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Introduction

The 20th-century China has been basically engaged in two undertakings: revolutionization and modernization. On the one hand, revolution in China was due to absolute necessity because there were no other alternatives open to China; on the other hand, revolution does not necessarily boost development, nor can it supersede modernization. From the midway and the latter half of the 1950's through the late 1970's, for instance, China, acting on the belief that revolution could replace modernization, launched successive political drives, with the hope to promote development and bring about modernization, which eventually wound up with boomerang results. Not until the very end of the 1970's was China on the right path.

As we know, China's revolution has proceeded modeled after the former Soviet Union's pattern. Rigid and stiff, the system under the pattern can not cater to the demands of modernization today, and moreover, it is increasingly in severe conflict with China's modernization programs. China is now confronted with a myriad of problems arising from its systems, such as the relationships between Party and government, between Party and law, between government and enterprises, between government and jurisdiction as well as constitutionalism, democracy and law-governing. To be sure, reform in political system should be incorporated into the whole reform and opening to the outside programs which were initiated in the early 1980's. But in reality, the political system reform has progressed far more slowly than the economic modernization pace, a phenomenon which is pervasive in Southeast Asian countries. China, however, has been held up too

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long a time and the hope for her to take on a new face as soon as possible is widely cherished. To that end, some intellectuals advocate, appealing again to revolution, to transform the current system; whereas great many Chinese intellectuals, having pondered soberly, favor a reformist way, namely, reform within the existing system since revolution would entail too high a price and China can no longer afford any drastic upheavals.

Reformism, known as “Wei Xin” (維新) in classical Chinese, is time-honored and rich in tradition, notably the cultural resources of Reformism as found in Confucianism were abundant. However, ever since the failure of the Reformist Movement of 1898, which was headed by Kang Youwei and Liang Qichao, Reformism was labeled as “backward” and “reactionary”. Thus Reformism became something that most intellectuals in those days were shy of. No wonder it was subjected to repeated repudiations and criticism.

What has happened in the past during the 20th-century has awakened the Chinese to the necessity of reappraising the value of Reformism and of trying to discover the wisdom and art contained. Such an awareness may explain in part why in China today the study of Kang Youwei and Liang Qichao has been increasingly appealing.

My interest, as well as my field of study, has been centering around the legal thoughts and legal culture of Confucianism. My studies, naturally, cover research fellows on Confucianism of various dynasties, Liang and Kang included. I have always made a point of devoting some attention to Liang's works on politics and law, as well as the research findings in the similar fields made by my contemporaries. In 1978, I was made responsible for working on one chapter devoted to Kang and Liang in a textbook entitled *The History of Chinese Legal Thought*. From 1992 onward, the post-graduates majoring in the history of Chinese legal thoughts (I am an adviser for the field) in Southwest China University of Political Science and Law began to develop great interest in modern Chinese legal culture. Thereupon, they had their theses center around the period between the Reformist Movement of 1898 and the Westernization Movement of the late Qing Dynasty. We joined hands to explore this area, and our effort was amply rewarded.

I was able to discover, as early as in 1980, that Liang was a pioneer in introducing from the West (by way of Japan) such concepts as “law-governing” and “man-governing” into China. Based on these concepts, he reappraised the scholars engaged in the polemics between the Confucian school and the Legalist school during the Pre-Qin Period (around

475-221 B.C.). I pointed out in my works and essays that although such an approach as employed by Liang had dominated China's juristical circle for decades, yet it was, in essence, of false analogy (See Yu Ronggen: 'Chapter two', *General Survey of Legal Thoughts in Confucianism*. Guangxi People's Publishing House, 1992). A further study of Liang, however, led me to realize that the point was not so simple as what it seemed to demonstrate: I found that Liang's approach was built on the juristical theories which he evolved and which underwent a process of development. It is mainly this awareness that motivated me to write this essay.

On the afternoon of November 17, 1995, I presented the preliminary draft of this essay on the "Study of Liang Qichao Program" hosted by Professor Hazama Naoki (狭間直樹) from the Humanities Institute, Kyoto University. Inspired and enlightened by this program, I developed the preliminary draft into the current revision. Works on Liang are by no means few both at home and abroad; but works specially devoted to Liang's principles of law-governing seem to be inadequate. In this sense, this essay may prove to be of some value.

I would like to acknowledge my indebtedness to the Graduate School of International Cooperation Studies Kobe University, for offering me the valuable opportunity and excellent research facilities. Special thanks are also due to Mr. Hazama Naoki (狭間直樹) and Mr. Tsuchiya Hideo (土屋英雄) for their help and encouragement.

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Starting from the end of the last century onward, some progressive Chinese no longer confined themselves to the Western science and technology; they began to turn their eyes to the political systems in the West and their attentions were engaged by such concepts as bourgeois constitutionalism, parliament, responsible government, democracy and, of course, law-governing. In his book "Biography of Guanzi", Liang, in describing the doctrines prevalent in China on the approaches to enrich China and make it powerful, observed:

In today's world, there are four concepts which are essential to governing a country (Actually, there are five), viz., national ethos; spirit of law-governing; local system; economic competition and imperialism. The emergence and the subsequent prevalence of these concepts occurred over a span of only 200-300 years. The presence

of these led Europe and America to world powers; the absence of these reduced China to a world weaker.¹

The progressive Chinese concluded with certainty that the salvation of China had no other alternatives-except one: the doctrine of law-governing. "As of now, one country has emerged after another and the situation is changing drastically. Under such circumstances, if a country can not be governed in good order, then it will be by no means possible for its people to unite as a whole to resist the aggression coming from outside. For this sake, the doctrine of law-governing is one and the only way to salvage the Chinese."²

Liang was the earliest advocate and disseminator of the doctrine of law-governing in China. As one of the leaders of the Reformist Movement, Liang was hailed as "an eminent scholar in the academic circle" early this century and stood out as an ideological teacher of a whole era. No wonder that his outlook on law-governing had exerted a powerful influence on China's public opinion for a time and on the academic circle enduringly.

The idea that Liang was "changeable" in his thoughts is widely shared. True, an investigation in his law theories seems to justify such an idea. However, when we look more closely we will find that the inconsistency in his outlook on law-governing is not negative by nature; on the contrary, it suggests a positive change in his legal philosophy. The truth is what he had advocated became more and more rational and conformed more closely with the reality in China. The whole process of such a change, to put it straight, is represented by the transition from the Doctrine of Chinese Origin to the Doctrine of the synthesis of the Chinese and Western Civilizations. The transition shows that Liang had been making unremitting effort to transform creatively the Chinese traditional legal culture by introducing and spreading the modern legal values in the West.

The Definition of Law-Governing

Prior to exploring further the changes in Liang's outlook on law-governing, it is necessary to know what he meant by law-governing.

The concept of law-governing is difficult to define clearly. Liang did not offer us a

1. Liang Qichao, "Biography of Guanzi," in *Yin Bingshi Complete Works*, Specialized Edition. Vol.8, Chapter 8, p.1.

2., "History of China's Juristical Development," *Yin Bingshi Complete Works*, Collected Essays, Vol.5, Chapter 15, p.43.

clear definition, either. However, in his treatises, he did give some insights into the interpretation of the term.

Liang was quite aware that the operation of law-governing must be based on constitution, which was incompatible with the notions that "constitution lies in a monarch's head," and "His will is law." In criticizing the Legalist school's idea that "the making or abrogating of a law is at the disposal of the monarch," Liang argued: "To make the doctrine of law-governing valid and justifiable, at least the so-called constitutionalism is needed as a back-up."³

Liang pointed out definitely that the enforcement of law could not be ensured unless the people had the legislative power. "Legislation," he asserted, "embodies the wills of a state. "Since the state used to be considered a monarch's personal property," ... thus his own wills symbolized those of the state ..." "The legislative power was exclusively held by the monarch." "Today, with the political climate relatively favorable, we are in a position to know that a state is the public property." Thus the legislative power should return to the people as a matter of course.⁴ He believed that people should enjoy the legislative rights squared with the major trend toward political civilization in the world. This trend brooked no reversal, "... so the enlightened societies today are all characterized by the people enjoying the legislative power."⁵ Quoting from the British Benthamism, Liang claimed that only when the overwhelming majority of the people were granted the legislative power, could the laws ensure them the greatest possible happiness. So, what Liang meant by law-governing is a modern one that is connected with democracy and civil rights.

Liang also made a point that China should model after the "law-governing countries" in the West by having the three powers – the legislative, the executive, and the judicial – separated from each other."⁶ He expressed his admiration for the theory of separation of powers advocated by Montes Quieu and said it was "the essence of constitutionalism."⁷ He argued in particular that not only should the legislative and judicial powers check and supplement each other," but also the legislative power should work independently of

3., *History of Political Thoughts of Pre-Qin Period*, p.254.

4., "On Legislative Power," *Yin Bingshi Complete Works*, Collected Essays, Vol.9, p.106.

5. *ibid.*, p.106.

6. *ibid.*, p.101.

7. *ibid.*, p.104.

the executive power. For this sake, according to Liang, a ministry of legislation should be established. Full of hope, he predicted, "provided that the legislative power is definitely assigned and that the laws made are unfailing, then, never will the executive officials be in a position to do harm to the nation and its people."⁸ That the legislative power and executive power "operate independently is, indeed, the essence of administrating a country."⁹

The separation of powers is the crux of the modern Bourgeois theories of law. In the light of this theory, the legislative, the executive and the justice function to check and balance each other. The executive is empowered by and works on basis of law. The executive officials are not to engage themselves in anything outside the province of legal provisions; people are equal before the law and the court exercises the right of independent trial which permits no interference on the part of executive bodies or officials. Such a system is also what Liang had meant by law-governing.

Liang appealed to the Bourgeois concepts of natural right and the doctrine of freedom in contract to expound law-governing. He disputed the fallacy that the Chinese began to enjoy freedom a long time ago and that the benevolent government in ancient China, in essence, was a democratic government in which the people's liberties were guaranteed. He argued, "The policy of benevolent government held by ancient Chinese sages differs considerably in spirit from the principle of liberty advocated by modern Western intellectuals although they are similar in form ... "¹⁰ for "the practice of benevolent government can not be isolated from the appeasing and ruling of the people, which offers the ruler no limits of power." In fact, the essence of the benevolent government was "those who govern have the power and those who are governed do not."¹¹ The statement nowadays that "liberty should be valued and the extent of authority should be set" denotes that "the government and the people stand on the equal footing, and then through bilateral consultation and agreement, they demarcate the limit of authority, rather than the government determines the rights that people should enjoy."¹² In so doing, a clear line is drawn between the law-governing of civil rights and the dictatorship of the benevolent

8. *ibid.*, p.105.

9. *ibid.*

10., "The Extent of Power Between Government and the People," *Yin Bingshi Complete Works*, Collected Essays, Vol.4, Chapter 10, p.5.

11. *ibid.*

12. *ibid.*

government. Liang pointed out that the exercise of law-governing aimed to “guarantee the people’s legitimate rights of participating in government and political affairs, freedom in speech, social gathering, publication, transference and religion.”¹³ So it would be impossible for the government to grab these rights at will.

In conclusion, it is safe to say that, modeled after the mode of the Bourgeois law-governing countries in the West, Liang’s law-governing is touched with modern significance. In introducing and disseminating his law theories, he attacked unrelentingly the autocratic monarchy of Qing Dynasty, which is also the manifestation of his patriotism and aspiration for national independence, liberty and wealth, as well as of his democratic consciousness for civil rights and constitutionalism. All in all, his law theories, considering the time he was in, are progressive and advanced.

The Doctrine of “Chinese Origin”

During the first ten years of this century, Liang wrote numerous articles on the Western Bourgeois law-governing theories. Running through all these articles was one easy-to-see reasoning logic: he tried to identify the modern practice of law-governing with that of Legalism of ancient China, arguing that the spirit of law-governing was of Chinese origin.

In April, 1906, No.77 and No.78 of *Xin Min*, a periodical early this century, serialized Liang’s treatise “History of China’s Juristical Development”, in which he said that the doctrine of law-governing “emerged in the midway of Spring and Autumn Period and saw its full bloom in the Warring States Period (475-221 B.C.)”¹⁴ and asserted that both the jurisprudence based on the Doctrine “was quite similar” to the law theory of the 17th century in Europe.¹⁵

Also taking the law-governing as a criterion of value, Liang made comments on the various policies held by Confucian, Mohist, Taoist and Legalist schools, attempting to pave way for the exercise of the Doctrine of law-governing. In Liang’s opinion, on the ideological arena of the Spring and Autumn period, there were four schools of thoughts that existed in relation to the Doctrine of law-governing, viz. the Taoist gospel of Laissez-

13., “On legislative Power”, p.106.

14., “History of China’s Juristical Development,” Vol.5, Chapter 15, p.90.

15. *ibid.*, p.12.

faire; the Confucian gospel of man-governing and rule by rites; and gospel of rule by power held by Shen Daoyi school". As none of these four gospels was effective enough to curb the ill tendencies, naturally the doctrine of law-governing emerged."¹⁶

Liang focused much of his mind to discuss the differences among the gospel of rule by rites, gospel of man-governing and doctrine of law-governing. In defining the gospel of man-governing Liang said, "it is such that the great people can bring me all the happiness that I desire and can help me from all my sufferings."¹⁷ That which upheld such viewpoints was the gospel of man-governing. The Confucian school, according to Liang, was characterized by upholding man-governing, but tinged with the tendency to incorporate law-governing as a modifier."¹⁸ As to the Legalist school, it rejected the gospel of man-governing in favor of only the doctrine of law-governing."¹⁹ In quoting the argument from "Censure on the Power", a treatise by Han Feizi that "when emperors, who have the actual power, observed the laws, the social stability would be ensured; otherwise the society would be in chaos." Liang was overwhelmed with admiration, exclaiming, "This statement is the powerful to repudiate the gospel of man-governing."²⁰

Liang pointed out that beginning from the Classical Three Dynasties (Xia Dynasty, Shang Dynasty and Zhou Dynasty), the gospel of rule by rites had been upheld in China, and the Confucian school was an inheritor of this gospel in that "it had the rites as the only guideline to govern a country and the world."²¹ Confucianism didn't reject entirely the doctrine of law-governing: "whereas rule by rites was highlighted, law-governing was treated as an auxiliary."²² In Liang's view, the most significant difference between law-governing and rule by rites consisted in that "the Confucian school was inclined to enlarge the scope of application of laws (viz., the rites) which, in the past, exclusively for aristocrats to cover the populace while the Legalist school intended to go in an opposite direction."²³ From the viewpoint of the Legalist school, the weakness of the gospel of rule by rites was that "its intervention was not sufficient enough,"²⁴ and could not adapt itself

16. *ibid.*, p.69.

17. *ibid.*, p.72.

18. *ibid.*

19. *ibid.*, p.73.

20. *ibid.*, p.74.

21. *ibid.*, p.81.

22. *ibid.*, p.82.

23. *ibid.*, p.83.

24. *ibid.*, p.84.

to the drastic change of the society, making it natural for the doctrine of law-governing to rise. As Liang observed, "The Doctrine of law-governing should rise to fight against the old doctrine."²⁵ On the other hand, as the Chinese had been predominant with ancient ideas, so the doctrine of law-governing eventually gave way to the gospel of rule by rites after the Qin Dynasty. (221-206 B.C.)²⁶

To Liang's mind, the present-day world was pervasive with nationalism, and as to the nationalism in our country, "it was started by the Legalist school"²⁷. The Doctrine of Law-governing held by the Legalist school was one that was based on nationalism, and even in the modern ages, it had indelible value. That was the purpose for Liang to write "History of China's Juristical Development".

This treatise, calling on people to rise and fight for the sake of the doctrine of law-governing, has great value in practice. However, the value is even more obvious in the academic history.

In discussing the Confucian school and the Legalist school, Liang's predecessors would tend to use two concepts: benevolent and despotic rules to differentiate the two schools, and they would play up Confucianism and play down Legalism. To some degree, "this practice had become something that defied any criticism and question. Liang borrowed from the West such concepts as "man-governing" and "law-governing", based on which, he developed some new terms, like "rule by power" and "rule by rites". Liang employed the Doctrine of Law-governing to reappraise the polemic between the Confucian school and the Legalist school during the Pre-Qin Dynasty, thus setting the entire former evaluations and criteria upside down. Therefore, that the Confucian school advocated man-governing and rule by rites while the Legalist school upheld law-governing, and that the polemic between the two schools was best represented by these differing doctrines had become, so to speak, a keynote underlying the treatises relating to history of Chinese ideology and law. This keynote, started early this century and enduring into the 1980's, had exerted far-reaching influence.²⁸ In this sense, Liang offered a new approach and new method to study the academic history of the Pre-Qin Dynasty which was widely adopted

25. *ibid.*, p.42.

26. *ibid.*, p.43.

27. *ibid.*, p.88.

28. In reference to this point, see treatises or essays published in the 1920's and the 30's relating to the history of China's legal system, legal thoughts and Political thoughts.

by his successors.

Nevertheless, on second thoughts, we shall find Liang's approach mentioned above can hardly hold water; that emphasizing the role of sages was branded as man-governing, and that emphasizing authority as law-governing are of little scientific significance, except the rhetorical simplification. In his essay "On the Legislative Power" written in 1902, Liang made a point that law-governing must be based on constitution and connected with civil rights, and that the system of division of powers should be exercised. By comparison, we will find that none of these propositions fits the law-governing principles held by the Legalist school. If the practice that emphasizing law and punishment was branded as law-governing, then it would justify the assumption that every feudal dynasty was a law-governing society. That being so, there would have been no point in distinguishing the concepts of law-governing and man-governing. In fact, even the Doctrine of Law-governing also laid some emphasis on roles of the sages and of morals. Under a law-governing system, generally, a high demand in morals was set on the law-enforcing officials.

The above discussion shows that Liang's argument that the confrontation between the Confucian school and the Legalist school during the Pre-Qin Period is represented by that of man-governing and law-governing is heavy with subjectivity. So this argument is not sound except that it has played some role in publicizing the doctrine of law-governing.

But Liang still clung to following his own drift of thoughts to publicize the doctrine of law-governing.

In his "History of China's Juristical Development", Liang only presented his viewpoint that the Doctrine of Law-governing had existed as early as in the Pre-Qin Period and failed to expound the Doctrine in details. Three years later (1905), Liang's another book "Biography of Guanzi" was published, in which he asserted that he had found the classic of the Doctrine of Law-governing that the earliest and finest in the world as well as in China: "Over the span of thousands of years in the world", he said proudly, "the first person to establish the Doctrine of law-governing which existed as independent and original thought was none other than China's Guanzi."²⁹ Then he tried to match Guanzi's views with the Doctrine of Law-governing as he interpreted.

29., "Biography of Guanzi," Vol.8, p.12.

Liang claimed that Guanzi had a clear and profound understanding of the aim of a state, which is "to promote that which is profitable and abolish that which is evil, and the most effective approach to this aim is by adopting law-governing system."³⁰ Therefore, the ultimate goal of law-governing, according to Guanzi, was to "assign clearly the rights and obligations to the people, so that the order of the state was established."³¹ Liang showed great appreciation of Guanzi's argument that laws and regulations could serve to boost development and curb the evil, and could guarantee fair distribution and check unfair scrambling (see Guanzi: "On Seven Masters and Seven Ministers"). This argument, to Liang's mind, embodied the idea of protecting the people's legitimate rights.

Liang categorized law-governing into the gospel of *laissez-faire* and interventionism. "The gospel of *laissez-faire*, based on democracy," emerged and flowered at the turn of the 19th century; interventionism, "based on nationalism," rose and thrived within the last few decades or so.³² He went on to suggest that "in a country where government by the people is practiced, the gospel of *laissez-faire* can be used. Otherwise, interventionism must be adopted; in a country which is exposed to less competition with the outside world, the gospel of *laissez-faire* can be used. Otherwise, interventionism must be adopted."³³ Then Liang asserted, "The irresistible trend is that interventionism will eventually take absolute predominance over the other doctrines."³⁴ "in China today", he said, "legal order has been upset and everything is at sixes and sevens. People tend to procrastinate and follow out old routines. The whole nation, tainted with the lethargic atmosphere, is on the constant decline."³⁵ Liang attributed this scenario to the negative influence imposed by the gospel of *laissez-faire*. Therefore what could contribute to salvaging China was nothing else but interventionism. Liang stated firmly, "Guanzi's law-governing theory is one and only approach to administer the state."³⁶ Hence, by turning to an roundabout art of debating, Liang identified the Legalist power politics with the Doctrine of Law-governing, hoping to assure people that the salvation of China rested solely on this type of doctrine.

30. *ibid.*, p.14.

31. *ibid.*, p.15.

32. *ibid.*, p.16.

33. *ibid.*, p.17.

34. *ibid.*

35. *ibid.*

36. *ibid.*, p.17.

In fact, the principle of monarchical power held by Guanzi and other Legalists was alien to the Doctrine of law-governing — a fact so obvious that it is hard to ignore. So there was the criticism against Liang which goes, “the law-governing practiced in constitutional nations is directed toward restricting monarchical power, the law-governing held by Guanzi, however, is just in the opposite, which is not in line with the true spirit of law-governing.”³⁷ In response, Liang contended, “That Guanzi advocated enlarging monarchical power is not intended to oppress the people, but to restrict the aristocrats.”³⁸ “The law upheld by Guanzi was unlike what the monarchs had set down to oppress the people; instead, it was set down by the state and it subjected both the monarchs and their people to restriction.”³⁹ Here Liang contradicted himself in that from the first statement we can find that Liang’s mind was tinged with the monarchical power tendency but in the second statement Liang denied the tendency. The contradiction also finds expression in the fact that the first statement leads us to the idea that Guanzi professed that a monarch set down laws so as to restrict aristocrats; the second statement, however, conveys the idea that the state set down laws so as to restrict both the monarch and the people. Here, the reason leading to the self-contradiction is that Liang had to ignore the inconsistency in his viewpoint because he set his mind on proving that Guanzi did not run counter to constitutional spirit. Then Liang jumped to the conclusion that only the law-governing theory maintained by Shang Yang, a Legalist, was not directed against toward restricting monarchical power. Guanzi’s law-governing, which demanded that monarchs had to observe, instead of nullifying laws, was rated as “the genuine representative of Legalist.”⁴⁰ All in all, Liang insisted that Guanzi’s Law-governing theory accorded to constitutionalism.

In a law-governing society, the right of making laws must be granted to the people. Guanzi’s thoughts, in Liang’s view, was in line with this requirement. Then, he quoted from the works entitled “Guanzi” to support his idea, “In the past, monarchs were integrated with their men”, and the purpose of this was to “have the state manage itself and the people administer themselves” (see “Guanzi: Monarch and Ministers”〈I〉) This type of government was hailed by Liang as “the best guideline for the today’s constitutional government”.⁴¹ Using the juridical principles of nationalism as rationale, Liang remarked,

37. *ibid.*, p.20.

38. *ibid.*

39. *ibid.*, p.21.

40. *ibid.*, p.22.

41. *ibid.*, p.25.

"The people's individual wills must be subordinated to those of the state, and in turn, the wills of the state must suit those of the people as a whole. "Therefore, the statement" ... integrated with their men" made by Guanzi virtually had its equivalent in the contemporary Western parliament whose legislation is also based on the conformity to the people's wills. In Liang's opinion, although there was no parliament in China in his time, yet its spirit was innately present in Guanzi's thoughts.⁴²

Besides, Liang was also able to trace from Guanzi the idea that the people enjoyed the "sacred and inviolable" rights to supervise government. So it is safe to say Guanzi was an "advocate of civil rights,"⁴³ on which his law-governing theories were based.

Also, Liang remarked that, "the ultimate purpose of Guanzi's doctrine of law-governing was to secure good laws."⁴⁴ Guanzi once argued, "The monarch is in command of the most important matters. The prime ministers of second important matters while the senior officials bear the responsibility of law-enforcement to control officials (see: "Guanzi: Monarchs and Ministers," <II>). This structure of power, according to Liang, "just fits the parliamentary system found today."⁴⁵ In exploring the purpose of upholding of the four virtues (namely rites, righteousness, integrity and sense of shame) maintained by Guanzi, Liang stated, "Besides aiming to enrich the country and build up the military power, it primarily aims to "turn the people into the populace". So Guanzi's "upholding of the four virtues" could be used not only "to touch the surface of a problem but also to get the root of it."⁴⁶ It is safe to say, as far as Guanzi's this viewpoint is concerned, he had no parallel in the West and was superior over Shang Yang. Liang took Guanzi's doctrine of law-governing as "perfect and leaving no room for regret."⁴⁷

Guanzi was glamorized by Liang to be the classic representative of the Doctrine of Law-governing in the world as well as that of China. In 1904, Liang assailed unrelentingly "The Doctrine of Chinese Origin" when he said, "Almost all learning found in the West today is claimed by some Chinese to have its equivalent in ancient China. This unhealthy tendency is doing injustice to our ancestors on the one hand and feeds self-deception of

42. *ibid.*

43. *ibid.*, p.26.

44. *ibid.*, p.27.

45. *ibid.*, p.29.

46. *ibid.*, p.30.

47. *ibid.*, p.33.

the Chinese people.”⁴⁸ Ironically, however, Liang departed from this position and relapsed into the old one as evidenced in his “History of China’s Juristical Development” (1906) and “Biography of Guanzi” (1909). In these two works, Liang went all out to extol the Legalism and the Doctrine of Law-governing. Liang had once appealed to the Chinese to acknowledge the backwardness of Chinese culture and to introduce the more sophisticated Western culture. But now he resumed the standpoint of the cultural departmental egotism and began to concern himself with defending the Chinese culture, which he now considered to be superior to Western counterpart and which had an abundance of valuable elements necessary for modern civilizations, the Doctrine of law-governing included.

On the other hand, Liang was not a vulgar and an obstinate intellectual in nature; he was aware with a sober mind that Chinese culture had been behind the times and the spirit of law-governing was also gone. China was confronted with the danger of perishing. Liang, right after he criticized “the Doctrine of Chinese Origin” in the works of 1904, he went on to say ... for the learning in the West was present in ancient China, too, why not take it over and have it exploited and improved upon. This approach helps to foster the sense of responsibility of the Chinese people and also to enhance their patriotism.”⁴⁹ Here, Liang took it as his “responsibility” to exploit the values of ancient culture and thought it would arouse people’s patriotism.

Thus, Guanzi’s law principles being exploited and improved upon, the doctrine of law-governing in the modern times, according to Liang, would be no longer an alien doctrine, but of Chinese origin. When we are exercising constitutionalism and upholding civil rights, we are actually taking over our ancestral legacies, rather than disowning them and copying wholly the Western practice. On the other hand, to avert the hazard of perishing, Liang insisted China must exercise the law-governing system which had led the Western countries to world powers. Since law-governing was also present in our culture which was broad and extensive, we had every reason to treasure it. So the love of this country was the equivalent of the love of this culture. From the discussion above, we can see how much thought Liang had given to what he was investigating. And we are also assured that Liang’s theory of “China Origin” is different from what his contemporary

48., “Doctrines of Zi Mozi,” *Yin Bingshi Complete Works*, Specialized Edition, Vol.10, Chapter 37.

49. *ibid.*

diehards had upheld. These diehards, insisting that any one of the governmental practices could find its equivalent in the theories of ancient Chinese thinkers, thought it was by no means necessary to copy the West. Liang's doctrine of "Chinese Origin", on the other hand, advocated that the Western culture be employed to reappraise the Chinese culture so that the values were applicable to modern society. Admittedly, Liang's ways of reasoning at this stage, somewhat awkward and mechanical, were still immature. Some dozen of years later, however, Liang, a great thinker had become mature as shown in his *History of Political Thoughts in Pre-Qin Period*.

The Doctrine of "Synthesis of Chinese and Western Civilizations"

In 1920, Liang wrote "Reflections after European Tour," and in 1922, published one of his representative works entitled *History of Political Thoughts of Pre-Qin Period*. In this book, Liang suggested that "synthesizing" the Chinese and Western civilizations should be the "responsibility" of the people. He said, "Drawing upon the Western civilizations to enrich ours, and let ours complement theirs. In so doing a new civilization can be shaped."⁵⁰ He insisted that "the greatest weakness of us Chinese is lack of organization ability and spirit of law-governing."⁵¹ Therefore, in real practice, "... We should, with western civilization, enrich our civilization in terms of law-governing."⁵² Liang was no longer intoxicated with the idea that law-governing was of Chinese origin; instead, he began to strive for the "synthesis" of Chinese and Western law-governing, which was embodied in his *History of Political Thoughts of Pre-Qin Period*.

In the Preface to this book, he wrote:

"To abolish an old idea, there must be a new one to be instilled into people's minds; otherwise, the whole nation would be permeated with skepticism and nihilism, and the old one would still retain influence enough to hold preponderance. To establish new idea, we could by no means transplant it entirely from other countries. What we should do is to rationally select and naturally transplant what is necessary which is compatible with our nation's legacy of thinking."⁵³

50., "Reflections after European Tour," *Yin Bingshi Complete Works*, Specialized Edition, Vol.23, p.35.

51. *ibid.*, p.28.

52., *History of Political Thoughts of Pre-Qin Period*, Separate Edition, p.11.

53. *ibid.*, p.11.

Objectively speaking, these utterances are quite down to earth. His *History of Political Thoughts of Pre-Qin Period* represents his attempt to introduce the Bourgeois legal system in the modern West into China on the foundation of “rational selection” of Chinese ancient thoughts of law-governing. Therefore, although he mechanically identified the concepts of man-governing and law-governing with Confucianism and Legalism, yet he reviewed these arguments critically, much different from those expressed in his “History of China’s Juristical Development” (1914) and “Biography of Guanzi.” (1917)

In his *History of Political Thoughts of Pre-Qin Period*, Liang termed Taoism as “wu zhi” (doctrine of none-governing), Mohism as “xin tian zhi” (new doctrine of rule by Heaven), Confucianism as “ren zhi” (doctrine of man-governing) or “de zhi” (doctrine of rule by morality), Legalism as “wu zhi” (doctrine of rule by physical materials) or “fa zhi” (doctrine of law-governing), respectively.⁵⁴ Here I would focus on the law theories upheld by the Confucian school and the Legalist school.

The Confucian school maintained that society was linked and cemented by man’s compassion which, so to speak, took his nearest circle of environment to him as the starting point, and radiated in even intervals. So the building of the ethical politics was based on people’s incumbent mutual helps and cooperation which served as a driving force to advance the compassion as much as possible, thus, relative liberty and equality could be realized and within the circle, coordination could automatically work where possible. Moreover, the Confucian school asserted that a good government must be established on the basis of a civilized people whose qualities would not be raised unless they were constantly cultivated materially and spiritually. Therefore, politics and education were equally important, and the economic distribution should receive much attention. This is what Liang had termed “man-governing,” “rule by morality” or “rule by rites”.⁵⁵

Then, he added, “Of course, this political system as held by the Confucian school could work well on the condition of a wise monarch and a prime minister. This is why Liang called it “man-governing”.⁵⁶

In fact, the connotations of these terms have no significant differences from those that he advanced ten years before when Liang termed the Confucian emphasis on wise

54. *ibid.*, p.107-109.

55. *ibid.*, p.107-108.

56. *ibid.*, p.132.

monarchs, on morality and on rites separately as “ren zhi”, “de zhi” and “li zhi”. Here, “ren zhi” (doctrine of man-governing) is different from what is found in the Western juristical history in that the latter, which existed as opposed to law-governing, is characterized by the monarch overriding law.

Now let us look at the definitions he made of law-governing.

With “the materialistic outlook” as the starting point, the Legalist school usually made a point of taking the surroundings into consideration when they were advanced. Meanwhile, they had the belief in the omnipotence of government while rejecting the divine nature of man’s individuality. Their political policies were marked by the advocacy of rigid intervention which, however, was exercised by means of “the materialistic criteria”, independent of the will of the ruler. People enjoyed freedom and equality only in the province of legal provision. This is what Liang had meant by “the doctrine of rule by physical materials” or “the doctrine of law-governing.”⁵⁷

Clearly, his terming Legalism the doctrine of law-governing differs significantly from what he had discussed in his earlier works such as “On Legislative Power”, for, the law-governing of Legalism was one that “bringing things under control and transforming their nature sheerly in accordance with the materialistic criteria, just like the measurement of gauge and ruler.”⁵⁸ Following the same thinking, he defined Legalism as “shu zhi” (doctrine of rule by strategy) because of the importance attached to strategies and the Legalism as “shi zhi” (doctrine of rule by power) because of the emphasis placed on power.⁵⁹

When reading Liang’s *History of Political Thoughts of Pre-Qin Period*, we would have a very superficial understanding if we just concerned ourselves with appreciating how he had defined Confucianism, Legalism and other schools of thought of Pre-Qin Period by using such terms as “man-governing,” “law-governing,” “rule by morality,” “rule by rites,” “rule by power” and “rule by strategy,” and if, by following these terms, we merely glued our eyes to the way he had adopted to clarify politics and law of that period. The pith of

57. *ibid.*, p.108-109.

58. *ibid.*, p.230.

59. *ibid.*, p.233.

this book lies in that he tried to make critical interpretations of various schools of Pre-Qin Period in terms of the Western doctrine of law-governing as he understood, and went all out to advance a sort of doctrine of law-governing which should be “synthetic” product of the West and China.

Liang held that “the idea of right is considered to be the sole element in the Western political thoughts.”⁶⁰ But the Confucian concept of “benevolence” was “absolutely incompatible”⁶¹ with it. Besides, the Confucian school considered the idea of right as “the root of all evils.”⁶² The idea, according to Liang, “had gone to the extreme of ‘infinite expansion’”, which had given rise to “human disaster of rivalry and slaughter.” Accordingly, “some of the European wise people bitterly concluded that the Western civilization is on the verge of doom.”⁶³ In Liang’s view, the Western departmentalism of individual right could not be copied into China indiscriminately, and the Confucian principle that “rule by rites” still had essential value in modern civilizations. After he had repeatedly cited such Confucian ideas as “valuing the people, defining the people’s properties and the boundaries in the nine squares system, and protecting the people to enjoy their support”, he remarked, “What Mencius had meant by ruling is a limited power defined to government. How could the government be hindered, if it passively secured people’s livelihood and actively raise their moral level?”⁶⁴

Liang criticized the Legalist school when he said: “The most obvious defect of the Legalist school is their failure to define the power clearly. They clamorously asserted that the monarch should “make laws for self-government and set down rites to regulate himself. When he strived for personal gains disregarding law, chaos would come. As to the person who makes and enforces the law, it is still the monarch himself.”⁶⁵ These remarks were much to the point. The law of Legalism was not only made by the monarch himself but also used to strengthen his power. Accordingly, law of this kind could not be identical with the modern law-governing which adhered to civil rights and government by the people. Then, Liang switched his criticism to the warlords,⁶⁶ “The Legalist discussion

60. *ibid.*, p.146.

61. *ibid.*, p.147.

62. *ibid.*, p.153.

63. *ibid.*, p.148.

64. *ibid.*, p.154.

65. *ibid.*, p.253.

66. *ibid.*, p.158.

in governing is rather similar to the remarks that the warlords today made to criticize the doctrine of government by the people. To support his view, Liang cited an example: the Legalist school maintained that law-governing should not depend on people's wisdom; similarly, the warlords and bureaucrats today, in their opposition to the government by the people, always regarded people as not civilized enough."⁶⁷ Consequently, with regard to the question of raising people's morality, Liang believed that the Confucian views were superior to the Legalist's.

Law-governing must go together with civil rights. To Liang's mind, "the operation of the Western democratic government" wholly relies on "the principle of the public participation in governing to sustain its value."⁶⁸ Nevertheless, "China's various schools of thought of Pre-Qin Period lacked, without exception, the ideas of civil rights. Whereas the Legalist school valued power and disregarded the people, the Confucian school was just the opposite. As to the Taoist and Mohist schools, neither power or the people were their central preoccupations."⁶⁹ In fact, this analysis is quite justified, for at least, the latter two schools were heavy with monarchical power. However, Liang's conclusion is right to the point: "The theory of civil right can not be found in Chinese ancient schools of thought."⁷⁰ He specially noted that the Confucian idea of valuing the people leads to consolidating the monarchical power and "could not serve as the evidence that the Confucian school adhered to civil rights, because the implication was "the people were regarded as the ruled instead of the ruler."⁷¹ This comment is very pertinent to the point. In Liang's view, therefore, there was all the necessity to develop civil right in China, and the approach to this end was to advance step by step. In other words, officials and gentry should first be intellectually developed before the people were intellectually and morally cultivated, and before civil rights were exercised. This idea was repeatedly expounded in his "On the Modern People". In examining the Confucian policy that it was up to "the gentlemen" to foster "the humble people's moral character," Liang believed that this policy still had a positive value today. "When everyone turns into a gentleman, then the Confucian policy that 'the whole nation participate in governmental affairs' will come true."⁷²

67. *ibid.*

68. *ibid.*

69. *ibid.*, p.307.

70. *ibid.*, p.305.

71. *ibid.*, p.310.

72. *ibid.*, p.312.

However, Liang opposed to hastily exercising this kind of government and civil right when the time was not ripe. He said, "In light of Confucianism, granting political rights to those humble people before their moral character was fostered would wind up with the result similar to asking a layman to butcher a big animal."⁷³ In addition, Liang was overcome with indignation at the warlords' usurpation and abuse of power in the name of civil rights. "Alas", he signed, "for those who have reduced China to chaos in the name of civil rights, don't they resemble to that layman!"⁷⁴ Liang's view that to put civil rights into practice not only depended on the transplant of the Western idea of civil rights, but also on the development of people's intellect⁷⁵ is quite true. The argument, however, that the Confucian school advocated "the whole nation participating in governmental affairs" is nothing but groundless conjecture.

Liang held critical attitude toward the Legalist doctrine of law-governing, accusing it of building politics on "the mechanical outlook on life"⁷⁶ and of the people becoming "the mechanically ruled subjects."⁷⁷ He dubbed the law-governing of this school as "wu zhi" (rule by physical materials). Then he censured this school in two aspects, 1) the Legalist school did not have the principle of setting up a supervising body. Hence the monarch would be in a position to abrogate laws at will. Wise monarchs like Emperor Yao and Emperor Shun were exceptions. "If, however, we did not make any laws until emperors like Yao and Shun came, then the governing would still be of rule by man instead of rule by law."⁷⁸ 2) Even if there were countless laws, there must be areas beyond legal restraint. Thus, within these areas, people could behave at will and officials could abuse power. Either of the cases would lead to abolishing laws. The problem was, more often than not, areas which were free from legal restraint outnumbered those under legal res-

73. *ibid.*

74. *ibid.*

75. In 1988, an international symposium on Reformist Movement was held at Nanhai County, Guangdong Province. On that symposium, some scholars argued that Liang Qichao held opposing stand on the idea of "rashly exercising democracy before the time was ripe." Liang had held that "the promotion of civil rights is premised on the intellectual development of the people and the construction of a new China is on the condition of the enlightenment of the people." This argument was hailed by the scholars as being practical and true to the hard facts of history as well as to social and political principles." For further details, please refer to Shong Dehua & Liu Shengyi: "The Reformist Movement and China's Modernization," in *China's Social Sciences*, No.3, 1989.

76. *History of Political Thoughts of Pre-Qin Period*, Separate Edition, p.164.

77. *ibid.*, p.134.

78. *ibid.*, p.254-255.

traint. As a result, "the number of laws invalid would be disproportionately greater than the number valid. "Therefore, the Legalist assertion that "all different things will be led to one and all standards will be finalized by law" would turn out to be a "mere illusion."⁷⁹ In the process of discussing ancient legal thought, Liang never forgot to direct his criticism toward the then "Republic of China" where necessary. "If law could work free from man's personal influence, then it would be impossible to explain the reason why in China today laws introduced from the West are many, yet China is still in chaos."⁸⁰ He thought the statement made by Xun Zi that "man-governing may work well whereas law-governing can never work well without the participation of a qualified people." was the equivalent of Confucius' idea that "man can develop the Way but not vice versa." "The statement has something true."⁸¹

Comparing Liang's law-governing theories offered in his *History of Political Thoughts in Pre-Qin Period* with what he expounded in "History of China's Juristical Development" and "Biography of Guanzi," we can find there are both similarities and dissimilarities, the former lied in his consistency of upholding the spirit of law-governing while the latter consisted in two aspects.

First, he ceased to play up the Legalist doctrine of law-governing. In his *History of Political Thoughts in Pre-Qin Period*, he went so far as to hold somewhat critical attitude toward this school. On the other hand, his attitude toward the Confucian doctrine of man-governing, in the main, become positive. Basically, he played down the former in favor of the latter as evidenced by the conclusion he made on comparing the two schools:

"In short, Confucianism is based on such kind of idealistic outlook on life which is living, moving, and vigorous. Naturally its political policies will lead to advocacy of doctrine of benevolence-governing, or, man-governing. Legalism, on the other hand, is based on such kind of materialistic outlook on life which is dead, motionless and mechanical. No wonder that its political policies lead to the advocacy of doctrine of law-governing, or, doctrine of rule by physical materials. I need not bother to say which is better because it is so obvious."⁸²

79. *ibid.*, p.255.

80. *ibid.*, p.139.

81. *ibid.*

82. *ibid.*, p.262.

So the idea shared by some scholars that Liang had persisted in the advocacy of the Legalist law-governing theories can hardly hold water.

Secondly, Liang no longer argued that the modern doctrine of law-governing of the West could also find its equivalent in ancient Chinese schools of thought; nor did he try to identify the Legalist law-governing with what existed in the West. And besides, he ceased to claim that the Legalist school was the initiators of the doctrine of law-governing. He had clearly pointed out that the Legalist law-governing ran counter to constitutionalism. As this school valued monarchical power, it objected to rule by the people and civil rights. So it is similar in form with, but actually quite different in essence from the modern Western law-governing.

The two aspects above also symbolized Liang's effort to excel his contemporaries. And the progress that he made in these two aspects can boil down to the change in his outlook on culture as seen in his advance from the doctrine of "Chinese Origin" to "the doctrine of synthesis of Chinese and Western civilizations."

Traditional and Modern

For Liang, either doctrine of "Chinese Origin" or "Synthesis of China and West" was his approach to reconcile the conflicting relationship between traditional and modern ages.

In 1896, two years before the Reformist Movement, Liang finished his well-known essay entitled "Postscript to Booklists on Western Learning" in which he presented his views on the relationship between the Western learning and Chinese learning. "The Chinese learning," he noted, "would lose its 'manifesting form' (Yong) when divorced from the Western learning; the Western learning would lose its 'core' (ben) when isolated from the Chinese learning."⁸³ The essence of this statement, to put it briefly, is the Chinese learning served as the end while the Western learning as the means. Here the Western learning covered not only science and technology but also institutions such as constitutionalism, parliament, and of course, law-governing.

Preoccupied with the idea that the Chinese learning was the core, Liang claimed that many institutions and values found in the West today also had their equivalents in the

83., "Postscript to Booklist on Western Learning," *Yin Bingshi Complete Works*, Specialized Edition. Vol.1, Chapter 1.

Chinese traditional culture, some were found to be much earlier and more sophisticated than those of the West.⁸⁴ As to the Legalist theory of law-governing that Liang had expounded early this century, it was nothing but a concrete instance of his cultural departmental egoism, which, naturally, found its expressions in the form of "the Chinese Origin".

In a broad sense, the idea that the Chinese learning was the core and the Western learning the manifesting form also incorporates the doctrine of "Synthesis of Chinese and Western Civilizations," but its emphasis was on the Chinese learning to transform the Western learning. More specifically, in dealing with the theory of law-governing, Liang intended to use the Legalist principles to transform the modern Western counterpart into the modern Chinese law-governing. This was his attempt to solve the confrontation between tradition and the modern ages. However, people in those days, including Liang, could not be expected to have a more profound insight into the nature of the confrontation which, they thought, could be solved as long as he could find the doctrine of "Chinese Origin."

On the other hand, Legalism is by no means the mainstream in Chinese tradition. If the Doctrine of law-governing should be treated as the core, then it would run counter against the principle of the Chinese learning being the core, for the Legalist thoughts, including the law-governing theory, could only play the role of manifesting the Chinese learning, whose source is the benevolent government policy held by the Confucianism. Therefore, logically, claiming that the doctrine of law-governing could be traced back to Legalism is not forceful enough to fill in the gap between traditional and modern ages.

What primarily led Liang to abolish the doctrine of "Chinese Origin" was the reality that he faced both at home and abroad.

In China, the failure of Revolution of 1911 was followed by tangled wars among the warlords. Usurpation and abuse of the state power among officials was rampant. Parliament, as well as its members, yielded itself to force. This chaotic situation echoed the theory held by the Legalist school that "the amount of authority is determined by the military force." The cruel reality thus shattered Liang's dream of building a law-governing society through the law-governing theory maintained by the Legalist school. In his

84. *ibid.*, p.127-128.

treatise *History of Political Thoughts in Pre-Qin Period*, Liang began to criticize the Legalist school for its failure to radically reform the Legislative power and also for its opposition to the doctrine of government by the people. His criticism was all directed toward the warlords government of his day. Such shift in his attitude shows that Liang, disappointed at the Legalist doctrine of law-governing, had awakened and became sober-minded.

The world situation was another factor that contributhg to his abolishing the Doctrine of Law-governing. In Liang's view, the First World War not only ruined Europe but also showed that the Western civilization had come to a dead end. On one occasion, some members from the French Socialist Party were introduced by Liang to some fresh ideas held by Chinese thinkers, such as "all within the four seas are brothers," and "poverty is not to be feared, what is to be feared is ill-apportion," (Confucius) "nine square land system," (Mencius) and "universal love" and "Cease Fire". (Mozi) Greatly interested by these ideas, the Frenchmen said, "Why do you keep these precious things all for yourselves and not let us have a share. You really should have!"⁸⁵ These praises urged Liang to synthesize the Western and Chinese culture to make it contribute more to the world civilization. These praises also inspired him to exploit more valuable resources from Confucianism, including resources concerning law-governing.

However, the New Cultural Movement early this century was the most significant factor leading Liang to value Confucianism. To be sure, Liang did not cherish so strong opposing attitude toward modern movements as Gu Hongming did. But New Cultural Movement, which attacked unrelentingly the Chinese tradition, notably Confucianism, had greatly hurt his respect of and confidence in modern culture. The main purpose of May Fourth Movement of 1919 was to abolish the ancient moral values. But Liang harped a discordant tune as shown in his work "On the Modern People." In this treatise, he still adhered to the moral doctrines held by Confucianism, such as "arranging families in an orderly way, cultivating one's moral characters, improving oneself to enjoying the support of the people." Also he believed that traditional moral values could breed new virtues, and in turn, a moral revolution could be accomplished on the basis of synthesizing the Chinese traditional and Western moral values.

Thereupon, he began to focus on Confucianism to find the modern value contained in

85., "Excerpts of Reflections after European Tour," *Yin Bingshi Complete Works*, Specialized Edition, Vol.5, Chapter 23, p.23.

ancient culture. His *History of Political Thoughts of Pre-Qin Period* represented his fresh attempt to synthesize Confucianism and Legalism with the modern Western law-governing with the latter serving as a supplement.

He explained that Heaven was esteemed by the Confucian school to be the sovereign and entitled to choose emperors embodying "the great spirit of human equality."⁸⁶ That what Heaven desired was what the people desired naturally leads to the fact that "the people were the de facto sovereign power holders."⁸⁷ Therefore, "Heaven resembled to the constitutional state in which there is no responsible sovereign. As to the emperors, they played a role similar to what the heads did in the responsible cabinets."⁸⁸ Hence, from Confucianism, Liang traced the equivalents to constitutional monarchy, democracy and cabinet system, and these are precisely the premises and cores of modern law-governing societies in the West.

In the meantime, Liang mentioned the weaknesses of the democratic policies of Confucianism: although the Confucian school respected the people's wills, yet they failed to give full play to the wills. "If the government did something against the people's wills, there would be no corresponding measures available to impose sanctions against it unless the wrongdoing was so serious that nation-wide rebellion occurred."⁸⁹ "This", he went on, "is the greatest weakness in our country's politics and ideology."⁹⁰

By comparison, Liang thought the greatest weakness in the Legalist school was their opposition to government by the people. The laws of this school were made by monarchs, rather than out of the people's wills. The true spirit of Legalism, however, consisted in "taking law as being absolutely divine, brooking no violence on the part of government."⁹¹ "In terms of this point," he admired, "this school held the same spirit of the modern constitutional monarchy."⁹² Liang's praise, however, was not without reservation: he also pointed out that the Legalist school failed to find a way to prevent laws from being subjugated to "the wills of monarchs."⁹³

In his view, the relevant Western doctrine should be introduced to compensate for

86., *History of Political Thoughts of Pre-Qin Period*, p.51.

87. *ibid.*, p.52.

88. *ibid.*

89. *ibid.*, p.53-54.

90. *ibid.*, p.54.

91. *ibid.*, p.250.

92. *ibid.*, p.251.

93. *ibid.*

the weaknesses of the two Chinese schools.

Liang had told seriously younger generations not to “belittle Confucius unduly.”⁹⁴ He offered some steps to further promote the Chinese culture.

(1) Everyone should have sincerity in respecting their own culture. (2) The approaches commonly used in the Western academy circles should be employed to study the Chinese culture. (3) The Chinese culture should be synthesized before it is supplemented by the other cultures, then let them yet again synthesize. Thus, a new cultural system could be shaped. (4) Expand the system to make it benefit all the human beings”⁹⁵.

These steps also applied to Liang himself. By following the order of these steps, he evolved his law-governing theories in his *History of Political Thoughts in Pre-Qin Period*; restudy and reinterpret it with western approaches; synthesize Chinese culture and, synthesize Chinese and Western cultures with the latter as supplement.

The structure of the order is the manifestation of Liang’s concern for the Chinese culture. It also demonstrates his conscious and positive response to the cultural shock from the West. The nature of this order is “the Chinese culture is treated as the core and the Western culture as the manifesting form,” or to put it simply, the Chinese culture is the leading component and Western culture is simply something auxiliary.

The problem is, according to this order, the operation of “the synthesizing” is pre-conditioned. In fact, “the synthesis”, according to Liang, did not occur with equal shares between the West and China; nor were the two cultures intermingled on the same footing. What it actually connoted was “I” synthesized “you”, but not vice versa. In another word, in the process of synthesizing, the Chinese culture, or the Chinese culture reinterpreted with the western approaches, invariably retained a dominant role.

In retrospect, this kind of synthesis put forward by Liang is creative and original. But the problem is in the light of the order he offered, his theory was always based on the premise that the Chinese culture was the core. Therefore, in using the Western

94., “Excerpts of Reflections after European Tour,” *Yin Bingshi Complete Works*, Specialized Edition, Vol.5, Chapter 23, p.37.

95. *ibid.*, p.37.

academic approaches to study Chinese traditions, he was invariably driven by the desire to find in them the equivalents to the Western traditions. Thus the re-exposition was open to false analogy, and the synthesis based on it would end up with the result similar to that of building a tower on drift sand. So developing a new cultural system would be only a fond dream.

However, it should be noted that Liang's law-governing theories do present us with many inspirations.

Just as what Liang had maintained, law-governing is not a term for ornament; nor would it do to completely copy the Western mode of law-governing. Westernization in law-governing is by no means suitable to China. The spirit of the Western law-governing must be subjected to be synthesized with that of Chinese legal culture to form the law-governing mode of Chinese characteristics. Indeed, these ideas are imbued with ever-lasting value. Following these ideas, China's contemporary law-governing system can be built on the conditions as follows:

This system does not necessarily have the actual form of constitutionalism as exercised in Japan or the West; but it must bear the dignity and authority required of constitution.

It is not necessary to model mechanically after the division of powers system of the West, but all legislative, executive and judicial organs must, without exception, be subjected to strict legal control, to multilateral check among them and forceful supervision.

The system of civil servants is not necessarily identical with that of the West. Greater emphasis is expected to be on cultivating such qualities as self-restraint, self-improvement, dedication to work and sacrificing spirit. However, to prevent and crack down on grafts and other corrupt activities, a mechanism should be set up which is as sound as, or even more efficient than, that of the West.

Under this system, the litigation, trial and other juridical systems can not be completely patterned after the Western counterparts. However, such principles deserve strict observance as litigation occurs complying to procedures; the court enjoys the right of independent trial; people should act in accordance with law and everyone is equal before the law.

Finally, under this system, greater emphasis is expected to go to the value of families, the harmony in a community, the stability and development of the collective. Also

under this system, in dealing with civil disputes, mediation may outweigh juridical settlement. The citizens, however, like those in other law-governing countries, should have keen consciousness of law and of citizenship, and the awareness of individual right.

....

It must be noted that, it will take quite a long time before this legal system is actually established in China. The establishment of it rests on comprehensive development of legislation, jurisdiction, law-enforcement and observance of laws. It also relies on all-around raising of the whole nation in their general qualities and the establishment of law-governing spirit.

It is assumed that the realization of China's modern law-governing may undergo two steps: 1) the exercise of the so-called "law-governing in implement", 1) the exercise of the so-called "law-governing in system".

"The law-governing in implement" can be immediately developed from the Chinese tradition. It is possible because there are numerous insightful ideas in our ancient legal culture which may serve as inspirations, such as "combining rites and law," or "complement of moral cultivation and punishment, with the former playing the leading role." These ideas, after being instilled into modern interpretation, can be made use of to our advantage. In addition, we can draw upon a great deal of successful experience from our neighbor Singapore. Under the system of "law-governing in implement", the legitimate government use the power defined to enhance the education in the people's morality and legal responsibility, and strengthen the cultural and ideological construction. Government is also under the duty to inflict severe punishment and crack-down upon all corrupt officials and criminals for their offenses so as to safeguard the people's rights and to sustain the public order.

Currently, the serious deviation from social norms in China is a handicap to the proper development of China's on-going market economy. Therefore, the protective function of law must be brought into full scope. To ensure this end, priority should be given to the construction of law-making bodies as well as making the legal system more sophisticated. In reference to these measures, it is rewarding for us to promote and develop such Confucian idea as "the operation of government is up to people," "man can advance the Way" (Tao) or "the rectification of oneself is the prerequisite of the rectification of others." The nature of "the law-governing in implement" is, in fact, similar to the princi-

ple that we uphold nowadays which runs “ensure that there are laws to rely on; ensure that laws are observed; ensure that laws are strictly enforced, and ensure that breaches of law are handled.”

“The law-governing in system” is one that is built on the basis of democratic system which is relatively stable and sophisticated. As we know, the market economy will inevitably calls for law-governing. Likewise, the systematization of the market economy will undoubtedly require the systematization of law-governing. To China, the realization of this goal will probably take a long period of time. It must be noted that “the law-governing in system” will be by no means identical to the Western model, but instead, it will certainly be a Chinese model – a model of Chinese characteristics.

The process of the realization of law-governing in China will involve the whole nation's participation. It will be such a process in which the traditional legal culture both continuously exerts influence and is subjected to constant renewal. It will be, therefore, the resultant of cultural forces as it were, with its track according to the principle of diagonal. That is, it will not be solely determined by the Chinese traditional culture, nor will it be anchored in the Western law-governing culture. It will not subject itself to the disposal of law-makers; nor will it yield to the mercy of juridical officials. It will not work directed by the elites' programs, nor will it operate following the public's action on instinct. In fact, this process has started long since; although it is far from over. Liang's law-governing theories, for example, made the debut right in the early stage of this process. So it is exceptionally commendable that Liang was able to present the doctrine of synthesizing the Chinese and Western civilizations to inaugurate the theories relating to China's modern law-governing. It has been proved that his theories are far more practical, and hence, far more valuable than that of those who advocate westernization whenever law-governing is discussed.