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FROM CONSTITUTIONAL LISTENING TO CONSTITUTIONAL LEARNING

LEIGH JENCO*

INTRODUCTION

As a political theorist concerned with the historical marginalization of “non-Western” thought in modern academic discussions of politics, I wholeheartedly endorse Michael Dowdle’s call to scholars of constitutionalism—and indeed of politics more generally—to take more seriously the views about legal and political life emerging from differently-situated places and times.¹ His exploration in his paper of how legal scholars can attend more sympathetically, and indeed more accurately, to the ways constitutionalism has been used in China and elsewhere as an important contribution to larger debates not just in law, but in fields as diverse as cultural and political theory, postcolonial studies, and even comparative philosophy. Comparative constitutionalism, Dowdle contends, has been hamstrung by an unwillingness to engage constitutional practices at odds with widely accepted liberal variants, with two important consequences. First, liberal Anglo-American constitutionalism becomes inscribed within legal discourse as an exhaustive and exclusive model for “constitutionalism” more generally;² and second, legal scholars are left unable to learn from globally diverse experiences or interpretations of constitutionalism.³ His own solution, which he calls “constitutional listening,” involves “interpreting constitutional discourse of other polities in their best light,” with the goal of expanding “our understanding of the diversity of experiences that have gone into the human project of constitutionalism.”⁴ The premise of constitutional listening, Dowdle explains, is “the recognition that the human project of constitutionalism will always contain possibilities that exceed our current constitutional imagina-

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1. Michael W. Dowdle, *Constitutional Listening*, 88 CHI.-KENT L. REV. 115 (2012).
2. *Id.* at 116.
3. *See id.* at 119.
4. *Id.* at 115.

tion.”⁵ This particularly felicitous way of phrasing the engagement—as an expansion of our imagination, not simply an addition to our intellectual capacity or an entry into some zoological catalogue of human activity—invites us to consider the unimaginable (or at least the unimagined) within our existing domains of thought.

As I understand it, seeking to expand our understanding about a particular idea, in this case constitutionalism, is a goal underwritten by a unique possibility: not only will the new information enhance our comprehension of others’ experiences, but in the process of “finding” some idea elsewhere the very definition of that idea may change for us. That is, these new experiences do not simply cumulate additively within an expanding vessel called “constitutionalism” whose basic shape is taken as given, but rather are part of what constitutes the dynamic meaning(s) of constitutionalism—not only for “them,” but also for “us.” If the engagement is truly transformative in this way, we do not simply continue to “think” about constitutionalism as we always have.

I do not write as a legal scholar, but as someone concerned with the methodological challenges of interpreting across difference, whether that difference be historical, cultural, or even idiosyncratic. I therefore have little to say about how the Chinese debates Dowdle examines here contribute to an increasingly complex and diverse understanding of constitutionalism *per se*. I believe that Dowdle argues convincingly that the debates do make such a contribution, even if they may not be able to do so under the conditions of constitutional listening that he sets out. To the extent that Dowdle is pursuing the kind of self-reflexive transformation of “thinking” about constitutionalism differently, however, his own solution may be less radical than he thinks, and, indeed, less radical than he seems to want.

Dowdle’s goal relies on two methods—listening and learning—which he presents as complementary but which I believe may lead in different directions. In what follows, I point out some limitations of the “listening” model, particularly its basis in the “principle of charity.” I try to show that listening, as well as the principle of charity, are inadvertently passive and one-sided exercises that seem to have little similarity to the deeply self-transformative “learning” Dowdle urges us to undertake. My comments here are thus more directed at analyzing some of the problems in the method of “constitutional listening” rather than critiques of its overall aims, with which I generally agree.

5. *Id.* at 119.

I. LISTENING AND THE PRINCIPLE OF CHARITY

Dowdle's goals for constitutional listening are clear: to enhance understanding of how the constitutional project has been pursued in many different places around the globe. However, this goal is sometimes belied by the very grounds of Dowdle's plea for openness, which relies on an un-interrogated ideal of modernist rationality as fulfilled by the principle of charity. I point out some limitations in this view using Dowdle's own examples to break down the key problems in these assumptions before resuming in the next section to suggest other ways of accomplishing the goals Dowdle sets for this project.

Dowdle defines the constitutional project by its ends, rather than by its means, which are merely structural features whose value depends on (rather than determines or constitutes) some higher constitutional good.⁶ Therefore, the particular structures that characterize liberal constitutionalism, such as separation of powers, may not only *not* be integral to constitutionalism *qua* constitutionalism, but upon comparison with other regimes (including non-liberal ones) may even be shown to be inferior to certain alternatives. This is particularly the case in countries where state power is neither stable nor strong, as the contributions to a recent volume edited by Victor Ramraj and Arun Thiruvengadam have shown.⁷ By recognizing that the ends of constitutionalism are served by a variety of different means, Dowdle believes that comparative legal study may then properly encompass a wider variety of human possibilities for constitutionalism beyond its liberal variant.

In (re)defining the constitutional project to enable this widening of disciplinary horizons, Dowdle claims to be returning to the true roots of constitutionalism in Enlightenment rationalism. It was this "Enlightened" epistemic character, not its liberal aspects, which caused this new modern notion of constitutionalism to spread outside of the Anglo-European realm."⁸ This character was grounded in an "epistemology that saw political knowledge and understanding as residing in universal reasons that were cognitively accessible to all persons, as contrasted against an earlier epistemology that saw capacity for political understanding as being limited to a particular class of the popula-

6. *See id.* at 116-21.

7. *See generally* EMERGENCY POWERS IN ASIA: EXPLORING THE LIMITS OF LEGALITY, (Victor V. Ramraj & Arun K. Thiruvengadam eds., 2010)

8. Dowdle, *supra* note 1, at 124.

tion.”⁹ Such “rational openness” has two consequences for Dowdle. First, it shows that constitutionalism is not defined by liberal institutions or values, but by the epistemic character of the enlightenment from which those values emerged. Indeed, he argues that this particular form of rationality is the very reason constitutionalism spread so quickly among non-Euro-American peoples, such that by reviving it in our discussions of constitutionalism we are better able to comprehend those forms of constitutionalism.¹⁰ Second, it grounds the technique he calls constitutional listening, which locates constitutionalism in “efforts to accommodate more open political epistemologies.”¹¹

I fear, however, that this Enlightenment vision of reason, as well as Dowdle’s redefinition of constitutionalism and the call for constitutional listening grounded on it, may prevent the kind of self-reflexivity about constitutional development Dowdle advocates. His view of reason is troubled by its historical and epistemological association with European imperialism, which was a project of economic, military, and cultural homogenization imposed on colonial subjects in the name of promoting progress and modernity. Dowdle effaces the pivotal role played by imperialism in spreading the idea of modern constitutionalism (among other things) and provoking nation-building projects in the third world.¹² In presenting this form of enlightenment rationality as universally transparent and intelligible, Dowdle does not consider the possibility that it may very well be a culturally and historically specific framework for understanding the world. That is, its terms may not legible *a priori*, so much as contingent on particular institutional and social transformations—often wrought by imperialism or the threat of imperialism—that sustain its legitimacy. It is probably true that such modern (post-Enlightenment) Western rationality enjoys pervasive and nearly exclusive legitimacy around the world; as Dipesh Chakrabarty has pointed out, the universal and secular character of the human presumed by such rationality is now a “global heritage,” providing a strong foundation on which to erect critiques of socially unjust practices both inside and outside of Europe.¹³ The point is rather that

9. *Id.* at 123-24.

10. *See id.* at 124-25.

11. *Id.* at 125.

12. For discussion of the paradoxes such imitation engendered, particularly in terms of nation and constitution-building, *see generally* PARTHA CHATTERJEE, NATIONALIST THOUGHT AND THE COLONIAL WORLD: A DERIVATIVE DISCOURSE (1993).

13. DIPESH CHAKRABARTY, PROVINCIALIZING EUROPE: POSTCOLONIAL THOUGHT AND HISTORICAL DIFFERENCE 4 (2000).

the pervasiveness of this particular form of epistemic rationality may have more to do with the refashioning of the world through imperialism and less about the inevitable unfolding of a universal human reason. Knowledge and reasoning may be closely tied to particular, contingent institutions of power operating in specific times and places, rather than universal principles always-already shared by all humanity.¹⁴

The implications of this claim—associated often but by no means exclusively with postcolonial and post-structuralist approaches—are explored in a variety of scholarly disciplines whose nuances I lack the space to explore fully here. My goal here is much more modest: I simply want to point out how the general direction of such work, specifically its emphasis on the condition of irreducible particularity rather than presumptions of shared humanity or universal reason, gestures toward a possible alternative to the principle of charity Dowdle espouses. If we seek to expose the contingency, rather than assume the self-evidence naturalness of particular ways of life, our inquiry must take careful account of how differences do not mark variations on a shared activity so much as extend an invitation to transform the very terms at stake—for both ourselves and our designated “others.” I call this alternative the “self-reflexive” approach. I think we can develop this self-reflexive approach to guide us in fairly and constructively evaluating the practices of others who inhabit differently situated communities—indeed, to cultivate explicitly the more transformative potentials already implicit in Dowdle’s analysis. We must think about how we might change ourselves—our conversations, our terms, our concerns—in addition to, and in the process of, learning from others.

This particular approach responds in part to the dilemma of modern social science and its attempts to establish verifiable, scientific knowledge of foreign others. Charles Taylor offered an early and extremely influential statement of such an approach to social inquiry, grounded in the German tradition of contextual hermeneutics.¹⁵ In order to perspicaciously account for different ways of life without reducing them to either inferior or incorrect versions of our own, Taylor argues, we must subject our own languages of self-understanding to interrogation.¹⁶ That is, we must at the very least understand their

14. For a discussion of how epistemic difference gives rise to perceptions of cultural difference, see Chatterjee, *supra* note 12, at 14–16.

15. 2 CHARLES TAYLOR, *Understanding and Ethnocentricity*, in *PHILOSOPHY AND THE HUMAN SCIENCES: PHILOSOPHICAL PAPERS* 116 (1985).

16. *Id.* at 124–25.

terms by transforming our vocabulary or at the most evolve a new language capacious enough to encompass both different ways of being and thinking.¹⁷

Taylor's work reflected and influenced an emerging critical interest in cross-cultural inquiry, as disciplines such as political science and anthropology came to grips with their complicity in forms of knowledge that implicitly denigrated foreign others. The still-evolving response has largely centered on how difference can be acknowledged rather than assimilated, figured as a provocation to learning rather than a mark of inferiority. In a well-known article published in 1964, the philosopher of science Peter Winch considered the extent to which we, as "modern" Anglophone social scientists, may be able to adequately comprehend the categories of knowledge advanced in what he called "primitive societies."¹⁸ Winch agrees with Alisdair MacIntyre that the self-descriptions of participants in social practices are necessary to conceptualize human action, but he denies MacIntyre's conclusion that the continual modification of these self-descriptions adds up to a rational thread running throughout human history.¹⁹ Rather, Winch argues, to understand culturally foreign practices, including those we associate with the magic and witchcraft of primitive societies, we must extend our own conception of intelligibility to make it possible for ourselves and our audiences to see what intelligibility amounts to in the life of the society we are investigating.²⁰ That is, we do not simply find this understanding already within the existing boundaries of our intelligibility.²¹ If we have no category for what the other does, Winch argues, the onus is on us to extend our understanding to make room for it, rather than insist on seeing it in terms of our own ready-made distinctions.²²

Winch's example explains why, if we are to take seriously Dowdle's contention that we do not know, and can never know, "everything there is to know about . . . constitutionalism,"²³ we must be prepared to transform our own standards of intelligibility to comprehend the practices of constitutionalism in different times and places. We do not simply "listen" to constitutionalism in other times and places, so much

17. *See id.*

18. *See* Peter Winch, *Understanding a Primitive Society*, 1 AM. PHIL. Q. 307, *passim* (1964).

19. *Id.* at 315-21.

20. *Id.* at 318-21.

21. *See id.* at 316.

22. *Id.* at 316-17.

23. Dowdle, *supra* note 1, at 121.

as gain a completely new ear (or even, perhaps, a heretofore unimagined organ) that forever refigures all future encounters. In contrast to the principle of charity, which turns for its efficacy on a presumption of shared premises or capacities, the self-reflexive, mutually transformative approaches such as Taylor's and Winch's are motivated by attempts to come to grips with contextualized difference. Indeed, it is precisely because we may not be able to assume a shared universal basis of rational intelligibility that the work of understanding differently situated others can have such a transformative effect on our own ways of being: learning implies not simply acquiring new knowledge or novel examples of an existing construct, but the more or less profound transformation of our self-understanding.

If we accept this view, then the principle of charity may not be able to function as Dowdle claims it can: that is, in a way that produces a truly broadened vision of constitutionalism, which expands rather than reproduces its original premises. This is because, as Dowdle presents it here, the principle of charity explains only how one is to understand others by rendering their behavior or utterances coherent. But precisely because it does not explain, expect or require one's own self-understandings to be transformed or challenged in the engagement with otherness, the "coherence" one is urged to find in others is always coherence in terms one already recognizes—because its criteria for intelligibility always remain permanently beyond the transformative reach of the encounter itself. The approach of charitably reconstructing what we take to be rational in the other's claims recalls Alisdair MacIntyre's remark that "if we identify behavior except in terms of the intentions and therefore of the beliefs of the agents we shall risk describing what they are doing as what we would be doing if we went through that series of movements or something like it rather than what *they* are actually doing."²⁴

One example offers a particularly telling demonstration of this point. In the conclusion to his article, Dowdle makes a final attempt to persuade scholars of comparative constitutionalism to take Chinese constitutional practice seriously. He points out that in doing so we are not necessarily legitimizing the authoritarianism that undergirds that constitutional order.²⁵ Although he presents what seems to be one unified reason for this view, he actually offers two separate arguments,

24. Alasdair MacIntyre, *Is a science of comparative politics possible?*, in *AGAINST THE SELF-IMAGES OF THE AGE: ESSAYS ON IDEOLOGY AND PHILOSOPHY* 260, 264 (1971) (emphasis added).

25. Dowdle, *supra* note 1, at 155.

which should be meaningfully distinguished for reasons that will become apparent below. The first reason is that, according to Dowdle, the very complexity of the “real world” mitigates against fixed normative labels: “nothing is purely good; nothing is purely evil. By extension, nothing is purely legitimate, and most importantly, nothing is purely illegitimate.”²⁶ Labeling others in such ways, according to Dowdle, is not helpful because it really tells us nothing about their practices. The second reason is that to claim that “we should not listen to odious constitutional systems simply because they are odious is to effectively assert that we have already learned all there is to know about what we might call constitutional morality.”²⁷

I think these two reasons are not only distinct, but are indeed acting at cross-purposes in a way that dramatizes the tensions between the self-reflexive transformation that Dowdle seems to want, on the one hand, and the rather one-sided comparisons that his analysis often performs, on the other. The first reason deeply interrogates the foundation of such terms as “good” and “legitimate,” suggesting that such terms are more useful for providing psychological comfort than they are in advancing helpful assessments of reality. More importantly, although Dowdle does not explicitly say so, this first reason also suggests that definitions of such normative terms are fundamentally and perpetually contested, emerging as they do from comparative perspectives situated in different places and times. What appears legitimate to us, for example, is obviously not what the Chinese call legitimate. This first reason, as I understand it, calls not for a decision about who is right, but a conversation about what “legitimacy,” or “constitutionalism,” means.

The problem with Dowdle’s second line of reasoning, however, is that it categorizes the “other” from whom one should listen as an example of “moral mistake.”²⁸ Indeed, this approach concedes that the very reason one should listen to “the constitutional discourse that takes place in more odious regimes” is precisely because it presents us with examples of errors, lapses, or problems. We examine them not because they truly have something to teach us, but because, in Dowdle’s words, we should realize that “there but for the grace of God go I.”²⁹ This encounter with differently situated practice does

26. *Id.*

27. *Id.* at 155-56.

28. *Id.* at 156.

29. *Id.* (quoting BERNARD WILLIAMS, *MORAL LUCK: PHILOSOPHICAL PAPERS 1973-1980* (1981))

acknowledge that practice as “constitutional,” and in that way does go beyond the contemporary practice of comparative constitutionalism as Dowdle describes it. However, the very way the encounter is framed makes impossible the kind of profound de-centering Dowdle’s first reason seems to call for; it truncates the very possibility of a conversation about “legitimacy” or “constitutionalism,” even as it fulfills the conditions for the principle of charity as Dowdle outlines them. This is because the encounter becomes meaningful only when and insofar as we have pre-judged the other using the same definitive normative assessments that the first reason interrogates. In contradiction to his claim that “[u]nderstanding the unfamiliar demands a process of learning, not simply one of evaluating,”³⁰ only by evaluating do we come to learn. Only when we see the other as (to use Dowdle’s word) “odious” can the other’s practices come to have meaning for our own practices of constitutionalism.

The encounter, as Dowdle describes it, teaches us more about what *not* to do with our constitutionalism, than about what constitutionalism is, or, given these new experiences with constitutionalism, what we might come to understand about its positive potential. There is nothing in this stance inconsistent with the principle of charity; pre-judging the other as odious or morally suspect says nothing about the coherence or rationality of their position. Without grasping what *they* are actually doing, in a way that fully references their own self-understandings (even to the point of acknowledging that we may disagree about what constitutes “odious” constitutional practices), we deactivate their capacity to really teach us something about constitutionalism. If we are learning, we are simply learning more about what “we” do not want to be. This means we are ultimately learning more about ourselves than about the imaginative possibilities of constitutionalism.

Comparison can function, however, not only to measure but also to create. Recently Roxanne Euben and others have built on similar insights to argue that the very practice of applying insights from one place and time to another relies fundamentally on a practice of comparison that produces knowledge rather than discovers it: “knowledge about what is unfamiliar and familiar is produced comparatively by way of what I call nested polarities[:] . . . recurring dyads [that] are both plastic and persistent, serving to establish contrasts that alterna-

30. *Id.* at 121.

tively distort and enable understanding of what is familiar and unfamiliar.”³¹ While sometimes leading to the congealment of prejudice, Euben notes, these nested polarities are essential to the “critical distance productive of . . . theoretical moments[.]”³² As I read this claim, and indeed as some of Dowdle’s own examples demonstrate, comparison is part of what enables us to learn more about what we already think we know. Even delineating a “liberal” vision of constitutionalism requires some “non-liberal” other against which it can be contrasted; it is, as Dowdle notes, built on a series of “situational” metaphors,³³ which rely on liberal constitutionalism’s putative differences with other forms of political and legal ordering. Otherwise, it would lack meaning as a “liberal” vision, rather than simply “constitutionalism” per se.

It is on the basis of comparing our experience or discourse with that of others that we can have any idea about what it is we are even talking about. What we take to be ourselves is constituted by contrasts and similarities we draw from juxtapositions with others. Just as Dowdle points out, the articulation of English constitutionalism by Albert Venn Dicey was motivated by a desire to distinguish what is “English” from what is “French.”³⁴ This is why, however, the comparative act is inherently creative, in that these characteristics are not so much found as *constituted* in the act of comparison. English characteristics cannot be English without some “French” characteristics that the contrast simultaneously disavows and calls into being. The comparative process can be refigured as one of dialogic translation, in which, as Roxanne Euben explains, the hegemonic representation of self/familiar over other/unfamiliar is not erased, but negotiated in a way that assures its polysemic and multivocal potential.³⁵ That is, this form of translation does not seek correspondences or equivalences with some external or culturally defined notion of “truth,” but engages dialogically in a “jagged and perpetually unfinished endeavor constrained by power inequalities and social institutions.”³⁶

Elsewhere, I have argued that we can take this process even further, beyond mutually creative dialogue toward radical interrogation of our existing commitments and modes of inquiry. The local character

31. ROXANNE LESLIE EUBEN, *JOURNEYS TO THE OTHER SHORE: MUSLIM AND WESTERN TRAVELERS IN SEARCH OF KNOWLEDGE* 15-16 (Dale F. Eickelman et al. eds., 2006).

32. *Id.* at 16.

33. Dowdle, *supra* note 1, at 116-18.

34. *Id.* at 152.

35. Euben, *supra* note 31, at 43.

36. *Id.* at 44.

of all thought, which emerges from and relies on a process of comparison that situates it within a broader framework of knowledge, is not best understood as a “cultural context that permanently conditions our understanding and argumentative claims, but [rather] as a particularized site for the circulation of knowledge” with its own broader-than-local ambitions.³⁷ In so far as this is true, the generalizability of erstwhile marginalized or “foreign” thought means that it can analyze us as much as we analyze it; it can discipline the very structure of our inquiry as much as provide objects of study. The result, I argue, “is not simply self-reflexivity about the parochialism of our own debates—producing what we may call *de*-centered theory . . . [but] the more radical possibility of *re*-centering the constitutive terms, audiences, and methods of theoretical discourse.”³⁸ Once we make ourselves *part* of the analysis, that is, as much an object of analysis and not simply its author, we are no longer insulated from the dynamic play of comparison that structures all meaning—for “them” as well as “us.”

II. TAKING THE NEXT STEP: AN EXAMPLE

Dowdle and I would both agree about the ways in which “our” differences from perceived others can productively inform, or transform, the way we think we do things. I have tried to show, however, that such engagements can also have a profound impact on how we position ourselves and our knowledge, transforming who “we” as a knowledge community think we are, as much as the kind of knowledge we produce. This capacity of comparison would strengthen rather than detract from Dowdle’s claims about how and why engaging constitutionalism in different places and times comes to matter. This is because comparison so conceived—as part of the self-reflexive and mutually transformative engagement inaugurated by the encounter with new forms of intelligibility—reminds us to what extent we are always-already part of the analysis, even as we can use our analysis to reflect critically on the terms we originally set out, and the objects we have attempted to describe.

I am not claiming that such bold moves are always legitimate or even necessary to every form of analysis, but they do seem integral to successfully performing the kind of transformative work Dowdle hopes to inaugurate with “constitutional listening.” Only by building-in this

37. Leigh K. Jenco, *Recentering Political Theory: The Promise of Mobile Locality*, 79 CULTURAL CRITIQUE 27, 28 (2011).

38. *Id.*

element of self-reflexivity from the very beginning, can we (as Dowdle hopes we can) go beyond a definition of constitutionalism that simply generalizes on the basis of particular Anglo-American structural features. We would make our understanding of constitutionalism dynamic and vernacular rather than an exclusive artifact of North Atlantic liberal experience.

The next step, as I envision it, may take us even further. Once we have acknowledged the possibility that constitutionalism, as a term, focuses a variety of human political and legal projects all over the globe, we may be encouraged to see the ways in which it carries us beyond even those institutions, meanings, and ideas that historically have supported it. That is, the self-understandings of participants in such conversations may themselves come to the basis for the next set of questions we ask.

What would this kind of approach look like? What would be its benefits? In my own work, I have tried to show that the results tend to be less confined to existing frameworks or expectations, and indeed more open to the imaginative transpositions that Dowdle urges us to consider. In one recent article, I analyzed discourse surrounding a term in Chinese, *fazhi*, that many take to refer to “rule of law.”³⁹ The term has existed in Chinese since the pre-Qin period (circa 400 BCE), and was often invoked in contrast to *renzhi*, literally meaning “ruling through people” or “rule by man.”⁴⁰ Although the binary seems to map in an obvious way the tensions between constitutional legal order and arbitrary rule, early twentieth century advocates of *fazhi* did not seem directly concerned with limiting state power, overseeing the activities of officeholders or establishing an independent judiciary, despite the fact that these ideas had already begun circulating in China at the time.⁴¹ These institutional innovations were connected with the discourse, but did not determine or exhaust it. Rather, I discovered that *fazhi*, which I translate as “rule by law” rather than the somewhat misleading “rule of law,” tracked an earlier, more longstanding debate about how individuals could effectively transform shared political and social environments.⁴² Rule-by-law advocates spurned rule-by-man arguments on the basis of their inadequate transformative capacity,

39. See Leigh K. Jenco, “Rule by Man” and “Rule by Law” in *Early Republican China: Contributions to a Theoretical Debate*, 69 J. ASIAN STUD. 181, *passim* (2010) [hereinafter Jenco, *Rule by Man*]. The term “*fazhi*” literally means “ruling through laws.”

40. *Id.* at 182.

41. *Id.* at 183-85.

42. *Id.* at 201.

rather than on the basis of their normatively troubling enshrinement of arbitrary power or their failure to enumerate and secure transparent and equal rights. Reading *fazhi* as rule of law, I contend, does acknowledge the capacity of the Chinese to engage in legal argument and to make contributions to broader legal understanding. This reading contributes to ongoing debates in legal scholarship over the ambiguities and dissonances within the term itself, even when applied to the contexts of its original emergence. But such a reading tends to efface the central but subtle stakes of invoking *fazhi* rather than *renzhi* in debates about political agency and reform.

This indigenous approach to the terms explains the contemporary variant of the debate in the People's Republic of China ("PRC") not as a rejection of "rule of law," but as an assertion of a different kind of political sensibility irreducible to liberal-democratic commitments. Much like Dowdle, then, I try to approach these Chinese discussions about *fazhi*—and indeed, the entire cluster of concepts and dilemmas characterizing Chinese political thought at that time—in a way that avoids ascribing them to concepts that we already think we understand; we cannot assume we have exhausted all the possibilities of human living-together, and so must remain perpetually open to the challenges of alternatives.⁴³ We must be particularly careful, as Dowdle warns us, to assume the dominant form of American liberalism as a normative parameter of our examinations of other societies. Unlike Dowdle, however, I do not read these alternatives as always-already captured meaningfully by categories (such as "constitutionalism" or "rule of law") we already know and use, *even if* we insist, as Dowdle does, that these alternatives perpetually trouble the valence of those categories. We must "ask, from an internal perspective, not how these Chinese terms of 'men' and 'law' fail in translating what we want them to, but what other kinds of politics they make possible. What questions do they ask about political life, and how do they structure responses to those questions?"⁴⁴

Analogously, I believe we must go beyond an expansion of the term constitutionalism, to consider its replacement. The Chinese conversation is not a case study that exhibits features predictable by already existing (and largely Western-centric) models of legal understanding, but stands as itself an important source of socio-

43. I undertake this larger project in LEIGH K. JENCO, MAKING THE POLITICAL: FOUNDING AND ACTION IN THE POLITICAL THEORY OF ZHANG SHIZHAO (2010) [hereinafter Jenco, *Making the Political*].

44. Jenco, *Rule by Man*, *supra* note 39, at 182.

political theory that can contribute to solving larger puzzles within political and social-scientific analysis more generally, including democratic theory and Chinese politics.⁴⁵ The best way to act upon the global presence of political thinking may be not to compare it only, but also to “act upon it: to develop *from* alternative traditions and *in* alternative modes new possibilities for thinking critically about politics.”⁴⁶ As Dowdle himself notes in a statement from his paper worth repeating and ruminating on, “Given the limits of our own current understanding of the possibilities and limits of the human project of constitutionalism, it is probably not wise to reflexively dismiss as intellectually meaningless arguments that have provoked such unprecedented reflection within a polity that has both historically and recently shown considerable, if somewhat unrecognized, sophistication in its collective constitutional discourse and imagination. It is precisely in those places that we have yet to seriously explore that truly new knowledge and understanding is most likely to be found.”⁴⁷ Taking this mandate seriously, I think we must go beyond constitutional listening to the more active exercise of self-critique and self-transformation, to craft ears that can begin to listen at all. The institutional and intellectual transformations this activity invites would likely resemble more closely those which brought about the translation of “constitutionalism” in the Chinese context, than those which today characterize academic comparative work.

45. In other work I have suggested that this extends to include even the very methods by which we conduct cross-cultural inquiry itself. See Leigh K. Jenco, “*What Does Heaven Ever Say?*” *A Methods-centered Approach to Cross-cultural Engagement*, 101 AM. POL. SCI. REV. 741, *passim* (2007).

46. Jenco, *Making the Political*, *supra* note 43, at 10.

47. Dowdle, *supra* note 1, at 148.