

*A Century of Turmoil: An Overview of
China's Constitutional Reform and Revolutions*



INTRODUCTION: THE DAWN OF A CONSTITUTIONAL MOMENT – CONSTITUTIONAL ELEMENTS IN THE ANCIENT REGIME AND THEIR LIMITATIONS – Confucian *Li* as a Social Constitution? – Imperial Constitutional Reforms under Western Influence – Lessons to be Learned: The Dilemma of Constitutional Reform in an Authoritarian State – THE FIRST REPUBLIC: THE NATIONALIST REVOLUTION OF 1911 – The Clash of Regimes within the First Republic – An Interlude for Warlords: The Provincial Autonomy Movement and the Experiment with Federalism – The Northern Expedition, Reunification and the Ascendance of Party Rule – Limitations in the Nationalist One-Party Monopoly – WHY REVOLUTIONS FAIL TO BRING ABOUT CONSTITUTIONALISM

I. INTRODUCTION: THE DAWN OF
A CONSTITUTIONAL MOMENT

IT WAS THE last day of April 1895. In a mansion outside the inner Capital city, Kang Youwei (康有为), who shortly became China's most influential constitutional entrepreneur, gathered more than a thousand Confucian scholars (举人, juren) participating in the annual imperial examination and prepared to petition the Emperor against signing the Treaty of Shimonoseki with Japan. In most Chinese minds, Japan was but a tiny, peripheral, barbarian island (蕞尔岛, *zui'erdao*); but to their surprise and humiliation, this 'barbarian' island had eliminated China's entire fleet in a decisive battle on a single day in 1894 and forced

its giant neighbour to relinquish sovereignty over Taiwan and the Liaodong peninsula. To be sure, the Sino-Japanese War was not the only humiliating defeat from which China suffered in the nineteenth century; as early as 1840, China had lost the first Opium War to Great Britain, to which China ceded Hong Kong, and had since been defeated in a series of battles by the Western powers and signed a number of unequal treaties. But this time the damage was done by a tiny island that had historically relied on China for its language and cultural heritage and, like China, had undergone centuries of seclusion, until the Meiji Reformation of 1868. What had lent this island such magical power as to defeat an empire many times its size? What did China lack that had enabled Japan to attain such great achievements within such a short period? Ever since the very first defeat, Chinese intellectuals had been searching for ways to strengthen their country. First they saw the immediate necessity of building sturdier warships and more powerful cannons; next they realised the need to establish modern industry as the basis for military power.¹ For almost half a century, they had been preoccupied with the Westernisation Movement (洋务运动, *yangwu yundong*), which introduced new science, technologies and manufacturing to revitalise the ancient country, but the sad fact that the giant fleet they had studiously built for decades disappeared in a single day before a seemingly tiny rival could not have failed to shock them and raise a far-reaching question: what else had been missing?

The nineteenth-century Chinese were nationalists, proud of their cultural tradition, but they were not blind chauvinists who refuse to learn from their rivals. In fact, Japan had become an object of admiration and imitation for the ordinary Chinese; it had been admired not only for its economic and military achievements but also for its achievements in legal and institutional reforms. During merely two decades following the Meiji Reformation, Japan transplanted the entire body of civil, criminal and administrative law from Western legal systems, before it eventually succeeded in adopting the Meiji Constitution in 1889.² Constitutional reformers like Kang Youwei and his prominent disciple, Liang Qichao (梁启超), could not fail to seize the chance and make Japan a persuasive

¹ See JD Spence, *The Search for Modern China* (New York, WW Norton, 1990) 143–51.

² See R Benedict, *The Chrysanthemum and the Sword: Patterns of Japanese Culture* (New York, Mariner Books, 2006) 27–97; and S Matsui, *The Constitution of Japan: A Contextual Analysis* (Oxford, Hart Publishing, 2011) ch1.

case for their own constitutional cause: Japan succeeded because it was a stronger military power, but it was able to build up a strong military and economy only because it had undertaken constitutional and legal reforms as the necessary institutional precondition to its success. It was precisely the lack of a constitution and, together with it, a parliamentary system and rule of law that ultimately accounted for China's failures. It thus became widely accepted that if China was to part with its disgraceful recent past and join the world as a major power, as Japan had successfully done, the most urgent thing was not to build more warships and set up more factories but to prepare for constitutional reforms that would essentially replace the institutional structure of the ancient Chinese state. And this was precisely what Kang and Liang proposed in their petition to the Emperor: strength through institutional reform (变法图强, *bianfa tuqiang*).³ While the petition ultimately failed to prevent the Emperor from signing the Treaty (just as the many other official petitions on the matter had), the scholarly gathering that day symbolised the first organised constitutional movement in modern China initiated from below.

The impact of the civic constitutional movement proved to be far-reaching. In the span of several years civic associations sprang up across China, and private newspapers thrived. As early as August 1896, Kang and Liang established in Shanghai an influential newspaper, *Current Affairs* (时务报), which soon became the major mouthpiece for constitutional reforms. During the next two years, over 300 associations and news agencies were established across China. Under the persistent influence of this reformist enlightenment, Emperor Guangxu (光绪) finally issued an edict on 11 June 1898, declaring the inauguration of constitutional reform. The next 100 days saw the introduction of China's 'New Deal' (百日维新, *bairi weixin*). The Emperor, following the teachings of Kang and Liang, issued over a hundred directives covering a wide range of initiatives from the right to petition to freedom of the press; from

³ Scholars have recently questioned whether Kang actually presented the petition to the Council of Censors (都察院, *ducha yuan*) as he claimed in his autobiography, but there has been no doubt that he drafted the petition and held the assembly in his mansion. See Mao Haijian, 'Additional Examinations of "Public Petition" I' (2005) 3 *Studies in Modern History* 1; and Mao Haijian, 'Additional Examinations of "Public Petition" II' (2005) 4 *Studies in Modern History* 1. Cf Fang Deling, 'Kang Youwei and the Public Petition: Questioning Additional Examinations of "Public Petition" II' (2007) 1 *Studies in Modern History* 111.

educational reforms to streamlining of bureaucratic structures; from centralisation of finance to modernisation of the army; and above all, the repeal of special privileges enjoyed by the small minority ruling class, the *Manchu* ethnic group (满族), which had managed to maintain dominance over the *Han* (汉族) population for nearly 300 years. Although the imperial edicts fell short of bringing onto the agenda the more grandiose issues of constitutional monarchy and the establishment of a parliament, these reforms seemed to lay a political and legal foundation for the sustainable modernisation of China, just as they had for Japan.

Unfortunately, the reformist momentum was not sustained for long before it was stalled by the threatened underlying *status quo*. On 21 September, the Empress Dowager (慈禧, Cixi, Emperor Guangxu's mother) took over control, put the Emperor under house arrest, repealed all reform measures and executed the 'six gentlemen' – high officials in the reform camp. Kang and Liang managed to flee to Japan and continued to try to muster support for constitutional monarchy overseas. Despite this seemingly fatal conservative backlash, the domestic constitutional movement did not simply fail, since the intellectual elites after 1894 had generally agreed that constitutional reform was necessary for China's modernisation. Shocked by both China's weakness when faced with Western intruders, who overtook the capital and ransacked the imperial Yuanming Park in 1900, and particularly by the Japanese defeat of the Russian fleet in 1904, even the Dowager realised the inevitability of reform and revived the process of constitutional drafting by sending several high-ranking officials overseas to study the constitutional systems of Western countries.⁴ An Outline of the Imperial Constitution (《钦定宪法大纲, *qinding xianfa dagang*) was finally promulgated in 1908. Despite its many defects, even vices, it is commonly regarded as the first written constitution in Chinese history and as a convenient point of departure for China's modern constitutional movement.

⁴ The Qing officials visited a dozen countries, including the United States, the United Kingdom, France, Germany and Japan. Eventually, Germany's Bismarck Constitution (1871) and Japan's Meiji Constitution (1889), both authoritarian constitutions that vested substantive power in the monarch, were selected as blueprints for the Outline, since they were deemed more 'fitting' for China's conditions than the others. See Jing Zhiren, *China's Constitutional History* (Taipei, Lianjing Press, 1984) 134–43.

I shall begin the book with a brief introduction to China's constitutional history, since it not only provides the reader with an important historical perspective and explains why we are where we are now, but also illustrates the basic dilemma that China faces in modernising its constitution and embracing constitutionalism. Some of the historical themes simply recur in a transitional society like China. For example, it is difficult to ascertain why the ruling regime has any interest in fulfilling the promises it made in the Constitution by sharing its powers and making itself accountable to the people, when it has managed to concentrate all powers in its own hands; those within the ruling circle can derive tremendous personal profit from the traditional system, and power-sharing means they will lose at least some of their means for making personal profit. The lessons China learned (or should have learned) from the imperial and Nationalist failures should shed some light on how to transcend China's constitutional predicaments today.

With that in mind, I divide this chapter into several periods, beginning with a short account of indigenous resources for constitutionalism in China. The Confucian concept of *li* (礼, sometimes translated as 'rites' or 'propriety') can be fairly characterised as a social constitution that had governed traditional Chinese society for over 2000 years, but when China was confronted by the Western powers as early as the seventeenth century, the incompatibilities of *li* with modern society became obvious and eventually led to the demise of the traditional institutions. The chapter will then deal with the efforts to modernise these institutions, and it will end with an explanation of the institutional and cultural causes for the repeated failures to establish a stable constitutional state.

II. CONSTITUTIONAL ELEMENTS IN THE ANCIENT REGIME AND THEIR LIMITATIONS

A. Confucian *Li* as a Social Constitution?

That China's constitutional movement did not begin until near the end of the nineteenth century does not imply, of course, that pre-modern China had no conception of constitution or fundamental laws. It is true that the word corresponding nowadays to 'constitution' (宪, *xian*) meant