

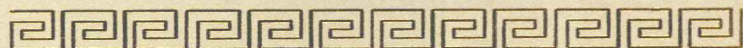
SELECTED WORKS OF MODERN CHINESE LEARNING

MODERN DEMOCRACY IN CHINA

Mingchien Joshua Bau



商務印書館
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Mingchien Joshua Bau

(1894—1961)

Editorial Note

One hundred years ago, Zhang Zhidong tried to advocate Chinese learning by saying: “The course of a nation, be it bright or gloomy, the pool of talents, be it large or small, are about governance on the surface, and about learning at the root.” At that time, the imperialist powers cast menacing eyes on our country, and the domestic situation was deteriorating. The quick infiltration of Western learning made the long-standing Chinese tradition come under heavy challenge. In those days, Chinese learning and Western learning stood side by side. Literature, history and philosophy split up, while many new branches of learning such as economics, politics and sociology were flourishing, which made many Chinese dazed. However, there appeared a vital and vigorous learning climate out of the confusing situation. It was at this critical moment that modern Chinese scholarship made the transition—by exchanging views, basing on profound contemplation and even with confrontation of idea and clash of views, the scholarship made continuous progress, bringing up a large number of persons of academic distinction and creating numerous innovative works. Changes in scholarship and in general modes of thinking made transition in all aspects of the society possible, thus laying a solid foundation for revitalizing China.

It's over a century since the journey of modern Chinese learning started, during which various schools of thought stood in great numbers, causing heated discussions. The journey sees schools of thought as well as relevant arguments rising and

falling, waxing and waning instantly, leaving complicated puzzles to followers. By studying and reviewing the selected works, one may gain new insights into that journey; and it is the editor's sincere hope that readers would ponder over the future by recalling the past. That's why we have compiled "Selected Works of Modern Chinese Learning". The effort includes masterpieces of celebrated scholars from diverse fields of study and different schools of thought. By tracing back to the source and searching for the basis of modern Chinese learning, we wish to present the dynamics between thought and time.

The series of "Selected Works of Modern Chinese Learning" includes works (both in Chinese and in foreign languages) of scholars from China—mainland, Hong Kong, Macau, and Taiwan—and from overseas. These works are mostly on humanities and cover all fields of subjects, such as literary theory, linguistics, history, philosophy, politics, economics, jurisprudence, sociology, to name a few.

It has been a long-cherished wish of the Commercial Press to compile a series of "Selected Works of Modern Chinese Learning". Since its foundation in 1897, the Commercial Press has been privileged to have published numerous pioneering works and masterpieces of modern Chinese learning under the motto of "promoting education and enlightening people". The press has participated in and witnessed the establishment and development of modern Chinese learning. The series of "Selected Works of Modern Chinese Learning" is fruit of an effort to relay the editorial legacy and the cultural propositions of our senior generations. This series, sponsored by National Publication Foundation, would not be possible if there were no careful planning of the press itself. Neither would it be possible without extensive collaboration among talents of the academic circle. It is our deeply cherished hope that titles of this series

will keep their place on the bookshelves even after a long time. Moreover, we wish that this series and “Chinese Translations of World Classics” will become double jade in Chinese publishing history as well as in the history of the Commercial Press itself. With such great aspirations in mind, fearing that it is beyond our ability to realize them, we cordially invite both scholars and readers to extend your assistance.

Editorial Department of the Commercial Press

December 2010

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 Tutchuns (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 Tschuns, 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.

I

MODERN CHINESE HISTORY AND POLITICS

- II. The Rise of Democracy.
- III. The Triumph of the Republic.
- IV. The Return of Monarchy.
- V. The Struggle over the Constitution.
- VI. The Civil War.
- VII. The Provisional Constitution—and Its Defects.
- VIII. The Lessons of the Decade.
- IX. The Abolition of the Tuchun System.
- X. The Framing and Adoption of the Permanent Constitution.
- XI. The Perils and the Salvation.