

# The “Constitutional Tradition” in China

WM. THEODORE DE BARY\*

## I. INTRODUCTION

“Constitutionalism,” as we understand it today, is a European-American concept of relatively recent provenance. On the Chinese scale of time, it has hardly been around long enough to count as a tradition, although we would no doubt recognize the modern version as growing out of a much longer Western experience. Is constitutionalism to be understood, then, not only as distinctively Western but perhaps as peculiarly Western — something for which no counterpart is to be found in Asia? As an initial hypothesis, it seems fairer to assume that other societies similarly share some such conception of fundamental law. Indeed, to assume the contrary may imply that other major cultures, even those of great maturity and refinement, lack the essential prerequisites of civilized life.

Beyond this initial presumption, however, the question centers on how narrowly or broadly we define constitutionalism. If we start by defining it in modern Western terms, we are likely to adduce a more culture-bound understanding than if we begin with a looser conception as a provisional construct. A broader construct, such as this, may facilitate a deeper appreciation for the experience of other peoples that could in turn aid in discovering a more universal, comprehensive view.

For working purposes I propose to think of “constitutionalism” simply as a basic structure of laws in accord with values widely accepted in a society. The definition also encompasses the institutional means by which these laws can be effectively upheld. This may be especially true within the context of examining effective restraints on the society’s ruling power. Yet, contextual factors complicate the picture immediately. Ecological, social and cultural differences render it difficult to judge whether pursuing this line of inquiry leads prematurely to “recognizing” elements of commonality between the West and China or, alternatively, looking too hard for elements to distinguish from our Western

---

\* John Mitchell Mason Professor and Provost Emeritus of Columbia University. Educator, scholar and author of numerous books in the fields of Asian thought and civilization. Most recent books include *The Trouble with Confucianism* and *Waiting for the Dawn*.

experience. Since Confucianism, the dominant intellectual tradition in China, had grave reservations about law as a fundamental solution to the problems of human society, one cannot, in any case, expect to arrive at an unqualified affirmation of such a tradition.

In this brief essay, I will discuss the constitutional elements within China's historically important intellectual traditions. First, I briefly examine the attitudes toward law held by both the Confucians and, alternatively, the so-called "Legalists." Next, an analysis of Tang and Ming dynastic codes is offered as exemplifying the basic law of the imperial dynasties. This is followed by some of the more important critiques of dynastic law offered by prominent Neo-Confucians in the twelfth and seventeenth centuries. Finally, I offer some speculations as to the possible relevance of these earlier views to the prospects for constitutionalism in contemporary China.

## II. CONSTITUTIONALISM, CONFUCIANISM & A LEGALIST REJOINDER

Traditionally speaking, China's intellectual discourse as regards constitutionalism involved the Confucians and the Legalists. The question of governance is raised early in Confucius's *Analects*, when, in the chapter entitled "Regulation,"<sup>1</sup> he says:

If you try to lead the people by regulations and order them by punishments, the people will evade these and have no sense of shame [in doing so]. If you lead them by virtue and order them through the rites, they will have a sense of shame and will correct themselves."<sup>2</sup>

This statement has usually been taken to express Confucius's strong distrust of law as well as his great faith in the power of virtuous example. While not incorrect, this understanding insufficiently accounts for the importance Confucius attached to the second part of his formula — i.e., rites, as affirming and exemplifying norms of human conduct, including governance. For, given the high value placed on rites in the *Analects* generally, it is significant that Confucius, here, sees them as the most fundamental of human institutions. Rites, in other words, represent

---

1. "Regulation," here, is usually understood as government regulation.

2. Confucius, *Analects* 2:3.

a basic constitutional order, correlative in importance to individual and public morality

These rites, originally religious in character, embodied the norms of conduct for human relations in a properly structured kinship system and were based upon long-standing customs and voluntary participation in the same. Moreover, since the traditional rites of Confucius's time were clan and family centered and the family was key to the organization of both economic and religious life in ancient China, it may be said that Confucius's statement identified these as fundamental factors in human governance. In turn, these factors were given priority over laws imposed by conquering regimes, whose dictates, backed by the threat of force, were superimposed on the life of the more consensual agrarian society. In other words, a large sphere of social activity was to be governed by voluntary adherence to the traditional rites without the intervention of the state and its laws. Theoretically, and to some degree practically, this constituted a sphere of reserved power for non-governmental organizations operating on a familial or communitarian basis.

Anyone mindful of the ways in which the agricultural sector of early Maoist China resisted, evaded and undermined the regimentation of the commune system and state management of agriculture, will recognize in Confucius's aphorism a perception of human motivations not solely applicable to remote antiquity. At the same time, the restoration of family centered management and the reaffirmation of family values in post-Mao China has had little more modifying effect on the bureaucratic state apparatus of the People's Republic of China than did Confucius's strictures on early dynastic regimes. Specifically, the recent, family-oriented reforms by the Deng regime have had little effect on the form of "constitutionalism" enforced in contemporary China in the form of one-party rule.

Among the followers of Confucius who amplified his teachings, Mencius and Xunzi are usually thought of as representing opposite poles in their approaches to government. Mencius is traditionally viewed as emphasizing the importance of personal virtue, whereas Xunzi focuses on the significance of rites. Yet, the similarities between Mencius and Xunzi are more significant in some ways than are their differences. While it is true that Mencius stressed personal virtue as the cornerstone of both rulership and public life, he also insisted that virtue, understood as "humaneness" (*ren*) by both Confucius and Mencius, was not simply an interior sentiment or habit of mind, but something that had to be given tangible form as conferring benefits on the people. Specifically, he

stated that benevolent intentions on the part of the ruler were useless if not carried out in the sage-kings's laws, systems or institutions. As he said:

Today we have rulers with humane hearts and a reputation for humaneness, and yet the people receive no benefit from them, nor can they serve as models for later ages — all because they do not follow the ways of the early [sage-] kings. Therefore it is said: “To pursue virtue [lit. goodness] alone does not suffice for governance; nor do laws [models] alone suffice for their own execution.”<sup>3</sup>

In other words, for Mencius, personal virtue and social institutions are inseparably related.

In his writings, Mencius uses the term *fa* to designate the model institutions of the sage-kings. *Fa* also represents “law,” as advocated by the Legalists (*fa jia*). At the same time, the actual institutions cited as representative of the humane rule of the sages, for example, the enfeoffment system, the land distribution system, the school system and the like, are all institutions identified with and included in the classical ritual texts as “rites.” The above examples demonstrate considerable overlap in the conceptions of “rites” and “laws” in Confucian usage. Therefore, Mencius was not departing from the essential formula of Confucius in balancing personal virtue with proper corporate or systemic models spoken of either as “rites” or “laws.”

In fact, the same may be said in the case of Xunzi. Although he elevates “rites” almost to the status of a cosmic principle, when it comes to discussing the key institutions of Kingly Rule, he identifies many of the same policies and systems Mencius had recommended and speaks of them in the same terms as Mencius — i.e., the “*fa*” of the king, meaning model enactments of the ruler. Moreover, when presenting his most theoretical justification of the rites, Xunzi does so on the basis of how they may serve to cultivate, elevate and refine peoples's inner feelings, rather than how these may insure or compel conformity with the dictates of the state. Thus, Xunzi, like Mencius, seeks to sustain the dual emphasis on, and the thorough coordination of, the inner springs of personal motivation with the rites already spoken of by Confucius as the

---

3. Mencius 4A:1.

essential correlate of virtue. Together, self-restraint, especially on the part of the ruling class, as well as the hierarchical ordering of society when based upon proper qualitative distinctions, reduces, if not eliminates, the need to rely on external constraints.

It is this broad meaning of *fa* as a set of model institutions that became incorporated in the expression *xian fa* [lit. "exemplary model"] to represent the idea of a constitution in modern East Asian parlance. In its original form, however, *xian fa* was conceived as representing more the power/charisma of personal example rather than of legal institutions backed by the power of the state. Nevertheless, from the time of the classical Confucians to the present, two major developments affected the conception of fundamental law in the dominant Confucian tradition. One was the rise of the Imperial dynastic system, with laws serving its own purposes. The other was the Neo-Confucian criticism of dynastic law in that form. In this dialectical process, a proto-constitutionalism emerged among certain Confucian scholars.

Dynastic law, in its institutionalized form, emerged from the centralized administrative structures of the Qin dynasty in the third century B.C. Initially, these were heavily influenced by the Legalists, who deliberately repudiated Confucian, family-centered morality and stressed, instead, the universality and impartiality of law in its administration. This is compared to the particularism and personal treatment stressed by the Confucians, whose humanist universalism was always to be adapted to local circumstances and relational contexts. Its universalistic aspect is what renders the Legalist conception most akin to modern conceptions of constitutionalism. No less relevant is its concomitant emphasis on systems, especially in the form of systematic, rational management and total control of human affairs by the state.

Thus, law, as developed by the Legalists, was perceived as an instrument of state power, imposed on the people for their own good but not ratified by any consensual process. Law and the state were absolute in their authority. There was no sense of a need for countervailing powers, or checks and balances, such as modern constitutionalism has most often attempted to provide.

### III. DYNASTIC LAW

Although the Qin dynasty was short-lived, the memory of its totalitarian controls and reliance on harsh punishments lived on in traditional historiography. Indeed, many of its administrative structures

were preserved by the Han dynasty, which set the pattern for later imperial regimes. Some of these preserved traits included:

- 1 A rejection of Legalist totalitarianism, its punitive, deterrent methods and its assertion of state power for its own sake, along with a reaffirmation of state authority in the guise of a benevolent paternalism, based on the Confucian conception of true rulership responding to people's needs.
2. Continuance of the essential Legalist apparatus for central administration, while nominally elevating Confucian rites to a higher place than penal law in the administration of the empire. This acknowledged the inherent limitations of law in the form of centralized controls and allowed greater scope in the hinterland for local tradition and especially clan/family centered rituals. In other words the dynastic pattern implied a *modus vivendi* or coexistence between a rationalized, central bureaucracy overall, and a looser, more autonomous, customary practice on the local level, where the Confucian ethos generally prevailed. To this extent, both in theory and practice, the Han system acknowledged necessary limits on the exercise of state power, while still asserting the supremacy of the ruler's authority by virtue of his role in keeping the peace and fulfilling his paternalistic responsibility to provide for the welfare of the people.
3. In place of a Legalist rationale for basic law, the dynastic constitution or ultimate authority was vested in the exemplary enactments of the founder of the dynasty, seen as legal precedents for his successors, who were bound by filial obligation to perpetuate the regime and its founding institutions to which they had become heirs. Thus filial piety, a Confucian virtue, was invoked on behalf of dynastic laws conceived, not as a systematic and coherent legal structure but as exemplary models of superior virtue (and thus of charismatic power) on the part of the founding fathers.

Insofar as superior virtue was identified with a Heaven-ordained moral law and its rulers were answerable to this higher "law," it constituted a moral constraint on the exercise of power. For practical purposes, however, the effectiveness of this constraint upon the Son of

Heaven depended on the readiness of his ministers, whose assistance the ruler clearly depended upon for the implementation of his dictates, to articulate these sentiments at the imperial court and make them prevail. There was no other "constituted" court to which recourse might be had in cases of dispute. A popular revolution, if conditions deteriorated seriously, was the final court of appeal, with the people speaking for Heaven. Thus, it was said, "Heaven does not speak      Heaven sees as my people see; Heaven hears as my people hear."<sup>4</sup> Still, this is not constitutionalism, which, in any language, must imply an orderly process under law, not a resort to violence.

Traditionally, in East Asia, the most widely admired formulation of dynastic law was found in the Great Tang Code. The Tang Code, like the Han Code, synthesizes regulations designed to assert and preserve the power of the dynastic state with prescriptions according a large role to customary, especially family, rituals on the local level. Its preamble affirms the primary basis for law in the need to maintain the human order as coordinate with the cosmic order of Heaven and Earth, hence, the ruler's remedial use of the law to redress human disorders and restore the proper balance between man and nature.

Although the mystique of the Confucian sage-kings and their humane rule is invoked in the preamble to the Code, it is primarily a penal code, the initial provisions of which define the types of punishments that may be meted out. As the principal authority among modern Western scholars has said, "[t]he Code      reflects an attempt by a centralized, bureaucratic state to extend and protect its power throughout all of China."<sup>5</sup>

Thus, there was nothing consensual or contractual about this basic law. It was an instrument of state power which recognized certain, inherent limits in its ability to enforce it over a widely dispersed, but densely populated, realm. Nevertheless, as a rational, systematic formulation for the uses of that power, the Tang Code was widely employed as a model for advanced societies in the process of state building in seventh, eighth and ninth century East Asia, particularly in Korea, Japan and Vietnam. Moreover, as a document that presented itself as a recapitulation of time-honored legal practices, including organic links to past human experience, the Tang code possessed a remarkable durability. Its basic provisions reappear again and again in later dynastic

---

4. Mencius 5A:5.

5. Wallace Johnson, *The Tang Code* 12 (1979).

formulations which themselves claimed a legitimacy derived from strong continuity with the past.

This continuity surfaced in other Asian nations as well. For example, in seventh century Japan, Prince Shotoku's "constitution"<sup>6</sup> placed more emphasis on basic moral and spiritual values than on the detailed codification of laws and their enforcement.<sup>7</sup> Prince Shotoku's "constitution" synthesized continental thought and institutions with indigenous social and cultural traditions. Although the "human" values thus posited as fundamental to governance may seem general, abstract and even platitudinous to modern readers, they have a parallel in the idealistic assumptions of the American founding fathers. Examples may be gleaned from the Declaration of Independence, U.S. Constitution and Bill of Rights, with their respective references to the Creator, his endowments of man and natural law. In this wider perspective, then, we can see that while the legal codes of Imperial China were shared by others in East Asia as impressive instrumentalities of state power, it was also possible for consciously value-oriented, consensual conceptions of governance to find expression in formulations of basic law elsewhere within the larger Confucian cultural sphere. For example, Shotoku's appeal to Harmony as the ultimate value, and his repeated references to the need for consultation with the people on all major decisions. Indeed, it should be borne in mind that, although the Tang Code is characterized by its penal attributes, there was a great deal of other legislation in the Tang that would be better thought of as administrative law. These formulations also tended to become models for other states that emulated this great dynasty as the center of world civilization.

In the development of Chinese dynastic law, the next major influential codification was that of the founder of the Ming dynasty, Ming Taizu, in the late fourteenth century. In its essential character, this Ming "Constitution" did not differ greatly from the Tang Code. Nevertheless, its spirit and tone reflected the personality of the Ming's founder, whose rise to power, and later enactments, manifested the indomitable will of a lowly peasant triumphing over all adversity and adversaries to become the supreme autocrat of a great empire. In the process, he laid the foundation for much of the legal and ideological framework for later imperial China. This included the concentration of all, legitimate decision-making authority in the hands of the emperor, the

---

6. The Chinese term *xian fa*, rendered into Japanese as *kenpō*.

7. See Wm. Theodore de Bary, *East Asian Civilizations* 21, 27-35 (1987).



imposition of centralized controls over the extended imperial bureaucracy and the use of the merit principle, in one form or another, as the only acceptable way to recruit officials.

By 1368, Ming Taizu made himself sufficiently literate to start composing what became a large number of essays, colloquies, commentaries, Confucian-style moral exhortations and political and social regulations. Through these he defined his own role as both ruler and teacher of China, striving to reach out directly to everyone in the realm in order to explain to his own conception of the well-ordered society. Although few of his Ming successors could sustain Taizu's comprehensive vision, many of his ideas and enactments nonetheless remained influential through succeeding dynasties. Though far from representing anything like "constitutionalism" in the Western sense, many of Taizu's enactments were accepted as authoritative in the Ming dynasty, by his Manchu successors in the succeeding Qing dynasty, by the Korean Yi dynasty and by Vietnam's rulers. In this sense, they achieved a certain universality, but it was of a kind more analogous to the "constitutions" widely adopted in the Soviet world from the 1930s to the 1980s than to those of the modern West.

As a commoner turned Emperor, Taizu thought of himself as a great communicator, conveying his own brand of imperial populism in slightly different form to different audiences. It is inconsequential, in the absence of formal processes for registering "public opinion," whether these appeals to popular sentiment by a self-made man actually elicited the "consent of the governed." Still, Taizu's Ming dynasty survived for two and one-half centuries. Therefore, a modicum of "acceptance" must be assumed. In any case, his instructions to his descendants, the "August Ming Ancestral Instructions," reveal his larger vision of rulership and the dynastic constitution, as well as many detailed regulations for the management of the palace and members of the Imperial family. A few excerpts may convey the spirit and character of this kind of constitution:

Preface: I have observed that since ancient times, when states established their laws it was always done by the ruler who first received Heaven's Mandate. At that time the laws were fixed and people observed them. Thus was the imperial benevolence and authority extended throughout the realm so that people could enjoy peace and security. This was because at the outset of the founding the ruler endured hardships, saw many men and became experienced in handling affairs. In

comparison with a ruler born and bred deep within the palace, unfamiliar with the world, or a hermit scholar living alone in the mountains or forests considering himself enlightened, how different it was [for me]. When I was young I was orphaned and poor, and grew up amidst warfare. At the age of twenty-four I joined the ranks and was ordered about for three years. Then I gathered together able followers and studied the ways of training soldiers, planning to compete with the warlords. It was trying and worrisome. I was apprehensive and on guard for nearly twenty years until I was able to eliminate the powerful enemies and unite the empire. Of human deceit I have known plenty. Therefore, drawing on what I have seen and done, together with the officials I have fixed the law of the land. This has eliminated the indulgent rule of the Yüan [Mongol] Dynasty and those who defiled the old customs. The warlords were powerful and deceitful. They were hard to govern, but I have governed them. The people, encountering disorder, tried by all manner of evil means to pass through the unrest. They were hard to manage but I have managed them. Now since the pacification of Wuchang there was discussion about enacting the *Code* and the *Commandments*. The additions, deletions and changes have been innumerable. Ten years have passed and we have accomplished the task. Now these have been promulgated and gradually the people have come to know the prohibitions. In order to teach later generations the Ancestral Instructions were also created, and set up as family law. Now I have ordered the Hanlin Academy to compile this book and the Minister of Rites to print it and pass it on to eternity. All my progeny should adhere to my orders and not be crafty and confuse the laws which I have fixed forever. Not a single word may be changed. Not only should you not fail to live up to my intentions to pass on the law, but Heaven and Earth and the Ancestors will also bless and protect you without end.<sup>8</sup>

One of Taizu's most famous enactments was the abolition of the prime ministership. This policy was effected after an alleged plot by the

---

8. Ming zhao kaiguo wanxian, 3 Huang Ming xuxun, in *Sources of Chinese Tradition* 1579-91 (Edward Farmer trans., Wm. Theodore de Bary et al. eds., rev. ed., forthcoming 1996).

existing prime minister to usurp the throne was exposed. Thereafter, all executive power was concentrated in the emperor, assisted by a secretariat — a system that persisted through the late Imperial period. Taizu claimed this to have the sanction of antiquity.

From ancient times policy was discussed among the three dukes and the duties of government were divided among the six ministers, but a prime minister was never established. The Qin began the establishment of a prime minister and fell soon thereafter. The Han, Tang and Song continued the practice. Although there were some virtuous prime ministers, many of them were evil men who monopolized power and confused administration. Now our dynasty has abolished the prime ministership and established such offices as the five chief commissions, the six ministries, the Censorate, the Office of Transmission, and the Grand Court of Revision to manage the affairs of the realm. They parallel one another and dare not seek to dominate each other. It is the court which provides overall control of government affairs. That is why there is stability. From now on, when my descendants become emperors, they absolutely shall not establish a prime minister. If there are officials who dare to memorialize requesting such establishment, civil and military officials shall immediately submit accusations. The offender shall be put to death by slicing and his whole family executed.

Of the rulers in ancient times only dynastic founders, rulers who presided over restorations or virtuous rulers who maintained the heritage were sincerely concerned about the realm. The common run of rulers [thereafter] only looked to the realm as a source of pleasure. This was the beginning of the end of any dynasty. How is this so? When a ruler first gains the realm it is because Heaven has chosen a man of virtue. As for rulers who maintain the heritage, if they are constantly reverential toward Heaven and take to heart their ancestor's concern for the realm, they can receive Heaven's blessing forever. If they begin to be negligent, disaster will result. Take heed.<sup>9</sup>

---

9. *Id.*

With such threats and imprecations, Ming Taizu confirmed, in blood, the tradition of ancestral law as a “constitutional order.” In a minimal sense, Taizu’s strictures were meant to establish regular processes of government, binding on his successors and thus limiting their individual freedom in the arbitrary exercise of their power. At the same time, a certain parity was established, if not a balance of powers, among the major organs of government, including the Censorate (investigative) and Grand Court of Review (judicial review). Thereafter, the question of whether any major measure presented to the Ming court was in keeping with the ancestral mandate became as frequent an issue in debates at court, as “constitutional” questions in the United States Congress. A major difference, of course, was that in China there existed no separate and independent court to resolve such issues. Thus, the burden fell on the Emperor and his Confucian advisors to decide things as best they could, or would, in the light of their sense of filial obligation to the founding father. From start to finish, the “constitutional order” remained within the orbit of dynastic rule, and while the court could not be wholly unresponsive to popular opinion in arriving at its decisions, one could not say that this order was consensual either in its original formulation or in its later practice, there being no infrastructure by which popular sentiment could become informed, articulated or autonomously structured so as to contribute its own authentic voice to the decision-making process.

#### IV NEO-CONFUCIAN CRITIQUES OF DYNASTIC LAW

Filial piety, constituting the root, if not the highest, virtue in Confucian thought, could not but loom large in the minds of Confucian ministers and officials serving the Chinese imperial court, who were thereby committed to upholding the best interests of the ruling dynasty. In the Song period, however, Confucian thought underwent a major restructuring in response to pressing ideological, economic and social challenges. In dealing with great crises, activist reformers found ancestral precedent, by itself, insufficiently equipped to handle situations unanticipated by the founder. Further limitations were imposed if the precedents were interpreted too narrowly or too literally, thereby inhibiting effective policy formulation. It is understandable, then, that reformers in the eleventh century, the most famous being Wang Anshi (1021-1086), grounded their reform proposals in neither ancestral law nor the precedents of prestigious earlier dynasties, such as the Han and

Tang, but in classical texts bearing the higher authority of great antiquity and the early sage-kings. For this purpose, Wang and others conveniently invoked the idealized "constitution" of the Zhou dynasty, the so-called *Institutes of Zhou* (*Zhou guan*), otherwise known as the *Rites of Zhou* (*Zhou-li*), to express the Confucian preference for rites rather than laws or systems as the basis of the social order. Purportedly an account of the Zhou government at its founding, the *Rites of Zhou* was integrated into the Confucian canon during the Han dynasty and was probably composed as an idealized, prescriptive model, rather than as a straight historical description.

While susceptible to varying interpretations, the very adaptability of the *Rites of Zhou* lent itself to appropriation by radical reformers as a higher authority which could be invoked in order to bypass ancestral precedent and dynastic law. Viewing the early sage-kings as the true founding fathers of civilization, these reformers were able to relativize dynastic law and establish a higher, more sacred ground in the Confucian classics for a new, overarching constitutional order transcending the temporal limits of dynastic law. In the Song period, this certainly contributed to a sense that dynastic law — i.e., the precedents of the founder and his successors — was far from unalterable.<sup>10</sup>

Although major politico-economic reforms were undertaken by appeal to this higher, classical authority and although similar invocations were made to the text of *Mencius*, one could not think of this as a major constitutional breakthrough. For one thing, these appeals were not unprecedented, since similar classics had been invoked earlier in the Han. One might also note that many of Wang's reforms became contested, discredited or dismantled. Finally, the Neo-Confucian movement, which became heir to the Song Confucian revival, focused increasing attention on "mind-and-heart" formulations,<sup>11</sup> as opposed to the formal, legal aspects of "constitutionalism."

None of this involved a direct, overt attack on dynastic law. Nevertheless, the question had now been raised as to the finality and absoluteness of ancestral precedent. In subsequent discussions of what constituted ultimate authority, no less a thinker and scholarly authority

---

10. This is the judgment of the leading Western authority on Song law, Brian McKnight, conveyed in a personal communication to the author.

11. In other words, increasing attention was focused on subjectivity, intentionality, the grounds of interpretation, and questions of the ultimate philosophy of mind inherent in such appeals to sacred tradition.

than Zhu Xi (1130-1200), the dominating philosophical figure in late Imperial China, and himself often critical of Wang Anshi, confirmed the Neo-Confucian position that no historical figure or dynasty could claim fully to embody the Way. Nor, if there were a conflict between ancestral precedent and the models established by the sage-kings, could the former prevail against the latter. The higher authority of the sages, the Duke of Zhou and Confucius especially, overrode the founding fathers of later dynasties.<sup>12</sup>

One cannot say that this philosophic point of Zhu Xi's became an accepted principle in the politics of the Court, despite the high respect in which Zhu Xi came to be held. Nevertheless, his political views in other respects served to call into question the laws and systems of the dynastic state, to the extent that he placed them lower on the scale of political values and priorities. While Zhu Xi did not call for the outright abrogation or non-enforcement of ancestral law, for him the resort to laws of a punitive variety, as was clearly the case with much of the Tang Code, and would be so later with the Ming, was a last recourse. Accordingly, the first priority in governance, and the primary model to be set before others, should be one of responsible leadership as manifested through the self-cultivation and self-discipline of the ruler and his surrogates. In other words, law enforcement would prove unnecessary if, following the leader's example, the populace practiced self-discipline in accordance with the rites. Hence, we arrive at the widely quoted maxim among the later followers of Zhu Xi throughout East Asia: "self-cultivation [or self-discipline, *xijü*] for the governance of men."

Although Ming Taizu's strong self-assertion in the preamble may seem a far cry from Zhu Xi's philosophy of the self, particularly his insistence on taking responsibility for oneself and for the Way, there may well be a connection between the two. The Tang code, as noted earlier, was predicated on the conception of a close connection between the human and cosmic orders. Aberrations in the former would affect the latter, and would be evidenced by natural anomalies and disasters, unless the ruler took action to correct and rebalance the situation by meting out due punishment to violators. The Neo-Confucian teaching of the Song, as well as subsequent regimes, centered on the human mind-and-heart and on Heaven's principle as directly revealed and intuited in the human

---

12. See Wm. Theodore de Bary, Chen Te-hsiu and Statecraft, in *Ordering the World* 349, 362 (Robert P. Hymes and Conrad Schirokauer eds., 1993).

moral nature, rather than as a corrective principle in the natural order.<sup>13</sup> Within this context, the autonomy of the self, as well as the individual's moral responsibility for mastering the situation in which he finds himself, provide a somewhat plausible ground for Ming Taizu's unabashed self-assertion. For, it is Ming Taizu who exemplifies the individual who took it upon himself, out of his own personal experience of life, to master an unruly situation and firmly impose a systematic, rational order, such as he says the Mongols had proved incapable of developing.

As for the other pole of the traditional Confucian formula, balancing personal virtue and the rites, Zhu Xi understood the need to adapt the ancient rites to modern circumstances. Indeed, he realized the need to improvise rites in new, institutional forms which were, he hoped, better suited to the particular time and place. Examples are found in such local organizations as the community compact, community granaries, community schools and local academies that operated on a consensual basis, relying on mutual respect and reciprocity. If consensual means failed, Zhu acknowledged that laws and regulations would have to take over, but these methods should never constitute the first resort or the standard.<sup>14</sup> Nor, was it wise to place one's primary reliance on legal institutions, programs, systems and measures of the central state. Decentralized administration, it was thought, encouraged local initiatives and community responsibility and was, therefore, preferable.

Thus, although Zhu Xi's philosophical inquiry raised fundamental questions vis-a-vis the ultimate authority of ancestral law and dynastic constitutions, his focus on the crucial questions of human motivation, moral nature, the discipline of the mind and the practical exercise of self-discipline in the family and local community led him toward the disaggregation of power rather than the legal reconfiguration of the central state. His preference was for defining local "constitutions," such as the rules and procedures for the community compact. Human governance depended more, from top to bottom, on self-cultivation and self-discipline than on legal definitions and the organization of power.

---

13. See Mizoguchi Yüzō, *Tenrikan no seiritsu ni tsuite*, in 86 *Tōhōgaku* 1, 1-20 (1993), for this important shift from the Han-Tang conception to the Neo-Confucian view of Heaven's principle (*tian-li*) as manifested in the human mind and heart.

14. See Wm. Theodore de Bary, *Chu Hsi as an Educator*, in *Neo-Confucian Education* 186, 204 (Wm. Theodore de Bary & J. Chaffee eds., 1989).

Against this background we may better appreciate the contribution to this discussion of the seventeenth century Neo-Confucian Huang Zongxi (1610-1695), who comes the closest to offering a constitutional program resembling, in important respects, the constitutional systems of the modern West. The basis for this lies in Huang's masterwork, the *Ming daifang lu*,<sup>15</sup> the title of which defies literal translation but which may be rendered somewhat freely as *Waiting for the Dawn: A Plan for the Prince*. Huang's main points may be summarized briefly as follows:

- 1 He sets aside the old Confucian dichotomy of laws versus personal virtue, stating unequivocally the need for basic law, without the support of which individuals, no matter how virtuous, cultivated or self-disciplined, can hope to contend with the evils in human society and, especially, in dynastic rule. As Huang put it, "should it be said that 'there is only governance by men, not governance by law,' my reply is that only if there is governance by law can there be governance by men. Since unlawful laws fetter men hand and foot, even a man capable of governing cannot overcome inhibiting restraints and suspicions."<sup>16</sup>
2. Here too, for the first time, Huang explicitly rejects the claims of dynastic law, spoken of by him as "unlawful laws" — "unlawful" because it serves not the public interest of the people at large, but only the private interests of the imperial family. This debased law is not just to be deemphasized, but totally invalidated by comparison to the higher law of the Early Kings.
3. This new conception of law, as higher than the state, challenges ancestral laws on the ground that the latter serve the private interests of the ruling house, not the public interest of all-under-Heaven.
4. By subjecting the ruler to this higher law, Huang attempts to impose a constitutional limitation on the ruler's power (legally defined and structurally incorporated in the organization of

---

15. Huang Zongxi, *Ming daifang lu* (1662).

16. Wm. Theodore de Bary, *Waiting for the Dawn: A Plan for the Prince* 99 (1993). Some portions of what follows are drawn from this earlier work.



government) rather than continuing to put faith, as earlier Confucians had, in the ruler's capacity for self-restraint.

5. Law, as Huang advocates it, is to serve as a countervailing force, strengthening the position of the scholar-official (*shi*) in his role as public servant from the arbitrariness of the ruler. In this way Huang drew from the Neo-Confucians' unhappy Ming experience a new lesson concerning the individual's need for law and the importance of law for the curbing of imperial power. Prior to this, in the Song, Yüan and Ming dynasties, Neo-Confucians had put their hope in persuading rulers to perform as sage-kings, by listening to the advice of wise mentors. From this hope sprang their strenuous efforts to elevate and reinforce the position of the Confucian minister.<sup>17</sup> As Huang, however, reviewed the results of this effort over several centuries, he could no longer believe that the individual heroism and dedication of the Noble Man (*jünzi*) as minister was sufficient to cope with the inordinate power of the ruler or the latter's indisposition to accept the self-discipline that goes with sage-kingship. Something more would be needed by way of a supporting infrastructure such as Montesquieu, in the West, had identified with the "corps intermediaries" between state and society at large.

Certainly, it is not that Huang believed any less in the noble calling of the Confucian scholar-official, but only that this lofty vocation needs support and structural reinforcement at every level. Accordingly, in the recommendations of his Plan, Huang called repeatedly for strengthening the status and identity of the scholar-official class (*shi*) and expanding both their numbers and functions. Huang also believed in giving them an increased role in civil government generally, placing particular emphasis on enhancing their status as ministers, with the prime minister, as leader of the *shi*, in an executive position sufficiently strong to counter-balance

---

17. See Ono Kazuko, *Tōrinha no seiji shisō* in *Tōhō gaku* 262-82 (1980). The author particularly emphasizes the combination of legal restraints on the ruler and the institutionalization of public discussion in academies as an attempt by Dong-lin scholars to subject dynastic rule in the late Ming to a higher constitutional law.

the power of the emperor.<sup>18</sup> Further, Huang believed in more active involvement of the *shi* in military affairs, firmer control over eunuchs, who had gained such dominance in the Ming, and, above all, greater independence and authority in education, from the lowest level of society to the very top.

One may still question, however, in what way this enhanced status of the scholar-official serves Huang's avowed aim of establishing the people as masters in the land. The question arises whether this translates into "government by the people," or anything resembling representative democracy as known in the modern West with institutions designed to provide people with the means of freely expressing their will and in some way controlling the conduct of government. Indeed, he advocated government "by the people" only in the sense that he wrote, with Mencius, that people can be expected to rise up and overthrow a tyrannical ruler, and in the sense that, ideally, he would have entrusted political power to those sufficiently sensitive to the desires of the people that they could speak for them. Like Mencius too, however, he took for granted the fact that political leadership requires literary education, testing and training. These are all activities that require some freedom from the hard labor of the peasant as well as some leisure for the cultural pursuits essential to civilized rule. Thus, to the extent that peasants lack these, in Huang's view, most were unprepared to make political judgments. For this very reason, then, both Huang and Mencius emphasized the heavy responsibility that those to whom such leisure and education are vouchsafed must accept as custodians of the people's welfare. Learning cannot be indulged simply for one's own self-enjoyment. The educationally privileged *shi*, therefore, incur the burdens of noblesse oblige.

The institutions that Huang recommended in accordance with this vision would perform some of the functions executed in the organs of Western representative democracies. This is especially evidenced by his proposal for a strong prime minister as well as for ministers who are servants of the people's interests and the common good (*gong*), and who

---

18. Yū Yamanoi, *Kō Sōgi* 73-6 (1983). In discussing the role of the Prime Minister and other reforms to curb the ruler in the MITFL, Yamanoi repeatedly uses the word "check" in transliteration. He is right in this, but see, *Chinese Despotism and the Confucian Ideal: A Seventeenth-Century View*, in *Chinese Thought and Institutions* 197 (John Fairbank ed., 1957). See also Mizoguchi, *Chūgoku Zenkindai shisō no bussetsu to tenkai* 267-8 (1980); Li Jinquan, *Cong 'yuan' 'liu' guanxi kan Huang Zongxi minzhu qimeng sixiang de lishi di wei*, in *Huang Zongxi lun* 328 (Guang Wu ed., 1987).

cannot be arbitrarily overruled by the ruler. This constitutional order, it seems, has certain similarities to the present British system of government. Further, in the great importance which he attached to schools, going far beyond their immediate educative functions and setting them up as centers for the expression of public opinion, Huang intended that they should perform much the same purpose as political parties or parliaments.<sup>19</sup> Indeed, considering the whole trend of Chinese political history, it is quite natural that he thought of them in this light. What were called "factions" at the Chinese court, represented the nearest thing to the political parties of the West, and, in so far as these alignments were based upon political principles rather than cliques merely held together by personal loyalties, they tended to become identified with certain schools, as in the late Ming dynasty. Unquestionably, Huang's conception of the high place of schools in the political sphere was a response to the attacks that had been made on precisely this role of the schools as organs of political expression during the late Ming dynasty.

A more fundamental reason, perhaps, why schools should seem to Huang the most suitable representatives of public opinion may be found in the traditional structure of Chinese society itself. In the absence of a strong middle class, which in the West has usually provided the basis for an effective party system, it was more natural to turn for this purpose to some institution indispensably bound up with the scholar-official class for whom the state had an inescapable need in its recruitment of officials and the carrying out of bureaucratic functions. In reality, there were no real alternative grounds for political parties to stand on and no organized class or group for them to represent. Nor, were there, beneath the ruling bureaucracy and its territorial agents, any corporate institutions or voluntary associations with sufficient economic power, social position and established political rights to make themselves a force with which to be reckoned. There was only the mass of common people, primarily farmers, inarticulate and unaccustomed to political action on a wide scale except in the form of violent revolt.

In such a situation, the schools alone provided a mechanism for the expression of opinion. Although these opinions were not publicly made, they were, at least, informed and, thereby, became indispensable to the ruling class itself. Although there had been attempts to make them subservient to the ruling power, this very suppression testified to the fact that schools were potentially dangerous centers of opposition in a state

---

19. Luo Huaching, *Gong Ji Shifei*, *Huazhong Hiyuan Xuebao*, Sept. 1984, at 55-58.

which placed such a premium on learning. Even in modern times this has continued to be the case. With the imposition of one-party rule during most of the twentieth century in China, schools and research institutes have remained the most articulate centers of political discussion in mainland China.

If, therefore, we appreciate the forces with which Huang had to contend, and the limited institutional resources available to cope with them, it is not surprising that he should have proposed different means of achieving some of the same ends as Western democratic institutions. But, having made allowances for the historical situation, there are still some deep-seated differences between Huang Zongxi and Western proponents of "government by the people." In spite of his emphasis upon law and a quasi-constitutional order, the prime minister, to whom Huang would grant great powers, and the ministers, whom he calls servants of the people, were still to be appointed by the ruler. Similarly, although he denied that "the principle of monarchy is inescapable," his denial implies only that a tyrant may be overthrown. In other words, he did not specifically provide alternative mechanisms by which a ruler may be chosen except that it should, somehow, be done through a consensual process.

Earlier Confucian thought was much concerned with the question of whether the Confucian minister should accept or decline the ruler's invitation to serve — i.e., whether he should "advance to or withdraw from" office.<sup>20</sup> In any case, the ruler is always presumed to be there, in place, either respectfully inviting or imperiously commanding such service on the part of the Confucian. There is discussion, too, centering on whether anyone, over the course of history, justifiably overthrew a reigning ruler or ruling dynasty. Thus, the possibility of changing rulers and dynasties was recognized early on, and with it the consequent problem of whether or not Confucians could accept the change and be willing to serve a new ruler or dynasty. Huang Zongxi, though unwilling himself to serve the Manchus, was compelled to accept such changes as historical facts. It is likely that he would have eagerly accepted changes dispensing with hereditary rule altogether.<sup>21</sup> Apparently, however, the thought did not occur to him, anymore than to earlier Confucians, that

---

20. See Wing-tsit Chan, *Reflections on Things at Hand* 182-201 (1967).

21. See Kōji Sano, *Min-i taihōroku ni okeru ekisei kakumei no shisō*, 17 *Nihon Chūgoku gakkai hō* 129, 129-142 (1965). See also Shinji Satō, *Min-i taihōroku no kompon shisō*, 30 *Akademia* 18 (1961).

Confucian activists themselves might band together, install a new ruler, and institute a new order.

In the paradigmatic cases cited by Huang of rulership being offered to sagely or worthy men who proved unwilling or reluctant to serve, nothing is revealed as to who it is that makes the offer, or by what consensual process the invitation is initiated. Parenthetically, we might note that Huang's contemporary, Lü Liu-liang, who also deplored dynastic rule and lineal succession, spoke of Confucian ministers as those who should offer the throne to a worthy person, but Lü, too, failed to specify the process of selection.<sup>22</sup> In the somewhat similar cases of education officials being locally chosen and conducting some autonomous direction of affairs, Huang was likewise reticent concerning the consensual mechanisms to be used in making the choice. Huang did, however, presume that some natural community leadership existed in local situations, probably based on family, lineage, gentry or guild organizations. Yet, however practicable these means might be on the local level, it leaves one without any clear picture of how the consensual process would work on the intermediate or higher levels of government.

In part, Huang's reticence may be attributable to the deference he had to show one of his prime authorities in the past, Mencius. For, the latter said that the deposing of an unworthy or incompetent ruler was a family matter for "ministers of the royal blood" to decide. It was, then, up to the leadership of the ruling house to meet this responsibility, not for ordinary ministers, who are left simply to decide whether they will stay with the ruler or leave.<sup>23</sup>

Thus, although we have no reason to believe that representative government and electoral processes would be incompatible with Huang's consensual, meritocratic and fiduciary conception of government, these would, in the circumstances of seventeenth century China, and in view of past Confucian experience, be unlikely vehicles for the realization of his ideal Plan. Based on this reality, the enlightened prince and, ideally sage-ruler, however chosen or installed, remains for Huang an almost necessary figure.

Hence, it is to the prince and the scholar-official that Huang addresses this book, not to the multitudes of common people among whom he might conceivably have tried to sow the seeds of a grass-roots

---

22. See Lü Liu-liang, *Si-shu Jiang-yi*, 6:10ab (commenting on *Analects* 3:19); Wm. Theodore de Bary, *Learning for One's Self* 328 (1991).

23. Mencius 5B:9.

democracy Reform must start from above because, in the given circumstances which had prevailed from time immemorial, there was no infrastructure through which it could come up from below. Unless, of course, one counts the very uncertain route of the submission of memorials to the throne, which are essentially petitions for the Emperor to act, not manifestos for concerted action.<sup>24</sup>

Recently Peter Bol, considering the possibilities for finding some equivalent of a civil society in imperial China, has noted the relatively independent growth in the Song dynasty of a Confucian intellectual movement among the *shi* class. This class strongly resisted pressures for conformity from above and subordination to the official culture of the civil service examination system. Bol emphasizes the autonomy this Neo-Confucian "civil culture" was able to maintain vis-a-vis the Chinese state system: "The real legacy of the Song dynasty was the independence of civil culture from government both institutionally and intellectually."<sup>25</sup>

Huang Zongxi, a strong partisan of the *shi*, is heir to this same civil culture, but he has become convinced that the *shi* cannot develop and fulfill their proper leadership role if all they have is a free-standing "civil culture." This is particularly the case if the *shi* remain unincorporated into a "civil society" that provides the supporting infrastructure necessary for coping effectively with the dynastic state. For him, the autonomous culture (*wan*) of the Song literati is not enough without the support of proper laws and institutions going beyond the limited foothold the literati had established as a countervailing force in the Song court.

It is from this perspective, too, that significance should be attached to Huang's proposals for the strengthening of the educational system and of the educated scholar-official's role in government. Successive Neo-Confucians had earlier insisted on the need to expand education in order to facilitate the more informed participation by the people in government. The failure of these efforts, as well as of formal gestures in the direction of a universal school system by Khubilai Khan in the Yüan dynasty and Ming Taizu later, provide a background for this renewed advocacy by Huang Zongxi.

Zhu Xi had drawn special attention to the need for expanded education on every level of society. In his preface to the *Great Learning*,

---

24. See Ray Huang, *Taxation and Governmental Finance in Sixteenth Century Ming China* 314, 317-18 (1974).

25. Peter Bol, *Song Civil Culture and the Examination System*, Presented to the European-American Symposium on State and Society in East Asia, Paris (May 29-31, 1991).

which all educated persons encountered as the first item in standard editions of the Four Books, Zhu spoke of the need for schools in every village and town. Besides hoping to contribute to the betterment of the populace, Zhu also believed that education would strengthen the ranks of the *shudafu* as a meritocratic leadership elite. Even so, Zhu does not approximate Huang's efforts in articulating and defining the specifically political, and not just the cultural, role of the schools. Further, Huang also surpassed Zhu's efforts to establish the schools's autonomy at every level, as well as to assert the importance of having educated leadership in every sphere of governmental activity

For these reasons, as well as because Huang is far more pointed than his predecessors in asserting, by his special attention to *fa*, the necessary means to institutionalize these Confucian values, Huang's Plan goes far toward drawing up a real system, a kind of Confucian constitution, in a way that no one before him had attempted. Yet, it is no less true that he does so by building on lessons learned from the earlier, mostly unhappy, experience of Neo-Confucian scholar-officials, especially many of the late Ming writers whose reform proposals anticipated many of Huang's.<sup>26</sup>

As a proposal that emerges from the late Ming Neo-Confucian experience, and at the same time differs in form from most Western constitutions, it may be fair to call Huang's Plan a kind of Confucian constitutionalism. It is perhaps most distinguishable from the Western type in that, while both are predicated on the implied consent of the governed, largely absent in Huang's Plan is the contractual element so prominent in Western parliamentary systems — i.e., a document ratified by elected representatives and implemented through electoral processes. On this point, in Huang's mythic account of the origin of rulership, he does not speak of the people as coming together and establishing a ruling order where one did not exist beforehand. Instead, he pictures a state of affairs in which individuals went about their own business, taking care of themselves. It was only when a sage-king stood forth and showed, by his own self-sacrificing efforts, how a better order of things could be managed that civilization came into being. Thereafter, it was a question of whether other high-minded noble men could be persuaded to emulate

---

26. See Lynn Struve, Huang Zongxi in Context, 47 JAS 3, 475-479 (1988). See also Ono Kazuko, Tōrinha to sono shisō, Tōhō gakuho 28, 249-282 (1958); Minmatsu no kessha ni kansuru ichi kosatsu—toku ni Fusha ni tsuite, 45 Shirin 2, 37-67 (1962); and Tōrintō kō: Kaibu Ri Sansai wo megutte, Tōhō gakuho 28, 563-594 (1980).

this self-denying role rather than whether any contractual agreement, ratified by the people and binding on both parties, would be reached.

Thus, we may call it a Confucian constitutionalism: "Confucian" insofar as it depends on the personal vocation of the noble man and the *esprit de corps* of the *shi* but "constitutional" insofar as Huang will no longer rely simply on the good intentions and exemplary character of the ruler. Indeed, Huang insists upon institutionalized limits to the exercise of the ruler's power. He condemns those who:

think that the prince shares the world with one [a minister] so that it can be governed, and that he entrusts one with its people so that they can be shepherded, thus regarding the world and its people as personal property in the prince's pouch.

Here, Huang clearly denies legitimacy to even a benevolent ruler who might assume that governance was something for him to delegate to ministers as he chose, rather than an inherently collegial, Heaven-ordained sharing of responsibility to be incorporated in the basic structure of government.

There is reason, then, to credit Huang with making a special contribution to the devising of this new institutional order. Who before him assembled such a unified, systematic document that addressed both fundamental issues and concrete proposals? Who before Huang had thought to make the proposal, shocking to the more conventionally-minded, that the Emperor and his ministers should sit periodically as students at the Imperial College and listen while the libationer conducted a discussion of current issues among the scholars there in attendance?<sup>27</sup> Who had, both symbolically and practically, asserted the higher intellectual and moral authority of the scholarly community in a way that so dramatically challenged imperial claims to ultimate authority? Finally,

---

27. See Xiong Yüezhi, *Huang Zongxi yu Tang Zhen Fandui Feng-jian Zhuanzhi Zhuyi de Sixiang* in *Shanghai Shifan Daxue Xuebao*, *Zhexue Shehui Kexue* 27, 27-31 (1973). There is sometimes a tendency to equate the "progressive" thinking of seventeenth century Enlightenment scholars as if they fell into a uniform emerging pattern, as when Tang Chen's discussion of the education of the Crown Prince is likened to Huang's proposal for the Court and the heir apparent to attend the discussion at the Imperial College. Tang Chen would subject the heir apparent to a rigorous experience of life and work among the peasants, which may have the same value as later Maoist policies for the reeducation of intellectuals in the countryside, but has the opposite effect from establishing an autonomous public space for intellectuals, as Huang would have it.



who, before Huang, had thought to generalize this deference to "public opinion" (*gonglun* or *gongyi*) as a pattern to be followed on all levels of education and administration?

Plainly, my use of the term "public opinion" cannot refer to the people or popular opinion as a whole, inasmuch as the great mass of the populace would have been unable to participate significantly in the process of generating and expressing opinion or forming any general consensus, there being few media of communication or discussion available outside of literati circles. "Public," (*gong*) then, refers to opinion generated both within the government and autonomously outside the state apparatus. It also refers to discussion which addresses issues of concern to "all under Heaven" — i.e., issues affecting society as a whole and not the interests of the state or dynasty alone.

Literati and scholar-officials called such discussion *jiangxue*, literally "the discussion of learning." It was mainly carried on in Ming academies (*shu-yüan*) and supported by local scholarly communities.<sup>28</sup> Thus, it was in a scholarly and academic, that is, mostly elite, setting that this kind of public forum was conducted. Further, these forums were conducted by a class who thought of themselves as dedicated to public service. True, in many academies in the middle period of the Ming dynasty philosophical discussion had become so focused on issues of human nature and the mind that some who felt the urgent need for political action, dismissed it as empty talk. Yet the underlying purpose of the academies was to bring such theoretical discussion to bear on more immediate questions of public importance. It was to this experience that Huang referred to when he spoke of establishing this "public" function in a system of government schools, with the libationer leading a *jiangxue* open to any and all issues.<sup>29</sup>

Huang's desire to create a public space for the airing of important matters is made unambiguously clear when he asserts, in the opening lines of his essay on schools, that the Son-of-Heaven, in ancient times, did not try to decide "right and wrong" for himself but left this to be publicly aired and decided by the schools (*gong qi shifei yu xuexiao*). The fact that he uses the language of the Confucian academy, "the

---

28. See Yamanai, *Min Shin* 271 (1980). See also, Wm. Theodore de Bary, *Learning One's Self*, supra note 16, at 278-82. The less favorable connotation attaching to *jiangxue* is "vapid, groundless, pedantic discussion."

29. On this question in the late Ming, see Ono, *Tōrinha no seiji shisō*, *Tōhō gaku* 28, 266-267 (1958); and Mizoguchi Yūzō, *Zenkindai shisō* 14-16 (Tokyo U. Press, 1980).

discussion of learning" (*jiangxue*) and "public discussion" (*gongyi*), to describe the essential function to be carried on in this public space, rather than the language of teaching, instruction or indoctrination, tells us that he is drawing on the one tradition and institution available as a working example, the academy, and trying to incorporate its characteristic activity in a legally established and protected constitutional body. Moreover, he is broadening its application, its public dimension, by stipulating that the scholar (*ru*) chosen to head the prefectural and district schools may be anyone with the requisite personal qualifications, even a commoner, and need not be someone accredited through the civil service exams, but could be unconnected to the state.

Huang defended the intellectual autonomy of the "private" academies themselves, but his aim was to establish this open discussion as a public function, both in state schools and at court, where he specifies that the discussion of state matters should be thoroughly aired by the prime minister and his ministers, who are to be scholar-officials within Huang's Plan. This has much to say about his constitutional intentions. This scholarly forum was to be a well-defined, state-supported, fully accredited and legal function of a duly constituted order. Yet, this forum was also to be as independent as possible in a society that lacked a middle class, popular press, church, legal profession and other supporting infrastructure independent of the state.

## V CONCLUSION

In the foregoing, all-to-brief summary, I have given special attention to the views of Huang Zongxi because, in my estimation, they sum up the long experience of the Confucians with dynastic rule, and especially the best reflections of Neo-Confucian thinkers in the pre-modern period. I would not claim that Huang's ideas constitute a "tradition" in themselves, because subversive as they clearly were of dynastic regimes, they could only be circulated and shared discreetly among a limited number of the Confucian educated elite in the late seventeenth century. Admittedly, they represent no sustained political movement. Nevertheless, in the late nineteenth century, when the Western and Japanese impact on China was powerful enough to shake the foundations of Manchu dynastic rule, scholarly reformers, both those influenced by the West or those of a more traditional Confucian persuasion, quickly turned to Huang's work as a way of linking up Western constitutionalism with the Chinese historical experience.

Moreover, on still other intellectual grounds, Huang's ideas commanded respect because anyone in East Asia familiar with the Confucian scholarly tradition would recognize the superior authority of Huang Zongxi as an eminent intellectual historian, classicist and literary critic. By no means could he be belittled as a minor figure with idiosyncratic views that just happened to coincide with new trends from the West. True, some recent scholars in the West have tended to dismiss such purported resemblances between Western thought and Chinese as contrived and forced, simply on the ground that the two were not congruent in all respects. These criticisms are unwarranted, however, in assuming that modern Chinese invocations of Huang's ideas reflect no more than the sentimental attachment of Chinese traditionalists to a past from which, against all rational calculation, they are reluctant to break their emotional ties. Even highly competent Japanese sinologues of the early twentieth century, both familiar with Chinese history and deeply concerned over the problems of modern China, have regarded Huang Zongxi as a major voice to be considered in the encounter between tradition and modernity<sup>30</sup>

Today in East Asia, Eastern Europe and the republics of the former Soviet Union, new steps are being taken in the direction of electoral democracy, which, if successful, may in the longer run have some beneficial influence upon the People's Republic of China. In East Asia, however, despite significant advances toward representative democracy, there are authoritarian counter-tendencies in the People's Republic, which invoke a conservative version of Confucian tradition as an antidote to liberal influences from the West.

This may leave the prospects for liberal, pluralistic, multi-party, electoral democracy, still uncertain. This is particularly true given the powerful inertial forces in mainland China, tending to sustain the present system for the foreseeable future. In these circumstances, even if freedom of public discourse and electoral processes are not a likely prospect in the near term, the present regime still needs educated men and women to serve the managerial elite as well as to provide essential services in support of the modernization program to which it is committed. Can this be done without depending on schools, technical institutes, research centers and scholarly academies, roughly the modern equivalent of Huang's schools and academies? If not, then is it unrealistic to think that such institutions, given the autonomy needed to do their work, might not

---

30. See de Bary, *supra* note 16, at 71-85.

be able to serve as a kind of intermediate level for the gradual expansion of a more liberal constitutional order? Indeed, in some places, and to some limited degree, such discussions are already taking place in the Chinese academy

Given both China's past history and the present obstacles to rapid and substantial political changes, a protected role for schools and academies, the promotion and expansion of education and the means of publication, and the circulation of ideas are first steps which might be taken on the way to such a new order. In fact, this natural transition, from schools discussing current issues to their serving as organs for the expression of public opinion, was recognized by earlier modernizers like Liang Qichao, who was also familiar with the ideas of Huang Zongxi. Thus, K. C. Liu refers to Liang's aim to organize local gentry (*shen-shi*) "into a 'study society' that could turn itself into a provincial assembly"<sup>31</sup>

From this perspective, then, Huang's proposals have some continuing relevance, and should be recognized as a contribution to a liberal Confucian tradition that not only offers more hope for the future but is also more representative of Confucian humanism in its historical development than the authoritarian versions of Confucianism being promoted in some quarters today

---

31. See K.C. Liu, *Intellectuals and the Reformist Movement in Late 19th Century China*, Presented at the Conference on Intellectuals as Cultural Carriers (Oct. 31, 1992).