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# MODERN DEMOCRACY IN CHINA

Mingchien Joshua Bau



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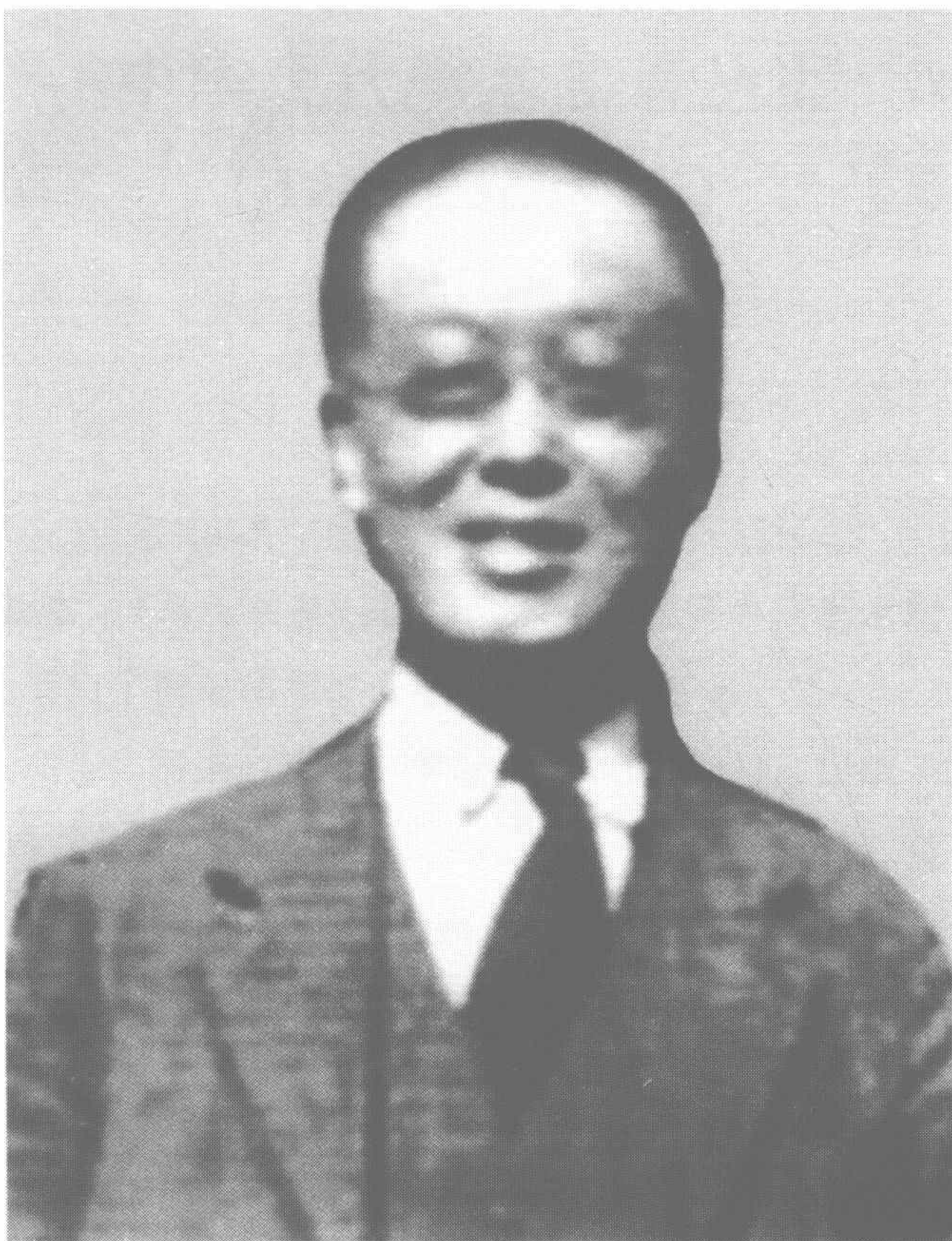
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Mingchien Joshua Bau  
(1894—1961)



# 中华现代学术名著丛书

## (120 周年纪念版)

### 出版说明

商务印书馆自 1897 年始创,以“昌明教育,开启民智”为宗旨,于建馆翌年便出版了《马氏文通》,这部学术经典既是中国学术现代化的标志之一,也开启了商务印书馆百年学术出版的序幕。

其后,商务印书馆一直与中华现代学术相伴而行,出版了大批具有鲜明原创精神并富于学术建树的经典著作,诸多开山之著、奠基之作都是在本馆首次问世。这些学术经典的出版,使本馆得以引领现代学术发展,激动社会思想潮流,参与民族新文化的构筑,也分享中国学界的历史荣光。

1949 年以后,本馆虽以译译世界学术名著、编纂中外辞书为侧重,但原创学术著作的出版从未止步。2009 年起,我馆陆续出版“中华现代学术名著丛书”,全面整理中华现代学术成果,深入探寻现代中国的百年学脉。

丛书收录上自晚清下至 1980 年代末中国原创学术名著(包括外文著作),以人文社会科学为主,涵盖文学、历史学、哲学、法学、政治学、经济学、社会学、教育学、地理学、心理学、科学史等众多学科。意在辨章学术,考镜源流,收录各学科学派的名家名作,展现传统文化的新变,追溯现代文化的根基。丛书立足于精选、精编、精校,冀望无论多少年,皆能傲立于书架,更与“汉译世界学术名著丛书”共相辉映,昭示中华学术与世界学术于思想性和独创性上皆可等量齐观,为中国乃至东方学术在世界范围内赢得应有的地位。

2017年2月11日,商务印书馆迎来了120岁的生日。为纪念本馆与中华现代学术风雨同行的这段历程,我们整体推出“中华现代学术名著丛书”120周年纪念版(200种),既有益于文化积累,也便于研读查考,同时向长期支持丛书出版的诸位学界通人致以感激和敬意。

“新故相推,日生不滞。”两个甲子后的今天,商务印书馆又站在了一个新的历史节点上。传承前辈的出版精神,迎接时代的新使命,且行且思,我们责无旁贷。

商务印书馆编辑部

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## 凡 例

一、“中华现代学术名著丛书”收录晚清以迄 20 世纪 80 年代末，为中华学人所著，成就斐然、泽被学林之学术著作。入选著作以名著为主，酌量选录名篇合集。

二、入选著作内容、编次一仍其旧，唯各书卷首冠以作者照片、手迹等。卷末附作者学术年表和题解文章，诚邀专家学者撰写而成，意在介绍作者学术成就，著作成书背景、学术价值及版本流变等情况。

三、入选著作率以原刊或作者修订、校阅本为底本，参校他本，正其讹误。前人引书，时有省略更改，倘不失原意，则不以原书文字改动引文；如确需校改，则出脚注说明版本依据，以“编者注”或“校者注”形式说明。

四、作者自有其文字风格，各时代均有其语言习惯，故不按现行用法、写法及表现手法改动原文；原书专名（人名、地名、术语）及译名与今不统一者，亦不作改动。如确系作者笔误、排印舛误、数据计算与外文拼写错误等，则予径改。

五、原书为直（横）排繁体者，除个别特殊情况，均改作横排简体。其中原书无标点或仅有简单断句者，一律改为新式标点，专名号从略。

六、除特殊情况外，原书篇后注移作脚注，双行夹注改为单行夹注。文献著录则从其原貌，稍加统一。

七、原书因年代久远而字迹模糊或纸页残缺者，据所缺字数用“□”表示；字数难以确定者，则用“（下缺）”表示。



TO  
MY MOTHER  
AND  
MY WIFE



## PREFACE

The purpose of this book is to study the important political and constitutional problems confronting the Chinese nation and to crystallize the conclusions of the studies into a draft of a permanent constitution for the Republic of China. Passing, as it does, abruptly from monarchical autocracy to republican constitutionalism without proper preparations and foundations, confronted not only by anarchy, as expected following the Revolution, but also by the grip of militarism, civil war, bankruptcy, and foreign intervention and control, the Chinese nation is, or is about to be, face to face with a crisis unparalleled in her own history or even in the history of any nation on earth. Challenged by the appalling outlook of the situation, responding to the sentiment of the Powers assembled at the Washington Conference for the establishment and maintenance of a stable and effective government in China, and at the sight of the untold and mute sufferings of the helpless, innocent people—a sturdy, patient, industrious, frugal, sensible, peace-loving people that deserves a good, stable, and effective government—the voice of conscience calls and dictates that those qualified to study the problem and point out the way should undertake the work. In response to this sentiment, the important political and constitutional problems of China, some of which are perhaps beyond human wisdom and solution, are consequently courageously studied, and suggestions boldly offered, concluding with a draft of a permanent constitution for China, which, it is hoped, may serve as a proposal for the permanent national constitution of the Republic.

Undertaking the work with the aforesaid motive, unaffiliated as yet with any political party or faction in China, bent on



knowing the truth and truth only, the author sides with no Political cliques or factions, and enters the work with a mind absolutely open and non-partisan, endeavoring to solve each problem as it comes, not so much for the interests or preferences of any part or group of the nation, as rather for the welfare of the entire people. The statements made in this work represent the opinions and convictions of a conscientious, impartial, and patriotic student, and the gentle readers are consequently requested to pardon the frankness, straightforwardness, and fearlessness of the statements and proposals, with the diffident expectation that those disagreeing with the conclusions of the studies may be lenient in their criticisms, making allowance for the motive of the work, whereas those agreeing and convinced by the reasons of the conclusions may yet further the cause by active application of the principles and substantial coöperation and assistance in the execution of the ideas.

That the work may fulfill the purpose for which it is written and truly represent the spirit in which it is done, the author undertook all pains to make it as valuable and reliable as feasible. To this end, aside from utilizing all the available facilities of the Library of Congress at Washington, D. C., and consulting with the leading experts and authorities in America on constitutional government and China, he endeavored to base his work, not so much on political theories, or new experiments in constitutional government, as on the solid rock of the experience of mankind, especially the political and constitutional experience of the leading states as revealed in their history, as well as that of the Chinese nations as manifested in her history of recent years.

Grounded on the firm foundation of human experience, the book is divided into two main parts. The first part, dealing



with modern Chinese history and politics, takes up the constitutional history of China and analyzes the problems presented thereby, such as the provisional constitution—and its defects, the lessons of the decade, the abolition of the Tuchun system, the framing and adoption of the permanent constitution, and the perils and the salvation. The second part, treating of the constitutional government proper, discusses the issues as involved in the making of the Chinese permanent constitution, such as cabinet vs. presidential system, unitary vs. federal system, legislature, executive, judiciary, provincial autonomy, local government, budget, political parties, and private rights, concluding with the proposal for the convocation of a national convention for the framing and adoption of the permanent constitution and the crystallization of the conclusions of the discussions into a draft of a permanent constitution for China. The book further ends, as appendices, with a list of important Chinese constitutional documents from the Manchu dynasty down to the moment of writing.

The author takes this opportunity to express his indebtedness to all the authors whose works he has consulted, and whose names appear generally in the footnotes of this work, and particularly to his revered teachers at Johns Hopkins University, President F. J. Goodnow, Professors W. F. Willoughby and W. W. Willoughby, all of whom were formerly constitutional advisers to the Chinese Republic, for kindly advices and encouragement.

MINGCHIEN JOSHUA BAU.

*Peking, China.*



## CHAPTER I

### INTRODUCTION: THE CRISIS AND THE PROBLEM

The rise of modern democracy in China will constitute the marvel of the twentieth century. Emerging from several thousand years of isolation from the Western world, discarding old institutions, and donning the garb of Western constitutional government, this ancient democracy of the Orient, the mother of Far Eastern civilization, is to astonish the world with her *début* into the modern democracies.

The significance of China in world politics has been declared by John Hay: "Whoever understands that mighty Empire—socially, politically, economically, religiously—holds the key to world politics for the next five centuries." Realizing this significance, the rise of modern China, which the twentieth century is to witness, as the nineteenth did the rise of Germany, Italy, and Japan, cannot but produce tremendous effects on world politics and civilization.

On the eve of such an epoch-making event as the Rise of Modern China, a national crisis confronts the Oriental democracy, probably unparalleled in magnitude in the history of any nation. Amidst the ruins of the Manchu régime, unprepared for constitutional democracy either by education or experience, saddled by military despotism of the *Tuchuns* (or Military Governors), this ancient people endeavors to leap over an unbridged gap from monarchical autocracy to republican constitutionalism. In the wake of the Revolution, instead of being blessed with comparative peace and order, so that the infant republic can have a breathing chance of survival and growth, as the United States of America was for approximately seventy years before the baptism of



civil war, the young oriental republic was at once plunged into the testing crucible of internecine warfare. Instead of being relatively immune from foreign aggression as the United States was and is, the ancient democracy, notwithstanding the benevolent compact at the Washington Conference to respect her sovereignty and furnish fullest opportunity for the development and maintenance of an effective and stable government, is yet exposed to the perils of the concerted intervention of the Western powers for the protection of their treaty rights and interests. As a consequence of civil strife and war and the maintenance of large excessive hordes of armed forces by the rival Tuchuns, the National Treasury has been woefully depleted, practically facing bankruptcy and foreclosure, and national assets and credits sadly mortgaged in the hands of foreign creditors. Under such conditions, whether China can pass the throes of the birth of a new nation, whether she can develop an effective and stable government, whether she can remain independent, or whether she will be a second Mexico cursed by recurrent revolutions and civil wars, or fall under the grip of international control—these are the scenes yet to be enacted.

Amidst such appalling situations, and in face of an unparalleled crisis, the evolution of an effective and stable government and the institution of a modern constitutional democracy cannot but become the supreme task of every patriotic Chinese, and absorbing interest of all the peoples of the world. Undaunted by the staggering perplexities and obstacles, and impelled by a high sense of duty, the supreme endeavor is, therefore, made in this work to analyze the modern history and conditions with critical interpretation, and to find solutions for the fundamental problems, political and constitutional, confronting the nation, chiefly as follows:



- (1) Framing and Adoption of the Permanent Constitution by the Parliament or by the National Convention.
- (2) Abolition of the Tuchun System and the finding of its substitute.
- (3) Adoption of Cabinet or Presidential System.
- (4) Adoption of Federal or Unitary System.
- (5) Election of President by the Parliament, or by the people, or by the National Convention.
- (6) Appointment of Governors by President or their Election by Provincial Assembly or Electoral College.
- (7) Judiciary Independent of the Executive Control.
- (8) Provincial Autonomy.
- (9) Municipal Home Rule.
- (10) The Adoption of a Proper Budgetary Procedure.
- (11) The Rise of Two Great Opposing Parties.
- (12) Judicial process of protection for life, liberty and property.

To the end that the aforesaid fundamental questions and other related problems may be adequately answered, the work is divided into two parts. The first dealing with modern Chinese history and politics attempts to narrate the recent history of China and to interpret the present conditions of China, so as to furnish an historical background and exact understanding of conditions—the causes of civil strife, the lessons of the situation, the defects of the provisional constitution, the problem of the Tuchun system, the best mode of framing and adopting the permanent constitution, the perils confronting the Republic, the means of salvation, and so forth. The second part treating of the problems of constitutional government endeavors to discuss them in the light of the history



and experience of the contemporary states and history and tradition of China, and to offer solutions, concluding with a draft of permanent constitution which crystallizes the results of discussions and studies into a concrete document.

With no partiality toward any political or military factions or parties in China, dictated by the spirit of truth as revealed by truth, the author attempts to state and advocate only what he believes to be the best for China. Unsupported by laboratory verifications possible in scientific researches, nor by documentary evidences obtainable in legal or historical studies, the author endeavors to avoid errors of theorizations without verifications, or of assertions without evidences, and to base his work on the only safe and reliable foundation—that is, the experience of mankind in political and constitutional respects. Guided thus by the lamp of experience, relying upon political theories and philosophies only when substantiated by facts and experiences, critically and analytically studying the political institutions, not so much of new states whose constitutional experience is yet in the making, but of the older states, whose records of political and constitutional operations are well established, the author tries to chronicle, analyze and interpret the modern history and politics of China and to construct a system of constitutional government for China in the light of the undeniable and irrefutable results of human experience, expecting thereby to save China from repetition of unnecessary errors of other peoples, and to render the system presented practicable and adaptable in the conditions and traditions of the Chinese.



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