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BOOK REVIEW

Yuanze yu tuoxie: Meiguo xianfa de jingshen yu shijian (Principles and Compromises: The Spirit and Practice of the American Constitution). By Wang Xi, Beijing daxue chubanshe, 2005. ix, 485 pp.

Professor Wang Xi's book entitled *Principles and Compromises* dwells on why and how the American constitution is a "living" one. The answer lies in the fact that the whole history of the American constitution is a series of "principled compromises (p. 2)." Both principles and compromises are two key issues that last until today and takes on different forms and contents. The idea and occurrence, which link the two domains, is called "negotiation." The author borrows it from sociology by which he wants to express the theme that different interest groups in American society negotiate to gain a co-existence within the framework of constitutional principles. In addition, the author extends this idea by saying different interest group sometimes go beyond the stipulated political rules. Such events happened in history when deemed absolutely necessary by involved parties and the results inevitably modified the political rules governing the negotiation. In other words, the previous mechanism of the negotiation ceases to function and a new one takes place within the framework of the constitution based on a new political environment.

It is because of the mechanism of negotiation that builds up a platform to allow for the elasticity of the actual political operations based on the compromises. Nevertheless, there are constitutional principles that defy challenges of any excurses such as those against the supremacy of the law and republicanism of the constitution. The author clarifies these two concepts by saying that the most important trait of the American constitution is its "supremacy," which is one of the most important creations in the making of the constitution (p. 4). The concept not only ascribes the source of the power to the people but also supplies a mechanism for different interest groups of people to organize and orientate themselves towards the goal for the advancement of their self-interest by means of negotiation within the framework of the constitution. The framework itself builds on a number of principles that serve as the pillars of a mansion. Negotiations, compromises and whatever political manipulations, serve as the modification for the mansion but the pillars themselves cannot be demolished. That is why the negotiations in American constitutional history are termed as "principled compromises."

The book tells the development of the American constitutionalism ranging from the early colonial period to the present. To begin with, it dates back to the formation of the political systems in different colonies. The early settlers brought with them the most important achievement of the European religious reformation—the right to seek the spiritual purity, which is accompanied by its intrinsic appeal to the individual freedom. Puritans convert the religious concept of Covenant into a political agreement, which is well embodied in the "Mayflower Compact," and some other important documents during the early colonial period. This conversion is a breakthrough in human history because it claims that all powers stem from the people who are in the right relationship with God (p. 15). The colonial mode of the governance presented the crude form of the later constitutionalism, which is highlighted in Jefferson's enchanting words. The writer rightly points out the significance of the Declaration of Independence in that it starts afresh a new political ecological environment (p. 44), which has never been experienced by human beings. The sublime declaration that every one is created equal and born with right to pursue their happiness placed the Americans' action for independence on a very lofty foothold, which lays the foundation of the true modern constitutionalism because the government derives its power from people and its sole purpose of existence is to guarantee the people' rights to purse happiness.

After the war of the independence, the founding fathers, having seen the feebleness of the Confederation, contrived an ingenious and delicate arrangement of the political mechanism of the federalism based on the compromises. The author claims that the process of making the constitution is that of negotiations between interest groups (p. 103). It is absolutely necessary to reach compromises in order to make up a union and the constitution itself forms a mechanism and platform for different interest groups to gain and exchange interests based on the bargaining negotiation although such negotiations and compromises may be implemented at the expense of some openly declared principles. While admitting its ingenious contrivances and necessary compromises, the author clearly reveals that not everything can be traded off because this mechanism has a bottom line that cannot offer an unlimited tolerance to the intolerable and insatiable challenge to its supremacy. When the challenge becomes irreconcilable, an old balance is bound to be replaced with a new one.

From the ratification of the constitution to the Civil War, the newly-born constitution has proved its vigor in American life and collected its first bunch of achievements resulting from a series of principled compromises through negotiations between different interest groups. The rise of power in the Congress is the main theme of the development of the constitution in this period. On behalf of different interest groups, Hamilton and Jefferson are opposed with each other in the explanation of the powers of the federal government. According to Hamilton,

the federal government possesses implied and resultant powers only if they serve the purpose which is constitutional. Clearly the federal power is expanded a great deal during this period especially in the legislative branch. Accompanied with the power rise of Congress, the judicial review comes into existence after Judge Marshal makes full use of the cases of Marbury v. Madison and McCulloch v. Maryland and some other minor cases. The author sees through the surface of legal disputes and precisely points out that Judge Marshal cleverly transfers all those disputes around the scope and demarcation of the federal power into issues involving the rights of the citizens. Once any legal suit is related to the citizen rights, which is hard to define due to its transcendental nature, it becomes the realm of the judicial review (p. 137). Thanks to judge Marshal's righteous but clever efforts, the true balance of the separation of the powers is acknowledged and established.

This period also witnessed the power increase of the executive branch. It is driven by human nature and urgent needs of the young nation that all presidents, from Washington to Lincoln, push forward the frontiers of the executive power with varying degrees. On the whole, the power rise of the federal government will inevitably undermine the state power, which is no longer regarded as the source of the federal power according to the founding fathers. The waning of the state power is aggravated by a morality and political issue of slavery, which topples over the dual federalism and unavoidably led to the Civil War. The revelation of the war is that not everything can be exchanged through compromises and negotiation is not a panacea to cure all constitutional illnesses. The author sums up two significant contributions of the Civil War: (1) the morality issue of slavery is sorted out and (2) a long-term dispute involving the federal power and state power is clarified (p. 209). The lessons drawn from this period of constitutional development is that on most of the occasions the compromises work but the bottom line is that the supremacy and republican form of the government is definitely unchallengeable.

From the reconstruction to the end of the Second World War comes the peak period up to now to sort out constitutional issues by means of compromises and negotiations. The fact that this turmoil era is pacified and tamed within the framework of the constitution proves the usefulness of the principled compromises. Throughout this period the fundamental principles of supremacy and federal power do not meet with stiff resistance and serious challenges. In this circumstance, the elasticity and flexibility of the true meaning of the constitution has a chance to present itself as a means to deal with the appeals from all different interest groups. Take the reconstruction for example. Even though President Andrew Johnson relied on the old dual federalism to resist the Civil Rights bills, Congress, while seizing the leadership of the reconstruction, which culminates in the passing of the 14th Amendment (the author comments that it foretells the Federal intervention into the traditional state domain a few decades later. p. 229), stops short of

impeaching President Andrew Johnson. It can be understood as a sign of the political rules that keeping players on the ground is to the interests of all.

It is in this period that the scope of interest groups is extended far and wide to the lower-middle and lower social strata. They start to organize themselves into political forces. The most outstanding characteristic of this period is that USA began to move from an agricultural society to an industrial one. The economic growth of the country sparked off more constitutional issues than ever before. The case in point is that of a series of anti-trust laws. With the advent of the trade unions of all different shapes and sizes, a social momentum gathered force. The issue confronting the federal government was to shun away from intervention by holding the gold principle of laissez faire capitalism or respond to the appeal from the relevant interest groups by taking actions. The intrinsic logic of the constitution has forced the government to get more and more involved in labor disputes and show more and more inclination to the economically and politically weaker interest groups. From the late 1890s to the breakout of the First World War, the Progressive Movement took place. From the perspective of the constitution, it was a chance for all to practice self-improvement through negotiation.

The dynamism and active intervention of the constitutional practice during this period was sharply in contrast with the previous non-interference practice in the social-economic area and consequently the federal power played a more and more important role in building up the society of general welfare. This resulted in the passing and enforcement of a series of laws to care for the weaker interest groups as well as those well-known anti-trust laws. It is worth noticing that state power, after being rounded to the corner during and after the Civil War, began to revive and take quite a number of progressive actions in the state level. The constitutional practice in this period lessened the social strife on the one hand, and reinforced the competition drive on the other. The author comments that two special contributions should be ascribed to the Progressive Movement. One is that the principle of general welfare and the principle of justice are employed by the progressive movement leaders to provide a social ideology to appeal to all. The other is that the role the government played is changed from a passive or non-interfering one into an active one (p. 310). The platform of negotiation is provided by the constitution for different interest groups to play the game of give and take under the control of the constitution. President Roosevelt with his followers, after the crash of 1929, transforms the laissez faire constitutionalism into a national constitutionalism oriented by the federal government (p. 339). The New Deal itself is the reinforcement of the progressive movement and it sets up a new model for the mobilization of the grassroots masses in the participation in politics (p. 352).

The 20th century witnessed the fact that America has increased from a regional power to the only world superpower as well as the expansion and reshuffling of the constitutional power of the federal government. Domestically, it was the

Civil Rights campaign that occurred in the 1950s and 1960s that proved again that the political rules underlying negotiation are open to change if needed. Even though the Declaration of Emancipation set free the African-American slaves, their citizenship rights remained unrealized until after the Second World War. The Supreme Court, through a series of cases involving the issues of the freedom of speech such as Abrams v. the United States since the early part of the 20th century, paved the way for the federal power to step into the area of Civil Rights, which is traditionally handled by the state government. The fact that USA has become a world power and needs to meet with the challenges from the communist camp has pushed the federal government further in the participation of the Civil Rights movement.

The significance is that the traditionally weaker interest groups such as the African-American people, once united under their leaders with the strategies of non-violent, massive, direct action protests (p. 392), are able to present themselves as a formidable political force that no political party, whether republican or democratic, could afford to ignore. Thus, the grassroots interest groups, by manipulating the bi-party system as well as forcefully interpreting the core values embedded in the constitution such as equality and freedom in addition to the use of political stratagem including compromises and negotiations, successfully found a way into the mainstream of politics. The series of Civil Rights acts and Voting Rights Act of 1965 not only confirm the rights for the African-American people to be free from segregation but also sort out the issues of morality left over by the founding fathers. Once the principle that all men are created equal becomes the supreme value in the constitution, this morality issue sooner or later would need to be sorted out.

The process of the African-American people's emancipation fully reveals the weaknesses and strength of the constitution. Initially, the founding fathers compromised on this issue for the unity of the country. The 19th century saw more compromises and negotiations over this issue but more importantly it also saw the Civil War as a final resort to the uncompromised conflict of interest groups. Once the order is returned with supremacy and the republican form of government firmly maintained, a peaceful evolution ensues as the normal mode of the constitutional progress. The Civil Rights movement, in essence, is still on in USA with the resounding effects of Martin Luther King's speech "I have a dream" on the eardrums of Americans one generation after another.

In the international arena, the American government launched the Human Rights campaign against communism and took up the responsibility as the leader of the Western camp. An unexpected result was that executive powers increased to an unprecedented height in Nixon's "Imperial Presidency (p. 411)." Nevertheless, it ends up in Nixon's humiliating dethroning due to a congressional impeachment. This is a good example of how the American constitution can mend its own

holes. Modern times render visible more and more loopholes in the constitution such as those in the Electoral College system especially in the General Election of year 2000, power struggle among federal government branches, and antipathy or indifference of American citizens to politics, etc. However, these loopholes are far from undermining the major principles of the constitution. Once the pillars of the mansion are in place, the mechanism of the compromises and negotiations will function to mend the holes.

The book is very impressive by the author's possession and clarification of the source materials. Throughout the book, the author shows a remarkably good command of knowledge. His description of cases is superbly clear. What makes the book valuable is his theme of the "principled compromises" and "give-and-take on negotiations." Charles A. Beard (1874–1948) explored the issue from a similar angle but he put more stress on conflict than negotiation. His subtle insinuation (in his influential book "Economic Interpretation of the American Constitution") that there is no such thing as "Supremacy" but an agreed share of spoils between interest groups is quite misleading, considering the historical background of China decades ago. Professor Wang Xi rightly discovers that the internal force of the constitution lies in its abstract ideas rather than technological wordings, whose loopholes are still being mended. However, the fundamental principles are well in place and can never be abandoned. Only by understanding such basis, can we see the true meaning of the compromises and negotiations. The book provides a panoramic view of the constitutional development to convincingly salient his argument. If there allows some scope for suggestions, I would like to see the author, with his expertise, explore more into the transcendental background of supremacy, which, I believe, is an area worthy of more profound study.

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