

December 2012

From Constitutional Listening to Moral Listening

Roy Tseng

Follow this and additional works at: <https://scholarship.kentlaw.iit.edu/cklawreview>

 Part of the [Comparative and Foreign Law Commons](#), [Constitutional Law Commons](#), and the [Legislation Commons](#)

Recommended Citation

Roy Tseng, *From Constitutional Listening to Moral Listening*, 88 Chi.-Kent L. Rev. 157 (2012).

Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol88/iss1/10>

This Article is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact dgersberg@kentlaw.iit.edu.

FROM CONSTITUTIONAL LISTENING TO MORAL LISTENING

ROY TSENG*

INTRODUCTION

Michael Dowdle has written an informative and thoughtful paper on comparative constitutionalism.¹ The main goal of his paper is to argue that Western scholars, especially those who work in the liberal tradition, should try to sympathize with the perspectives of non-Western constitutional systems if they wish to enrich their understanding of constitutional practices. To support this goal, Dowdle makes three major points in the paper. First, he argues that the dominant liberal methodology in the study of comparative constitutionalism is deficient because it concentrates solely on the structural architectures associated with liberal constitutional culture and leaves untouched the diversified ends of constitutionalism.² Secondly, to clarify non-liberal constitutional discourses in a fuller sense, he develops an alternative methodology, “constitutional listening,” which is derived largely from the interpretive principle of charity.³ Finally, he illustrates the methodological merits of constitutional listening by referring to a specific constitutional discourse generated by China’s draft property law between 2005 and 2007.⁴

Although I appreciate Dowdle’s effort to empathetically engage non-Western values while avoiding the error that Michael Walzer refers to as “covering law universalism,”⁵ I do not completely agree with his claims about (1) the cognitive limits of the liberal vision of constitutionalism; (2) the real purpose of comparative constitutionalism; and (3) the historical features of Chinese political and legal discourses. In the following, I will try to exchange ideas with him by elucidating my views on these three issues respectively.

* Professor of Political Theory, National Sun Yat-Sen University, Taiwan.

1. Michael W. Dowdle, *Constitutional Listening*, 88 CHI.-KENT L. REV. 115 (2012).

2. *Id.* at 116-21.

3. *Id.* at 121-38.

4. *Id.* at 142-48.

5. See generally MICHAEL WALZER, *THICK AND THIN: MORAL ARGUMENT AT HOME AND ABROAD* (1994).

I. HISTORICIST LIBERALISM

According to Dowdle, the cognitive limits of liberal constitutionalism are dual. First, liberal constitutionalism often conflates the moral ends of constitutionalism with the institutional means that may help realize those ends.⁶ Secondly, liberals assume that in understanding non-Western constitutional experiences, we should focus our attention on a set of institutional structures, such as judicial independence, separation of powers, rule of law, and multi-party electoral competition, regardless of the different ends of constitutionalism pursued by various countries.⁷ However, as Dowdle continues, the institutional features of liberal constitutionalism that a number of Western researchers take for granted arose out of the specific American constitutional experience, and therefore do not serve other parts of the world well.⁸ What is worse, just because the liberals are historically blind, their identification of constitutionalism with a specific list of institutional structures alleges that these institutional structures signify the only possible way of achieving their assigned constitutional ends. In this sense, they commit what David Sciulli has coined the “fallacy of exhausted possibilities” within the context of comparative constitutional law discourse.⁹ In short, the liberals are led to believe that through a series of institution-based analyses, Western liberal constitutionalism would eventually achieve “the end of history,” to use Frances Fukuyama’s infamous phrase.

These arguments raise a number of questions for me. To begin with, I think Dowdle is definitely correct in remarking that our practices and institutions are embodiments of a certain cluster of human purposes and beliefs, and thus, in search for the justification of constitutionalism, we must be concerned with its moral ends. In this regard, it seems plain that liberalism or the liberal vision of constitutionalism, so to speak, contains two fundamental elements, namely liberal values and liberal institutions. That said, liberalism as a form of moral and political theory premised on the basic values of human dignity, human rights, political equality, and so forth is related to, but not identical with, liberalism as a particular institutional arrangement for exercising and realizing those values.

6. See Dowdle, *supra* note 1, at 116-17.

7. *Id.* at 115.

8. See *id.* at 116-19.

9. See DAVID SCIULLI, A THEORY OF SOCIETAL CONSTITUTIONALISM: FOUNDATIONS OF A NON-MARXIST CRITICAL THEORY 9-10 (1992).

More to the point, in considering the characteristics of liberalism, we also need to draw attention to the nature of philosophizing disclosed by liberal thinkers. In contrast to the narrowest reading of liberalism that Dowdle seems to have followed, there appear to be several alternative groupings of liberalisms in contemporary political theory. To name only a few, we have Richard Rorty's Kantian liberalism vs. Hegelian liberalism;¹⁰ John Gray's Enlightenment liberalism vs. agonistic liberalism;¹¹ and Charles Taylor's procedural liberalism vs. communitarian liberalism.¹² For my purpose, it is sufficient to indicate that all of these writers agree that the meaning of liberalism has been redefined at least in part by a growing sense of its *historicity*, a sense that increases our awareness of the plurality of ways of life and forms of thinking (including liberalism itself) in the modern secularized world. As a result, it may not be inappropriate if, in the discussion that follows, I reformulate the two faces of liberalism as historicist liberalism vs. universalist liberalism.

Based on the distinction between liberal values and liberal institutions and the two categories of liberalism which I have identified, it seems to me that Dowdle's examination of liberal constitutionalism is liable to fall victim to the "fallacy of exhausted possibilities" in the same way. For one thing, Dowdle's adopted meaning of liberalism actually reflects only a particular aspect of liberalism; namely, that of the Enlightenment project.¹³ In other words, the vision of liberalism depicted by Dowdle reiterates nothing more than the ethos of covering law universalism, according to which there are objective liberal values that can be realized in every corner of the world by establishing liberal institutions. Alternatively, we could say that the kind of liberalism he has in mind echoes what Charles Taylor terms the "primacy-of-right" theory,¹⁴ which is premised on the notion of the "disengaged self" or "right bearing subject" conceived by modern mainstream philosophies, including both Kantianism and Utilitarianism.

By contrast, it is the premise of historicist liberalism that human thought and actions are historically conditioned, and that in under-

10. See generally RICHARD RORTY, *Postmodernist Bourgeois Liberalism*, in 1 OBJECTIVITY, RELATIVISM, AND TRUTH 197, 197-202 (1991).

11. JOHN GRAY, TWO FACES OF LIBERALISM 29-32 (2000).

12. Charles Taylor, *Shared and Divergent Values*, in OPTIONS FOR A NEW CANADA 53, 66-72 (Ronald L. Watts and Douglas M. Brown eds., 1991).

13. Dowdle, *supra* note 1, at 124-25.

14. See CHARLES TAYLOR, *Atomism*, in 2 PHILOSOPHY AND THE HUMAN SCIENCES: PHILOSOPHICAL PAPERS 187, *passim* (1985).

standing other cultures we should take historicity and contextuality seriously if we are to empathize with ways of life that are set apart from our own experience. Further, while historicist liberalism so understood would thereby be immune from Dowdle's criticisms on the end-of-history myth, it attempts to *reevaluate* the moral import of liberalism and its adaptability to non-Western societies at the same time. That is to say, despite pressing serious charges against universalist liberalism, historicist liberals would not straightforwardly deny the moral values of liberalism and the practical meanings of its institutional designs from top to bottom.

For example, in terms of moral and political thinking, Taylor's position can be read as a historicist reconstruction of liberal values, rather than a total rejection of liberalism. One commentator accurately writes that "Taylor endorses the liberal concern with rights and autonomy, and joins liberals in reflecting on the meaning of freedom and the social and political conditions propitious to its attainment," and that "the politics of recognition can be seen as continuing the traditional liberal concern with how a society can peacefully accommodate significant and enduring differences among its population with minimal recourse to coercion."¹⁵ Taylor also adopts some significant aspects of liberal institutions, such as "openness, participation and deliberation," into his vision of republican democracy.¹⁶

Seen from the perspective of historicist liberalism, then, the real issue running through the prospect of liberalism points to the question of whether liberalism is still morally important and practically significant when facing the clash of civilizations and when engaging in the ongoing enterprise of cross-cultural interlocution. With this understanding, the major limits of Dowdle's paper lie in its failure to carefully ponder at least two crucial interrogations posed by historicist liberals. Whereas the first question for the most part has to do with how to avoid extreme cultural relativism by bringing into focus the historical development of "the whole chain of civilization,"¹⁷ the second question involves the historical practices of Western political ideas in non-Western societies. In the following two sections, I will discuss these questions in turn.

15. RUTH ABBEY, CHARLES TAYLOR 148 (2000).

16. *Id.*

17. JOHANN GOTTFRIED VON HERDER, *Treatise on the Origin of Language*, in *PHILOSOPHICAL WRITINGS* 65, 154 (Michael N. Forster ed., trans., Cambridge Univ. Press 2002) (1772).

II. THE MORAL SIGNIFICANCE OF CROSS-CULTURAL DIALOGUE

Let me begin with the first question in relation to the real purpose of comparative constitutionalism that Dowdle identifies in his project of constitutional listening. First and foremost, as Dowdle remarks, constitutional listening is concerned with a process of learning how to listen charitably to the constitutional discourses of other societies.¹⁸ It does this by understanding them as coherent systems of ideas that can help to explain the complex ways of life in alien cultures. More specifically, the principle of charity underlining constitutional listening suggests that we should empathetically listen to a speaker with reference to a specific set of ideas, and interpret his or her words in their most reasonable light. As a result, in understanding Chinese constitutional discourse, for example, we should not only take ideas seriously, but also be aware that the ideas that matter can be liberal, non-liberal (such as Confucianism), or even anti-liberal (such as Maoism and Marxism). Since the social-constitutional meanings of the ideas under interpretation, as we have seen, consist in their practical usages, Dowdle thus concludes that to truly understand the coherence of a constitutional discourse, we must look for its unique ways of thinking and acting, that is, to treat the very discourse as a concrete universe of ideas.¹⁹

I have suggested that following historicist liberalism, I cannot agree more with Dowdle concerning the historicist insights that he unveils in the case of undertaking comparative constitutionalism. In fact, following Vico, Herder, Wittgenstein, Oakeshott, Berlin, Taylor, and many others,²⁰ I firmly believe that the political and legal idioms we adhere to are manifestations of our own historical experience; thus, we have to pay serious attention to this experience and the idioms it has generated if we wish to understand the meanings of a political or legal concept. Nor is it surprising that my historicist position has encouraged me to follow in the footsteps of some historicist liberals to embark on a cross-cultural dialogue.

Theoretically, the real difference between Dowdle and I is that I have a different view on the ethical desirability of accepting the core liberal value of human dignity as the common moral ground across cultures, or the historical plausibility of establishing quasi-liberal insti-

18. See Dowdle, *supra* note 1, at 125-30.

19. See, e.g., *id.* at 155-56.

20. See generally Roy Tseng, *Conservatism, Romanticism, and the Understanding of Modernity*, in *THE MEANINGS OF MICHAEL OAKESHOTT'S CONSERVATISM* 126 (Corey Abel ed., 2010).

tutions in the Chinese world. Before briefly touching on the second issue, there are two problems stemming from the first issue that need to be spelled out. First, should we remain morally neutral when conducting cross-cultural understanding? And second, is there really no moral linkage at all between traditional Chinese thought such as Confucianism and liberal values in spite of the cultural differences between the two civilizations?

I am prepared to make some comments on the principle of charity so as to support my observation on the *moral significance* of cultural encounters. I raise this issue because the proposal of constitutional listening seems to rest on an assumption of the primacy of epistemology. In other words, the principle of charity, as used by Dowdle, is nothing more than a set of epistemic principles that keep the interpreters away from deeper moral evaluation. As Dowdle explains, his major purpose in mapping out constitutional listening is to interpret the alien constitutional system in a way that is coherent with that society's existing understanding, without affecting the way in which its members actually understand it.

This implies that for Dowdle, constitutional listening is by and large about learning and understanding constitutionalism, rather than about judging and evaluating the political and legal systems of other cultures. Put another way, although Dowdle grants that communication across political and legal systems is possible, he nevertheless keeps a tight rein on the principle of charity as a *morally neutral tool* to appreciate alternative, non-liberal discourses. The insistence on moral neutrality becomes even clearer when Dowdle rebuts the skeptical view about the possibility of truly understanding others' ways of life. According to Dowdle, the skeptics in question fall short of realizing the methodological point that human beings do in fact share similar perceptions and cognitions—"[w]hat differs among cultures is the way perception and cognition is expressed and not differences in perception or cognition per se."²¹ Consequently, these skeptics are inattentive to the epistemological stance which holds that we can distinguish "conceptual coherence" making sense to the interpreters from the "moral agreement" that we deliver to those ideas under interpretation, such as Chinese socialism or Chinese democracy.

Even in the age of value pluralism, the attempt to avoid moral judgment in understanding others' cultures is not always sustainable,

21. Dowdle, *supra* note 1, at 131-32.

insofar as extreme cultural relativism or radical moral nihilism is still one of the most intricate philosophical issues that we should deal with nowadays. Instead of delving into this issue, nevertheless, I only intend to remark that if we stick to the principle of charity as being content with existing understanding, we are likely to confine our research to empirical explanation or select subject matter for its “epistemological tractability” alone.²² As is often the case, however, what comes from “epistemological tractability” is a not a true comprehension of other’s cultures, but a naive exercise in “objective research” that is in danger of succumbing to the most extreme form of cultural relativism or moral nihilism. To take an obvious example, millions of female babies were killed in mainland China for reasons that Western people are not incapable of objectively grasping: China’s one-child procreation policy and the Chinese custom that favors boys over girls. What should really be questioned in this typical case is the moral wrong of killing newborn children, not the search for conceptual coherence.

At this point, Dowdle would reply that the reason why he insists on moral neutrality is to avoid Western cultural hegemony in the sense of accounting for Chinese constitutional discourse simply from the Western point of view. However, my observation is that considering the historical features of modern Chinese political and legal discourses, it would be inadequate, if not absurd, to treat liberalism, socialism, or Marxism as *distinctively* Western concepts. I will return to this issue shortly. For now, I just want to conclude that even though overcoming Western cultural hegemony is the right thing for us to do, it does not necessarily follow that we should give up the hope of discovering some basic human values linking “the whole chain of civilization.”²³

Seen in this light, the question that really bothers me is this: if human beings do share similar perceptions and cognitions, as Dowdle powerfully remarks,²⁴ I cannot see why they are unable to share similar moral understandings that would enable them to agree on a cluster of core values. In other words, it is my reading that on balance, Dowdle gives us no sufficient reason to maintain that there is an asymmetry between human epistemic perception and human moral reasoning. On the contrary, it seems to me that the same reasoning he uses to transcend epistemic skepticism might work to explain away the moral skepticism that he employs in his paper. That is, to rephrase his statement

22. See JOHN DUNN, *INTERPRETING POLITICAL RESPONSIBILITIES* 3 (1990).

23. See von Herder, *supra* note 17.

24. See Dowdle, *supra* note 1, at 131-32.

in moral terms, human beings share an ability to reason morally: "what differs among cultures are the particular metaphors and symbols used to express and communicate these [*values*]."25

This immediately brings up the most difficult problem regarding cross-cultural dialogue: the search for the common moral ground that may justify different reasons given by different parties engaged in the conversation of mankind. From the standpoint I have been taking, it is clear that the present difficulty of cultural encounters actually arises from the fact that people from different cultural backgrounds are still not ready—to use Charles Taylor's famous words—to empathize with the "moral sources" that *lend significance* to the ways of life of other people; it is not because they are unable to understand each other, as Dowdle suggests. In short, the problem is not at the level of epistemology but at the level of moral ontology. It is for this reason that Taylor urges us to "overcome epistemology" if we really wish to discover some "transcendental" values for human beings.²⁶

On this occasion, instead of giving a detailed account of Taylor's moral theory, it is sufficient to note that for the historicist thinkers like Taylor, the tensions between civilizations do not affect the truth that "we can and should struggle for a 'transvaluation' (to borrow Nietzsche's term, *Umwertung*) which could open the way to a mode of life, individual and social, in which [our moral] demands could be reconciled."²⁷ To make the case that a more sophisticated way of reaching "the whole chain of civilization" is still available, Taylor has tried to address the problem of "ethnocentricity." In general, and following Herder on this point, Taylor's view is that we can sympathize with another's way of life via "a language of perspicuous contrast":

This would be a language in which we could formulate both their way of life and ours as alternative possibilities in relation to some human constants at work in both. It would be a language in which the possible human variations would be so formulated that both our form of life and theirs could be perspicuously described as alternative such variations. Such a language of contrast might show their language of understanding to be distorted or inadequate in some respects, or it might show ours to be (in which case, we might find that understanding them leads to an alteration of our self-understanding,

25. *Id.*

26. See CHARLES TAYLOR, PHILOSOPHICAL ARGUMENTS 18-19 (1995).

27. Charles Taylor, *Reply and Re-articulation*, in PHILOSOPHY IN AN AGE OF PLURALISM: THE PHILOSOPHY OF CHARLES TAYLOR IN QUESTION 213, 214 (James Tulley ed., 1994).

and hence our form of life – a far from unknown process in history);
or it might show both to be so.²⁸

Here, it should be noted that in Taylor's opinion, for "human constants" to work, suitable basis for undertaking cross-cultural dialogue are moral sources and their constitutive goods, rather than a set of abstract rules guaranteed by modern epistemological criteria, as the former, but not the latter, can truly give meaning to the different ways of life in question.

That said, for Taylor, the clash of civilizations is not the last word, as he believes that there does exist a common moral ground across civilizations. Alternatively, it can be said that although he is abandoning covering law universalism, Taylor is still advocating a historicist reconstruction of universal ethics, maintaining that even though human goods are plural, "some goods do feature in all moral codes and are strongly valued by all cultures."²⁹ Thus, Taylor certainly does not think that the idea of basic human values is *already* out of our reach in the age of pluralism. For example, as he remarks, "[e]very moral system has a conception of what we might call human dignity . . . of the quality which, in man, compels us to treat him with respect, or . . . a conception which defines what it is to have respect for human beings."³⁰ Compared with Taylor's insights, it appears that the version of constitutional listening offered by Dowdle is epistemic listening, not value listening, or still less, moral listening.

It is largely for this reason that in constructing his epistemic-based project of constitutional listening, Dowdle takes for granted that the Western and Chinese worlds represent two incommensurable systems of values and that liberalism and Confucianism stand for two incompatible worlds of ideas. In sharp contrast to that presumption, my suggestion is that, in the deepest ontological sense, the traditions do share the common ground of human dignity.

Considering my purpose here, I am unable to invite readers to listen morally to the conversation between liberalism and Confucianism in any great detail. Instead, I only wish to mention that considering the compatibility of liberalism and Confucianism actually has a long history. Mencius has often been taken as a good starting point for such an

28. CHARLES TAYLOR, *Understanding and Ethnocentricity*, in 2 *PHILOSOPHY AND THE HUMAN SCIENCES* 116, 125-26 (1985).

29. See Abbey, *supra* note 15, at 22.

30. Charles Taylor, *Human Rights: The Legal Culture*, in *PHILOSOPHICAL FOUNDATIONS OF HUMAN RIGHTS* 49, 53 (1986).

endeavor.³¹ It is commonly believed that Mencius made significant progress in filling the philosophical lacunae in Chinese legacy and that he did great service in systematizing the Confucian doctrine. Furthermore, it is basically to the credit of contemporary Neo-Confucianism that the philosophical resemblances that Mencius bears with liberal thinking about the moral subject have become widely recognized. What these strands of reflection suggest is that underlying Mencius' moral theory is exactly the idea of human dignity understood in the liberal sense that we human beings are morally equal and should take responsibility for our own decisions and actions. Thus, my feeling is that Chinese people following the wisdom of Confucius, Mencius, and others are not fundamentally different from Westerners in their desire to respect the dignity of all human beings as rational creatures capable of establishing civilizations.

III. THE HISTORICAL RECEPTION OF WESTERN POLITICAL VOCABULARIES

So far, I have indicated that although I strongly endorse Dowdle's stress on the importance of social context for understanding another culture, two insights that are regrettably missing in the project of constitutional listening are (1) the ethical desirability of liberal values in the cross-cultural venue, and (2) the practical plausibility for acclimatizing some liberal institutions into Chinese societies. It can be added that my less pessimistic expectation for Western political and legal thought in general and for liberalism in particular has to do with my view of the influence of Western metaphors and symbols on modern Chinese public thinking and practice.

In general, my premise is that in the Chinese context, the major political and legal vocabularies that we use—including constitution, the rule of law, power, the state, democracy, rights, social justice, liberalism, and socialism—originate from Europe. In some sense, I agree with Oakeshott's remark that " 'European' has become an adjective which refers to something which may be found in any part of the world."³² However, in the course of cultural encounters, the political and legal idioms in question have changed their original meanings as they have become incorporated into the Chinese way of life. As the

31. Mencius (372-289 B.C.?) has traditionally been regarded as the Second Sage in the history of Confucianism. He studied with a disciple of Confucians' grandson, Tzu Ssu, and his sayings and conversations have been recorded in a book called *MENCIUS*, probably by his disciples.

32. MICHAEL OAKESHOTT, *Europe, the Emergence of an Idea, in WHAT IS HISTORY? AND OTHER ESSAYS* 429, 436 (Luke O'Sullivan, ed., 2004) (1981).

linguistic context at stake is largely formulated by Chinese culture as well as Western perspectives in modern China (as in many other modern Asian countries), we are primarily obligated to examine the *unique ways* in which Western political and legal vocabularies have been culturally “translated” into the Chinese-speaking world so as to better understand modern Chinese political thinking. In any case, it seems undeniable that modern China has undergone a linguistic revolution with respect to morality and politics, mainly caused by European imperialism, among many other factors. Thus, we must be aware of the originality of the concepts of constitution or rule of law in the first place when listening to Chinese constitutionalism.

From my perspective, it appears that Dowdle has overlooked the fact that “European” as a worldwide adjective has already been “here” for a considerable length of time. As a result of this, he simply ignores that long before the coming of socialism, liberalism had reached the mind of Chinese intellectuals—the translation of Mill’s *On Liberty*, for instance, appeared in 1903—and more importantly, he also ignores the fact that in modern China there is a lasting “moral anxiety” driven from the deepest civilization crisis caused by Western imperialism. A famous contemporary philosopher, for example, has borrowed Alasdair MacIntyre’s conception of “epistemological crisis” to illustrate the current condition of Chinese culture,³³ purporting to entail that in the actual world in which Chinese people inhabit the language of morality, the system of beliefs, and even the way of life, are in “the same state of grave disorder.”³⁴

Seen in this light, it not only turns out that Dowdle’s claim that “liberalism has not played a significant role on modern China’s political history or experiences” is untrue, but it is also evident that his exclusion of liberal voices from the understanding of Chinese constitutional discourses is arbitrary. Dowdle neglects the long-term historical efforts that Chinese intellectuals have actually made to accommodate some liberal visions in an effort to resolve their moral anxiety. For me, the success of Taiwan’s effort to establish democracy, a free society, and a self-constrained state that protects human rights is not purely accidental but is the fruit of historical practices. Again, the liberals in China (which is not necessarily identified with the confusing name new-

33. YUAN-KANG SHIH [石元康], *FROM CHINESE CULTURE TO MODERNITY: THE SHIFT OF PARADIGMS [從中國文化到現代性：典範轉移]* 26 (1998). For the idea of “epistemological crisis,” see Alasdair MacIntyre, *Epistemological Crisis, Dramatic Narrative, and the Philosophy of Science*, in *PARADIGMS AND REVOLUTIONS* 54, *passim* (Gary Gutting, ed., 1980).

34. ALASDAIR MACINTYRE, *AFTER VIRTUE* 2 (2d ed., 1984).

Right) are not unreflective fans of Frances Fukuyama, but self-conscious descendants of a fresh tradition of Chinese liberalism in development.

This account, along with the reasons I have already explicated, do not support the conclusion that liberal concern about human rights simply represent a form of Western hegemony, which is meaningless or even harmful in Chinese-speaking societies. Provided that the recent rise of China means that the People's Republic of China ("PRC") has now endorsed capitalism of some sort, it appears that the question we should ask next is not simply how to explain the empirical phenomena by showing how financially satisfied Chinese people are currently. Rather, it is imperative for a political theorist working in a Chinese context to embark on a cross-cultural dialogue so as to help explain the moral anxiety with which China as a historically established civilization is still confusingly confronted at the moment.

While doing so, we surely have no reason to exclude the socialist promise from the dialogue. Regarding the debate over the draft of the property law of PRC, I think Dowdle is definitely correct in remarking that the term "constitution" has its unique social meaning and political force in PRC.³⁵ He is also correct that Gong Xiantian actually stands up for many Chinese peasants and working class people in arguing that the neo-Right's attempt to prioritize the development of the private economy over the public economy would be contrary to China's constitutional status as a socialist polity. Further, Dowdle correctly recognizes that Xiantian argues that to take better care of economic equality, to restrict the income gap in society, to decrease fraud and corruption in pursuit of private wealth, and to remain the socialist public-property system, Chinese Communism "must create a socialist legal civilization that carries [Chinese] national characteristics."³⁶

Be that as it may, abiding by the principle of charity, Dowdle is content with existing understanding. That is, his purpose is to argue that while China's left tradition reiterated by Gong has been dismissed out of hand in the liberal version of constitutionalism, his project of constitutional listening can go some way to filling the lacuna.

From my standpoint, however, there have been two opinions that need to be reiterated. On the one hand, given the historical features of the modern Chinese linguistic milieu that I have briefly sketched, I

35. Dowdle, *supra* note 1, at 143-48.

36. *Id.* at 150 (citing Gong Xiantian, *A Property Law (Draft) that Violates the Constitution and Basic Principles of Socialism*, in 29 LINKS: INT'L. OF SOCIALIST RENEWAL (May-Aug., 2006)).

doubt that the liberals in the broadest sense, including Chinese liberals and Western ones, would have epistemic problems with understanding what Dowdle refers to as a “distinctly Chinese Marxism.”³⁷ By contrast, my understanding is that both a “distinctly Chinese Marxism” and “a distinctly Chinese liberalism” symbolize half-truth in understanding modern Chinese political and legal discourses. Neither liberalism nor Marxism is a product of Chinese political thought; in the course of cultural encounters, nevertheless, they have gradually become an indispensable part of it. Following Oakeshott’s observation that a proper understanding of a complex historic alloy is to be reached by identifying the frontiers—which protects the identity of the manner of thinking concerned—I conclude that as far as modern China is concerned, the frontiers in question are by and large a “distinctly Chinese Marxism” and “a distinctly Chinese liberalism.”

On the other hand, it follows that modern Chinese moral outlooks are still developing in the wake of these two dramatic cultural upheavals. Being a Taiwanese political thinker whose mother tongue is Chinese, I must confess that for me, what really gets in the way of undertaking the peace dialogue between China and Taiwan is the tension between the two different ways of life shaped by a “distinctly Chinese Marxism” and “a distinctly Chinese liberalism” respectively. Indeed, China is now in transition. In defending historicist liberalism, nevertheless, I am not saying that the China of the future must be converted into a liberal regime in order to achieve civility. But still, unlike Dowdle’s claim of “moral humility,” it does seem *morally wrong* for me if China remains an authoritarian regime that continues to intimidate Taiwan’s democracy and sovereignty and violate its own people’s basic human rights. In short, it is my view that without considering the idea of human dignity or its political expression, namely civil and political rights, market-oriented economic development might culminate in an authoritarian regime in association with nationalism and militarism, which in turn would not only damage liberalism itself but also usher political evils into the world.

In Western experience, there are many things that liberals may have learned from socialism; the idea of a welfare state is just one example. At the end of the day, I presume, the new left in China is likewise required to answer the question of whether the liberal assumption that human beings are equal, because they share the ra-

37. Dowdle, *supra* note 1, at 146.

tional capacity to decide for themselves what is good for them, is truly alien to Chinese culture.

CONCLUSION

To conclude, it is my view that to properly understand the moral anxiety with which the Chinese people have long been confronted, we must seek a cross-cultural dialogue such that the common moral ground can be revealed. If this is the case, then for the purpose of comparative political theory, I believe that the main task of political theorists working in the Chinese world is not to reject the Western perspectives for the sake of nationalism or anti-Western hegemony, but to listen carefully to Western voices and ascertain whether these alien values resonate with our own moral habits in significant ways. Evidently, the process of cross-cultural dialogue is full of difficulties and uncertainties; in my opinion, it even appears to be an endless task with no final destination. Nevertheless, what follows from moral anxiety and epistemic opacity is merely that the West and the East must continue learning how to make better judgments in this historically given world and to appreciate each other's moral resources.