

中 國 民 治 主 義 .  
MODERN DEMOCRACY  
IN CHINA

BY

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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 monarchic 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 paralleled 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 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 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.

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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.

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## 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.

## CHAPTER II

### THE RISE OF DEMOCRACY

Constitutional government in China is a product of western contact and intercourse. Unlike the British system of government, it is not an indigenous growth, but rather a necessary outcome of circumstances as created by Western contact and intercourse.<sup>1</sup>

For centuries absolute monarchy was the traditional and accepted form of government for the Chinese. The dynasties came and the dynasties went, but absolute monarchy or paternal autocracy remained the recognized system of Chinese government. With the advent of the Western contact and intercourse, the age-long system was rudely brought to test. Under its auspices the Empire entered into conflict with Great Britain and France, and was defeated. Under its aegis the Empire came to blows with Japan—then supposedly a second rate Power in the Far East—and was ignominiously vanquished, as a consequence of which its weaknesses were glaringly revealed to the whole world, and the Western Powers commenced their ruthless scramble for concessions and leases. Under the same Dynasty the Empire came into clash with the entire civilized world in the Boxer Uprising with the object of extirpating all Western influences, only to plunge itself into the depths of humiliation and to prostrate itself helpless before the feet of the enraged Powers.

• Thus the traditional system of absolute monarchy and paternal autocracy was weighed in the balance and found

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1. Cf. Rheinbaben, *Chinesische Verfassung, 1900-1917*, p. 16.

wanting. Rumors of partition ran rife, and the independence of the Chinese was on the precipice of extinction. Urged by necessity, the instinct of self-preservation dictated change in political system, and, if possible, adoption of western constitutional government, as a means of survival and adaptation.

The movement for constitutional government dates from the end of the Boxer Uprising. Prior to this, to be sure, there were the premature and ill-fated reforms of 1898 under the leadership of Kang Yu-wei and the energetic sanction and direction of Emperor Kwang Hsu, generally in the realms of political and educational reforms, but these endeavors were so soon nullified by the coup d'état of the Empress Dowager in the same year, that very little trace of their influence on the constitutional development of China could now be noticed. The real origin lay rather in the refuge of the Empress Dowager and the Emperor in Sianfu in January, 1901, after their precipitant flight during the Boxer Uprising from the entry of the allied expeditionary forces into Peking, when, with a repentance of heart and a new resolve, an Imperial edict was issued, extorting the study of the Western system of government and adoption of necessary political reforms.<sup>2</sup>

Thereafter, despite edicts for reforms, no significant step was taken in regard to the institution of a constitutional government until the year of 1905, when the victories of Japan over Russia inspired the Chinese and Manchu Court with the belief that an Asiatic nation by the adoption of Western methods and institutions was also capable of attaining parity with the Western Powers. Impelled by this conviction, a Constitutional Commission was despatched to Japan, America, and Europe, consisting of Duke Tsai Tse, Li Sheng-to, Shang

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2. China Year Book, 1912, p. 352.

Ki-hung, Tuan Fang, and Tai Hung-tsi to study the various systems of constitutional government and to report the findings for a constitutional system of government for China. Upon their return a memorial was submitted to the throne describing the advantages of constitutional government and urging the adoption of a constitution and convocation of a national parliament. After consideration and examination of the report, an Imperial edict was issued on September 1, 1906, promising the adoption of a constitutional system of government in the near future and ordering preparations to be made for the establishment of the same.<sup>3</sup>

"The governmental system and laws of our country have been transmitted from generation to generation with so little change and improvement that they are now out of harmony with the general existing conditions of the world, with the result that our country is in a dangerous position and we are filled with great anxiety and earnest apprehension. . . . Therefore we sent our High Ministers to various countries to study and investigate their governmental systems and administrative methods. Now, these Ministers have returned, and in their report all submitted their opinion, as the result of their study and investigation, that the weakness and inefficiency of our country is due to the lack of close touch between the government and the people and the entire separation of those who are in office and those who are not. . . . That other countries are wealthy and strong is primarily due to the adoption of a constitution, by which all the people are united in one body and in constant communication, sane and sound opinions are extensively sought after and adopted, powers are well divided and well defined, and financial matters and legislation are discussed and decided upon by the people. . . .

3. Hawking L. Yen, *A Survey of Constitutional Development in China*, p. 123, et seq.; *China Year Book*, 1912, p. 353; Louis Ngaosiang Tchou, *Le Régime Des Capitulations et La Réforme Constitutionnelle En Chine*, p. 144, et seq.

“ In view of the situation our country is in, there is no other way to power and prosperity than, after having carefully and minutely examined the constitutions of other countries, to adopt one by selecting portions of all, if necessary, best suited to us, whereby all civil affairs are open to the public but the controlling powers remain with the Throne, so that a permanent and proper foundation may be laid for our country. But at present no definite plan has been decided upon and the people are not educated enough for a constitution ; if we adopt one hastily and regardless of the circumstances, it will be nothing more than a paper constitution. . . .”

In pursuance of this policy of systematic preparation, an edict was issued on September 20, 1907,<sup>4</sup> creating the National Assembly (Tzechenyuan), as the foundation of a parliament which was to be established subsequently as the people were ready. Another edict of October 19, 1907,<sup>5</sup> followed ordering the establishment of Provincial Assemblies to ascertain public opinion in all the Provinces and to serve as nurseries for the National Assembly, and also the preparation for local self-government in prefectures, departments, and districts. A subsequent edict of December 25, 1907,<sup>6</sup> decreed the general constitutional principles governing the functions and operation of the National Assembly in Peking and the Provincial Assemblies.

Hitherto there have been only vague and indefinite promises of constitutional reforms. The people, observing the ruthless struggle on the part of the Western Powers for concessions at the expense of their heritage and rights and to the peril of their national existence, and under the influence of the leaven of the Western political thought, became restless

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4. China Year Book, 1912, p. 355.

5. Ibid, 1912, p. 355.

6. Ibid, 1912, p. 356.

and yearned for an early convocation of the Parliament and the establishment of a constitutional system of government. In 1908, delegates were despatched to the capital and petitions presented to the effect. In response, discerning the rising tide of public sentiment, on August 27, a very significant edict was promulgated, announcing the proposed principles of a constitution and a nine-year programme (1908-1917) of preparation.<sup>7</sup> The edict declared that the proposed principles of a constitution and fundamental laws of parliament and election, being in strict accordance with the intent of the previous edicts "to the effect that supreme powers will remain with the Throne while civil affairs shall be open to public opinion,"<sup>8</sup> should serve as the foundation for the framing of a constitution in the future. It further commanded all the officials, high and low, with one heart and purpose, to execute the nine-year programme, faithfully and punctiliously, so that at the expiration of the period, the task of preparation could have been completed, the constitution promulgated, and Parliament convoked.

The proposed principles of a constitution covered the sovereignty of the Emperor, duties and rights of subjects, principles of parliamentary law, and principles of elections. The Emperor was sacred and inviolable and to be commander-in-chief of the army and navy; had the power to make laws; invoke, prorogue and suspend parliament; appoint all officials; declare war, make peace, conclude treaties; issue edicts restricting the liberty of his subjects; enforce the law, establish courts and appoint judges; issue ordinances within the limit of law; in time of emergency, in absence of the parliament in

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7. Ibid, 1912, pp. 357-363; Yen, *A Survey of Constitutional Development in China*, pp. 129-132; L. R. O. Bevan, *China's Constitutions*, *The Chinese Social and Political Science Review*, December, 1917, p. 93.

8. *China Year Book*, 1912, p. 397.



session, issue edicts for carrying on the government and for raising necessary revenues, which measures should, however, be submitted to Parliament at its next session; and fix the expenses of the Royal Household and obtain them direct from the Treasury without the interference of Parliament. Thus the supreme power of legislation and execution was to be vested in the Emperor, with the Parliament delegated to an advisory capacity.

Subjects were to have the rights of the freedom of speech, press, meeting, government appointment, life, liberty, and property within the confines of law; and the duties to pay taxes, perform military service, and obey the laws of the nation. Parliament had the power to propose legislation, but not the power to legislate; Imperial sanction was required for measures to become law, which meant that the Emperor was to have the power of absolute veto over legislation; regular expenditures authorized by the Emperor and those already fixed by law could not be reduced or abolished except in consultation with the government; Parliament was to have only auxiliary power in the compilation of Empire's budget, and Ministers could be denounced, but the power of removal or punishment was to lie with the Emperor. The election laws provided for the supervision by local authorities, the qualification of at least a year's residence in the locality and the requirement for election of the largest number of votes cast for a candidate.

The nine years' programme of preparation embraced reforms in local self-government, education, law, courts, census, civil service, police, and budget, all calculated for the preparation for the constitutional régime.

In pursuance of the programme twenty-two Provincial Assemblies were opened on October 14, 1909.<sup>9</sup>

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9. China Year Book, 1912, p. 366; Yen, *op. cit.* p. 132.