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# Creating a Constitutional Absolute Monarchy: Li Jiaju, Dashou, and Late Qing Interpretations of the Japanese Parliament

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## ABSTRACT

This paper explores interpretations of the Japanese parliament by governmental actors in the Qing empire, most importantly the commissioners for constitutional research Li Jiaju 李家駒 (1871–1938) and Dashou 達壽 (1870–1939). It shows that, within a theoretical framework formed in dialogue with their Japanese constitutionalist colleagues, these actors came to understand the Japanese parliament as an organ possessing tightly limited attributions gifted by the emperor. They maintained that the constitutional system should not be parliamentary, although the parliament was one of its necessary elements. Rather, it should be based on an imperially authorised constitutional document and a form of government centred on the figure of the emperor, in which the parliament would play a consultative rather than legislative role. Ultimately, the article shows that, within a Eurasia-wide wave of imperial transformation in which officials envisioned parliaments mainly as organs designed to increase governmental efficiency, political actors like Li Jiaju and Dashou creatively adapted categories of political science to their own political needs.

## KEYWORDS

Parliamentarism; Qing Empire; Meiji Constitution; Li Jiaju; Dashou

## Introduction

In the first years of the twentieth century, the Qing Empire's decision to transform China into a constitutional monarchy was closely modeled on the experience of Meiji Japan. The *Outline of a Constitution by Imperial Decree* (Qinding xianfa dagang 欽定憲法大綱) unveiled in 1908 along with parliamentary and electoral laws drew heavily, although not unrestrictedly, from the Meiji constitution. The accompanying constitutional roadmap foresaw a nine-year period of 'constitutional preparation' before the eventual convening of a national assembly in 1916, in the same way as Japan, in 1881, had also announced the establishment of the Imperial Assembly nine years later. On the one hand, the announcement of the Qing Court was made in the midst of heavy public pressure for the 'speedy establishment of a parliament,' perceived as a panacea to the country's internal and external weaknesses. On the other hand, not only was the government reluctant to relinquish part of its powers, it was also genuinely concerned about the

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destabilising effects of such a plan and its feasibility without first undertaking fundamental reforms in every aspect of society and government.

Extensive scholarly research has been carried out on the Japanese influence on late Qing China in its many aspects. Since the 1990s, scholarship such as carried out by Philip Kuhn,<sup>1</sup> Roger R. Thompson,<sup>2</sup> Peter Zarrow,<sup>3</sup> Takahashi Kazuyuki 高橋和之,<sup>4</sup> Sōda Saburō 曾田三郎<sup>5</sup> and others<sup>6</sup> has also explored the significance of Japan for the late Qing Empire's attempt to adopt a constitution. There is broad consensus about the general significance of Japan for the creation of Chinese modernity, although there is some disagreement over its exact extent. While some studies show an unhealthy tendency to automatically explain all phenomena which emerged in the last years of the Qing Empire as being reflections of Japanese influence,<sup>7</sup> other research has pointed towards its limitations, stressing the creativity and agency of Chinese adaptations.<sup>8</sup>

Building on this large body of research, the current paper aims to deepen our understanding of specifically parliament-related aspects of Sino-Japanese constitutionalism. How did Chinese political actors interpret the process by which the Japanese parliament had come into being, as well as its function in Japan's constitutional system? How did they justify the adoption of a representative element into their political system? As Peter Zarrow has noted, most government officials agreed in theory that the new parliament would leave the monarch's position as sovereign untouched, although they sensed that it might transform every-day decision-making.<sup>9</sup> This paper expands on this aspect of late Qing reforms by focusing on the two of the main governmental interpreters of Japanese constitutionalism of the late Qing constitution, whose output has been rarely used by previous scholars despite its paramount significance in late Qing constitution-making, namely Li Jiaju 李家駒 (1871–1938) and Dashou 達壽 (1870–1939). Li, who had studied in Tokyo between 1898 and 1903, was made minister of China to Japan in 1907 and appointed commissioner for constitutional research in Japan in 1908. In 1911, he became one of the two main drafters of the constitution, together with Wang Rongbao 汪榮寶 (1878–1933), the 'pioneer of China's modern constitutional law,'<sup>10</sup> who had studied at Waseda University from 1901 to 1904. As constitutional commissioner in Japan, Li replaced Dashou, who had been an official at the Ministry of Education (*xuebu* 學部) before being posted to Tokyo. Li and Dashou held central positions in the making of the Qing government's constitutional policies, leading to the promulgation of the Qing *Outline of a Constitution by Imperial Decree* and the unfinished work on a definitive constitution. Li's and Dashou's interpretation of parliamentarism, which were based on classes taught to them by high-ranking Japanese constitutionalists, thus became crucial for the development of the late Qing parliamentary institutions.

A recent global turn in both Chinese and Japanese studies is starting to show the broader embedding of both countries' historical processes. Late Qing understandings of Japan—including those of Li and Dashou—can only be understood as part of global circulations of knowledge.<sup>11</sup> Japan's role as a model for political thought and constitutional law was truly global,<sup>12</sup> exerting a significant influence in places such as the Ottoman Empire,<sup>13</sup> India,<sup>14</sup> Russia,<sup>15</sup> Siam,<sup>16</sup> and, slightly later, Ethiopia.<sup>17</sup> Chinese intellectuals not only looked towards Japan, but also toward other Eurasian empires such as Russia, Persia, and the Ottoman Empire, with whose experiences they tended to sympathise.<sup>18</sup> In the wake of a series of existential crises faced by these Eurasian empires, officials envisioned parliaments mainly as organs designed to increase governmental efficiency, and creatively adapted categories of political science to their own political needs, developing vernacular projects of imperial modernisation.<sup>19</sup> It is against this background that Li Jiaju and Dashou used the example of Meiji Japan to amend what they saw as shortcomings in European constitutional thinking. As this paper shows, their understanding of the Japanese parliament as an organ possessing tightly limited attributions gifted by the emperor to the people led them to see the future Qing parliament according to the logic of bureaucratic governance.

## Japan's adoption of a parliament in 1890 and early qing proposals for political reforms

From the mid-1870s, the adoption of a parliament was among the first suggestions for political reforms brought forward in the late Qing Empire to counter the country's political and economic crisis and strengthen it against external threats.<sup>20</sup> Writers publishing in the Shanghai newspaper *Shenbao* 申報 argued that the introduction of a parliament would improve governance by strengthening the connection between government and people. Becoming more urgent in the wake of the Sino-French War of 1884/85, such arguments were carried on by a series of literati. Against this background, it is not surprising that the Japanese constitutional process and the Japanese Movement for Freedom and People's Rights (*Jiyū minken undō* 自由民權運動) were covered by the Chinese press from their inception.<sup>21</sup> The Chinese government, too, was well-informed about the Japanese developments. In 1889, the Chinese minister, Li Shuchang 黎庶昌 (1837–1896), together with his colleagues from other countries, attended the promulgation of the Meiji Constitution, reporting to the capital on the pompous ceremony.<sup>22</sup> Fu Yunlong 傅雲龍 (1840–1901), a diplomatic envoy sent by the Board of Foreign Affairs (*zongli yamen* 總理衙門) to the Americas, passed through Japan and published the first Chinese translation of the Meiji Constitution even before it came into effect.<sup>23</sup>

Kang Youwei 康有為 (1858–1927), a leading reformist thinker who stood behind an aborted attempt at political reforms in 1898, advocated for the introduction of a parliament in several petitions to the throne. In his *Study of the Japanese Reforms* (*Riben bianzheng kao* 日本變政考), which he attached to one of the memorials, he described the Japanese reform process until its culmination in the promulgation of the Meiji Constitution in 1889 and the convening of the Japanese parliament the next year.<sup>24</sup> Although Kang saw a certain parliamentary element as a necessary factor of state-building, he was nevertheless extremely cautious about the possible functions of a parliament in China.<sup>25</sup> In his view, the general population was not yet equipped with the proper knowledge to participate in politics—a frequent trope in constitutional debates across Eurasia. Kang's hopes lay in autocratic reforms from above and by decree; a parliament would not possess substantial decisive powers, but merely exert deliberative functions. In order to perform such functions, it was more important to have technocrats who could assist in legislation than to represent society or provide channels for popular participation. As he wrote in his *Study of the Japanese Reforms*,

... only an autocratic ruler can, with his sovereign rights, provide for decisive and speedy rulership. Then, everything will change by itself. But one should carefully select polymaths to provide for counsel.<sup>26</sup>

By the end of the nineteenth century, not even this cautious approach towards parliamentarism met with government approval. During the Hundred Days' Reforms undertaken in the summer of 1898, Kang presented a memorial demanding the establishment of a parliament to the throne, but the government did not take up the topic. Kang's memorials were ignored: No imperial edict of the time included any mention of parliamentarism. Furthermore, the reforms were aborted after barely more than three months, ending with the execution or ostracism of several reformist intellectuals, including of Kang and his most prolific disciple, Liang Qichao 梁啟超 (1873–1929), who both managed to escape to Japan.

By that time, the Chinese government was not yet ready to include any representative element in its political system. Curiously, it is the man who later became the main drafter of the Qing constitution, Li Jiaju, who can provide us with a glimpse into this official rejection of parliamentarism following the abortive 100 Days' reforms and its subsequent shifts. From 1898 to 1903, Li was in Tokyo accompanying the Qing Empire's minister to Japan, Li Shengduo 李盛鐸 (1859–1937), to study the Japanese educational system. Li's mission to Japan is interesting because it testifies of an early stage before constitutionalism came to be widely embraced by Chinese officialdom. Whereas Li left no diary from the time when he helped draft the Qing

constitution, he did in fact leave one covering the years 1898–1903, together with the memorials which he submitted to the emperor. Not explicitly discussing the notion of constitutionalism, Li mentioned the Japanese parliament in an openly unfavourable manner. In a memorial sent to Beijing in 1899, Li drew the following balance of Japan's transformation:

In sum, Japan planned its self-strengthening for the sake of self-maintenance; its modelling on Western countries has had successes and drawbacks. Matters such as modernising the military, revitalising schools, agriculture, industry and trade have been successes. The convening of a parliament and the increase of the tax burden have been drawbacks.<sup>27</sup>

Since Li did not explain why he deemed the convening of a parliament in Japan to be a drawback, we can only surmise his reasons for this assessment. Since the 100 Days' reforms had just been thwarted, parliamentarism was still a revolutionary idea which could not yet be safely praised in a memorial to the Court, even if applied to a foreign country and not to China. It is also possible that Li's assessment reflected concerns about the parliament being a means for factionalism and regional particularism. Overcoming 'factions' (*tōha* 黨派), understood as associations based on personal relationships and serving private interests rather than the common good, had been a major concern during the elaboration of the Meiji constitution, and fear of factionalism continued to throw shadows after its promulgation in 1889.<sup>28</sup> Before they would support the establishment of a parliament in China, Qing officials like Li and others had first to be convinced that it would not be a divisive institution, but a tool for the creation of national unity.

### Chinese students in Japan

Things were changing even while Li was still in Tokyo. A year after this diary entry, armies from Japan, the United States and six European powers invaded Beijing following the Boxer rebellion, forcing the Imperial court to flee to the city of Xi'an under humiliating conditions. On 29 January 1901, Empress Dowager Cixi 慈禧 (1835–1908) issued an edict calling for political reforms in China.<sup>29</sup> The edict did not envision a break with the past, but rather sought to preserve the past by adapting the form of governance to the requirements of the time.<sup>30</sup> It stressed that, while the 'eternal principles' (*changjing* 常經) of the Chinese state were unchangeable, 'methods of governance' (*zhifa* 治法) were indeed prone to political reforms. Adapting a *tanka* 短歌 poem by the Japanese Meiji Emperor,<sup>31</sup> the Empress Dowager called for China to 'take the strengths of foreign countries in order to amend China's shortcomings.'<sup>32</sup> Qing loyalist students who were studying in Tokyo at the same time as Li Jiaju and would later play decisive roles in the Qing constitutional reforms published a series of works advocating for parliamentary-constitutional reforms in China.

While the framework set forward by the edict of 29 January 1901 opened the ideological door for the constitutional reforms several years later, it also established the conservative features of the Qing court's constitutional reforms. These saw the introduction of parliamentary politics not so much as a limitation of the emperor's power, but to a large extent as an element to strengthen the state's efficiency and capabilities. Against this background, the Japanese parliament no longer needed to be interpreted as a weak spot of the country's modernizing reforms; much to the contrary, it could be understood in a similar framework as the one desired for a future constitutional Qing Empire. After all, the makers of the Meiji constitution themselves had perceived the difficulties that the parliamentary system was facing in Germany and had made a conscious effort to craft a system in which the Diet played a more limited role than did its European models.<sup>33</sup>

While the Japanese constitution of 1889 is often said to be based on the German Constitution, it was indeed a complex rearrangement of constitutional elements and theories. In particular, the architecture of the Meiji constitution owed much to the notion that the

emperor held a fourth power of the state above the three Montesquieuan powers, an idea termed 'royal power' (*pouvoir royal*) by Stanislas de Clermont-Tonnerre (1757–1792) and Benjamin Constant (1767–1830).<sup>34</sup> This notion of a 'neutral power' (*pouvoir neutre*) of the monarch was not only popular in French and German constitutional theory, but it was adapted in constitutional texts around the world, most notably in the Ibero-American traditions (Spain, Portugal, Brazil) and in East Asia.<sup>35</sup> The Japanese refraction of the principle provided for a constitutional structure which could flexibly accommodate both strong and weak emperors, but which preserved the factual power of the ruling oligarchy and tended to dissociate the emperor from day-to-day politics.<sup>36</sup>

Nominally, however, the Meiji constitution gave the emperor's vast powers at the top of the constitutional structure. Japanese scholars had long been discussing the nature of the state and of the emperor's role within it. The ruling oligarchy eventually came up with an official ideology which centered the emperor as the locus of the 'national essence' (*kokutai* 國體).<sup>37</sup> The specifically Japanese *kokutai* associated with the figure of the emperor is mostly associated with Article 1 of the Meiji Constitution, which stated that the 'Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal.' Hozumi Yatsuka 穗積八束 (1860–1912), a professor at the Imperial University in Tokyo who had studied in Germany with Paul Laband (1838–1918), was one of those who expressed this constitutional ideology in its clearest and strongest form.<sup>38</sup> Referring to theories of the social contract and to traditions of popular assemblies, Hozumi argued that all European countries had a fundamentally democratic *kokutai* even if they were nominally monarchies.<sup>39</sup> Japan, however, was a true monarchy, for her *kokutai* was derived from ancestor worship and the hereditary imperial line.<sup>40</sup> In short, for Hozumi, the Japanese emperor, being the sovereign, was indeed the state (*shukensha wa sunawachi kokka nari* 主權者八即國家ナリ),<sup>41</sup> and all divisions of power within the state were mere divisions of labour established by the emperor himself. As he explained,

Our form of government has not lost the basic feature of the so-called constitutional system, and the unity of the powers is in the throne. Our constitution follows the doctrine of the separation of the three powers, but this separation means only division according to the articles of the constitution. The power which establishes and maintains the constitution itself is one and undivided, and in both name and fact it resides in the throne. It is the special feature [of our form of government] ... that an all-powerful sovereign ... divides the action of power; ... that there are Diet, government, and judiciary, and yet that the centre of government in both name and fact is in the royal prerogatives.<sup>42</sup>

Such official positions found their way into the publications of the loyalist Qing students in Tokyo and later became the basis for the Qing government's constitutional plan. In his *Xin Erya* 新爾雅, a seminal encyclopedia of modern terms which he co-edited and published in 1902, Wang Rongbao compared the position of the Japanese emperor with that of European monarchs. In contrast to the European principle whereby the monarch 'reigns but does not rule',<sup>43</sup> Wang understood the Japanese emperor to do both:

Looking at it from this (perspective), the Japanese monarch effectively combines both rule and reign, and only their enactment needs to follow the constitution. For example, Art. 5 of the (Japanese) constitution says: 'The Emperor exercises the legislative power with the consent of the Imperial Diet'. That is, legislative power is a function of royal power (*tongzhi quan* 統治權). It is the Emperor and not the Imperial Diet who enacts it; the Diet only consents. If something is enacted without consent, it is called an unconstitutional regulation.<sup>44</sup>

In the same year 1902, Wang Hongnian 王鴻年 (1860–1911), a student at the Imperial University of Tokyo who would later become Dashou's assistant as constitutional commissioner, published the first systematic Chinese textbook of constitutional law based on lectures given by Hozumi Yatsuka. In the preface to his book, Wang elevated Hozumi above the most famous European political thinkers and made it clear that the main objective of constitutional law, in his understanding, was preserving the power of the emperor:

While Mr. Hozumi vociferously bashes heterodox teachings, he exclusively promotes the teaching of monarchic sovereignty. Thereby, he rigorously restrains Montesquieu's theory of division between three powers and the common mistakes of Rousseau's theory of the social contract, while he preserves the superior meaning of loyalty to the monarch and patriotism in order to inspire the human mind.<sup>45</sup>

## Dashou, Li jiaju, and the qing empire's constitutional preparation

Furthermore, many Chinese officials vociferously argued that a constitution would be key to extricating China from her political, economic, and military weakness. In 1904/05, their ideas were confirmed in practice when Russia, a large empire without a constitution, lost in war to Japan, which had newly established a constitutional system and a parliamentary representation. In this context, explanations such as Wang Rongbao's and Wang Hongnian's made constitutionalism palpable to the Chinese government, convincing it that constitutional reforms would not further limit its powers. In the second half of 1905, the Qing government dispatched a high-ranking delegation to Japan, the United States, and twelve European countries (including Russia) with the professed aim of investigating foreign political systems. When in Japan, the group met with Hozumi Yatsuka as well as with Itō Hirobumi 伊藤博文 (1841–1909), Japan's first prime minister. Upon their return, the ministers vociferously recommended the introduction of a constitution on the basis of the Japanese model.

Prince Zaize's 載澤 (1868–1929) report to the throne contains a slight mistake which is perhaps telling of how the convocation of the parliament was conflated with the constitution itself. He writes that Japan had 'announced constitutional government in the 14<sup>th</sup> year of the Meiji era [1881] and convened the Diet in the 22<sup>nd</sup> year of the Meiji era [1889].'<sup>46</sup> In reality, 1889 was the year in which the constitution was promulgated after eight years of preparation, whereas the parliament convened a year later, in 1890. Yet, while Prince Zaize painted the convocation of the Imperial Diet as the pinnacle of the Japanese constitutional project, he reassured the throne that the constitution would help break up the dynastic cycle and stabilize the Qing dynasty's line of succession for all eternity.<sup>47</sup> Thenceforth, political crises would be resolved on the level of government, while the emperor would retain his plenipotentiary powers. Zaize's memorial contained a long list of such imperial powers, several of which concerned the parliament:

Nr. 13: The organisation of the House of Lords shall be undertaken by the monarch.

Nr. 14: The extension of parliament shall be undertaken by the monarch.

Nr. 15: The preliminary convocation of parliament shall be undertaken by the monarch.<sup>48</sup>

As a result, on 1 September 1906, the government announced with great fanfare that it would 'prepare for constitutionalism.'<sup>49</sup> Having in mind not only the gradual Japanese approach, but also the difficulties faced by other countries in similar situations—most importantly, Russia,—this meant that the country would first undertake thorough reforms of nearly every aspect of governance before, eventually, promulgating a constitution and convening a parliament as the coronation of this effort.<sup>50</sup> However, large parts of the intellectual public and of local elites were becoming increasingly impatient. From 1907, successive petition campaigns called for the 'speedy opening of a national assembly' (*su kai guohui* 速開國會).<sup>51</sup>

The government had to react to such pressure. Although the 1905/06 ministerial *tour du monde* had been highly publicised—it also fulfilled an important public diplomacy purpose for the Qing government—, perhaps a second mission dispatched was of even greater importance. In 1907/08, the Qing court sent semi-permanent representatives to Japan, China, and the United Kingdom, with a more technical mission of gathering in-depth knowledge about the respective constitutional and legal systems. Of these, the mission to Tokyo was by far the most important. Dashou, the first constitutional commissioner, arrived in Tokyo in November 1907. Then, in



March of the following year, something unusual happened: Dashou was recalled to Beijing. Instead, the Japanese minister to Japan himself, Li Jiaju, was removed from his diplomatic post to head the constitutional commission. There has been some speculation about the reasons for this reshuffle, but the most plausible explanation is that the government simply decided to entrust this key position to the much higher-ranking Li Jiaju.<sup>52</sup>

Nevertheless, Dashou's experience was fundamental for the Qing government's constitutional efforts. The constitutional commissioners were tasked with studying six areas: Japanese constitutional history, comparative constitutional law, parliament, administration, jurisprudence and finance.<sup>53</sup> Prominent teachers were found to impart knowledge on these subjects: the two distinguished law professors Hozumi Yatsuka and Ariga Nagao 有賀長雄 (1860–1921), the Privy councillor Itō Miyoji 伊東巳代治 (1857–1934), as well as the chief secretary of the House of Peers Ōta Minesaburō 太田峯三郎 (1863–1914). In this round of constitutional investigation, the most important of these preceptors was Ariga Nagao, whose interpretations became the basis for the commissioners' reports.

Dashou concluded the first half of the workload, including the part on parliamentarism, with the 30<sup>th</sup> lesson at the end of May 1908.<sup>54</sup> Shortly after, under heavy pressure from the public, the court in Beijing decided to take concrete measures for the adoption of a constitution and of a national assembly. It ordered that the Constitutional Office and the bureau which should later develop into the parliament (the Political Advisory Council, *Zizhengyuan* 資政院) to 'quickly' draft an 'outline of a monarchical constitution' (*Junzhu xianfa dagang* 君主憲法大綱) based on the 'best regulations found in different countries.' The two institutions should also draft an electoral law, a law for a parliament and a reform plan to be fulfilled in the years before its convocation.<sup>55</sup>

In this context, Dashou's report, filed on 7 August 1908, came in handy, and became the basis for the constitutional documents presented to the public just three weeks later, on 27 August 1908.<sup>56</sup> Just as his Japanese preceptors, Dashou made a clear distinction between 'national essence' (C. *guoti* = J. *kokutai*) and 'form of government' (C. *zhengti* = J. *seitai* 政體).<sup>57</sup> Japanese *kokutai* thinkers liked to stress the uniqueness of Japan's monarchic *kokutai* based on an allegedly eternal line of imperial succession since the creation of the earth. Yet, this was not a major hindrance for Dashou to classifying China under the same category of *kokutai* as Japan.<sup>58</sup> However, different interpretations were possible. In a speech to Chinese students, reprinted in an edited volume prefaced by Dashou himself, Ariga Nagao argued that in spite of the dynastic changes, the fundamentals of China's polity had been set down in the classic books set down by the sages of antiquity and were 'immutable for a myriad of generations.'<sup>59</sup> Accordingly, Dashou used quotes from the *Book of Changes* (*Yijing* 易經) and the *Spring and Autumn Annals* (*Chunqiu* 春秋) to classify China as having a monarchical *kokutai*.<sup>60</sup>

For Dashou, a constitutional form of government was imperative because it would dissociate the imperial house from the upheavals of politics, thus overcoming the dynastic cycle and perpetuating the dynasty. Building up a framework of distinctions based on Ariga Nagao's, Dashou distinguishes constitutional and autocratic forms of government and three types of written constitutions: authorised ones, contractual ones, and democratic ones. Constitutions could provide for a parliamentary regime (C. *yi yuan zhengzhi* = J. *giin seiji* 議院政治), for regimes of (monarchical) prerogatives (C. *daquan zhengzhi* = Jp. *taiken seiji* 大權政治) or for mixed regimes.

On this issue, Dashou was more restrictive than his successor as constitutional commissioner, Li Jiaju, who based his ideas on the same framework but categorised Germany and Austria together with Japan. According to Li's definition,

England and France are both parliamentary polities. Hence the parliament's intentions are necessarily the standard for their prime ministers policies, whence he ineluctably will become restricted. However, in Japan, Germany, and Austria, the policies set by the prime minister are not only not restricted by the parliament, but can even control the parliament, which is within his powers.<sup>61</sup>



Dashou, however, juxtaposed the Euro-American constitutions with that of Japan; for him, Japan and Russia were the only existent constitutional regimes of monarchic prerogatives. Placing China in the same category as Japan, he recommended the adoption of a constitution based on, although not identical to, the Meiji constitution.

The fundamental issue that Dashou needed to tackle in order to convince the Qing court of the necessity of a constitution was its pervasive fear that it could lose its (in practice already rather limited) power. Hence, Dashou's text laid out five main ways in which the constitution would not weaken the monarchy's power, but 'preserve the national essence and stabilise sovereignty.' Dashou countered the fear that talk of political 'rights' could instigate revolutionary feelings in the otherwise peaceful Chinese people by referring to Japan's authorised constitution, in which both rights and duties of the people were regulated, by pointing out that the Chinese constitution needed not be so extensive as the Japanese constitution, and by asserting that the fundamental rights to be granted in the future constitution, such as freedom of movement, of religion, of speech and others, were already regarded as given in China.<sup>62</sup>

As to possible limitations of the court's power through the principle of separation of power, Dashou was adamant that the constitution must be authorised by the emperor and provide for a regime of imperial prerogatives instead of a parliamentary one. Impressed by what he learned about the Prussian deadlocks between king and parliament on budgetary matters, he stressed that the constitution must exhaustively list the parliament's attributions, and that any matters not listed in the text fall under the Emperor's responsibility. In the paragraph describing the first way in which a constitutional form of government would stabilise the country, Dashou listed twelve prerogatives of the Emperor within the framework of an authorised constitution, including those of giving sanctions to laws, to convene and to dissolve the parliament, stating that:

... these are rarely to be seen in the constitutions of the European countries, and the Japanese scholars even said that when there were regulatory lacunas, these opened space for doubts. When China crafts a constitution, she had better lay down a list of norms about the prerogatives of the monarch, clearly regulating them, in order to avoid that either there arise space for doubts in the future or that they be limited by law when the national assembly convenes.<sup>63</sup>

As is clear from this definition, the hoped-for authorised Chinese constitution would provide for a regime of monarchical prerogatives, which Dashou had defined slightly earlier in the text:

Regime of royal prerogative means that the monarch is the centre of [the constitutional] powers, and although its organs are divided into three branches, his royal prerogative unites them into one. As to the cabinet, the monarch can freely appoint and dismiss the ministers according to his own trust in them. As to the parliament, the monarch himself is the subject of law-giving, and the parliament only has participatory rights. Even if the parliament has participatory rights, in fact the monarch holds the power of approval.<sup>64</sup>

The fourth of five considerations justifying the adoption of a Japanese-style constitutional framework to the Chinese throne explored the issue of the parliament more deeply. Dashou therein explained that England was an example of a parliamentary form of government with an omnipotent parliament, but that in other countries such as 'the USA, France, and Belgium,' too, it was the parliament which held competences not explicitly listed in the constitutional text.<sup>65</sup> Thus, in such countries the assembly representing the people was the subject of sovereignty. In Japan, it was the other way round. There, as in the future Chinese parliament, 'the sovereignty is with the monarch and the people are in fact objects of sovereignty.'<sup>66</sup> The Emperor would retain all reigns in hand, as the parliament's participation would 'effectively only be in laws and budgeting.' Hence, Dashou concluded his argument by belittling fears of a powerful parliament:

As for convening, closing, suspending, dissolving the parliament, emergency ordinances, and independent ordinances, not a single one of these is not part of the monarch's prerogatives. How could this be possible if not for a purely authorised constitution? Those in the public who suspect that the national assembly could infringe on the monarch's power or hamstringing the government really have a limited understanding.<sup>67</sup>

## Gradualism or immediatism

In one important point, however, Dashou diverged from the opinion of most (but not all) Japanese observers of Chinese constitutionalism. Just as Western observers had been very cautious about Japan's constitutional reforms, a large part of Japanese observers were extremely cautious about China's constitutional plans: they tended to think that a constitution could only be adopted if the conditions were ripe for it, and that this was not yet the case in China.<sup>68</sup> Nakamura Shingo 中村進午 (1870–1939), a Heidelberg-educated professor, went so far as to propose a timeframe of a 100 years.<sup>69</sup> In its declaration of intent of 1906, the Qing government had subscribed to such gradualist views and not defined a concrete timeframe. This cautious position was further informed by the difficulties faced by Russia and Persia in their respective constitutional reforms. In fact, Dashou mentioned the Russian next to the Japanese constitution as an example of an authorised constitution—Prussia's just being a contractual one—, but he did not further discuss Russia's unstable political situation.<sup>70</sup> Rather, applying his interpretation of recent Japanese history to China, he maintained that China could at least replicate Japan's fast-paced constitution-making of the 1880s. His words about the Japanese experience expressed the constitutional enthusiasm held by many Chinese reformers of the time:

Then, in a conference counting with the emperor's presence, the emperor decided to shorten the period for promulgating the constitution and urgently determine a deadline for convening the National Diet. As soon as the edict was promulgated, all people clamoured in joy. Then, in the 22<sup>nd</sup> year of the Meiji era, the constitution was promulgated, and in the 23<sup>rd</sup> year the National Diet was convened. Since Itō Hirobumi &c. returned home from an examination of constitutional governments, less than seven years had passed! Then they won one war, and then another war, and their fame is high throughout the world.<sup>71</sup>

In spite of its previous reluctance, the Qing government succumbed to the pressures and attempted a replication of what it perceived to have been the Japanese experience. It's roadmap for 'constitutional preparation' envisaged a timeframe of nine years and foresaw elections for both chambers of the national diet for the last year of that period, i.e. 1916.

To Japanese observers who had argued for caution, carrying out such an ambitious project in this short span of time was nothing short of insane. Itō Hirobumi had long been unsuccessfully trying to personally travel to China to give advice to the Chinese government. In his view, China had to tackle a large number of problems which were even greater than those previously faced by Japan, and the sheer size of China meant that the constitutional reforms were a matter of generations, not just of a few years. One of the many problems, for example, was that of transportation and communication: How could China have a representative system and convene parliaments if the delegates could not yet swiftly travel from their home areas to the parliament?<sup>72</sup> Thus, on 28 August 1909, Itō gave a farewell dinner for the constitutional commissioner Li Jiaju, which was attended by high-ranking members of the cabinet as well as the foremost Japanese authorities on constitutional law. At the end of the party, Itō delivered a long speech wherein he told Li his hopes for how China should proceed with enacting the constitution. Once enacted, Itō stressed, constitutionalism could not be revoked, and therefore, the constitution should be prepared with special care.<sup>73</sup>

But the recipient of these admonishments did not exert any influence to change course. Quite the contrary: According to reformist Chinese media, Itō had said that it was possibly already too late for constitutional reforms, implying that they should be carried out quickly and thus de facto reversing his position.<sup>74</sup> Provincial assemblies were elected in 1909, and a parliamentary assembly at the central level convened in 1910. In 1911, the court once again had to succumb to public pressure and issued a new constitutional plan, now shortened to a total five years until the planned promulgation of the constitution and the establishment of the full national assembly in 1913.

In fact, Itō was particularly concerned with the establishment of parliamentary assemblies, which, he feared, would pull the governors-general to their sides and against the central

government.<sup>75</sup> Itō not only foresaw a violent surmise of the government, but was also eerily precise in prophesying when this would happen. On 13 May 1909, he told the British Ambassador to Japan, Sir Claude MacDonald, that:

within three years there would be a revolution in China.<sup>76</sup>

Itō's fears came true. Although the assemblies were designed as merely consultative organs to improve communication between government and population, local elites did make use of their right to speak in them and severely pressured the government. In October 1911, a mutiny in the city of Wuchang 武昌 triggered a chain of events in which a series of provinces successively declared independence from the Qing Empire in order to reassemble in the form of the Republic of China.<sup>77</sup> Two years and nine months after Itō's prophecy, the Qing emperor abdicated.

### **Conclusion: The qing adaptation of the japanese parliament its legacies in 20<sup>th</sup>-century China**

Japan was the most significant foreign model for the adoption of a parliament in the late Qing Empire during the first decade of the twentieth century. Having seen Japan's meteoric rise as a major imperialist power, many officials in Beijing became enamoured with its constitutional system. In their eyes, Japanese constitutional theory provided a solution to the conundrum which made the Qing court reluctant to promote constitutional reforms. An element of popular representation was deemed to be essential to enable a smoother communication between government and populace, to foster nationalism and to improve the quality of legislation. But how could one introduce such popular representation without endangering the position of the court? Japanese constitutional theory, as interpreted by Dashou, Li Jiaju, and others, allowed the emperor to remain absolute monarch despite the separation of powers, understood as a functional division of work to enhance government efficiency.

The Japanese model certainly had its limitations. Large parts of the Qing Empire's territory, including Mongolia and Tibet, were governed as separate domains from the Han-majority provinces towards which the constitutional reforms were geared. In spite of occasional references to Hokkaidō and Taiwan as Japan's imperial space, the Japanese model was barely equipped to deal with this legal and constitutional pluralism, which was more similar to the situation in the Russian Empire.<sup>78</sup> Furthermore, Japan had nominally reinstated the erstwhile powerless emperor to the centre of the constitutional system, while in the Qing Empire, the situation seemed to be the reverse. Although the court was in fact weak, in theory its power was already absolute. Hence, just as in Russia, the attempt to constitutionalise the central position of the emperor led revolutionaries to criticise this version of parliamentarism as 'sham constitutionalism' (*jia lixian* 假立憲), using a concept developed by Max Weber (1864–1920).<sup>79</sup> The tension between the well-nigh utopian hopes of the Qing government and the various internal pressures eventually led to the demise of the Qing.

On the surface, the proclamation of the Republic of China in 1912 ended the Qing experiment with creating a parliament subject to the imperial prerogative. In theory, it also meant the replacement of a system striving to largely emulate Japan's constitutional monarchy by a republic whose provisional constitution nominally transferred the locus of sovereignty to the people. The new constitutional architecture, which took much inspiration from the French Third Republic, gave substantial powers to the National Assembly, including that of electing the president, thus making it the centre of the political system.<sup>80</sup>

The political situation of the young republic was extraordinarily unstable, and the parliamentary system was blamed for the instability. The republic's president, Yuan Shikai 袁世凱 (1859–1916), a man who had already played a key role in the late Empire, had greater ambitions for himself. He dissolved the National Assembly, replacing it with a series of new assemblies

designed to enhance his personal power. In particular, he had a new provisional constitutional compact adopted in 1914, which foresaw the establishment of a bicameral national assembly and of a 'political participatory council' (*Canzhengyuan* 參政院). While the Political Participatory Council had its origins in institutions such as the Japanese Privy Council (*Sūmitsuin* 樞密院) and the councils of state of France and other republics, it was designed in such a way that made for quasi-dictatorial powers of the president.<sup>81</sup> The National Assembly was not convened in Yuan's lifetime, and the return to the constitutional system of 1912 after Yuan's death in 1916 was short-lived. Like in Russia and the Ottoman Empire, dissatisfaction with competitive multi-party parliamentarism led to the emergence of single-party regimes.<sup>82</sup> The Anfu Club (*Anfu julebu* 安福俱樂部), which dominated the National Assembly from 1918–20 and was long dismissed as a mere 'faction,' was in fact such a proto-single-party regime.<sup>83</sup>

Later, the Chinese National Party (*Kuomintang* 國民黨, KMT) developed the idea of gradualism into an ideology of 'tutelage' to be exercised by the KMT over the people as long as it was allegedly 'not ready' for constitutional government. The National Government did not convene the National Assembly during this period, which lasted until after the Second World War. Yet, it sought to respond to demands for a parliament and maintain the loyalty of elites by integrating public figures into deliberative bodies with little substantive political power. Such were, for example, the National Emergency Conference (*Guonanhui* 國難會) of 1932, the National Political Participatory Conference (*Guomin canzhenghui* 國民參政會) of 1938, and the 'old' and 'new' Political Consultative Conferences (*Zhengzhi xieshang huiyi* 政治協商會議), the first of which was convened by the KMT in 1946 as a means to mediate between the various political forces, whereas the latter was established by the Chinese Communist Party in 1949 in order to gather support from minor political groups and project an image of consensual decision-making.<sup>84</sup>

Beneath the surface, the legacy of the late Qing attempt at creating a bureaucratic parliament continued. The nominal change of political paradigm in 1912 concealed substantial continuities, including in the area of constitution-making. Most important constitutionalists of the Qing Empire continued to be highly influential in the early Republic, and Yuan Shikai, the president of the Republic, employed Ariga Nagao as his advisor. To Ariga, as to Frank Johnson Goodnow (1859–1939), Yuan's other prominent foreign advisor, it did not matter much whether China was nominally a monarchy or a republic; what mattered was a strong position of the head of state.<sup>85</sup> Although China's history after the fall of the Qing Empire underwent many upheavals, the tendency to treat parliaments as bureaucratic elements of governance remained strong.

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## Notes

1. Kuhn, 'The Transformation of the Constitutional Agenda,' 114–35.
2. Thompson, *Local Councils in the Age of Constitutional Reform*.
3. Zarrow, "Constitutionalism and the Imagination of the State"; Zarrow, "Late Qing Reformism and the Meiji Model."
4. Takahashi, ed. *Nitchū ni okeru Seiō rikkenshugi no keiju to henyō*.
5. Sōda, *Rikken kokka Chūgoku e no shidō*.

6. E.g. Han, "Lun Riben Mingzhi xianfa"; Jang and Hsu, "Lorenz von Stein and Chinese Constitutional Movement"; Li, 'From a Japanese Transplant to a British Imitation'; Matsushita, "Nihonjin hōritsu komon"; Li, 'The Role of the Japanese Advisor'; Fogel, ed. *The Role of Japan*.
7. Reynolds, *The Xinzheng Revolution and Japan*.
8. Cui, "Qingting zhixian yu Mingzhi Riben."
9. Zarrow, "Constitutionalism and the Imagination of the State," 67.
10. Zhao, *Wang Rongbao*.
11. Li, "Xianfa zhishi de quanqiu liudong."
12. Colley, *The Gun, the Ship, and the Pen*; Takii, *Meiji-shi kōgi*.
13. Esenbel, *Japan, Turkey and the World of Islam*.
14. Banerjee, *The Mortal God*, 164–73.
15. Sablin, 'Russia in the Global Parliamentary Moment,' 276.
16. Malitz, *Japanese-Siamese relations*.
17. Levine, "Ethiopia, Japan, and Jamaica"; Marzagora, "'We proceed following Japan'"; Marzagora, "Refashioning the Ethiopian Monarchy"; Marzagora, 'Political Thought and the Struggle for Sovereignty.'
18. Moniz Bandeira, "China and the Political Upheavals in Russia, the Ottoman Empire, and Persia"; Kaufman, "One Nation Among Many"; see also Brang, "Conceptual realism and imperial nostalgia."
19. See Sablin et al., "Duma, yuan, and beyond," 13–52.
20. The first Chinese intellectual to propose an elected assembly had been Feng Guifen 馮桂芬 in 1860/61, although his writings did not gain wider circulation until 1884. See Hill, *Voting as a Rite*, 11–39.
21. On the Shenbao debates see Wagner, "The Free Flow of Communication," 116–188. On the continuation of the debates by literati see Onogawa, *Shinmatsu seiji shisō kenkyū*, 52–85, and Lloyd Eastman, "Political Reformism in China Before the Sino-Japanese War," 695–710.
22. The ceremony, however, was overshadowed by the murder of Mori Arinori 森有禮 (1847–1889). See Li Shuchang 黎庶昌, Han shu canguan Riben banbu xianfa dianli bing Sen Youli bei ci qingxing 函述參觀日本頒布憲法典禮並森有禮被刺情形 [Letter describing a visit to the ceremony of promulgation of the Japanese constitution and the circumstances of the murder of Mori Arinori], Guangxu 15/02/04 [5 March 1889], file no. 01–19–007–02–005, Archives of the Institute of Modern History, Academia Sinica, Taipei.
23. Fu, *Youli Riben tujing*, 343–345.
24. Kang, *Riben bianzheng kao*.
25. On the shifts in Kang Youwei's parliamentary thought at the time see Lee, "Musulbyōnbōpsigi Kangyuwūi ūhojedō sōllip kusanggwā riphōnsasang," 83–85. See also Zarrow, "Late Qing Reformism and the Meiji Model," 40–67. On Kang Youwei see further Brusadelli, *Confucian Concord*.
26. Kang, *Riben bianzheng kao*, 25.
27. Li, "Youzhengye Zhai zaji," Guangxu 25/2/22 (2 April 1899).
28. Scalapino, *Democracy and the Party Movement in Prewar Japan*, 139–45; Kim, *The Age of Visions and Arguments*, 48–57; 395–408
29. Zhu, *Guangxu chao Donghua lu*, 4:4601–02. For a translation see Reynolds, *The Xinzheng Revolution and Japan*, 201–04. See also Moniz Bandeira, "From dynastic cycle to eternal dynasty," 7 (who however mistakenly writes of September 1901).
30. Meienberger, *The Emergence of Constitutional Government in China*.
31. "By taking what is good and discarding what is bad, may we make Japan into a nation not inferior to foreign countries!" Meiji Tennō, *Meiji Tennō gyosei*, 8.
32. Zhu, *Guangxu chao Donghua lu*, 4:4601.
33. See Takii, *The Meiji Constitution*, 64–65.
34. Clermont-Tonnerre, *Recueil des Opinions* 4:390–396; Constant, *Cours de Politique Constitutionnelle*, 1:1–2.
35. See Moniz Bandeira, "The 22 Frimaire of Yuan Shikai."
36. See Lokowandt, „Die Stellung des Tennō in der Staatsführung," 49–64.
37. See Kim, *The Age of Visions and Arguments*, and Bruce Grover, "Public opinion under imperial benevolence," 75–102.
38. On Hozumi see Minear, *Japanese Tradition and Western Law*.
39. Hozumi, *Kenpō teiyō*, 1:129.
40. Hozumi, *Kenpō teiyō*, 1:92–97; Minear, *Japanese Tradition and Western Law*, 69–76.
41. Hozumi, "Teikoku kenpō no hōri," 1:107. See also Minear, *Japanese Tradition and Western Law*, 57–64.
42. Hozumi, *Kenpō teiyō*, 1:129. The translation is adapted from Minear, *Japanese Tradition and Western Law*, 104.
43. The saying goes back to Adolphe Thiers (1797–1877): 'Le roi n'administre pas, ne gouverne pas, il règne' (The king does not administer, he does not rule—he reigns). See Thiers, 'Intérieur. Paris, 3 Février,' 1.
44. Wang and Ye, *Xin Erya*, 10–11.
45. Wang, *Xianfa falu yaoyi*, 1b–2a.
46. Zaize. "Zaize zouqing xuanbu lixian mizhe," 1:175.
47. *Ibid.*, 1:175.

48. *Ibid.*, 1:174.
49. "Xuanshi yubei lixian xian xing liding guanzhi yu," 43–44.
50. See Moniz Bandeira, "China and the Political Upheavals in Russia, the Ottoman Empire, and Persia."
51. See Kusunose, "Niju seiki shotō okeru Chūgoku no kokkai sokkai seigan undō."
52. The press at the time speculated that Dashou had been recalled because he had not written any report, but it was still quite early for that; Matsui Naoyuki writes that he was recalled because he received a new post; although he was only officially appointed to the post one month after his report. See Moniz Bandeira, "China and the Globalisation of Constitutions," 387–88, with further references, and Matsui, "Chūgoku ni okeru rikkenshugi no keiju," 107.
53. See Li, "Li Jiaju zou kaocha Riben guanzhi qingxing zhe," 1:523. The topics were slightly modified after consultation with Itō Miyoji. See Sōda, *Rikken kokka Chūgoku e no shidō*, 71, with further references. See also Tu, "Ta shan zhi shi," 158, with further references.
54. See Sōda, *Rikken kokka Chūgoku e no shidō*, 71–72; Matsui, "Chūgoku ni okeru rikkenshugi no keiju"; Sun, "Qingmo yubei lixian zhong de waifang yinsu."
55. "Ziyiju ji yiyuan xuanju zhangcheng jun zhao suo yi banli zhuo ge dufu xian yi nian nei ban qi yu," 2:684
56. Matsui, "Chūgoku ni okeru rikkenshugi no keiju," 93.
57. The term *zhengti/seitai* had originally meant 'constitution' per se.
58. Moniz Bandeira, "From dynastic cycle to eternal dynasty."
59. Doi, *Shinkoku rikken mondai*, 49 (Chinese translation in p. 61).
60. Dashou, "Dashou zou kaocha Riben xianzheng qingxing zhe," 1:26.
61. Li, "Li Jiaju zou kaocha Riben guanzhi qingxing zhe," 1:526.
62. Dashou, "Dashou zou kaocha Riben xianzheng qingxing zhe," 1:36.
63. *Ibid.*, 1:35.
64. *Ibid.*, 1:34.
65. *Ibid.*, 37.
66. *Ibid.*
67. *Ibid.*, 38.
68. See Moniz Bandeira, "Political Reforms in a Global Context," 155; 161–175.
69. Doi, *Shinkoku rikken mondai*, 100.
70. Dashou, "Dashou zou kaocha Riben xianzheng qingxing zhe," 1:34.
71. Dashou, "Dashou zou kaocha Riben xianzheng qingxing zhe," 1:29.
72. "Itō Kō no Shinkoku rikken ron," 167 infra–168 supra. Indeed, when the Advisory Council convened in 1910, difficult transportation was one of the issues faced by delegates from remote regions. The delegate from Tibet arrived two months late and missed most of the session. See Moniz Bandeira, "Late Qing Parliamentarism and the Borderlands of the Qing Empire," 25.
73. *Asahi shimbun*, "Kensei taishin sōbetsukai," 29 August 1909. See also *Shenbao*, "Zhuandian," 31 August 1909.
74. Gan, "Shijie dashi ji," 124. The article refers to a speech by Itō given at a different occasion.
75. Tel. no. 121, file no. 22128, FO 371/690, National Archives, Kew, 216–17.
76. *Ibid.*, 217.
77. See Chen, "Disassembling Empire," 283–315.
78. Moniz Bandeira, "Late Qing Parliamentarism and the Borderlands of the Qing Empire."
79. Weber, "Rußlands Übergang zum Scheinkonstitutionalismus."
80. See Yan and Leung, "The Anfu Parliament in Republican China."
81. Moniz Bandeira, "The 22 Frimaire of Yuan Shikai," 164–72.
82. Sablin and Moniz Bandeira, "Parties from Vanguard to Governments."
83. Leung, "The birth of Anfu China," 26–59.
84. Rudolph, "The preparations for the first Chinese People's Political Consultative Conference," 283–85.
85. Matsui, "Chūgoku ni okeru rikkenshugi no keiju," 114–15.

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