

## Part II

# Constitutional Government: China's Predicament and Extrication

### Introduction

In modern Chinese intellectual history Liang Shu-ming occupies a very special position for he was not only linked throughout his life to the movement towards constitutional government but, more significantly, his views on these matters proved to be more penetrating and systematic than others of his time. Apart from the *rural reconstruction movement*, his greatest involvement in, and his most notable contribution to, the public sphere was “the constitutional campaign”. In this campaign, he was, at times, both enthusiastic and dispirited. On the other hand, as a private intellectual, it is true that, in the inner intellectual sphere, constitutionalism is what Liang Shu-ming was most desperately concerned with as a part of the objective ending of the long-term process of the legal, institutional and conceptual reconstruction and holistic revivification of the Chinese culture, a culture which had been under such pressure from the Western Powers’ overwhelming claims. Spanning the varieties of periods of China’s modern history, his ideas are not only the results of his contemplation as a cognitive thinker who is in, but not of, his society, but also a bitter reflection on the precarious and changeable circumstances in China in this century.

As will be seen later, Liang Shu-ming was an enthusiastic advocate of constitutional government, although he adopted different attitudes towards this issue, depending on the different circumstances. His lifetime experience did much to develop and clarify his own views on this issue. Briefly, in his earlier years, influenced by the Constitutionalists,<sup>1</sup> young Liang Shu-ming believed in, and

---

<sup>1</sup> For further details about these campaigners who sought the construction of constitutional government in China as soon as possible by coping the Western model earlier this century, see Pen-yuan Chang, “The Constitutionalists”, in Mary Clabaugh Wright (ed.), *China in Revolution: the First Phase, 1900–1913*, at 143; also Chang’s book, *The Constitutionalists and the Revolution of 1911*, which is based largely on his article above, in particular, part I; other monograph references on this matter include: Zhang Yu-fa, *The Constitutionalist Groups in Later Qing*; Qi Bin-feng, *The Revolution in Later Qing and the Arguments about Monarchy or Constitutional Government*. An interesting description by Harold Monk Vinacke early this century is *Modern Constitutional Development in China* (1920).

constantly promoted, the Western form of government, especially the supremacy of parliament and of law. Consequently, he not only “took the British style of political institutions as his ideal model”,<sup>2</sup> and “dreamed of implementing the parliamentary system (in China),”<sup>3</sup> but also “wished that China’s Constitutional government would come true soon,”<sup>4</sup> His advocacy of this system was further supported by the fact that he himself, “thought that China would become a modern nation, as soon as desirable, following after Europe, America and Japan, once China advanced straight ahead along the way of constitutional government”.<sup>5</sup>

He reminisced, thirty years later, that in those days, whilst he was still a schoolboy,<sup>6</sup> he “always tried to attend as a bystander (in the public gallery) when the Parliament (of *Republic of China*) held a debate”.<sup>7</sup> Furthermore, upon commencing his career as a journalist after graduated from high school, he “involved himself in almost all of the Parliament Houses sessions that were held during the first and second years of the earlier period of the Republic of China”.<sup>8</sup> His dream and enthusiasm, however, were quickly and easily squelched by the political darkness and corruption of those times. In pursuing his commitment to serve his country, young Liang Shu-ming experienced a significant shift of interest from constitutional government to socialism, which was imported into China mainly by Chinese students who had studied in Japan. As a voracious reader, he was

---

<sup>2</sup> LSM, “*My Brief History of Self-education*” (1942), 2: 684.

<sup>3</sup> *Ibid.*, at 2: 687.

<sup>4</sup> LSM, “*On Constitutional Government in China*” (1944), 6: 487. Liang was not the only example. In fact, as described by Professor Ray Huang, in the “Hundred Days’ Reform” (June 11 to September 21, 1898), for a period of 103 days, “prescripts, decrees, and edicts came down from the throne proclaiming that governmental offices would be reorganised, a budget prepared, the army and navy modernised, the entire educational system and civil service realigned, and agriculture, industry, and commerce promoted and brought up to the world’s standards. If those measures could have been carried out by proclamation of the throne, China would have been instantly transformed into a modern nation.” But the move toward Westernisation, which Huang mocked, was proclaimed in a characteristically un-Western manner. For further details see Ray Huang, *China: A Macro History*, at 244.

<sup>5</sup> For further details see LSM, “*My Brief History of Self-education*” (1942), 2: 688; “*On Constitutional Government in China*” (1944), 6: 488.

<sup>6</sup> Resulting from the “Hundred Days’ Reform”, many “new style” schools had been founded in the major metropolitan cities since the later Qing. Those schools became commonplace for the spread of the Western knowledge and concepts. The school Liang attended was one of this sort. For comprehensive studies about the impact those schools had on Chinese society, see in general, Sang Bing, *The Schools in the Later Qing and the (Chinese) Social Transformation*; also cf. K. Biggerstuff, *The Earliest Modern Government Schools in China*.

<sup>7</sup> LSM, “*My Brief History of Self-education*” (1942), 2: 687.

<sup>8</sup> LSM, “*My Brief History of Self-education* (1942)”, *ibid.*. Other references which are also valuable in this field to understand Liang Shu-ming’s thought in that days are: LSM, “Some Memories about the Political Events in the Earlier Years of the Republic of China” (1959), 7: 60–71; “Notes on Events during the Period from the Revolution of 1911 to the Earlier Years of the Republic” (1978), 7: 469: 471; “*My Activities in the Revolution of 1911*” (1981), 7: 511–518.

enthralled by this “new” critical instrument. It was under this influence that a monograph entitled “*A Concise Introduction to Socialism*”, written and published by himself and perhaps mainly inspired by a famous early popular Japanese work on socialism, Kotoku Shusui’s *Shakai shugi shinzui* (The essence of socialism), was launched by this enthusiasm.<sup>9</sup>

As in many other parts of the world at the turn of the century, there were many followers of Socialism amidst the country’s intellectuals. The fact that Liang Shu-ming’s views were reflected in the mainstream “new fashion” schools of philosophy was not an accident.<sup>10</sup> Liang Shu-ming truly was, as Saul Touster once described Oliver Wendell Holmes, jr., a child of his time.<sup>11</sup> As a result of this ideological influence, therefore, his view of educationalists, religionists, moralists and philosophers was that they all can do nothing to save human beings who had been edging towards evil step by step, day after day, “Needless to mention politicians and lawyers,” who also could do nothing.<sup>12</sup> Obviously, Liang Shu-ming was not an “infralapsarian”, but rather a misanthrope at that moment in his life. It takes little to realise how utterly worthless his old dream must have appeared according to this new world view. The thrust of this shift was not so much that constitutional government inadequately protects individual rights, but rather that it was so deficient as an instrument of government. This clearly eroded its potential to rescue China. He therefore argued that constitutional government, if not a Penelope’s web, would be the outcome and the end rather than a starting point for the Chinese national self-rescue and the Chinese cultural revivification.

In Spring 1920, after at least ten years of spiritual crisis, Liang Shu-ming came to terms with his spirituality by leaving Buddhism and returning to Confucianism. In this way, he thought, he would be able to resolve the “problems of life”. In 1926, he decided to devote himself to the China’s *rural reconstruction* after he developed viewpoints on such matters as Chinese politics and constitutional government, hereby attaining answers to the “problems of China”. All those factors, in the context of a way of life, and mind and spirit that reflected Chinese historical

---

<sup>9</sup>For a detailed accounts about this dramatic shift see LSM, “My Brief History of Self-education” (1942), 2: 691.

<sup>10</sup>In his article “Chinese Socialism before 1913”, Martin Bernal has shown that some Marxist ideas had been introduced in China before the New Cultural Movement started. Also see Martin Bernal, *Chinese Socialism to 1907*. Among numerous writings about this phenomena in diverse dimensions, see, e.g., Maurice Meisner (Li Ta-Chao and the Origins of Chinese Marxism) and Arif Dirlik (*The Origins of Chinese Communism*). The treatise of Edward X. Gu is an unique one, for his detailed analysis see his: “Populistic Themes in May Fourth Radical Thinking: A Reappraisal of Intellectual Origins of Chinese Marxism (1917–1922)”. Also he noted that some Marxist ideas were in China by 1905, see this paper’s footnote 102.

<sup>11</sup>Saul Touster, “Holmes A Hundred Years Ago: the Common Law and Legal Theory”, in *10 Hofstra Law Review* (1982), at 689.

<sup>12</sup>LSM, “An Account in My Own Words” (1934), 2: 15–21; “My Brief History of Self-education” (1942), 2: 689–90. “On Lecture of the Locust Tree Platform” (1923), 4: 729–734.

tradition and society, contributed towards Liang Shu-ming's unique way of forming a notion of constitutional government in China.<sup>13</sup>

Ironically, as a *persona non grata* in both left and right political factions, many misunderstandings have arisen, and continue to arise, regarding his stance on the constitutional government in the sense of China's modernity. For some critics like Dr. Hu Shi, Liang Shu-ming's historical observations constituted little more than ill-disguised "conservatism" and perhaps "irrationalism".<sup>14</sup> This was similar to the charge made by Rudolph von Jhering about Savigny, and later repeated by Karl Mannheim and others.<sup>15</sup> Like that controversy, "feudalism" was most often the charge labeled at Liang Shu-ming.<sup>16</sup> Generally speaking, however, Liang Shu-ming's "crime" was a lack of zeal for the campaign and it was this, more than anything, that led others to burn with righteous indignation against him. Liang Shu-ming's response, as always, was to try to dampen down what he considered to be over-enthusiasm.

In October 1939, for example, when over-enthusiasm enveloped a gathering in the wartime capital of Chongqing, Liang Shu-ming was there to douse the flame. The philosopher Zhang Shen-fu (张申府), whom one could, in terms of Bertrand Russell's thinking at least, describe as an anglophile, asked Liang Shu-ming to participate in their campaign. The latter's response was "to persistently refuse to adhere to their line".<sup>17</sup> It is with this understanding of Liang Shu-ming that we can revisit the now the famous night of 29 November 1939. After a meeting with the nation's president, Jiang Jie-shi, Liang Shu-ming was enjoined to share a car ride back to his hotel with the then Minister of Justice and later Foreign Affairs, Wang Shi-jie (王世杰). Apart from his governmental position Wang was a British-educated professor in constitutional law and politics and a follower of Albert V. Dicey. Wang Shi-jie called Liang Shu-ming to account: "Don't you think that in China constitutional government is unnecessary and always will be?" Naturally, even posing this question suggests that Wang had misread the basic

---

<sup>13</sup>13 For this cognitive transformations see LSM, "My Brief History of Self-education" (1942), 2: 691–699; "My Account on the Changes I Have Undergone During the Earlier years of My Life" (1969, 1979), 7: 177–185; "On Constitutional Government in China" (1944), 6: 493. Also see "The Changes of My Cognitive Representations on the Human Mentality" (1965), 7: 130–137.

<sup>14</sup>14 Cf., Hu Shi, "Answer to Mr. Liang Shu-ming"; "On Reading Mr. Liang Shu-ming's Eastern and Western Cultures and Their Philosophies".

<sup>15</sup>15 Donald R. Kelly, *The Human Measure: Social Thoughts in the Western Legal Tradition*, at 246.

<sup>16</sup>16 There were many such critics from the 1910s through to the 1990s. Except for critical comments from Hu Shi previously mentioned, others included, for instance, Ai Si-qi, *Critique of Liang Shu-ming's Philosophical Thought* and a two-volume collection *Critique of Liang Shu-ming's Thought*. In these critiques, the expressions such as "reactionary nature of Liang Shu-ming's thought", used by radicals like Qian Jia-ju and Liu Da-nian, can be found everywhere. Some of them even went further to question "Who did Liang Shu-ming's reactionary theory serve?"

<sup>17</sup>17 LSM, "Preamble" (1941), 6: 119; "On Constitutional Government in China" (1944), 6: 498.

rationale behind Liang Shu-ming's opposition to "the construction of constitutional government in China".<sup>18</sup>

Liang Shu-ming's conservative image did not improve after 1949. In particular, Liang's 1953 conflict with Mao Ze-dong increasingly led to him being perceived as a "feudal remnant".<sup>19</sup> Thus while Marxism-Leninism and Mao's thoughts were believed to be the most advanced on "world outlook and methodology", Liang Shu-ming's views were thought to come from the days of the "horse and buggy". He was not only a *persona non grata*, but also a *declass e* out of date.

With few exceptions, this stereotypical portrait of Liang Shu-ming as being resistant to constitutional government still remains among Chinese intellectual circles today, perpetuated by critics of both a Marxist and Western liberal persuasion.<sup>20</sup> In conformity with prevailing thinking, an author on the history of

---

<sup>18</sup>18 For further details of this meeting and the tension between them see LSM, "What I Had Tried Hardly for: My Experiences Since the War of Resistance to Japanese Invasion" (1941), 6: 253.

<sup>19</sup>19 In this public conflict, Mao lost his temper and seized the microphone on the rostrum from Liang, and shouted: "you stink! You have stinking bones!" Here I would quote a long passage from the Selected Works of Mao Ze-dong to indicate the severity of conflict between them, as they represented different ideologies. Mao said There are two ways to kill people, one by guns, and the another by pens. The most sophisticated way to kill people is by using a pen without shedding blood. Liang Shu-ming is such a murderer. He is reactionary to the core. He thought he was the most beautiful person in the world, surpassing all the famous beauties in history, such as Yang Gui-fei or Xi Shi. I have never failed to criticize his erroneous ideas whenever I saw him. I have never believed his advocacies, such as: "China has no classes," "China's problem is one of cultural maladjustment," "a colorless and transparent government" (i.e., a government that transcends political parties), "China's revolution has no intent but only extraneous cause," and the recent ones consisting of the excellent ideas of "the ninth level of heaven and of hell," "the Communists have lost the peasants," "the Communist Party is less reliable than the Federation of Industry and Commerce," etc. The problems of China are semi-feudalism and semi-colonialism. To deny this is virtually to have helped imperialism and feudalism. No one would listen to Liang except a reactionary or a middle-minded person. What Liang should do is to confess clearly his reactionary anti-people and anti-Communist record of serving the interests of the landlord class. On the whole, Liang is a careerist, a hypocrite; his program for rural reconstruction is for "landlord construction" and for "national destruction." The significance of repudiating Liang is not to repudiate a single person, but the whole reactionary through represented by Liang. For details of Mao's virulent attack on Liang see the Selected Works, at 107–115. For a detailed description of this incident and its background see Wang Dong-lin, Interviews with Liang Shu-ming, at 128–147; Wen-shun Chi, Ideological Conflicts in Modern China: Democracy and Authoritarianism, at 192–194; "Liang Shu-ming and Chinese Communism", in The China Quarterly (January–March 1952), at 64–82; Guy S. Alitto, The Last Confucian: Liang Shu-ming and the Chinese Dilemma of Modernity, at 1–4; Luo Zhe-hai, Liang Shu-ming and Zai Zhi-cheng, in Selected Works on Modern New-Confucianism (I), at 321–330; Dai Qing, Liang Shu-ming, Wang Shi-wei and Chu An-ping. For Liang Shu-ming's speeches, which Mao attacked and Liang's own narrative and comments about this incident see his "The Drafting Address in CPPCC on 11 September 1953"; "The Drafting Address on People's Government Meeting Attending as An Observer" (1953); "The Incidents during 8 to 18 September 1953" (1953); "A Brief Record of My Experiences during 9 to 18 September 1953 (1953); "What I Intended to Propose?" (1953). All the above are quoted from LSM, 7: 3–23.

<sup>20</sup>20 Cf. Guy S. Alitto, The Last Confucian: Liang Shu-ming and the Chinese Dilemma of Modernity, at 126 Sq.

modern Chinese legal studies, for instance, condescends to devote just one page to Liang Shu-ming in his book and describes him as a figure who “supposed that the only extrication for China is ‘rule of *Li*’ (礼治) rather than rule by the people and regional self-government” (民治与地方自治). In other words, Liang Shu-ming opposed the rule of law, including constitutional government, and wanted “feudal rule of *li*” (封建礼治) in China instead.<sup>21</sup>

The argument I will proffer and illustrations I will give about Liang Shu-ming's approach to constitutionalism and the question of constitutional government differ markedly from such accounts. To begin, one must recognise both the context within which Liang Shu-ming wrote. I aim to argue that Liang Shu-ming was never antagonistic to what we now name as constitutionalism or constitutional government. Nor did he doubt the desirability of “industrialisation” or “urbanization”. Rather Liang Shu-ming was more concerned about the consequences of these things and his fear was that those who were so enthralled by them lacked a critical perspective. Such incurable naive optimism, he thought, was fatal because the complexities and length of time it would take for an alien notion such as constitutionalism to be integrated and made operative in Chinese society demanded a more critical appreciation of the difficulties. Liang Shu-ming wanted to avoid a slavish aping of the European-Americanized form of constitutional government indiscriminately, both in form and in substance. He wanted to make people aware of the practical difficulties surrounding constitutionalism. Yet in recognising practical difficulties and the need to go beyond a mere aping of the West he was, in fact, taking the Chinese social setting into account. As, after all, constitutions are the documents framed in general terms to accommodate the changing course of events for a localized people, how can such actions be described as anti-constitutionalism?

Especially, he abhorred the notion of taking the constitution as an *Abigail* to whitewash the political reality in terms of preparing to wheel and deal. And he jested at “the willingness to alter (Chinese) people's political attitudes and behavioural habits by just relying on making a mere scrap of paper, a constitution”.<sup>22</sup> It was just these sort of things that led his intelligentsia conscience to take a detached and critical stance towards the actions of both the nationalists and the communists whom he believed were playing games with the constitution and using it as a mere bargaining chip. For Liang Shu-ming, such things were meaningless unless they ushered in a “true” constitution or constitutional form of government. It was because of his principled stance that he was the only person in China after 1949, who dared to appeal for recognition and identification of whether or not China had “true” constitutions. These appeals were made with a note of profound insinuating innuendo. Articles such as “*China has not yet reached the stage where it can have a successful constitution*”<sup>23</sup>(1934), statements he offers in “*A Response to Enlistment*

<sup>21</sup>21 Hua You-gen, *The History of Modern Chinese Legal thoughts*, at 67–8.

<sup>22</sup>22 LSM, “*Studies on Chinese Politics*” (1948), 6: 778.

<sup>23</sup>23 LSM (1934), 5: 466–470.

*Called from the Government*<sup>24</sup> (a letter to Mr. Shao Li-zi 邵力子 who spoke to Liang on behalf of the ROC government, 1943), papers and articles he published between 1944–1946, and the speeches he made after 1949 on “drafting constitutions” in different circumstances, will all be used in this study to make this point. All these will articulate that Liang Shu-ming’s very personal intellectual considerations on constitutionalism, for the purpose of dealing with this predicament China faced, can inspire us today.

For these reasons, therefore, this part of the book aims to outline Liang Shu-ming’s main theoretical engagements and his skepticism towards this seductive dream of instant implementation of “constitutional government” in China, and will approach his understandings of constitutionalism. In particular, this part will focus on his critical stance vis-à-vis the Chinese predicaments whereby many thought, rather naively, that constitutional government, a Western *magnum opus*, could be simply transplanted into China. Liang Shu-ming’s critical considerations on China’s pathway to constitutional government is focused on too, in comparison with other societies and political forms. In doing so, I hope that the myths that have built up around Liang Shu-ming can finally be swept away.

---

<sup>24</sup>LSM (1943), 6: 447–450.