. It was about even more: it was about imperialism (*diguozhuyi* 帝國主義). His words merit being transcribed directly:

Imperialism is assembling the perspective of the entire people and letting it gaze at the world, opening up new spaces with hands and feet, not being disgraced by others but always intending to disgrace others, not being invaded by others but always intending to invade others. Thus, militarism is imperialism of war. Colonial policy, spheres of influence, open doors, distribution of benefits, customs unions are economic imperialism. Religious proselytism, expansion of national languages, promotion of habits and customs are cultural imperialism. Nowadays, the powers either pick two of these three imperialisms, or they pick all three imperialisms simul-

¹¹⁵⁹ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubelixian dang'an shiliao*, vol. 1, 29–31.

¹¹⁶⁰ Chai, "Lun Qingmo chuyang kaocha dachen Dashou de xianzhengguan," 45. Chai attributes the concept to Theodor Mommsen (1817–1903), but is imprecise in a significant detail: The concept used in German discourse to refer to the German Empire is not "pseudo-constitutional absolutism," but "pseudo-constitutional semi-absolutism" (*pseudokonstitutioneller Semiabsolutismus*).

¹¹⁶¹ Zarrow, "Constitutionalism and the Imagination of the State," in *Creating Chinese Modernity*, 69.

taneously and primarily make military and economic imperialism a priority. In general, those who want to implement imperialism, all use economic and cultural imperialism as the vanguard and military imperialism as the backing. This is the common rule of the powers of the world. Those who follow it, thrive, and there is none who can escape it! Constitutional political systems are an instrument to increase national competitiveness and enable a state to further implement imperialism!

帝國主義者，聚全國人民之眼光使之射於世界之上，高掌遠矚，不爲人侮而常欲侮人，不爲人侵而常欲侵人。故軍國主義者，卽戰鬥之帝國主義也。殖民政策也，勢力範圍也，門戶開放也，利益均霑也，關稅同盟也，卽財富帝國主義也。宗教之傳播，國語之擴張，風俗習慣之外展，卽文化帝國主義也。今之列國，或於此三主義中取其二焉，或並取其三焉，而要以戰鬥、財富爲尤重。大抵欲行帝國主義者，咸以財富、文化爲先鋒，而以戰鬥爲後盾，此爲今日世界列國之公例。循是者興，無可逃矣。立憲政體者所以厚國民之競爭力，使國家能進而行帝國主義者也。¹¹⁶²

Indeed, the line between defense and aggression is always a blurry one. Tolstoy had argued that imperialism was inextricably correlated to imperialism, and warned the Chinese against adopting “the Europeans’ hogwash teachings of constitutionalism, police and armies” (*Ouren lixian jingcha lujun zhu xieshuo* 歐人立憲警察陸軍諸邪說), to use the words of Qian Xuantong. Here, we have the other side of the medal. Dashou, *nota bene* an official representative of the Chinese government, recommended the adoption of a constitution precisely because it was so closely linked to “militaries and police,” as well as to all other economic and cultural elements of expansion used by the Western powers and Japan. For Dashou, China needed not only to become “prosperous and strong” in a passive sense; such would not suffice to guarantee national survival. Lest it perish, China had to become an aggressive imperialist power just like the powers of which it had

¹¹⁶² Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubel lixian dang'an shiliao*, vol. 1, 29. The edition has a slightly different punctuation.

theretofore been a victim. Although no one conceptionalised the goal of constitutionalism as candidly as Dashou under the term “imperialism,” the conception of international politics as a number of warring states fighting predominance was commonplace in the late Qing. For many Chinese intellectuals and officials, it was clear that pursuing constitutional imperialism was the only way for China not to become a victim of constitutionalist imperialism itself.

c) The Hague Peace Conference of 1907 as a Constitutional Impulse

Dashou draw his conclusions from his studies and experiences in Japan. However, these were not only grounded on regional circumstances, but on an understanding of global international politics, wherein China was one of many states occupying disadvantageous positions. The argument about a constitution helping China not to be the sheep eaten by the wolves of international politics gained credibility because it was not only voiced by students of constitutionalism like Dashou, but also by those directly involved in international relations: China’s diplomats. In 1907, the international community gathered in the Dutch capital for the Second Hague Peace Conference.¹¹⁶³ The stratified international community, in which some states wielded hegemonic powers and others were confined to marginal roles or even openly oppressed, lay painfully open to Chinese eyes.

Accordingly, China’s diplomats repeatedly used the occasion of the Peace Conference to pressure the Chinese government to adopt a constitution. As Tang Qihua 唐啓華 explained, the Chinese government participated in the Hague conferences because it hoped to use international law to safeguard China’s sovereignty.¹¹⁶⁴ However, one should note that both the indirect and direct arguments about the need for a constitution came to the fore.

¹¹⁶³ For a summary of China’s participation in the Hague Conference of 1907 and its importance for China’s constitutional reforms see Tang, “Qingmo Minchu Zhongguo dui ‘Haiya Baohehui’ zhi canyu,” 65–68.

¹¹⁶⁴ Tang, “Qingmo Minchu Zhongguo dui ‘Haiya Baohehui’ zhi canyu,” 46.

The first time when happened this happened was when three Korean delegates appeared at the Hague, equipped with credentials and an official seal. The Koreans were not allowed to take part in the conference, and the mission prompted a harsh Japanese reaction. As a consequence of the affair, the Emperor of Korea, Kojong, lost his power in favour of his son, and Korea was forced to sign a new protectorate treaty with Japan. The new treaty was even more unfavourable than the one in effect since 1905, hastening Korea's complete annexation by Japan.¹¹⁶⁵

The incident was widely reported in the Western press of the time.¹¹⁶⁶ Western accounts did stress Korea's political frailty, but they did not discuss it under the notion of "constitutionalism." For the Chinese delegation, however, Korea's misfortune was a warning. According to the wonderful properties ascribed to constitutions, these symbols of sovereign statehood, it was an essentially constitutional warning. China's representatives to the conference, Lu Zhengxiang and Qian Xun 錢恂 (1853–1927), reported the matter to Peking. The report employed the direct line of argumentation, writing that only if China showed determination to pursue its constitutional plans, other powers would respect it (*qi jing* 起敬):

The crowd at the conference is commenting that all papers of the various countries write that the crisis in today's world is getting more urgent by the day, and only if one rapidly adopts a constitution, it can perhaps be recovered. Their explanations are extremely earnest; their opinions har-

¹¹⁶⁵ On the affair see Lee, *A New History of Korea*, 311–313, and Yöng-ho Ch'oe and Tae-jin Yi, "The Mystery of Emperor Kojong's Sudden Death in 1919: Were the Highest Japanese Officials Responsible?," *Korean Studies* 35 (2011), 143–144.

¹¹⁶⁶ There is some disagreement in secondary literature about whether Western press was favourable to Japan. The account in Lee, *A New History of Korea*, 311, sounds as if the mission served to arouse sympathy for Korea. Klaus Schlichtmann, "Japan, Germany and the Idea of the Hague Peace Conferences," *Journal of Peace Research* 40, no. 4 (2003), 389, on the other hand, asserts that Western press was generally favourable to Japan, citing the *New York Times*. However, Schlichtmann's assessment is based on a Japanese diplomatic source which reported the *New York Times*, and should be accordingly taken with respective care. A close examination of original sources would be a desideratum.

bour reward and punishment, and we, Lu Zhengxiang and Qian Xun, do not dare to block the various foreign opinions from reaching the ruler's ears. Certainly, our country has already issued Imperial edicts and orders by the Empress Dowager with the purpose of preparing for constitutionalism. We clearly know that at this time, the level is not yet satisfying; if we do not gradually prepare, then it will not be easy to be implemented. Yet, there is no harm in again definitely proclaiming our purpose of instituting a constitutional government, in order to show that there has been no alteration [of our plans] at all. All the clauses [of the constitution] can be decided on later in ample time. In this way the great powers will nourish respect, and our nation can rest on firm foundations.

會衆論列國各報均調當今世界危機日迫，惟趕速立憲，庶幾可挽。語極諄切，意存勸懲，祥、恂備聞，種種外論不敢壅於上聞。我國固已欽奉懿旨，豫備立憲宗旨，明知此時程度未足，非逐漸豫備未易實行，然立憲宗旨不妨再行確實宣佈，以示決無更動，一切條目自可從容酌議，如此則列強起敬，邦基乃鞏，……¹¹⁶⁷

Lu's July dispatch talking about the Korean incident was followed by a more pressing epistle, signed by a group of six Chinese ministers, including Lu himself, Qian Xun, Sun Baoqi, Hu Weide and Li Shengduo.¹¹⁶⁸ The July letter had called for a reaffirmation of China's policy to the inside, accompanied by public relations measures to the outside. The September letter, however, demanded more expeditious action to the inside. It deplored that China itself had been classified as a "third-tier state" (*sandengguo* 三等國) and that the states of South and North America had accused China's laws of being the most faulty of all, with the Euro-

¹¹⁶⁷ Wang and Wang, *Qingji waijiao shiliao*, vol. 7, 3252. The last part of the translation is inspired on Sun, "The Chinese Constitutional Missions of 1905-1906," 252.

¹¹⁶⁸ Sun Baoqi 孫寶琦 et al., *Haiya Baohehui lie Zhongguo wei sandengguo qing xiuming falü yi bao zhuquan you* 海牙保和會列中國為三等國請修明法律以保主權由 (As the Hague Peace Conference has classified China as a third-class country, a request to repair the laws in order to protect sovereignty), Guangxu 33/08/15 [September 22, 1907], file no. 02-21-002-03-051, Archives of the Institute of Modern History, Academia Sinica, Taipei.

peans agreeing (*Nanbeimei geguo qun shi wo wei falü zui bi zhi guo, er Ouzhou geguo fuhe zhi* 南北美各國群嘗我為法律最敝之國而歐洲各國附和之). Consequently, the ministers demanded a speedy reform of the legal system. They made it expressly clear that such reform was part of the enterprise to create a constitutional government, of which the most important part was the constitutional charter (*xianzheng shouzhong falü xianfa di-yi* 憲政首重法律憲法第一). Beneath the constitution, constitutional government comprised the substantive and procedural civil and criminal laws. What China needed to do was bringing its laws into conformity with the “common principles of constitutional government of all countries” (*wu shi heyu shijie geguo xianzheng gongli* 務使合於世界各國憲政公理).¹¹⁶⁹ If such a reform of the legal system with the aim of consolidating constitutional government did not happen, China could sink to an even lower place in the next Hague Peace Conference.

After the letter reached the Constitutional Office, Shen Jiaben 沈家本 (1840–1913) and his colleagues charged with legal reforms agreed with alarmed words of the Chinese ministers:

Thus, although law is internal politics, in reality it is secretly closely connected to international [politics]. ... Thus, if it does not correspond to international common principles, it will not be able to stop the greedy coveting and bring trust to the fore.

¹¹⁶⁹ Tang, “Qingmo Minchu Zhongguo dui ‘Haiya Baohehui’ zhi canyu,” 67, transcribes the text of the letter slightly differently than the present study. Instead of *Nanbeimei geguo qun shi wo wei falü zui bi zhi guo* (南北美各國群嘗我為法律最敝之國), he has *Nanbeimei geguo qun ze wo wei falü zui bi zhi guo* (南北美各國群責我為法律最敝之國). Instead of “common principles of constitutional government of all countries” (*shijie geguo xianzheng gongli* 世界各國憲政公理), Tang has “common principles of the constitutions of all countries” (*shijie geguo xianfa gongli* 世界各國憲法公理). This last reading would change the meaning of the letter somewhat, as it would more narrowly imply the constitutional charters of each country, rather than their principles of government.

是法律雖內政實隱於國際息息相通……是非期合世界公理不足以杜覬覦而昭信用¹¹⁷⁰

Their reaction will not surprise the reader who has read the foregoing chapters: they proposed to send two or three representatives to the Netherlands to discuss law with foreign colleagues. In a way, Shen Jiaben and his colleagues' reaction deconstitutionalised the demand, as it did not talk about the constitution as such and was mainly concerned with substantial and procedural simple law. However, the reaction was in line with the overall constitutional plan: The constitutional charter remained the finishing stone of a thorough programme of "constitutional preparation."

The September letter still employed the direct argument that China needed to bring its laws into conformity with common principles in order to be classified in a higher rank of statehood. But lessons from the Hague Conference were by no means confined to this peaceful argument of constitution as a benchmark. The Chinese delegation did not dwell on the—possibly naïve—hope that a constitution would generate good-will among the powers. They also employed the indirect argument concerning the relation of powers. Not only the Chinese, but actually a transcontinental alliance of diplomats felt that the imperialist powers were showing their domineering natures at the conference. For the Chinese diplomats, only with a constitution could China become strong enough to cope with them.

One of the main points of the contention of the Hague Conference concerned the establishment of a permanent international court of justice. The Euro-

¹¹⁷⁰ Shen Jiaben 沈家本, Yu Liansan 俞廉三, and Ying Rui 英瑞, Baohehui wei geguo faxue huicui zhi suo ni linxuan 2, 3 ren zou pai fennian zhu He taolun you 保和會為各國法學會萃之所擬遴選二三人奏派分年駐和討論 (The Peace Conference is an assembly of the *crème de la crème* of international jurisprudence, we intend to send two or three people to stay for a year each in the Netherlands to discuss matters), Guangxu 33/12/25 [January 28, 1908], file no. 02-21-012-03-055, Archives of the Institute of Modern History, Academia Sinica, Taipei. Tang, "Qingmo Minchu Zhongguo dui 'Hai-ya Baohehui' zhi canyu," 68, transcribes *xinshou* 信守 ("to abide by [laws]") instead of *xinyong* 信用 ("trust").

pean powers and the USA favoured a model creating an arbitral tribunal with themselves as permanent arbiters, greatly favouring themselves to the detriment of all others. The leading opponent against this proposal was the Brazilian Ruy Barbosa (1849–1923), whose activity in the Hague made him one of the idols of his country's diplomatic history. As Lu Zhengxiang wrote in one of his reports, he was impressed by Barbosa's closing speech at the conference.

Barbosa was a fierce defender of the principle of sovereign equality of nations. Being a realist, he knew full well that international law is never respected unless among powers whose might is in an equilibrium.¹¹⁷¹ Thus, in his closing speech, he recounted how, until 1904, Europe only recognised the USA in its political horizon, and Asia and Latin America were but "geographical expressions" ("l'Asie et l'Amérique latine n'étaient que des expressions à peu près géographiques"). But things were changing. In 1904, Barbosa explained, Japan had entered the international concert by the "war door," while Latin America was entering by the "peaceful door." However, Barbosa was uncertain about his home region's peaceful attitude. The not-so-peaceful attitude of the great powers was threatening the whole objective of the Peace Conference, and could force his own country to, *à contre-cœur*, take part in the arms race as well:

But, if we found ourselves disappointed, if one rebutted us and left us disillusioned, having made the experience that international greatness is only measured by the force of arms, then, by your work, the result of the Second Peace Conference will have been to reverse the political trend of the world in the sense of war. One would have pushed us to seek in large armies and large navies the recognition of our position, indicated in vain by population, intelligence and richness.

¹¹⁷¹ Ruy Barbosa, "O Continente Enfermo," *A Imprensa*, May 3, 1899, citing fellow jurist Eduardo Prado (1860–1901).

Mais, si nous nous trouvions déçus, si l'on nous rebutait désillusionnés, avec l'expérience que la grandeur internationale ne se mesure que par la force des armes, alors, par votre œuvre, le résultat de la Seconde Conférence de la Paix aurait été de renverser le courant politique du monde dans le sens de la guerre, en nous poussant à chercher dans les grandes armées et dans les grandes marines la reconnaissance de notre position, en vain indiquée par la population, par l'intelligence et par la richesse.¹¹⁷²

Lu felt the speech to be of considerable relevance for China, and summarised it in a comprehensive conference report written half a year after its closure, in February 1908. His summary of it made Barbosa sound even more defiant; the lament about the militarism of the great powers turned into a barely concealed threat:

Today, I know that under the heaven there are indeed no common principles. After I have returned home, I will only warn them to amass military prowess. I ask you all to wait until the Third Conference and have a look again at Brazil, whether it is or not a strong country or a weak country, a large country or a small country!

今知天下果無公理會畢回國惟申儆國人蒐討軍實請俟第三次會諸君再視巴西是否強國弱國大國小國¹¹⁷³

Barbosa's speech as such did not relate to the notion of constitutionalism. But for Chinese officials and officials, questions of international power were necessarily constitutional questions, just as the affair of the Korean delegation had also been of constitutional significance for the Chinese delegates. Thus, in the same way as,

¹¹⁷² Ruy Barbosa, *A Segunda Conferência da Paz: Deuxième Conférence de la Paix. Actes et discours de M. Ruy Barbosa, Ambassadeur et Premier Délégué du Brésil, Membre de la Cour Permanente de l'Arbitrage. Prefácio do Embaixador Hildebrando Accioly, consultor jurídico do Itamarati* (Rio de Janeiro: Ministério da Educação e Cultura, 1966), 393.

¹¹⁷³ Lu Zhengxiang 陸徵祥, Juzou Baohehui qianhou shizai qingxing deng zhepian qing daidi you 具奏保和會前後實在情形等摺片請代遞由 (Memorial about the actual circumstances before and after the Peace Conference, &c.; with a request to retransmit), Guangxu 34/01/16 [February 17, 1908], file no. 02-21-004-01-003, Archives of the Institute of Modern History, Academia Sinica, Taipei, [11].

for Lu, Brazil had a plan to counter imperialist encroachment until the next Peace Conference, China also had one, which he hardly tried to conceal in diplomatic language. The Empress Dowager had decreed that constitutional preparation should take place gradually. But as the third Conference would be convened “in the twinkling of an eye,” Lu hoped that constitutionalism could be implemented speedily in order to “shut up other countries’ mouths” (*sai geguo zhi kou* 塞各國之口).¹¹⁷⁴

5. The International Reception of China’s Constitutional Movement

a) International Dialogues in Public Opinion

If China’s diplomats wanted to use constitutionalism to “shut up the international community,” how did the international community, then, react to China’s constitutional reforms? It is not exaggerated to state that China’s constitutional reforms drew considerable attention across the world. Before proceeding to the diplomatic reactions, a few words about press and other public reactions are in order. Lest we drown in the vast sea of foreign-language press reports on the various aspects of Chinese constitutionalism, only a few general remarks shall suffice.¹¹⁷⁵ In particular, this section wants to stress the point that public opinion was, again, not a one-way affair: In the one direction, foreign press was well-aware of its impact in China, changing its reporting accordingly. In the other direction, Chinese actors were not silent, but actively worked to influence foreign opinions. But just as constitutional news from abroad were filtered in China according to the own political agenda of the respective Chinese media, voices from China were also interpreted according to the political agendas of the recipients.

It is not surprising that China’s planned adoption of a constitution was followed and commented on in great detail in its neighbour, Japan. But China’s

¹¹⁷⁴ Ibid.

¹¹⁷⁵ For a broader coverage of foreign-language reporting on China’s constitutional reforms, see Moniz Bandeira, “Political Reforms in a Global Context”, in particular 143–155.

constitutional plans were of such importance for the world that they were not even ignored in the part of the world the farthest away from China, in South America. Although they did evoke less attention there than in China's neighbourhood, it is worth adducing one or two examples to show that the Chinese constitutional reforms were not only noticed, but also had significance to observers in South America. For in Brazil, too, the Chinese constitutional movement was seen as an expression of a world-wide development, and as one of the finishing stones of the "constitutionalisation" of the world. After China announced the intention to adopt a constitution, the press organ of the Brazilian Republican Party characterised the constitutional movement as a "peaceful revolution" that was "shaking the fundamentals of the old institutions for the advent of a new, constitutional and progressive China."¹¹⁷⁶ Some months later, the paper *A Imprensa* celebrated the "fortunate news" that thenceforth, in the old world only the Sultan of Turkey and the Emirs of Bukhara and of Afghanistan would remain as *de jure* despotic and autocratic rulers.¹¹⁷⁷

In general, the foreign-language press saw it as something desirable that there happen a political transformation in China culminating with the eventual promulgation of a constitution. However, apart from such theoretical recognition of the principle of constitutional government, there was considerable variation in how China's concrete steps of "constitutional preparation" were interpreted abroad. Next to positive evaluations, there was also an abundance of skeptical opinions. Many stressed that the Qing government was not particularly capable, or characterised it as degenerate, expressing skepticism about whether China was really proceeding in a way conducive to success. Surprisingly often, just as Herbert Spencer had argued about Japan, observers voiced the sentiment that, for

¹¹⁷⁶ Most of the article, however, was about the Chinese revolutionary movement, stressing the similarities between Russia and China, and that the Chinese revolutionists were imitating Russian methods. *A Republica: Organ do Partido Republicano Federal*, "A China revolucionaria," February 26, 1907, 47.

¹¹⁷⁷ *A Imprensa*, "A China constitucional."

various reasons, the reform declarations were too ambitious to be feasible and that China had to proceed more slowly in order to be successful.

Lest the reader gain the mistaken impression that foreigners were only passively observing Chinese events, one aspect remains to be stressed. There was not such a clear-cut distinction of Chinese press versus foreign press, or even of Chinese opinion versus foreign opinion as it might seem. Chinese officials and intellectuals were well-aware of foreign interest on Chinese constitutionalism. Sometimes they felt disconcerted by this attention,¹¹⁷⁸ but very often, foreign perceptions of China were also translated back into Chinese and thus had an influence on the Chinese discourse itself.¹¹⁷⁹ Chinese intellectuals and officials avidly read Japanese and English newspapers, and these in turn adapted their reporting in view of their Chinese audience.¹¹⁸⁰ For example, the correspondent of the *Times*, George Ernest Morrison (1862–1920), admitted that “the Chinese pay considerable attention [to] what is said by The Times and perhaps knowledge of this fact leads me from time to time to be polemical rather than judicial.”¹¹⁸¹

In the other direction, Chinese intellectuals also tried to explain China to foreign audiences and influence their opinions. We have already mentioned examples like Zhang Qingtong’s activities in Russia and Ma Derun’s German booklet *China: Explanations*. Let us adduce a few more example from another part of the world, the United States, which show how the points mentioned in the foregoing sections were expressed by the Chinese and how Chinese arguments were adapted there.

¹¹⁷⁸ “... The Consul of a certain state has deemed it necessary to immediately translate the items of discussion of the Provincial Assembly He produced four copies, of which he sent each one to his government, one to the Minister in Peking and one to Tsingtau, and kept one for himself. Do we Chinese even know that the foreigners are following everything with such attention?” *Shenzhou Ribao* 申舟日報, October 9, 1909, translated in *Verfassung, Parlament, Peking* II 595, Political Archive of the Federal Foreign Office of Germany, Berlin, 147.

¹¹⁷⁹ E.g., *South China Daily Journal*, “Japanese opinion on the Chinese situation,” June 18, 1907

¹¹⁸⁰ See Zachmann, “China’s Role in the Process of Japan’s Cultural Self-Identification,” 17–18.

¹¹⁸¹ George Ernest Morrison, *The Correspondence of G.E. Morrison*, ed. Lo Hui-min, 2 vols. (Cambridge et al.: Cambridge University Press, 1976), vol. 1, 388.

In the United States, too, students went beyond the contributions required for their graduation to dialogue directly with a broader academic or even general public. For example, at the turn of 1906/07, Lingoh Wang, a student at Cornell University in New York, delivered a speech about the proposed constitution for China at the Cornell Cosmopolitan Club, an organisation of international students. According to the *Chinese Students' Bulletin*, the speech was "heartily welcomed" by the public.¹¹⁸² The bulletin of the Chinese students, an English-language publication, continued seized of the constitutional developments. In an article published a few months later, the bulletin mentioned education and political freedoms as elements of Chinese constitutional reforms. But the same time, the article made it clear that the ultimate goal of the constitution was its political strengthening. The constitution, thus, was not a means to subordinate China to a Western political concept, much to the contrary:

Her people are not only asking for education, but they are also asking for individual freedom, and in a short time they will have a *constitution*. This movement means everything to China. It means that she will be a factor in the East, and not a victim of Western oppression.¹¹⁸³

A student who explained the Chinese constitutional reforms to the general populace well beyond the university campus was Ye Daqian 葉達前, alumnus of Peiyang University and then a student at Harvard College. On October 18, 1908, the *Boston Daily Globe* dedicated a collection of articles to the question of whether the Orient was becoming democratic. To a large measure, the page was about the constitutional wave sweeping the Eastern half of the Eurasian landmass. Besides an article by Ye Daqian, the series counted contributions from a Persian diplomat, an Armenian journalist speaking for the Ottoman Empire and an Indian student.

¹¹⁸² "Local: News from Ithaca Club," *The Chinese Students' Bulletin* 2, no. 2 (1907), 32.

¹¹⁸³ E. Ling Soon, "The Awakening of China," *The Chinese Students' Bulletin* 2, no. 6 (1907), 136.

The Chinese, Persian and Armenian contributors all talked about the constitutional upheavals going on in their home countries.

Ye used words which certainly pleased his US American audience, but at the same time he was also clear that he saw China as an equal to the Western powers. Ye's article affirmed that "Chinese democracy" was "coming" and denied that "'Chinaman' is not fit for self-government."¹¹⁸⁴ In Ye's view, the people as a whole were very eager "in looking toward a constitution and a representative assembly."

Ye's article was then republished across the country and appeared in such diverse papers as the *Taney County Republican* in Missouri and the *Colfax Chronicle* in Louisiana.¹¹⁸⁵ Although each of these papers, in contrast to the *Boston Daily Globe*, was of only minuscule local significance, they are interesting as they not only published Ye's opinion, but also adapted it so as to reflect the expectations of the US American audiences. Ye's original article, published in the *Boston Daily Globe* as well as in the local newspapers, tried to strike a delicate political balance. On the one hand, at the same time as he described the constitutional movement as going back to Kang Youwei's 1898 reform plans, he denounced Kang as a radical who had brought about a *coup d'état*. On the other hand, he deplored the court still being full of reactionaries. Compromises had to be found, and Ye praised Yuan Shikai for winning over the opposition and having been able to push his plans forward. In sum, he was optimistic about the progressive element being able to succeed over the conservative one. Ye's original article did not, in any way, call for an end of the monarchy; it parts from the assumption that the new constitution would be given under the current form of state. Yet, in the republican United States, his calls for "self-government" were interpreted according to the local political agenda: The *Taney County Republican* and, little later, the *Colfax*

¹¹⁸⁴ Ta, "Chinese Democracy Coming."

¹¹⁸⁵ Ta, "Chinese Rule: Days of Monarchy Surely Numbered," *Taney County Republican*; Ta, "Chinese Rule: Days of Monarchy Surely Numbered," *Colfax Chronicle*.

Chronicle, published the article under a new title proclaiming that in China, the “days of monarchy” were “surely numbered.”

Perhaps the farthest-reaching voice defending China’s constitutional enterprise in North America was that of a journalist: Li Sum Ling 李心靈 (1881–?), the editor of the Hongkong *Chinese Mail* (*Wah Tse Yat Po*, mand. *Huazi Ribao* 華字日報).¹¹⁸⁶ Li visited North America on a tour arranged by the *New York Herald’s* Hongkong correspondent, William Henry Donald (1875–1946).¹¹⁸⁷ Although declared as Li’s private tour to study the West and gather information, its main objective was promoting the idea of a political alliance between China and the United States. Thus, although Li also spent four months in Europe, the emphasis of his trip lay in the USA, where he received “princely receptions.” He toured most important cities in all regions of the country and met numerous political and commercial dignitaries, including presidential candidates William Taft (1857–1930) and William Bryan (1860–1925). Li also gave speeches to large audiences, the largest of which was reported to have consisted of some 15,000 people in the south of the country.¹¹⁸⁸

Li’s tour missed its political objectives and even backfired: Instead of a Sino-US alliance, Japan managed to forge a Japanese-US alliance. But it did help in promoting China’s constitutional reforms to the US American public. His

¹¹⁸⁶ There is some confusion about what paper’s editor Li was. The *Chicago Daily Tribune* identifies him as editor of the Hongkong *Daily Mail*. Some sources also have Li as the editor of the *China Mail*. Indeed, the *China Mail* (*Dechenxi Bao*, Cant. *Dak¹san⁴sai¹ Bou³* 德臣西報, for *Dixson’s newspaper*) and the *Chinese Mail* were distinct, but related newspapers: the former was written in English, the latter in Chinese.

¹¹⁸⁷ On Li’s trip and its political objectives, see Mordechai Rozanski, “The Role of American Journalists in Chinese-American Relations, 1900-1925” (PhD diss., University of Pennsylvania, 1974), 74–76.

¹¹⁸⁸ *South China Morning Post*, “Mr. Li Sum Ling Returns to Hongkong,” January 15, 1909. There is no verification of this high number, although Li did in fact visit other large gatherings. The New Orleans Cotton Convention, where he held a speech and declared that “nothing makes a Chinaman so happy as wearing a shirt made of southern cotton,” was attended by approximately 1500–1800 people. See *Atlanta Constitution*, “25 Per Cent in Cotton Crop Asked by Union: Call Also for Diversification of Crop Made By New Orleans Convention. Strong Address Made by President Barrett. He Tells the Convention That Price Must Be Raised, as It Means \$150,000,000 to the South. Night Riding Denounced and Warehouse System Indorsed. President C. S. Barrett to the Cotton Convention.” November 12, 1908, 14.

speeches could not be silent on the most prominent topic of contemporary Chinese politics: China's constitutional changes. The *Chicago Daily Tribune* even declared his voyage to be a constitutional study tour and reported that Li had spent his time in Europe studying constitutional systems with the idea of preparing an educational campaign "to usher in China's new era."¹¹⁸⁹ Li, who presented himself as a loyal subject of the Qing and went into seclusion to mourn the death of Cixi and Guangxu,¹¹⁹⁰ gave declarations which lay in line with the confident mood of other Chinese voices in the West. At the same time, they were also adapted to please the ears of his US American audience, stressing the US American contribution to China's political development. Thus, repeating the official guideline of the Chinese government, Li explained at a speech held in the Chicago Auditorium Annex that China's new constitution was "an effort to unite the best features of the constitutional governments of Europe and the United States into a system that will be peculiarly adapted to the growing needs of China."¹¹⁹¹

b) Economic Reactions

Let us now finally have a look at the substantial importance of China's constitutional reforms for the outside, i.e., at the economic, diplomatic and political reactions to them. If some Chinese hoped that these were conducive to improving China's international standing, were such hopes really justified?

For the economic realm, the answer is the quickest, for here the relationship to constitutional changes was only indirect. Sometimes constitutional government was welcomed so far as it promised to make the Chinese market more accessible and facilitate economic exchange. Such a hope for possible economic

¹¹⁸⁹ *Chicago Daily Tribune*, "Chinese Editor Discusses Constitution for China: Li Sum Ling of Hongkong Arrives on Tour to Study Government Systems - To Address Illinois Manufacturers," October 20, 1908.

¹¹⁹⁰ *Washington Post*, "Agreement on China. Powers Will Support the New Regime in Empire. All is Tranquil in Peking. In Sir Robert Hart's Opinion, Prince Chun, the Regent, Will Do Well. Reform Party Leader Says Movement to Overthrow Manchu Dynasty Is Again on Foot. Kang Yu Wei Has Doubts." November 19, 1908.

¹¹⁹¹ *Chicago Daily Tribune*, "Chinese Editor Discusses Constitution for China".

benefits from constitutional reforms can be seen in a memorandum written by Walter Caine Hillier (1849–1927), a former diplomat and professor in London, concerning the creation of a “Committee for the furtherance of the education of Chinese in England”:

The development of China during the last few years in the direction of constitutional reform and material progress indicates the probability of vast expansion in the near future in the direction of the opening up of the resources of China.¹¹⁹²

Four years later, it was Walter Hillier’s brother Edward Guy Hillier (1857–1924), one of the directors of the Hongkong and Shanghai Banking Corporation (HSBC), who made a connection *expressis verbis* that the emerging constitution was advantageous for international economic relations. In May 1911, the Chinese government introduced a new “cabinet” to become the top of the executive branch.¹¹⁹³ The cabinet was dominated by members of the Imperial family, and the move was heavily criticised as being a perversion of this institution.¹¹⁹⁴ Since the national assembly had not yet been convened, the cabinet was also not yet responsible. In fact, at the end of October 1911, the Chinese government revoked the cabinet, acknowledging that it “was not compatible with the constitutional form of government” (*huangzu neige yu lixian zhengti bu neng xiangrong* 皇族內閣與立憲政體不能相容) and that the existing system had “not been in accordance with the rules practiced in constitutional countries” (*yu lixian geguo tongli bu fu* 與立憲各國通例不符).¹¹⁹⁵

¹¹⁹² File no. 19295, June 9, 1907, FO 228/2136, National Archives, Kew.

¹¹⁹³ The documents related to the cabinet are to be found in Gugong Bowuyuan Ming-Qing dang’anbu, *Qingmo choubei lixian dang’an shiliao*, vol. 1, 558–565 and 572–576. On the so-called “Imperial kinsmen cabinet” see Rhoads, *Manchus & Han*, 167–170.

¹¹⁹⁴ E.g., “Zhongguo dashi ji” 中國大事記 (Record of big events in China), *Dongfang Zazhi* 東方雜誌 8, no. 6 (1911).

¹¹⁹⁵ Gugong Bowuyuan Ming-Qing dang’anbu, *Qingmo choubei lixian dang’an shiliao*, vol. 1, 597–598.

Nonetheless, Edward Hillier and his HSBC colleague Heinrich Cordes (1866–1927) were quite satisfied with the “growth of constitutional reform,” and, despite its deficiencies, saw the introduction of a cabinet as a progress. In a memorandum to the British Office about the agreement for the Hukuang Imperial Government Railways of May 20, 1911, to which the HSBC was one of the signing parties,¹¹⁹⁶ the two noted:

The unusual publicity given to the Hukuang Agreement and to the decrees referring to it, and the responsibility of the Cabinet to the National Assembly under the new constitution, are conditions which have been non-existent in the case of previous loan agreements, and these add materially to the value of the guarantees of the present ones.¹¹⁹⁷

In other words, for the HSBC men, the hopes-for constitutional reforms provided additional stability safeguarding their business interests. However, in spite of the ubiquitous clamour for a constitution, even in China many officials were less interested in the question of the constitution as such than in the more practical sub-constitutional aspects of a broadly-understood “constitutional preparation.” Such an attitude was readily supported by the foreign officials they had contact with. This had been the case with the constitutional mission of 1905, and it continued to be the case after the declaration of intent of 1906. For example, in 1907, the Chinese minister to Austria-Hungary, Li Jingmai 李經邁 (1876–1938) took detailed lessons with professor Arnold Krasny (1869–1937) on the laws and institutions of his host country. But his most lively interest was “mainly for those European institutions which could gain practical importance there in China without

¹¹⁹⁶ MacMurray, *Treaties and Agreements with and concerning China*, vol. 1, 866–899. The agreement was signed by the Chinese Minister of Posts and Communications, Sheng Xuanhuai 盛宣懷 (1844–1916), the Deutsch-Asiatische Bank, the HSBC, the Banque de l’Indo-Chine and a consortium of four US banks (the American Group). See also Moniz Bandeira, “Political Reforms in a Global Context,” 160–161.

¹¹⁹⁷ Mr. C. S. Addis to Foreign Office/Memorandum by Messrs. Hillier and Cordes, received on July 7, 1911, enclosure to file no. 26394, FO 405/205, National Archives, Kew, 12.

thorough upheavals, such as the monopolies of the state, the organisation of the system of coins and bank notes, public debt and others.”¹¹⁹⁸

In the economic realm, thus, the constitution was not necessarily of central importance in and of itself. Capitalists hoped for stability and for liberty to make profits. A constitution could be conducive to their economic goals, but it was a secondary consideration rather than a *condicio sine qua non*. Continuing the pre-constitutional reform debates of the late 1890s, many a foreign observer gave priority to practically tangible reforms rather than to long-term constitutional reforms. The US American journalist Thomas Millard (1868–1942) depicted this sentiment well when he exclaimed that financial and fiscal reforms were paramount:

While the effort to secure a constitution and assembly in China may excite sentimental interest in America and Europe, this ambitious reform now promises less practical results than other proposed measures. China can wait for a constitution and representative government. These may in time assist to regenerate the Empire, but liberal institutions are not necessary to accomplish important matters which must quickly be undertaken.¹¹⁹⁹

c) Political and Diplomatic Reactions

In the political realm, as Itō Hirobumi repeatedly stressed, the “Chinese question” was “the most important and also the most dangerous one of the present time.”¹²⁰⁰ Accordingly, the adoption of a constitution, as an eminently political enterprise, was of paramount interest to the many politicians and diplomats from

¹¹⁹⁸ *Neue Freie Presse*, “Der abberufene chinesische Gesandte,” September 21, 1907. This press report can be confirmed by a memorial in which by Li Jingmai stressed the importance of education and finance: Gugong Bowuyuan Ming-Qing dang’anbu, *Qingmo choubai lixian dang’an shiliao*, vol. 1, 200–202.

¹¹⁹⁹ Thomas F. Millard, *America and the Far Eastern Question* (New York: Moffat, Yard and Company, 1909), 312–313.

¹²⁰⁰ Consul-General Cockburn to Sir C. MacDonald, November 12, 1907, enclosure to file no. 2103, FO 371/472, National Archives, Kew, 63 b.

across the world observing developments in the Far East. As expected, one can find a similarly broad spectrum of opinions from diplomats and politicians as one can from the press, ranging from disappointment with China's tortuous constitutional reforms to demands for a slower pace. However, even if there was sympathy for governmental reform, there was no pressure to rapidly adopt a constitutional system. China's constitutional movement continued to take place largely without foreign pressures, and, as will be shown in the next section, to a certain extent even in spite of foreign opinion.

Among the more enthusiastic voices was the North American politician and three-time presidential candidate William Jennings Bryan (1860–1925), who wrote about the expected parliamentary constitution that there was “a distinct advance along governmental lines, and this in itself means much for China [and] for the outside world.”¹²⁰¹ In general, however, diplomatic views tilted towards skepticism, favouring a slow pace of constitutional change. For example, in a report on China's constitutional reforms written in October 1907, the German legation pondered that China was not yet fit for a constitution, considering the low level of popular education and the imperfection of its transport routes.¹²⁰² The limit of 15 years, the report considered, was not too long, especially in light of the 9-year preparatory phase that small Japan had taken.¹²⁰³ They judged that the steps theretofore taken by the Chinese government were reasonable and purposeful, and hoped that it were not swayed by the “clamour of immature literates” to premature or else reactionary measures.¹²⁰⁴

Despite of the difference in the form of the state (*guoti* 國體) of Germany and the United States, such an assessment was initially shared by the representative of the USA. After the declaration of September 1, 1906, minister William

¹²⁰¹ William J. Bryan, “Awakening of Sleeping Giantess.”

¹²⁰² Die Einführung einer Verfassung in China, October 10, 1907, Peking II 595, Political Archive of the Federal Foreign Office of Germany, Berlin, 5.

¹²⁰³ Ibid.

¹²⁰⁴ Ibid.

Rockhill (1854–1914) expressed the concern that the Qing government may be overburdening itself, while at the same time applauding the content of the intended reforms:

The programme of reforms laid down in the edict is most gratifying if carried out, but it may be feared that a few years, as pointed out in the edict, will not prove sufficient to make them, even in the rough; or, if made, that they will prove satisfactory or permanent. The task before the Government is an enormous one.¹²⁰⁵

But the communications of minister Rockhill with Washington also showed that perceptions shifted together with the actions of the Chinese government and with the changing perceptions of the broader public. Two years into the era of “constitutional preparation,” his reports were much more explicit in sharing a common criticism of China’s constitutional reforms: He accused the Qing government of pulling the wool over the public’s eyes. Using the example that the *Zhengwenshe* had been disbanded, he wrote that:

It seems highly probable that before the beginning of the new era many changes in the program of government will take place, and that many new regulations will be compiled, sanctioned by the Throne, and published. However that may be, the present program clearly indicates the tendency of the statesmen in charge of the reform movement, the limitations they hope to impose on it, the object they seek to attain, which would seem to be no other than the perpetuation of the existing system under a thin veil of constitutional guarantees.¹²⁰⁶

¹²⁰⁵ United States Department of State, *Papers Relating to the Foreign Relations of the United States 1906*, 349.

¹²⁰⁶ United States Department of State, ed., *Papers Relating to the Foreign Relations of the United States with the Annual Message of the President Transmitted to Congress December 8, 1908* (Washington: Government Printing Office, 1912), 190.

Similar variations can be seen in the assessments of British diplomats to China. Ernest Satow, who had been minister from 1900 to 1906, has already been noted as expressly arguing against using the notion of constitutionalism to provide too much power to local dignitaries. Sir John Jordan, however, who replaced Satow in September 1906, seemed to be less skeptical about “constitutional” reforms that would include a representative system. To the public, he was optimistic about the general direction of things in China. In a speech given at Belfast in 1910, he

testified to the extraordinary progress made by China in the last decade both in a material and intellectual sense. He believed that the stability of the Chinese character, their love of peace, and above all the sanctity of their family relations, justified the hope that the reform movement would tend to the peace and good of the world.¹²⁰⁷

However, his appraisal of the Chinese government itself was far less benign. Reacting to the reform of central government effected on November 1, 1906, he wrote that “little in all this” could be called preparation for constitutional government. Although he saw the reorganisation as a small step forward, he deemed it to be a very unsatisfying compromise that did not represent a substantial path away from the old ways.¹²⁰⁸

Jordan reiterated his critical stance on the Chinese government in his further diplomatic correspondence concerning China’s constitutional reforms. However, even if he was dissatisfied with the Chinese government, he deemed that directly pressuring the Chinese government would be counter-productive. In this point, he perfectly agreed with the two HSBC bankers Hillier and Cordes, who had warned that China was “like a restive and nervous horse” and suggested

¹²⁰⁷ *Seoul Press*, “Sir John Jordan of China,” October 6, 1910.

¹²⁰⁸ Jordan to Grey (no. 219), November 14, 1906, file no. 43540, FO 405/168, National Archives, Kew, 310–311,

that it “must be guided with a light hand rather than controlled by force.”¹²⁰⁹ Thus, Britain’s policy, like that of most other powers, was of one of not pressing the Chinese government for reforms while giving passive support for the moderately reforming powers within the Chinese government.

d) Itō Hirobumi and the Chinese Constitution

However, there were also some divergences on how to practically react to China’s constitutional plans. In Japan, policy-makers were extraordinarily interested in the Chinese constitutional reforms, as China was of crucial importance for Japanese foreign policy. Some sectors of the Japanese government, most notably the elder statesman Itō Hirobumi, tried to influence China in the sense of slowing down political reforms and delaying the adoption of a constitution. The question of how to exactly react to the Qing constitutional reforms even became the object of an intense inter-continental diplomatic debate between Japan, the United Kingdom and France.

This global dialogue on China’s constitution must be understood against the background of tense relations between China and Japan. The first years of the 20th century had been marked by very dense interactions between both countries in all fields of modernisation, described in a somewhat exaggerated tone by Douglas Reynolds as the 1898–1907 “golden decade” of Sino-Japanese coöperation.¹²¹⁰ However, Sino-Japanese relations became markedly tenser beginning from 1906.¹²¹¹ In January 1906, the administration of prime minister Katsura Tarō 桂太郎 (1848–1913) was replaced by a new government. The new cabinet, headed by Saionji Kinmochi 西園寺公望 (1849–1940) and represented in China by minister Hayashi Gonsuke 林權助 (1860–1939), was seen by contemporary observers as considerably more confrontative towards China.

¹²⁰⁹ Memorandum by Messrs. Hillier and Cordes, enclosure to file no. 26394, FO 405/205, 13.

¹²¹⁰ Reynolds, *The Xinzheng Revolution and Japan*, 5.

¹²¹¹ Cf Dispatch n° 9, Les Japonais en Chine, January 9, 1908, N. S. Chine 183, Diplomatic Archives of the Ministry of Foreign Affairs of France, Paris, 75b.

Policies on both sides were very complex and at times even contradictory. In face of growing Chinese nationalism, Akira Iriye argues, Japanese policy had two options: Either being confrontative or coming to terms with the Chinese public opinion while trying to solidify the dynasty. In theory, he writes, many Japanese politicians and diplomats favoured the second option. However, *in praxi*, they were often undecided on what points should be given up to China.¹²¹² Japan, thus, at times pursued a rather aggressive foreign policy of imposing its interests in China.¹²¹³ Japan encroached ever more in Korea and Manchuria, and Japanese diplomats sometimes used threatening language towards their Chinese counterparts. The tense relations between both countries erupted publicly when, in February 1908, Chinese authorities apprehended the Japanese ship *Tatsu Maru* 辰丸. She was carrying a freight of arms, which the Chinese side alleged were being shipped for the anti-Qing revolutionaries in Southern China.¹²¹⁴ On the surface, Japan won the ensuing diplomatic conflict, as the Chinese government had to apologise and release the steamer to Japan. But it did so at the high cost of losing sympathies in China: mass rallies were held and a boycott movement against Japanese goods broke out.

China at times proposed to settle the various bilateral disputes by way of international arbitration, a proposal which was not accepted by the Japanese side.

¹²¹² Akira Iriye, "Public Opinion and Foreign Policy: The Case of Late Ch'ing China," in *Approaches to Modern Chinese History*, ed. Albert Feuerwerker, Rhoads Murphey, and Mary C. Wright (Berkeley: University of California Press, 1967), 230. Iriye adduces a report by Hayashi Gonsuke 林權助, *Manshū shisei kaikaku ni taisuru waretaido ni kansuru gushin no ken* 滿洲施政改革ニ對スル我態度ニ關スル具申ノ件 (Report about our stance on the reforms of governance in Manchuria), April 30, 1907, file no. 1-6-1-4_2_5_001, Diplomatic Archives of the Ministry of Foreign Affairs of Japan, Tokyo, 88. There are indications that Hayashi's dealings on the ground were not fully compatible with his reports to the *Gaimushō* in Tokyo. Cf. *Les Japonais en Chine*, N. S. Chine 183, Diplomatic Archives of the Ministry of Foreign Affairs of France, Paris, 75b–76a, and dispatch n° 148, *Politique du nouveau cabinet à l'égard de la Chine*, September 28, 1908, N. S. Chine 184, Diplomatic Archives of the Ministry of Foreign Affairs of France, Paris, 104a.

¹²¹³ Cf. *Rapports de la Chine avec le Japon*, April 16, 1907, N. S. Chine 183, Diplomatic Archives of the Ministry of Foreign Affairs of France, Paris, 14b.

¹²¹⁴ The Japanese defense was that the arms were being rightfully shipped with correct papers to an arms dealer in Macao, then under Portuguese administration. See the official narrative, which was circulated in an unidentified English-language newspaper and included in the files of the French foreign ministry. "The Tatsu Maru Affair: An Official Narrative," *ibid.*, 152.

Given the uncompromising policies of Japan, the Chinese public and officials became increasingly disillusioned.¹²¹⁵ Fear of Japanese meddling was strong within the Chinese political leadership, which tended to be less enthusiastic about Japan than the intellectuals. Many in the Chinese government and quite a few foreigners saw the hand of Japan behind many of the troubles in China and the Japanese government to be at least passively supporting anti-government forces or even trying to actively undermine the Imperial Chinese government.¹²¹⁶

However, as Valentine Chirol wrote, “one can hardly be surprised that Japanese influence should appear at times to pull in opposite directions.”¹²¹⁷ Positions within Japanese government and diplomacy were not completely uniform. Both Katsura Tarō, who was only temporarily out of office as prime minister, and Itō Hirobumi had reservations towards the new political line. Itō intervened several times with the Japanese government to correct some of its policies in Manchuria.¹²¹⁸ Katsura, Itō and Gotō Shimpei 後藤新平 (1857–1929), the director of the South Manchurian Railway, tried to influence China regarding the adoption of a constitution. To this effect, Itō even put in place a kind of transcontinental parallel diplomacy.

¹²¹⁵ Cf. the analysis in *North China Herald*, “Japan's Influence in China,” May 15, 1909, 357–358, tracing how too high hopes had converted into profound disillusion in the years 1905–1909.

¹²¹⁶ See dispatch no. 194, *Chine et Japon*, September 5, 1907, N. S. Chine 183, Diplomatic Archives of the Ministry of Foreign Affairs of France, Paris, 47a–47b; dispatch no. 84, *Situation du gouvernement chinois*, April 2, 1908, in: N. S. Chine 184, Diplomatic Archives of the Ministry of Foreign Affairs of France, Paris, 1; dispatch no. 169, *Situation générale*, July 9, 1908, in: *ibid.*, 63. On the Japanese concession in Tientsin being the “headquarters of the revolutionaries” see dispatch no. 172 of the French consulate in Tientsin, March 9, 1907, 513PO/A 326, Diplomatic Archives of the Ministry of Foreign Affairs of France, Nantes, carton 30. On minister Hayashi Gonsuke having very good relations with the revolutionaries and possibly playing a double game in China see *Les Japonais en Chine*, N. S. Chine 183, Diplomatic Archives of the Ministry of Foreign Affairs of France, Paris, 75b–76a. For him being considered outright hostile towards the Qing government see *Politique du nouveau cabinet à l'égard de la Chine*, N. S. Chine 184, Diplomatic Archives of the Ministry of Foreign Affairs of France, Paris, 104a. On Sun Yat-Sen and Japan in the years 1895 to 1907, see Giancarla Fioroni Sandri, “Sun Yat Sen e il Giappone,” *Cina*, no. 12 (1975).

¹²¹⁷ Chirol, “The Chinese Revolution,” 553.

¹²¹⁸ Consul-General Cockburn to Sir C. MacDonald, enclosure to file no. 2103, FO 371/472, National Archives, Kew, 64a.

Itō Hirobumi maintained a life-long interest in China. Having a strong Chinese education was not unusual for cultured Japanese of the time, but even for Japanese standards, Itō was unusually interested in and knowledgeable of the country. As Valentine Chirol wrote,

few Japanese were better acquainted with China ; few followed the course of events there with keener interest ; few had more intimate friends among the best Chinese ; few also had a greater admiration for all the solid qualities of the Chinese people.¹²¹⁹

In 1898, Itō had travelled to China for the first time, just when the 100 day reforms were being effected, and was enthusiastically welcomed as the paramount figure of the Japanese reforms.¹²²⁰ Already by that time, Itō showed a profound pessimism that reforms of administration and politics might be able in China.¹²²¹ He had been understood as having said that reform was not possible in China without a “revolution,” and later denied having said this.¹²²² When the first constitutional commission toured Japan in 1905/06, Itō Hirobumi lectured them on how Japan had become a constitutional state and what he thought were the cru-

¹²¹⁹ Chirol, “The Chinese Revolution,” 539.

¹²²⁰ On Itō’s *two months in Korea and China* in 1898, see Takii, *Itō Hirobumi*, 158–173. On their public reception see Zachmann, *China and Japan in the Late Meiji Period*, 110–117. See also the account of Hayashi Gonsuke, Hayashi Gonsuke 林權助, *Waga nanajūnen o kataru わが七十年を語る* (Talking about my 70 years) (Tokyo: Yumani shobō, 2002), 86. See also Morrison, *The Correspondence of G.E. Morrison*, vol. 1, 90–91.

¹²²¹ See Satow, *The Semi-official Letters of British Envoy Sir Ernest Satow from Japan and China*, 97 (Satow to Salisbury, February 24, 1898), likening China to an old man dying. See also *ibid.*, 151 (Satow to Salisbury, February 21, 1899).

¹²²² In 1898, Sir Ernest Satow had reported that Itō was of the opinion that reforms were not possible from above, without a revolution as the Meiji revolution of 1868, which he likened to the French revolution of 1789. Compared to, e.g., with the Sultan of Turkey, the emperor had comparatively little power and would not be able to hold the Chinese in case of an armed uprising. He also prophesied that such a revolution would necessarily lead to foreign intervention, but it would be beyond the power of European states like France or Germany states to quell a popular uprising. *Ibid.*, 122 (Satow to Salisbury, May 26, 1898, P.S.); see also 144 (Satow to Salisbury, December 29, 1898). However, in a further talk with Satow, Itō later denied having said that reform was impossible without a revolution. *Ibid.*, 151 (Satow to Salisbury, February 21, 1899).

cial elements of constitutionalism.¹²²³ However, unnoticed by secondary literature, Itō continued to pay utmost attention to the question of the Chinese constitution up to the very last days of his life.¹²²⁴

Previous research has downplayed Itō's post-1906 interest in China. Thus, Takii Kazuhiro, in one of the newest available studies of Itō, entitles a section "hands off political changes in China."¹²²⁵ Takii asks: "Did Itō have any plans to try to bring political stability to the East Asian region through guidance in constitutionalism, thus spreading the fruits of the Meiji constitutional system to China and Korea?" Based on Japanese documents, he answers that "Itō Hirobumi appeared determined to steer clear of involvement in any moves by China to embrace constitutional government,"¹²²⁶ implying that he was "not interested" in political reforms in China.¹²²⁷

But is it valid to simply equate "guidance in constitutionalism" with "spreading the fruits of the Meiji constitutional system to China and Korea?" Let us try to answer the question anew by looking at Japanese, European and Chinese sources.¹²²⁸

¹²²³ This episode is so well-known that it made it into the 2003 China Central Television series *Towards the Republic* (*Zouxiang gonghe* 走向共和), starring Hirata Yasuyuki 平田康之 as Itō Hirobumi. Luo Hao 羅浩 et al., *Zouxiang gonghe* 走向共和 (Towards the republic). Series, dir. Zhang Li 張黎 (Beijing: Zhongguo zhongyang dianshitai, 2003), episode no. 33.

¹²²⁴ On Itō and China, with a focus on the 1890s, see Hashikawa Bunzō 橋川文三, *Jungyaku no shisō: Datsua ron igo* 順逆の思想：脱亜論以後 (Ideas of right and wrong: After the ideology of "leaving Asia behind") (Tōkyō: Keisō shobō, 1973), chapter "Itō Hirobumi and China" (*Itō Hirobumi to Chūgoku* 伊藤博文と中国), 78–153. 152–153 describe a discussion between Itō and Gotō Shinpei on the question of pan-Asianism, but do not mention neither the planned visit to Peking nor the question of Chinese constitutionalism, so important to Itō in his last years. On Itō's life-long interest for China see also *La situation de la Chine, les rapports du Gouvernement Japonais avec le Gouvernement Chinois*, October 29, 1907, N. S. Chine 183, Diplomatic Archives of the Ministry of Foreign Affairs of France, Paris, 58. On Itō's views on the Chinese constitutional reform see further his exchange of correspondence with Itō Miyoji on the subject of China, *Itō Hirobumi kankei monjo kenkyūkai* 伊藤博文関係文書研究会, ed., *Itō Hirobumi kankei monjo* 伊藤博文関係文書 (Correspondence concerning Itō Hirobumi), 9 vols. (Tokyo: Hanawa shobō, Shōwa 49 [1974]).

¹²²⁵ Takii Kazuhiro, *Itō Hirobumi*, 178–180.

¹²²⁶ *Ibid.*, 179.

¹²²⁷ *Ibid.*, 180.

¹²²⁸ Itō Hirobumi's concern for the Chinese constitution and its far-reaching diplomatic implications have been first described by Moniz Bandeira, "Political Reforms in a Global Context," 161–173.

Although many in Japan tended towards views of “Asia to the Asians” in the style of an Asiatic “Monroe Doctrine,”¹²²⁹ Itō and Katsura were in constant contact with Western diplomats on the matter of China and sought to coordinate policies with them. In 1907, the French ambassador to Japan, Auguste Gérard (1852–1922), reported to Paris about the talks he had with Itō and Katsura about Chinese politics. Therein, he records both of them being concerned about the “hesitations and tergiversations” of the Chinese government as to reforms. They complained to Gérard that the Manchu party had not allowed, up to now, the adoption of a constitution or any other radical measure.¹²³⁰ Just as he had done in 1898, Itō again came to compare China to the Japan of the *bakumatsu* 幕末 period before the Meiji Restoration in 1868. Just as had happened in Japan, Itō analysed, a “revolution” would become necessary, be it with or without the consent of the government.¹²³¹ This Chinese revolution, he later told Valentine Chirol, had been overdue since about the same time: It had been the West’s great mistake helping China overthrow the Taiping in the 1860s, because the dynasty had reached its tether then and the West “arrested a normal and healthy process” of nature.¹²³²

In autumn 1907, right after Itō returned to Korea from a home leave, the *Seoul Press* published a series of articles on China confirming such thoughts.¹²³³ The *Seoul Press* was an English-language newspaper published by the residency-general of Japan to Korea serving as a mouthpiece to the outside world. It is not unlikely, thus, that the articles in the *Seoul Press*, at least to some extent, reflected the position of the resident-general, i.e., of Itō. In fact, the articles on China were

Moniz Bandeira’s account, however, does not yet take into account the full range of primary sources and secondary literature, and has to be modified and amended accordingly.

¹²²⁹ *Attitude de la Chine, – et préoccupation de l’opinion japonaise*, May 30, 1907, in: N. S. Chine 183, Diplomatic Archives of the Ministry of Foreign Affairs of France, Paris, 21a.

¹²³⁰ *La situation de la Chine*, in: *ibid.*, 57a.

¹²³¹ *Ibid.*, 56b–57a.

¹²³² Chirol, “The Chinese Revolution,” 539.

¹²³³ *Seoul Press*, “An Historical Parallel,” October 17, 1907; *Seoul Press*, “Politics at Peking,” September 27, 1907; *Seoul Press*, “The London and China Express’ Special Correspondent...,” October 19, 1907; *Seoul Press*, “The Prospect of Chinese Reform,” October 26, 1907

attributed to him at the time.¹²³⁴ At first, the *Seoul Press* likened the situation in China to the Japanese situation of the early Meiji years, with the aggravating circumstance of racial antipathy between Manchu and Han.¹²³⁵ But three weeks later, the newspaper commented that it would be more accurate to liken China to *Bakumatsu* Japan, and that the Qing Court's prospects were most probably not better than those of the Tokugawa clan, for the opposition of the nobility had proven fatal to all reform schemes.¹²³⁶ Although the *Seoul Press* showed confidence that Empress Dowager Cixi was doing her best, as a whole, it believed that the Chinese government was "talking reforms but actually doing very little to honestly carry them out."¹²³⁷

From these statements and from his conversations with French and British diplomats, it is clear that Itō's regard for the Chinese government and the Chinese central administration, apart from a few exceptions such as Empress Dowager Cixi, was rather low. Itō was deeply skeptical of their ability to implement constitutional and administrative reforms. If one can take the *Seoul Press* to indicate Itō's stance, he seemed convinced that Cixi wanted to realise reforms, but that her government was moving forward cluelessly, promoting the wrong reforms and being hampered by numerous obstacles that needed to be carefully removed first:

... there seemed to be now in Peking the same half-blind groping after what is proper and wise which was noticed in Tokyo thirty-five years ago.¹²³⁸

When he complained about hesitation and dishonesty on the part of the Chinese government, he did not share the impatience of many Chinese intellectuals and

¹²³⁴ La situation de la Chine, in: N. S. Chine 183, Diplomatic Archives of the Ministry of Foreign Affairs of France, Paris, 56b.

¹²³⁵ *Seoul Press*, "Politics at Peking."

¹²³⁶ *Seoul Press*, "An Historical Parallel."

¹²³⁷ *Seoul Press*, "The Prospect of Chinese Reform."

¹²³⁸ *Seoul Press*, "An Historical Parallel."

European observers. Much to the opposite. There was no alternative to the dynasty. As Itō explained to Valentine Chirol, “of destructive elements there may be enough and more than enough in China to produce a revolution, but of the constructive elements required to evolve a new and stable order of things out of the chaos which a revolution would produce, there are as yet but few indications.”¹²³⁹ Such constructive elements had first to be carefully created. Precisely because of the many obstacles such as the large conservative-minded sectors of administration and government, Itō was not hoping for China to hurry up with forcefully implementing constitutionalism. Such careless management of the already extremely perilous situation could serve as a catalyst of calamity. Thus, Itō even thought that some of the measures of constitutional preparation that the Chinese government came to implement in 1908 in 1909 were outright temerarious.

In this vein, Itō told ambassador Gérard that China was not yet prepared for the “ineluctable” revolution of its political system, and that it was not ready to unite for the organisation of a new regime.¹²⁴⁰ His advice for China was probably not much different to the advice that Herbert Spencer had had for Japan. His general stance, which he incessantly repeated in several variations, is perhaps best summed up in the words he diplomatically directed to a Torghut Prince, who visited him en route to study at a military school in Tokyo:

The establishment of constitutional politics, which his majesty the Qing Emperor has recently proclaimed in China and abroad, is most pertinent to the trend of the time. Although it cannot but be highly praised, according to the method of implementation to be adopted at its beginning, there will be a great many factors that might cause advantages or disadvantages. I hope that a sustainable result will be attained by adopting an attitude of thoroughness and prudence.

¹²³⁹ Chirol, “The Chinese Revolution,” 543–544.

¹²⁴⁰ La situation de la Chine, in: N. S. Chine 183, Diplomatic Archives of the Ministry of Foreign Affairs of France, Paris, 57a.

過般清國皇帝陛下が中外に公表せられたる立憲政の施設は最も時勢に適切なる者にして大に賞讃せざるべからずと雖其最初に採るべき施政法如何に依りては其利害の及ぼす處甚だ少からず充分慎重の態度を取り有終の効果を收めん事を望む¹²⁴¹

Itō was, thus, interested in introducing a constitutional system in China. But being a huge and heterogeneous country, he argued, China did not yet have the fundamentals for installing a constitutional government, even much less than Japan had had them in the *Bakumatsu* period. Albeit secluded, he considered, Japanese people themselves had been interested in learning from the West, while the Chinese had no interest in spite of having much more interactions. In contrast to Japan, he laid out, there was no national idea and no class that could lead: The bureaucracy was incompetent and corrupt; the merchants too specialized and not interested in politics; the masses thrifty and industrious, but always treated as “stupid people” and thus utmosty indifferent; the young students had good intentions, but had no touch whatsoever with their own people; and the army was inefficient. Furthermore, Itō remarked that imperialist action was much stronger in China than it had been in Japan.¹²⁴²

Hence, Itō advocated that the country slowly promote reforms that made such a constitutional government possible—and by slow he meant generations, not mere years.¹²⁴³ To Valentine Chirol, he pondered that even in Japan, 15 years of “dangerous travail and sometimes sanguinary strife” had been needed in the years from 1853 to 1868. In China, he implied, far less favourable conditions

¹²⁴¹ *Asahi shimbun* 朝日新聞, “Shinkoku rikken to Itō Kō” 清國立憲と伊藤公 (The adoption of a constitution in the Qing Empire and Prince Itō), October 4, 1906. The prince then went on to study at the military school *Shimbu Gakkō* 振武學校 in Tokyo. See Military report no. 31/06, April 23, 1906, R 18698, Political Archive of the Federal Foreign Office of Germany, Berlin (where the Prince’s name is somewhat mistakenly given as Toruhato, the Japanese transcription of Torghut).

¹²⁴² Chirol, “The Chinese Revolution,” 543–544. On the lack of nationalism see also 548.

¹²⁴³ “He [Itō – note of the author] would endeavour to point out that westernizing reform in China, when it came, must come slowly, and not, as it had done in Japan, in one generation.” Sir C. MacDonald to Sir Edward Grey, February 19, 1908 (no. 45, very confidential), file no. 9079, FO 371/472, National Archives, Kew, 98.

would make many more necessary.¹²⁴⁴ As he explained to Sir Claude MacDonald (1852–1915), the British ambassador to Tokyo, the reform attempts undertaken by the central government at that time were “dangerous and of a revolutionary nature,”¹²⁴⁵ implying that the Chinese government was actually leaping forward too quickly. The same argument was made by Katsura Tarō to Sir MacDonald in 1909: Constitutions and assemblies, Katsura maintained, were excellent things in their way, but that China still needed much time to assimilate and indeed understand these things.¹²⁴⁶

Itō continued to voice his concerns publicly as well as to European diplomats and Chinese dignitaries throughout the next two years, right up to his death. He even seemed to have become more pessimistic in the meanwhile. After his retirement from his post in Korea, on August 20, 1909, he gave a much-publicised speech on Chinese constitutionalism in the city of Fukushima 福島.¹²⁴⁷ In this lecture, he gave an overview of his position on the constitution-making process in China and stressed that the outcome of the constitutional reforms in China would have a deep impact on peace in East Asia.¹²⁴⁸

Itō stressed that the conditions of China (*Shina* 支那) made it difficult for the country to quickly become a constitutional monarchy, and he was deeply skeptical that the Qing Empire (*Shinkoku* 清國) would be able to repeat what Ja-

¹²⁴⁴ Chirol, “The Chinese Revolution,” 544.

¹²⁴⁵ Sir C. MacDonald to Sir Edward Grey (No 280, very confidential), December 22, 1907, file no. 2103, FO 371/472, National Archives, Kew, 63a.

¹²⁴⁶ Sir C. MacDonald to Sir Edward Grey, May 14, 1909, file no. 22129, FO 371/690, National Archives, Kew, 226.

¹²⁴⁷ Itō Hirobumi 伊藤博文, *Itō Hirobumi hiroku* 伊藤博文秘録 (Private writings of Itō Hirobumi), eds. Itō Hirokuni 伊藤博邦 and Hiratsuka Atsushi 平塚篤. 2 vols. (Tokyo: Hara shobō, 1982), vol. 2, 248–252, recorded under the title “Kaiko sanjūnen no ato, Meiji yonjūnen hachigatsu misoka Fukushima kangekai ni oite” 回顧三十年の跡、明治四十二年八月三十日福島歡迎會に於て (Looking back at the traces of 30 years, at the welcome party in Fukushima on August 30, 1909). The dating in the title is a mistake, as the speech was already noticed in international media before that date. The speech was recorded at the time in “Itō Kō no Shinkoku rikken ron (Hachigatsu hatsuka Fukushima-shi ni okeru kan’ei ni oite nashitaru enzetsu yōshi)” 伊藤公の清國立憲論（八月二十日福島市に於ける歡迎會に於て爲したる演説要旨） (Prince Itō’s assessment of the Qing adoption of a constitution [Essentials of a speech held at a welcome party in the city of Fukushima on August 20]), *Kokka gakkai zasshi* 國家學會雜誌 23, no. 9 (Meiji 42 [1909]).

¹²⁴⁸ *Ibid.*, 167 *infra*.

pan had done.¹²⁴⁹ For instance, there was the very mundane problem of transportation: How could China have a representative system and convene parliaments if the delegates could not yet swiftly travel from their home areas to the parliament?¹²⁵⁰ Furthermore, China had very deep-rooted customs that were even more difficult to change than Japan's, citing the tax system as an example.¹²⁵¹ The third problem was that in theory, constitutional government started from local self-government. Japan had done this, establishing local assemblies in the year Meiji 11 (1878). But Japan had learned "civilised politics" (*bunmei no seiji* 文明の政治) from Europe for several years, and the Japanese people had a "strong sense of service to the public order" (*hōkōshin no atsusa* 奉公心の厚さ). Thus, implying that the Chinese people were not yet equipped with the necessary knowledge and culture for constitutionalism.

Itō's Fukushima speech went around the world, at last arriving in China, where it was completely reinterpreted according to the local political agenda. The speech was reprinted in the Japanese *Kokka Gakkai Zasshi* 國家學會雜誌 and then widely reported about abroad, namely in *The Times* of London¹²⁵² and in the *Christian Science Monitor*.¹²⁵³ In China, it was noticed in the *Eastern Miscellany* through the *Times*.¹²⁵⁴ Now, the *Times* had stated all three of Itō's main arguments, as well as his complaint about the West's lacking interest in the question. However, the *Eastern Miscellany* just more or less translated the first sentence of the

¹²⁴⁹ Ibid., 167 infra–168 infra. Itō was very careful in the words he used to denominate the country he was talking about, depending on whether he meant the current polity (*Shinkoku* 清國) or the country of China in general (*Shina* 支那). On the various denominations for China in Japan, see Joshua A. Fogel, "New Thoughts on an Old Controversy: Shina as a Toponym for China," *Sino-Platonic Papers*, no. 229 (2012), 1–25.

¹²⁵⁰ "Itō Kō no Shinkoku rikken ron," 167 infra–168 supra. Cf., stressing the "slenderest means of communication" and the marked regional differences, Chirol, "The Chinese Revolution," 547.

¹²⁵¹ "Itō Kō no Shinkoku rikken ron," 168 supra–168 supra.

¹²⁵² *Times*, "Prince Ito on China," August 26, 1909; *Times*, "Prince Ito on Japan. The Question of a Constitution," August 26, 1909.

¹²⁵³ *Christian Science Monitor*, "Not Ready for Constitution: Prince Ito Doubtful Whether China Is Prepared to Adopt New Methods of Government," September 8, 1909.

¹²⁵⁴ Gan Yonglong 甘永龍, "Shijie dashi ji" 世界大事記 (Record of big events in the world), *Dongfang zazhi* 東方雜誌 6, no. 10 (1909), 124.

Time's report, i.e., that he "doubted whether China could successfully introduce a constitution, while failure would imperil peace in the Far East." But the exact reasons for his doubts remained unheard in the Chinese press. Not only this, the *Eastern Miscellany's* translation of the *Time's* article added one small interpretive word which was not present in the original. According to the notice, Itō said that the prospects of success were such that they "indeed made people doubt whether it was not so late that one could not solve it" (*shu ling ren yi chi mo jue* 殊令人疑遲莫決).

Given the journal's political inclinations and the discursive context of the time, the *Eastern Miscellany's* sentence implied that China should be pressing forward much more forcefully towards a constitution. The interpretation, thus, fitted the agenda of the Chinese constitutionalists, but was the opposite of Itō's original intention. However, while Itō would have disagreed with the political implications, he would have agreed with the sentence in so far as it feared that there was no solution, for Itō felt that the Qing were moribund and not able anymore to solve their existential problems. In the past, Itō had often spoken about a "revolution," but leaving it open whether such a revolution would happen with or without the consent of the Qing government. His various declarations of 1909, however, were rather pessimistic and specific in expecting a violent political turnover if the Qing government continued to pursue its policy of constitutional reform. In July 1909, for example, on the occasion of his taking over his seat as president of the Privy Council, the *Washington Post* reprinted declarations Itō gave to the *Associated Press* about China.¹²⁵⁵ He stressed that he was not worried about Korea, which he deemed to be on a good way, but much more about China,

¹²⁵⁵ *Washington Post*, "China's War Specter: Prince Ito Says Neighbor Realm Is a World Problem. — Unrest Throughout Empire—Japan's Policy, Statesman Declares, Is for Maintenance of Integrity of China. Half-Baked Constitution, He Says, Means Revolution, With Possibilities of Conflict Involving Nations," July 18, 1909. Cf. Frank G. Carpenter, "Prince Ito Talks of Yellow Peril and New Japan," *The Atlanta Constitution*, February 21, 1909; Frank G. Carpenter, "Yellow Peril is a Chimera, Says Prince Ito: Frank G. Carpenter Interviews the Grand Old Man of Japan in His Villa Near Tokio—A Remarkable Talk With One of the World's Greatest Statesmen," *Boston Daily Globe*, February 21, 1909. There, Itō did not mention the constitution.

which loomed large and was becoming “the problem of the day, not only for Japan, but for the whole civilized world.” About the constitution, he declared:

It is the demand for control by the younger and progressive element of China that forms the menace, not first of all to any other country, but to China itself. A constitution is demanded, and it is said a constitution is to be granted, but a constitution without a carefully prepared and organized administration must bring chaos which means revolution.

Perhaps the most astonishing declaration of Itō's is to be found in the records of his talk held with Sir Claude MacDonald on May 13, 1909.¹²⁵⁶ He saw a tremendous weakness of the central government in Peking due to the fact that it had given too much powers to the local assemblies, which would pull the Viceroys to their sides and against the central government.¹²⁵⁷ This time, Itō not only foresaw a violent surmise of the government, but was also eerily precise in foretelling when this would happen. 2 years and 9 months before the abdication of the Qing Emperor, he prophesied that

within three years there would be a revolution in China.¹²⁵⁸

Takii Kazuhiro, thus, is correct in as far as Itō was of the opinion that the Chinese government was pushing forward too hastily with local self-government, and argued for much slower constitutional reforms. Itō was not a “constitutional evangelist” in the same sense as he had been in Japan.¹²⁵⁹ In fact, he hoped that China pursue reforms, but was deeply skeptical about the constitutionalist process as it was being carried out there. China, he maintained, was much larger than both Japan and Korea and needed an approach of its own.

¹²⁵⁶ Tel. No. 121, May 13, 1909, file no. 22128 No. 22128, FO 371/690, National Archives, Kew, 213–214. The meeting was noticed to the press, however without details. *North China Herald*, “Prince Ito and the British Ambassador,” May 15, 1909, 361.

¹²⁵⁷ Tel. no. 121, file no. 22128, FO 371/690, National Archives, Kew, 216–217.

¹²⁵⁸ *Ibid.*, 217.

¹²⁵⁹ Takii, *Itō Hirobumi*, 75–100.

However, contrary to what Takii Kazuhiro affirms, Itō did not want to “stay clear of involvement” in any constitutional moves by China. As he told the *Associated Press*, he hoped that the wise men in China would also see their country’s miscarriage of constitutional reforms. Itō actively tried to influence them, and even quite obsessively planned to offer guidance to China on the matter of constitutionalism. In this sense, he tried to be a “constitutional evangelist” for China, too, albeit without much success. But how did Itō—together with Katsura Tarō and Gotō Shimpei—try to influence China?

Itō maintained personal connections to China throughout his life: After he had lectured the travelling commissioners in 1905, he received the young Tongghut Prince who was going to Japan on an audience, and he indirectly helped Dashou and later met Li Jiaju. But mainly, Itō wanted to repeat what he had done in 1898. He envisioned travelling to China and inviting—one could even say: imposing—himself to be the direct advisor to Cixi. Such an intention had been reported by the Chinese- and English-language press as early as the end of 1905. At the time, he was hindered by an attack carried out against his railway carriage in Korea, which left him injured in his forehead and cheek.¹²⁶⁰ Itō’s intention to travel to China seems to have become stronger after the Japanese government changed and the Chinese government officially declared “constitutional preparation.”

Hayashi Gonsuke, minister to Peking during the Saionji government, recalls in his memoirs that Itō Hirobumi, Katsura Tarō and Gotō Shimpei approached him with the plan to come to Peking, treating the matter as one of utmost secrecy.¹²⁶¹ At the time, Hayashi saw a “spirit of arrogance, inertia and obstruction” in a Peking where reaction was reigning, and analysed that Cixi was

¹²⁶⁰ *North China Herald*, “Latest Telegraphic Intelligence: ‘North China Daily News’ Service of Foreign and Local Telegrams,” December 8, 1905, 572, referring to the *Nanfangpao* 南方報. For the attack on Itō see *North China Herald*, “News from East Asia: Yokohama, 23rd November,” December 1, 1905, 469.

¹²⁶¹ Hayashi, *Waga nanajūnen o kataru*, 278–280.

losing power.¹²⁶² Thus, he was afraid that the mental attitude of the Chinese government was rather unsuitable to the plans of Gotō, Itō and Katsura, and wrote a sharp letter to foreign minister Hayashi Tadasu 林董 (1850–1913). In its arrogance, the diplomat pondered, the Chinese government would be hardly willing to accept advice from Japan. China was seeming to be opposing every Japanese manner to deal with things; and it would be a grave miscalculation to think that one could win Chinese favour with a single voyage. Rather, the Chinese government could violently react to their suggestions. Even if they officially declared the voyage as “touristic,” misunderstandings could arise. The foreign minister did not directly show the letter to Itō, but told him its contents.¹²⁶³

Itō was not much more successful in his efforts to garner international support for his enterprise. Under the framework of the Anglo-Japanese alliance,¹²⁶⁴ he talked about this trip to the British Consul-General to Seoul, Henry Cockburn (1859–1927).¹²⁶⁵ Arguing that his mission required some international consensus, he assured the British diplomat that he would do nothing without the concurrence and approval of the British Government.¹²⁶⁶ Later, Itō also talked about his plans to Sir Claude MacDonald, who reported the matter to London.¹²⁶⁷ There is, as yet, no evidence that Itō officially notified the Chinese side about his intentions to offer his advice to Cixi: The rumour of Itō’s coming spread to the

¹²⁶² Attitude de la Chine, in N. S. Chine 183, Diplomatic Archives of the Ministry of Foreign Affairs of France, Paris, 19b.

¹²⁶³ The letter is reproduced in Hayashi Gonsuke’s memoirs, Hayashi, *Waga nanajūnen o kataru*, 279–280.

¹²⁶⁴ The text of the alliance treaty valid at the time is to be found in MacMurray, *Treaties and Agreements with and concerning China*, vol. 1, 516–519. The 1905 treaty had replaced an earlier version of 1902 (324–326) and was itself replaced by a newer treaty in 1911 (900–901). The treaty insured “the independence and integrity” of the Chinese Empire (Preamble—[b]) and stipulated that if any of their rights or interests were in jeopardy, the two powers would communicate with one another and consider in common the measures to be taken (Art. I). However, while the 1902 treaty had expressly recognized a right to intervention in case of disturbances in China (Art. I), such a provision lacked in the 1905 treaty.

¹²⁶⁵ Cockburn’s note about his talk is to be found in Consul-General Cockburn to Sir C. MacDonald, enclosure to file no. 2103, FO 371/472, National Archives, Kew, 63–64.

¹²⁶⁶ *Ibid.*, 63.

¹²⁶⁷ *Ibid.*, 63–64.

very Chinese Foreign Ministry, whose officers thought it to be unfounded (“there was nothing at present to bring the Prince to Peking”) and asked the British legation for confirmation.¹²⁶⁸ It would, thus, seem, that his planned visit stayed a completely one-sided affair.

Both Cockburn and Sir MacDonald assumed that the Japanese government found itself in an *impasse* as to how to come to terms with China without using coercion, and counted on Itō’s influence in China.¹²⁶⁹ Sir MacDonald’s report does not mention Gotō Shimpei. Instead, it attributes the idea of the mission to Katsura Tarō, but is clear in describing that Itō would come alone to Peking. According to the report, Itō thought that a single interview with Cixi or formal talks would not suffice, and therefore planned to stay at least one or even two months in the Chinese capital.¹²⁷⁰ This time, he thought his chances of influencing here were higher than in 1898, because it had come to see the necessity of reform in China.¹²⁷¹

The proposal was widely discussed within the British government. The British held a rather high opinion of Itō Hirobumi and did not doubt Itō’s good intentions.¹²⁷² His proposal, however, was received rather coldly in the Foreign Office. The opinion was that Itō’s suggestion would be without effect: The Chinese government needed no advice on how to quell insurgents, and on the second point, the modernisation of China, the country was making some slow progress, but this progress was not influenced by the government: “... reforms at present are a matter of ebb and flow: those announced one day are cancelled the

¹²⁶⁸ Sir J. Jordan to Sir E. Grey (no 114, telegraphic), May 27, 1908, file no. 18234, *ibid.*, 112.

¹²⁶⁹ *Ibid.*, 63–64.

¹²⁷⁰ *Ibid.*, 64a. Itō had talked about “the Japanese government” to the Consul-General in Seoul Henry Cockburn (63b), but to Sir Claude MacDonald, he was more precise in stating that the suggestion had come from Katsura.

¹²⁷¹ *Ibid.*, 64.

¹²⁷² “Though men like Itō are no doubt entirely to be trusted”; “Prince Ito is perhaps the one Japanese it is more or less safe to trust. He is a statesman & broad minded.” Proposed visit of Prince Ito to China. Letter from Mr. Cockburn, repeating conversation with Prince Ito on the subject, received on January 20, 1908 (no. 280, very confidential), minutes to file no. 2103, *ibid.*, 60–62. See also Consul-General Cockburn to Sir C. MacDonald, Seoul, file no. 2103, *ibid.*, 63b.

next. China is advancing it is true, but this is not the result of action by the Gov^t.”¹²⁷³

Both sides agreed that the most imminent danger for China were troubles expected to happen when the Empress Dowager would die.¹²⁷⁴ Itō expressed the opinion that the Qing Dynasty must be upheld at all costs, not because it was a good one, but because there was no other.¹²⁷⁵ In the British Foreign Office, although there were some sympathies for upholding the dynasty, Foreign Secretary Edward Grey could not even agree “that we can co-operate in upholding the Manchu Dynasty,” for he was not sure about what “upholding” meant.¹²⁷⁶ Some of the comments in the discussion went even further, interpreting Grey to be against coöperation because “they [the Qing—*note of the author*] might be committed to repressing a reform movement in China”.¹²⁷⁷ In any case, one could not prepare for eventualities if one did not know yet what course they would take.¹²⁷⁸ Finally, the British used the same argument as Hayashi Gonsuke: The Court was not at that moment willing to accept advice from foreign powers, and, in view of the mounting bilateral tensions, least so from Japan.¹²⁷⁹

The British Foreign Office, rather, preferred for a policy of non-interference,¹²⁸⁰ while at the same time quietly backing the reformer Yuan Shi-kai.¹²⁸¹ As it deemed Itō’s proposal to be much too vague,¹²⁸² it asked Itō to ex-

¹²⁷³ Proposed visit of Prince Ito to China, minutes to file no. 2103, *ibid.*, 60–62.

¹²⁷⁴ *Ibid.*, 61b.

¹²⁷⁵ Sir C. MacDonald to Sir Edward Grey, February 1, 1908, file no. 3590, *ibid.*, 80.

¹²⁷⁶ Prince Ito’s visit. Conversation with Prince Ito, February 1, 1908, minutes to file no. 3590, *ibid.*, 79.

¹²⁷⁷ Prince Ito’s proposed visit to Peking to be postponed sine die in view of present feeling in China, March 27, 1908, minutes to file no. 9709, *ibid.*, 103.

¹²⁷⁸ Sino-Japanese relations: proposed visit of Prince Ito to Peking: submits observations on, March 7, 1908, minutes to file 7873, *ibid.*, 85a.

¹²⁷⁹ Sir J. Jordan to Sir Edward Grey (no. 29, very confidential), January 21, 1908, file no. 7873, *ibid.*, 86b.

¹²⁸⁰ See Foreign Secretary Grey’s handwritten minute in Sino-Japanese relations, March 7, 1908, minutes to file no. 7873, *ibid.*, 85b.

¹²⁸¹ Sir J. Jordan to Sir Edward Grey (no. 29, very confidential), January 21, 1908, file no. 7873, *ibid.*, 86b.

¹²⁸² Proposed visit of Prince Ito to China, minutes to file no. 2103, *ibid.*, 61a.

plain what exactly he wanted to suggest to Cixi. Itō promised to come back with more detailed explanations.¹²⁸³ However, the *Tatsu Maru* incident came in between. With the Sino-Japanese relations now publicly and severely strained, the trip was postponed *sine die*.¹²⁸⁴

But Itō did not give up his intentions of influencing the Chinese government. The conditions on the Japanese side became better in July 1908, when Katsura Tarō returned to his post of prime minister. Having been rebuked by the British, Itō, in late July or early August 1908, contacted the French ambassador Auguste Gérard on the question of what to do in case of the death of the Empress Dowager.¹²⁸⁵ But again to no avail: The eventuality being discussed happened just three months later: On November 14 and 15, 1908, the Chinese Guangxu Emperor and Emperor Dowager Cixi died.

Still, Itō did not cease his efforts. In April or May 1909, a number of Chinese- and English-language media reported that Itō directly wrote a letter to the Chinese foreign ministry offering advice on the constitutional reforms. Therein, he encouraged China to not directly take Japan as a model, but rather follow the German or Austria constitutional systems.¹²⁸⁶ There is, as yet, no other confirmation that Itō really wrote the letter, and its original has not been found yet. Given his unsuccessful attempts at travelling to China, it is not implausible that he tried to exert his influence in another way. However, lacking the original letter, it can only be speculated why in 1909 he reportedly advocated to directly follow the German and not the Japanese model. In 1905, Zaize had still understood him as proposing Japanese constitutionalism to China. Most likely, this can be explained

¹²⁸³ Sir C. MacDonald to Sir Edward Grey, February 19, 1908, *ibid.*, 98.

¹²⁸⁴ Sir C. MacDonald to Sir Edward Grey (no. 27, telegraphic), March 27, 1908, file no. 10527, *ibid.*, 104.

¹²⁸⁵ "Eventualities" in China—Question of attitude of U.K. in case of, August 6 1908, minutes to file no. 27339, *ibid.*, 115–119.

¹²⁸⁶ *Zhongwai ribao* 中外日報, May 5, 1909 and *Xiamen ribao* 廈門日報, May 15, 1909, both contained in translation in Peking II 595, Political Archive of the Federal Foreign Office of Germany, Berlin, 220–221. This was also reported in *North China Herald*, "Chinese News (Translated from the Chinese Press)," May 8, 1909, 345.

by Itō's gradualist approach: As he repeatedly declared, he felt that copying the speed with which Japan had adopted a constitution would be catastrophic for China.

As his efforts to go to China were constantly frustrated, and there is no record of the Chinese side receiving the letter, Itō continued to express his opinion in Tokyo. On July 31, Itō held an "important conference" at his home with Prime Minister Katsura Tarō, Foreign Minister Komura Jutarō 小村壽太郎 (1855–1911), and Minister of War Terauchi Masatake 寺内正毅 (1852–1919), which foreshadowed "important developments in the Chinese situation."¹²⁸⁷ On August 28, Itō gave a farewell dinner for the constitutional commissioner Li Jiaju.¹²⁸⁸ The dinner was attended by the same high-ranking members of the cabinet who had attended the conference of July 31, as well as the constitutional specialists Itō Miyoji, Ariga Nagao, Hozumi Yatsuka, and others.¹²⁸⁹ At the end of the party, Itō delivered a long speech¹²⁹⁰ wherein he told Li his hopes for how China should proceed with enacting the constitution. Again, he stressed that constitutionalism, once enacted, could not be revoked, and therefore should be prepared with special care.

At that time, Itō was still dreaming to go to Peking and help the country craft a constitutional government. He was now scheduling his trip for 1910, as he confided to Itō Miyoji.¹²⁹¹ But Itō was not able to further push China in the direction he hoped. Just a few days after, in October 1909, Itō traveled to Manchuria to

¹²⁸⁷ *New York Times*, "Consult on China Plans: Prince Ito and Japanese Leaders Hold Important Conference," August 1, 1909.

¹²⁸⁸ *Asahi shimbun* 朝日新聞, "Kensei taishin sōbetsukai: Ōmori onshikan nite kenpō no chūkoku" 憲政大臣送別會：大森恩賜館にて憲法の注告 (Farewell party for the constitutional commissioner: Advice at the Imperial hall in Ōmori), August 29, 1909. See also *Shenbao* 申報, "Zhuandian" 專電 (Forwarded telegrams), August 31, 1909.

¹²⁸⁹ According to the *Asahi shimbun*, Navy Minister Saitō Makoto 齋藤實 (1858–1936) had also been invited, but had not come to the party. *Asahi shimbun* 朝日新聞, "Kensei taishin sōbetsukai."

¹²⁹⁰ The *Asahi shimbun*, *ibid.*, records a length of "several tens of minutes" (*shū juppon no nagasa* 數十分の長さ).

¹²⁹¹ Itō Miyoji 伊東巳代治, "Shinkoku kenpō to wagakuni" 清國憲法と我國 (The constitution of the Qing Empire and our country), *Kokumin shimbun* 國民新聞, October 5, 1910

meet the Russian Minister of Finance, Vladimir Kokovtsov (1853–1943), and was slain in Harbin by the Korean An Chunggün 安重根 (1879–1910).¹²⁹²

e) Chapter Conclusion

After the declaration of intent of September 1, 1906, the Qing government began formulating the first measures of “constitutional preparation.” Agreeing on their necessity had been easy, but devising concrete policies was not, as every change affected many powerful interests. Thus, the following two years were characterised by political maneuvering, of which the most important results in terms of constitution making were the Constitutional Office and the Political Consultative Council.

Yet, the years of 1906–1908 were also characterised by intensified national and international debates on the adoption of a constitution for China. In order to gain more knowledge about foreign constitutional systems, the Qing government set up three commissions to Japan, Prussia and England, with the aim of conducting more detailed studies of the respective constitutional systems. These missions were not isolated, passive recipients of the constitutional laws of their host countries. Rather, they were integrated in pre-existing scholarly and political networks, and next to interacting with the local Chinese communities, the commissioners were also engaged in explaining the new constitutional China to the broader public, at home and abroad.

The three commissioners also provide good examples for some important aspects of what this new constitutional China was about. Yu Shimei, the commissioner sent to Germany, became the centre of a controversy because he argued that a constitution had to be looked for within China and not abroad. His stance towards constitutionalism, while conservative, was rather complex, and evidenc-

¹²⁹² On the murder of Itō and the political circumstances on Itō’s trip to Manchuria see John Gilbert Reid, *The Manchu Abdication and the Powers, 1908-1912: An Episode in Pre-War Diplomacy, a Study of the Role of Foreign Diplomacy During the Reign of Hsüan-T’ung* (Westport [Connecticut]: Hyperion Press, 1973), 56–76.

es the difficulties of conciliating China's own political tradition with the new concept of constitution. Both proponents of a constitution and conservative circles claimed that "China was the motherland of constitutionalism" or "generated it."

The mission to Japan, headed first by Dashou and then, after his sudden and unexpected removal, by Li Jiaju, produced the most tangible results for further Chinese constitution-making. Apart from this, Dashou's report to the Throne also provides the most striking description of one of the important external functions of constitutionalism. Internally, the constitution should give new legitimation to the government, and externally, it should improve China's international standing.

For Chinese intellectuals, this facilitation could work in two ways: For one, it could work directly: As Zaize and others argued, a constitution was needed because it was a *condicio sine qua non* to take part as a peer in international politics. But this was the rarer mode of argumentation. Even more frequent was the argument of power politics: A constitution, being the central element of nation-states, would strengthen a state and increase its hard power, thus enhancing its international competitiveness.

Expanding on Tang Qihua's general findings about the Second Peace Conference, this chapter found that China's delegates at the Hague seemed to have had both aspects in mind when they urged their government to step up the efforts of introducing a constitution before the convening of the next Peace Conference. A China reformed in this way, wrote Lu Zhengxiang, would be able to "shut up" the powers. Dashou's candid report went even further: China should not only defend itself against the powers, but, through constitutionalism, become just as imperialist as them. Both Lu's and Dashou's reports are some of the clearest confirmations of Kawashima Shin's hypothesis that Chinese intellectuals and officials were beginning to cast an eye on becoming a world power, following the models they had before them.

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This chapter has also shown a number of limitations of the global movement into which China's adoption of a constitution was embedded. Lu's call for a constitution itself stemmed largely from his own imagination that the instrument would be a political panacea for China and barely from its relevance at the Hague Conference. Most importantly, in actual diplomacy and international politics, the response to China's constitutional reforms was not as enthusiastic as some Chinese constitutionalists like Lu had imagined. Although the adoption of a constitutional system as such was seen as a desirable long-term goal, and although Chinese subjects explained Chinese positions to the outside, there was much skepticism as to the Chinese government's capability and many criticisms on its management of the question. The various powers, thus, were reserved towards the constitutional reforms, and refrained from pressuring the Chinese government. Some of the most influential political figures of Japan, most prominently Itō Hirobumi, tried to influence China in a different way. Itō unsuccessfully wanted to guide China towards a slow adoption of a constitutional system, which should be much slower than Japan's own implementation.

As both the Japanese minister to China, Hayashi Gonsuke, and the diplomats at the British Foreign Office observed, Itō's plan to act as constitutional advisor in Peking would most probably have backfired, given the reservations in Peking against Japanese meddling. But the events in China confirmed much of what he feared: Against the background of mounting internal pressure, the Chinese government intensified its "groping for what is proper and wise." In 1908, it promulgated its first constitutional documents—the *Outline of a Constitution* and its accompanying laws—, and in 1909, the first provincial elections took place.

CHAPTER FIVE.

“Débris of Paper Constitutions”: The Elaboration of a Constitution for the Qing Empire

i-nu-ma Marduk a-na šu-te-šu-ur ni-ši

kalama u-si-im šu-ḥu-zi-im

u-wa-e-ra-an-ni

ki-it-tam u mi-ša-ra-am

i-na pî ma-tim aš-ku-un

ši-ir ni-ši u-ṭi-ib

Codex Hammurabi (18th century BC)¹²⁹³

1. Prelude: “The Magic Virtue of Words” and “Rococo Constitution-Tinkering”

In May 1913, the British diplomat Evelyn Baring, Earl of Cromer (1841–1917), published an article in the magazine *The Nineteenth Century and After* on “Some Problems of Government in Europe and Asia.” Therein, Cromer spoke with contempt about the many constitutions that were being enacted across Eurasia. Citing examples from, among others, Garibaldi’s (1807–1882) Italy, the Ottoman Empire, and China, he mocked the enthusiasm with which constitutions were generally, in East and West, received as the harbingers of a better future. For him, the problems were cultural rather than political and could not be solved by the “constitutional formulae” demanded by reformers and revolutionists alike in the “Eastern World”:

¹²⁹³ “When Marduk to reign over the people, / to announce the Law to the land, / has sent me, / Law and Justice I have/ put into the mouth of the land, / created the well-being of the inhabitants.” Translation according to Hammurabi, *Gesetze: Eine vergleichende Lektüre*, ed. Hugo Winckler (Leipzig: Leipziger Literaturverlag, 2014), 26-27.

T'ang—a leading Chinese republican—Mr. Bland says (p. 222), 'like all educated Chinese, believes in the magic virtue of words and forms of government in making a nation wise and strong by Acts of Parliament.' And what poor, self-deluded T'ang is saying and thinking in Canton is said and thought daily by countless Ahmeds, Ibrahims, and Rizas in the bazaars of Constantinople, Cairo and Teheran.¹²⁹⁴

The result of this, Cromer commented, was that:

The Eastern World is at present strewn with the *débris* of paper constitutions, which are, or are probably about to become, derelict. ... But in Turkey, in Persia, and in China, the epidemic, which is of an exotic character, appears to be following its normal course. ... These ebullitions provoke laughter.¹²⁹⁵

Cromer wrote these lines in 1913, after the Qing Empire had been overturned by the Republic of China. However, the “epidemic” he was referring to had already begun to sweep across Eurasia and Africa in 1905, as described in the previous chapters. More precisely, the wave did have two crests: in 1905/06, Russia and Persia had adopted constitutions, and China had announced her intention to “prepare for constitutionalism.” The second crest came two years later, in 1908, a year which not only the Chinese saw as “decidedly ... a year of constitutions.”¹²⁹⁶ In that year, while the constitutional struggles were going on in Russia and in Persia, a number of other states caught a “constitutional fever,”¹²⁹⁷ and several Eurasian and African

¹²⁹⁴ Earl of Cromer, “Some Problems of Government in Europe and Asia (III.): China,” *Nineteenth Century and After*, no. 435 (1913), 1162. Cromer cites Bland, *Recent Events and Present Policies in China*, 222.

¹²⁹⁵ Cromer, “Some Problems of Government in Europe and Asia,” 1161.

¹²⁹⁶ *North China Daily News*, “Foreign Affairs in 1908: Shanghai, Jan. 3, 1909,” under the subtitle “the constitutional tendency.” The article is appended to Shinkoku daikan aida ni okeru shinroshugi ni kansuru jōhō ikken 清國大官間ニ於ケル親露主義ニ関スル情報一件 (File containing intelligence on russophily among high officials in the Qing Empire), file no. B03030412100, Diplomatic Archives of the Ministry of Foreign Affairs of Japan, Tokyo.

¹²⁹⁷ *Kokumin shimbun*, “Ejiputo no kenpōnetsu,” about Egypt.

polities introduced constitutions or considered to do so. Just as had been the case before, all these international developments were noticed in China and helped shape Chinese debates on constitutions.

What still needs to be done in this last chapter is analysing the Chinese results of this “rococo constitution-tinkering,” as Cromer calls it,¹²⁹⁸ in the context of the global “constitutional fever.” How did the Chinese try to create constitutional documents of “magic virtue”? What information about other constitutional documents did the Chinese have when crafting one of their own? It shall be shown here that they had ample information about global constitutionalism available to them, and that the extant constitutional drafts were much more than a mere copy of the Japanese model. In practical terms, much of the norm-crafting was a close coöperation and dialogue between China and Japan, but at the same time, the concerned actors were aware of the global wave of constitutionalisation of which they were part. Even what seems like a mere copy was more than a copy, as the norms circulated globally and were explicitly or implicitly adapted locally.

This last chapter shall cast a particularly close look at Kitaoni Saburō’s constitutional draft, which best exemplifies the regional coöperation and global context. Kitaoni has been hitherto shrouded in thick clouds of mystery. This study adduces copious Japanese material unknown to scholarship, which does help in answering some, albeit not all, of the open questions. Kitaoni needs much more attention than he has received, as he was the man who composed the first-ever constitutional draft for the Chinese Empire: the first version of his full draft was finished in February 1908, marking the beginning of the “year of constitutions.”

¹²⁹⁸ Cromer, “Some Problems of Government in Europe and Asia,” 1163

2. China's First Official Constitutional Document

a) The Concomitant Adoption of constitutions in the Ottoman and Qing Empires

But before talking about specific drafts for a full constitution, let us clarify the official dimensions and the global context of that “constitutional year.” How did China's first official constitutional document of 1908 come into being, and how was it related to the global wave of constitutionalism? Did the Ottoman constitution also influence China just as the new Russian and Persian constitutions?

To be precise, the Qing Empire did not introduce a full constitutional document in the “year of constitutions” of 1908, nor did it actually ever pass a full constitutional charter. But given the mounting pressures, the Qing government decided to present first results. On July 8, 1908, an Imperial edict acceded to a memorial by the *Zizhengyuan* containing proposals for parts of its organic law,¹²⁹⁹ and on July 22, 1908, the court accepted the organic law for the provincial assemblies (*ziyiju* 諮議局).¹³⁰⁰ On the same day, it also pressed forward with preparing a constitutional charter. The court ordered the Constitutional Office and the *Zizhengyuan* to “quickly” (*xun* 迅) draft an “outline of a monarchical constitution” (*junzhu xianfa dagang* 君主憲法大綱) based on the “best regulations found in different countries” (*liebang zhi lianggui* 列邦之良規). The two institutions should also draft an electoral law, a law for a parliament and a list of things to be provided for in the years before its convention.¹³⁰¹

¹²⁹⁹ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, vol. 2, 627–629. For an English translation of the edict and the covering memorandum see United States Department of State, ed., *Papers Relating to the Foreign Relations of the United States with the Annual Message of the President Transmitted to Congress December 6, 1910* (Washington: Government Printing Office, 1915), 331–336.

¹³⁰⁰ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, vol. 2, 670–683. For an English translation of the edict and the covering memorandum see United States Department of State, *Papers Relating to the Foreign Relations of the United States 1908*, 182–188.

¹³⁰¹ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, vol. 2, 684.

Two days after that edict, on July 24, it was the Ottoman Empire's turn: Sultan Abdülhamid was forced to reinstate the 1876 constitution.¹³⁰² The prospects of having a constitution caused similar euphoria as the declaration of September 1, 1906 had caused in China. In Constantinople, for example, there were "thousands of cafés, restaurants, drug-stores and even hairdressers' establishments which have embodied in their title some reference to the Constitution."¹³⁰³ Accordingly, on the global level, too, the rapidity of Turkey's transformation could, as the *North China Herald* remarked little later, "hardly fail to give fresh stimulus to the cause of constitutional government that" was "finding so many new adherents in different parts of the world."¹³⁰⁴

As expected, a significant portion of Chinese public opinion interpreted the news from the Ottoman Empire as it being the catalyst of national recovery. Despite the officially acknowledged need for a long period of "constitutional preparation" in China, many interpreted the constitutional upheaval of another large Empire as an argument to adopt a constitution of China's own. The *Shenbao*, for example, used the argument of a constitution leading to international recognition, and as a prerequisite for imperial ambitions. The paper was afraid that Turkey, now being a constitutional polity, would be treated as an equal by the other powers.¹³⁰⁵ Before that, the powers had derided both China and Turkey for being "sick men" of the world, but Turkey had now unexpectedly catapulted itself onto the "constitutional stage." Although Turkey was not China's enemy, it was now its turn to deride China.

¹³⁰² For a contemporary account of constitutional problems in the Ottoman Empire from a Japanese point of view see Inada Shūnosuke 稻田周之助, "Toruko no rikken seiji" 土耳其ノ立憲政治 (Turkey's constitutional politics), *Hōgaku shinpō* 法學新報 18, no. 11 (Meiji 41 [1908]).

¹³⁰³ *North China Herald*, "Duelling in Turkey," May 8, 1909, 386.

¹³⁰⁴ *North China Herald*, "Constitutional Government," August 8, 1908, 333.

¹³⁰⁵ *Shenbao* 申報, "Lun Tu'erqi lixian yu Zhongguo zhi guanxi" 論土耳其立憲與中國之關係 (On the relationship between Turkey's adoption of a constitution and China), August 2, 1908.

Consequently, the *Shenbao* feared that Turkey, being an Empire, could freely sign international treaties, and as a constitutional country was now in a position to force treaties upon China. Just as France had made herself protector of the missionaries in China, Turkey could make use of ethnic and religious affinities to the Uyghurs to intervene in regions like Sinkiang and others. If Turkey made use of international law in this way, China would not be able to withstand. Of the three non-constitutional states of the world on the turn of the 20th century (Russia, Turkey, China), only China was left. Finally, the *Shenbao* adverted even if Turkey was smaller than Russia, she was larger than Japan, and would not stay weak. China should adopt a policy to cope with this.

The Chinese government stayed on the ball. The two organs indeed produced the demanded documents very quickly within little over a month, on August 27, 1908, and Cixi promulgated them on the same day.¹³⁰⁶ The first of the documents was the *Outline of a Constitution by Imperial Ordinance* (*Qinding xianfa dagang* 欽定憲法大綱), China's first official constitutional document.¹³⁰⁷ It should, however, be read in connection with the accompanying outlines of a the parliamentary law (*yi yuanfa yaoling* 議院法要領) and of an electoral law (*xuanju fa yaoling* 選舉法要領).¹³⁰⁸

¹³⁰⁶ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, vol. 1, 54–67; 67–68. Also contained in Beitusheng yingyinshi 北圖社影印室, ed., *Qingmo Minchu xianzheng shiliao jikan* 清末民初憲政史料輯刊 (Compilation of historical material on constitutional government in the late Qing and early Republic), 11 vols. (Beijing: Beijing Tushuguan chubanshe, 2006), vol. 2, 313–354; vol. 3, 177–218. Miao, *Zhongguo zhixianshi ziliao huibian*, 2–13. For an English translation of the documents and of the covering memorial see United States Department of State, *Papers Relating to the Foreign Relations of the United States 1908*, 191–199.

¹³⁰⁷ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, vol. 1, 57–59. See also Miao, *Zhongguo zhixianshi ziliao huibian*, 2–5. For an English translation see United States Department of State, *Papers Relating to the Foreign Relations of the United States 1908*, 194–195. For a German translation see Hai-Hào Chiang, *Die Wandlungen im chinesischen Verfassungsrecht seit dem Zusammenbruch der Mandschu-Dynastie: Unter besonderer Berücksichtigung der rechtlichen Stellung des Staatshauptes* (Berlin: Carl Heymanns Verlag, 1937), 179–180. The name *Outline of a Constitution by Imperial Ordinance* was later adopted by the very Chinese government, see Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, vol. 1, 579.

¹³⁰⁸ *Ibid.*, 59–60 (parliamentary law) and 60–61 (electoral law).

The fourth document approved on that day, the nine-year plan, contained 92 articles in chronological order which delineated a detailed roadmap towards the promulgation of a constitution.¹³⁰⁹ Among others, the government committed itself to establish deliberative assemblies at the different levels of administration, as well as to create a separate court system on all levels. At the communal level, rules for self-government should be published in the very year of 1908; they should be carried out after four years of preparation in 1913. At the regional level, the process should take place one year later, respectively. At the provincial level, where there already were such rules, the members of the assemblies should be elected in 1909. At the national level, the rules for the *Zizhengyuan* should be published in 1909. The organ should be elected in the same year, with the first session to take place in 1910.

The constitution would operate on the basis of a “rule by laws” (*fazhi* 法治).¹³¹⁰ The Qing government’s constitutional outline did not foresee the parliament to create new laws from scratch; rather, it should only assist in legislation and deliberate on the adaptation of existing laws. As the constitution was considered the capstone—and not the foundation—of the project of national reconstruction, all kinds of laws had to be passed before a parliament could work on their basis.¹³¹¹ Hence, the nine-year plan contained a lot of items providing for the compilation of various laws, including a new criminal law, tax law and budgetary law. Furthermore, just as Zaize had stressed that laws had to be deliberated by educated people, the plan also contained several educational goals, such as ordering that textbooks be printed and schools created. The literacy rate should rise to 1% by 40 (1914) to 2% by Guangxu 41 (1915) to 5% by Guangxu 42 (1916).

The crucial year for the plan would be the 42th year of Guangxu (1916), when the definitive constitution was scheduled to be promulgated. Together with

¹³⁰⁹ Ibid., 66–67.

¹³¹⁰ See the covering memorial to the organic laws of the *Xianzheng Bianchaguan*, Beitushe yingyinshi, *Qingmo Minchu xianzheng shiliao jikan*, vol. 2, 355.

¹³¹¹ Cf. Meienberger, *The Emergence of Constitutional Government in China*, 80.

the constitution, the plan also foresaw the promulgation of definitive parliamentary and electoral laws, the adoption of an Imperial household (*huangshi dadian* 皇室大典), elections for both chambers of parliament, and the establishment of a privy council (*bideyuan* 弼德院). However, the plan did not mention any cabinet.

As art. 6 of the outline of a parliamentary law indicated, the parliament would be composed of two chambers. It would be tasked with helping in legislation and advising the emperor, and it would be heard in budgetary questions. Moreover, the president of parliament would be able to direct memorials about all resolutions to the Court. All of these attributions had strict limitations: The parliament could not enact laws, neither could it cut the budget at will, and while it could impeach officials, it could not dismiss them. It did not have any power in military and foreign matters either.

b) On the “Japaneseness” and the “Chineseness” of the Qing *Outline of a Constitution*

Judging from the suspiciously short period of time and technical sloppiness of their elaboration, the documents issued on August 27 were mainly meant to show some tangible results in face of the various pressures, and to set the direction of the further constitution-making process. The *Outline of a Constitution* and the outlines of the two accompanying laws were mere incomplete skeletons for the constitution to come, but not meant to have immediate practical effects. As the covering memorial explained, the “current system” (*xianxing zhidu* 現行制度) should remain in effect until the proclamation of a constitution.¹³¹²

That being said, it is worthwhile looking briefly into the contents of the *Outline*, as they were still the first public expressions of Chinese constitution-drafting, and as they strongly influenced further debates in China. Even if they seemed to lack creativity, they exemplify how norms changed in meaning according to

¹³¹² Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, vol. 1, 67.

local circumstances. As could be expected, the *Outline of a Constitution* was mostly concerned with the position of the emperor. Of its 23 rather brief articles, the first part of 14 articles dealt with the prerogatives of the Emperor (*junshang daquan* 君上大全). The second, comprising 9 articles and called an “annex” to be specified during the drafting of the final constitution, dealt with the “rights and duties of the subjects” (*fu chenmin quanli yiwu, qi ximu dang yu xianfa qicao shi chouding* 附臣民權利義務，其細目當於憲法起草時酌定).

The Emperor was head of the legislative, executive and judiciary powers. He could appoint the parliament, declare war and make peace, and in times of war issue edicts substituting laws. Yet, the Emperor’s powers were not unlimited, if only by the mere fact that they were enumerated in the constitution. He would not stand above the law anymore, and although it was him who would proclaim laws, he could only proclaim them in cooperation with the parliament. Alone, he could only issue orders (*mingling* 命令) and decrees (*zhaoling* 詔令), but not laws. He also was not entitled to abolish parliament, but just to dissolve it, and he could only limit the rights of the people temporarily, but not abolish them altogether. Hence, he was not able to constantly govern autocratically without becoming unconstitutional.¹³¹³

On the rights side, the emperor granted the right to become civil or military public servant and a member of a parliamentary assembly. Within limits, the *Outline* also granted liberty of speech, of the press and of assembly. Arrests could not be made against the law, and the charter introduced the right to appeal to a court of law. The text also contained the promise not to infringe on the property and domicile of the subjects. The duties of the subjects including the payment of taxes, military duties and respect for the laws. The *Outline* did not, however, mention several fundamental rights common elsewhere, including in Japan (free movement, secrecy of correspondence, freedom of religion, &c.).

¹³¹³ Meienberger, *The Emergence of Constitutional Government in China*, 86.

Having been composed in a hurry, rather than being based on the regulations in “various countries,” on the surface the *Outline* looked, to a large extent, like a translation of the first two chapters of the Japanese constitution of 1889: chapter I, “the Tenno” 天皇 (Articles 1-17) and chapter II, the “rights and duties of the subjects” (*shinmin kenri gimu* 臣民權利義務, articles 18-32). This view, however, is only superficial. Even from a textual comparison, Cui Xuesen has shown that the Chinese *Outline* was more than just a copy of the Japanese model and did indeed have its own “Chinese characteristics.”¹³¹⁴

However, mere textual comparisons do not do justice to the differences in the actual meaning and context of the constitutional provisions.¹³¹⁵ Constitutional charters were shaped in a global circulation of meaning, which adapted the provisions to the local circumstances. Take, for example, the two first and probably most emblematic provisions of the *Outline*. These were likely also the most controversial articles in a hastily devised document that did little to advance its goal of placating the growing internal pressures for a constitution. To the contrary, the *Outline* gave opponents of the government more ground for attack, and constitutionalist reformers criticised it for being a constitution that protected autocracy (*yonghu zhuanzhi zhi lixian* 擁護專制之立憲).¹³¹⁶

Article 1 and 2 of the *Outline* literally took over the two provisions that defined the “Japaneseness” of the Meiji constitution. Art. 1, translated from the Japanese Art. 1, declared that the Qing Empire was to be governed in one dynastic line for ages eternal (*wanshi yixi, yongyong zundai* 萬世一系，永永尊戴). Moreover, art. 2 declared the emperor to be “sacred and inviolable” (*junshang shensheng zunyan, bu ke qinfan* 君上神聖尊嚴，不可侵犯), translated directly from the Japanese art. 3 (*Tennō wa shinsei ni shite okasubekarazu* 天皇ハ神聖ニシテ侵スヘカラス).

¹³¹⁴ Cui, “Qingting zhixian yu Mingzhi Riben,” 109–115, with further references. Cf., among others, Bian, *Jindai Zhongguo xianfa wenben de lishi jiedu*, 42–48 and 62–63, arguing that the *Outline* was a mere copy without a spirit of its own.

¹³¹⁵ Sōda, *Kindai Chūgoku to Nihon*, 39.

¹³¹⁶ *Shibao* 時報 of September 3, 1908, cit. in Bian, *Jindai Zhongguo xianfa wenben de lishi jiedu*, 45.

In the latter provision, both terms had been in use in other constitutions, mostly in tandem. “Inviolable” was a common term designing the principle of sovereign immunity (“rex non potest peccare”/“the king can do no wrong”). It was a fundamental element of the principle of the separation of powers: The legislative power had the right to examine the execution of the laws it made, but it could not judge over the person of the executor.¹³¹⁷ As such, the term was commonplace in constitutional charters, such as in the Prussian constitution of 1850 (Article 43) and in the Belgian constitution of 1831 (Article 63).

The term “sacred” to refer to the monarch, too, was of time-honoured origin and wide currency.¹³¹⁸ The term was widely used by jurists, including Montesquieu himself, to describe the English king,¹³¹⁹ and upon the establishment of the United States, one of the proposals about how to style the president had been to call him “Sacred Majesty.”¹³²⁰ In Europe, among the constitutional charters that used it were the Swedish *Instrument of Government* of 1809 (Article 3), the Italian *Statuto Albertino* of 1848 (Article 4) and the Danish *Fundamental Law* of 1849 (Article 11). By the time Japan adopted its constitution, the “sacredness” of the monarch

¹³¹⁷ See Jean Baptiste Bivort, *Commentaire sur la Constitution Belgique*, 2nd ed. (Brussels: Librairie de Deprez-Parent, 1847), 45.

¹³¹⁸ The term “sacred” dates back to Roman law, which distinguished the terms “sacer” (commonly translated as “sacred”) and “sanctus” (commonly translated as “holy”). “Sanctus” is that which is not sacred, but is protected by a sanction and thus inviolable. Roman laws, thus, were “holy” (“sanctus”), but not “sacred.” On the concept of inviolability in Roman law see Yan Thomas, “De la « sanction » et de la « sainteté » des lois à Rome: Remarques sur l’institution juridique de l’inviolabilité,” *Droits, Revue française de théorie juridique* 18 (1993).

¹³¹⁹ Montesquieu, *L’esprit des lois*, 111. On the “sacredness” of the English king, including a discussion of William Blackstone’s (1723-1780) interpretation of the term, which went much farther than Montesquieu’s, see Clement Fatovic, “The Political Theology of Prerogative: The Jurisprudential Miracle in Liberal Constitutional Thought,” *Perspectives on Politics* 6, no. 3 (2008), 494.

¹³²⁰ In George Washington’s time, there were wild debates on how to style the president. The Congress at one point considered the title “His Highness the President of the United States of America and Protector of the Rights of the Same.” See Edgar S. Maclay, *Journal of William Maclay: United States Senator from Pennsylvania (1789-1791)* (New York: D. Appleton and Company, 1890), 25–26. Kathleen Bartoloni-Tuazon’s monograph on the topic contains a total of 36 specific suggestions, including “His Elective Majesty,” “The Delight of Human Kind,” “His Sublimity,” “His Grace,” “Sacred Majesty,” or just “Washington” (as a title). Kathleen Bartoloni-Tuazon, *For Fear of an Elective King: George Washington and the Presidential Title Controversy of 1789* (Ithaca [New York]: Cornell University Press, 2014), 95, 251, with further references.

had long transcended Europe and the USA: the 1852 and the 1864 constitutions of Hawai‘i (Articles 35 and 31, respectively), as well as the 1875 constitution of Tonga (Article 41), declared the king to be sacred.¹³²¹ However, the term “sacred” did not fit well into the 18th and 19th century trend towards rationality, so that many constitutions chose to hide it. It was neither employed in the Prussian nor in the Belgian constitution, somewhat obscuring the global constitutional currency of the term. Nonetheless, the expression “inviolable and sacred” as a tandem was “admitted by all constitutional governments,” as explained a commentary to the Belgian constitution.¹³²²

In Japan, both parts of the duo acquired a somewhat different meaning. As to the term “inviolable,” the official commentary to the constitution not only noted that the emperor, while having to respect the law, could not be held accountable for it. It went further than the European versions: The Emperor could not be made the topic of derogatory comment or even “one of discussion” (*shiseki gengi no soto ni aru mono to su* 指斥言議ノ外ニ在ル者トス).¹³²³ As to the term “sacred,” Japanese discourse sometimes concealed the global uses of the term, presenting it instead to the public as a Japanese addition. According to the official commentary, it alluded to the 8th-century chronicle *Nihon shoki* 日本書記. In the interpretation of the 19th-century constitution-makers, the Emperor was “heaven-descended, divine and sacred” (*tenshō-uishin-shisei* 天縱惟神至聖), for that chronicle had allegedly declared that “the sacred Throne was established when the heavens and the earth became separated.”¹³²⁴

¹³²¹ The term had not been used in the first Hawai‘ian constitution of 1840; it was first used in the 1852 Constitution.

¹³²² Bivort, *Commentaire sur la Constitution Belgique*, 45.

¹³²³ Itō, *Teikoku kenpō gige*; *Kōshitsu tenpan gige*, 5; Itō Hirobumi 伊藤博文, *Commentaries on the Constitution of the Empire of Japan*, with the assistance of trans. Itō Miyoji 伊東巳代治, 2nd ed. (Tokyo: Chūō Daigaku (Central University), Meiji 39 [1906]), 7.

¹³²⁴ Itō Hirobumi 伊藤博文, *Teikoku kenpō gige*, 5, more precisely referring to the first chapter, “the Age of the Gods” (*shindai* 神代). The official translation mistakenly claims that the allusion is to the *Kojiki* 古事記. Itō, *Commentaries on the Constitution of the Empire of Japan*, 7. Cf., however, the commentary Fukui Jun 福井淳, *Kakkoku hikaku teikoku kenpō mondō shōkai* 各國比較帝國憲法問答詳解 (Detailed explanations in questions and answers of the Imperial constitution compared to all countries) (Osaka:

When used in the Chinese *Outline*, these terms became highly controversial. Chinese commentators took both article 1 and 2 of the *Outline* to be nipponisms and criticised them for that.¹³²⁵ The rather moderate *Shenbao* compared the adoption of the phrase “one dynasty for ages eternal” (*bansei ikkei/wanshi yixi* 萬世一系) to Chinese biology textbooks, which blindly took over the cherry blossom without adapting the textbook to Chinese circumstances. However, it still came to the conclusion that a constitution given by the monarch could use the term.¹³²⁶ But two years later, it changed its verdict to the negative and declared *in extenso* the very different historical contexts of China and Japan. Under the title “Constitution-Making Should Not Take Japan as a Model” (*Lun zhiding xianfa bu yi shifa Riben* 論制定憲不宜師法日本), it explained that in Japan, the real ruler had been the very brutal Shōgun. When the domain system collapsed, the people were naturally thankful for the new constitution which secured the emperor’s more benign rule. In China, however, the *Shenbao* analysed, the feudal system had been abolished for thousands of years, and in an administration by non-responsible officials, the emperor had always taken the blame if things went wrong. How could such a royally-approved constitution, which solidified the rule of the emperor, placate the people?¹³²⁷

The revolutionary Zhang Bingling 章炳麟 (or Zhang Taiyan 章太炎, 1868–1936) formulated a similar argument in the *Minbao*. His words, however, were much more polemical and fraught with violent anti-Manchu ethnic slurs—for

Okamoto Sensuke, Meiji 22 [1889]), 10–12, which explains the norm without differentiating between its two elements, and without reference to Japan’s traditions. Instead, this commentary goes back to principles of Roman law and shows the parallel norms in monarchic and republican constitutions of the time. Similarly, in Chinese, Bao Tingliang 保廷樑, *Daqing xianfa lun* 大清憲法論 (On a constitution for the Qing Empire) (Tokyo: Shūkōsha, Xuanton 2 [1910]), 63–66, traces the term “sacred” back to Rome.

¹³²⁵ On Art. 2 see also Zhang Bolie’s draft, explaining why he did not take over the expression from Japan. Zhang, *Jiading Zhongguo xianfa cao’an*, 3–4.

¹³²⁶ *Shenbao* 申報, “Wanshi yixi zhi Zhongguo” 萬世一系之中國 (A China of one dynasty for ages eternal), September 6, 1908.

¹³²⁷ *Shenbao* 申報, “Lun zhiding xianfa bu yi shifa Riben” 論制定憲法不宜師法日本 (Constitution-making should not take Japan as a model), November 28, 1910.

ethno-nationalism was a preferred topic among revolutionaries, whereas it was rarely raised by monarchic constitutionalists.¹³²⁸ Zhang explained that, although textually the same in China and Japan, the two first articles of the *Outline* meant exactly the opposite if applied to the historical circumstances of each country. To Zhang, the two provisions showed clearly that the Manchus were subduing the Han, and he took this as one more reason to fight against the Qing Court's constitutional plans:

This tries to copy the Japanese constitution, but loses its truth. The Japanese constitution only says "The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal." This appellation is given following the facts of their history. When there first was a Japanese country, there was also a Japanese Emperor with that name. ... It does not say "From now on there shall be a line of Emperors unbroken for ages eternal." Although the textual meaning is the same, its spirit seems to have a hidden agenda [in China]. Now, the Manchus are not of our race, and since antiquity we do not have a history of "a line unbroken for ages eternal". Therefore, after they set that as a law, the scepter shall always pertain to one family... This hereditary rulership will always have the Han people be servants! ... For Japanese history and customs are different from China's, and their collective psychology is also different. That their one family has been transmitted for 2500 years is what the Shintō religion preaches ... But in China there is no such thing, ... Of course, the Manchus have arisen as fierce bandits and are our hereditary foes ...

此欲模拟日本憲法而失其真。日本憲法但云：“大日本帝國，以萬世一系之天皇統治之。”此从其歷史成事而施名號。初有日本國，便有此姓之日本天皇，……不曰“此後當萬世一系”。雖文義兼攝初終，其辭氣猶有蘊藉。今滿洲本非我族類，自古無“萬世一系”之歷史，由是規定其後，使

¹³²⁸ Zarrow, "Constitutionalism and the Imagination of the State," 79.

亡豈永屬於一家。……以莠言固其世祚，令漢人永遠服從，……。蓋日本與中國歷史風俗不同，而其人心亦異。彼一姓相繼二千五百歲惟神道教所說者……。如中國則非其例……勿論滿洲起於狂寇，爲我世仇……。¹³²⁹

c) Chinese Interpretations of the Ottoman Constitutional Revolution

Although the *Outline of a Constitution* did not have any legal effect yet and drew many political and technical criticisms, China did now in fact have some written constitutional document. Thus, China was now in the same club as the Ottoman Empire, which had reinstated its constitution a mere month earlier. The above-mentioned Earl Cromer later derided these adoptions of constitutional documents as a belief in a magical “shibboleth” to modernity,¹³³⁰ but to many Chinese, having a written document indeed mattered. Accordingly, it was not only papers such as the *North China Daily News* which noticed that the year of 1908 was “decidedly ... a year of constitutions.”¹³³¹ This fact was also very well-noticed in Chinese-language media of the time. In secondary literature, Rebecca Karl has taken notice of Chinese interest for the Turkish constitution of 1876/1908, but limited her analysis to the Chinese revolutionaries and anarchists.¹³³² Let us, thus, try to give a broader assessment of Chinese perceptions of the Turkish constitutional revolution, not only in revolutionary, but also in monarchist and governmental circles.

The *Shenbao*, which a month and a half earlier had feared that the Ottoman Empire would prey on China as an imperialist power, now published another article, entitled “This Year’s Five Constitutional Countries” (*jinnian zhi wu lixian guo* 今年之五立憲國). This time, the newspaper commemorated the fact that China had

¹³²⁹ Zhang Binglin 章炳麟, “Daiyi ranfou lun” 代議然否論 (On the pros and cons of popular representation), in *Xinhai geming qian shi nian jian shilun xuanji* 辛亥革命前十年間時論選集, ed. Zhang Nan 張枬 and Wang Renzhi 王忍之, 5 vols. (Beijing: Sanlian shudian, 1977), vol. 3, 100.

¹³³⁰ Cromer, “Some Problems of Government in Europe and Asia,” 1162.

¹³³¹ *North China Daily News*, “Foreign Affairs in 1908” under the subtitle “the constitutional tendency.”

¹³³² Karl, *Staging the World*, 182–192.

caught up with the Ottoman Empire.¹³³³ In that year, the paper noticed, five countries had turned to a constitutional system marking 1908 as the year of highest development for constitutionalism: China, Turkey, Persia, Egypt and Morocco. Here, the *Shenbao* showed the same kind of solidarity that commentators had shown before, for example when Persia had adopted a constitution in 1906. It did also follow a strain of thought very similar to how the Young Turks had seen China's declaration of constitutional preparation. In its article of August 1908, the *Shenbao* stressed that all five new constitutional countries lay outside of Europe, had populations that were not of the white race and had been in existential crises. But who could know whether, after some decades, the world would not be widely different?

The imperialist threat to China had vanished from the *Shenbao*, much to the contrary. Constitutionalism, it implied, would set China on the path of military prowess. The article did not mention, like Dashou, imperialism as a goal of Chinese foreign policy, but was rather unabashed in delineating that it was now the newly-constitutionalised States' turn to conduct a muscular policy. The article compared in detail the militaries of the five new constitutional countries, remarking that of them, China was the one with the best prospects. What could be fathomed was that these countries would be far better off than before the transition to constitutionalism. If even Morocco could look for Japan's example of military victory, how much more could China? The article ended full of pathos:

Vast are the waters of the Mediterranean! Unlimited are the skies of Arabia!
Beholding them, our people truly want to open up a boundless stretch of
land!

蒼蒼者地中海之波莽莽者亞刺伯之雲吾人引而望之直欲闢一萬里¹³³⁴

¹³³³ *Shenbao* 申報, "Jinnian zhi wu lixianguo" 今年之五立憲國 (This year's five constitutional States), September 24, 1908.

¹³³⁴ Ibid.

Of the newcomers to the club in 1908—Persia had actually already adopted its constitution in 1906—, it was the Ottoman Empire that provoked the most interest. The *Shenbao* was far from the only paper interested in the Ottoman Empire. Again, various magazines and newspapers carried detailed articles on the Ottoman constitution. Just as in the case of Persia, there was little direct contact between the Ottoman Empire and China, and so Chinese media often translated articles from Japanese or Western sources. The papers again showed a range of different interpretations, and again, the Chinese “translations” did also often offer their own short commentaries on the translated articles, or even interpolated their own interpretations into the translations.

In sum, across political camps, the Ottoman constitution of 1908 seems to have provoked comparatively more positive evaluations in China than the continuous chaotic strife and foreign encroachment in Persia and the mixture of revolt, strikes and brutal repression in Russia. China, too, had changed in the past two years, as the calls for a constitution had become louder, and impatience for concrete results had become more pressing in the convoluted process of “constitutional preparation.”

The praise across all political camps came in differing, even contradictory, flavours, according to the political orientation of who expressed it. While non-opposition media like the *Shenbao* continued to advocate a constitutional monarchy and now argued that the Ottoman Empire had surged ahead of China in pursuing this goal, Chinese revolutionaries argued that the Young Turks had surged ahead in carrying out their revolution. In contrast to Russia’s reactionary constitution, which had served as a negative example for the revolutionaries, revolutionaries like Zhang Zhongduan 張鍾端 (1879–1911) praised the “popular spirit” (*guomin zhi jingshen* 國民之精神) of the Young Turk revolution, putting Turkey ahead of China.¹³³⁵ Zhang also provided a concise description of the conflicting motives of

¹³³⁵ Hong Fei 鴻飛 [Zhang Zhongduan 張鍾端], “Tu’erji lixian shuo” 土耳其立憲說 (Commentary on Turkey’s adoption of a constitution), *Henan* 河南, no. 7 (1908), 26.

the praise for the Ottoman Empire common to both monarchists and revolutionaries:

Observers across the globe think that this [the positive results of the political turnover in the Ottoman Empire] is the glory of the monarch, the glory of the officials. But I think that it is in fact the glory of the people!

環球注視人。以爲君主之榮。官吏之榮。吾則以爲實國民之榮也。¹³³⁶

One particularly interesting aspect of the Ottoman constitution was the ethnic question.¹³³⁷ Russia and Persia were both multiethnic Empires, and their constitutions were of importance in this respect as well.¹³³⁸ However, this was not the main aspect under which they were discussed abroad. In the Ottoman Empire however, the tensions with the Christian population in the Balkans had already been one of the paramount factors leading to the constitution of 1876, and ethnic and religious conflicts were still one of the prevailing aspects of debates about the Young Turk revolution in 1908.

Rebecca Karl argues that Chinese revolutionaries were sceptical about the Young Turk revolution because of its ethno-religious inclusiveness, and that they used it to profess an “ethno-nationalist revolution” of the Han directed against the Manchus.¹³³⁹ Yes—but not exclusively. One of the sources used by Karl to back up her assertion is Zhang Zhongduan’s article. Karl claims that Zhang was cautious to praise the Turkish revolutionaries because he thought that such a “multiethnic, multireligious national formation” was “inherently unstable.”¹³⁴⁰ After arguing

¹³³⁶ Ibid., 25.

¹³³⁷ On Chinese revolutionary and anarchist views on the ethnic and religious in the Ottoman Empire, see also Karl, *Staging the World*, 183–192.

¹³³⁸ For Russia vis-à-vis Finland, see Tatiana Khripachenko, “Modernizing Heterogeneous Empire: The Russian Fundamental Laws of 1906 and the Incorporation of the Grand Duchy of Finland,” in *Constitutionalism, Legitimacy, and Power*, eds. Grotke and Prutsch, 262–280.

¹³³⁹ Karl, *Staging the World*, 192.

¹³⁴⁰ Ibid., 183.

that Zhang attacked Liang Qichao and his faction for being indulgent of the Manchus, Karl concludes her interpretation of Zhang's stance with the claim that "Zhang foregrounded the uneasy and unstable compromise between Muslims and Christians in Turkey as proof of the need to exclude the Manchus from any political settlement in China, and to stabilize 'China' in terms of the Han *minzu* [*ethnos*, remark of the author]."

However, there are a few problems with Karl's translation of the relevant passage. This study's retranslation gives it a rather different meaning, which necessitates a more nuanced reading of how Chinese revolutionary circles perceived the Young Turk revolution. What Zhang said was the following:

Oh, are they strong, the people of Turkey! Look at them coercing the monarch, cleansing the officialdom, and proclaiming to unify the Empire and regard all the "Arab" people as equal! ("Arabs" refers to Egypt, which has been destroyed by Turkey. This matter is analogous to the Popular Party in China declaring these days that, after the establishment of a new government, the Manchus will be treated as ordinary citizens). There is no conflict between Islam and Christianity. This is how their fairness is, how their possibilities are, how their spirit is. Although it is thousands of miles away, and our people have not yet looked through its motivation, just hearing the news and imagining it already really makes me constantly come back to it and praise it, without end!¹³⁴¹

¹³⁴¹ This is the author's own translation. For the ease of comparison, let us reproduce Rebecca Karl's translation here: "The Turkish people have experienced the monarchy's coercion and the co-opting of officials through the high-sounding rhetoric proclaiming the unity of the empire and that the "Arabs" are equal. (Arab people are in Egypt and were destroyed by Turkey; this affair is reminiscent of the recent one in China, when the People's Party [*Mindang*] proclaimed that, once a new government is established, the Manchus will be treated like the rest of the people.) Yet, what is the enduring basis for the impartiality, motivation, and spirit of the lack of conflict between Muslims and Christians? This all remains extremely volatile, and I will be watching closely to see what happens next." Karl, *Staging the World*, 183.

壯矣哉。土耳其國民也。觀其要脅君主。盪滌官吏。并聲言統一帝國視『阿拉比亞』人。皆爲同等。（阿拉比亞人即爲埃及被土耳其滅者此事與中國近日民黨宣言新政府成立後視滿族爲齊民同例）回教耶教不相衝突。此其公正如何。能力如何。精神如何。雖遙遙萬里。吾人未窺其動作。而聞風想像亦殊令吾低徊贊頌不置也。¹³⁴²

This study's translation diverges from Karl's in several aspects, which cannot be discussed here in detail. The most important one is that, according to Karl's translation, Zhang doubted that there was an "enduring basis" for the lack of conflict and judged that the situation of Turkey was "volatile." However, neither of these expressions is present in the Chinese original. There is only one word which could have prompted Karl to interpret Zhang's position as cautious. It is in the very last part of the passage, which Karl did not directly translate: Zhang literally wrote that he praised Turkey while "going back and forth" (*dihui* 低徊), an expression which can carry the figurative meaning of "hesitate." However, as Zhang used the adverb "especially, extraordinarily" (*shu* 殊) as well as the resultative complement "without stopping" (*bu zhi* 不置), such a translation would not be appropriate. Rather, it means that Zhang, in his mind, goes back and forth praising it, i.e., praises it over and over again. Such an interpretation also matches the overall tone of admiration permeating the paragraph.

Zhang Zhongduan's "Popular Party" (*mindang* 民黨) was not a reference to Liang Qichao's intellectual current, usually called "constitutional party" (*xiandang* 憲黨), but a common name for the revolutionaries themselves, and in making the analogy to China, Zhang was not criticising anyone for being too indulgent with the Manchus. For in contrast to what Rebecca Karl suggested, not all Chinese revolutionaries used the Young Turk movement to promote "ethno-nationalist" revolution,¹³⁴³ painting the Manchus as an enemy of the Han. As Zhang Zhongduan's

¹³⁴² Hong, "Tu'erji lixian shuo," 25.

¹³⁴³ Karl, *Staging the World*, 192.

article shows, some were even impressed by the ethno-religious inclusiveness of the Ottoman constitutional revolution, seeing it as an example of “justice” for China.

This reinterpretation withstanding, the intellectual current painted by Karl did also exist. Some revolutionaries did indeed use the Turkish constitution to denounce the Qing government and agitate against the “Manchurian Outline of a Constitution” (*Manzhou xianfa dagang* 滿州憲法大綱).¹³⁴⁴ Just like Liu Yazhi had done seven years earlier, *Minyi* 民意—a shared pseudonym of the revolutionaries Wang Jingwei 汪精衛 (1883–1944) and Hu Hanmin—observed in the *Minbao* that constitutions were of no benefit to the oppressed ethnic group, no matter how beautiful the concept was. Likening Greece to China and Turkey to the Manchus, they argued that the solution was a revolution instead of coöperation with the Manchus:

The Greeks are a civilized people who were subjugated by Turkey, just as the Han were subjugated by Manchuria. During the period when the Greeks were subjected to the oppressive rule of Turkey, they knew to plot for independence and not to rest their hopes on a Turkish constitution... This is really exactly the same as the intentions of contemporary China’s revolutionary party.

希臘以文明民族。而被征服于土耳其。與漢人被征服于滿洲同也。希臘民族受土耳其壓制之時。知謀獨立。不知望土之立憲。……眞與現時中國之革命黨同一。¹³⁴⁵

Apprehensive, sceptical, or even pessimist voices about the Ottoman constitution were indeed heard in all camps. Anarchists, naturally, denounced the Ottoman constitution as an expression of government. The anarchist magazine *New Times*

¹³⁴⁴ *Minyi* 民意 [Wang Jingwei 汪精衛; Hu Hanmin 胡漢民], “Tu’erqi geming” 土耳其革命 (The Turkish revolution), *Minbao* 民報, no. 25 (1910), 7.

¹³⁴⁵ *Ibid.*, 5. The translation is adapted, with some modifications, from Karl, *Staging the World*, 187.

(*La Novaj Tempoj: Xin shiji* 新世紀),¹³⁴⁶ edited in Paris, rhetorically asked: “Why would one actually be contented with constitutional monarchy and find it something pleasing to the eye?” (*he jing yu junzhu lixian er sui ganxin yuemu ye?* 何竟于君主立憲而遂甘心悅目耶).¹³⁴⁷

In the non-revolutionary press, it was precisely the spectacular speed with which the Sultan had been forced to accept the constitution which caused some skepticism about the sustainability of the *nouveau régime*. After a while, some foreign observers became disillusioned with the new government in the Ottoman Empire itself, leading their reporting to oscillate between approval and dissatisfaction, some of which was transported to China.¹³⁴⁸

Calls for a slower procedure in China in view of the difficulties faced in other Empires, so often voiced in relation to Russia and Persia, could be clearly heard in the English-language media of Shanghai. Thus, the *North-China Herald* called for the Chinese government to proceed “slowly and cautiously” as it expected pro-constitutional Chinese-language media to use the Ottoman example to demand greater velocity in China, too.¹³⁴⁹ To the Chinese-language public, similar feelings were expressed by the missionary William Arthur Cornaby (Gao Baozhen 高葆真, 1860–1921), editor of the Chinese-language magazine *Datong bao* (*Ta Tung Pao* 大同報). In one of his published notes on the Ottoman constitution, he expressed uncertainty about the success of constitutional government in the Ottoman Empire.¹³⁵⁰ A few weeks later, he translated into Chinese an article about “the situation in Turkey” first published in the *North China Daily News*, which again emphasised the uncertainty of the Ottoman situation. The article pondered that

¹³⁴⁶ On the magazine see Müller, *China, Kropotkin und der Anarchismus*, 219–263.

¹³⁴⁷ “Tu’erqi tiedao zhi bagong” 土耳其鐵道之罷工 (The railroad strike in Turkey), *Xin shiji* 新世紀, no. 72 (1908), 6.

¹³⁴⁸ E.g., *North China Herald*, “Constitutional Turkey,” September 16, 1910, 641. Edwin Pears, “Lun Tu’erqi lixian zhi qingxing” 論土耳其立憲之情形 (On the constitutional situation of Turkey), *Waijiao bao* 外交報, no. 284 (1910), reports the different views of optimists and pessimists in Chinese.

¹³⁴⁹ *North China Herald*, “Constitutional Government,” 333.

¹³⁵⁰ William Arthur Cornaby and Xu Weidai 徐惟岱, “Tu’erqi zhi xuanbu lixian” 土耳其宣布立憲 (Turkey’s proclamation to adopt a constitution), *Datong bao* 大同報 10, no. 2 (1908).

the Sultan counted on the military and that it was difficult to anticipate whether he would return to autocracy, thus showing disbelief in constitutions given under pressure and in great velocity.¹³⁵¹

At the same time as concerned voices about the Ottoman constitution were being heard in Europe and in China, these did not fit the political agenda of those who pressed for a constitution. For them, the Ottoman constitution had to be defended against any objection that might be raised against it. Qian Xun, the former delegate to the Hague Conference of 1907 who was now acting as minister to Italy, responded to the frequent European skepticism towards new constitutions. In his interpretation, this skepticism was rather a proof that constitutions were a tool for success, making the constitutional powers not want the non-constitutional polities to follow suit.

Qian expressed this in a lengthy report he wrote to Peking in May 1909 about the geopolitical situation in the Near and the Far East. For him, both regions were of utmost importance and intimately connected. Qian explained that the European powers which were encroaching on the Ottoman Empire actually feared that constitutional government might eventually be successful (*shen kong xianzheng guo cheng* 甚恐憲政果成).¹³⁵² Arguing that any weaknesses of Ottoman foreign policy were the result of old problems rather than of the recent events, he emphasised that the Ottoman Empire was striving for a constitution in order to become strong. In sum, he considered those who claimed the constitution was useless to be “dishonest.” (*fei dulun ye* 非篤論也).¹³⁵³

Whether European criticism of the Ottoman constitution was really dishonest or not, is not for this study to judge. But not all Europeans were negative towards it, and the pro-constitutional press of China did also reproduce the optimist

¹³⁵¹ William Arthur Cornaby and Xu Weidai 徐惟岱, “Tu’erqi xuanbu lixian zhi xianzhuang” 土耳其宣布立憲之現狀 (The present situation of Turkey’s proclamation to adopt a constitution), *Datong bao* 大同報 10, no. 7 (1908).

¹³⁵² *Daqing xuanton zhengji shilu*, chapter 12, 3.

¹³⁵³ *Ibid.*, chapter 12, 5.

voices. One of the most positive European opinions on the Ottoman Empire in China, however, was not presented as European to the Chinese public. The article “On the Situation of Constitutionalism in Turkey” (*Lun Tu'erqi lixian zhi qingxing* 論土耳其立憲之情形), published in the *Waijiao bao*, was attributed to a certain “Turkish man called Biyasi” (*Turen Biyasi* 土人比亞斯). In reality, the man who was presented to the Chinese readership as a Turkish voice was the British Edwin Pears (1835–1919), a jurist who had been living for decades in Constantinople. Pears had published a long account in the London *Contemporary Review* under the title “Developments in Turkey.” The article presented both the optimist and the pessimist sides, but came to a very positive conclusion, as Pears judged that “all things considered Turkey is doing well. ... It is the best Government which Turkey has ever had. Its faults are those of inexperience, which time will cure.”¹³⁵⁴

The Chinese translation focused even more on the aspect on the Ottoman Empire now having a constitution. Not only did it add constitutionalism to the title. It also added at the beginning a sentence which was inexistent in the original: “In the age of the 20th Century, a state has no means to subsist in the world if it does not adopt a constitution” (*ershi shiji zhi shidai, guo yu shijie zhe fei lixian wuyi tucun* 二十世紀之世代。國於世界者。非立憲無以圖存。).¹³⁵⁵ Variations of this sentence had been hovering around in Chinese discourse for quite some time, and the mentioned *Shenbao* article on the five constitutional countries of 1908 had used a very similar phrase.¹³⁵⁶ Here, the *Waijiao bao* made it seem to the Chinese reader that this well-known trope of Chinese discourse was a sentence of universal usage.

The translation of Pears' article, condensed from 24 English pages to 10 Chinese ones, was at times rather free. But it shows why Pears' article was inter-

¹³⁵⁴ Edwin Pears, “Developments in Turkey,” *The Contemporary Review*, no. 97 (1910), 716.

¹³⁵⁵ Pears, “Lun Tu'erqi lixian zhi qingxing,” 15b.

¹³⁵⁶ “Everyone knows that if [a state] does not change the political system, it does not suffice to subsist on the world.” (*renren zhi bu gai zhengti bu zuyi tucun yu shijie* 人人知不改政體不足以圖存於世界). *Shenbao*, “Jinnian zhi wu lixianguo.”

esting to a Chinese audience, and why a constitution was thought to be so fundamental for national existence: Its second half focused heavily on the development of the military and of education in the Ottoman Empire. “Until the revolution of July 1908,” Pears explained, “both the navy and the army had been allowed to fall into decay,”¹³⁵⁷ but since the Young Turk revolution, it had substantially improved. Very tellingly, the Chinese translation did not connect the turning point in the quality of the Ottoman military to any “revolution.” This was not an article in a revolutionary magazine like the *Minbao*. For the non-revolutionary Chinese press, the key to national success was rather—the adoption of a constitution: “Before Turkey adopted a constitution, the corruption of both the navy and the army had reached its extreme” (*Tu wei lixian yiqian, hailu liangjun zhi fubai da yu jidian* 土未立憲以前。海陸兩軍之腐敗。達於極點).

3. Translations of Foreign Constitutional Texts

a) The Appearance of “Comparative Constitutional Studies”

If China now had a written constitutional document, the State still needed a final constitutional charter. But for such a final document to be drafted, officials and intellectuals referred to other constitutional charters that were in force in other parts of the world. There are studies on the reception of specific constitutions in China—such as those on the constitution of the USA, surveyed in chapter one of this study, and Cheng Mengjing’s 程夢婧 research on the Magna Carta,¹³⁵⁸ which will be substantially amended in this chapter. But overall, literature on the Chinese constitutional movement has only rather scarcely and superficially discussed the intense translation movement that accompanied it.

¹³⁵⁷ Pears, “Developments in Turkey,” 704; Pears, “Lun Tu’erqi lixian zhi qingxing,” 18a.

¹³⁵⁸ Cheng Mengjing 程夢婧, “Daxianzhang zai wanqing Zhongguo de chuanbo” 《大憲章》在晚清中國的傳播 (The dissemination of the *Magna Carta* in late Qing China), *Qinghua faxue* 清華法學, no. 2 (2016), 115–130.

Therefore, before casting a look at the debates at the Constitutional Office and at the various drafts of a constitutional charter for China, let us first look at the foundation of debates on Chinese constitution-making. This section does not pretend to give a complete overview over the numerous translations that were made and published in the *Xinzheng* decade. But it does intend to show on some examples the various forms and media in which translations of constitutions appeared, as well as to demonstrate that translation activity far exceeded the well-known constitutions of Japan, the USA and Europe. A more far-reaching list of translations is given in the appendix to this work.

Chapter one of this study has already dealt in some detail with early translations of foreign constitutional charters that appeared in the 19th century, not only of the USA, but also of the French and Japanese constitutions, and of the short-lived Philippine constitutional decree. By the turn of the 20th century, interest for foreign constitutional charters was no longer limited to their function as central texts of the respective polities. Rather, it grew in view of possible political reforms in China itself.

Accordingly, there was also demand for overviews and comparisons of various constitutions and constitutional systems. Han Dayuan 韓大元 has remarked that the term “constitutional comparison” (*bijiao xianfa* 比較憲法) appeared in Chinese language earlier than “legal comparison” itself, contending that it was used for the first time in 1901.¹³⁵⁹ This 1901 article was a review of various constitution- and law-related books published in Japan, which appeared in the Tokyo-based magazine *Collectanea of Translated Books* (*Yishu huibian* 譯書彙編). In particular, the review referred to Émile Boutmy’s (1835–1906) *Études de droit constitutionnel*, which had appeared in Japanese in 1894 under the title *Comparative Study of the Constitutions of England, the United States and France* (*Ei-Bei-Futsu hikaku*

¹³⁵⁹ Han Dayuan 韓大元, “Bijiao xianfa gainian zai jindai Zhongguo de yanbian” 比較憲法概念在近代中國的演變 (The development of the concept of constitutional comparison in modern China), *Bijiaofa yanjiu* 比較法研究, no. 6 (2015), 20, 21.

kenpōron 英米佛比較憲法論), translated by Okamatsu Santarō 岡松參太郎 (1871–1921).¹³⁶⁰

But actually, the 1901 review in the *Yishu huibian* was not the first piece of Chinese-language literature to notice the Japanese works about “constitutional comparison.” Rather, the term appeared in Chinese three years earlier than Han Dayuan wrote, i.e., in 1898. In Japan, it had been popular since the 1880’s, with several works appearing under the title. In 1886, Kusama Tokiyoshi 草間時福 (1853–1932) had published a translation of a chapter of William Gladstone’s (1809–1898) *Gleanings of Past Years*. The chapter “Kin Beyond Sea,” which had first been published as a separatum in the *North American Review* for September 1878, appeared in Japanese under the title *Comparative Treatise on the Constitutions of England and the United States* (*Ei-Bei kenpō hikakuron* 英米憲法比較論).¹³⁶¹ Two years later, in 1888, Tatsumi Kojirō 辰巳小二郎 published a book entitled *Comparison of the Constitutions in Force in All Countries* (*Bankoku genkō kenpō hikaku* 萬國現行憲法比較).¹³⁶²

It was this second book which had a special importance for China. In 1898, Kang Youwei himself, in his *Record on Japanese Bibliographies*, explicitly praised Tatsumi Kojirō’s book as one of the “finest” (*zui jing* 最精) works on foreign constitutions,¹³⁶³ making this the first time that “constitutional preparation” appeared

¹³⁶⁰ “Zalu” 雜錄 (Miscellaneous records), *Yishu huibian* 譯書彙編, no. 6 (1901), 8. For the Japanese see Émile Boutmy, *Ei-Bei-Futsu hikaku kenpōron* 英米佛比較憲法論 (Comparative study of the constitutions of England, the United States and France), trans. Okamatsu Santarō 岡松參太郎 (Tokyo: Yao shoten, Meiji 27 [1894]).

¹³⁶¹ William Ewart Gladstone, *Ei-Bei kenpō hikakuron* 英米憲法比較論 (Comparative treatise on the constitutions of England and the United States), trans. Kusama Tokiyoshi 草間時福 (Osaka: Hino shokan, Meiji 19 [1886]); For the English original see William Ewart Gladstone, *Gleanings of Past Years, 1843–1878* (London: John Murray, 1879), vol. 1, 203–248. Vol. 1 is entitled “The Throne, and the Prince Consort; The Cabinet, and Constitution.”

¹³⁶² Tatsumi Kojirō 辰巳小二郎, *Bankoku genkō kenpō hikaku* 萬國現行憲法比較 (Comparison of the constitutions in force in all countries) (Tokyo: Tetsugaku shoin, 1888)

¹³⁶³ Kang, *Riben shumu zhi*, 229.

in a Chinese context. Tatsumi's book was, correspondingly, translated not long after, in 1902, by Ji Yihui 戢翼翬 (1878–1908), a student in Japan who hailed from Hubei.¹³⁶⁴

There is something else to Tatsumi's book which has escaped attention so far. It was not actually Tatsumi's book. Rather, it was a plagiarism of our well-known *Stateman's Year-Book*, which had already been translated into Chinese twice. As explained, the original *Stateman's Year-Book* did place considerable weight on describing the constitutions of each country. Tatsumi translated the statistical tables and the sections on constitutions and government, with the exception of the one of Japan, which he himself wrote, and reordered them according to Japanese conventions.

From the basis of this Japanese edition by Tatsumi Kojirō, the *Stateman's Year-Book* was translated into Chinese for a third time. This time, the *Year-Book* appeared incognito, but in contrast to the former translations, the notion of a constitution was even more foregrounded. The former direct and marked translations of the *Year-Book* into Chinese had brought considerable knowledge about constitutions to the Chinese public, but had still shown occasional difficulties in handling the notion in Chinese. In 1902, however, the *Year-Book* had become the basis for a whole book on “compared constitutional law.”

b) Collections of Translations and Translations as Monographs

Ji Yihui's publication of a book on “constitutional comparison” was indicative of another important trend. The surprisingly large number of translations of various constitutions made in the 19th century had appeared to the public in magazines and within other books. With the 1901 Imperial sanction of “taking the strengths of foreign countries,” books began to be specifically dedicated to constitutional

¹³⁶⁴ Tatsumi Kojirō 辰巳小二郎, *Wanguo xianfa bijiao* 萬國憲法比較 (Comparison of the constitutions of all countries), trans. Ji Yihui 戢翼翬 (N.p.: Guangxu 28 [1902]). See also Han Dayuan 韓大元, “Bijiao xianfa gainian zai jindai Zhongguo de yanbian,” 74.

translations, either as monographs carrying single charters or as collectanea of several texts.

One monograph, for example, was a translation of the revolutionary French *Constitution de l'an I*, which had been passed on June 24, 1793, but was never applied. Its 35 paragraphs were published by *Qunxueshe* 羣學社 editors.¹³⁶⁵ Another constitution whose text prominently came to the fore in these years was the Meiji Constitution. While it had been translated very early, in its the very year of promulgation of 1889, that translation had been published in fine print within a general book of Japan. It was in 1901 that the text of the constitution together with the official commentary by Itō Hirobumi was published as a book.¹³⁶⁶ Translated by Shen Hong 沈紘, its preface was penned by Yan Fu 嚴復 (1853–1921) himself. Several editions of the Japanese constitution with Itō's commentaries were printed in 1901/02. Further publications, such as in the *Magazine of Politics and Arts* (*Zhengyi tongbao* 政藝通報), further testify of the success that the Japanese constitutional charter had even before the Russo-Japanese war.¹³⁶⁷

Equally successful was the constitutional charter of the USA. Having been translated thrice and published six times in the 19th century, the document continued to be translated in the 20th century. One abridged translation published in the *Zhengyi tongbao* in 1902 was still headed under a somewhat anachronic term for “constitution” (*liguo lüli* 立國律例), showing that the terminological transition towards the term *xianfa* 憲法 did not take place as abruptly after the 100 days as is mostly imagined.¹³⁶⁸ In 1902, the United States Constitution also made its first appearance as an independent monograph, translated by Zhang Zongyuan (1877–?),

¹³⁶⁵ Gu Xieguang 顧燮光, “Yishu jingyan lu” 譯書經眼錄 (Record of translated books I have read), in Wang, Gu et al., *Jindai yishu mu*, 463.

¹³⁶⁶ Itō Hirobumi 伊藤博文, *Riben Diguo xianfa yijie* 日本帝國憲法義解 (Commentaries on the constitution of the Empire of Japan), trans. Shen Hong 沈紘 (N.p.: Jin li zhai, Guangxu 27 [1901]).

¹³⁶⁷ Deng Shi 鄧實, ed., *Guangxu guimao (29 nian) zhengyi congshu* 光緒癸卯 (廿九年) 政藝叢書 (Collectanea of politics and arts for the year guimao (29) of the Guangxu Emperor), 4 vols. (Taipei: Wenhua chubanshe, Minguo 65 [1976]), vol. 2, 527–534.

¹³⁶⁸ Deng, *Guangxu renyin (28 nian) zhengyi congshu*, vol. 2, 609–610.

a student at Pomona College in California who would later work at the Constitutional Commission in China. The book carried some commentaries by Zhang on the text, and in his terse preface, Zhang stressed why the constitution of the USA was so important:

The US Constitution is the ancestor of all written constitutions.

美國憲法。各國成典憲法之祖也。¹³⁶⁹

In the same year of 1902, the US constitution also appeared in the perhaps first Chinese-language collectanea of constitutional texts. It was a translation done on the basis of Tsuboya Zenshirō's Japanese translation, which had been first translated into Chinese by Kang Tongwen and published in the *Dongya bao* in 1898. Tsuboya had not only translated the US Constitution: He had published a large compendium of constitutional texts from 13 polities under the title *Constitutions of the World* (*Bankoku kenpō* 萬國憲法), each accompanied by introductions to the respective constitutional history. Tsuboya's compendium had first appeared in 1888 and was reedited several times.

In 1902, Tsuboya's compendium was partially translated into Chinese by Zhou Kui, whom the reader will remember as a member of the "Association for Studies of the State" in Tokyo, and published in Shanghai under the title *Account of the Constitutions of the World* (*Wanguo xianfa zhi* 萬國憲法志).¹³⁷⁰ Zhou Kui's Chinese version contained the constitutional charters in force in six polities, divided into three sections: a) monarchic constitutions (England, Prussia, Italy); b) republican constitutions (France, USA); c) federal constitutions (USA, referring to lit. b, and Germany). Zhou chose not to translate the historical constitutions of France and the constitutions of the seven remaining smaller European states (Netherlands,

¹³⁶⁹ Zhang Zongyuan 章宗元, trans. *Meiguo xianfa* 美國憲法 (Constitution of the United States) (Shanghai: Wenming shuju, Guangxu 28 [1902]), chapter "Abstract" (*tiyao* 提要), 1. Cf. Gu, "Yishu jingyan lu," 463–464.

¹³⁷⁰ Zhou, *Wanguo xianfa zhi*.

Belgium, Spain, Portugal, Austria, Denmark, Switzerland). Given that Zhou was translating a Japanese compendium of foreign constitutional charters, the constitution of Japan was also absent.

c) Translations of English Constitutional Texts

The inclusion of England's constitution into a compendium of written constitutions might seem confusing at first sight, given that England is—and was in late Qing China—usually said to have a non-written constitution. But this is only partially true, as the United Kingdom has had several constitutional texts, beginning with the most emblematic one, the Magna Carta of 1215. It is no wonder that Chinese intellectuals, when exploring the concept of a constitution in depth, were quite interested in the constitutional texts of what was frequently deemed the motherland of constitutionalism. Accordingly, quite a large number of translations of English constitutional texts appeared early, evidencing the importance conferred on them by Chinese intellectuals.

Hitherto, there has been only one piece of research on the reception of the *Magna Carta* in China, published in 2016 by Cheng Mengjing in the *Tsinghua Law Journal* (*Qinghua faxue* 清華法學). The article counts four translations published in the late Qing dynasty and analyses them. However, it has only perceived the four translations which are readily available via electronic databases of periodicals, overlooking Zhou's book as well as the other translations which appeared in book form.¹³⁷¹ In total, however, at least seven translations were published before the fall of the Qing, some of them interrelated.

Tsuboya's *Bankoku kenpō* was the basis for two Chinese translations. It gave an overview over English constitutional history and structure, then translating the essential constitutional documents of England: the 63 original articles of the *Magna*

¹³⁷¹ See Cheng, "Daxianzhang zai wanqing Zhongguo de chuanbo," 115–130. For short descriptions of the four translations in periodicals, including notes on omissions (as compared to the English original) see 118–120.

Carta, the 7 articles of Edward I's *Confirmatio Cartarum* of 1297, Charles I's *Petition of Right* of 1628 and the 1688 (1689) *Bill of Rights*. Additionally, the operative part of the 1700 (1701) *Act of Settlement* is translated at the end of the *Bill of Rights*, as if it were part of it.¹³⁷² The translations were nearly complete, but for some inaccuracies and changes in order in the part concerning the *Bill of Rights*.¹³⁷³

Zhou's *Account of the Constitutions of the World* translated Tsuboya's historical introduction, the *Magna Carta* and the *Bill of Rights* with the appended *Act of Settlement*. The book, which is preserved, e.g., at the National Library of China, has been nearly forgotten. However, the importance of Zhou's translation in providing a textual basis for such studies can be seen by the fact that it was cited in the above-analysed article "On the Essentials for China's Adoption of a Constitution" (*Lun Zhongguo lixian zhi yaoyi* 論中國立憲之要義), published in the Tientsin *Dagongbao* and republished in the *Eastern Miscellany* (*Dongfang zazhi* 東方雜誌) in 1904.¹³⁷⁴

Another translation of the *Magna Carta* was published in 1903 in the *Zhengfa xuebao* under the title *English Constitutional History* (*Yingjili xianfa shi* 英吉利憲法史). The basis for the publication was, again, Tsuboya Zenshirō's collectanea, including the same historical introduction and all four (five) bills. While being based on Tsuboya's work, the translation seems to have been done independently from Zhou Kui's, as it clearly diverges from that one. This new 1903 publication in the *Zhengfa xuebao* was part of a series of translations of foreign laws to be studied for the benefit of China. It stood alongside laws such as the Japanese Mining Law

¹³⁷² Tsuboya, *Bankoku kenpō*, 1–42. The *Bill of Rights* is commonly assigned to the year 1689, and the *Act of Settlement* to the year 1700. However, according to the old style calendar, the year began on March 25th. Until the late 18th century, all undated Acts passed in a session of Parliament were assigned to the year in which the respective session began. For the *Bill of Rights*, this was 1688 O.S. (February 13, 1689, new style). The *Bill of Rights* then received Royal Assent on December 16, 1689. Accordingly, the *Settlement Act* was passed in 1701 (N.S.), but is assigned the year 1700.

¹³⁷³ The *Bill of Rights* is divided into paragraphs, which the original is not. The translation switches the original order, putting the complete recital of misdeeds of King James II at the end of the *Bill* instead of the beginning. A part of the text of the *Bill* is deliberately omitted in the translation. There are also some mistranslations, e.g., when the original "thirtyeth yeare of the Raigne of King Charles the Second" is translated as "thirteenth year of Charles the Second" (*Chârusu nisei jûsan nen* チャールス二世十三年 / *Chaersi ershi shisan nian* 查爾斯二世十三年). See *ibid.*, 39.

¹³⁷⁴ "Lun Zhongguo lixian zhi yaoyi," 50–51.

and the Japanese Tax Law, but remained the only constitutional contribution to the series.¹³⁷⁵

Most translations appeared right after the proclamation of “constitutional preparation,” in 1906 and 1907. In 1906, a full translation of the *Magna Carta*, the *Petition of Right*, the *Bill of Rights* and the *Act of Settlement* appeared in four installments in the Tokyo-based *Magazine of Law and Politics* (*Fazheng zazhi* 法政雜誌), translated by Qian Yingqing (錢應清, 1878–1938).¹³⁷⁶ Still in 1906, a special edition of the *Eastern Miscellany* (*Dongfang zazhi* 東方雜誌) published an abridged version of the *Magna Carta* and the *Bill of Rights*.¹³⁷⁷

In 1907, Zhou Kui’s translation reappeared, with some minor divergences, in the Tokyo-based magazine *New World of Translations* (*Xin yijie* 新譯界), giving a man named Wang Jizhou 汪濟舟 from Hubei as translator. The 1907 translation included the same foreword and the translation of the *Magna Carta*, but not of the other constitutional texts. As the title *Account of the Constitutions of the Countries of Europe and America* (*Oumei geguo xianfa zhi* 歐美各國憲法誌) indicates, the article was set as the beginning of a series, which, however, was never continued. It is likely that the further British constitutional texts were cut off due to space constraints and never printed later because the magazine was discontinued after one further edition.¹³⁷⁸

¹³⁷⁵ “Yingjili xianfa shi” 英吉利憲法史 (English constitutional history), *Zhengfa xuebao* 政法學報, no. 3 (1903), 113–127 (*Magna Carta*); 127–128 (*Confirmatio Cartarum*); 128–131 (*Petition of Right*); 132–137 (*Bill of Rights*).

¹³⁷⁶ Qian Yingqing 錢應清, “Yingguo xianfa zhengwen” 英國憲法正文, *Fazheng zazhi* 法政雜誌, nos. 1–3, 5 (1906).

¹³⁷⁷ “Junzhu lixianguo xianfa zhaiyao (Ribei, Ying, E, Pulushi, Yidali)” 君主立憲國憲法摘要 (日本、英、俄、普魯士、義大利) (Excerpts from constitutions of constitutional monarchies [Japan, United Kingdom, Russia, Prussia, Italy]), *Dongfang zazhi* 東方雜誌 3, linshi zengkan xianzheng chugang 臨時增刊憲政初綱 (Guangxu 32 [1906]), 9–12.

¹³⁷⁸ Wang Jizhou 汪濟舟, “Oumei geguo xianfa zhi (di yi pian: Yingjili)” 歐美各國憲法誌 (第一篇：英吉利) (Account of the constitutions of the countries of Europe and America, part 1: England), *Xin yijie* 新譯界, no. 7 (1907). Cf. “Lun Zhongguo lixian zhi yaoyi,” 50–51. The 1903 translation is also contained in the 1934 catalogue Gu, “Yishu jingyan lu,” 463. Cheng, “*Daxianzhang zai wanqing Zhongguo de chuanbo*,” does not mention neither the particular similarity of the 1903 and 1907 versions, nor the fact of the 1904 *Eastern Miscellany* quoting the 1907 version.

English constitutional texts were published in at least two further books that have not been included in Cheng Mengjing's article: In 1907, it appeared in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編),¹³⁷⁹ which will be discussed in more detail below. In 1911, finally, it appeared in a collection that is already well-known to the reader: As a result of Wang Daxie's mission to England, it was published in his *Book Series on English Constitutional Government*.

d) Translated Constitutions of Newly-founded Republican Polities: Philippines and Cuba

As has been seen, translations were published and circulated in quite a few different forms and media. Several monographs appeared dedicated to a single constitution, such as Japan, the United States and England. Other translations also appeared in compendia comprising several constitutions, in magazines and journals. In the course of this sub-chapter, we will even see translation of constitutional charters which appeared in daily newspapers. It is thanks to the many readily available translations of constitutional charters that both the general press¹³⁸⁰ and government documents¹³⁸¹ could argue by precisely citing even charters that are usually less thought of in conjunction with the Qing constitutional enterprise, such as the constitutions of the Netherlands, Italy or Austria. After 1906, translating constitutions became one of the attributions of the Constitutional Office. Their circulation in the government, hence, also contributed to debates at a political level.

¹³⁷⁹ Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九, eds., *Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編 (Collection of the full texts of the constitutions of 17 countries) (N.p.: Jingshen shuzhuang, Guangxu 33 [1907]), 1–25.

¹³⁸⁰ See, e.g., “Lun junzhu lixian zhengti zhi xingzhi (lu bingwu di 1 qi *Beiyang xuebao*)” 論君主立憲政體之性質 (錄丙午第一期北樣學報) (On the nature of the monarchic constitutional form of government (contained in the *Beiyang xuebao*, no. 1 of the Year Guangxu 32), *Dongfang zazhi* 東方雜誌 3, no. 4 (1906), *passim*, citing the Prussian, Austrian and Italian constitutions.

¹³⁸¹ See, e.g., Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubei lixian dang'an shiliao*, vol. 1, 314–315: A memorial by Yikuang of January 14, 1908 (Guangxu 33/12/11) talking about Art. 100 of the Dutch Constitution, concerning disagreements between ruler and the parliament.

Interest towards constitutional charters was by no means restricted to Japan, the USA and the main constitutions of Europe. It also stretched to the republican constitutions recently implemented by way of revolutions. We have already seen this in chapter one: in 1898, the Philippine constitutional decree which changed the “dictatorial” into a “revolutionary” regime had been translated into Chinese via Japanese intermediation. In the first years of the 20th century, Chinese interest for the Philippines and its revolution continued strong, and the Philippine constitutional exploits again found their way to China via Japan.

On January 21, 1899, the Philippine revolutionaries had enacted the constitution of the First Philippine Republic, known as the Malolos Constitution. This Malolos Constitution was mainly inspired by the French one, but also took inspiration on the Belgian, the Mexican, the Brazilian, Guatemalan, Nicaraguan and Costa Rican constitutions. Officially, this was because these republican polities were closest to the Philippine people.¹³⁸² But as a matter of fact, the selection also reflects an affinity with Romance languages, especially given that the Belgian constitution was not a republican one.¹³⁸³

In 1900, Mariano Ponce (1863–1918), a Philippine revolutionary acquainted with Sun Yat-Sen, wrote the first account of the Philippine revolution written from revolutionary perspective: *The Philippine Question: A Critical Historical Exposition of the Deeds Relating to the War of Independence* (*Cuestión Filipina: Una exposición (sic!) histórico-crítica de hechos relativos a la guerra de la independencia*). As Ponce writes, the

¹³⁸² Mariano Ponce, *Nan'yō no fūun: Firipin dokuritsu mondai no shinsō* 南洋之風雲：比律賓獨立問題之真相 (*Cuestión Filipina: Una exposición histórico-crítica de hechos relativos a la guerra de la independencia: Turmoil in the Southern Sea: Real portrait of the question of Philippine independence*), trans. Miyamoto Heikurō 宮本平九郎 and Foudzita Suetaka 藤田季莊 (Tokyo: Hakubunkan, 1901), 85–86.

¹³⁸³ Teodoro M. Kalaw, in his preface to Mariano Ponce's book on Sun Yat-Sen, admits that the Malolos constitution was a “pure and complete acceptance of the Western doctrines, especial of the latin countries” (“una aceptación pura y completa de las doctrinas occidentales, sobre todo de los países latinos”). Mariano Ponce, *Sun Yat Sen: El fundador de la República de China* (Manila: Imp. de la Vanguardia y Taliba, 1912), xvii.

Malolos Constitution “occupies the most important place in the contemporary history of our people.”¹³⁸⁴ Consequently, he puts a strong stress on it, devoting two entire chapters on it: Chapter 12 gives an overview of the constitution, and chapter 13 reproduces its text in full. The Malolos Constitution is by far the longest regular chapter and the culminating point of the book.

Ponce’s book, originally written in Spanish while Ponce was in Japan, was addressed to Japanese and Chinese elites.¹³⁸⁵ It was first published in Japanese translation by Miyamoto Heikurō 宮本平九郎 and Foudzita Suetaka 藤田季莊 under the title *Turmoil in the Southern Sea: Real Portrait of the Question of Philippine Independence* (*Nan’yō no fūun: Firipin dokuritsu mondai no shinsō* 南洋之風雲：比律賓獨立問題之真相). From the Japanese, it was translated into Chinese, appearing in 1902 in the Shanghai Commercial Press (*Shangwu Yinshuguan* 商物印書館) under the title *History of the Philippine War of Independence* (*Feiliebin dulizhan shi* 飛獵濱獨立戰史).¹³⁸⁶ This Chinese translation exerted a large influence on Chinese thinking not only about the Philippines, but about colonialism in general.¹³⁸⁷

A year later, in 1903, another book on the Philippine revolution was published in Chinese taking over the Japanese title of Ponce’s book (*Turmoil in the South Sea: Nanyang fengyun* 南洋風雲), but with its contents somewhat changed, edited by the Chinese student Xia Qingfu 夏清馥.¹³⁸⁸ The different chapter division of this version did not change the importance conferred to the constitution: chapter 15

¹³⁸⁴ Ponce, *Nan’yō no fūun*, 84.

¹³⁸⁵ On the book and its influence in China see Karl, *Staging the World*, 102–105, and Rebecca E. Karl, “Secret Sharers: Chinese Nationalism and the Non-Western World at the Turn of the Twentieth Century” (Ph.D. diss., Duke University, 1995), 250–252 and 255–259. On the book see also the recollections of the author himself in Ponce, *Sun Yat Sen*, 17.

¹³⁸⁶ The book appeared in two issuings in 1902. It was reedited at least once afterwards, in 1913. Karl, “Secret Sharers,” 250–252 (especially notes 8 and 9); Pan, “Qingmo lishi yizhu yanjiu,” 171. See also Gu, “Yishu jingyan lu,” 451. For the Japanese version see Ponce, *Nan’yō no fūun*, chapter 12 (84–89) and chapter 13 (90–118).

¹³⁸⁷ Karl, *Staging the World*, 102–105. Ponce affirms that “thousands” of copies were sold in China. Ponce and Kalaw, *Sun Yat Sen*, 17.

¹³⁸⁸ Pan, “Qingmo lishi yizhu yanjiu,” 173–174.

was devoted to the Malolos Congress and the proclamation of the constitution, and the last chapter—no. 16—to the constitution itself.

While in the Philippines, the Cuban Jimaguayú constitution of 1895 was superseded by the Malolos Constitution of 1899, the Chinese public still heard of it in the year 1904. For Charles Bride provided a summary of it in his book *La Guerre Hispano-Américaine de 1898*, which was published in Chinese in 1904 by Li Jinggao 李景鎬 in the same publishing house that had published the 1874 Chinese translation of the *Stateman's Year-Book*, i.e. the Kiangnan Arsenal in Shanghai. Even if not (completely) labelled as such, Bride basically translated articles 1–3, 9 and 18–24 of the constitutional charter, giving an account of how the Jimaguayú constitution created the organs of the revolutionary government.¹³⁸⁹ Bride went on to describe how the *Constitución Autonómica* conceded in turn by Spain to her Caribbean colonies in 1897 did not placate the revolutionaries, being seen as a sign of weakness rather than of conciliation. The conflict ended in the total separation of Cuba from Spain, and in Cuba lying prone to foreign (US American) intervention.¹³⁹⁰

e) Translations of the Constitutional Wave of 1905–1911

After “constitutional preparation” became an official policy of the Chinese government, the number of translations increased even more. After having shown that interest was not limited to the well-known constitutions of the USA, Japan and Europe, this spate of translational activity gives us the opportunity to further delineate the approximate geographical extent of the translated constitutions and

¹³⁸⁹ The articles of the original are not given, but art. 3 is a list enumerating the powers of the Council of State, with the sub-articles 1–8 given as such. The translation mixes the order of Articles 18 and 19; and omitted a part of art. 22, but apart from that was rather faithful. Charles Bride, *La guerre Hispano-Américaine de 1898* (Paris: Librairie Militaire R. Chapelot, 1899), 29–31; Charles Bride, “Xi-Mei zhan shi” 西美戰史 (History of the Spanish-American War), trans. Li Jinggao 李景鎬, in *Jiangnan zhizaoju yishu congbian*, ed. Shanghai Tushuguan, vol. 1, 337–338.

¹³⁹⁰ The Chinese translation did not translate that there was a “river of blood” (*fleuve de sang*) between Cuba and Spain, only stating that there was a deep separation, like between the ancient states of Qin and Yue (*shi tong Qin Yue* 視同秦越). Bride, *La guerre Hispano-Américaine de 1898*, 36, and Bride, “Xi-Mei zhan shi,” 339.

demonstrate how broad the interest for foreign constitutional charters had become. In particular, since we have shown that the republican constitutions passed in the last years of the 19th century readily appeared in China, it also behooves us to show that Chinese translators were concerned with the latest constitutions that were being passed in the years of 1906–1908.

Generally speaking, translation activity was concentrated to Eurasia and North America. The only full translation of a constitution from outside these regions was from Oceania, i.e., from Hawai‘i. Fu Yunlong’s description of Brazilian politics had followed the Brazilian constitution quite closely, and parts of the Cuban constitution of 1895 had been, without being marked as such, published in the Chinese translation of Charles Bride’s book on the war between Spain and the USA. However, there is no full translation of any constitution from Latin America in the late Qing period. It must be noted, however, that this statement is only valid by a very narrow margin, for such translations did not wait much longer. The first translations of the Argentine and the Brazilian constitutions are attested for the first (1912) and second (1913) year of the Republic, respectively.¹³⁹¹ Both had been translated from a compilation that had published by the government printing office of the USA in 1906.¹³⁹²

¹³⁹¹ José Ignacio Rodríguez, “Agenting Gongheguo xianfa Constitution Argentina (1860 nian 9 yue 26 hao zhiding ju 1906 nian Huashengdun chuban zhi Meizhou xianfa American Constitution chongyi)” 阿根廷共和國憲法 Constitution Argentina (一千八百六十年九月二十六號制定據一千九百零六年華盛頓出版之美洲憲法 American Constitution 重譯) (Constitution of the Republic of Argentina—Constitución Argentina, promulgated on September 26, 1860, retranslated according to *American Constitutions*, published in Washington in 1906), trans. Qian Zhixiu 錢智修, *Fazheng zazhi* 法政雜誌 2, no. 5 (1912); José Ignacio Rodríguez, “Baxi Minzhuguo xianfa Constituisao da Republica do Beafil (1891 nian 2 yue 24 hao zhiding ju Laodelige Meizhou xianfa Rodriguefs Aafrican Constitutions chongyi)” 巴西民主國憲法 Constituisao da Republica do Beafil (一千八百九十一年二月二十四號制定據勞德利格美洲憲法 Rodriguefs Aafrican Constitutions 重譯) (Constitution of the Republic of Brazil—Constituição da República do Brasil, promulgated on February 24, 1891, retranslated according to Rodríguez, *American Constitutions*), trans. Qian Zhixiu 錢智修, *Fazheng zazhi* 法政雜誌 2, no. 7 (1913). The Brazilian constitution was also reprinted in the magazine *Constitutional News* (*Xianfa xinwen* 憲法新聞).

¹³⁹² José I. Rodríguez, ed., *American Constitutions: A Compilation of the Political Constitutions of the Independent Nations of the New World: With Short Historical Notes and Various Appendixes* (Washington: Government Printing Office, 1906).

These and other untranslated constitutions, however, were not completely unknown in Qing times either, for they were described in overviews of political systems of the world. Due to the large distance and little direct contact, these descriptions were also mediated through third sources. This frequent mediation via third sources also explains why, although Chinese intellectuals were very interested in recent events and swiftly translated recent constitutions, not all information about foreign constitutions arriving in China was up-to-date.

The above-mentioned Japanese-mediated *incognito* translation of the *Stateman's Year-Book* under the title *Comparison of the Constitution of all Countries* (*Wanguo xianfa bijiao* 萬國憲法比較) might serve as an example for this. While the first two direct translations of the *Year-Book* had appeared immediately, the long detour via Japan had caused Ji Yihui's translation to be outdated, as the basis was the *Year-Book* for 1887.¹³⁹³ The information continued to be used years thereafter. In 1906, the *Book of Opinions on Preparing the Constitution* (*Yubei lixian yijianshu* 豫備立憲意見書) detailed China's constitutional efforts on the occasion of the Qing court's declaration of intent. One of the chapters, entitled "Brief Examination of the Constitutions of Various Countries" (*Wanguo xianfa kaolüe* 萬國憲法考畧), rehashed much of the information given in Ji Yuhui's book, giving a comprehensive overview over the written constitutions of the world and dedicating about 3–5 lines to each. For example, the section on the constitution of Brazil beautifully described the Imperial constitution in the shape it had taken with the amendments of 1834. However: this constitution had lost effect in 1889 by a coup d'état introducing a presidential republic.¹³⁹⁴ The information given in the *Book of Opinions* was already outdated by 17 years.

¹³⁹³ John Scott Keltie, *The Stateman's Year-Book for the Year 1887*, Twenty-fourth annual publication revised after official returns (London, New York: MacMillan, 1887) (cf. the statistical tables, which show numbers identical to the 1887 edition).

¹³⁹⁴ Jiaoyu pinwu gongsi, *Yubei lixian yijianshu*, chapter "Brief Examination of the Constitutions of Various Countries" (*Wanguo xianfa kaolüe* 萬國憲法考畧). The section on Brazil is in pages 3b–4a of the chapter.

Such anachronisms notwithstanding, constitutional texts were collected in considerable historical and local depth from Europe and North America. One extensive Chinese collection was a compendium that had originally been published by the Japanese Furuya Sōsaku 古屋宗作 in 1887 under the title *Compendium of Constitutions* (*Kenpō isan* 憲法彙纂).¹³⁹⁵ Furuya's book itself was based on a number of European and US American sources, most notably on François-Rodolphe Dareste's *Constitutions Modernes*, published in 1883.¹³⁹⁶ From his sources, Furuya selected constitutions from 16 polities. The 14 constitutions from Europe included the various English constitutional texts, both the German and Prussian constitutions, and various charters of smaller states such as Denmark or Portugal. Russia, in spite of not having a constitution as such, was represented as well by the relevant part of the *Digest of the Laws of the Russian Empire*. Additionally, Furuya's collection contained the constitutions of the USA and of Hawai'i (adopted in 1864, valid until 1887).

In China, parts of Furuya's compendium became the basis for at least two collectanea of translations, both of them modified to accommodate to the constitutional changes that had happened in the meanwhile. In 1907, Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九 edited the book *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編).¹³⁹⁷ In 1911, the Shanghai Commercial Press edited the collection *Complete Texts of the Constitutions of France and the United States* (*Famei xianfa zhengwen* 法美憲法正文), which was then republished in 1912.

In the case of France, both compendia contain not only the constitution in force at the time (the 1875 constitutional laws of the French Republic), but also the

¹³⁹⁵ Furuya Sōsaku 古屋宗作, ed., *Kenpō isan* 憲法彙纂 (Compendium of constitutions) (N.p.: Furuya-shi, Meiji 20 [1887]).

¹³⁹⁶ François-Rodolphe Dareste and Pierre Dareste, eds., *Les Constitutions Modernes: Recueil des constitutions actuellement en vigueur dans les divers états d'Europe, d'Amérique et du monde civilisé. Traduites sur le texte et accompagnées de notices historiques et de notes explicatives*, 2 vols. (Paris: Challamel Ainé, 1883).

¹³⁹⁷ Qi and Gu, *Shiqi guo xianfa zhengwen huibian*.

1852 constitution of the French Empire with several amendments and other relevant legal texts. This shows that both collections departed from the same source. However, stylistic differences in the translation of the French documents show that the two compendia of 1907 and 1911 were translated independently.

As the title indicates, the latter collectanea contain only documents on France and the USA.¹³⁹⁸ However, the Chinese book adds something novel that shows the interest for the latest constitutions: It prints the Constitution of the State of Oklahoma, which had just been promulgated in 1907 as the most recent constitution of the United States. Constitution-making, it turns out, was not finished in the “West” either. New constitutions were still being made, and China was immediately keeping track of them.

In contrast to the 1911 selection, the 1907 Chinese version of Furuya’s book by Qi Yuhe and Gu Xiangjiu was the most extensive Chinese-language compendium of fully translated constitutional charters that appeared in late Qing times. This collectanea also shows the tensions between relying on rapidly aging information mediated via third sources and the wish to stay up-to-date with the newest constitutional developments around the world. Next to the European and US American constitution, Qi and Gu also brought the constitution of Hawai‘i to the knowledge of the Chinese public. However, it is clear that the two men had not

¹³⁹⁸ *Famei xianfa zhengwen* 法美憲法正文 (Complete texts of the constitutions of France and the United States) (Shanghai: Shangwu yinshuguan, 1911). The constitutions of France, the United States of America and Oklahoma are each paginated separately; the constitutional documents of France in the first part of the book are printed as follows: 1–19 (Constitution of January 1, 1852); 19–22 (*sénatus-consulte* of November 7, 1852); 23 (Imperial declaration of December 2, 1852); 24–29 (*décret organique* of December 18, 1852); 29–36 (*sénatus-consulte* of July 17, 1856, misdated as July 16); 36–37 (*sénatus-consulte* of May 27, 1857); 37–38 (*sénatus-consulte* of February 17, 1857); 38–40 (*sénatus-consulte* of July 18, 1866); 40–43 (“Loi du septennat” of July 20, 1873); 43–46 (“Law on the organisation of the public powers” of February 25, 1875; the text interpolates Art. 10 and 11 into the text. These actually belong to one of the other constitutional laws, the “Law on the organisation of the Senate” of February 24, 1875, which is otherwise omitted); 46–50 (“Law on the relationship between the public powers” of July 16, 1875); 50–61 (*loi organique* of August 2, 1875); 61–72 (*loi organique* of November 30, 1875); 72–73 (amendment to the “Law on the organisation of the public powers” of June 19/21, 1879); 73–75 (law of July 22, 1879).

been following the news from that part of the world with much attention: The Hawaiian constitution of 1864, contained in the book, had in the meanwhile been superseded by three further constitutions, two of them monarchic (1887, 1893) and one republican (1893). The 1887 constitution had already put political power in the hands of US American business interests, and eventually, in 1898, Hawai‘i ceased to exist as an independent state altogether, as it was formally annexed by the USA.

However, apart from that, Qi and Gu, also modified the translation and adapted the compendium to the year 1906. Their compendium departed from Furuya’s original by amending the translation of the English *Bill of Rights* on the basis of an English-language source.¹³⁹⁹ They also now included the Japanese constitution, which obviously had not been present in the 1887 original. Most importantly, Qi and Gu replaced the Russian *Digest of Laws* with the constitution that had been adopted just a few months earlier, in the spring of 1906.

This last alteration shows that Chinese intellectuals and officials were indeed paying close attention to the recent constitutional upheavals in Eurasia, and to the constitutional charters that were being drafted at the time. Each of the three new constitutional charters — of Russia, of Persia and of the Ottoman Empire — was translated into and published in Chinese multiple times. The various translations of the Persian constitution, together with the accompanying comments by the editors, have already been discussed above. Of these three states, the one whose constitutional charter was translated most often and drew the most interest was Russia. There are at least six translations or reproductions of the Russian constitution:

- a) The *Essentials of Government in Various Countries* (*Lieguo zhengyao* 列國政要),¹⁴⁰⁰ the 132-volume result of Duang Fang’s and Dai Hongci’s constitutional mission abroad, contained 3 volumes (nos. 8–10) with legal provisions of the “Russian constitution”. These were, however, not a

¹³⁹⁹ Qi and Gu, *Shiqi guo xianfa zhengwen huibian*, 25. Referring to John William Burgess, *Political Science and Comparative Constitutional Law*, 2 vols. (Boston, London: Ginn & Company, 1902).

¹⁴⁰⁰ Duanfang and Dai, *Lieguo zhengyao*.

translation of the constitutional charter, but of other legal provisions concerning the State Council, the Duma and the elections.

- b) An abbreviated translation was included in the special volume on constitutional government published by the *Eastern Miscellany* (*Dongfang zazhi* 東方雜誌) in 1906;¹⁴⁰¹
- c) In the Tokyo-based *Magazine of Law and Politics* (*Fazheng zazhi* 法政雜誌) of June 1906;
- d) In the first edition of the journal *Miscellaneous Knowledge about Constitutional Government* (*Xianzheng zashi* 憲政雜識), of December 1906;¹⁴⁰²
- e) In the afore-mentioned compendium *Constitutions of 17 countries* (*Shiqi guo xianfa* 十七國憲法), published in book form in 1907.¹⁴⁰³
- f) In the Bulletin of the “Society for Preparation of Constitutionalism” (*Yubei lixian gonghui bao* 預備立憲公會報); this was not a literal translation, but a prose reproduction, followed by a short commentary saying that in spite of its shortcomings, it was a remarkable feat for a country that had been an autocracy for millennia. This showed the great trend of the world.¹⁴⁰⁴

Compared with the Russian Empire, there are fewer versions of the Ottoman constitution. Yet, it, too, received considerable official and public attention. The Ottoman example shows that the official goal of translation constitutions was not limited to the constitutions of Japan, Germany and England. China did not have a diplomatic representation in Constantinople, but it was the Chinese minister to the

¹⁴⁰¹ “Junzhu lixianguo xianfa zhaiyao,” 5–9.

¹⁴⁰² Bao Xiyi 包兮毅, “Geguo xianfa zhengwen (Eguo)” 各國憲法正文（俄國）(Full texts of the constitutions of the various countries: Russia), *Xianzheng zashi* 憲政雜識 1, no. 1 (1906).

¹⁴⁰³ Qi and Gu, *Shiqi guo xianfa zhengwen huibian*.

¹⁴⁰⁴ He Yu 何域, “Eguo xianfa ji xuanjufa zhi dayi” 俄國憲法及選舉法之大意 (Rough meaning of the Russian constitution and electoral law), *Yubei lixian gonghui bao* 預備立憲公會報, no. 20 (Guangxu 34 [1908]).

Netherlands, Lu Zhengxiang, who sent a translation to the ministry of foreign affairs in Peking in January 1909.¹⁴⁰⁵ Later in the year, the full text of the Ottoman constitution came to the attention of the broader public at least twice, in the same identical translation. The pro-constitutional *Eastern Miscellany* had been publishing translations of constitutional charters since 1906, including both the Russian and the Turkish constitution, and published the Ottoman charter in two instalments in June and July.¹⁴⁰⁶ But most notably, it was of such importance that it did not only appear in a monthly magazine specifically devoted to the constitutional cause, but was even published in full in a daily general newspaper. The *Shenbao* printed it in six editions from March 15 to April 3, 1909.¹⁴⁰⁷ Apart from a translation of the *Declaration of the Rights of the Man and of the Citizen* of 1789, which had been given as a part of the French constitution,¹⁴⁰⁸ the Ottoman Constitution was the only full translation of a constitutional charter to be published in the *Shenbao*.

3. Working on a Final Constitution

a) An Overview over the Various Drafts

It was on this fertile soil of translated constitutional texts that a constitutional document for the Qing Empire was being elaborated. However, besides the official *Outline of a Constitution*, fragmentary sources limit our knowledge of the concrete constitutional texts that were being drafted at the end of the Qing dynasty. The original goal was writing the constitution until 1916, but in November 1910, under

¹⁴⁰⁵ Lu Zhengxiang 陸徵祥, *Yi cheng Tu'erqi xianfa you* 譯呈土耳其憲法由 (Memorial submitting the constitution of Turkey), *Guangxu* 34/12/16 [January 7, 1909], file no. 02-12-026-01-018, Archives of the Institute of Modern History, Academia Sinica, Taipei.

¹⁴⁰⁶ "Tu'erqi chongban xianfa tiaowen" 土耳其重頒憲法條文 (Text of the reinstated Turkish constitution), *Dongfang zazhi* 東方雜誌 6, nos. 5–6 (Xuantong 1 [1909]).

¹⁴⁰⁷ *Shenbao* 申報, "Tu'erqi chongban zhi xianfa" 土耳其重頒之憲法 (The reinstated Turkish constitution), March 15, 17, 18, 22, 26; April 3, 1909.

¹⁴⁰⁸ *Shenbao* 申報, "Faguo xianfa renquan shiqi tiao yizhu" 法國憲法人權十七條譯注 (Translation and commentary of the 17 articles on human rights of the French constitution), March 30; April 1; 6, 1907.

increased pressure, the Court revised the nine-year plan and declared that the constitution should be adopted in 1913.¹⁴⁰⁹ A day after the revision, the Court put Pulun and Zaize in charge of drafting the constitution.¹⁴¹⁰ The team was reinforced by further three members on March 20, 1911: Chen Bangrui 陳邦瑞 (1855–?), Li Jiaju and Wang Rongbao.¹⁴¹¹

As the draft for the final constitution was being elaborated in secrecy,¹⁴¹² the only substantial source on it is Wang Rongbao's diary, which merely allows for a very fragmentary academic understanding of it.¹⁴¹³ Besides this, there are three surviving full drafts of a constitution. All three were private, unofficial drafts, although two of them ended up at the Constitutional Office in Peking. The first is a document contained at the First Historical Archives in Peking. Part of scholarship has deemed it to be an official document closely connected to the ultimate draft by Wang Rongbao and Li Jiaju, but Shang Xiaoming 尚小明 and Cui Xuesen 崔學森 have convincingly argued that it was rather a private draft that happened to be circulated at the Constitutional Office.¹⁴¹⁴ The two other drafts were both published as books in Japan in 1909. One was a mysterious work written by the mysterious Japanese scholar Kitaoni Saburō before the 1908 *Outline* and late in the year given to a Chinese friend of Kitaoni's. A revised, post-Outline version was then printed in 1909 by a commercial editor and widely distributed in Japan.¹⁴¹⁵ The last

¹⁴⁰⁹ Gugong Bowuyuan Ming-Qing dang'anbu, *Qingmo choubelixian dang'an shiliao*, vol. 1, 78–79.

¹⁴¹⁰ Ibid., vol. 1, 79. Also contained in *Daqing xuantong zhengji shilu*, 755 (chapter 43, 6). Gao, *Qingmo lixian shi*, 242, mistakenly gives Xuantong 2/10/3 = November 4, 1910. The correct date was Xuantong 2/10/4, i.e., November 5, 1910.

¹⁴¹¹ *Daqing xuantong zhengji shilu*, 865 (chapter 49, 17).

¹⁴¹² Secrecy had been proposed to the Court shortly after the appointment of Pulun and Zaize by Yuan Lizhun 袁勵準 (1876–1935); the Court forwarded the proposal to the drafters. See *ibid.*, 763 (chapter 43, 21).

¹⁴¹³ For an overview of existing knowledge about the draft see Cui, "Qingting zhixian yu Mingzhi Riben," 118–144, with further references.

¹⁴¹⁴ See Shang Xiaoming 尚小明, "'Liang zhong Qingmo xianfa cao'an gaoben' zhiyi" "兩種清末憲法草案稿本" 質疑 (Disputing "Two late-Qing constitutional drafts"), *Lishi yanjiu* 歷史研究, no. 2 (2007), 164–169, and Cui, "Qingting zhixian yu Mingzhi Riben," 195–199.

¹⁴¹⁵ Kitaoni Saburō 北鬼三郎, *Daishin kenpōan* 大清憲法案 (Draft Constitution for the Qing) (Tokyo: Keisei shoin, Meiji 42 [1909]).

draft is the only one that did not find its way to the Constitutional Office: it was a constitution compiled by Zhang Bolie.¹⁴¹⁶ Apart from these drafts, documents from the archives of the Constitutional Office can help to understand discussions that were going on there.

Discussion of Chinese constitution-making is often narrowed down to a discussion of China's reception of the Meiji Constitution, due to the close resemblance of the "Outline" of 1908 with it and the close connection of the drafts and drafters with Japan. Yet, a close look at the sources reveals that although legal scholars, and especially the drafters of the Chinese constitution, chose to adopt many, but not all, Japanese norms, they did not blindly do so. They were aware that the quest for constitutions was a global effort. In particular, they were aware of the global wave of constitutionalism that had led to promulgation of the Russian constitution in 1906 and to reinstatement of the Turkish constitution in 1908.

b) Inside the Constitutional Office: Global Perceptions

How, then, was this multi-faceted activity reflected in the work of the Constitutional Office? Given the various well-known factors that spoke in favour of Japan, it is not at all surprising that indeed a clear preference for the Japanese model can be seen from the surviving material concerning the drafting of a new constitution. Wang Rongbao, in his diary, makes clear how much he relied on Japanese literature. For example, in the entry for September 16, 1911, when pondering about the expenditures of the emperor, he not only refers to Art. 67 of the Meiji constitution, but writes that he has consulted a whopping ten different Japanese books on the question.¹⁴¹⁷

The scholar Luo Zhenyu 羅振玉 (1866–1940) formulated his preference for Japan as a norm when he submitted to the Constitutional Office his *Parochial Views on Investigation of Politics and Administration* (*Diaocha zhengzhi guanjian* 調查政治管

¹⁴¹⁶ Zhang, *Jiading Zhongguo xianfa cao'an*.

¹⁴¹⁷ Wang, *Wang Rongbao riji*, 296.

見). In this neatly printed four-page document, Luo gave ten opinions on China's constitution. Luo argued that European constitutions had been the basis for the Japanese constitution, but that the national conditions of Japan differed markedly from those of the West, and so did the Japanese constitution. As China's conditions were similar to Japan's, Lu's second opinion expressly mandated: "A constitution has to closely follow Japan's" (*Xianfa bi xiang xun Riben* 憲法必詳詢日本).¹⁴¹⁸

However, at the same time, there was a keen consciousness about the constitutions of the world as well as debates on them. Luo Zhenyu himself stressed that the constitution-making process was a dialogue, and suggested that once a draft be compiled, it should be distributed to "specialists of politics and law of all countries" (*geguo zhengfa dajia* 各國政法大家). With them, the merits and shortcomings of the draft should be discussed, for the final constitution should be as solid and immune to changes as possible.¹⁴¹⁹

Perhaps the point of utmost importance to the Qing government was the part about the sovereign's position. On this part, the constitution of Russia with her strong Czar was of special interest. For example, a memorial penned by the Prince Pujun 溥儁 (1885–1942), contained in the archives of the Constitutional Office,¹⁴²⁰ criticises the parts of the 1908 Outline of a Constitution on the basis of the Japanese and the Russian constitutions. Thus, art. 3 of the Outline, which stipulated that "laws shall be made and promulgated by the sovereign, and he has the power to determine what may be assigned to others for deliberation."¹⁴²¹ A fine-

¹⁴¹⁸ Luo Zhenyu 羅振玉, *Tiaocha zhengzhi guanjian* 調查政治管見 (Parochial views on investigation of politics and administration), file no. 09-01-01-0001-006, First Historical Archives of China, Beijing, [1–2].

¹⁴¹⁹ *Ibid.*, [4].

¹⁴²⁰ Jinjiang Xianzheng Bianchaguan niding xianfa dagang youguan Junshang daquan zhe canchou taguo xianfa fenbie qingzhong jianfan nichen fuqi jiancai 謹將憲政編查館擬訂憲法大綱有關 君上大權者參酌他國憲法分別輕重簡單擬陳伏乞鑒裁 (Simple memorial concerning the prerogatives of the Emperor in the Constitutional Office's drafting of the constitutional charter, consulting the constitutions of other countries and ordered according to importance, reverently submitted with a request for Imperial review), file no. 09/01-01/003/009, First Historical Archives of China, Beijing.

¹⁴²¹ For an English translation of the Outline see United States Department of State, *Papers Relating to the Foreign Relations of the United States 1908*, 194–196.

print annotation to the norm specified that “laws which have been passed by parliament shall not become operative until approved and promulgated by the sovereign.”

In this case, the memorandum took issue with the *Outline's* use of the expression “by the sovereign” (*qinding* 欽定), criticising its inappropriateness, the conceptual confusion expressed in the norm and the technical slovenliness of the draft. The memorandum cites both article 5 of the Japanese constitution and article 7 of the Russian constitution, which both determined that the sovereign and the parliament jointly exerted legislative power (*xing lifaquan* 行立法權). It goes on to cite articles 6 of the Japanese and 9 of the Russian constitution, which both laid down that, in a second separate step, the Emperor approved (*caike* 裁可) the laws. The memorandum heavily criticised the imprecise Chinese document by citing the Japanese and Russian texts as models of good law-making. Interestingly, this document did not adopt the common perception that Russia's constitution was a fake, but, without looking at the constitutional and legal reality, contrasted the texts of both the Japanese and Russian charters with the Chinese in technical terms:

The meaning of legislation in both Japan and Russia pays attention to the content and not the name; they treat laws as an essential tool for life and property of the people. ... When the present article writes “by the sovereign,” it pays attention to the name and not to the content. Now, the reason why both the Japanese and the Russian constitution clearly regulate the power to approve laws in a special norm is exactly to express that the effects of executive power cannot arise without approval [by the sovereign]. The meaning is the same as the annotation to the present article, but there are some of its effects which cannot be attained by an annotation. Why is that? All countries, when drafting legal codes, will necessarily make sure that the words of the norms are certain and clear. Thus, exegesis and prac-

tice both shall be analysed according the original text, lest there be misunderstandings... If the respective legal code does not exhaust the meaning of a norm in the article, then some regulate this in the second and third section of the article, and some add a “proviso” formula or the like. All these have the same effectiveness as the article itself. But one has never seen annotations added beneath the article! ...

蓋日俄兩國立法之義尚實不尚名以法律為人民生命財產之要具...本條原文曰 欽定者尚名不尚實也...夫日本與俄國憲法皆以裁可權明定於專條者正所以表示立法權効力之發生非經裁可不能施行也其義與本條註語同其効力有非註語所可及者何則各國制定法典必期條文字句確實明晰則解釋遵守皆當按本斯義以免誤會...本法典於條文中規定義有未盡者規定於同條第二項第三項者有之或加但書云云者有之皆與條文有同一之効未見有條文之下而加註語者 ...¹⁴²²

c) *The Constitutional Code for the Great Qing Empire*

While such criticisms would certainly have affected the final constitution, no official draft of it has survived. Instead, let us thus have a look at the surviving unofficial drafts. The identity of the non-book draft contained in the First Historical Archives of China, entitled *Constitutional Code for the Great Qing Empire* (*Daqing Diguo xianfa fadian* 大清帝國憲法法典), has already been extensively and controversially debated in Chinese literature. At this point, thus, it shall suffice to just register this likely identity, and add a few details showing how the Chinese constitution was being co-produced with the other Imperial constitutions that were coming into being between 1905–1910.

It is not exactly clear when this draft was written, but the accompanying memorial speaks of the “prince-regent” and states that the constitutional plan was to be fulfilled after nine years. Hence, one can surmise that it was circulated very

¹⁴²² Junshang daquan, file no. 09/01–01/003/009, First Historical Archives of China, Beijing.

shortly after Emperor Guangxu's death, still in the first year of the nine-year plan, i.e., roughly between November 1908 and January 1909.¹⁴²³ Yu Jiang 俞江 has argued that the *Constitutional Code for the Great Qing Empire* was "clearly written by a Chinese" and that it was a precursor to the official draft.¹⁴²⁴ Chi Yunfei 遲雲飛 instead sees "many traces of it being a translation from Japanese" and argues that it was an improved version of the official draft.¹⁴²⁵ Most convincingly, however, Shang Xiaoming 尚小明 has argued that it was probably neither, but a private draft made by pro-constitutional circles within China, who gave it to the Constitutional Office to support their work.¹⁴²⁶

This becomes clear from the accompanying memorial to the *Constitutional Code*. While the *Constitutional Code* itself has ended up in the documents of the Zizhengyuan, the accompanying memorial, containing some prefatory remarks and a summary of the constitution, has remained among the documents of the Constitutional Office. The accompanying memorial is interesting for how it framed the need for such a constitutional draft. It explains that constitutions had become popular following a "wave of civilisational evolution" (*wenming jinhua zhi chaoliu* 文明進化之潮流) that had travelled from Europe over the Atlantic to the Americas (*Meizhou* 美洲) and from there over the Pacific to Japan, whence it was slowly reaching China. But why should China adopt a constitution? Because China had to take part in the "competition of nations" (*shijie wanguo zhi jingzheng* 世界萬國之

¹⁴²³ The covering memorial is to be found in the First Historical Archives under Cheng wei chouni Daqing Diguo xianfa fadian chengdi cuozhengwang deng yiqi caina shi 呈為酌擬大清帝國憲法法典呈遞攝政王等以期採納事 (Memorial on a draft of a constitutional charter for the Qing Empire presented to the Prince-Regent for adoption), file no. 09/01-01/003/010, First Historical Archives of China, Beijing. For the conclusion see Cui, "Qingting zhixian yu Mingzhi Riben," 194–195.

¹⁴²⁴ Yu Jiang 俞江, "Liang zhong Qingmo xianfa cao'an gaoben de faxian ji chubu yanjiu" 兩種清末憲法草案稿本的發現及初步研究 (Discovery of and initial research on two late Qing constitutional drafts), *Lishi yanjiu* 歷史研究, no. 6 (1999), 93.

¹⁴²⁵ Chi, *Qingmo yubei lixian yanjiu*, 303.

¹⁴²⁶ Shang, "Liang zhong Qingmo xianfa cao'an gaoben' zhiyi," 167–169.

競爭), otherwise it would “suffer disastrous defeats and be eliminated by evolutionary selection” (*liebai bi gui taotai* 劣敗必歸淘汰).¹⁴²⁷

So far, the drafters’ social Darwinian argument could be interpreted along the lines of China being a late-comer to constitutionalism, trying to cope with a predefined concept. But reality was more complex: Shang Xiaoming took notice of a little detail which he uses to support his conclusion that the *Constitutional Code* was a private draft. In the documents of the *Zizhengyuan*, together with the *Constitutional Code*, one finds a copy of the Russian constitution (*Luxiya xianfa* 露西亞憲法), translated from the *Asahi shimbun*. Apparently, both documents had been given to the *Zizhengyuan* for reference when drafting a final constitutional charter for the Qing Empire.¹⁴²⁸ This detail confirms that China was not that much of a global outlier in constitutional history, and that the wave of “constitutionalisation” mattered to the drafters of the Chinese constitution. What better depiction of the global co-creation of a constitution could there be than the two documents, the recently-enacted constitution of the Russian empire and a private draft made by Chinese subjects, being used side by side as references for the new constitution of the Qing Empire?

d) Zhang Bolie and his Draft

Let us instead concentrate on the two drafts published in book form, which are both significantly understudied. Both have a high value added because they come with extensive article-to-article commentaries by the authors themselves, showing the considerations that led to the final norm texts. Both drafts are quite revealing

¹⁴²⁷ Daqing Diguao xianfa fadian, file no. 09/01-01/003/010, First Historical Archives of China, Beijing, [1].

¹⁴²⁸ Shang, “‘Liang zhong Qingmo xianfa cao'an gaoben' zhiyi,” 167–169. The Japanese source had been published two years earlier: *Asahi shimbun* 朝日新聞, “Rokoku kenpō (5-gatsu 9-ka Rokoku kanpō ni yoru)” 露國憲法（五月九日露國官報に依る）(Constitution of Russia: According to the Russian official gazette of May 9), June 25, 1906.

in illustrating how the creation of a constitution was an international dialogue, enterprise and co-production.

Next to nothing has been written about Zhang Bolie's draft. Zhang was a student from Hubei who had first been sent to Japan by Zhang Jian in 1904 and had returned to Japan after a stint at home in 1907. Later, in Republican times, he became an important parliamentarian. Zhang published his draft in book form in 1909 under the title *Hypothetical Draft of a Constitution for China* (*Jiading Zhongguo xianfa cao'an* 假定中國憲法草案).

Other than many of his fellow students in Japan, he was not a revolutionary, but drafted his constitution close to the lines of what the Qing government was envisioning. However, the way in which he put into legal terms the principles of hereditary Emperorship and of "the king can do no wrong" (*rex non potest peccare*), shows that he had read not only superficially the Japanese constitution, but also other constitutional charters and existing literature on constitutional law. His articles 1–3, thus read:

- | | |
|--------|--|
| Art. 1 | China is a state which is common to the ruler, officials and people of China. Rulership is bestowed upon the Aisin Gioro Clan, continuing in a hereditary line from the former Emperors to their descendants. The state has the style name "Qing." |
| Art. 2 | The Emperor is like heaven. The officials and subjects cannot commit crimes against him. |
| Art. 3 | The Emperor must treat the officials and subjects with courtesy and love. |
| 第一條 | 中國為中國君臣人民共公之國家奉載為新覺羅氏為皇帝續先王緒垂子孫統國號清 |
| 第二條 | 皇帝如天臣民對之不可獲罪 |

In Art. 1, the explicit definition of China as being a representative monarchy and the exact denomination of the ruling house was something not present in the Japanese model, but in several European constitutions. Article 3 was most likely Zhang's innovation, which he justified both with Confucian values and with the "reality of all constitutional states of the world" (*shijie lixian geguo shiji* 世界立憲各國實際). But perhaps Zhang's struggle with adapting the constitutional models he had to the Chinese realities can be best seen in the case of the formula "sacred and inviolable" and how it was reflected in art. 2 of his draft.

Zhang objected to both terms on the grounds of them not fitting the national circumstances of China. Citing the Japanese scholar Sueoka Seiichi 末岡精一 (1855–1894), he declared the term "sacred" (*shensheng/shinsei* 神聖) to be a nipponism. Were the great Emperors of antiquity not revered without bearing the title "sacred"? Zhang deplored the *Outline's* use of the term: "It is even more nonsense that my country has, again, blindly followed this" (*Woguo you mangcong zhi, geng shu wuwei* 我國又盲從之。更屬無謂。). Zhang also objected to the term "violate" (*qinfa* 侵犯) on the grounds of how it was used in the Chinese classics. His alternatives, declaring the emperor to be "like heaven" and forbidding to "commit crimes" against him, added a new twist to this clause common to most constitutions across Eurasia.

Zhang's draft constitution did not stand alone: The book in which it was published contained a preface and, as noted in chapter four, a Chinese translation of the Japanese book *China's Constitutional Question* (*Shinkoku rikken mondai* 清國立憲問題). These make clear that he belonged to the enthusiastic group of Chinese intellectuals. With the translation of the book, Zhang entered into a direct dialogue with the Japanese intellectuals and politicians giving advice to China: He answered individually to each essay, agreeing with some points, but often also

¹⁴²⁹ Zhang, *Jiading Zhongguo xianfa cao'an*, 1–6.

harshly criticising them for not being as optimistic as he was. For example, similarly to Nakamura Shingo, Katō Takaaki was one of the most pessimistic voices. In Katō's opinion, China was not learning from its own history and national circumstances, and was acting "recklessly" (*keikyōmōdō* 輕舉妄動) in trying to jump into constitutionalism just because Japan had obtained military victories after adopting a constitution.¹⁴³⁰ Zhang's answer to this was that this opinion needed no deeper comment, for it was a "blind theory ignorant of current affairs" (*bu shi shiwu zhi manglun* 不識時務之盲論).¹⁴³¹

But the "current affairs" were well-known at the global level: A wave of constitutionalism was affecting Eurasia. What differed widely, as has been shown, was its interpretation. Zhang himself was fully aware of the phenomenon, but also knew that not everybody saw the other experiences being made across Eurasia as positive. Thus, in the preface to his book, he narrated the cases of Russia and the Ottoman Empire, and defended constitutionalism from accusations that it did not much to help a country recover. While others drew negative lessons from Russia, Zhang simply dismissed the example: It was sham constitutionalism, but what China should do was real constitutionalism. The Ottoman Empire, instead, had obtained a major international victory through the adoption of a constitution. Thus, Zhang stressed that for China too, a constitution would be fundamental for national salvation:

Alas! If a constitution is adopted a day earlier, then the court will become strong a day earlier, and China will be saved a day earlier. If a constitution is adopted a day later, then the court will be endangered a day earlier, and China will also perish a day earlier. There have been examples of countries which have prospered through the adoption of constitutions, but there have not been any examples yet of countries which have perished through

¹⁴³⁰ Doi, *Shinkoku rikken mondai*, 216–217.

¹⁴³¹ Zhang, *Jiading Zhongguo xianfa cao'an*, 195.

the adoption of constitutions! Earlier, I heard that the constitution adopted by Russia was empty and void and that the partisans [of constitutionalism] have become half-outlawed heroes. Since Turkey adopted a constitution, England and Russia have rested the case of Macedonia. How has the adoption of constitutions disappointed in other countries? Please, don't be afraid and don't [adopt] fake [constitutions]!

吁早一日立憲則朝廷早強一日中國即早救一日遲一日立憲則朝廷早危一日中國亦早亡一日立憲而興其國者有之矣立憲而亡其國者未之前聞露國立憲虛無黨半化為義勇士國立憲英露消改馬其頓案立憲何負人國哉請勿畏勿偽

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4. Kitaoni Saburō, the Pioneer of Constitutions in Modern China

a) Kitaoni Saburō's Relevance to Constitutional Studies

Compared to Zhang Bolie, somewhat more has been written about Kitaoni Saburō and his draft, or, more precisely, about his two extant drafts, although he is still only known to a very restricted circle of scholars. Most recently, Cui Xuesen has devoted a significant portion of his doctoral dissertation to Kitaoni.¹⁴³³ Due to limited source material, existing literature has been groping in the dark, and both the constitutional draft and the man behind it have remained utterly mysterious. This sub-chapter brings up fresh Japanese material which unveils part of the mystery or at least gives directions for further research.

Kitaoni's draft is of paramount research interest for a number of reasons. First, he was "the pioneer of China's modern constitutions," in analogy to the title

¹⁴³² Ibid., 4–5.

¹⁴³³ Cui, "Qingting zhixian yu Mingzhi Riben," 166–191. Cui has also published on the question in Cui Xuesen 崔學森, "Zailun Qingmo *Daqing xianfa'an* gaoben wenti" 再論清末《大清憲法案》稿本問題 (Renewed discussion of questions concerning the manuscript of the *Draft Constitution for the Qing* in the late Qing), *Lishi dang'an* 歷史檔案, no. 2 (2017), 109–117. The newer publication is a condensed version of the relevant parts of the doctoral dissertation, using the same sources and coming to the same conclusions.

of Zhao Linfeng's 趙林鳳 biography of Wang Rongbao (*Zhongguo jindai xianfa di yi ren* 中國近代憲法第一人).¹⁴³⁴ Wang was the first official constitution-maker of the Qing Empire. But even more than him, it is Kitaoni Saburō who can justly claim this title. Kitaoni began working on his constitutional draft at a time when nobody in China was yet thinking of compiling a concrete constitutional charter, and the first version of it was completed well before the *Outline of a Constitution*, making it the first constitutional text ever drafted for China.

Second, even more than Zhang Bolie's book, Kitaoni's draft shows that the drafting process of a Chinese constitution was much more than a mere passive (albeit selective) copying of the Japanese model, but was indeed embedded in a wider context of constitution-making. The creation of Kitaoni's constitutional draft shows the close regional dialogue between Japan and China, and its contents show the global nature of constitution-making at the time.

Third, although it was written in Japan by a Japanese scholar, the draft ended up in China several times. The impact of his work on Wang Rongbao and his colleagues is contested and might have been limited, but Kitaoni's work was nonetheless a factor in Qing constitution-making. This is evidenced by the fact that both the Japanese original and a Chinese translation, made by Li Jingming 李景銘 (1877–?), circulated within the Constitutional Office in Peking.

But who was he, this pioneer of China's modern constitution? Yu Jiang has called Kitaoni Saburō a famous (*zhuming* 著名) scholar, without giving a justification for the adjective.¹⁴³⁵ Others, such as Shang Xiaoming and Cui Xuesen, have rejected this characterisation of Kitaoni. Shang writes that he was apparently not very well-known (*zhimingdu sihu bu shi hen gao* 知名度似乎不是很高), for he is not to be found in any *who's who* list of the late Meiji period.¹⁴³⁶ Cui went even further in the evaluation of Kitaoni's fame. As he writes, he used the method of searching

¹⁴³⁴ Zhao, *Wang Rongbao*.

¹⁴³⁵ Yu, "Liang zhong Qingmo xianfa cao'an gaoben de faxian ji chubu yanjiu," 91.

¹⁴³⁶ Shang, "'Liang zhong Qingmo xianfa cao'an gaoben' zhiyi," 166–167.

for the two keywords “Kitaoni Saburō” 北鬼三郎 and *Draft Constitution for the Qing* (*Daqing xianfa'an* 大清憲法案) in the catalogue of the National Diet Library of Japan. Cui, however, failed to find anything else written by Kitaoni Saburō, except for his constitutional draft.¹⁴³⁷ Furthermore, he cites the preface to the extant 1908 version of the constitutional draft, which he interprets as Kitaoni saying that he was “about to graduate” at that time.¹⁴³⁸ However, Cui does recognise that Kitaoni’s constitutional draft as such had an important impact on Chinese constitution-making and constitutional scholarship. The following sections will corroborate this assertion with new material.

The truth lies in the middle. Shang Xiaoming is right in saying that Kitaoni was not (yet) a well-known scholar, and that his fame could, by far, not compare to that of, say, Hozumi Yatsuka, not to speak of Itō Hirobumi. However, Cui is not correct in writing that Kitaoni was still a student. The author of this study has looked through the extant records of Chūō University, to which Kitaoni was attached, and through other late Meiji literature, and found a considerable amount of hitherto unused material on Kitaoni. In particular, Kitaoni had already graduated a few years earlier, necessitating a wholly different interpretation of his constitutional draft. Furthermore, although Kitaoni was not yet a famous scholar, he was beginning to be productive, and left a number of articles on Chinese and Japanese questions. Some of these did have a considerable impact, as did his book, which was taken notice of in Japan as well as in China. Having been reviewed in newspapers and received by numerous libraries, it was markedly more important than Zhang Bolie’s book. However, Kitaoni was not able to become famous, for he died at a young age, not long after the publication of his constitutional draft, which remained his *opus magnum*.

¹⁴³⁷ Cui, “Qingting zhixian yu Mingzhi Riben,” 169; Cui, “Zailun Qingmo *Daqing xianfa'an* gaoben wenti,” 115.

¹⁴³⁸ Cui, “Qingting zhixian yu Mingzhi Riben,” 167.

b) Kitaoni's Personal Background

So mysterious has Kitaoni been that there is not even clarity about the pronunciation of his name or his life span: There are at least six variants of his name, with even the most eminent scholars diverging on how to parse the characters that make up his name or on what readings to attribute to them.¹⁴³⁹ Specialised dictionaries differ on the readings of his surname,¹⁴⁴⁰ and even during his very lifespan, there was disagreement about his name: Some documents parsed his name as Kitaoni Saburō and some as Kita Kisaburō.¹⁴⁴¹ However, the correct reading is most likely Kitaoni, for the name is attested in Roman letters in the index of the magazine *Gaikō jihō* of 1910, where he published two articles.

¹⁴³⁹ Only the library of Chuo University, where he was a student, transcribes his name as Kitaoni Saburō キタオニ・サブロウ. Sōda Saburō 曾田三郎, the eminent Japanese scholar of late Qing constitutionalism, continually parses him as “Kita Kisaburō” 北・鬼三郎. Sōda, *Rikken kokka Chūgoku e no shidō*, 22–23. The National Diet Library of Japan used to list him as “Kita Kisaburō” キタ・キサブロウ until 2007, but has then changed the reading to “Kitaki Saburō” キタキ・サブロウ. The latter is also the reading used by the library of Waseda University. The catalogue provided by the Japanese National Institute of Informatics (NACSIS-webcat) lists him as “Hokuki Saburō” ホクキ・サブロウ, as does the catalogue of Tohoku University. The eminent Chinese historian Shang Xiaoming transcribes his name as “Kitaoni Sadu” in the English abstract to his article. Shang, “‘Liang zhong Qingmo xianfa cao’an gaoben’ zhiyi,” 192. The catalogue of Peking University Library has him as “Yegui Sanlang” 業鬼三郎. The latter variant is most likely just a misreading of the first character *bei* 北 as the simplified character *ye* 业, which was then reconverted into a traditional character.

¹⁴⁴⁰ Takanobu Yukio 高信幸男, *Nandoku kisei jiten* 難読稀姓辞典 (Dictionary of rare family names difficult to read) (Tokyo: Nihon kajo, 1993), 77, reads the surname as Kitaki きたき. Niwa Motoji 丹羽基二, *Nihon seishi daijiten* 日本姓氏大辞典 (Great dictionary of Japanese family names) (Tokyo: Kadokawa, 1985), 47, and *Myōji 8man yomikata jiten* 苗字8万よみかた辞典 (Dictionary of the readings of 80,000 family names) (Tokyo: Nichigai asoshietsu, 1998), 967, give the additional reading Kitaochi きたおち.

¹⁴⁴¹ The articles published by him at the time appear with a space between the second and third characters of his name, making for the parsing “Kitaoni Saburō” 北鬼・三郎. However, some other documents appear with a space between the first and second characters, parsing him as “Kita Kisaburō” 北・鬼三郎. In his university graduation records, for example, he is parsed once as Kitaoni Saburō and once as Kita Kisaburō. Cf. Chūō Daigaku hyakunenshi henshū iinkai senmon iinkai, ed., 中央大学百年史編集委員会専門委員会, *Chūō Daigaku-shi shiryōshū* 中央大学史資料集 (Historical material of Chuo University), 28 vols. ([Hachioji]: Chūō Daigaku shuppanbu, 1987–2017), vol. 17, 133, and “Tōkyō Hōgakuin Daigaku kiji” 東京法學院大學記事 (Chronicle of the Tokyo Institute of Law University), *Hōgaku shinpō* 法學新報 14, no. 6 (Meiji 37 [1904]), 104. Furthermore, the earliest document in which Kitaoni appears also parses him as “Kita Kisaburō.” *Kanpō* 官報, “Shōgyō tōji” 商業登記 (Business registrations), no. 4891, Meiji 32/10/19 [October 19, 1899], appendix (*furoku* 附録), 6.

Moreover, the reading Kitaoni also remits us to where he was from and what he was doing in Tokyo when he wrote China's first constitution. Cui Xuesen writes that Kitaoni was still a student when he gave the first version of the constitution to a Chinese acquaintance in 1908. However, with the help of freshly-excavated material from Japan, this study is able to falsify this assertion. Kitaoni hailed from the small fishing town of Uozu 魚津 in Toyama 富山 Prefecture in western Japan, where there is a neighbourhood called Kitaoni-E-chō 北鬼江町. The first document in which he appears is an entry in the *Official Gazette* (*Kanpō* 官報) of October 19, 1899, where Kitaoni was registered as a shareholder of a fishing company named *Kitanada* 北洋 in Uozu.¹⁴⁴²

At about that time, Kitaoni was enrolled at the Tokyo Institute of Law (*Tōkyō Hōgakuin* 東京法學院), the precursor to the Chūō 中央 University. In 1900, he graduated from the "law in English language" (*Eigo hōgaku ka* 英語法科學) course offered by that institute.¹⁴⁴³ He continued to pursue postgraduate studies in the same institute, now specialising in *Staatslehre* (*kokuhōgaku* 國法學), whence he graduated with the title of "licentiate of laws" (*hōgakushi* 法學士) in 1904.¹⁴⁴⁴

After his graduation, Kitaoni did not seem to hold a formal occupation. One of the two short obituaries which appeared in the *Chuo Law Review* (*Hōgaku shinpō* 法學新報) has occupation details for all deceased personalities, except for Kitaoni.¹⁴⁴⁵ However, even if his formal occupation between his graduation and his death is unclear, there is plenty of evidence that he was attached to academia and lived the life of a scholar in the years before he died. Kitaoni himself, about a year before his death, declared in an open letter to Prime Minister Saionji that he was writing as a scholar (*ichi dokushosei toshite* 一讀書生として).¹⁴⁴⁶

¹⁴⁴² Ibid., 6.

¹⁴⁴³ Chūō Daigaku hyakunenshi henshū iinkai senmon iinkai, *Chūō Daigaku-shi shiryōshū*, vol. 17, 133.

¹⁴⁴⁴ "Tōkyō Hōgakuin Daigaku kiji," 104.

¹⁴⁴⁵ "Fu" 訃 (Obituary), *Hōgaku shinpō* 法學新報 23, no. 1 (Taishō 2 [1913]).

¹⁴⁴⁶ Kitaoni Saburō 北鬼三郎, "Saionji shushō ni teisuru fumi" 西園寺首相に呈する書 (A letter to Prime Minister Saionji), *Nihon to Nihonjin* 日本と日本人, no. 568 (Meiji 44 [1911]), 36.

Cui Xuesen has denied Kitaoni's status as a scholar. Together with his misunderstanding that Kitaoni would only graduate much later, in 1908 or 1909, he translates Kitaoni's licentiate title as a "bachelor's" (*benke* 本科) degree to argue that it would be "inadequate" to call Kitaoni famous, or even a scholar at all.¹⁴⁴⁷ But Cui's "bachelor" is an anachronistic translation: Master's degrees were only introduced in 1947 under US American influence. In the Meiji period, license was already a specialised course which conferred a high academic status. There was no other intermediate title between license and doctorate, doctorates were only sparsely awarded, and numerous renowned legal specialists who taught in the universities or wrote books and articles were "merely" licentiates. Kitaoni's status as a licentiate cannot be used to deny his position as a serious scholar, and it did open him doors in the academic world.

To what extent Kitaoni was "famous" is another question altogether. After his graduation as a licentiate, he stayed in Tokyo and continued to be closely linked to his *alma mater*, for he attended the graduation ceremony of the institute in 1906.¹⁴⁴⁸ This latter detail might, in a moment, also help explaining Kitaoni's continued interest for China. Kitaoni then began to appear publicly as an academic beginning from 1909. Next to his constitutional draft, he published several articles on Chinese constitutional questions and Japanese colonial politics in 1910 and 1911 (see section d). Kitaoni, thus, was building a reputation as an early-career scholar, but his early death prevented him from achieving lasting scholarly fame: Not long after becoming productive, on December 2, 1912, he died from an illness.¹⁴⁴⁹

¹⁴⁴⁷ Cui, "Zailun Qingmo *Daqing xianfa'an* gaoben wenti," 115.

¹⁴⁴⁸ "Zatsuhō" 雑報 (Miscellaneous news), *Hōgaku shinpō* 法學新報, no. 8 (1906), 96.

¹⁴⁴⁹ "Kōshi gakuin no seikyo (Hirayama Sentarō hoka) [*Hōgaku shinpō* dai 23 ken 2 (261) gō Taishō 2-nen 2-gatsu 1-tachi]" 講師學員の逝去 (平山銓太郎他) [「法學新報」第23卷2 (261)号 大正2年2月1日] (Death of teachers and alumni [Hirayama Sentarō, &c.], *Hōgaku shinpō* 23, no. 2 (261), February 1, Taishō 2 [1913]), in *Chūō Daigaku-shi shiryōshū*, ed. Chūō Daigaku hyakunenshi henshū iinkai senmon iinkai, vol. 19, 177.

c) Kitaoni's Interest for the Chinese Constitution

When did, however, Kitaoni's interest for Chinese constitutional questions begin, and when did he begin writing the draft? In the 1909 book edition, Kitaoni writes that the book was the result of several years (*sūnenrai* 數年來) of work and that he had finished the first draft of the constitution on February 3, 1908, a draft which has never been found. He added that he felt proud about the *Outline* being similar to his own draft finished in early 1908, even if there had been no direct connection between both.¹⁴⁵⁰

But when exactly did this period of "several years" begin? The answer to this can be found in two places. Kitaoni inserts an essay about "Japanese Constitutional Law and Ancestor Worship" (*Nippon kokuhō to sosen sūhai* 日本國法ト祖先崇拜) into the commentaries to his art. 1 of the proposed Qing constitution, which discuss the role of the emperor and touch upon the role of ancestor worship in China. The essay is dated to November 20, 1904. However, it does not comment directly on China, and it would be possible that he first wrote it independently of his China interests. However, Kitaoni himself writes that it was "related to the manuscript of a few years back" (*sūnenmae no sōkō ni kakaru* 數年前ノ草稿に二係る),¹⁴⁵¹ and the essay gives an impression of how early Kitaoni was active as an academic writer.

There is another confirmation that Kitaoni was not only academically active by 1904/05, but was also already devoting himself to Chinese law. It is contained in a hitherto unknown advertisement for the book found in the front page of the *Asahi shimbun* for July 2, 1909. It describes that the author of the book had been specialising in "law of the state" for more than ten years and "used four or five years to dedicate 'all the blood of his heart' to the study of Chinese law" (*Shi-*

¹⁴⁵⁰ Kitaoni, *Daishin kenpōan*, no. 1 of the prefatory remarks (*reigen* 例言).

¹⁴⁵¹ Kitaoni, *Daishin kenpōan*, 8.

go-nenrai awasete Shinahō no kensan ni shinketsu o keichūshitaru 四五年來併せて支那法の研鑽に心血を傾注したる).¹⁴⁵²

Although the note uses a flowery advertisement language, the facts given in it are most likely to be correct. As Kitaoni had graduated nine years before the advertisement, it is correct that he had been studying law for a decade. There is no reason to doubt that he did also need “several,” i.e., 4–5 years to do research and compile his voluminous book, the first version of which was ready in early 1908. This means that Kitaoni began working on the question of a constitution for China in 1904 or 1905. Although the advertisement only says that he was working on “Chinese law,” one can safely assume that this meant constitutional questions at least in a wider sense, for Kitaoni was already confirmedly specialised in Law of the State (*kokuhō* 國法). At first sight, 1904/05 seems like a flabbergastingly early date, for at that time, the Chinese government was still far from adopting constitutional policies and had not even yet send the constitutional commissioners abroad. However, while extravagant, it is not at all unlikely, as constitutionalism was heavily trending in political debates, and its application to China was also already being discussed in Japan.

For example, in the *Gaikō jihō* for November 1904, Matsumiya Shun'ichirō 松宮春一郎 (?–1933) published an article entitled “The Discovery of Constitutionalism in China” (*Shinkoku rikken no hakken* 清國立憲論の發現). Therein, Matsumiya discussed the problems faced by China, such as the corruption of the dynasty and the hatred of the Han for the Manchu, which would have to be taken account of in

¹⁴⁵² *Asahi shimbun* 朝日新聞, “Kokuhō senkō, Chūō Daigaku hōgakushi Kitaoni Saburō choku (shinkan: issatsu yōsō kikuban segawa kinji habi hon): *Daishin kenpōan*” 國法學專攻、中央大學法學士北鬼三郎著（新刊全一冊洋裝菊版背皮金字頗美本）大清憲法案 (*Draft constitution for the Qing*: Written by Kitaoni Saburō, specialist in law of the State and licentiate of laws of Chuo University: Recently printed, one volume in occidental binding, *kikuban* size, leather cover and golden letters, very beautiful book), July 2, 1909.

a future constitution.¹⁴⁵³ The *Gaikō jihō* was a publishing platform for Kitaoni's professors at the Tokyo Institute of Law (renamed Tokyo University of Law in 1903 and Chūō University in 1905), and years later, Kitaoni himself published two articles of his own in the journal.

More than just through the *Gaikō jihō*, Kitaoni's immediate academic environment was most conducive to come up with such a topic. Chuo University, which Kitaoni was still frequenting after his graduation, was closely connected to Chinese constitutional matters, and was a hotspot of bilateral interchanges. Several professors at Chuo University were high-ranking intellectuals who published on the question of the Chinese constitution. Some other Chuo professors were later employed to teach law at the newly founded institutions of higher learning in China. The high density of China expertise can be exemplified on the graduation ceremony visited by Kitaoni in 1906. Three intellectuals who would later contribute to the book on *The Question of Constitutionalism in China* were present at the event: Nakamura Shingo, Katō Takaaki and Shimizu Tōru 清水澄 (1868–1947).¹⁴⁵⁴ Furthermore, Chūō University, with its focus on law and political science, attracted many students from the Qing Empire interested in constitutionalism, as well as official attention from China. The Chinese minister to Japan visited the graduation ceremony for undergraduates in 1904.¹⁴⁵⁵ And finally, to once again

¹⁴⁵³ Matsumiya Shun'ichirō 松宮春一郎, "Shinkoku rikkenron no hakken" 清國立憲論の發現 (La Chine et la constitution: The discovery of constitutionalism in China), *Gaikō jihō* 外交時報 7, no. 11 (Meiji 37 [1904]).

¹⁴⁵⁴ "Zatsuhō," 95–96. Shimizu Tōru does not appear under this name in Doi, *Shinkoku rikken mondai*, 77–90. His name is, instead, given under the rather transparent pseudonym "Dr. iur., Mr. Tōru Mizu" (*Hōgaku hakase Tōru Mizu sei* 法學博士澄水生). The identity is further revealed in the Chinese translation, which names the author "Mr. Shimizu" (*Qingshui sheng* 青水生). Although the Chinese version writes the first character, corresponding to *shi* in Japanese, not as 清 but as 青, this is most likely a misspelling based on the identical pronunciation of both in Chinese. Zhang, *Jiading Zhongguo xianfa cao'an*, 118–120.

¹⁴⁵⁵ "Tōkyō Hōgakuin Daigaku kiji (dai 19 kai sotsugyōshiki, shingakunen no kōshi) [*Hōgaku shinpō* dai 14 ken 8 (162) gō Meiji 37 nen 8 gatsu 10-ka]" 東京法学院大学記事 (第十九回卒業式・新学年の講師) [「法学新報」第十四卷八 (一六二) 号 明治三十七年八月十日] (Chronicle of the Tokyo Institute of Law University [the 19th graduation ceremony; teachers in the new school year—*Hōgaku shinpō* 14, no. 8 (162), August 10, Meiji 37/1904]), in *Chūō Daigaku-shi shiryōshū*, ed. Chūō Daigaku hyakunenshi henshū iinkai senmon iinkai, vol. 18, 79.

take the graduation ceremony visited by Kitaoni in 1906 as an example, one of the Qing students who participated in it, named Gao Zhong 高種, was to work later at the Constitutional Office in Peking.

Against this background at Chuo University, it is not surprising that Kitaoni became interested in the topic of constitutionalism for China as early as 1904 or 1905. If it was in 1904, there would be the possibility that his graduation thesis had touched upon the topic, or that he came across the topic otherwise before graduating. However, this hypothesis cannot be tested, as Kitaoni's student files are not preserved, the archives of Chuo University having for the most part been destroyed by fires in the subsequent decades. Needless to say, the extant versions of the constitutional draft do not reflect the situation of 1904/05 anymore, as they take into account the Chinese developments and proposals since the declaration of intent of 1906.

Further details of the process by which Kitaoni compiled his draft for a Chinese constitution are not known. He finished the first draft in February 1908. Later in the year, some weeks after the adoption of the *Outline*, he gifted his work to a Chinese acquaintance. This version is entitled *Draft Constitution for the Qing with Motives* (*Daishin kenpōan riyūsho* 大清憲法案理由書) and is the earliest known version of Kitaoni's *opus*. Shang Xiaoming and Cui Xuesen have shown that this version was not Kitaoni's original draft, but it was a copy he specifically made for the recipient, as it specifically states that he had revised it from the original (February) version.¹⁴⁵⁶ Furthermore, it carries some remarks specifically directed to him.

But to whom did Kitaoni give the book and why? This study cannot fully answer the question, but it can offer new insights into it and at least narrow down the field of candidates. The book ended up in the library of Peking University and carries a stamp of the scholar Rong Geng 容庚 (1894–1983). However, he cannot

¹⁴⁵⁶ Cui, "Qingting zhixian yu Mingzhi Riben," 170–171.

have been the recipient because he was only 14 at the time.¹⁴⁵⁷ Instead, the clue lies in prefatory remark no. 10 of the draft, which is present in the 1908 version but not in the 1909 printed version. In Chinese, it reads:

茲面臨畢業，謹祝閣下健康，且特表敬意。¹⁴⁵⁸

Cui Xuesen interprets the sentence as: “As I am currently facing graduation, I wish your excellency health and express my special respect.” From this, Cui concludes that Kitaoni was still an undergraduate student when he gifted the book, about to graduate in 1908 or 1909. As to the recipient, he writes that it could have been a Chinese student studying in Japan, but also constitutional commissioner Li Jiaju, a diplomat from the Chinese legation, or any of their subordinates.¹⁴⁵⁹

The cited sentence must be interpreted quite differently, however. Was Kitaoni really saying “I am about to graduate; may you stay healthy”? No. As mentioned above, Kitaoni had already graduated twice, in 1900 and 1904. Did he graduate for a third time? No. The Chinese sentence does not have a personal pronoun, meaning that it must be inferred from context. With the newly-excavated documents, the context becomes clear. The graduation records of Chūō Daigaku for the years 1908–1910 do not show Kitaoni’s name anymore. Moreover, the short obituary for Kitaoni published in the *Chuo Law Review* expressly states that he graduated in Meiji 33 (1904) and later became a licentiate of laws (*hōgakushi* 法學士), which is

¹⁴⁵⁷ Kitaoni Saburō 北鬼三郎, *Daishin kenpōan riyūsho* 大清憲法案理由書 (Draft constitution for the Qing with motives) ([Tokyo]: unpublished, 1908), apud Cui, “Qingting zhixian yu Mingzhi Riben,” 171–172. At the time the author of this study conducted research in Peking (July 2016), the 1908 version of Kitaoni’s work was not accessible to the public. The author has, thus, only had first-hand access to the 1909 commercial edition of the book. Most conclusions of this study do not rely on the specific differences between the 1908 and the 1909 versions—except for those which arise out of remark no. 10, which is not present in the 1909 version. More specifically, these are the questions of when the book was written and to whom it was given. It is a desideratum for further research to confirm the findings of this study with Kitaoni’s 1908 original in hand, as soon as the book becomes accessible again.

¹⁴⁵⁸ Kitaoni, *Daishin kenpōan riyūsho*, apud Cui, “Qingting zhixian yu Mingzhi Riben,” 171.

¹⁴⁵⁹ Ibid, 172.

the title he used up to his death.¹⁴⁶⁰ The sentence, thus, must be understood as “as you are currently facing graduation, I wish you good health.”

This rules out the possibility that Kitaoni (directly) gave the book to the constitutional commissioner or to a diplomat, who were not facing graduation at the time, although it is still could have ended up in Dashou’s hands later. But immediately, it is most probable that the recipient was a student of Chuo University, for it was Kitaoni’s *alma mater* and he was still attached to it. It is far less likely, but not impossible, that the recipient was a student of another university. Thus, the answer to the question is most likely to be found in the hitherto ignored graduation lists of Chuo University, which have been preserved in the *Chuo Law Review*.

As the recipient was “facing” graduation, it can be further assumed that this would have been either in the same year of 1908 or else in the next year of 1909. The wording of Kitaoni’s dedication—including the wishes for health—seems to indicate that the recipient’s departure from the university was imminent, and that the book was a farewell gift. It is slightly less probable that Kitaoni would write such wishes to a student who still had nearly a full year to stay in Japan. This would make 1908 a somewhat more likely date. However, the dating poses a problem. In Chuo University, the respective graduation ceremonies took place on July 6, 1908¹⁴⁶¹ and July 8, 1909.¹⁴⁶² The prefatory remarks of the book, in contrast, are dated in traditional Chinese style to “mid-autumn [i.e. the 8th month] of the year

¹⁴⁶⁰ “Kōshi gakuin no seikyo,” 177.

¹⁴⁶¹ “Chūō Daigaku kiji (dai 23 kai sotsugyōshiki, sotsugyōsei oyobi yūtōsei, gakunen shiken mondai) [Hōgaku shinpō dai 18 ken 8 (221) gō Meiji 41 nen 9 gatsu 1-tachi]” 中央大学記事（第二十三回卒業式・卒業生及び優等生・学年試験問題）[「法学新報」第十八卷八（二二一）号 明治四十一年九月一日] (Chronicle of Chuo University: The 23rd graduation ceremony; graduates and outstanding students; questions of the yearly exam. *Hōgaku shinpō* 18, no. 8 (221), September 1, Meiji 41), in *Chūō Daigaku-shi shiryōshū*, ed. Chūō Daigaku hyakunenshi henshū iinkai senmon iinkai, vol. 18, 169.

¹⁴⁶² “Chūō Daigaku kiji (dai 24 kai sotsugyōshiki, sotsugyōsei oyobi yūtōsei, gakunen shiken mondai) [Hōgaku shinpō dai 19 ken 8 (133) gō Meiji 42 nen 9 gatsu 1-tachi]” 中央大学記事（第二十四回卒業式・卒業生及び優等生・学年試験問題）[「法学新報」第十九卷八（一三三）号 明治四十二年九月一日] (Records of Chuo University: The 24th graduation ceremony; graduates and outstanding students; questions of the yearly exam. *Hōgaku shinpō* 19, no. 8 (133), September 1, Meiji 42), in *Chūō Daigaku-shi shiryōshū*, ed. Chūō Daigaku hyakunenshi henshū iinkai senmon iinkai, vol. 18, 205.

boshin” (*boshin chūshū gekka* 戊申仲秋月下), which stretched from August 27 to September 24, 1908.¹⁴⁶³ Even interpreting “autumn” more broadly, the gift was dated after the graduation of the students. Thus, although the wording of the dedication seems to be indicating otherwise, its date suggests that the recipient was a 1909 graduate.

Behind this point of reasoning, guessing which of the graduates was the recipient of the book becomes purely speculative. According to the graduation lists, Chuo University had 9 Chinese graduates in the year 1908, 8 of whom graduated in law. In 1909, the number of graduates from China skyrocketed to 34, 27 of whom graduated from one of the two law courses offered by the university.¹⁴⁶⁴ However, although some 1906 and 1907 graduates were working at the Constitutional Office, none of the 1908 and 1909 graduates had obvious connections to Qing constitution-making.¹⁴⁶⁵ It remains the challenge of posterior scholars to find new material shedding more light on the question. But independently of who it was, the episode does teach us a lesson: Kitaoni’s giving his constitutional draft to a politically interested Chinese student who was about to graduate and return to China evidences the regional interconnectedness of intellectual discourse and constitution-

¹⁴⁶³ Kitaoni, *Daishin kenpōan riyūsho*, no. 10 of the introductory remarks (*reigen* 例言), apud Cui, “Qing-tong zhixian yu Mingzhi Riben,” 169.

¹⁴⁶⁴ “Chūō Daigaku kiji (dai 23 kai sotsugyōshiki, sotsugyōsei oyobi yūtōsei),” in *Chūō Daigaku-shi shiryōshū*, ed. Chūō Daigaku hyakunenshi henshū iinkai senmon iinkai, vol. 18, 171–172; “Chūō Daigaku kiji (dai 24 kai sotsugyōshiki, sotsugyōsei oyobi yūtōsei),” in *Chūō Daigaku-shi shiryōshū*, ed. Chūō Daigaku hyakunenshi henshū iinkai senmon iinkai, vol. 18, 208–209.

¹⁴⁶⁵ If it were not for the fact of his already having graduated in 1908, probably the most educated guess would be Huang Yuansheng 黃遠生 (styled Huang Weiji 黃爲基, 1885–1915). Huang is said to have already been going back to China in his summer holidays to participate in pro-constitutional activities, and he was also close to Liang Qichao’s group. Literature on Huang, however, is rather thin. This information is contained in Li Daogang 李道剛, “Ryūnichī hōkagakuto Kō Ensei” 留法科學徒黃遠生 (Huang Yuansheng, a foreign law student), *Chūō Daigakushi kiyō* 中央大學史紀要, no. 15 (2010), 85–86. Li’s articles, however, are insufficiently sourced. In this case, Li’s information seems to come from Huang Yuansheng’s son and cannot be independently verified. However, at least Huang Yuansheng’s strong involvement with constitutional questions can be confirmed by the large number of articles he penned as a journalist. On Huang Yuansheng see further Li Daogang 李道剛, “Kō Ensei no kensei gakusetsu kenkyū josetsu” 黃遠生の憲政學說研究序說 (Über Huang Yuansheng’s Konstitutionalismus: Prefatory research on Huang Yuansheng’s constitutionalism), trans. Sen Guang 森光 and Endō Kayoko 遠藤佳代子. *Hikakuhō zasshi* 比較法雜誌 45, no. 1 (2011), 261–290.

making. This is also evidenced by the impact his work had on the public and in the Constitutional Office in Peking.

d) Kitaoni's Work and its Importance

If Kitaoni's personal relations with the Chinese students cannot be fully clarified, and it is not known whom gifted his constitutional draft and how it did end up in China, we can affirm that, in the years 1909–1911, Kitaoni was beginning to have an international academic impact in both Japan and in China. Before returning to his *magnus opum*, let us thus enlist Kitaoni's extant scholarly production in order to roughly assess Kitaoni's impact factor and obtain an overview over his academic interests:

- a) In June 1909, Kitaoni published a thoroughly revised version of his constitutional draft for the Qing Empire at *Keisei shoin* 經世書院 publishers. As will be shown, this book had considerable circulation in Japan and ended up twice at the Constitutional Office, where it was translated into Chinese and provoked debates.
- b) In 1910, Kitaoni published two articles in the prestigious magazine *Gaikō jihō*. The first was entitled "The Problem of the Centralisation of Power in the Qing Empire" (*Shinkoku no chūō shūken mondai* 清國の中央集權問題).¹⁴⁶⁶ The second was entitled "On the Laws Concerning the Administration of the New Territories" (*Shin ryōchi tōchihō ron* 新領地統治法論).¹⁴⁶⁷
- c) In 1911 and 1912, Kitaoni published again on similar questions in the considerably less well-known magazine *Japan and the Japanese* (*Nihon to Nihon-jin* 日本と日本人). These articles have been hitherto ignored by secondary

¹⁴⁶⁶ Kitaoni Saburō 北鬼三郎, "Shinkoku no chūō shūken mondai" 清國の中央集權問題 (La question de centralization des pouvoirs en Chine: The problem of the centralisation of power in the Qing Empire), *Gaikō jihō* 外交時報 13, no. 9 (Meiji 43 [1910]), 37–43.

¹⁴⁶⁷ Kitaoni Saburō 北鬼三郎, "Shin ryōchi tōchihō ron" 新領地統治法論 (L'administration de nouveau territoire: On the laws concerning the administration of the new territories), *Gaikō jihō* 外交時報 13, no. 12 (Meiji 43 [1910]), 37–46.

literature, as the magazine is of difficult access today, but the author of the present study has been able to obtain access to microfilm copies from the library of Hokkaidō University. The three articles are: 1. “The Promulgation of the New Cabinet and System of Officialdom in the Qing Empire” (*Shinkoku shin naikaku kansei no kōbu* 清國新内閣官制の公布);¹⁴⁶⁸ 2. “A Letter to Prime Minister Saionji” (*Saionji shūshō ni teisuru fumi* 西園寺に呈する書);¹⁴⁶⁹ 3. “Essentials of a Private Draft for the Reorganisation of the [Government] System” (*Seido seiri shian yōrei* 制度整私案理要領).¹⁴⁷⁰

- d) In 1910, Kitaoni must have published another article in Japanese on the central administration and related questions, of which the original, however, remains undiscovered. These considerations—distinct from the *Gaikō jihō* article—were translated into Chinese and discussed in the *Daily Constitutional Newspaper* (*Xianzhi rikan* 憲志日刊). From there, Kitaoni’s article and the pertinent discussion were republished in the Shanghai *Shenbao* in three instalments in November 1910.¹⁴⁷¹

From this overview, one can see that, overall, Kitaoni worked on two recurring themes. One was the colonial policies of Japan. Not only did one of the articles in the *Gaikō jihō*¹⁴⁷² discuss legal questions regarding the newly-gained territories

¹⁴⁶⁸ Kitaoni Saburō 北鬼三郎, “Shinkoku shin naikaku kansei no kōbu” 清國新内閣官制の公布 (The promulgation of the new cabinet and system of officialdom in the Qing Empire), *Nihon to Nihonjin* 日本と日本人, no. 561 (Meiji 44 [1911]), 28–30.

¹⁴⁶⁹ Kitaoni, “Saionji shūshō ni teisuru fumi,” 36–39.

¹⁴⁷⁰ Kitaoni Saburō 北鬼三郎, “Seido seiri shian yōrei” 制度整理私案要領 (Essentials of a private draft for the reorganisation of the government system), *Nihon to Nihonjin* 日本と日本人, no. 595 (Taishō 1 [1912]), 20–24.

¹⁴⁷¹ Kitaoni Saburō 北鬼三郎, “Zhongguo zhongyang guanzhi gaige an (*Xianzhi rikan* yi Beigui shi gao)” 中國中央官制改革案 (憲志日刊譯北鬼氏稿) (Reform plan for China’s central administration [Draft by Mr. Kitaoni, translated in the *Xianzhi rikan*]), *Shenbao* 申報, November 21, 1910; *Shenbao* 申報, “Du Beigui shi Zhongguo zhongyang guanzhi gaige an shu hou (lu *Xianzhi rikan*)” 讀北鬼氏中國中央官制改革案書後 (錄憲志日刊) (After reading Mr. Kitaoni’s Plan for a Reform of the Chinese Central Administration [from the *Xianzhi rikan*]), November 24, 25, 1910. Sōda, *Rikken kokka Chūgoku e no shidō*, 255–256, covers this aspect of Kitaoni’s influence.

¹⁴⁷² Kitaoni, “Shin ryōchi tōchihō ron.” See Han Dayuan 韓大元, “Lun Riben Mingzhi xianfa dui Qinding xianfa dagang de yingxiang: wei Qinding xianfa dagang banbu 100 zhounian er zuo” 論日本明治憲

(Formosa, Korea), but his open letter to premier Saionji also concerned his colonial policies. The second theme question of the organisation of the central government. This was highly related to the adoption of a constitution. The first article he published on the topic showed his keen perception of how the international function of constitutionalism was connected to the centrifugal tendencies in the Empire. As he analysed, China's problem was the weakness of central authority vis-à-vis provincial governments which were even responsible for foreign and military affairs.¹⁴⁷³ Such a situation was “the exact opposite” of what happened in constitutional states with their strong governments, and the reform of the central government was a precondition for constitutional government.¹⁴⁷⁴ China, Kitaoni reasoned, had no other way if it China wanted to survive in this world of strong governments:

Probably, seeing this from the [perspective] of the foundations of the state, one cannot avoid the fear that the very system of a powerless central government will produce a result like an animal with a tail so big that it cannot move it. Thinking that the German government has been promoting imperialism as a policy for several generations; by England's customs agreements and defense treaties, the colonies are all fretting, the United States are enthusiastic about the expansion of the Monroe Doctrine, and none of the others like Russia, France, Spain etc., is not pursuing policies of strengthening the foundations of sovereignty, China should comprehend

法對《欽定憲法大綱》的影響：爲《欽定憲法大綱》頒佈 100 周年而作 (On the influence of the Japanese Meiji constitution on the *Outline of a Constitution by Imperial Ordinance*: Written for the 100th anniversary of the promulgation of the *Outline of a Constitution by Imperial Ordinance*), *Zhengfa luntan* 政法論壇 27, no. 3 (2009), 30. See also the Japanese translation: Han Dayuan 韓大元, “Kintei kenpō taikō ni taisuru Nippon Meiji kenpō no eikyō: Kintei kenpō taikō kōfu 100 shūnen o kinenshite” 『欽定憲法大綱』に対する日本明治憲法の影響：『欽定憲法大綱』公布 100 周年を記念して, *Sapporo Gakuin hōgaku* 札幌学院法学 27, no. 2 (2011), 92, and the adapted Japanese version in Han, “Meiji kenpō no Kintei kenpō taikō ni okeru eikyō,” in *Nitchū ni okeru Seiō rikkenshugi no keiju to henyō*, ed. Takahashi, 129. All versions cite incorrect editions of the *Gaikō jihō* and incorrectly imply that the second article is about China, too.

¹⁴⁷³ Kitaoni, “Shinkoku no chūō shūken mondai,” 466.

¹⁴⁷⁴ *Ibid.*, 466–467.

the reason to prioritise by itself the one big reform of the local (government) system.

蓋し立國の大本よりして之を觀る、中央無權の制は自ら尾大不振の結果を生ずるのを虞あるを免れず。獨逸政府が累代の政策として頻りに帝國主義を鼓吹しつつある、英國が關稅協約、國防聯合等に依りて植民地の一統に腐心しつつある、北米合衆國がモンロー主義の擴張に熱中しつつある、其他露西亞、佛蘭西、西班牙等、何れも國權の基礎を鞏固にするの政策を執らざる莫きを思はば、清國現在の地方制度は自ら一大改革を要する所以を自得すべきなり。¹⁴⁷⁵

Two other things are remarkable. First, Kitaoni was able to publish twice in *Gaikō jihō*, which was a top-notch and widely-read magazine. Second, it is also remarkable that his considerations found circulation in China and merited extensive supplementary commentaries. Sōda Saburō even argues that Kitaoni's suggestions for a better organisation of the Chinese central government might have influenced Li Jiaju, who demanded the establishment of a cabinet in a memorial to the court after returning to China.¹⁴⁷⁶ Sōda's argument remains somewhat speculative, as by that time Kitaoni had only published his constitutional draft. His specialised articles on the central government all appeared after Li Jiaju had returned to China and submitted his suggestions.

What is attested is that Wang Rongbao read Kitaoni's draft, even though there is some debate as to how Wang Rongbao evaluated the draft.¹⁴⁷⁷ Shang Xiaoming has argued that Kitaoni was not well-known and that his works did not receive much attention and even that his works were not held in high regard at

¹⁴⁷⁵ Ibid., 469.

¹⁴⁷⁶ Sōda, *Rikken kokka Chūgoku e no shidō*, 255–256.

¹⁴⁷⁷ Peng Jian 彭劍, "Ye tan 'liang zhong Qingmo xianfa caoan gaoben' zhong de 'jiacanben'" 也談“兩種清末憲法草案稿本”中的“甲殘本” (Further discussion of the “fragment A” in “Two late-Qing constitutional drafts”), *Lishi dang'an* 歷史檔案, no. 3 (2011), 95; Shang, "'Liang zhong Qingmo xianfa cao'an gaoben' zhiyi," 166–167. For a summary of the debate with a convincing conclusion see Cui, "Qingting zhixian yu Mingzhi Riben," 169–170.

that time. To this, he points out that Wang Rongbao, in his diary, mentions Kitaoni less than other, more famous scholars like Soejima Giichi 副島義一 (1866–1947), Ariga Nagao and Shimizu Tōru, and places him in the last place when writing about who supported a certain point of view. Furthermore, he adduces the book *On a Constitution for the Qing Empire* (*Daqing xianfa lun* 大清憲法論), a voluminous textbook written by Hōsei 法政 University student Bao Tingliang 保廷樑 (1874–1947). The book, published in Tokyo in 1910 and republished in Shanghai in 1911, copiously uses the works of other Japanese scholars, but, in its 507 pages, only quotes Kitaoni Saburō twice in matters of detail, disagreeing with him to boot.¹⁴⁷⁸ Hence, Shang concludes ironically, one can see “how much value even the Chinese students in Japan placed on Kitaoni’s work.”¹⁴⁷⁹

Shang is correct in that Kitaoni’s fame and level of academic importance was, by far even, lower than that of arrived Japanese scholars who had also published on the Japanese constitution. But this notwithstanding, Chinese readers did study him in detail, reflect on his writings and cite him, even if in disagreeing mode. Cui Xuesen has shown that Bao’s book shows striking similarities to Kitaoni’s draft in structure and detail.¹⁴⁸⁰ For example, when arguing for the regent to have no responsibility, Kitaoni and Bao both adduced exactly the same “Art. 97 of the Portuguese constitution and art. 21 of the constitution of Saxe-Coburg-Gotha in Germany.”¹⁴⁸¹ Maybe Bao did not mention Kitaoni’s name because his book was not a standard *œuvre* on constitutions and because Kitaoni was not yet one of the heavyweights of Japanese constitutional studies. But given that Bao read Kitaoni in such a particular question, he is most likely to have thoroughly studied his book, even when not directly citing it.

¹⁴⁷⁸ Bao, *Daqing xianfa lun*, 140.

¹⁴⁷⁹ Shang, “Liang zhong Qingmo xianfa cao’an gaoben’ zhiyi,” 166–167.

¹⁴⁸⁰ Cui, “Qingting zhixian yu Mingzhi Riben,” 189–191.

¹⁴⁸¹ Kitaoni, *Daishin kenpōan*, 129 (Art. 17). Bao, *Daqing xianfa lun*, 117–118. Bao talks about the constitution of “Saxe-Cobu-Pu’erbi-Gotha” (*Sakesen-Guobu-Pu’erbi-Keda* 薩克森、果補、普耳比、可達). The odd insertion of “Pu’erbi” is probably due to a misrendering of Japanese *Kōburuhi* コーブルヒ for Coburg.

We will come back to the impact of Kitaoni's draft of a constitution in the Constitutional Office, including on Wang Rongbao, in a moment. But for the moment, the list of his articles adds another example showing that Kitaoni was not ignored by the Chinese. The comments of the *Xianzhi rikan*, republished in the *Shenbao*, recognised that Kitaoni was knowledgeable about China (*duo wen Qing shi* 多聞清事), but were rather critical of him, disagreeing with him in several points. Yet, Kitaoni's considerations were deemed to be so valuable that they merited critical engagement than his original article. Thus, from the entirety of his articles in China and Japan one can see that Kitaoni was already more than a mere undergraduate student who just happened to write a constitutional draft before graduation.

While Kitaoni's articles are an important and hitherto understudied part of his work, his *opus magnum* was the constitutional draft for China in its published form. One of the obituaries for Kitaoni in the *Chuo Law Review* wrote that he was "a man with a love of learning" (*tokugaku no shi* 篤學の士), and mentioned his private draft of a constitution as his outstanding work.¹⁴⁸² Compared to Zhang Bolie's draft, Kitaoni's book was much more well-publicised and well-distributed. The book was purchased by several important libraries at the time and can still be consulted to this day in several libraries across Japan. While Zhang's book did also receive a note in the "recent publications" section of the *Asahi shimbun*,¹⁴⁸³ Kitaoni's work was largely advertised and—sometimes negatively, sometimes positively—

¹⁴⁸² "Kōshi gakuin no seikyo," 177. The author would like to thank Asa-Bettina Wuthenow, Orion Klautau, Sano Mayuko 佐野真由子 and Yamamoto Takahiro 山本敬洋 for their help with interpreting the unpunctuated obituary.

¹⁴⁸³ *Asahi shimbun* 朝日新聞, "Shinkan zassho: Katei Chūgoku kenpō sōan (Chō Hakuretsu choku)" 新刊雜書：假定中國憲法草案（張伯烈著）(Newly published miscellaneous books: *Hypothetical draft of a constitution for China*, by Zhang Bolie)," May 9, 1909.

reviewed in general newspapers such as the *Asahi*¹⁴⁸⁴ and the *Yomiuri shimbun*,¹⁴⁸⁵ as well as in specialised journals such as the *Gaikō jihō*¹⁴⁸⁶ and the *Journal of the Association of Political and Social Science* (*Kokka gakkai zasshi* 國家學會雜誌), another top-notch magazine closely associated with Itō Hirobumi and the Meiji constitution.¹⁴⁸⁷

One also can trace the book in China almost immediately after its publication in Japan. The book was published on June 22 and released to the public on June 25, 1909. 20 days later, on July 15, Dashou showed Kitaoni's work to Wang Rongbao, who notes in his diary that he found it "fine and solid" (*jue qi jingshi* 覺其精實) and that he borrowed Dashou's copy, continuing to read it at home the same night.¹⁴⁸⁸ Assuming that Dashou and Wang were reading the recently published book version and not the 1908 version gifted to a Chinese student, the book would have arrived at their hands in astonishing speed: The minimum shipment time from Tokyo to Peking, via Shanghai and Tientsin, was just slightly less than 20 days.¹⁴⁸⁹ This would show how well-tuned the constitution-makers in Peking were to Japanese novelties concerning China's constitution.

¹⁴⁸⁴ *Asahi shimbun* 朝日新聞, "Shinkan zassho: Daishin kenpōan (Kitaoni Saburō choku)" 新刊雜書: 大清憲法案 (北鬼三郎著) (New publications and miscellaneous books: *Draft constitution for the Qing*, by Kitaoni Saburō), July 1, 1909 (review); *Asahi shimbun*, "Shinkan: issatsu yōsō kikuban segawa kinji habi hon" (advertisement).

¹⁴⁸⁵ *Yomiuri shimbun* 讀賣新聞, "Shinkan sunpyō: Daishin kenpōan (Kitaoni Saburō choku)" 新刊寸評: 大清憲法案 (北鬼三郎著) (Short reviews of new publications: *Draft constitution for the Qing*, by Kitaoni Saburō), July 7, 1909 (review).

¹⁴⁸⁶ "Shohyō: Daishin kenshian" 書評: 大清憲此[sic!]案 (Book reviews: *Draft of a constitution for the Qing*), *Gaikō jihō* 外交時報 12, no. 7 (1909), 87 (review).

¹⁴⁸⁷ "Shinkan shōkai: Daishin kenpōan" 新刊紹介: 大清憲去案 (*Introduction to new publications: Draft of a constitution for the Qing*), *Kokka gakkai zasshi* 國家學會雜誌 23, no. 9 (Meiji 42 [1909]), 1361 (review). However, neither Zhang's nor Kitaoni's book seem to have been reviewed in the *Sun* (*Taiyō* 太陽).

¹⁴⁸⁸ Wang, *Wang Rongbao riji*, 43. Cf. the facsimile of Wang's diary: Wang Rongbao 汪榮寶, *Wang Rongbao riji* 汪榮寶日記 (Diaries of Wang Rongbao) (Taipei: Wenhai chubanshe, Minguo 80 [1991]), 175.

¹⁴⁸⁹ On shipping times in the late Qing see Zhongguo jindai jingjishi ziliao congkan bianji weiyuanhui 中國近代經濟史資料叢刊編輯委員會, ed. *Zhongguo haiguan yu youzheng* 中國海關與郵政 (China's customs and post administration) (Beijing: Zhonghua shuju, 1983). The shipping from Tokyo through Yokohama to Shanghai would take about 7–13 days, although there are records of letters which took even longer. Post from Shanghai to Tientsin would take a further 9–12 days. On top of that, getting the letter from Tientsin to Peking and distributing it there would also take approximately one or two

Furthermore, a copy of Kitaoni's book is registered, together with a few other books, as having been purchased by the Constitutional Office on a document dated August 2, 1908 and signed by Zhang Zongxiang. It is, however, not possible to ascertain whether this copy registered on August 2 was the same as the one read by Dashou and Wang two weeks earlier. Possibly, there were more copies circulating in Peking at the time, as the book was of interest to a considerable number of readers there.¹⁴⁹⁰ Whether it was the same copy or not, the book continued to be used in the Constitutional Office throughout the period of constitutional preparation, i.e., throughout the years 1909 to 1911. As Shang Xiaoming has pointed out, Wang Rongbao was aware that Kitaoni was not one of the "popes" of constitutional law in Japan, and accordingly adduced him less than others in his considerations.¹⁴⁹¹ But Wang does mention having read Kitaoni's book twice again. In July 1910, he reads Kitaoni's book after going home, without a concrete motive, which he would not have done if he had reverted his opinion uttered a year earlier.¹⁴⁹² And again a year later, in 1911, he uses Kitaoni next to a number of other scholars to support his viewpoint.¹⁴⁹³ Thus, as can be seen from his first comment in July 1909 as well as from the further entries, Wang did, in fact, value Kitaoni's constitutional draft.

days each. Thus, in the fastest case, the book could have arrived in Peking within 18 days. On late Qing postal history see further Xu Xuexia 徐雪霞, *Jindai Zhongguo de youzheng, 1896-1928 近代中國的郵政, 1896-1928* (Postal administration in modern China) (Taipei: Sili Dongwu Daxue xueshu zhuzuo jiangzhu weiyuanhui, Minguo 81 [1992]).

¹⁴⁹⁰ Given that shipping times could also easily take longer than 20 days, there is a further possibility: that the version read Wang Rongbao in July was not the newly-published book, but still the 1908 version that had been gifted to a Chinese student and then found its way to Dashou and him. Cui, "Qingting zhixian yu Mingzhi Riben," 172, does not consider this possibility at all. However, although Wang Rongbao uses the shorter title of the 1909 edition, omitting the supplement *motives* (*liyoushu* 理由書) present in the 1908 version (see his diary entry in Wang, *Wang Rongbao riji*, 175), it would have been easily conceivable for a diary entry to shorten the title of the book. The possibility of Kitaoni's preliminary draft getting to Dashou and Li Jiaju should not be lightly dismissed. This would have interesting implications, as it would show that Kitaoni's draft gifted to a student was circulating in Peking and being read by the concerned officials even before its official publication.

¹⁴⁹¹ Shang, "'Liang zhong Qingmo xianfa cao'an gaoben' zhiyi," 166-167.

¹⁴⁹² Wang, *Wang Rongbao riji*, 168 (entry for July 2, 1910).

¹⁴⁹³ *Ibid.*, 296 (entry for September 16, 1911).

It was not only him who read Kitaoni: Li Jingming, an official of the Ministry of Revenue who had studied in Japan and whose brother was working at the Constitutional Office, translated Kitaoni's draft from the Japanese into Chinese and submitted it to the Constitutional Office for reference.¹⁴⁹⁴ That is, Li not only translated the draft as such, but also parts of the accompanying commentaries. While the translation of the suggested constitution has survived in its entirety, only a few of the commentaries translated by Li have survived. All relate to chapter one of the constitution, dealing with the position of the emperor. But again, Li's translation shows that the constitution-drafting process was a dialogue rather than a one-sided reception of a constitutional draft made by a foreigner. For on top of Kitaoni's commentaries, Li added commentaries of his own, which critically evaluated the content of the stipulations and pointed out what should be taken into account by the drafters of the final Chinese constitution.

e) On the Contents of Kitaoni Saburō's Draft

From the intricacies of regional entanglements in producing a constitutional draft, let us proceed to the global level. For a closer look at Kitaoni Saburō's constitutional draft shows how constitutional charters were also becoming globalised as an accessory of modern nation-states. Although written by a Japanese scholar in

¹⁴⁹⁴ Li Jingming 李景銘, *Cheng fanyi Riben faxueshi Beigui Sanlang suozhu Daqing xianfa'an tiaomu* 呈翻譯日本法學士北鬼三郎所著大清憲法案條目 (Translation of the articles of the *Draft constitution for the Qing* written by the Japanese licentiate of laws Kitaoni Saburō), file no. 09-01-01-0003-011, First Historical Archives of China, Beijing (constitutional charter); Li Jingming 李景銘, *Cheng fanyi Riben faxueshi Beigui Sanlang suozhu Daqing xianfa'an tiaomu ji shuoming* 呈翻譯日本法學士北鬼三郎所著大清憲法案條目及說名 (Memorial submitting the articles and explanations of the *Draft constitution for the Qing* written by the Japanese licentiate of laws Kitaoni Saburō), file nos. 09-01-01-0003-012, 09-01-01-0003-013, 09-01-01-0003-014, 09-01-01-0003-015, 09-01-01-0003-016, First Historical Archives of China, Beijing (specific articles). Li does not include information about his translation in his memoirs, consulted by the author of the present study in the archives of the Chinese Academy of Social Science. His possible relationship to Kitaoni and the exact circumstances of his translation still remain unclear. Li Jingming 李景銘, *Liu-er huiyi caogao* 六二回憶草稿 (Draft of my memoirs at 62), file no. *shi* 史 420.8/4068, Archive of the Chinese Academy of Social Sciences, Beijing, and Li Jingming 李景銘, *Liu-er huiyi dinggao* 六二回憶定稿 (Definitive manuscript of my memoirs at 62), file no. *shi* 史 420.8/4068, Archive of the Chinese Academy of Social Sciences, Beijing.

Japan, it does actually make an earnest effort at not blindly copying the Japanese model, but following the thought of “picking the best regulations from the various countries.” At the same time, it cast an eye on recent constitutional developments, i.e., the adoption of a constitution in Russia, which Kitaoni deemed to be akin to China.

At the time, the review in the *Journal of the Association of Political and Social Science* criticised Kitaoni’s draft for being too close to the Meiji constitution: “Only two or three expressions have been changed, but most of it is completely equal to the Japanese constitution” (*tada nisan jiku o henkōshitaru nomi, daitai ni oite mattaku Nihon Kenpō to dōyō nari* 唯二三字句を變更したるのみ、大體に於て全く日本憲法と同様なり). The review remarked that Kitaoni had more than a few bright ideas, but suggested that he read more foreign literature in order to increase the value of his work.¹⁴⁹⁵

It is not surprising that Kitaoni worked out a constitution for a constitutional monarchy that was similar to the constitution of the constitutional monarchy he was a subject of. It is also not surprising that, in a Japan where most intellectuals were skeptical of China being able to replicate Japan’s constitutional experience, the journal did not show support for such a draft heavily modelled on Japan. But the journal’s criticism of just “two or three” different expressions was vastly exaggerated. For example, Kitaoni copied art. 3 of the Meiji constitution literally into his draft, declaring the emperor to be “sacred and inviolable.” In the commentaries, he also took over the official Japanese explanation that the term “sacred” of the Meiji constitution was a reference to Japanese tradition.¹⁴⁹⁶ However, aware of the differences between Japan and China in the role of the emperor, he did not copy the most emblematic art. 1 of the Meiji constitution.¹⁴⁹⁷

¹⁴⁹⁵ “Shinkan shōkai: *Daishin kenpōan*,” 1361.

¹⁴⁹⁶ Kitaoni, *Daishin kenpōan*, 42–43.

¹⁴⁹⁷ On the specificities of the Emperor in Chinese history vis-à-vis Japan and the European states see *ibid.*, 1–6.

Cui Xuesen has compiled a list of all provisions of Kitaoni's draft in its 1909 version and graded them from 0 to 5 for similarity to the Meiji constitution. He comes to the conclusion that of 94 provisions in total, 37 have a similarity degree of 5, 24 a similarity degree of 4 and 8 a similarity degree of 3, making for about 70% of the articles that are more similar than diverging.¹⁴⁹⁸ While these numbers can be taken as a proof that the Meiji constitution was the "mother version" (*muban* 母版)¹⁴⁹⁹ of Kitaoni's draft, they show more than "just two or three" differences and can also be interpreted in other ways.

The description of the book in *Gaikō jihō* was much more nuanced: while Kitaoni's draft was modeled on the Japanese constitution, he had also carefully considered foreign constitutions and China's own system.¹⁵⁰⁰ Indeed, many of the differing articles concern the two institutions which gave Kitaoni's constitutional draft a "heavy Chinese flavour."¹⁵⁰¹ The first was the regency. Although the question arises in all hereditary monarchies, it had become a particularly hot topic after the passing away of the Emperor and Empress Dowager at the end of 1908. Accordingly, Kitaoni devotes a separate chapter of his constitution to it, as was also planned for the final constitution of China. This correlation between the two has led Cui Xuesen to affirm that Kitaoni most likely influenced the final constitution, although there is no definite proof for that.¹⁵⁰² The second Chinese characteristic of the draft was the censorate. Kitaoni's draft was the only one that devoted a separate chapter to this institution.¹⁵⁰³

But the mere textual comparison to the Meiji constitution does not suffice, for even the articles that seem to be copied from it tell a broader story. The other newspaper reviews and even more so the advertisement place emphasis on an-

¹⁴⁹⁸ Cui, "Qingting zhixian yu Mingzhi Riben," 182–183.

¹⁴⁹⁹ Ibid., 183.

¹⁵⁰⁰ "Shohyō: *Daishin kenshian*," 87.

¹⁵⁰¹ Cui, "Qingting zhixian yu Mingzhi Riben," 183–184.

¹⁵⁰² Ibid., 189.

¹⁵⁰³ Ibid., 184.

other aspect: The global outlook of Kitaoni's draft. The *Yomiuri shimbun*, for example, stressed that the draft was not only valuable for the Chinese to consult, but rather for all generally interested in the study of politics.¹⁵⁰⁴

Why was that so? Kitaoni's book provided something unique, which is probably also something which aroused the interest of the constitution-makers in Peking.¹⁵⁰⁵ The commentary of every paragraph discussed the legal situation in various countries and gave parallel norms in other constitutions. This was stressed in the book review of the *Asahi shimbun* as well as in the paid advertisement, showing that the editors themselves saw this as the book's advantage. The advertisement praised Kitaoni's academic background in English law and, in large type, emphasised those interested in "comparative law" as part of the target readership.¹⁵⁰⁶

Both other constitutional drafts—that of Zhang Bolie and the one contained in the First Historical Archives—did also refer to the constitutions of Europe and America, but in a less rigorous and often vaguer fashion. Kitaoni, instead, gave exact parallel norms to almost all of his own articles in a specific "reference" (*sankō* 参考) section, most of the exceptions concerning the specifically Chinese censorate. The parallel norms were consistently ordered according to the largest similarity of the respective "national essence" (*kokutai* 國體) to China's, which, according to Kitaoni, was: Japan—Great Britain—Russia—Prussia—German Empire—others.¹⁵⁰⁷

Although Japan is Kitaoni's default point of reference, he does not mention it every time. Most importantly, except for three norms towards the end of the charter, he almost never mentions Japan alone. Although most of the provisions are inspired by their Japanese counterparts, Kitaoni explains and justifies them

¹⁵⁰⁴ *Yomiuri shimbun*, "Shinkan sunpyō: Daishin kenpōan."

¹⁵⁰⁵ Cui, "Qingting zhixian yu Mingzhi Riben," 183–184. Cui does not explore the implications of this aspect of Kitaoni's work.

¹⁵⁰⁶ *Asahi shimbun*, "Shinkan: issatsu yōsō kikuban segawa kinji habi hon."

¹⁵⁰⁷ Kitaoni, *Daishin kenpōan*, 2.

within a larger mesh of norms, referring extensively to constitutions of a large number of states. While the reference sections were limited to the nine most important charters (additionally to the mentioned ones, they included Austria, Belgium, France and the USA), the commentaries also referred to less well-known ones, such as Luxembourg or the smaller German states.

Remarkably, Kitaoni wrote with a view to the current global wave of constitutionalism, not being limited to the monarchies of Europe which had already been constitutional for a few decades. When stating that the sovereignty rested with the people, he adduced the Belgian constitution side by side to the recent constitution of the Philippine Republic of 1899, which had never been fully implemented.¹⁵⁰⁸ Just as the sacredness and inviolability of the head of state was not limited to crowned kings, it can also be seen from this example that constitutional provisions transcended simplistic divisions of monarchy and republic.

The Persian and Ottoman constitutions, even more recent than the Philippine constitution of 1899, did not feature in the draft. In the latter case, this might also be explained by the speed with which events were taking place, as the Ottoman constitution was only reinstated after the first version of Kitaoni's draft had been finished. However, Kitaoni does place much weight on the Russian fundamental laws of 1906. Nearly half of Kitaoni's proposed articles (thirty-seven out of seventy-six articles) refer expressly to parallel norms in the Russian Constitution of 1906.¹⁵⁰⁹

Kitaoni not only deems the "national essence" of both states to be particularly close to each other, but also writes that the position of the Emperor of China to be the same as that of the Japanese and Russian Emperors.¹⁵¹⁰ Thus, the part

¹⁵⁰⁸ Ibid., 215. As the wording is identical, the version of the Philippine constitution consulted by Kitaoni is likely Ponce, *Nan'yō no fūun*, 91.

¹⁵⁰⁹ Articles 1–6, 8–15, 19–21, 24, 26, 28–30, 33–37, 39, 41–42, 50–51, 65–66, 68–69 and 74. This is less than the number of parallel norms indicated for Japan (65), Prussia (55) and England (50), but more than the numbers for Belgium (36), Germany (31), Austria and USA (24 each) and France (21). However, Kitaoni's references are not always correct.

¹⁵¹⁰ Kitaoni, *Daishin kenpōan*, ii, 7.

which refers most heavily to the Russian Constitution is section one about the emperor's position, whereas the articles about the future parliament took much less notice of it. Most conspicuously, Kitaoni's Article 3 about the "sacredness" and "inviolability" of the emperor was identical in Kitaoni's draft, in the Meiji Article 3 and in the Russian Article 5. One of the differences to the Japanese constitution that had been noticed by the critical review in the *Journal of Political and Social Sciences* was Kitaoni's Article 15, which stipulated that the emperor had the right of coinage. This provision was not present in the Meiji Constitution, but it did exist in the Russian and a number of Western European charters. Thus, at least from a textual point of view, Kitaoni's draft was also similar to the recently-promulgated Russian constitution, of which the drafter was fully aware. This was not a mere coincidence, but the expression of the global process in which it was embedded: the co-production of the accoutrements that define today's nation-states.

5. Chapter Conclusion

In 1908, both the internal and the international situation came to a head. Since the Chinese government had promised to "prepare for the adoption of a constitution," pressures for it to proceed quickly had steadily increased. Given these pressures from several sides, the Chinese government ordered a legal outline of a coming constitutional system and a detailed roadmap to be quickly produced. This move by the Chinese government coincided with constitutional moves in several other states of Asia and Africa, which continued the global constitutional wave of 1906. Most notably, the Ottoman Empire decided to reinstate its constitution just two days after China ordered its constitutional *Outline* to be written. Astonishingly, this wave of constitutions has been nearly forgotten, but at the time, it was well-noticed across the world. Most importantly, the Ottoman Constitution did have a noticeable impact on China. Again, the fact that the last large autocratic Empire had adopted a constitution provided an argument that China should follow suit

soon. The case of the Ottoman Empire also shows the intricacies of the global dialogue surrounding constitutions: For many Chinese observers, the Ottoman efforts to recover from national weakness through the means of a constitution were inspiring. European criticism towards it was, thus, also understood as a means to contain the victims of imperialism, as Qian Xun's report to Peking evidences.

It was against this background that the work on concrete constitutional drafts for China began. Those concerned with constitution-making in the government circles of Peking as well as interested laymen worked on their drafts in full conscience of the global trends and knowing about the latest constitutional developments. Translations of constitutions had been produced since the second half of the 19th century, and their number skyrocketed in the first decade of the 20th century. Accordingly, Chinese intellectuals and officials had not only translations of the Japanese and Prussian constitutions at hand. They could also make use of such varied charters as those of the smaller European kingdoms, those of the Kingdom of Hawai'i and of the State of Oklahoma, and the newly-adopted ones of Russia, Persia and the Ottoman Empire.

The norms produced in China, thus, cannot be reduced to mere copies of the Japanese norms, even if they were literally taken over from the Meiji constitution. The extant constitutional drafts show, at the same time, a close regional coöperation with Japan and an awareness of the broader global phenomenon of constitutionalism. Two of them were produced in Japan. Zhang Bolie's draft comes with the collected opinions of a large number of Japanese public figures. While dismissing their often pessimistic views, he simultaneously praises the constitution as China's salvation and points out Turkey's recently improved international standing.

It is the Japanese scholar's Kitaoni Saburō's draft that best shows this regional and global embedding of China's constitution making. Kitaoni's work was of noticeable importance both in Japan and in China. His draft of a constitution was especially remarkable because of its strong foundation in compared law. As

he had himself first majored in English law, his book was unique in providing a rigorous international background for each of his suggested norms. It placed much attention on the fundamental laws of Russia, which had been adopted as part of the same wave of constitutionalism that had also brought about the Qing Court's quest for a constitution. Even though most of the norms were inspired by the Meiji Constitution, Kitaoni's draft shows how the crafting of a constitution for China was not a mere copy of a Japanese blueprint, but part of a larger phenomenon.

Kitaoni does also rightfully merit the title of being the creator of the first constitutional charter ever devised for China. He is even more distinguished considering that many observers in Japan cautioned for a much slower pace of "constitutional preparation." Kitaoni began his studies of Chinese constitutionalism astonishingly early, in 1904/05, when it was already a hotly-discussed topic, but not yet officially embraced by the Chinese government. He then finished his first draft of a constitutional charter in February 1908, several months before the Chinese government commissioned the *Constitutional Outline*. This charter would remain his *magnum opus*. Having died early, in 1912, he was soon forgotten and is today only known to a handful of specialists.

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It is also, dear reader, with this overview of the concrete constitutional texts that were drafted for the Qing Empire that we finish our survey of how the concept of a constitution was established in China. None of the constitutional drafts devised in the last years of the Qing Empire—not even the *Outline of a Constitution*—was ever applied, for the internal tensions of the Qing Empire came to a head in the years 1908–1911, invalidating the plan of "constitutional preparation." The various drafts show a hypothetical situation of what the constitutional charter of a Chinese monarchy might have looked like. But most importantly, and not hypothetically at all, they mark the consummation of the process by which constitutions became

firmly engrained in China's political culture. Since the *Outline of a Constitution*, no Chinese government has ever forgone this political and legal instrument.

CONCLUSIONS

國無常強，無常弱。奉法者強則國強，奉法者弱則國弱。¹⁵¹¹

Han Fei (3rd century BC)

1. Epilogue: The World Coming to an End

In 1905, when the Chinese decided to send a commission to examine foreign constitutional systems, the *Los Angeles Times* was so flabbergasted about the prospect that China, the erstwhile symbol of autocracy, would adopt a constitution that it humorously exclaimed:

A Constitution for China also? The Seventh Day Adventists are right. The world is coming to an end.¹⁵¹²

Apocalypse was not coming. But the *Los Angeles Times* was right in two aspects: First, the Qing Empire was coming to an end. The efforts of constitution-making in the following years did not lead to the Qing Empire adopting a permanent constitution. To many pundits, the Qing government perished because it was too late and too slow to introduce constitutional reforms. This is true in so far as the Qing dynasty was no longer able to tackle problems which had accumulated for decades. But in a way, the Chinese government, sending mixed signals, was also too early and too quick with its reforms, as many contemporary observers warned.¹⁵¹³ The

¹⁵¹¹ "No state is forever strong or forever weak. If those who uphold the law are strong, the state will be strong; if they are weak, the state will be weak." Text and translation adapted from Han Fei 韓非, *The Works of Han Fei Tzu*, trans. Burton Watson, 3rd ed. ([Taipei]: Wenzhi chubanshe, 1984), 2-3. In the 1930s, Lin Yutang 林語堂 (1895–1976) has referred to Han Fei's (c. 280-233 BC) legalist teachings as an ancient model of constitutionalism, in opposition to mainstream Confucian philosophy. See Lin Yutang, *My Country and My People* (New York: Reynal & Hitchcock, 1935), 206-213.

¹⁵¹² *Los Angeles Times*, "Pen Points." November 4, 1905.

¹⁵¹³ See also Reynolds, *The Xinzheng Revolution and Japan*, 191-192, who argued that damage by the anti-Qing revolutionaries was containable, but that the alienation of the throne from its staunchest conservative allies and officials led to the demise of the Qing dynasty.

use of “constitutionalism” as a tool to promote the creation of a nation-state did not help in mitigating internal conflicts, especially between local and central elites, but rather exacerbated them.

Edward Satow’s and Itō Hirobumi’s warnings more or less became reality: The tensions between central government and regional elites intensified. At the same time as it lost its conservative backing, the Court was not able to win over the reformist sectors of society. Nor was it able to coöpt local elites, much to the contrary. The regional assemblies and later the Political Consultative Conference in the capital, elected as a central element of constitutional preparation, became a platform for severe opposition to the Court. In October 1911, a military uprising took place in the city of Wuchang, leading to a domino effect of the Qing government rapidly losing control of large parts of Southern China. The revolutionaries, based in Nanking, proclaimed the Republic of China on January 1, 1912. After negotiations led by Yuan Shikai, the last Emperor, who was six years old at the time, resigned on February 12, 1912.

By that time, in spite of all political disputes, the concept of a formal constitution was already firmly entrenched in political debate as a necessity for the creation of a modern nation-state. In the chaotic last weeks of the Empire, on November 3, 1911, the Qing Court was forced to promulgate a second official constitutional document, the *19 Major Constitutional Articles* (*Xianfa zhongda xintiao shijiutiao* 憲法重大信條十九條).¹⁵¹⁴ Drafted by the Political Consultative Council, it was officially based on the English parliamentary system, which meant that it strengthened the legislative branch and narrowly limited the Emperor’s powers.¹⁵¹⁵ A

¹⁵¹⁴ Gugong Bowuyuan Ming-Qing dang’anbu, *Qingmo choubei lixian dang’an shiliao*, vol. 1, 102-104; also contained in Xia et al., *Shiliao huicui*, 148-149 and Miao, *Zhongguo zhixianshi ziliao huibian*, 15-16. For a French translation see Scié-Ton-Fa, “Notice sur le changement de régime,” 594-595. On the 19 Articles see Cui, “Qingting zhixian yu Mingzhi Riben,” 145-165.

¹⁵¹⁵ The reference to the English constitution is to be found in Li Jiaju’s memorial asking for the adoption of the *19 Articles*, Gugong Bowuyuan Ming-Qing dang’anbu, *Qingmo choubei lixian dang’an shiliao*, vol. 1, 101-102. It had also been contained in the accompanying memorial to the precursor *12 Articles*, demanded in the wake of another military revolt in the city of Luanzhou 灤州. Ibid., 98-101. At the time, not all observers agreed with the assertion that the draft was “English” in essence. The French

monarchy was no longer conceivable without a constitution: In 1916, when Yuan Shikai established the three-month Empire of China with himself as the Emperor, a draft of a monarchic constitution immediately appeared. It was written by Ma Jifu 馬吉符 (1876-1919), an official at the Ministry for Mongolia and Tibet (*Mengzang yuan* 蒙藏院), under the title *Parochial Views on the Constitution* (*Xianfa guanjian* 憲法管見).¹⁵¹⁶

On the other side, the revolutionaries, who had agitated against constitutionalism in the form of a constitutional Qing Empire, were not opposed to constitutions as such: Many provinces adopted their constitutions as they seceded from the Empire.¹⁵¹⁷ On a national level, the republicans announced their first republican constitution, called “organisational charter” (*Zuzhi dagang* 組織大綱), even before the fall of the Empire, on November 3, 1911, i.e. on the same day as the 19 Articles.¹⁵¹⁸ The newly-founded Republic also hurried to promulgate a provisional constitution (*Linshi yuefa* 臨時約法) just a month after the resignation of the Qing Emperor.¹⁵¹⁹ It was, indeed, only provisional: The very republicans who had attacked the Qing for not adopting a constitution quickly enough, eventually subscribed to the same gradualist principles. Sun Yat-sen 孫逸仙 (1866-1925) conceived of “constitutional government” (*xianzheng* 憲政) as just the last phase of

legation, e.g., denied that the document was an embodiment of English constitutional thought, rather attributing it to the whim of its drafters and particularly to their wish to “annihilate all powers” which would not emanate from the parliamentary chamber itself. Telegram no. 848, November 6, 1911, 513PO/A 227, dossier VI, Diplomatic Archives of the Ministry of Foreign Affairs of France, Nantes.

¹⁵¹⁶ The draft has been nearly totally ignored by literature, but it has been reprinted in 2008 as part of a collection on Muslim Chinese writers. Ma Jifu 馬吉符, “Xianfa guanjian” 憲法管見 (Parochial views on the constitution), in *Huizu dianzang quanshu* 回族典藏全書, vol. 119, ed. Wu Haiying 吳海鷹. 235 vols. (Lanzhou, Yinchuan: Gansu wenhua chubanshe; Ningxia renmin chubanshe, 2008), 413–437. On Ma Jifu see Zhao Yuntian 趙雲田, “Ma Jifu ji qi Zang du jieyu 馬吉符及其《藏牘劫餘》 (Ma Jifu and his Remnants of Tibetan Documents), *Zhongguo zangxue* 中國藏學, S2 (2013).

¹⁵¹⁷ See Prasenjit Duara. *Rescuing History from the Nation: Questioning Narratives of Modern China* (Chicago and London: Chicago University Press, 1995), 184.

¹⁵¹⁸ Xia et al., *Shiliao huicui*, 153-155. French translation in Scié-Ton-Fa, “Notice sur le changement de régime,” 595-597.

¹⁵¹⁹ Xia et al., *Shiliao huicui*, 156-159. French translation in Scié-Ton-Fa, “Notice sur le changement de régime,” 598-602.

state-building after military government (*junzheng* 軍政) and a government of “tutelage for the people” (*xunzheng* 訓政).¹⁵²⁰ The constitution of 1931 still declared itself to be a provisional constitution for the era of tutelage. The post-Imperial governments did not necessarily accept the whole range of connotations concerning popular representation and fundamental rights which were attached to some of the broader interpretations of the term “constitutionalism.” Nonetheless, whatever its substantial contents might be, government without a constitutional document became unthinkable, and several constitutions in both the Republic of China and the People’s Republic of China have taken turns as the country’s highest political and legal document.

2. Summary of Results: China and the Constitutionalisation of the World

a) A History Longer than Imagined

The *Los Angeles Times* was also right in a second, less obvious aspect. The world in which states were governed without a constitution was coming to an end. China’s adoption of a constitution marked a *cæsura* in global constitutional history. As exposed in the introduction to this thesis, Benjamin Akzin saw the First World War as the point when constitutions “well-nigh became a universal fashion, a symbol of modernism.”¹⁵²¹ This dissertation has shown that this has to be slightly revised. The decisive push for the constitutionalisation of the world was provided by the global constitutional wave of the first decade of the 20th century, which affected several of Eurasia’s largest Empires, both in terms of area and population, such as China, Russia, the Ottoman Empire and Persia.

The “constitutional movement” of 1905-1910 was prepared in a decades-long process. In Western Europe and the United States, constitutions had become

¹⁵²⁰ Sun Yat-Sen 孫逸仙, *Guofu yijiao: Jianguo fanglüe; Jianguo dagang* 國父遺教：建國方略·建國大綱 (Teachings bequeathed by the father of the nation: Strategy for national construction; Outline of national construction), 9th ed. (Taipei: Sanmin shuju, Minguo 83 [1994]), 350.

¹⁵²¹ Akzin, “The Place of the Constitution in the Modern State,” 1.

central elements of statecraft for different reasons. They were instruments of regulating the division of power where the monarch lost part of his powers to the nobility and the bourgeoisie, but they also proved immensely useful for their symbolic and legitimising value when old forms of legitimation were not available or when their effects waned. In the United States, the constitution, originally a treaty of international law between 13 sovereign states, acquired a quasi-religious function, akin to the Chinese classics, as Hawklings Lugine Yen remarked.¹⁵²²

It was this elevated position and remarkable stability of the US American constitution that made it the first constitution to be known in China, being mentioned as early as 1838 in Elijah Coleman Bridgman's book *Sketch of the United States of America*. The US American constitution was also the first to be translated into Chinese, in the 1861 edition of Bridgman's book. This first translation would not remain isolated, as several other versions of the Constitution of the United States appeared in the 19th century.

Bridgman's translation, of which the first edition had been ignored by earlier literature, also shows the strong regional interconnectedness of intellectual discourse. Usually, Japan's constitutional development is depicted as having taken place independently from China until the Chinese began studying the Japanese *fait accompli*, but this is an unbalanced interpretation. Already at this early stage, China served as an entrepot of constitutional ideas to Japan and Korea. Bridgman's book was vigorously perused in Japan, and the term it used to render the notion of "constitution," *zhengti* 政體, was quite likely the source for the title of the first provisional constitution of Japan, promulgated in 1868.

Certainly, the early history of the term in China shows how difficult it was to find an adequate Chinese equivalent, and it shows considerable initial confusion about the notion. For example, Liang Tingnan's 1844 book conflates the notions of federal legislation and of constitution into one. As late as 1894, the Chinese version

¹⁵²² Yen, *A Survey of Constitutional Development in China*, 13.

of Robert Mackenzie's *The 19th Century: A History* used 10 different expressions for "constitution," many of which obscured the meaning. In that case, the notion was often lost in the double translation, first by Timothy Richard's oral rendering into Chinese and then by Cai Erkang's written renarration. In total, East Asian sources came up with 42 different translations of the word "constitution," several of which gained wider transnational currency in China, Japan and Korea.

Yet, in the course of the second half of the 19th century, news about foreign constitutions were increasingly coming into China, and Chinese intellectuals and officials were increasingly aware of functions of this instrument in other polities. One of the 1881 translations of the United States constitution, produced by the Chinese legation in order to understand the internal workings of the USA, did not simply disappear in the archives of the *Zongli yamen*, but was continued to be read by officials concerned with international relations, and was also republished by them. Fu Yunlong, whose republication of the United States constitution has hitherto been ignored by scholarship, was also the first to publish a translation of the Japanese constitution of 1889. Through this and other means, the Chinese government and public was also informed in real time about the constitutional developments of Japan, rather than only coming in contact with it through Kang Youwei years later.

b) A Constitution as a Political Instrument

But although this knowledge about foreign constitutions configured a substratum for the subsequent "constitutional movement," Chinese intellectuals and the government did not immediately feel the need to apply the notion to their own country. The Qing dynasty had been in power for more than 200 years, and the Imperial form of state had functioned for about 2000 years. Why should one change this tradition which had functioned so well for so long by adopting a constitution?

Constitutions were not only useful for revolutionary turnovers from below. At least as much, they could be used as a reaction to internal pressures and external

threats, both in Europe and in Asia. As late 19th-century China was facing severe and recurrent political and economic crises due to both internal and external reasons, Chinese intellectuals came to the conclusion that the technical and economical remedies that were first applied were not sufficient. Thus, in the last decade and the first years of the 19th century, Chinese intellectuals began connecting the concept of a constitution to the notion of progress along governmental lines and came to advocate a constitution for their own country.

The use of the concept for China with its own long tradition of governance posed some tricky problems. To a certain extent, the rising importance of the concept of constitution was made possible by the vacuum left by the erosion of the authority of the Confucian classics. However, the classics still remained important and had to be accounted for. Some used China's own past, rich in precedents for any political proposal, as an argument in favour of a constitution, whereas conservative officials argued that China did not need a (new) constitution precisely because it was "the motherland of constitutionalism." Moreover, if China's new constitution was to incorporate a larger portion of the population in policy-making, most believed that the population had to be specifically prepared and educated for this task. Thus, the Chinese government, many Chinese intellectuals and foreign observers concluded that a constitution had to be adopted after careful preparation and equipment of the people with the necessary knowledge, and that it had to be gradually developed out of China's own traditions. As such, the constitution was imagined to be the capstone of a thorough reform of the Chinese state.

The lofty function attributed to the constitution also meant that more and more extravagant hopes were placed on it. Impatience for its adoption grew, up to the *Nanfang Bao's* over-enthusiastic analysis that the adoption of a constitution was "the basis for everything." This increased importance of constitutions and constitutionalism can be seen in an inconspicuous, but telling phenomenon: In the early phase, translations into Chinese of texts mentioning constitutions often downplayed the notion in comparison to the sources. Next to the mostly blurry

translations in *The 19th Century: A History*, the translations of the *Stateman's Year-Book* might serve as an example. Although the Chinese versions still contained much information about constitutions and generally conveyed their importance, they sometimes omitted or changed the references to constitutional charters. But this changed as constitutions began to be perceived as the key to national success. Translations and reports began to put even more emphasis on constitutions than the originals, highlighting its importance to Chinese audiences. Thus, to name only two of the many examples that have been discussed in the course of this study, Nahum Isaac Stone's English title "Political Conditions in Russia" became "Can Russia be a Constitutional Country?" in its Chinese version, and Edwin Pears' English-language title "Developments in Turkey" was rendered in Chinese as "On the Situation of Constitutionalism in Turkey."

c) China's Constitutional Movement and the Global Constitutional Movement

These two titles also show that the usual focus of recounting the Chinese constitutional movement as merely following Japanese footsteps is too narrow. The focus on Japan is not surprising, given that the constitutional movement was most closely connected to Japan. Sino-Japanese interactions were certainly one of the most important elements of the Chinese constitutional movement, as Chinese officials and intellectuals frequently took inspiration from Japan, and the constitutional plan carried out by the government strongly resembled the Japanese models. This study has narrated several hitherto under-researched aspects of close Sino-Japanese regional cooperation, such as the efforts for drafting a concrete constitutional charter after 1908. Two of the three extant drafts were published in Japan, and the official drafters had studied in Japan and paid close attention to Japanese constitutional scholarship.

Yet, this is just one part of the story. Japan did by no means monopolise the Chinese constitutional imaginary. Chinese intellectuals were not only passively

copying what the Japanese themselves had copied from Europe. At the same time as they were proposing to closely follow the Japanese model, they also had good knowledge of other constitutions, and were following closely events from elsewhere. Intellectual debates unfolded in multiple directions. Chinese students and intellectuals spoke to non-Chinese audiences. Ku Hung-ming was the first self-identified Chinese to argue against constitutions in English, years before the concept was embraced by the Chinese government. Ku later wrote a memorial to the Chinese government and, in 1906, exchanged views with Leo Tolstoy in a truly global correspondence. Tolstoy's letter was widely published across Eurasia, including several times in China, and is reasonably well-remembered. However, one point has been missed: One of its central elements was the ongoing Eurasian constitutional wave which had begun in 1905.

In contrast to Ku Hung-ming, other Chinese intellectuals promoted their country's constitutional reforms to the outside. Outside of China, public opinion was very interested in the Chinese constitutional movement, and Chinese intellectuals were in turn concerned with what foreign opinion thought of China's constitution. Again, the reception of foreign news was not merely passive, as Chinese media often spun news from abroad according to their own political agendas. Often, constitutionalism was emphasised to stress its importance as a key for national salvation, but there were also other possible adaptations. To again take Leo Tolstoy as an example, the anarchist *Tien Yee* highlighted his anarchist criticism of constitutions, whereas the pro-constitutional *Eastern Miscellany*, quite probably deliberately, toned down the invective against constitutionalism to a criticism of "republicanism."

Moreover, Chinese intellectuals did not think of their constitutional movement as a simply regional event. Nor did, for that matter, foreign intellectuals think of it as a regional event either. Tolstoy's letter shows how closely the Chinese, Russian, Ottoman and Persian constitutions were linked. Tolstoy's correspondence is also one of several points of direct contact and interchange on the matter of

constitutions between China and Russia. With Persia and the Ottoman Empire, China did not have direct borders nor direct diplomatic relations with these two states, and knowledge about these was mostly mediated through Western Europe, the USA and Japan. There was, thus, less direct contact with them than with Russia, although some cases can be found such as the unofficial conversations by the five commissioners when their ship stopped in Egypt.

At any rate, Chinese intellectuals and officials were, from the beginning, keenly interested in the constitutions and constitutional situations of all these Empires, i.e. Russia, the Ottoman Empire, Persia and even beyond. Their attention towards them arose less of an intrinsic interest than out of their own interests and needs.¹⁵²³ Chinese observers, across political fault lines, strongly felt that, *mutatis mutandis*, they were in a comparable situation. They knew that these Empires were facing severe internal and external problems, many of which were quite similar to China's own, and that they were reacting to them with similar, albeit not identical, processes. Thus, Chinese observers closely associated these ailing polities to China's own situation and drew conclusions for China.

Often, their conclusion was straightforward: Non-constitutional empires were weak, while the great powers all were constitutional; hence China should also strive for a constitution. Thus, although the Russo-Japanese war of 1904/05 is commonly deemed to be the start of the Chinese constitutional movement, the fragility of Russia as a non-constitutional state was perceived well before it and taken as an indication that constitutionalism was ineluctable in Russia as well as in China. The war was much less of a surprise to Chinese observers than a confirmation of ongoing debates, and further confirmation came through the subsequent internal events in Russia and elsewhere: The weak non-constitutional empires were also heading towards the adoption of a constitution.

¹⁵²³ See Müller, "China and the Russian Revolution of 1905," 282.

In all autocratic empires which were ailing at the beginning of the 20th century, the answer to the fragility and vulnerability was similar. Governments were reluctant or cautious to embrace the concept, just as earlier governments in Western Europe had often been reluctant to embrace it or were still not taking it seriously. But in all of them, a constitution, being the highest legal and political document of a nation-state, came to be seen as key to overcome the manifold difficulties. Every polity that moved towards the adoption of a constitution in the years following 1905—be it Russia, be it Persia, be it the Ottoman Empire—increased the moral pressure on China to follow suit.

However, perceptions were much more complex than just a call for the adoption of a constitution. All at the same time, news from the other Empires undertaking constitutional reforms signified a call for a faster as well as for a more gradual pace of constitutional reform, slowed down China's actual pace of constitutional preparation, and raised mistrust against the Chinese government. Thus, they significantly aggravated internal tensions in China.

Just as the fragility of non-constitutional Russia and other non-constitutional Empires had been a strong argument to adopt a constitution, the fact that the newly-adopted constitutions of 1906 in Russia and Persia failed to quickly solve the internal problems of these countries was also a strong argument for a more circumspect and gradual approach in China. The chaotic situation in Russia left a very negative impression among the Chinese government about the hasty adoption of constitutions, contributing to its resolution to thoroughly "prepare" for constitutionalism beforehand. The argument was even heard outside of the government, in rather pro-constitutional media, both in respect to Russia and to Persia.

Moreover, news of the concomitant constitutional upheavals also stoked mistrust against China's own government and its meandering maneuverings, contributing to further loss of authority. For those advocating the overthrow of the Qing monarchy, the constitutions of Russia, where a reactionary backlash took

place soon after the constitution had been adopted, and the Ottoman Empire were even an argument against “constitutionalism” altogether. However, while anarchists like the editors of the magazine *Tien Yee* or the Russian writer Tolstoy were fundamentally opposed to any kind of constitution as an instrument of political domination, for the republican opposition, this only meant an opposition to constitutional monarchy, not to the concept itself. This is also shown by the close connections of the republican revolutionaries with the Philippine revolutionaries and their constitutional documents, which appeared in widely-read Chinese translations.

d) The Adoption of a Constitution in China and the Already Constitutional Powers

These developments unfolded out of China’s own dynamics, notwithstanding the close regional coöperation in formulating a constitutional charter and the numerous transnational interchanges. China’s attempt to “prepare for constitutionalism” and to draft a constitution drew considerable attention from across the world, but many observers from polities which already had established constitutions looked at these with considerable skepticism. Few non-anarchists fundamentally disputed the adoption of a constitution as a worthwhile objective for China to pursue. But alongside exhortations that China be more decisive in its introduction of a constitutional system, many doubted China’s capability to quickly arrive at it, and recommended slowing down the transition. On a political level, foreign powers did not provide direct assistance for China’s plan of rapid constitutional “preparation,” and Itō Hirobumi even tried to offer assistance in slowing down China’s “half-blind groping after what is proper and wise.”

Globally, such a reaction to new constitutions was not uncommon. Constitutions appearing in states considered to be symbols of autocracy usually suffered heavy criticisms from already-established constitutional states. This had been the case for Japan, which had been criticised by Herbert Spencer for proceeding too

rapidly with its own process of constitutionalisation. Two decades later, Japanese intellectuals were some of the loudest in criticising China with the same arguments. When the recently-reinstated Ottoman constitution was criticised by Western European observers, the Chinese diplomat Qian Xun exposed a shared feeling of solidarity with the other constitutionalising empires in a report to his government. He defended the Ottoman constitution and attacked the European critics for wanting to bog the Ottoman Empire down by denigrating its constitution.

Qian Xun's attack was somewhat exaggerated. Foreign criticisms were not necessarily a sign of "constitutional envy" in the sense that they were a tool consciously applied by representatives of constitutional states with the aim of keeping non-constitutional states at a civilisational distance. Some criticism might have emanated from a certain haughtiness of not deeming others capable to achieve what oneself had achieved. Nevertheless, most of the criticisms of China's constitutional process were earnest. Critics considered that both the West and Japan had taken a long time to adopt their constitutions and doubted that a country of the size of China could shortcut the process. They were right in pointing out the many obstacles that the Chinese government had to tackle, in particular the conflict between a feeble, anemic central government vis-à-vis provincial elites trying to use the concept of constitutionalism to solidify their own positions.

Yet, the skeptic reactions by foreign observers and Qian Xun's reaction show that the adoption of constitutions in this global wave of 1905-1910 did not happen as a submission to a Western concept, and they did not happen because the respective governments were following Western and Japanese suggestions. To be sure, there were occasionally elements in debate which suggested that a constitution was a kind of a standard to be attained in order to take part in international relations. Some Western observers remarked that constitutional reforms would bring China to the same level as the West, enabling it "to treat with China as with one of themselves." Some Chinese officials and intellectuals, too, argued that the

lack of a constitutional government made others look at China as a “half-civilised” country which could not be treated on the same level.

However, this was only an auxiliary aspect. International relations did not fundamentally depend on whether a country had a constitution or not, whence Russia was treated as an equal in spite of not having a constitution until 1906. Not incorrectly, Chinese observers analysed that in the West, too, constitutions were not only about dividing powers and granting fundamental rights, but that constitutionalisation correlated with the strengthening of nation-states and muscular, imperialist foreign policy.

Hence, most participants in the Chinese intellectual debates also saw the main value of constitutions as instruments in power politics, as tools to make the state “strong and prosperous” internally and externally. The constitution, it was hoped, would foster nationalism by binding people and government closer together,¹⁵²⁴ strengthen the military and expand the government’s power, making it an instrument against foreign powers encroaching on China. Although, given China’s weak position, this was, in the first place, mainly a defensive strategy, the defensive element cannot be sharply distinguished from an aggressive one: As constitutional commissioner Dashou expressed, China had to behave as an imperialist power itself in order to fend off imperialist encroachment. In sum, a constitution was a tool to increase China’s competitiveness vis-à-vis other powers whose competitiveness was also thought to be enhanced by constitutions.

3. Assessment of the Qing Constitutional Movement: A Local Refraction of a Global Movement

Given these circumstances, describing early Chinese constitutionalism as an “imported good” does not do full justice to the matter in several senses. First, at the

¹⁵²⁴ Ethno-nationalism, however, remained mainly a discursive domain of the revolutionaries, who debated the relationship between Han and Manchu. See Zarrow, “Constitutionalism and the Imagination of the State,” in *Creating Chinese Modernity*, 79.

time of the so-called “constitutional movement,” the concept had already been around in China and in Chinese language for decades. The impression that the notion gained hold earlier in Japan and Korea is also somewhat biased, as constitutional ideas travelled throughout the East Asian region in the 19th century, so much so that the crafters of the 19th-century Japanese and Korean texts found inspiration in texts mediated through China. Due to the different circumstances of the two countries, Chinese intellectuals were indeed slower to apply the notion to their own country than their Japanese counterparts. But when they began to do so in the last decade of the 19th century, they did not “import” a foreign concept out of the blue. They could only do so because they already were part of an international network of intellectual interchanges on the subject.

Second, the Chinese government decided to “prepare for constitutionalism” in a world in which constitutions were not yet universal. Coming from the constitutions of the USA and Western Europe, even from Japan, one could see China as a late-comer to the modern concept of constitutionalism. However, this view only captures a cut-out of a larger picture. By 1905, a considerable part of the Eurasian landmass was still covered by non-constitutional states.

Third, when the several constitutional movements of the years 1905-1910 came to dominate the respective political agendas, this development was enabled and engendered by the respective internal and external conditions of these countries. Although they were not necessarily directly conditioned by each other, they happened in a common international environment, and they stood in mutual as well as multilateral dialogue.

A constitution was not forced upon China, quite to the opposite. Although Chinese intellectuals and the Chinese government developed their ideas in close contact with Western and Japanese models, they did so with full agency of their own. They worked out their own understanding of constitutionalism according to their own needs and political agendas. These were partly similar, but also partly different to other states in which constitutions had been adopted earlier. Although,

to some extent, a constitution should make China's form of government compatible with that of the West and Japan, it was by no means intended to submit China to a Western-dominated world-order of constitutional states. Much to the contrary: It was, to a large extent, meant as an instrument to compete with the West and Japan.

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What does all this mean for the evaluation of Chinese and global constitutional history?

In her dissertation, Zhao Hui deplored an "unbridgeable gulf of concepts" between Chinese and Western constitutional theory, "when actually, similarities between contexts of and approaches to constitution building in both the East and the West are far more present than has so far been acknowledged."¹⁵²⁵ Hence, Zhao has called for a "meaningful and sustained dialogue" between East and West.¹⁵²⁶

But should we even make such a distinction between West and East? Can there be an easy distinction when China, Russia, Persia, and the Ottoman Empire all adopted constitutions at more or less the same time? Were constitutions, or the constitutional State, a "cultural accomplishment of the Western occident," as proclaimed by Peter Häberle, which was then more or less successfully transplanted to other parts of the world?

The answer to all these questions is: rather not. Going beyond the usual description of the Chinese constitutional movement as a national or at best East Asian phenomenon, this dissertation has positioned late Qing constitutional thinking within global constitutional history. This positioning shows that the origins of our modern world are much more transcultural than usually thought. Today's world order, in which nearly all countries have constitutions of varying forms, only emerged because Chinese intellectuals and the Chinese government—as well

¹⁵²⁵ Zhao, "Rethinking Constitutionalism in Late 19th and Early 20th Century China," 28.

¹⁵²⁶ *Ibid.*, 3.

as those of Russia, the Ottoman Empire, Persia, and many others—decided to use the concept for their own goals. The emergence of the concept in China and in the “West” were phenomena of the very same global process. Early Chinese constitutional thought, therefore, was not merely a derivative discourse aimed at grafting foreign ideas onto Chinese soil, but a local refraction of a wider global movement co-producing the paraphernalia of modernity.

As to why the concept became—and still is—so overwhelmingly attractive across the world despite the widely divergent local situations, the answer lies in the malleability of the concept. It is this versatility which has assured that today, whatever its form of government, from the most democratic to the most autocratic, hardly a State does not have a constitution, and sometimes it is even the more authoritarian states which expend most energy on their constitution. Constitutions not only try to organise and record how powers are separated in a society, but they especially provide a written legitimisation for those in power, whether they be defending their traditional power or assuring newly-gained power. What Kelly Grotke and Markus Prutsch have asserted for Europe is also, as we have seen, true for China. Constitutions were instruments to promote a whole range of often contradictory political aims: expanding participation as well as maintaining an imbalanced status quo, countering as well as promoting revolutions, fostering nationalism and imperialism. At the same time as they try to incorporate local political traditions, all these functions are not limited to specific localities.

Several of these functions played a role in the Chinese constitutional movement, and the political controversies surrounding constitutionalism were a catalyst of the Qing Empire’s demise. As several authors have stressed, due to the specific historic circumstances of China, the aspect of strengthening the state was of particular importance in the Chinese case. Even the aspect of popular representation was often thought as a means for the primary objective of promoting nationalism, at the same time as it was also a way for local elites to enlarge their power. Keeping in mind the various different arguments made to this effect, Kawashima

Shin's findings about the origins of modern Chinese diplomacy can be upheld for the constitutional movement. The perception of the world as a totality—not just of Japan and the Western powers—and of China's own standing in it fostered the wish not only to claim equality with the West, but to become a great power on the world stage.

After the demise of the Qing, many of the notions that accompanied Qing constitutionalism continued to dominate Chinese constitutional thought throughout the 20th century. Andrew Nathan, for example, mentions the idea that the population has to be gradually taught how to operate in a constitutional system, the idea that constitutions gather those “above” and “below” around a common goal, and the notion that rights are granted by the state and can be suspended in the common interest.¹⁵²⁷

But going further than this, the results of this dissertation could also be useful in contributing to the fundamental understanding of the contemporary Chinese constitution. Regarding the disparities between constitutional representation and constitutional practice in China, i.e. between China's written constitution and China's constitutional order, there is a heated debate about whether China has a “constitution without constitutionalism.”¹⁵²⁸ It might be worth considering whether this juxtaposition really does justice to the matter, as it presupposes a very specific meaning of “constitutionalism.” But beginning from the very origins, this is only one of the possible meanings and functions attributed to constitutions, and not always the dominant one.

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¹⁵²⁷ Andrew J. Nathan, review of *The Emergence of Constitutional Government in China (1905-1908). The Concept Sanctioned by the Empress Dowager Tz'u-Hsi*, by Norbert Meinenberger, *American Historical Review* 86, no. 3 (June 1981), 637.

¹⁵²⁸ On the debate see Jiang Shigong, “Written and Unwritten Constitutions: A New Approach to the Study of Constitutional Government in China,” *Modern China* 36, no. 1 (2010), 14; Donald C. Clarke, “New Approaches to the Study of Political Order in China,” *Modern China* 36, no. 1 (2010), 93; Larry Catá Backer, “Jiang Shigong 强世功 on ‘Written and Unwritten Constitutions’ and Their Relevance to Chinese Constitutionalism,” *Modern China* 40, no. 2 (2014), 122;

This study is by no means exhaustive. It can only claim to lay a basis for further research. In spite of its voluminous size, it could only touch upon some facets of early Chinese constitutional thought. Many details should still be explored in more depth: Translation activity concerning constitutions can certainly be covered in even more detail—the author of this study has seen Chinese-language citations from foreign constitutions which do not conform to any of the texts listed in the appendix, suggesting that even more, hitherto undiscovered, translations circulated in Qing times. Many of the late Qing books on constitutional law here introduced have only been very superficially debated elsewhere and would merit more detailed exegesis, such as Wang Hongnian's 1902 and Bao Tingliang's 1910 textbooks, Xian Shisheng's 1905 book deriving constitutional principles from Chinese classics, and Zhang Bolie's constitutional draft.

This study has touched upon the tensions between central and local governments, but obviously could not track all local ramifications of the formation of constitutional thought in a country as vast as the Qing Empire. In this sense, a particularly interesting field of further research would be “borderland constitutionalism” (*fanshu xianzheng* 藩屬憲政)—i.e., the application of the concept in relationship to Mongolia, Tibet, and Xinjiang, which received, or were about to receive, a different treatment in Qing constitutional policies. Moreover, sources show that Chinese intellectuals were concerned with the constitutional ramifications of England's and Japan's colonial and borderland policies, having the Qing Empire's own minority and borderland regions in view. Such research would require good knowledge of the local conditions in the borderland regions, as well as of the local languages.

Most importantly, this study has only placed China within a new framework of global constitutional history. While it placed heavy emphasis on delineating the importance for China of the concomitant constitutional upheavals in Russia, the Ottoman Empire, and Persia, it was not an attempt at writing the constitutional histories of these places, and it did also not compare these constitutions in depth.

But just as Chinese constitutional thought was embedded in a global-production of the concept, Russian, Ottoman, and Persian thought also was. A thorough reexamination of their constitutional histories in conjunction with each other's and China's constitutional history would promise another step toward a new, truly global, constitutional history of the world.

APPENDIX.

Translations of Constitutional Charters into Chinese

This is a list of foreign constitutional texts translated into Chinese, ordered alphabetically by country. The list encompasses 98 translations of 34 constitutional charters, ranging from the first Chinese-language version of the Constitution of the USA in 1861 up to the fall of the Qing Empire on February 12, 1912. The list does not claim to be exhaustive, but shows the diversity of translations made in what concerns their historical depth and geographical breadth, as well as their forms of distribution in Chinese. It should also be noted that the cut-off point for this list is arbitrary, as translation activity continued vigorously in 1912, 1913 and subsequent years.

The list is ordered alphabetically according to the translated constitution, and within each entry, chronologically. Sub-national constitutions (Prussia, Oklahoma) are given entries below the respective national constitutions (German Empire, USA). Identical translations that appeared in different publications are listed separately, but different editions of the same monograph are not. Mere amendments to existing constitutions and other accompanying legal documents, such as in the case of the 1852 constitution of the French Empire, are listed together. However, the various English constitutional documents are treated separately, as they have been issued centuries apart. For the convenience of those looking for specific texts, full information in Chinese characters is given for each entry, even if the same information is repeated elsewhere (e.g., in the case of collectanea containing many translations).

Austria, Constitutional Laws of the Austrian Empire (Staatsgrundgesetze des Kaisertums Österreich), 1867

- 1) 1907, included in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編), translated from the Japanese and published by Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九 in the publishing house *Jingshen shuzhuang* 敬慎書莊.

Belgium, Constitution of 1831

- 1) 1907, included in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編), translated from the Japanese and published by Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九 in the publishing house *Jingshen shuzhuang* 敬慎書莊.

Canada, British North America Act of 1867 (*Constitution Act*)

- 1) 1902, some parts of the text occur in Fu Yunlong's 傅雲龍 (1840-1901) *Illustrated Experiences of Travelling to the English Colony Canada* (*Youli Yingshudi Jianada tujing* 游歷英屬地加納大圖經).

Cuba, Constitution of Jimaguayú, 1895

- 1) 1904, abbreviated translation (articles 1-3, 9 and 18-24), not (completely) labelled as such, published in Charles Bride's *La Guerre Hispano-Americaine de 1898*, translated into Chinese by Li Jinggao 李景鎬 under the title *Xi-Mei zhan shi* (西美戰史) and published by the Kiangnan Arsenal (*Jiangnan zhi-zaoju* 江南製造局).

Denmark, Fundamental Law (*Grundlov*), 1849

- 1) 1907, included in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編), published by Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九 in the publishing house *Jingshen shuzhuang* 敬慎書莊.

England, *Magna Carta* (1215)

- 1) 1902, included in the collectanea *Account of the Constitutions of the World* (*Wanguo xianfa zhi* 萬國憲法志), published by Tokyo-based student Zhou Kui 周達 in the Shanghai publishing house *Guangzhi shuju* 廣智書局, together with the *Bill of Rights* of 1689 (which, in turn, included the *Act of Settlement* of 1701);
- 2) 1903, published in the no. 3 of the *Learned Magazine of Politics and Law* (*Zhengfa xuebao* 政法學報), together with the *Confirmatio Cartarum* of 1297, the *Petition of Right* of 1628 and the *Bill of Rights* of 1689 (which, in turn, included the *Act of Settlement* of 1701) under the collective title *English Constitutional History* (*Yingjili xianfa shi* 英吉利憲法史);
- 3) 1906, translated by Qian Yingqing 錢應清 (1878-1938) and published in no. 1-3 of the Tokyo-based *Magazine of Law and Politics* (*Fazheng zazhi* 法政雜誌), in a series with the *Petition of Right* of 1628, the *Bill of Rights* of 1689 and the *Act of Settlement* of 1701 under the collective title *Text of the English Constitution* (*Yingguo xianfa zhengwen* 英國憲法正文);
- 4) 1906, abridged translation published in the special edition on constitutional government of the *Eastern Miscellany* (*Dongfang zazhi linshi zengkan xianzheng chugang* 東方雜誌臨時增刊·憲政初綱), together with an abridged translation of the *Bill of Rights* of 1689, as part of a series on monarchical constitutions.

- 5) 1907, included in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編), translated from the Japanese and published by Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九 in the publishing house *Jingshen shuzhuang* 敬慎書莊.
- 6) 1907, published by Wang Jizhou 汪濟舟 in no. 7 of the magazine *New World of Translations* (*Xin yijie* 新譯界), as part of a planned, but not completed series of European and American Constitutions. Near-identical to 1).
- 7) 1909 (1911), translation by constitutional commissioner Wang Daxie 汪大燮 (1860–1929) and his team, included, together with the *Petition of Right* of 1627 and the *Bill of Rights* of 1689 in the work *Questions and Answers on Important Contents of the Examination of the English Constitution* (*Kaocha Yingxian yaomu dawen* 考察英憲要目答問). It was presented to the Court in 1909 and published commercially in 1911 at the Commercial Press in Shanghai (*Shanghai shangwu yinshuguan* 上海商物印書館) in the collectanea *Book Series on English Constitutional Government* (*Yingguo xianzheng congshu* 英國憲政叢書).

England, *Confirmatio Cartarum*, 1297

- 1) 1903, published in the no. 3 of the magazine *Zhengfa xuebao* 政法學報, together with the *Magna Carta* of 1215, the *Petition of Right* of 1628 and the *Bill of Rights* of 1689 (which, in turn, included the *Act of Settlement* of 1701) under the collective title *English Constitutional History* (*Yingjili xianfa shi* 英吉利憲法史).

England, *Petition of Right*, 1628

- 1) 1903, published in the no. 3 of the magazine *Zhengfa xuebao* 政法學報, together with the *Confirmatio Cartarum* of 1297, the *Confirmatio Cartarum* of 1297 and the *Bill of Rights* of 1689 (which, in turn, included the *Act of*

Settlement of 1701) under the collective title *English Constitutional History* (*Yingjili xianfa shi* 英吉利憲法史);

- 2) 1906, translated by Qian Yingqing 錢應清 (1878-1938) and published in no. 3 of the Tokyo-based *Magazine of Law and Politics* (*Fazheng zazhi* 法政雜誌), in a series with the *Magna Carta* of 1215, the *Bill of Rights* of 1689 and the *Act of Settlement* of 1701 under the collective title *Text of the English Constitution* (*Yingguo xianfa zhengwen* 英國憲法正文).
- 3) 1907, included in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編), translated from the Japanese and published by Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九 in the publishing house *Jingshen shuzhuang* 敬慎書莊.
- 4) 1909 (1911), translation by constitutional commissioner Wang Daxie (汪大燮, 1860-1929) and his team, included, together with the *Magna Carta* of 1215 and the *Bill of Rights* of 1689 in the work *Questions and Answers on Important Contents of the Examination of the English Constitution* (*Kaocha Yingxian yaomu dawen* 考察英憲要目答問). It was presented to the Court in 1909 and published commercially in 1911 at the Commercial Press in Shanghai (*Shanghai shangwu yinshuguan* 上海商物印書館) in the collectanea *Book Series on English Constitutional Government* ("Yingguo xianzheng congshu" 英國憲政叢書).

England, *Bill of Rights*, 1689 (1688)

- 1) 1902, included in the collectanea *Account of the Constitutions of the World* (*Wanguo xianfa zhi* 萬國憲法志), published by Tokyo-based student Zhou Kui 周達 in the Shanghai publishing house *Guangzhi shuju* 廣智書局. The translation included a partial of the *Act of Settlement* of 1701.
- 2) 1903, published in no. 3 of the magazine *Zhengfa xuebao* 政法學報, together with the *Magna Carta* of 1215, the *Confirmatio Cartarum* of 1297, the *Petition of Right* of 1628 under the collective title *English Constitutional History*

(*Yingjili xianfa shi* 英吉利憲法史). The translation included a partial of the *Act of Settlement* of 1701.

- 3) 1906, translated by Qian Yingqing 錢應清 (1878–1938) and published in no. 3-5 of the Tokyo-based *Magazine of Law and Politics* (*Fazheng zazhi* 法政雜誌), in a series with the *Magna Carta* of 1215, the *Petition of Right* of 1628 and the *Act of Settlement* of 1701 under the collective title *Text of the English Constitution* (*Yingguo xianfa zhengwen* 英國憲法正文).
- 4) 1907, included in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編), translated from the Japanese and corrected on the basis of the English original by Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九, published at *Jingshen shuzhuang* 敬慎書莊.
- 5) 1907, abridged translation published in the special edition on constitutional government of the *Eastern Miscellany* (*Dongfang zazhi linshi zengkan xianzheng chugang* 東方雜誌臨時增刊·憲政初綱), together with an abridged translation of the *Magna Carta* of 1215, as part of a series on monarchical constitutions.
- 6) 1909 (1911), translation by constitutional commissioner Wang Daxie 汪大燮 (1860-1929) and his team, included, together with the *Magna Carta* of 1215 and the *Bill of Rights* of 1689 in the work *Questions and Answers on Important Contents of the Examination of the English Constitution* (*Kaocha Yingxian yaomu dawen* 考察英憲要目答問). It was presented to the Court in 1909 and published commercially in 1911 at the Commercial Press in Shanghai (*Shanghai shangwu yinshuguan* 上海商務印書館) in the collectanea *Book Series on English Constitutional Government* (*Yingguo xianzheng congshu* 英國憲政叢書).

England, *Act of Settlement*, 1701 (1700)

- 1) 1902, included in the collectanea *Account of the Constitutions of the World* (*Wanguo xianfa zhi* 萬國憲法志), published by Tokyo-based student Zhou Kui 周逵 in the Shanghai publishing house *Guangzhi shuju* 廣智書局. Treated as a part of the 1688 *Bill of Rights*.
- 2) 1903, published in no. 3 of the magazine *Zhengfa xuebao* 政法學報, together with the *Magna Carta* of 1215, the *Confirmatio Cartarum* of 1297 and the *Petition of Right* of 1628 under the collective title *English Constitutional History* (*Yingjili xianfa shi* 英吉利憲法史). Treated as a part of the 1688 *Bill of Rights*.
- 3) 1906, translated by Qian Yingqing 錢應清 (1878–1938) and published in no. 5 of the Tokyo-based *Magazine of Law and Politics* (*Fazheng zazhi* 法政雜誌), in a series with the *Magna Carta* of 1215, the *Petition of Right* of 1628 and the *Bill of Rights* of 1689 under the collective title *Text of the English Constitution* (*Yingguo xianfa zhengwen* 英國憲法正文).

France, *Déclaration des droits de l'homme et du citoyen*, 1789

- 1) 1907, published in the daily newspaper *Shenbao* 申報 in three instalments from March 30 to April 6.

France, *Constitution de l'an I* of June 24, 1793 (never applied)

- 1) Published in book form by *Qunxueshe* 羣學社 editors.

France, *Constitution of the French Empire*, 1852

- 1) 1907, included in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編), translated from the Japanese and published by Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九 in the publishing house *Jingshen shuzhuang* 敬慎書莊.

- 2) 1911, included in the compendium *Complete Texts of the Constitutions of France and the United States* (*Famei xianfa zhengwen* 法美憲法正文), published by the Shanghai Commercial Press (*Shanghai shangwu yinshuguan* 上海商物印書館), with several amendments and other relevant legal documents.

France, *Lois Constitutionnelles* of the Third Republic, 1875

- 1) 1897, translation by Chen Jitong 陳季同 (1851–1907), published in the magazine *International Review* (*Qiushi bao* 求是報).
- 2) 1902, included in the collectanea *Account of the Constitutions of the World* (*Wanguo xianfa zhi* 萬國憲法志), published by Tokyo-based student Zhou Kui 周逵 in the Shanghai publishing house *Guangzhi shuju* 廣智書局.
- 3) 1907, included in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編), translated from the Japanese and published by Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九 in the publishing house *Jingshen shuzhuang* 敬慎書莊.
- 4) 1911, included in the compendium *Complete Texts of the Constitutions of France and the United States* (*Famei xianfa zhengwen* 法美憲法正文), published by the Shanghai Commercial Press (*Shangwu yinshuguan* 上海商物印書館), with several amendments and other relevant legal documents.

Germany, *Verfassung des Deutschen Reichs* (*Bismarcksche Reichsverfassung*) of 1871

- 1) 1902, included in the collectanea *Account of the Constitutions of the World* (*Wanguo xianfa zhi* 萬國憲法志), published by Tokyo-based student Zhou Kui 周逵 in the Shanghai publishing house *Guangzhi shuju* 廣智書局.

- 2) 1907, included in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編), translated from the Japanese and published by Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九 in the publishing house *Jingshen shuzhuang* 敬慎書莊.

Germany, Constitution of Prussia, 1848/1850

- 1) 1902, included in the collectanea *Account of the Constitutions of the World* (*Wanguo xianfa zhi* 萬國憲法志), published by Tokyo-based student Zhou Kui 周逵 in the Shanghai publishing house *Guangzhi shuju* 廣智書局.
- 2) 1906, abridged version published in the special volume on constitutional government of the *Eastern Miscellany* (*Dongfang zazhi linshi zengkan xianzheng chugang* 東方雜誌臨時增刊·憲政初綱).
- 3) 1906, published by Zhang Zongru 張宗儒 in no. 3-4 of the Tokyo-based *Magazine of Law and Politics* (*Fazheng zazhi* 法政雜誌).
- 4) 1907, included in the *Essentials of Government in Various Countries* (*Lieguo zhengyao* 列國政要), the 132-volume result of Duang Fang's and Dai Hongci's constitutional mission abroad.
- 5) 1907, included in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編), translated from the Japanese and published by Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九 in the publishing house *Jingshen shuzhuang* 敬慎書莊.
- 6) 1909, translation with extensive article-by-article commentary by the constitutional commissioner to Germany Yu Shimei 于式枚 (1853–1916) and his team, transmitted to the Chinese government. The translation was published in no. 110-114 of the *Beiyang Learned Magazine on Politics and Law* (*Beiyang fazheng xuebao* 北洋法政學報) and in the following (no. 6 and no. 7).

- 7) 1909, appeared as an appendix to the collectanea *Important Political Records of the Year Yiyou* (*Yiyou dazhengji* 己酉大政記), volumes 24-29, published by *Xiehua shuju* 擷華書局 in Peking.
- 8) 1909, Yu Shimei's translation and commentary, published in nos. 10-11 and 15-20 of the *Official Gazette of Sichuan* (*Sichuan guanbao* 四川官報).
- 9) 1909, Yu Shimei's translation and commentary, published in nos. 15 and 17 of the *Bulletin of the Society for Preparation of Constitutionalism* (*Yubei lixian gonghui bao* 預備立憲公會報).

Hawai'i, Constitution of the Kingdom of Hawai'i (Kumukanawai), 1864

- 1) 1907, included in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編), translated from the Japanese and published by Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九 in the publishing house *Jingshen shuzhuang* 敬慎書莊.

Italy, Statuto Albertino of 1848

- 1) 1902, included in the collectanea *Account of the Constitutions of the World* (*Wanguo xianfa zhi* 萬國憲法志), published by Tokyo-based student Zhou Kui 周達 in the Shanghai publishing house *Guangzhi shuju* 廣智書局.
- 2) 1906, published in the special volume on constitutional government of the *Eastern Miscellany* (*Dongfang zazhi linshi zengkan xianzheng chugang* 東方雜誌臨時增刊·憲政初綱).
- 3) 1907, included in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編), translated from the Japanese and published by Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九 at the publishing house *Jingshen shuzhuang* 敬慎書莊. The article counting of the constitution is garbled from the beginning, as art. 1 of the original is omitted.

- 4) 1909, the minister to Italy, Qian Xun 錢恂 (1853-1927) submitted to the court a book written by him with the title *Constitution of Italy with Commentaries* (*Yidali xianfa shuzheng* 義大利憲法疏證). He remarked that he had penned the book because he was of the opinion that “Japan in the East and Italy in the West” should be the models for China.

Japan, Constitution of June 1868 (*Seitaisho* 政體書)

- 1) 1898, translation published in Kang Youwei’s 康有為 (1858-1927) *Study of the Japanese Reforms* (*Riben bianzheng kao* 日本變政考).

Japan, Constitution of the Empire of Japan, 1889

- 1) 1889, translation published in Fu Yunlong’s 傅雲龍 (1840-1901) *Illustrated Experiences of Travelling to Japan* (*Youli Riben tujing* 游歷日本圖經).
- 2) 1901, translation of the Constitution and of Itō Hirobumi’s (1841-1909) commentaries to it. Three editions in 1901 (two of them name Shen Hong 沈紘 as translator, one of these gives Jin Li Zhai 金粟齋 as publishing house); one edition in 1902 (translator: Shen Hong 沈紘, Jin Li Zhai 金粟齋 publishers); one edition in 1905 (not naming translator and publishers);
- 3) 1903-1904, published in no. 23-25 of the the *Journal of Politics and Art* (*Zhengyi tongbao* 政藝通報); it is also contained in the book edition of all editions of the year, published in 1904 as *Collectanea of Politics and Arts* (*Zhengyi congshu* 政藝叢書).
- 4) 1904, version printed and distributed to the Court by Zhang Jian 張謇 (1853–1926).
- 5) 1906, published under the title *Commentaries to the Constitution of Japan in Comparison with all Countries* (*Wanguo bijiao Riben xianfa yijie* 萬國比較日本憲法義解), translated from the Japanese by Ding Dewei 丁德威.

- 6) 1906, published in the special volume on constitutional government of the *Eastern Miscellany* (*Dongfang zazhi linshi zengkan xianzheng chugang* 東方雜誌臨時增刊·憲政初綱).
- 7) 1906 (December), published in no. 11 of the *Eastern Miscellany* (*Dongfang zazhi* 東方雜誌).
- 8) 1906-1907, the *Beiyang Learned Magazine on Politics and Law* (*Beiyang fazheng xuebao* 北洋法政學報) reproduced, in twelve instalments, the *Constitution of Japan with Commentaries* (*Riben xianfa shuzheng* 日本憲法疏證) handed in by the constitutional commissioners.
- 9) 1907, included in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編), translated and published by Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九 at *Jingshen shuzhuang* 敬慎書莊.
- 10) 1908, the *Constitution of Japan with Commentaries* (*Riben xianfa shuzheng* 日本憲法疏證) penned by the constitutional commissioners was published in book form by the *Official Gazette* (*Zhengzhi guanbao* 政治官報).
- 11) An undated translation of the Japanese constitution with commentaries circulated in the Constitutional Office under the title *Abridged Commentaries on the Japanese Constitution* (*Riben xianfa shulüe* 日本憲法述略)

Netherlands, Constitution of 1815/1848 (*Grondwet*)

- 1) 1907, included in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編), translated from the Japanese and published by Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九 in the publishing house *Jingshen shuzhuang* 敬慎書莊.

Persia, Constitution of 1906

- 1) 1907, abridged translation printed in no. 4 of the *Eastern Miscellany* (*Dongfang zazhi* 東方雜誌);
- 2) 1907, the text of 1) was reprinted in no. 25 of the *Official Gazette of Sichuan* (*Sichuan guanbao* 四川官報);
- 3) 1907, abridged translation published in no. 6 and 7 of the *Journal of Politics and Art* (*Zhengyi tongbao* 政藝通報). The translation differs from 1) and 2), but is abridged in the same way. It is also contained in the book edition of all editions of the year, published in 1908 as *Collectanea of Politics and Arts* (*Zhengyi congshu* 政藝叢書).

Philippines, Constitutional decree of the “revolutionary government” of June 1898

- 1) 1898, published in nos. 6 and 8 of the magazine *British Eastern Asia News* (*Dongya bao* 東亞報) by Sumitani Daizaburō 角谷大三郎 (?–1921).

Philippines, 1899 Constitution of the Republic

- 1) 1902, published as chapter 13 of Mariano Ponce’s (1863–1918), *Cuestión Filipina: Una exposición (sic!) histórico-crítica de hechos relativos a la guerra de la independencia*, translated into Japanese by Miyamoto Heikurō 宮本平九郎, and Foudzita Suetaka 藤田季莊 under the title *Turmoil in the Southern Sea: Real Portrait of the Question of Philippine Independence* (*Nan’yō no fūun: Firipin dokuritsu mondai no shinsō* 南洋之風雲: 比律賓獨立問題之真相), thence translated into Chinese under the title *History of the Philippine War of Independence* (*Feiliebin dulizhan shi* 飛獵濱獨立戰史), published in two editions by the Commercial Press Shanghai (*Shangwu yinshuguan* 商物印書館);
- 2) 1903, published as chapter 16 of the book *Nanyang fengyun* 南洋風雲, translated and adapted into Chinese from the Japanese by the student Xia Qingfu 夏清馥.

**Russia, “Bulygin Plan” of August 1905 (*Uchrezhdeniē Gosudarstvennoī Dumy*
Учреждение Государственной Думы)**

- 1) 1905, published in nos. 16 and 17 *Journal of Politics and Arts* (*Zhengyi tongbao* 政藝通報), under the title *Text of Russia’s recently-adopted constitution* (*Eguo xinban xianfa wen* 俄國新頒憲法卜文). A precursory plan had already been published under the title “Russia Drafts a Charter for the Adoption of a Constitution” (*Eguo nixing lixian zhi zhangcheng* 俄國擬行立憲之章程) in no. 196 of the *Review of the Times* (*Wanguo gongbao* 萬國公報).

Russia, Fundamental Laws of March 1906

- 1) 1906, included in abridged form in the special volume on constitutional government of the *Eastern Miscellany* (*Dongfang zazhi linshi zengkan xianzheng chugang* 東方雜誌臨時增刊·憲政初綱).
- 2) 1906 (June), published in the Tokyo-based *Magazine of Law and Politics* (*Fazheng zazhi* 法政雜誌);
- 3) 1906 (December), published in the first edition of the journal *Miscellaneous Knowledge about Constitutional Government* (*Xianzheng zashi* 憲政雜識), of December 1906
- 4) 1907, included in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編), published by Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九 in the publishing house *Jingshen shuzhuang* 敬慎書莊.
- 5) 1908, a prose reproduction was published in the *Bulletin of the Society for Preparation of Constitutionalism* (*Yubei lixian gonghui bao* 預備立憲公會報).
- 6) 1908, a version of the Russian constitution, translated from the Japanese, was circulated in the Political Consultative Council and is to be found next to the draft of a *Constitutional Code for the Great Qing Empire* (*Daqing Diguo xianfa fadian* 大清帝國憲法法典).

Ottoman Empire, Fundamental Laws of 1876/1908

- 1) 1909, translation submitted to the Chinese government by the minister to the Netherlands, Lu Zhengxiang 陸徵祥 (1871-1949).
- 2) 1909, published in the daily newspaper *Shenbao* 申報 in six instalments from March 15 to April 3.
- 3) 1909, published in two instalments in the Eastern Miscellany (*Dongfang Zazhi* 東方雜誌) in June and July 1907. Identical translation to no° 2.

Portugal, Constitution of 1826

- 1) 1907, included in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編), published by Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九 at the publishing house *Jingshen shuzhuang* 敬慎書莊.

Spain, Constitution of 1876

- 1) 1907, included in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編), published by Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九 in the publishing house *Jingshen shuzhuang* 敬慎書莊.

Sweden, Instrument of Government (*Regeringsform*), 1809

- 1) 1907, included in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編), published by Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九 in the publishing house *Jingshen shuzhuang* 敬慎書莊.

Switzerland, Federal Constitution of the Swiss Confederation, 1874

- 1) 1907, included in the compendium *Collection of the Full Texts of the Constitutions of 17 Countries* (*Shiqi guo xianfa zhengwen huibian* 十七國憲法正文匯編),

translated from the Japanese and published by Qi Yuhe 齊雨和 and Gu Xiangjiu 古翔九 in the publishing house *Jingshen shuzhuang* 敬慎書莊.

United States of America, Constitution of 1788

- 1) 1861, translation (not including the amendments) by Elijah Coleman Bridgman, published in his *Sketch of the American Federation* (*Damei lianbang zhilüe* 大美聯邦志畧), Shanghai, *Mohai shuguan* 墨海書館.
- 2) 1881, translation by Cai Xiyong 蔡錫勇 (1850-1896) made for official use at the Chinese Legation to Washington and sent to the *Zongli yamen* 總理衙門 in Peking.
- 3) 1881, revised version of Elijah Coleman Bridgman's translation (no. 1), published in the *Wan Kwoh Kung Pau* 萬國公報 no. 642 of June 4, 1881 (main text) and no. 643 of June 11, 1881 (amendments).
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United States of America, Constitution of the State of California, 1879

- 1) 1901. Article 19 of the Constitution of California sought to expel Chinese immigrants, prohibiting the employment of any Chinese in the State, forbidding new immigration and allowing for the “removal of Chinese” who were already there. The *China Discussion* (*Qing yi bao* 清議報) translated and published the article; however, it presented it as the federal constitution and not as the constitution of California, entitling it “Abridged translation of the chapter of the constitution of the USA concerning the deportation of Chinese” (*Beimei Hezhongguo quzhu Huaren xianfa yi zhang* 北美合眾國驅逐華人憲一章)

United States of America, Constitution of the State of Oklahoma, 1907

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Lass mich, „Parola“, hoch dich preisen!
Não são coisas banais esses decênios;
Allons! Fais come Horace, crie Hourrah!
Monumentum exegi aere perennius!

Péthion de Villar (1900)¹⁵²⁹

¹⁵²⁹ Péthion de Villar [Egas Moniz Barreto de Aragão], *Poesia Completa* (N.p.: MEC—Conselho Federal de Cultura, 1978), 278-279.

DEUTSCHE ZUSAMMENFASSUNG

Diese Dissertation zeichnet die Genese des Verfassungsbegriffes in China nach. Sie reicht dabei von der ersten Erwähnung in einem chinesischsprachigen Text im Jahre 1838 bis hin zu den ersten konkreten Entwürfen einer Verfassung für das Qing-Kaierreich in den Jahren 1908 bis 1911. Anders als die vorhandene Literatur zum Thema, die das frühe chinesische Verfassungsdenken als nationales oder allenfalls regionales Phänomen behandelt, zeichnet diese Studie die frühe chinesische Verfassungsgeschichte aus einer breiteren Perspektive nach. Sie stellt die Entwicklung des chinesischen Verfassungsdenkens in einen globalen Kontext, indem sie China als Teil des globalen Prozesses analysiert, durch den Verfassungen unverzichtbare Elemente moderner Staaten geworden sind.



Die Dissertation ist in fünf Kapitel aufgeteilt, die mehr oder weniger chronologisch angeordnet sind. Das erste Kapitel („Verfassungen in der Welt und in China im 19ten Jahrhundert“) behandelt die Geschichte des Verfassungsbegriffs in China in den Jahren 1838 bis 1897. Da reformorientierte Intellektuelle erst seit den 1890er Jahren eine Verfassung für China forderten, war die vorhergehende Periode in der Geschichtsschreibung bislang größtenteils ignoriert worden. Dieses Kapitel zeigt jedoch, daß die Rufe nach einer Verfassung in China nicht aus heiterem Himmel erfolgten, sondern auf einer über Jahrzehnte andauernden langsamen Verbreitung des Begriffes fußen.

Das Kapitel zeichnet die beträchtlichen terminologischen Schwierigkeiten beim Umgang mit dem Verfassungsbegriff nach, die sich bis in die 1890er hingen. Die bislang ausführlichste Übersicht sinitischer Verfassungsterminologie zählt 44 Termini, mit denen der Begriff in chinesischen, japanischen und koreanischen Texten wiedergegeben worden ist, und zeichnet ihren Gebrauch im 19ten Jahrhundert nach. Im besonderen entdeckt das Kapitel zwei bislang unbe-

achtete frühe sinitische Übersetzungen der Verfassung der USA. Die bisherige Literatur, die davon ausgeht, daß die erste Übersetzung der US-Verfassung im Jahre 1881 veröffentlicht wurde, muß daher um 20 Jahre revidiert werden: die erste sinitische Übersetzung wurde 1861 in Shanghai veröffentlicht und 1864 in Tokyo neu herausgegeben. Vor diesem Hintergrund schlägt das Kapitel auch vor, daß das japanische „Dokument über die Regierungsform“ von 1868 tatsächlich als erste (vorläufige) „Verfassung“ Japans übersetzt und bewertet werde.

Das zweite Kapitel der Dissertation („Verfassungsdebatten von den 100-Tage-Reformen bis zum russisch-japanischen Kriege“) behandelt die Jahre 1898 bis 1904. Es handelt sich hierbei um eine Übergangszeit, in der „Verfassung“ zwar schon als in China einzusetzendes politisches Instrument behandelt wurde, aber noch kein offizielles politisches Ziel war. Das Kapitel beginnt mit den kurzlebigen Reformversuchen von 1898, wobei es die Rolle klarstellt, die der Verfassungsbegriff in den 100-Tage-Reformen sowie im Denken einer ihrer führenden Persönlichkeiten, Kang Youwei 康有為 (1858–1927), spielte.

Fürderhin beschreibt das Kapitel, wie sich der Verfassungsbegriff als ein politisches Instrument für China im komplexen internationalen Austausch entwickelte. In einem Exkurs wird die weithin unbekannte koreanische Verfassung von 1899 behandelt, die auf chinesisch vermittelten Quellen beruhte und dann chinesische Intellektuellen als negatives Beispiel diente. Wie das Kapitel ausführt, waren chinesische Intellektuelle über Verfassungsentwicklungen auf dem eurasischen Kontinent auf dem laufenden und festigten in ihren Schriften die Sichtweise, daß eine Verfassung das Fundament gedeihender und mächtiger Staaten sei. Das Kapitel endet, indem es sowohl englisch- als auch chinesischsprachige Beiträge südostasiatischer Intellektueller chinesischer Abstammung zur Verfassungsdebatte wiederentdeckt. Taw Sein Ko 杜成誥 (1864–1930) war wohl der erste, der eine englischsprachigen Publikum vorschlug, daß China eine Verfassungscharta annehmen solle, wohingegen Ku Hung-ming 辜鴻銘 (1857–1928) der erste Chinese

war, der vehement in englischer Sprache gegen die US-amerikanische Verfassung argumentierte.

Das dritte Kapitel („Der nullte Weltkrieg: Vom russisch-japanischen Kriege bis zu den russischen und persischen Verfassungen“) behandelt die Jahre 1904 bis 1906, die als Wendepunkt der chinesischen Verfassungsgeschichte anzusehen sind. In diesen Jahren wurde die Verfassung zum drängendsten Thema politischer Debatten, wobei es teils hehre Hoffnungen hervorrief, daß die Verfassung der Schlüssel sei, um Chinas politische Schwäche zu überwinden. Vor allem aber kontextualisiert dieses Kapitel China innerhalb der globalen Entwicklungen der Jahre 1905 und 1906, als sowohl Rußland als auch Persien Verfassungen erließen.

Gemäß der Analyse dieses Kapitels waren die Wirkungen dieser Verfassung in China beileibe nicht eindimensional, sondern, im Gegenteil, außerordentlich komplex. Da die verbliebenen größeren verfassungslosen Kaiserreiche des eurasischen Kontinents nun auch Verfassungen einführten, war dies einerseits ein Ansporn für China nachzuziehen. Wenn diese Kaiserreiche schließlich dieses Instrument benutzten, um in einer kompetitiven Welt zu bestehen, sollte China nicht noch weiter ins Abseits geraten. Allerdings war dies – bei weitem – nicht die einzige Schlußfolgerung, die chinesische Beobachter zogen. Verschiedene Intellektuelle, vor allem aber die chinesische Regierung, bemerkten die beträchtlichen Probleme, denen Rußland und Persien trotz der Einführung einer Verfassung ausgesetzt blieben, und folgerten daraus, daß China seine eigene Verfassung nur nach gründlicher Vorbereitung erlassen solle. Andere wiederum interpretierten schlechte Nachrichten aus Rußland, Persien und Korea als Warnung vor monarchischen Regierungen, die „Scheinkonstitutionalismus“ betrieben. Indem Chinesische Beobachter die Nachrichten aus den anderen Staaten, die zur gleichen Zeit wie China ihre Verfassungen einführten, unterschiedlich interpretierten, trugen diese dazu bei, die inneren politischen Spannungen Chinas zu verschärfen.

Auch dieses Kapitel legt den dialogischen Charakter dieses Prozess dar, indem es mehrere bislang zu wenig erforschte direkte Kontakte zwischen Rußland

und China unter die Lupe nimmt. Der Schlußteil des Kapitels beleuchtet die Kontakte des russischen Schriftstellers Leo Tolstoi mit chinesischen Intellektuellen. Es legt die bislang umfangreichste Übersicht über Tolstois Korrespondenz mit Ku Hung-ming 辜鴻銘 (1857–1928) vor, wobei es die zahlreichen Übersetzungen von Tolstois Brief und die von diesem hervorgerufenen verschiedenen internationalen Reaktionen analysiert. Hierbei wird nachgewiesen, daß die Verfassungsfrage von zentraler Bedeutung in Tolstois Korrespondenz mit chinesischen Intellektuellen sowie in den sich aus ihr ergebenden internationalen Debattenbeiträgen war. Tolstoj selbst empfahl keine Verfassung, sondern warnte gar vielmehr vor ihr, denn für ihn bedeuteten Verfassungen Unterdrückung und Imperialismus.

Das vierte Kapitel („Verfassungen und Imperialismus: Chinas Verfassungsvorbereitung und ihre internationale Bedeutung“) behandelt hauptsächlich die Jahre 1906 bis 1908, in denen der Erlaß einer Verfassung offizielles Ziel der chinesischen Regierung war, jedoch noch keinerlei offiziellen Dokumente vorlagen. Das Kapitel benützt diese Periode vor allem, um über die tatsächlichen sowie erhofften Wirkungen einer Verfassung auf internationaler Ebene zu reflektieren. Es legt dar, daß Intellektuelle eine höhere internationale Legitimität und Anerkennung erhofften, da die Verfassung dem chinesischen Staatswesen eine moderne Form verleihen würde. Aber noch mehr als dies arbeitet das Kapitel anhand der Beispiele der zweiten Haager Friedenskonferenz von 1907 sowie der Schriften verschiedener chinesischer Beamter und Intellektueller heraus, daß das Hauptargument für eine Verfassung in der Hoffnung bestand, daß sie den Staat politisch, militärisch und ökonomisch stärken würde. Die Verfassung würde China den Großmächten der Zeit gleich machen. Der chinesische Verfassungskommissar zu Tokio brachte das wohl weitgehendste Argument in dieser Hinsicht vor, als er schrieb daß das Ziel der Verfassung imperialistisch wie die anderen Verfassungsstaaten zu machen.

Das Kapitel endet, indem es ausländische Reaktionen auf Chinas Verfassungsambitionen analysiert. Es zeigt daß, obschon die meisten Beobachter die Ein-

führung einer Verfassung im Grunde guthießen, sehr viele von ihnen zu einer äußerst vorsichtigen Haltung bezüglich einer schnellen Umsetzung der Idee tendierten. Es gab keinen internationalen Druck, eine Verfassung einzuführen – im Gegenteil, teilweise fand die chinesische Verfassungspolitik nicht wegen, sondern trotz Japan und der europäischen Mächte statt. So zeigt dieses Kapitel, daß, im Gegensatz zu früherer Literatur, der japanische Staatsmann Itō Hirobumi in seinen letzten Lebensjahren unentwegt, wenn auch erfolglos, die chinesische Regierung zu beeinflussen suchte, indem er für ein wesentlich langsames Tempo der Verfassungsreformen eintrat.

Das fünfte Kapitel („Trümmer papierener Verfassungen“: Die Ausarbeitung einer Verfassung für das Qing-Reich“) behandelt hauptsächlich die Jahre 1908–1911, wobei es das Hauptaugenmerk auf konkrete Verfassungsdokumente richtet. Im Jahre 1908 veröffentlichte die Qing-Regierung den „Kaiserlich verordneten Umriß einer Verfassung“ (*Qinding xianfa dagang* 欽定憲法大綱) zur selben Zeit, als das Osmanische Reich seine Verfassung wieder in Kraft setzte. Dazu analysiert das Kapitel, daß die osmanische Verfassung in China allgemein positiv interpretiert wurde, jedoch wiederum mit je nach politischem Standpunkt unterschiedlichen Argumentationen.

Weiters zeigt dieses Kapitel zum ersten Male die ganze Bandbreite der lebhaften Übersetzungstätigkeit fremder Verfassungstexte ins Chinesische auf – der Anhang zu dieser Arbeit zählt 98 Übersetzungen von 34 verschiedenen Verfassungen. Diese Übersetzungstätigkeit reichte dabei weit über Japan und die Westmächte hinaus, wobei sie unter anderem auch die erst kürzlich erlassenen Verfassungen Rußlands, Persiens und des Osmanischen Reiches umfaßte. Eine mit einer globalen Denkweise verbundene enge regionale Kooperation charakterisierte auch alle vorhandenen Verfassungsentwürfe, im besonderen das des japanischen Gelehrten Kitaoni Saburō 北鬼三郎 (?–1912). Durch Benützung bislang unbekannter japanischer Quellen gelingt es, ein wesentlich präziseres Bild seiner Arbeit als bisher möglich zu zeichnen.

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Durch eine detaillierte Analyse der Geschichte des Verfassungsbegriffs im späten Qing-Reich kommt diese Dissertation zum Ergebnis, daß die chinesische Verfassungsbewegung nicht, wie weithin dargestellt, ein bloßer derivativer Diskurs war, der zum Ziel hatte, ein europäisches Konzept auf chinesischen Boden zu verpflanzen. Vielmehr war sie ein elementarer Teil einer globalen Bewegung, die gemeinsam die Ausstattungselemente der Moderne produzierte. Obgleich das Qing-Reich nicht dazu kam, ein vollständiges Verfassungsdokument zu erlassen, war es doch in den letzten Jahren des Kaiserreiches, daß Verfassungen zu einem unausweichlichen Bestandteil des chinesischen Staatswesens wurden. Zur gleichen Zeit wurden sie auch beinahe universelle Symbole der Moderne.

ENGLISH SUMMARY

This dissertation reconstructs the formation of the concept of a “constitution” in China, ranging from the first appearance of the concept in a Chinese-language text in 1838 up to the first concrete drafts for a constitution for the Qing Empire produced in the years 1908–1911. Going beyond existing literature, which treats early Chinese constitutional thought as a national or at best regional phenomenon, this study recounts it from a broader perspective and places it in its global context, examining the Chinese refraction of the process by which constitutions became universal elements of contemporary States.

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The dissertation is divided into five parts arranged in roughly chronological order. The first chapter (“Constitutions in the World and in China in the 19th Century”) deals with the history of the concept of a constitution in China from 1838 to 1897. As reformers only came to advocate a constitution for China in the 1890s, the foregoing period had been severely understudied in previous literature. Yet, the chapter shows that the calls for a constitution did not happen out of the blue, but were based on an awareness about the concept which had slowly built up over decades.

The chapter retraces the considerable terminological difficulties of this period, which stretched well into the 1890s. In the so far most extensive survey of Sinitic terminology on “constitutions,” it counts 44 terms with which the notion has been rendered in Chinese, Japanese, and Korean texts, tracing their use throughout the 19th century. In particular, the chapter discovers two early Sinitic translations of the US constitution which were hitherto well-nigh unknown. Previous research, which has held that the first translation of the US Constitution was published in 1881, must, therefore, be revised by 20 years: the first Sinitic translation was published in Shanghai in 1861 and republished in Tokyo in 1864.

Against this background, the chapter also suggests that the Japanese “Document on the Government System” (*Seitaisho* 政體書), promulgated in 1868, should be really correctly translated and treated as the first (preliminary) “constitution” of Japan.

The second chapter of this thesis (“Constitutional Debates from the 100 Days’ Reforms to the Russo-Japanese War”) deals with the years 1898 to 1904. This was a transitional period, in which a constitution was already discussed as a political instrument for China, but was not yet an official political goal. The chapter begins with the aborted reform attempts of 1898, clarifying the role played by the concept of a constitution in the “100 Days’ Reforms” and in the thinking of one of their leaders, Kang Youwei 康有為 (1858–1927).

The chapter further describes how the concept of a constitution as a political instrument for China developed through complex international dialogues. A section explains the not widely known 1899 constitution of Korea, which drew on sources mediated via China and then served as a negative example for Chinese intellectuals. Chinese intellectuals, the chapter narrates, kept abreast of constitutional developments across Eurasia, solidifying the vision that a constitution was the foundation of a prosperous and powerful State. The chapter finishes by rediscovering the contributions to constitutional debates, both in English and Chinese, of South East Asian intellectuals of Chinese descent. Taw Sein Ko 杜成誥 (1864–1930) was probably the first to suggest to an English-language audience that China should adopt a constitutional charter, while Ku Hung-ming 辜鴻銘 (1857–1928) was the first Chinese to vociferously argue in English against the US Constitution.

The third chapter (“World War Zero: From the Russo-Japanese War to the Russian and Persian Constitutions”) narrates the years 1904 to 1906, which configured a turning point in Chinese constitutional history. It was in these years that the constitution became the most important topic of political debates, eliciting high-flying hopes that the constitution might be the key to overcome China’s

political weakness. Most importantly, this chapter situates China within the global context of the years 1905 and 1906, when Russia and Persia promulgated constitutions.

The chapter analyses that the effects of these constitutions on China were not monodimensional, but rather complex. If the major constitution-less Empires of Eurasia were adopting constitutions, this was a stimulus for China to follow suit. After all, many Chinese intellectuals argued, if these Empires used this instrument in order to survive in a competitive world, China should not fall even more behind. But there was—much—more to it: Many Chinese observers, including but not limited to the Chinese government, perceived the considerable problems which persisted in Russia and Persia despite the adoption of constitutions, and concluded that China should adopt its constitution only after thorough preparation. Others interpreted the bad news from Russia, Persia, and Korea as a warning against the monarchical governments trying to pursue “sham constitutionalism.” Hence, as Chinese intellectuals offered diverging interpretations, news from the other Empires which were adopting constitutions at the same contributed to aggravate internal political divisions in China.

The chapter also lays out the dialogic character of this process, narrating various hitherto understudied direct contacts between Russia and China. It finishes by illuminating the contacts of the Russian writer Leo Tolstoy with Chinese correspondents. It provides the hitherto most extensive overview of Tolstoy’s correspondence with Ku Hung-ming 辜鴻銘 (1857–1928), detailing the many translations of Tolstoy’s letter and the various international reactions it provoked. The thesis demonstrates that the question of a constitution was of central importance in Tolstoy’s correspondence with Chinese counterparts and the ensuing international debates. But rather than recommending a constitution because it would reverse China’s political weakness, the anarchist Tolstoy warned against it—because for him, constitutions meant domination and imperialism.

The fourth chapter (“Constitutions and Imperialism: China’s Constitutional Preparation and its International Insertion”) mainly deals with the years 1906–1908, in which the eventual adoption of a constitution was an official goal of the Chinese government, but there were no concrete documents yet. The chapter mainly uses this period to reflect on the real as well as the hoped-for effects of a constitution for China’s international standing. As it explains, intellectuals expected higher international legitimacy and recognition, as the constitution would give a modern form to the Chinese political system. But more than this, discussing the Second Hague Peace Conference of 1907 and writings of various Chinese officials and intellectuals, the chapter works out that the main argument for a constitution was the hope that it would strengthen the nation in political, military and economic terms. The constitution, they argued, would make China equal to the major powers of the time. As the Chinese constitutional commissioner to Tokyo expressed in the most far-reaching argument brought forward to this effect, the goal of the constitution was to make China as imperialist as the other constitutional States.

The chapter finishes by analysing reactions from abroad to China’s ambitions to adopt a constitution. It shows that, although in theory most foreign observers welcomed the adoption of a constitution by China, many tended to be very cautious about its quick feasibility. There was no international political pressure for the adoption of a constitution, and at times, Chinese constitutional policies took place not because, but despite Japan and the European powers. For example, in contrast to former literature, the chapter shows that the Japanese statesman Itō Hirobumi constantly, but unsuccessfully, tried to influence the Chinese government in the last years of his life, lobbying for a considerably slower pace of constitutional reform.

The fifth chapter (“‘Débris of Paper Constitutions’: The Elaboration of a Constitution for the Qing Empire”) mainly discusses the years 1908–1911, focussing on concrete constitutional documents. In 1908, the Qing Empire

announced its *Outline of a Constitution by Imperial Ordinance* (*Qinding xianfa dagang* 欽定憲法大綱) as the Ottoman Empire reinstated its constitution. As the chapter analyses, the Ottoman Constitution was generally welcomed in China, although the specific interpretation varied across the political spectrum.

The chapter, for the first time, shows the whole range of the brisk translation activity of foreign constitutional texts into Chinese—the appendix to this dissertation counts 98 different translations of 34 different constitutions. Translational activity far transcended the constitutions of Japan and the Western powers, also including, among others, the recently promulgated constitutions of Russia, Persia, and the Ottoman Empire. As the chapter shows, a close regional coöperation combined with a concomitant global point of view can also be seen in all extant drafts of constitutions, especially in the one made by the Japanese scholar Kitaoni Saburō 北鬼三郎 (?–1912). Using hitherto unknown Japanese sources, the dissertation is able to paint a much more precise picture of his work as had been possible up to now.

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Through the detailed analysis of the history of the concept of a constitution in the late Qing Empire, the dissertation comes to the conclusion that the Chinese “constitutional movement” was not a mere derivative discourse aimed at grafting an European concept onto Chinese soil, but rather a fundamental part of a global movement co-producing the paraphernalia of modernity. Although the Qing did not promulgate a full constitutional charter, it was in the last years of the Empire that constitutions became ineluctable elements of the Chinese State. Concomitantly, they became well-nigh universal symbols of modernity.

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