

## Article

# The Introduction of Modern Constitutionalism in East Asian Confucian Context: The Case of Vietnam in the Early Twentieth Century

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### ABSTRACT

*Using the cases of Phan Bội Châu and Phan Chu Trinh, this study explores the contributions of the Confucian intellectuals in the introduction of modern constitutionalism in Vietnam. It shows that in the early twentieth century the Confucianists established the foundational steps which helped Vietnam fully access the fundamental values of western modern constitutionalism: popular sovereignty, written constitution, liberal rights, and the separation of powers. The study also demonstrates that the modern Vietnamese Confucianists while actively advocating modern constitutionalism have been loyal to Confucianism and integrated some classical political principles of Confucianism in their constitutionalist visions. In this study, I also raise a more general argument on the possibility of the integration of Confucianism with modern constitutionalism, which may make sense in the context of contemporary East Asia.*

**Keywords:** *Confucianism, Constitutionalism, Vietnamese Constitutional Development, Phan Bội Châu, Phan Chu Trinh*

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## I. INTRODUCTION

Under the leadership of the Indochinese Communist Party (presently Vietnamese Communist Party), the August 1945 Revolution brought perdition upon the long history of Confucian monarchy and the French domination in Vietnam. This was followed by the promulgation of the Constitution of the Democratic Republic of Vietnam in November 1946, the first written constitution in the country as well as in South East Asia.

So much attention has been given to the 1946 Constitution that previous diverse constitutional movements have been overlooked. In their rare international studies of Vietnamese modern constitutional system, such Western legal scholars as Mark Sidel and Penelope Nicholson unanimously regard the charter as the starting point of the constitutional history of the nation and prescient from pre-revolutionary constitutional movements.<sup>1</sup> Domestically, it should be accounted for in Phan Đăng Thanh's recent book which covers quite comprehensively constitutional movements during the colonial period of Vietnam.<sup>2</sup> Unfortunately, the book in fact is a Marxist-Leninist oriented record of relevant dossiers from various Vietnamese resources with serious deficiency of sober citations. It is more like a pastiche than a historic scientific analysis. In short, the contributions of the diverse constitutional movements to the introduction and development of modern constitutionalism in the early twentieth century remains hazy.

It is my contention that the enactment of the 1946 Constitution, albeit under the triumph of the communist puissance, is far from the exclusive denouement of the communist constitutional movement. Instead, the charter can be conceived as the culminant confluence of diverse constitutional campaigns led by various coterie of constitutionalists with different backgrounds. A full analysis of the constitutional movements led by these constitutionalists exceeds this article. For the purpose of the present study, I focus on the foundational generation—the Confucianists and the Confucian constitutional movements.

The study pursues dual purposes. First, it wishes to draw academic attention to the foundational contribution of the modern Confucian intellectuals in the introduction of modern constitutionalism in Vietnam.

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1. See generally MARK SIDEL, *THE CONSTITUTION OF VIETNAM* (2009); Penelope Nicholson, *Vietnamese Legal Institutions in Comparative Perspective: Contemporary Constitutions and Courts Considered*, in *LAW, CAPITALISM AND POWER IN ASIA* 57, 300-29 (Kanishka Jaysuriya ed., 1999). Some Western historians in their expositions of colonial Vietnam have only accounted for the constitutional movements led some colonial collaborators. See R.B. Smith, *Bui Quang Chieu and the Constitutionalist Party in French Cochinchina, 1917-1930*, 3(2) *MODERN ASIAN STUD.* 131, 131-34 (1969); Gerard Sages, "Indigenous Representation is Hostile to All Monopolies": *Phạm Quỳnh and the End of the Alcohol Monopoly in Colonial Vietnam*, 5(1) *J. VIETNAMESE STUD.* 1 (2010).

2. See PHAN ĐĂNG THANH, *TU TƯỞNG LẬP HIẾN VIỆT NAM NỬA ĐẦU THẾ KỶ 20* [VIETNAMESE CONSTITUTIONAL THOUGHTS IN THE FIRST HALF OF THE TWENTIETH CENTURY] (2006).

Second, it is designated to raise a more general argument on the possibility of modern constitutionalism in the Confucian East Asian context.

For the latter investigation, the meaning of constitutionalism should be clarified. In this study, I use Charles Howard McIlwain's definition that "constitutionalism has one essential quality: it is a legal limitation on government. It is the antithesis of arbitrary rule; its opposite is despotic government, the government of will instead of law."<sup>3</sup> The practice of constitutionalism firstly requires public articulation of the legal limits of governmental power. In modern constitutional governments, such an articulation is normally the enactment of a written constitution. In addition, constitutionalism also demands the practices of structural limits and normative limits.<sup>4</sup> In modern constitutionalist systems, structural limits normally include the separation of powers, checks and balances, and judicial review, while normative limits are closely related to individual liberty.

I confine the temporal scope to the early twentieth century from 1900s to 1932 when the Confucianists were the most active public intellectuals in the development of modern constitutionalism in Vietnam. Within this article, I also limit the study to the modern Vietnamese Confucianists whose projects are more systematic and most influential. For this reason, I choose the two cases of Phan Bội Châu and Phan Chu Trinh.

During the Vietnamese anti-colonial history in the first quarter of the last century, two Confucianists named Phan Bội Châu and Phan Chu Trinh emerged as the most influential figures. Their revolutionary thoughts together with the anti-colonial movements under their leaderships were the early concerns of some Western historians.<sup>5</sup> Additionally, the commendable efforts at the translation of some Vietnamese scholars and Western scholars have helpfully introduced their major political writings to the English readers.<sup>6</sup> Notwithstanding that, a paucity of attention has been paid to the

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3. CHARLES HOWARD MCILWAIN, CONSTITUTIONALISM: ANCIENT AND MODERN 24 (2005).

4. Graham Walker, *The Idea of Nonliberal Constitutionalism*, in NOMOS XXXIX: ETHNICITY AND GROUP RIGHTS 167 (Ian Shapiro & Will Kymlicka eds., 1997).

5. See William J. Duiker, *Hanoi Scrutinizes the Past: The Marxist Evaluation of Phan Bội Châu and Phan Chu Trinh*, 1(3) SOUTHEAST ASIA INT. Q. 242-54 (1971); WILLIAM J. DUIKER, THE RISE OF NATIONALISM IN VIETNAM 1900-41 (1976); William J. Duiker, *Phan Bội Châu: Asian Revolutionary in a Changing World*, 31(1) J. ASIAN STUD. 77 (1971); DAVID G. MARR, VIETNAMESE ANTICOLONIALISM 1885-1925 (1971); JOSEPH BUTTINGER, VIETNAM: A DRAGON EMBATTLED, VOL. 1: FROM COLONIALISM TO THE VIETMINH 111-58 (1976); ALEXANDER B. WOODSIDE, COMMUNITY AND REVOLUTION IN MODERN VIETNAM 36-42 (1976).

6. See PHAN BỘI CHÂU, REFLECTIONS FROM CAPTIVITY (David G. Marr ed., Christopher Jenkins, Trần Khánh Tuyết & Huỳnh Sanh Thông trans., 1978); PHAN BỘI CHÂU, OVERTURNED CHARIOT: THE AUTOBIOGRAPHY OF PHAN BỘI CHÂU (Vinh Sinh & Nicholas Wickenden trans., 1999) [hereinafter OVERTURNED CHARIOT]; PHAN BỘI CHÂU, COLONIALISM EXPERIENCED: VIETNAMESE WRITINGS ON COLONIALISM, 1900-1931 (Trương Bửu Lâm trans., 2000) [hereinafter COLONIALISM EXPERIENCED] (Translations of Phan Bội Châu's *The New Vietnam* and Phan Chu Trinh's *Letter to Governor-General Paul Beau* are included); PHAN CHÂU TRINH, PHAN CHÂU TRINH AND HIS POLITICAL WRITINGS (Vinh Sinh trans. & ed., 2009) [hereinafter PHAN CHÂU TRINH] (providing an

constitutionalist dimensions of their revolutionary odysseys. In the present study, I hope to fill in this gap by investigating their constitutionalist visions.

In the subsequent part, the study introduces the general historical background. It then moves to consider the cases of two Confucian constitutionalists - Phan Bội Châu and Phan Chu Trinh. In each case, I will begin by introducing generally the revolutionary path of the individual, then focus on examining his particular constitutionalist vision, and finally consider the relevance of Confucianism. The study concludes with a summary of the main findings and some reflections on the relations of Confucianism to modern constitutionalism in contemporary East Asia.

## II. HISTORICAL CONTEXT

It would be useful to briefly describe the historical context of the French colonization of Vietnam in which the Confucianists' constitutionalism was developed as a component of their anti-colonialism.

The French first fired at Đà Nẵng in 1858, initiating the invasion of Vietnam. After 25 years of belligerent colonization, the French held complete dominion over Vietnam by 1883, followed by 15 years (1883-1896) of the so-called "pacification" (*bình định*).<sup>7</sup> Under French domination, a system of colonial governmental institutions was established and maintained until the August Revolution in 1945. At the same time, the monarchy of the Nguyễn dynasty at Huế still remained together with its bureaucratic apparatus and its Confucian education and examination system juxtaposed with the colonial schools.<sup>8</sup> However, the traditional institutions only had titular or subservient status.<sup>9</sup>

In the early stages of the French colonization in the late 19<sup>th</sup> century, the national resistance witnessed abortive uprisings.<sup>10</sup> Frustrated by the precursors, the Vietnamese patriotic intellectuals of the early 20<sup>th</sup> century sought for new modern remedies. This new stage dramatically resonated with the overseas historical milieu.

The impact of the *Meiji Restoration* should be mentioned first. The *Meiji Restoration* had triumphed during the period 1868-1898, which radically initiated Japan's economic, social and political metamorphosis

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excellent introduction of Phan Chu Trinh's life and political thoughts and translation of his four critical political writings).

7. See TRẦN VĂN GIÀU, SỰ PHÁT TRIỂN CỦA TƯ TƯỞNG Ở VIỆT NAM, Tập II [The Development of Thoughts in Vietnam, Vol. II] 14 (1973).

8. See Trần Thị Phương Hoa, *Franco-Vietnamese Schools and The Transition from Confucian to a New Kind of Intellectuals in The Colonial Context of Tonkin* (Harvard-Yenching Institute, Working Paper Series 2009).

9. See TRẦN, *supra* note 7, at 20; WOODSIDE, *supra* note 5, at 3.

10. For more elaborations on *Can Vương Movement*, see MARR, *supra* note 5, at 44-76.

from a decentralized feudal kingdom into a powerful modern capitalist state with constitutional government.<sup>11</sup> By that time, the Vietnamese anti-colonialists had just an inkling of the Japanese restoration as they were grappling with the abortive uprisings. It was not until Japan's victory in the Russo-Japanese War (1904-1905) that the twentieth century Vietnamese nationalists were transfixed by the power of the Japanese restoration in maintaining the national autonomy and modernizing the nation.<sup>12</sup>

In conjunction with the *Meiji Restoration*, Chinese revolutionary movements equally served as the external catalysts for the Vietnamese nationalists to move forward to modern revolutionary alternatives. They were particularly inspired by the institutional reform movement known as the Wuxu Reform or the Hundred Days' Reform led by Kang Youwei (Vietnamese: Khang Hữu Vi), the 1911 Republican Revolution led by Sun Zhongshan (Sun Yat-sen; Vietnamese: Tôn Trung Sơn, Tôn Dật Tiên), and the constitutional reform movement under the radical influence of Liang Qichao (Vietnamese: Lương Khải Siêu).<sup>13</sup>

It is because of these revolutionary movements that the Vietnamese nationalists gravitated with great alacrity towards Chinese reformists' writings known as "New Books." The term "New Books" (Japanese: *shin sho*; Chinese: *hsin shu*; Vietnamese: *tân thư*) refers to the literature encompassing western modern knowledge, deviating from traditional teachings including the Confucian teachings, which were introduced into Japan, China and Vietnam during the late nineteenth century to early twentieth century. The wave of "New Books" was distributed in Vietnam via sinuous paths.<sup>14</sup> The wave was initiated in Japan during the *Meiji Restoration* period when radical figures like Fukuzawa translated western books to introduce the western modern knowledge of natural science, technology, philosophy, politics, law, and social sciences to Japan, which contributed significantly to the success of the restoration programs. The Japanese versions were in turn disseminated in China via the writings of such reformists as Kang Youwei and Liang Qichao. For the early modern

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11. For a comprehensive study of Meiji Restoration, see W. G. BEASLEY, *THE MEIJI RESTORATION* (1972). For particular accounts on Meiji constitutionalism, see TAKII KAZUHIRO, *THE MEIJI CONSTITUTION: THE JAPANESE EXPERIENCE OF THE WEST AND THE SHAPING OF THE MODERN STATE* (David Noble trans., 2007).

12. See TRẦN, *supra* note 7, at 25.

13. *Id.* at 27. For Chinese reformists and revolutionary movements, see Wang Juntao, *Confucian Democrats in Chinese History*, in *CONFUCIANISM FOR THE MODERN WORLD* 69, 72-81 (Daniel A. Bell & Hahm Chaibong eds., 2003); TSENG YU-HAO, *MODERN CHINESE LEGAL AND POLITICAL PHILOSOPHY* 39-133 (1930).

14. For a collections of essays indicating the Hanoi's views on the influences of the "New Books" in Vietnam, see *Tân thư và Xã hội Việt Nam cuối Thế kỷ XIX đầu Thế kỷ XX* ("New Books" and Vietnamese Society in the Period of the Late 19th Century to the Early 20th Century) (Đình Xuân Lâm ed., 1997).

Vietnamese nationalists, due to the fact that the exclusive foreign language in which they were competent was Chinese, the sole way they could have access to the “New Books” was indirectly via the Chinese medium. The Chinese “New Books” were initially introduced in spate in Vietnam by the 1990s through the harbors of Hải Phòng, Sài Gòn, and Đà Nẵng which were teeming with Chinese habitants and where some Chinese revolutionary cliques were in exile.<sup>15</sup>

The Chinese “New Books”, in particular the writings of Liang Qichao, served as the stimulus for the early modern Vietnamese nationalists to search for novel paradigms of revolution. The Vietnamese newspaper called *Morning Bell* (*Thần Chung*) published in Saigon on 8 January 1929 verified that Liang Qichao’s writings “have nearly directly aroused our Confucian scholars because they discuss the Chinese story but there are many contents coincident with our pathologies.”<sup>16</sup> After the death of Liang Qichao, the newspaper venerably compared the effect of his *Collected Works of Yinbingshi*<sup>17</sup> on the Vietnamese Confucian scholars as “the proper antidote for a person with a chronic disease.”<sup>18</sup>

Notably, in the early twentieth century, reformist thoughts and the Western democracy were propagandized in the country, which agitated the popular anti-colonial movements, not through the direct conveyance of the Western-style scholars and the French books but through the indirect medium of the Confucian scholars and the Chinese books.<sup>19</sup> The Western-style intellectuals trained in the French schools were inclined to a functionary career in the colonial bureaucracy, which thwarted them from becoming the introducers of western reformist thoughts. As far as the students of the Confucian schools were concerned, they were bifurcated into two groups: the Confucian mandarins and the free Confucianists. The Confucian mandarins stayed in the same line with the western-style intellectuals in that they tended to be the careerists within the existing system rather than the transmitters of novel western knowledge concerning political renovation. In contrast, the free Confucianists were the scholars who refused to participate in the traditional bureaucracy and chose the arduous odyssey to combat for national independence and socio-political modernization and this explains why they were the active propagandists of

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15. See TRẦN, *supra* note 7, at 26.

16. *Id.* at 27-28.

17. THE COLLECTED WORKS OF YINBINGSHI is anthology of Liang Qichao’s writings, firstly published in 1902. The phrase “yinbingshi” literally meaning “ice-drinker’s room” is putatively stemmed from this sentence in Zhuang Tzu’s work: “This every morning I was given my commission and this evening I am drinking iced water.” See THE BOOK OF CHUANG TZU 30 (Martin Palmer & Elizabeth Breuilly trans., 1996).

18. TRẦN, *supra* note 7, at 27.

19. *Id.* at 26.

western reformist theories.

The early constitutional movements in Vietnam were initiated in the above general context. It was the Confucianists rather than the western literati who were the first evangelists and activists for modern constitutionalism in Vietnam. The Meiji constitutionalism coupled with the Chinese constitutional movements served as the practical sources for them to formulate new concepts of republic and parliament. In addition, the “New Books” familiarized them with the philosophical foundations of western liberal constitutionalism detailed in the works of the Enlightenment thinkers, particularly *The Social Contract* of Jean-Jacques Rousseau and *The Spirit of Laws* of Charles-Louis de Secondat Montesquieu, which galvanizes them with novel notions of fundamental law, popular sovereignty, human rights, and the separation of powers. Furthermore, through the hortative “New Books”, the Confucianists have been aware of the modern practices of constitutional governments in the western world, especially American constitutionalism and French constitutionalism. Consequently, constitutionalism became an inextricable part of their revolutionary campaigns since they believed that constitutionalist institutions and values were instrumental to modernization of the nation and could ultimately restore the sovereignty from the invaders. During that time, Phan Bội Châu and Phan Chu Trinh were the most influential Confucian constitutionalists.

### III. THE CONFUCIAN QUEST FOR MODERN CONSTITUTIONALISM

#### A. Phan Bội Châu (1867-1940)

##### 1. *The Revolutionary Path*

Outside Vietnam, the name of Phan Bội Châu may not be well recognized, but within the country he has gained a status comparable to that of Sun Yat-sen in China.<sup>20</sup> Phan Bội Châu was the most influential protagonist of the national liberation movement in the first quarter of the twentieth century Vietnam. Nguyễn Ái Quốc (Hồ Chí Minh) regards him as “the hero, the apostle, and the martyr of independence venerated by twenty million enslaved compatriots.”<sup>21</sup> He was the historic figure for the leadership of the anti-colonial organizations and movement, namely *Restoration Association (Duy Tân Hội)* (1904), *Eastern Exodus Movement (Phong trào Đông Du)* (1905), and *Vietnam Restoration League (Việt Nam*

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20. See PHAN BỘI CHÂU, *Introduction to OVERTURNED CHARIOT*, *supra* note 6, at 1.

21. Nguyễn Ái Quốc, *Những Trò Lố hay là Varenne và Phan Bội Châu [The Jazz or Varenne and Phan Bội Châu]*, in PHAN BỘI CHÂU TRONG DÒNG THỜI ĐẠI [PHAN BỘI CHÂU IN THE STREAM OF TIME] 5 (Chương Thâu ed., 2007).



*Quang phục Hội*) (1912).

Phan Bội Châu is a son of a Confucian family in Nghệ An, the central province of Vietnam. He was instilled with Confucian values through familial education from an early stage. When Phan was five years old, his mother, Nguyễn Thị Nhân recited to him passages from *Classic of Poetry* (Chinese: *Shijing*; Vietnamese: *Thơ Kinh*). It is reported in his autobiography that at this age it took Phan merely three days to memorize verbatim the *Three-Character Classic* (Chinese: *San-tzu-ching*; Vietnamese: *Tam tự Kinh*). He was then taught by his father, a village teacher, other Confucian texts, especially the *Analects*. Phan subsequently spent fifteen years preparing for the Confucian traditional examination and eventually graduated as a valedictorian in the regional exam by 1900. After graduation, he spent five itinerant years inside the country to establish camaraderie with the patriotic Confucian community/society. During this time Phan Bội Châu and other Confucianists founded the *Restoration Association* (Vietnamese: *Quang Phục Hội*) in 1904. One of their main strategies was to seek foreign help to restore sovereignty for Vietnam. In concordance with the program of the *Association*, Phan went to Japan in 1905, initiating the *Eastern Exodus Movement* which allowed approximately 200 Vietnamese people to surreptitiously travel to Japan to study for revolutionary missions. After the movement was disrupted by the Franco-Japan treaty<sup>22</sup> in 1909, Phan moved to Hong Kong and then to Guangdong where he and his comrades dispersed the *Modernization Association* and established the *Vietnam Restoration League* (Vietnamese: *Việt Nam Quang Phục Hội*) in 1912. In 1925, Phan was arrested by French authorities, and tried and condemned to capital punishment. However, due to public demonstration, the punishment was converted to house imprisonment in Hue. Phan spent his last fifteen years here where he took trips on the Hương River to receive his friends and to talk to young admirers. Due to this period, he is remembered as the “*Old Man of Imperial Quay*” (*Ông già Bến Ngự*).<sup>23</sup>

## 2. *The Constitutionalist Project*

As a nationalist, Phan Bội Châu’s ardent preoccupation was the independence of Vietnam. However, it is unlikely that “his program consisted of one point: getting rid of the French.”<sup>24</sup> The fallacy stems from

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22. The treaty reaches to the *modus vivendi* by which the two countries respect each other’s spheres of interests in East Asia. See PHAN BỘI CHAU, *Introduction to OVERTURNED CHARIOT*, *supra* note 6, at 12.

23. For a comprehensive picture of Phan’s biography, *see id.* For particular accounts on the Eastern Exodus Movement, *see* MARR, *supra* note 5, at 120-55; PHAN BỘI CHAU, PHAN BỘI CHAU AND THE DONG-DU MOVEMENT (Vinh Sinh ed., 1988).

24. BUTTINGER, *supra* note 5, at 158.

ignoring the constitutional dimension of his revolutionary peregrination. In fact, Phan's goals were twofold: regaining national autonomy and establishing a constitutional government. With regard to the latter, Phan Bội Chau can be considered the first constitutionalist in the modern history of the Vietnamese constitutional development. Phan's constitutionalism was formulated on the grounds of his traditional Confucian knowledge and modern understanding of western constitutionalism which resulted from the influences of Meiji constitutionalism, Chinese revolutionary movements, the "New Books", and the Chinese reformists like Liang Qichao and Sun Yat-sen with whom he had directly held audience and exchanged modernizing projects.

(a) Absolute Monarchy versus Democracy

In similar vein with the percept that constitutionalist ideas are generated from the apprehension of despotic power, Phan Bội Chau developed his constitutionalist vision by criticizing the despotic monarchy and calling for a constitutional democracy.

It should be noted that when Phan Bội Chau was in Vietnam and at the foundational time of the *Modernization Association* in 1904, his sole mission was to regain national independence. It was not until Phan and the other members of the *Association* were in exile that the plan for a constitutional government for a future Vietnam was formulated, which accrued from the influences of the western works of constitutionalist theory and the experience of foreign governments and politicians. Phan explains in his autobiography:

Ever since my arrival in Japan, I had been studying the origins of revolutions in other countries and the advantages and disadvantages of various political systems. I was fascinated by the theories of Rousseau, Montesquieu, and others. Rousseau's *Social Contract* and Montesquieu's *De l'Esprit des Lois* [*The Spirit of Laws*] I had read for the first time only after I went overseas. Moreover, as a result of my many contacts with Chinese comrades, monarchism had been relegated to the back of my mind.<sup>25</sup>

Consequently, after Phan Bội Chau and his comrades travelled overseas, the political program of the *Modernization Association* was supplemented

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25. PHAN BỘI CHAU, OVERTURNED CHARIOT, *supra* note 6, at 190. Among his "many contacts with Chinese comrades", most notable are the audiences with Liang Qichao and Sun Yat-sen which considerably impact on his modernizing projects. Phan was able to write but not speak and listen in Chinese. Therefore, Phan's conversations with Liang Qichao and Sun Yat-sen were conducted mainly through brush-conversation. See PHAN BỘI CHAU, OVERTURNED CHARIOT, *supra* note 6, at 85-90 (with Liang Qichao), 101-02 (with Sun Yat-sen).

with constitutional contents. The new program was declared in 1905 as follows: “to subjugate the French, to restore Vietnam, and to establish a constitutional monarchism.”<sup>26</sup> Phan publicly enunciated in detail the new platform for the *Modernization Association* in his “*New Vietnam*” (*Tân Việt Nam*) written in 1907.<sup>27</sup> The document is actually a revolutionary manifesto with the central objective of a constitutional monarchism for a future independent Vietnam. It was inchoate with implacable castigations of the colonial tyrannical power and the absolutist monarchism.

Ever since the French came to protect us, Frenchmen hold every level of power; they hold the power of life and death over everyone. The life of thousands of Vietnamese people is not worth that of a French dog; the moral prestige of hundreds of our officials does not prevail over that of a French woman ...

The poison of absolutism coming from those people who have oppressed others for thousands of years spread from China into our country so thoroughly that a single individual surrounded by a few thousand mediocre men were able to treat our people like fish and meat. And yet our people are so naïve and stupid that they do not know how to wrest back their democratic rights, how to preserve their country’s destiny. Day and night, they simply think of how best to provide the ruler and his cohorts with their own blood for beverage and their own flesh for food.<sup>28</sup>

The *New Vietnam* envisages that in the brilliant prospect of the independent Vietnam the protectorate power shall be abrogated and the dogma of monarchial sovereignty shall be replaced by the modern principle of popular sovereignty. Accordingly, the people shall be girded with the supreme power to decide the destiny of the country, the structure of the government, and pass definitive adjudications upon the actions of the power holders through their representatives.<sup>29</sup>

Later, when the Republican Revolution of 1911 led by Sun Yat-sen subjugated the Manchu monarchy in China, Phan Bội Châu and his comrades adjusted their political organization and program. In 1912, the *Restoration Association* was replaced by the *Vietnam Restoration League* with the goals of restoring the autonomy for Vietnam and establishing a

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26. PHAN BỘI CHAU, TOÀN TẬP, Tập 2 [COMPLETE WORKS, VOLUME 2] 112 (1990).

27. The document was written in Chinese character when Phan went to Hong Kong from Japan. The modern Vietnamese language version can be found at *id.* at 250-77. The English translation can be found at PHAN BỘI CHAU, COLONIALISM EXPERIENCED, *supra* note 6, at 105-24. I will follow Trương Bửu Lâm’s translation.

28. PHAN BỘI CHAU, COLONIALISM EXPERIENCED, *supra* note 6, at 107-08.

29. *Id.* at 108.

democratic republic like the new China.<sup>30</sup> Phan explains that previously he was committed to the (limited) monarchy because he wished to “keep faith with the people at home” who still strongly advocated the monarchy, but with the establishment of the Chinese republican government, he believed that the circumstance had changed and was quickly absolved from the monarchical plan.<sup>31</sup> Therefore, Phan Bội Châu and his *Vietnam Restoration League* introduced a new plan for a democratic republic of an independent Vietnam. The *Military Strategies for Vietnam Restoration (Việt Nam Quang phục Quân phương lược)* (1912) declares: “We must eliminate the (traditional) monarchism because it is an egregious polity....Democratic republic is an excellent polity...The power in the nation shall belong to the plenary people and shall be decided by the people. The noisome vestiges of the despotism will be absent.”<sup>32</sup>

(b) Written Constitution

The new government in Phan’s vision would be articulated by a written constitution. This is firstly due to the influence of Meiji constitutionalism. In the “*Ballad to Awaken Countrymen*” (*Đề Tinh Quốc dân Ca*)<sup>33</sup> written in 1906, Phan inflammatorily reminded his people that “the Constitution was created at the beginning of the Meiji. Within thirty years, the morale of the people was powerfully invigorated.”<sup>34</sup> Phan then suggested that his compatriots should follow in Japan’s footsteps to pursue a written constitution.<sup>35</sup>

In addition, the *New Vietnam* implicitly suggests that a constitution will be promulgated in the future of an independent Vietnam. That is why the prosecutor general, the chief of the Judicial Service in Indochina, reported to the governor-general of Indochina on 28 April 1909 that: “It [the *New Vietnam*] deals with laws and regulations to be enacted by the future government of independent Vietnam.... Nothing has been left out of that draft for a new constitution and the chapter which spells out the promises for the future is one of the most elaborate in this document.”<sup>36</sup>

30. See PHAN BỘI CHÂU, *OVERTURNED CHARIOT*, *supra* note 6, at 191.

31. *Id.* at 190.

32. PHAN BỘI CHÂU, *TOÀN TẬP*, Tập 3 [COMPLETE WORKS, VOLUME 3] 135 (1990).

33. The authorship of the ballad is somewhat confused. Different materials note the author as Phan Bội Châu, Nguyễn Thiện Thuật, Tăng Bạt Hổ, and Dương Bá Trạc. However, some coevals of Phan Bội Châu such as Hồ Chí Minh verify Phan’s authorship. Phan himself did not mention on the ballad in his autobiography. However, Chương Thân noted that the ballad appeared in the collections of posthumous manuscripts of Phan Bội Châu that Chương received from Phan’s daughter-in-law (Nguyễn Thị Phúc) in 1961. Originally, the ballad was written in both literary Chinese character (*chữ Hán*) and Vietnamese demotic character (*chữ Nôm*). The modern Vietnamese romanized script (*quốc ngữ*) version appears in CHƯƠNG THÂN, *ĐÔNG KINH NGHĨA THỰC*, TONKIN FREE SCHOOL 159-58 (1982).

34. *Id.* at 162.

35. *Id.* at 167.

36. Cited in PHAN BỘI CHÂU, *COLONIALISM EXPERIENCED*, *supra* note 6, at 123-24.

After his dismal failure, Phan Bội Châu never abandoned his pursuit of a constitution for Vietnam even under home arrest in Hue. In 1926, Phan produced a constitutional draft and sent it to his friend Lê Văn Miến for comments. Lê replied: “In my opinion, it is not necessary to add anything but it should be reduced. It requires an entire abscission. Do not let any words and sentences remain. As the country is lost and the people are the slaves, how can we create a constitution!” Phan subsequently personally destroyed the constitutional draft.<sup>37</sup> However, Phan’s desire for a constitution in Vietnam was unquenchable. In 1932, in answering the interview of the *East and West (Dong Tay) Magazine*, he again stated that “creating a constitution is not only worthy but also necessary. There shall be a constitution. This is a truism.”<sup>38</sup> Phan then sketched his constitution: “I myself have a constitution in mind. My constitution will be the balance of the monarchical constitutions of England and Japan and model the constitutions of America, German, and Russia... It is also necessary to depend on our people’s background to select the appropriate things for perfection.”<sup>39</sup>

(c) Liberal Rights

Phan Bội Châu’s constitutionalism demands the responsibility of the government for human rights defined by him as “the rights of human and the rights to be human.”<sup>40</sup> The *New Vietnam* anticipates that in the new polity “the sense of rights” of the people will be developed. As an echo of western liberalism, the document particularly emphasizes the normative values regarding political liberal rights, including equal and free right to vote, freedom of thought, freedom of press, the rights of petitions and law-suits. Furthermore, the new constitutional government is envisaged to be responsible for social rights, especially, educational right, women’s rights, and gender equality.<sup>41</sup> As an enticing addendum, in a poem entitled “*The Rights*” (*Quyền lợi*), Phan delivered a comprehensive panegyric for constitutional rights, ranging from civil rights to social, economic and cultural rights:

The mouth has the right to talk and the brain has the right to think.  
The feet have the right to move and the hands have the right to push.  
The eyes have the right to see and the ears have the right to listen.  
We have the right to immigrate wherever the territories.

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37. PHAN BỘI CHAU, TOÀN TẬP, Tập 4 [COMPLETE WORKS, VOLUME 4] 71 (1990).

38. *Id.* at 244.

39. *Id.*

40. *Id.* at 261.

41. PHAN BỘI CHAU, COLONIALISM EXPERIENCED, *supra* note 6, at 108-14.

Writing books is our penning discretion.  
 Associating for common works is our assembling right.  
 Workers' helping each other is our accompanying right.  
 On business on land or on ship, we have the trading discretion.  
 Look at the constitutions of the civilizing nations  
 (In which) the people enjoy their axiomatic rights.<sup>42</sup>

(d) Separation of Powers

In order to safeguard the liberal rights, Phan suggests structural limitations of state power. The *New Vietnam* proposes a limited government in which the monarch and his mandarins are constrained by an independent congressional system. The Congress shall be created by popular vote and be responsible for all political matters. Remarkably, Phan suggests a tricameral system in which the congressional body is divided into three chambers namely, the Higher Assembly, the Middle Congress, and the Lower Congress operating with internal counterbalances.<sup>43</sup> The Congress is also conceived as the public forum for checking and balancing the monarchial and administrative authorities:

Whether to preserve or to do away with the monarchy, whether to promote or demote the mandarins: our people will have the ultimate right to make these decisions. The mismanagement done by the ruler or the abuses perpetrated by the mandarins, all behavior that is not conformity with the public good, can be reprimanded or punished by our people in their deliberations in the Congress.<sup>44</sup>

Unquestionably, Phan Bội Châu is a modern constitutionalist. Although Phan received Confucian traditional education, he was genuinely amicable to western modern constitutionalist notions and institutions. Consequently, in his vision, the new government in Vietnam would follow key elements of western modern constitutionalism: popular sovereignty, a written constitution, a bill of rights (normative limits), and separation of powers (structural limits).

(e) Denouement

Phan Bội Châu himself underestimated his influence when he began his autobiography with these words: "My history is entirely a history of failure."<sup>45</sup> In fact, his revolutionary thought and activities in general and his constitutionalism in particular had considerable influences on the

42. PHAN BỘI CHAU, TOÀN TẬP, Tập 5 [COMPLETE WORKS, VOLUME 5] 256 (1990).

43. PHAN BỘI CHAU, COLONIALISM EXPERIENCED, *supra* note 6, at 108.

44. *Id.*

45. PHAN BỘI CHAU, OVERTURNED CHARIOT, *supra* note 6, at 45.

modernization process and constitutional development in the history of the early 20<sup>th</sup> century Vietnam.

The significance of the *Eastern Exodus Movement* should first be noted. Vinh Sinh and Nicholas Wickenden remark that the movement, albeit short-lived, “was the first step toward giving Vietnam full access to modern ideas.”<sup>46</sup> In particular, Phan’s constitutionalism described in the *New Vietnam* was the first effort in bringing Vietnam to quite comprehensive ideas and institutions of modern constitutionalism, such as, popular sovereignty, representative democracy, fundamental rights, and separation of powers. Additionally, his strong commitment to democracy during the time of the *Vietnam Restoration League* “appears as the first effective step toward the abandonment of the traditional form of polity in Vietnam.”<sup>47</sup> To a certain extent, Phan effectively directed the development of Vietnamese modern politics to the constitutional democracy. Finally, the impact of Phan’s literature should be emphasized. As Vinh Sinh and Nicholas Wickenden write:

Phan’s voluminous writings, in particular his passionate poetry, were perfectly attuned to appeal to the feelings and desires of his countrymen then and since, arousing their patriotic sentiments and national pride in times of crisis. Many participants in the Vietnamese resistance movement of the later years cite a few lines of Phan’s poetry that had awakened their enthusiasm in their youth. Phan was far from unconscious of his literary gifts, but their effect was greater than he could know.<sup>48</sup>

Constitutional matters are important contents in his voluminous writings. Phan’s writings helpfully diffused constitutional knowledge to the people. His writings familiarize the people to modern terms and notions like “democracy” (*dân chủ*), “popular rights” (*dân quyền*), and “constitution” (*hiến pháp*) and inspire them to struggle for these values. In conclusion, Phan’s works considerably aroused the constitutional consciousness of the public and motivated the people to combat for a modern constitutional government in Vietnam.

### 3. *Relevance of Confucianism*

Phan Bội Châu, while gravitating to modern constitutionalist values, remained a bona fide Confucianist. After embarking upon a number of

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46. *Id.* at 32.

47. *Id.*

48. *Id.* at 33.

revolutionary activities struggling for national independence and constitutionalist polity, *The Old Man of the Imperial Quay* spent the late stage of his life in quiescence to mediate traditional values. It was during this time that he was still fixated to Confucianism, which led him to publish two renowned lucubrations, namely *Khổng học Đăng* (*The Light of Confucianism*) and *Chu Dịch* (*The Book of Change or I Ching*).<sup>49</sup> A perusal of the works will reveal that the *Old Man* is genuinely a sagacious Confucianist. Importantly, in these two magna opera, Phan Bội Châu affirms Confucianism as the foundational and immortal axiology. Interestingly, in the parallel sentences he composes to mourn himself, Phan states that he will carry with him the Way of Confucius and Mencius to cross the Styx.<sup>50</sup>

What was Confucianism in Phan Bội Châu's mind? Phan was a free Confucian scholar who had departed from the mandarin bureaucracy. Moreover, he had criticized the Confucian educational system designed for the selection of candidates for the officials of the court. Consequently, the Confucianism that he expounded is the tradition of philosophy rather than the politicized ideology of the imperial dynasties.

This can be well illustrated by his *The Light of Confucianism*. Characterizing Confucianism as the "old studies", Phan writes in the forward: "By 'old studies' I mean the Asian genuine philosophy in the ancient time ... The nomenclature 'old studies' is not the instrument to steal the trappings at all."<sup>51</sup> The allusion is that Confucianism is considered as a tradition of philosophy, not as the imperial ideology that was traditionally appropriated for the mandarin positions. Hence, Phan sarcastically writes that it is inadvisable for careerists to read this book.<sup>52</sup> Conceiving Confucianism as a tradition of philosophy, Phan goes further to categorize various schools of Confucianism throughout its history. Accordingly, the teachings of Confucius in the *Analects* are the essence of Confucianism; the teachings of the *Great Learning* and the *Doctrine of Mean* constitute the genuine Confucian school (*đích phái*); Mencian and Xunzian studies are considered the very adjacent Confucian school (*phái rất gần*); meanwhile, the Confucianism from Han dynasty to Qing dynasty is considered as the distant Confucian school (*viễn phái*).<sup>53</sup>

Phan Bội Châu's two Confucian works indicate his belief in the revivification of Confucian values. More importantly, the works show that Phan gives credence to the possible coexistence of Confucianism with

49. See PHAN BỘI CHÂU, CHU DỊCH [THE BOOK OF CHANGE] (1996); PHAN BỘI CHÂU, KHÔNG HỌC ĐĂNG [THE LIGHT OF CONFUCIANISM] (1998).

50. See Lê Sỹ Thắng, *Phan Bội Châu và Nho giáo* [*Phan Bội Châu and Confucianism*] in NHO GIÁO: XUA VÀ NAY [CONFUCIANISM: ANCIENT AND MODERN] 225 (Vũ Khiêu ed., 1991).

51. PHAN, KHÔNG HỌC ĐĂNG [THE LIGHT OF CONFUCIANISM], *supra* note 49, at 13-14.

52. *Id.* at 14.

53. *Id.*



modern values. In the forward of *The Light of Confucianism*, Phan offers a metaphor:

Substantial learning can be compared with constructing a building: old studies are the foundation while new studies are the material; the two can help each other to constitute a gorgeous building. There is never a building without materials but the essential thing is that there is never a building without foundations. I write this book to temper the old studies with the new studies; the two form each other; definitely, they are not contradictory.<sup>54</sup>

The outlook is really effective in his constitutionalism. Phan's constitutionalist project is virtually the *mélange* of Confucianism as "the old studies" and the western liberal constitutionalism as "the new studies." This is evident in Phan's wish to temper the Confucian principle of *minben* (*people as base*) with the western liberal principle of rights. He states: "At the present age, if (the doctrine of) Mencius is absent, the meaning of 'dân quý' (*people as the most important element*) cannot be illuminated; if (the doctrine of) Montesquieu is absent, who can raise the flag of 'dân quyền' (*popular rights*)?"<sup>55</sup> Phan's aspiration in this statement is to marry 'dân quý' and 'dân quyền', which is actually to integrate Confucian *minben* and western liberalism.

Western liberalism, as developed by enlightened thinkers like Montesquieu and Rousseau, focuses on liberal rights of individuals. Inspired by this tradition, western constitutional theorists tend to define constitutionalism as limiting public power to safeguard individual liberal rights.<sup>56</sup> Is threat to individual liberty the sole danger that needs limitations of the governmental power? As pointed out by Craham Walker, "from the perspective of other places and other histories, there may well be other harms to avoid, and other goods to pursue publicly, besides individual freedom."<sup>57</sup>

From the Confucian perspective in East Asia tradition, the objectives to pursue, rather than individual rights, are the material and spiritual needs of people, put forward under the rubric of *minben*. The concept of *minben* which was established in the *Shu Jing*<sup>58</sup> and further developed by

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54. *Id.* at 13.

55. PHAN, *supra* note 37, at 32.

56. See, e.g., Ronald Dworkin, *Constitutionalism and Democracy*, 3 EUR. J. PHIL 1 (1995); LAWRENCE W. BEER, HUMAN RIGHTS CONSTITUTIONALISM IN JAPAN AND ASIA 10 (2009).

57. Walker, *supra* note 4, at 163-64.

58. See JAMES LEGGE, THE CHINESE CLASSICS WITH TRANSLATIONS, CRITICAL AND EXEGETICAL NOTES, PROLEGOMENA, AND COPIOUS INDEXES, VOL. III- THE SHOO KING 158-59, 254-55, 262-63 (1906).

*Confucius*,<sup>59</sup> *Mencius*,<sup>60</sup> and *Xunzi*<sup>61</sup> holds that the people are the foundation of the country and the creation of the government is for the people. In particular, Mencius is an ardent advocator of the *minben* concept with the famous proclamation of “*dân quy*”: “The people are the most important element in a nation; the spirits of the land and grain are the next; the sovereign is the lightest,”<sup>62</sup> which was eulogized in Phan Bội Chau’s aforementioned statement. To practice the *minben* principle, the classical Confucians requires that the government must be responsible to the material and spiritual goods of people.<sup>63</sup>

It seems that Phan Bội Chau is unsatisfied with western liberal constitutionalism’s exclusive calculation of liberal rights and neglect of other public goods. Therefore, Phan incorporated the Confucian *minben* in his distinctive constitutionalist vision.

As a reflection of the *minben* tradition, even though Phan Bội Chau placed significant emphasis on individual rights, he never considered individual rights the sole and ultimate end of the new government; rather, in his project, the constitutional government is the public good of the people in general. His literature is rife with sentiment for “*nhân dân*” (people) instead of “*cá nhân*” (individual).<sup>64</sup> In fact, as an echo of the Confucian *minben* concept, Phan’s constitutionalism was designed to promote the accountability of the government to the people in general rather than solely to the individual rights.

The distinguishing feature of Confucian *minben* is the responsibility of the government in educating the people especially with spiritual values concerning culture and morality. Under the influence of this tradition, the normative values of the new constitutional government in Phan Bội Chau’s plan are not only fundamental rights but also fundamental virtues: the people should not only be entitled to the rights but also be educated with moral and cultural values. To instill these values in the people, Phan Bội Chau outlines the educational function of the government. Phan believes that once the government fulfills its edificatory function, and the people are imbued with patriotism attend to public business, conform to legislations, and pursue the

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59. *Id.* VOL. I- ANALECTS, at 194, 266-67, 269.

60. *Id.* VOL. II- THE WORKS OF MENCIOUS, at 147-48, 487.

61. JOHN KNOBLOCK, XUNZI: A TRANSLATION AND STUDY OF THE COMPLETE WORKS, VOL. III 224 (1994).

62. See LEGGE, *supra* note 60, at 483.

63. See Viren Murthy, *The Democratic Potential of Confucian Minben Thought*, 10(1) ASIAN PHIL. 35 (2000); SOR-HOON TAN, CONFUCIAN DEMOCRACY: A DEWEYAN RECONSTRUCTION 132-36 (2003).

64. See, for example: “Take our hearts to think about the people”; “The people are the people of the country and the country is the country for the people”; “Without the people, nothing is valuable.” TRÀN, *supra* note 7, at 119.

civilized values, criminal law will be trivial.<sup>65</sup> Structurally, in the *New Vietnam* Phan Bội Châu suggests establishing a Reeducation Center (*Viện Cải hóa*) at the capital of the independent Vietnam. This establishment would be presided over by a judge appointed by the Supreme National University and be specifically responsible for the edificatory task.<sup>66</sup> This is a genuine reflection of the Confucianism emphasis on the importance of virtue and the government's duty to educate.

In addition to moral education, Phan also emphasizes the significance of education about the constitution for the success of constitutionalism. Phan demands that the people should be educated by constitutional knowledge. He believes that "people's rights are respected due to the high level of people's intelligence. The republics of France and America are stemmed from people's intelligence. The constitutionalism in Japan, England, and Germany also originated from people's intelligence."<sup>67</sup> This explains the fact that Phan wrote in spate to criticize despotism and disseminate constitutional knowledge. Phan Bội Châu utilized his literary talent trained in the Confucian educational system to propagandize the constitutionalist values to the people.

## B. Phan Chu Trinh (1872-1926)

### 1. *The Revolutionary Path*

Phan Chu Trinh (also spelled as Phan Chau Trinh), the coeval of Phan Bội Châu, was another renowned Confucian patriot, recognised as the stalwart activist for democracy in the early 20<sup>th</sup> century in Vietnam. He is nationally celebrated as the key figure of the *Restoration Movement* (*Phong trào Duy Tân*) and the *Tonkin Free School* (*Đông kinh Nghĩa thực*).

Phan Chu Trinh was born in Quang Nam, a central province of Vietnam. As a military official's son, Phan was enamored with martial arts, spending his childhood on "swords" instead of "words." It was not until after his father's death in 1887 that Phan became a fledgling of the Confucian school with particular interests in the *Analects* and *Mencius*. After passing the first level examination (*cử nhân*) in 1900 and the next level (*phó bảng*) the following year, Phan was assigned as a secretary (*thừa biên*) in the Ministry of Rites in 1903. Disappointed with the corruption of the mandarin bureaucracy and partially due to his gaining access (in 1904) to the "New Books" of Liang Qichao, Phan resigned from his position in 1905 to travel together with his two intimate friends named Trần Quý Cáp and Huỳnh Thúc

65. PHAN BỘI CHAU, COLONIALISM EXPERIENCED, *supra* note 6, at 112.

66. *Id.*

67. PHAN, *supra* note 37, at 60.

Kháng to listen to the *vox populi* as the initiating preparation for later revolutionary activities. In 1906, Phan Chu Trinh arrived in Hong Kong to establish a liaison with Phan Bội Châu and from there the two Phans went to Japan where they exchanged their contentious political ideas.

After returning to Vietnam from Japan, Phan Chu Trinh composed the *Letter to Governor-General Paul Beau* (1907) in which he attributed the abysmal condition in Vietnam to the corrupted mandarin bureaucracy together with the vicarious onus of the French colonial government and appealed for reforms with emphasis on promoting popular rights through the selection of proficient officials, expanding press freedom, reforming the legal codes, abolishing the civil service examinations, expanding the school system, and encouraging industrial and commercial education.<sup>68</sup>

When the demands were disregarded, Phan and his two friends Huỳnh Thúc Kháng and Trần Quý Cáp initiated the *Restoration Movement* to struggle for modernization and liberal rights. The outcome of the movement was beyond the anticipation of the leaders. The movement reached the apogee by the farmers' insurrection in central Vietnam appealing for the reduction of taxes initially and later on liberal rights in general. The colonial authorities aggressively quelled the movement. Many members (including Trần Quý Cáp) were executed, while Phan Chu Trinh and Huỳnh Thúc Kháng were exiled to Poulo Condore Island.<sup>69</sup>

Fortunately, thanks to the French League for Human Rights, Phan Chu Trinh was released in 1910. However, the colonists tried to hold him under home punishment in Mỹ Tho city but later acquiesced to his demand for expatriation to France in 1911. During his 14 year stay in France, he incessantly wrote to demand for the reform of colonial policies in Indochina. He wrote *On Indochinese Politics* (*Đông Dương Chính trị luận*) and the *History of the Insurrection of Central Vietnam* (*Trung Kỳ Dân biến Thi Mạt Kỳ*) to disclose the affliction of the colonized regions, which led to some changes of French colonial policies in Indochina.<sup>70</sup> Additionally, a remarkable event during this time which drew special attention from French politicians and popular opinion was the dissemination of Phan Chu Trinh's *Letter of Seven Clauses* (*Thất Điều Thư*) in July 14, 1922 in which he incriminated seven crimes of the Emperor Khải Định when the Emperor had

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68. The English translation of the letter can be found at PHAN BỘI CHAU, COLONIALISM EXPERIENCED, *supra* note 6, at 125-40.

69. For more details on the *Restoration Movement*, see PHONG TRÀO DUY DÂN VỚI SỰ CHUYỂN BIẾN CỦA VĂN HÓA VIỆT NAM ĐẦU THẾ KỶ XX [RESTORATION MOVEMENT AND THE TRANSITION OF VIETNAMESE CULTURE IN EARLY TWENTIETH CENTURY] (Đỗ Thị Minh Thúy & Nguyễn Hồng Sơn eds., 2010).

70. See NGUYỄN Q. THĂNG, PHAN CHÂU TRINH- CUỘC ĐỜI & TÁC PHẨM [PHAN CHÂU TRINH- THE LIFE AND THE WORKS] 113 (2006).

visited the Marseille Exposition at the invitation of the French government.<sup>71</sup>

Repatriating to Saigon in 1925, Phan continued advocating for democracy in Vietnam. Most notable are his two public lectures entitled “*Morality and Ethics in the Orient and the Occident*” (*Đạo đức và Luân lý Đông Tây*)<sup>72</sup> (hereinafter *Morality and Ethics*) and “*Monarchy and Democracy*” (*Quân trị Chủ nghĩa và Dân trị Chủ nghĩa*).<sup>73</sup> Phan Chu Trinh died in Saigon in March 24 1926 and his funeral was an occasion for the eruption of a national movement of democracy.

## 2. *Constitutionalist Project*

Although Phan Chu Trinh and Phan Bội Châu pursued the same purpose of national independence and constitutional government for Vietnam, they were differentiated by the priorities of political campaigns and revolutionary means. Phan Bội Châu writes on the commonality and the disjunction between him and Phan Chu Trinh: “He and I were pursuing one and the same goal, but our means were considerably different. He wished to start by relying on the French to abolish the monarchy, but I wished to start by driving out the French to restore Vietnam.”<sup>74</sup> While Phan Bội Châu regarded the retrieval of national autonomy from French colonist by violent insurrection as the foremost mission and the establishment of the constitutional government as the sequel, Phan Chu Trinh suggested expediting liberal rights and formulating the constitutional democracy within a self-rule (*tự trị*) system under French patronage as the nonviolent means for incrementally restoring the unadulterated sovereignty.

Interestingly enough, there is a poem entitled “*The Ballad for Wakening up the National Spirit 2*” (*Tinh Quốc hồn Ca 2*) (hereinafter, *The Ballad*) written in the late phase of his life (1922) whose last stanzas helpfully encapsulate Phan Chu Trinh’s political program which is in accordance with his other political writings and activities:

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71. Formally known as *Việt Nam Quốc dân Phan Châu Trinh Ký thư ư Việt Nam đương kim Hoàng đế* (*A Letter by Phan Châu Trinh, a Vietnamese Citizen, Addressed to the Contemporary Emperor of Vietnam*), the letter is originally in Chinese and translated into French to publish in French magazines. The Vietnamese modern language version of the letter translated by Phan Chu Trinh and Lê Âm is included in *id.* at 421-46. The English translation of the letter can be found at PHAN BỘI CHAU, *supra* note 6, OVERTURNED CHARIOT, at 87-102. In this study, I follow Vinh Sinh’s translation.

72. For the Vietnamese version, see NGUYỄN, *supra* note 70, at 475-508. For the English version, see PHAN BỘI CHAU, OVERTURNED CHARIOT, *supra* note 6, at 103-23. In this study, I follow Vinh Sinh’s translation.

73. The Vietnamese version can be found at NGUYỄN, *supra* note 70, at 447-73. The English translation is included in PHAN BỘI CHAU, OVERTURNED CHARIOT, *supra* note 6, at 125-39. In this study, I follow Vinh Sinh’s translation.

74. See PHAN BỘI CHAU, OVERTURNED CHARIOT, *supra* note 6, at 109.

The primal agreement is to set up the self-rule system.  
 Anticipate how many years the self-rule shall last.  
 When the policy has the direction, every affair will be free from errors.

There shall be a Parliament to represent the people.  
 There shall be a responsible prime minister to serve the public.

The law shall be based on the French law.  
 The rights and the duties should be balanced.  
 We should be allowed to participate in politics, to assemble, to think, and to speak ...

The monarch's power should be exchanged with the people's power. Political platform should be somewhat transparent ...

Given that, our desiderata will be fulfilled.  
 The teacher-student relationship will be persistently amicable.  
 Our interests will be in lasting coexistence.  
 The white and the yellow are stemmed from the same genealogy.  
 The Asian and the European shall be in the same family.<sup>75</sup>

Phan's cachet is his instrumentalist approach to France for modernizing the nation as the prerequisite for the nation's accretion to independence.<sup>76</sup> With the belief that "to resort to violence is self-deconstructive" (*bạo động tắc tử*) Phan raises the slogan "relying on French to look for progress" (*Y Pháp cầu tiến bộ*).<sup>77</sup> This leads Phan to suggest that "the primal agreement is to set up the self-rule system." What Phan Chu Trinh really means by "self-rule" is that Vietnamese people must be allowed to govern themselves albeit without obviating the French's aegis.<sup>78</sup> His contemplation on the prospect of a rapprochement (the amicable relationship, the "coexistence of interests", Asian and the European in "the same family") indicates that he was thinking of a Vietnam as a dominion like Canada.

Within the dominion, Phan calls for a constitutional government. His constitutionalist vision is formulated by his traditional education, his access to western political theories (especially, the theories of Montesquieu and

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75. The Vietnamese version of the ballad can be found at: PHAN CHÂU TRINH QUA NHỮNG TÀI LIỆU MỚI PHÁT HIỆN, Tập 1 [PHAN CHÂU TRINH THROUGH NEWLY DISCOVERED MATERIALS, VOLUME 1] 242 (Lê Thị Kinh ed., 2001). The English translation is my own.

76. See Duiker, *supra* note 5, at 51.

77. PHAN BỘI CHÂU, OVERTURNED CHARIOT, *supra* note 6, at 43.

78. Phan Chu Trinh clearly expressed his ideas on self-rule in *Pháp-Việt Liên hiệp Hậu chi Tân Việt Nam* [*A New Vietnam Following the Franco-Vietnamese Alliance*] (1910-1911). For English translation of the writing, see PHAN CHÂU TRINH, *supra* note 6, at 57-86.

Rousseau<sup>79</sup>) through the “New Books,” and his experiences in Japan and France.

(a) Despotic Monarchy versus Democracy

Like Phan Bội Châu, Phan Chu Trinh had an animus to despotic monarchy. Phan Bội Châu wrote about Phan Chu Trinh when they exchanged revolutionary ideas in Kwangtung: “Every day when we talk about the affairs of our country, he singled out for bitter reproach the wicked conduct of the monarchs, the enemies of the people. He ground his teeth when talking about the ruler of the day, who was bringing calamity to the country and disaster to the people; as much as to say that if the system of the monarchial autocracy were not abolished, simply restoring the country’s independence would bring no happiness.”<sup>80</sup>

Phan Chu Trinh’s animosity toward monarchy is well illuminated by his *Letter of Seven*. Beginning with the declaration “I love democracy, abhor the tyranny of autocratic monarchy,”<sup>81</sup> the letter is in fact an indictment of the contemporary monarch. The letter was written with an adamant conviction that “unless people in our country make a united and strenuous effort to fight against the despotic monarch and corrupt mandarins, unless we extirpate the evil influence of the several-thousand years autocracy once and for all, it will be impossible for people in our country to see the daylight again.”<sup>82</sup> Phan then alleged that the Emperor Khải Định had committed seven offences (reckless promotion of autocratic monarchy, unfair rewards and punishments, reckless demand for kowtow, improper dressing, excessive pleasure outings, and shady deal behind the present visit to France) and called for his dethronement.<sup>83</sup>

Why did Phan Chu Trinh abhor the despotic monarchy? His explanation was that the loss of Vietnam’s independence was principally attributed to the despotic monarchy and the suppression of public rights as its consequence. In 1906, Phan Chu Trinh commented to Phan Bội Châu during their farewell in Hong Kong that: “since the nineteenth century when countries vehemently competed with each other, the destiny of a country is in the hands of the majority and never is there a country without public rights which can avoid losing the country.”<sup>84</sup>

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79. It is recalled that after Phan Chu Trinh returned to Saigon from Paris, there were many young admirers visiting him and at beginning of the every conversation, Phan asked every visitor the same question: “Have you read *The Social Contract* of Rousseau or *The Spirit of Law* of Montesquieu?” See TRẦN, *supra* note 7, at 451.

80. PHAN BỘI CHÂU, OVERTURNED CHARIOT, *supra* note 6, at 105.

81. *Id.* at 87.

82. *Id.* at 88.

83. *Id.*

84. Cited in Nguyễn Đình An, *Phan Châu Trinh- Nhà Cách mạng Chính trị, Nhà Dân chủ Đầu tiên của Nước ta* [*Phan Châu Trinh- A Political Revolutionary and The First Democrat of Our Country*] in PHONG TRÀO DUY DÂN VỚI SỰ CHUYỂN BIẾN CỦA VĂN HÓA VIỆT NAM ĐẦU THẾ KỶ XX

In the public lecture “*Morality and Ethics*” Phan Chu Trinh further persuades his people that the monarchy was the cause of the loss of the country. Drawing from historic evidence, Phan ascribed the invasion of Korea by Manchus, Mongols, and Japan respectively, and in the case of China, the replacement of the Song dynasty by the Yuan dynasty and subsequently the replacement of the Ming dynasty by the Qing dynasty to the monarchy.<sup>85</sup> He then concludes:

“Is it not silly to entrust a monarch with the governing power over a country of millions of people. Even in the case of an intelligent monarch, it would be difficult for him to accomplish every responsibility, and things would be even worse under the ignorant monarch who committed cruelties and prohibited the learned people from participating in national affairs. Who would then dare to shoulder the burden? If a family has no one to take care of it, or if a country is not tended, how can that family and that country not collapse and disappear?”<sup>86</sup>

Attributing the loss of the country to the monarchy and the suppression of liberal rights, Phan Chu Trinh calls for the abolishment of the monarchy and the establishment of a democratic republic as the gradual path to regain the entire sovereignty.<sup>87</sup> That is why he writes in *The Ballad*: “the monarch’s power should be exchanged with the people’s power.” Phan’s rationale is that in a democratic republic, public rights are developed, the people participate more actively in and are responsible for the national affairs, the patriotism is hence intensified, and ultimately the sovereignty can be entirely retrieved.

(b) Written Constitution

In the *Letter of Seven Clauses*, Phan laments that the absence of a constitution in Vietnam was the cause of the monarch’s arbitrary rule and therefore the suppression of liberal rights: “It is only in our country that popular rights are still being suppressed, a constitution has not been adopted, the monarch is still allowed to make arbitrary decisions, and the people do not have the freedom of public expression.”<sup>88</sup> Therefore, in *The Ballad*, Phan suggests: that the “political platform should be somewhat transparent.”

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[RESTORATION MOVEMENT AND THE TRANSITION OF VIETNAMESE CULTURE IN EARLY TWENTIETH CENTURY], *supra* note 69, at 358.

85. PHAN CHAU TRINH, *supra* note 6, at 119.

86. *Id.*

87. After his death, the Eastern French Magazine (Đông Pháp Thời Báo) published a picture of Phan Chu Trinh standing on the podium, with a caption reading: “Uphold Republicanism” (*Thủ Xướng Cộng hòa*). *Id.* at 37.

88. PHAN CHAU TRINH, *supra* note 6, at 88.



The implication is that the governmental power should be divided and operate under a stable and clear legal framework like a written constitution. In concordance with his suggestion in *The Ballad* that “the law shall be based on the French law,” in the *Monarchy and Democracy*, Phan particularly extols the French constitutional system and implicitly calls for a written constitution like the French’s as the basic law for the political platform.

In the *Monarchy and Democracy*, Phan equates democracy with rule of law: “Democracy is a government of laws (Vietnamese: *pháp trị*). The right and the duty of everyone in the country are well described by the laws ... Before the law, everyone is equal, regardless of whether they are officials or common people.”<sup>89</sup> In particular, Phan underlines the distribution and constraint of public power by a written constitution: “Everyone in the country must observe the constitution. The power of the government is also stipulated in the constitution, and therefore there is little room for negligence and autocracy.”<sup>90</sup> Conceiving monarchy as the rule of man and democracy as the rule of law, and after making some comparisons, Phan concludes: “democracy is better than monarchy.”<sup>91</sup> He then, in the peroration of the speech, orientates his compatriots to a democratic government with a written constitution: “To govern a country solely on the basis of the personal opinions of one individual or an imperial court is to treat the people of that country as if they were a herd of goats— their prosperity and joy, or their poverty and misery, are entirely in the hands of the herder. In contrast, in a democracy, people create their own constitution and select officials, who will act according to the will of the people to look after their nation’s business.”<sup>92</sup> Phan in fact suggests a democratic government with a written constitution ordained by the people mirroring the French paradigm.

(c) Liberal Rights

With regard to the normative limits of the government, Phan Chu Trinh’s constitutionalism is largely influenced by western modern liberalism. His constitutionalism requires the practice of liberal rights.

In fact, Phan Chu Trinh is characterized as the most ardent democrat who held aloft the banner of liberal rights in the early twentieth century Vietnam. Huynh Thúc Kháng in his funeral eulogy for Phan Chu Trinh virtually espied the essential spirit of his defunct friend: “The philosophy of the Nestor (*Tiên sinh*) is to capsize despotism and to liberalize popular rights.”<sup>93</sup> Nguyễn Sinh Huy, another friend of Phan Chu Trinh, condoled

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89. *Id.* at 139.

90. *Id.*

91. *Id.*

92. *Id.*

93. Cited in TRẦN, *supra* note 7, at 437.

with him by the words: “the first organizer of popular rights in the Southern Nation.”<sup>94</sup> Indeed, Phan’s revolutionary path, from the appeal for reform of colonial policies in *Letter to Governor-General Paul Beau* and leading the *Restoration Movement* to expatriating to France with important political writings and return to Saigon with influential public lectures, pivots at mobilizing the practice of liberal rights.

It should be noted Phan Chu Trinh’s approach to public rights is instrumentalist. When the two Phans exchanged reformist ideas in Japan, Phan Chu Trinh advised Phan Bội Châu: “Please stay on in Tokyo to take a quiet rest and devote yourself to writing, and not to make appeals for combat against the French. You should only call for ‘popular rights and popular enlightenment.’ Once popular rights have been achieved, then we can think about other things.”<sup>95</sup> The implication is that Phan Chu Trinh considered the practice of public rights as instrumental to incrementally regaining the national independence.

It is understandable that Phan in the *Ballad* called for enfranchising people with political participation, freedom of assembling, freedom of thought and freedom of speech, the prerequisites for other public rights.

(d) Separation of Powers

In order to implement public rights, Phan Chau Trinh envisages a political system in which the governmental functions are divided. At an early stage, he called for the separation of powers in his petition of “laws and the establishment of supplementary courts” in 4 June 1911. He laments that: “In Indochina, the worst thing is that the judiciary power and the administrative power are concentrated in one hand; hence, if the mandarins injure the people, the people do not dare to do anything.”<sup>96</sup> He then suggests “renovating the laws, constituting supplementary courts, separating the powers: administrative officials will be responsible for governing affairs and the judicial officials will be responsible for legal affairs.”<sup>97</sup> It was clear that Phan had already developed the concept of judicial independence.

Additionally, his time in France helped Phan intensify his understanding of the doctrine and the practice of the separation of powers. Therefore, after his return to Saigon from Paris, in his *Monarchy and Democracy*, Phan demonstrated his more profound comprehension of the government’s Montesquieuan scheme. In the speech, Phan describes with admiration the French constitutional system in which, he observed, “the judicial power, the administrative power of the government, and the legislative power of the

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94. Cited in NGUYỄN, *supra* note 70, at 77.

95. PHAN BỘI CHAU, *OVERTURNED CHARIOT*, *supra* note 6, at 108.

96. Lê, *supra* note 75, at 37.

97. *Id.* at 38.

parliament are separate, not controlled by a single person.”<sup>98</sup> This explains his envisagement of the new Vietnam where “there shall be the Parliament to represent the people” and “there shall be a responsible prime minister to serve the public.” In fact, the structural limitation of the government that Phan envisaged follows the parliamentary model of separation of power with a representative legislature, a responsible executive, and an independent judiciary.

To recapitulate, like Phan Bội Châu, Phan Chu Trinh was a modern constitutionalist in early 20<sup>th</sup> century Vietnam. Phan Chu Trinh, albeit formally trained with Confucian knowledge, was an admirer of western modern constitutionalism, particularly the practice of French constitutionalism, which led him to advocate for a democratic republic, written constitution, public rights, and the separation of powers.

(e) Denouement

The history of Vietnam has taken a path different from that anticipated by Phan Chu Trinh. Instead of becoming a French dominion, the country has gained autonomy through the revolution in August 1945 and a written constitution was subsequently enacted. However, this does not mean that Phan’s constitutionalist project was fruitless. On this point, Phan Chu Trinh’s unique funeral in 1926 should be noted. This unprecedented funeral in which the entire country mourned a Confucian patriot has served as the occasion for the big breaking out of Vietnamese modern nationalism. Reportedly, it was attended by around sixteen thousand to one hundred thousand people in Saigon where the main funeral took place while the total population here was around three hundred thousand. Apart from the main event in Saigon, around forty provinces throughout the country also held funerals to mourn Phan Chu Trinh.<sup>99</sup> The nation-wide funerals demonstrated the significant influence of Phan Chu Trinh’s revolutionary thoughts and activities, including his constitutionalism. Phan Bội Châu helpfully represented the national impact of Phan Chu Trinh’s works:

Our Phan Hy Mã [Phan Chu Trinh’s other name] studied Montesquieu’s philosophy and illuminates Mencius’ sayings, took the two words ‘popular rights’ (*dân quyền*) to cry throughout the country like the resounding thunders wakening up a myriad of dreams and thanks to that our nation henceforth gradually realizes that we have rights... Now he has passed away but his philosophy has become more and more luminous. The whole of our

98. See PHAN CHAU TRINH, *supra* note 6, at 139.

99. For information about Phan Chu Trinh’s funeral, *Phan Châu Trinh hiện đại một cách lạ lùng!* [Phan Chu Trinh in unique modernity!] (Mar. 23, 2011). <http://phapluattp.vn/20110322113816778p0c1021/phan-chau-trinh-hien-dai-mot-cach-la-lung.htm>.

compatriots, even children, has genuflected and worshipped him. Hence, the meaning of ‘popular rights’ has imbued in their minds.<sup>100</sup>

Phan Chu Trinh never witnessed the realization of his constitutionalist ideas. However, his evangelism was dramatically influential in introducing to the Vietnamese people the fundamental principles of modern constitutionalism during that period. Like Phan Bội Châu, Phan Chu Trinh considerably enlightened and galvanized the people with modern constitutionalist values, especially, the modern discourse of liberal rights.

### 3. *Relevance of Confucianism*

In spite of supporting modern constitutionalism, Phan Chu Trinh himself declared that “I am a Confucianist”<sup>101</sup> when he was taking in the liberal atmosphere in France. Additionally, in “*Morality and Ethics*”, Phan Chu Trinh extolled western moral values but explicitly attested his loyalty to Confucianism: “I have thus far criticized our ethics and praised western ethics; probably the audience is astonished, thinking that I am betraying the teachings of Confucius and Mencius. I would like to tell you that ever since I came to understand Confucian morality to a certain extent, I have adored it.”<sup>102</sup>

What was Confucianism in Phan Chu Trinh’s understanding? Phan became a free Confucian scholar after serving for the imperial administration for a short period of time. He called for the abolishment of the traditional Confucian examination system and criticized the corruption of the Confucian mandarins. Therefore, like Phan Bội Châu, Phan Chu Trinh acclaimed Confucianism views as a tradition of philosophy rather than an ideology of the imperial government. However, what was remarkable about Phan Chu Trinh’s perspective, which was clearly demonstrated in his *Monarchy and Democracy* and *Morality and Ethics*, was that he only regarded the classical principles practiced by the Chinese ancient kings like Yao, Shun, Yu, Tang, Wen, and Vu and philosophized by Confucius and Mencius as Confucianism.<sup>103</sup> He contended that the monarchs of the later generations in East Asia had actually abandoned Confucianism while claiming that they were following it: “When one looks into the history of monarchy in East Asia, one finds that, since Qin dynasty (221-206 B.C.) , though the East Asian countries would consider they were practicing Confucianism, in

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100. PHAN, *supra* note 37, at 32-33.

101. PHAN CHAU TRINH, *supra* note 6, at 45.

102. *Id.* at 117.

103. *Id.* at 129.

actuality there was nothing Confucian in the policy practiced, only one or two things remained in the family traditions, and, apart from that, the absolute monarchs relied on Confucianism only to exert pressure upon their peoples.”<sup>104</sup> He then laments that the teachings of Confucius and Mencius have been misunderstood and misappropriated, and therefore countries like China, Vietnam, and Korea have just practiced the “heretical form of Confucianism” (*tà Nho*).<sup>105</sup>

What is the authentic form of Confucianism, according to Phan Chu Trinh? Interestingly, while it is customary to think about Confucianism as the foundation of despotic monarchy in East Asia, Phan states in *Monarch and Democracy* that: “Monarchy in East Asia did not originate in Confucianism.”<sup>106</sup> In *Morality and Ethics*, he also claims: “Confucianism is not an ideology that serves the autocratic monarchs.”<sup>107</sup> Instead, Phan Chu Trinh conceptualized that Confucianism is antagonistic to autocracy.

On this point, it is worth a return to his castigation of the Emperor Khải Định in the *Letter of Seven Clauses*. Phan Chu Trinh has invoked Confucianism to justify the illegitimacy of the monarch. Phan argued that while “from the olden days our country held Confucianism in reverence” in practice, the emperor’s reckless promotion of autocracy had been the perfidy of Confucianism.<sup>108</sup> To show that the emperor had lost the Confucian legitimacy, Phan summoned the Confucian criticism of despotism and the Confucian concept of *minben*. After reminding the emperor about Confucius’ saying that an unopposed ruler may lead the nation to ruin<sup>109</sup> and Mencius’ famous statement on the people as the most important element, Phan states that: “If your Majesty opened the *Five Classics* and the *Four Books*, could you find an indication that autocracy should be promoted? If your position is above everyone, you should place your heart below everyone— that is the essence of Confucianism.”<sup>110</sup> Acerbically, Phan related Khải Định to Jie and Zhou, the notorious tyrants in Chinese ancient history. Phan reminded the Emperor about the favorable attitude of Confucius toward the castigations of the two tyrants and Mencius’ stigmatization of Jie as “a robber”, “a ruffian”

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104. *Id.* at 130.

105. *Id.* at 118-19.

106. *Id.* at 127.

107. *Id.* at 117.

108. *Id.* at 88.

109. Phan reminds the monarch about the following conversation in the *Analects*: “One day, the Duke Ting asked Confucius: ‘Is there a single sentence which can ruin a country?’ He replied, ‘Such an effect as that cannot be expected from one sentence. There is, however, the saying which people have – ‘I have no pleasure in being a prince, but only in that no one can offer any opposition to what I say!’ ‘If a ruler’s words be good, is it not also good that no one oppose them? But if they are not good, and no one opposes them, may there not be expected from this one sentence the ruin of his country?’” LEGGE, *supra* note 59, at 167.

110. PHAN CHAU TRINH, *supra* note 6, at 89.

and “a mere fellow.”<sup>111</sup> Phan then concluded:

Is it not genuine Confucianism? The Classics and the Books are still available, all were compiled from the sayings of Confucius and Mencius- I did not fabricate them to deceive myself and then go on to deceive others. By issuing edicts for promotion of autocracy, are you yourself not acting against Confucianism? Is there any king who, acting against the national religion (*quốc giáo*) can remain on the throne for long?<sup>112</sup>

It can be seen that, in adherence to classical Confucianism, in particular Mencian studies, Phan Chu Trinh conceives the core values of Confucianism as the antagonism of despotism and responsible government for the people.

On that ground, Phan suggests that the classical Confucian paradigm of government is basically comparable to constitutional government in that the people and the government are equal in their values and responsibilities: “Confucianism is very fair, teaching that the monarch and the people are both equally important. The monarch and the people both need to be equipped with morality and ethics.”<sup>113</sup> Interestingly, Phan believes that modern constitutional government is just the practice of the Confucian classical governmental model:

In the *Great Learning*, Master Zeng quoted Confucius, saying: “From the emperor down to the mass of the people, all must consider the cultivation of the person the root of everything.” Self-cultivation is such a crucial aspect, one which Confucius insisted the people and the monarch must practice. Was he not fair? This form of government has been practiced in Europe for a long time, i.e., the form of government in which power is divided between the monarch and the people, which has been translated into Chinese as *junzhu lixian* (Vietnamese: *quân chủ lập hiến*). At present, Britain, Belgium, and Japan practice this form of government.<sup>114</sup>

As both classical Confucian governmental inquiry and modern constitutional democracy practiced in Europe accentuate the important role

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111. Mencius talked about the tyrant Zhou: “He who outrages the benevolence proper to his nature, is called a robber; he who outrages righteousness is called a ruffian. The robber and ruffian we call a mere fellow. I have heard of the cutting off of the fellow Zhou, but I have not heard of the putting a sovereign to death, in his case”. See LEGGE, *supra* note 60, at 167.

112. PHAN CHAU TRINH, *supra* note 6, at 89.

113. *Id.* at 117.

114. *Id.* at 117-18.

of the people and equality between the government and the people, Phan concludes: “There is nothing in the present civilization of Europe that goes against the teachings of Confucius and Mencius.”<sup>115</sup> Hence, Phan’s *Monarchy and Democracy* and *Morality and Ethics* are the encomiums of both modern western constitutionalism and Confucianism. Phan concurrently eulogized both western liberal thinkers (Rousseau, La Fontaine, Montesquieu, Pascal and Voltaire) and the practice of French constitutionalism and the Confucian classical thinkers (Confucius and Mencius.)<sup>116</sup>

Since Confucianism has been misunderstood and misused in autocratic sways, Phan Chu Trinh, under the belief in the shared values of Confucianism and European modern civilization, proposes that the reasonable way to revitalize the authentic Confucianism is by introducing European democracy: “Democracy is a wonderfully efficacious remedy against the autocratic disease of our country. To bring in European civilization is to bring back the teachings of Confucius and Mencius ... The introduction of European civilization would not cause any harm, but it will help to enhance the teachings of Confucius and Mencius.”<sup>117</sup> Finally, Phan emphasizes that this introduction is the harmonization of the authentic civilization (*chân văn minh*) in the West with the authentic Confucianism (*chân Nho giáo*) in East Asia.<sup>118</sup> Consequently, Phan’s constitutionalism is in fact the amalgamation of western liberal constitutionalist values and Confucian classical values. Like in Phan Bội Châu’s case, this is well elaborated on by Phan Chu Trinh’s integration of the Confucian *minben* concept into his constitutionalist project.

Despite being an ardent activist for liberal rights, Phan is far from a pure liberalist. As the echo of Confucian *minben*, like Phan Bội Châu, the *telos* of Phan’s constitutionalism concerns the public goods of the people in general rather than merely liberal rights. On this point, attention should return to his program for the *Restoration Movement* encapsulated in the motto: “*chấn dân khí, khai dân trí, hậu dân sinh*” (*invigorate the people’s spirit, broaden the people’s mind, and enrich the people’s well-being.*)<sup>119</sup> Within the movement, “*chấn dân khí*” means, by education and public speech, revitalizing the national catharsis that had been at a low ebb due to the miasma of the despotism and colonialism; “*khai dân trí*” means educating the people on new values by establishing free schools to teach a new curriculum; and “*hậu dân sinh*” means improving the living condition by developing domestic

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115. *Id.* at 118.

116. *Id.* at 116.

117. *Id.* at 118.

118. *Id.*

119. *Id.* at 20.

products and industry.<sup>120</sup> Obviously, Phan Chu Trinh's concerns encompass widely moral, intellectual, and material dimensions of people's lives. It should be noted that these are also Phan's enduring considerations rather than only the ephemeral slogan for the *Movement*. That explains why Phan has written in the *Ballad* that "there shall be a responsible prime minister to serve the public." Understanding the verse within his philosophy, "the public" can be construed as the general standards comprehensively concerning people's moral, intellectual, and material dimensions.

In particular, following the teachings of Confucius and Mencius on educating the people as the practice of the *minben* principle, "Phan Chau Trinh strongly believed education was the most important element in modernization."<sup>121</sup> In Phan Chu Trinh's project, the people must not only be entitled to the liberal rights but also be educated with moral values. Importantly, Phan Chu Trinh especially underlines the foundational value of classical Confucian morality. This is most evident in his "*Morality and Ethics*." After returning to Saigon from Paris, he chose to deliver a speech on the traditional theme of morality and ethics instead of more topical or modern issues. His explanation for the choice actually reflects his attachment to the Confucian moral foundationalism: "I have chosen this subject because I believe that, from ancient times to the present day, regardless of the people, regardless of the country, regardless of the race, and regardless of the national power, once a nation is standing in the world to compete against other nations, it cannot count only on its material strength but must also rely on morality as its foundation."<sup>122</sup> His understanding of morality is in fact shaped by Confucian morality. He states: "To be a human being, one is expected to have *nhân* (humaneness), *ngĩa* (righteousness), *lễ* (propriety), *trí* (wisdom), *tín* (trustworthiness), *cần* (diligence), and *kiệm* (frugality)."<sup>123</sup> These are fundamental moral values fostered in classical Confucianism but Phan considers them the universal moral values which can serve as the foundation for every society "regardless of time and place."<sup>124</sup>

Apart from the moral values, Phan Chu Trinh believes that people should be educated with contemporary western knowledge for modernization in general and constitutional knowledge for the success of modern constitutionalism in particular. In this regards, it should be recalled that Phan Chu Trinh together with Huỳnh Thúc Kháng and Trần Quý Cáp created the *Tonkin Free School* (*Đông kinh Nghĩa thực*) in Hanoi in March

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120. *Id.* at 20-21.

121. *Id.* at 22.

122. *Id.* at 103.

123. *Id.* at 104. (slightly retranslated).

124. *Id.*



1907.<sup>125</sup> The school was established with the mission of expanding the people's wisdom (*khai dân trí*) of the *Restoration Movement*. By the establishment of this school, Phan Chu Trinh and other modern Confucianists in Vietnam continued the teachings of Confucius and Mencius in educating the people but with novel contents. Although the school had a short life of only nine months,<sup>126</sup> it played an important role in the change of Vietnamese modern culture and in the movement toward modern constitutionalist values in particular.<sup>127</sup> Through the materials<sup>128</sup> and the activities<sup>129</sup> of the school, among other things, the new terms and ideas of “*chính thể lập hiến*” (constitutionalist polity), “*cộng hòa*” (republic), “*ngị viện*” (parliament), “*dân chủ*” (democracy) were disseminated to the public. In short, Phan Chu Trinh seems to agree with Phan Bội Châu that the success of constitutionalism requires the education of constitutional knowledge to the people.

Phan Chu Trinh in a similar manner with Phan Bội Châu was highly active in writing to criticize the despotic monarchy and to propagandize constitutional knowledge to the people. It is worth remembering Phan Bội Châu's inscription for Phan Chu Trinh: “by words instead of swords and guns, you disquieted the dynasty of the autocrat; by nibs instead of drums or gongs, you illuminated the atrium of democracy.”<sup>130</sup> Like an old bottle used for storing new liquid, Phan Chu Trinh utilized his literacy capacity nurtured in the Confucian educational system to diffuse constitutionalist values. Particularly, he composed the poem (which has been appropriated in the present study) to propagandize his constitutionalist project.

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125. According to Vinh Sinh and Wickenden, the *Tonkin Free School* (*Đông Kinh Nghĩa Thục*) was modeled after the *Keiō Gijuku*, the school found in Tokyo in 1868 by Fukuzawa (1835- 1901), a famous educator. “*Đông Kinh*” is both the old name of Hanoi and the Vietnamese equivalent of Tokyo. “*Nghĩa Thục*” is the Vietnamese equivalent of *Gijuku*, a private “community school.” See PHAN BỘI CHAU, *Introduction to OVERTURNED CHARIOT*, *supra* note 6, at 12. I believe that the name of the school implies Confucian meaning. “*Thục*” means school and “*Nghĩa*” is a Vietnamese word for the Confucian term *yi* (righteousness). The implication is that the school is aimed at generating a new Vietnamese generation who will embark upon righteous actions. For more illustrations on the school, see Vu Duc Bang, *The Dong Kinh Free School Movement*, in *ASPECTS OF VIETNAMESE HISTORY* 30-95 (Walter F. Vella ed., 1973); MARR, *supra* note 5, at 156-84.

126. The colonial authority closed the school in February 1908 as the result of the tax-protest riots.

127. For a collection of essays indicating Hanoi's current reappraisal of the meaning of the school, see *MỘT TRĂM NĂM ĐÔNG KINH NGHĨA THỤC* [CENTENARY OF THE TONKIN FREE SCHOOL] (Hoàng Như Mai ed., 2008).

128. For a corpus of materials produced and used by the school, see *ĐÔNG KINH NGHĨA THỤC VÀ VĂN THƠ ĐÔNG KINH NGHĨA THỤC* [TONKIN FREE SCHOOL AND THE LITERATURES OF TONKIN FREE SCHOOL] (Chương Thân ed., 2010).

129. It should be noted that Phan Chu Trinh's public speeches as the activity of the school were extremely popular and attracted a number of audiences, as verified by this poem: “Those who went to hear the speeches were crowded as if at the festival, then came the time of composition expositions, guests come like rains.” Cited in PHAN CHAU TRINH, *supra* note 6, at 23.

130. TRẦN, *supra* note 7, at 437.

## IV. CONCLUSION

Utilising the cases of Phan Bội Châu and Phan Chu Trinh, the present study has demonstrated the efforts of the Confucianists in facilitating the introduction and development of modern constitutionalism in early 20<sup>th</sup> century Vietnam. I conclude with the following reflections:

Firstly, even though the Confucianists never witnessed the realization of their constitutionalist projects, the meaningfulness of their works is considerable. The establishment of the Democratic Republic of Vietnam in 1945 and the subsequent enactment of the first written constitution in 1946 are the denouement of various constitutional movements and the contribution of Confucian movements should be recognized. The Confucianists, the first generation of the modern constitutionalists in Vietnam, have familiarized and inspired the Vietnamese people with novel vocabularies and notions of western constitutionalist theories, such as written constitution, popular sovereignty, republic, liberal rights, and the separation of powers. They have actually established the foundational steps in helping Vietnam to have full access to the ideas and institutions of modern constitutionalism.

Secondly, the Confucianists albeit trained in the traditional system of education were sympathetic to notions and institutions of Western modern constitutionalism. They were concurrently the students of Confucius, Mencius, Montesquieu, and Rousseau. While they eulogized Meiji constitutionalism, French constitutionalism, and American constitutionalism, they were still the loyal adherents of Confucianism. This phenomenon indicates that identification with Confucianism—putatively the political ideology of authoritarian governments in pre-modern East Asia—need not constrain attraction to Western modern constitutionalism. This is a meaningful observation when we consider the real predicates for the development of modern constitutionalism in the Confucian East Asian societies.

Thirdly, the Vietnamese modern Confucianists have been not only loyal to Confucianism but also moved further to integrate some classical Confucian political principles, such as *minben*, to their particular constitutionalist visions. That integration requires sober consideration for even the construction and development of modern constitutionalism in the contemporary East Asia where Confucianism has continuingly provided familiar vocabularies and idioms for the people to make sense of the world. Western liberal constitutionalism may not be perfect and can be improved by Confucian political wisdom in the Confucian context. Prepossessed by enlightened liberalism and individualism, western liberal constitutionalists strongly commit to the principles of the neutrality of the state, personal

autonomy, and liberal rights of the individual. Liberal values may not be the ultimatum of the people and the governments in East Asia where communitarian vision has been still rather influential. A model of “communitarian constitutionalism”<sup>131</sup> may make sense in the Confucian East Asian context in which the telos of the government should be the public standards in general rather than only liberal rights, people should be not only girded with fundamental rights but also be instilled with fundamental virtues, and there should be the requirement of educating the people with constitutional knowledge provided by both the government and the community.

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131. In quite similar vein, some western scholars talk about “nonliberal constitutionalism” or “communitarian constitution.” See Walker, *supra* note 4; BEAU BRESLIN, THE COMMUNITARIAN CONSTITUTION 112-33 (2004).

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## 東亞儒學脈絡中的現代憲政主義 以二十世紀初期的越南案例為論述基礎

Bui Ngoc Son

### 摘 要

此研究以潘佩珠與潘周楨之案例為論述基礎，輔以儒學文獻的深入瞭解，介紹了越南的現代憲政主義。二十世紀早期的儒學撰述者，為越南得以成功地接近西方現代憲政主義，奠定了深厚基礎，其貢獻涵括了：主權在民，明文憲法，自主權利，權力分立等。此研究演示了：在積極提倡現代憲政主義之風潮下，現代越南儒學者一方面忠於儒學，一方面則將儒學所反映之古典政治原則整合入他們的憲政思想與視野之中。本文作者針對儒學與現代憲政主義整合之可能性，提出了更為廣泛一般性之論述，並置於當代東亞之論述脈絡下做出詮釋。

**關鍵詞：**儒學、憲政主義、越南憲政發展、潘佩珠、潘周楨