

From Grand Norm to the Code of Constitution – A Paradigm Shift of the Doctrine of the Mandate of Heaven

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Abstract

Hsien-fa (憲法) is a common translation of the term “constitution” describing a code of supreme law. *Hong-fan* (洪範, Grand Norm), a synonym for *hsien-fa*, first appeared in the *Shang Shu* (尚書, the Book of History), and is rooted in the doctrine of the Mandate of Heaven that was created as long ago as the early Chou dynasty. The two have traits in common, as well as major differences. Upon the demise of the Ch’ing dynasty and the founding of the Republic of China in the early 20th century, a paradigm shift, powered by constitutionalism, was inevitable.

The traits in common include the following: (a) power may be associated with evil, thereby requiring norms to gauge legitimacy and envisage possible sanctions; (b) the purpose of government cannot discount the welfare of the people; (c) a stable political order should be pursued; (d) a fair common ground should be established beyond partisan politics; and (e) taking public opinion into account in the decision-making process is the origin of deliberative democracy.

If we contrast the Grand Norm and the code of constitution, several political and cultural differences are apparent: (a) the presupposition that all emperors tend towards corruption; (b) the presupposition of political equality of personality; (c) the institution of periodic elections; and (d)

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benevolent despotism does not equal separation of powers. The latter two points answer the emphasis of the Mandate of Heaven on the merits of political morality over procedural mechanisms to rein in corruption of rulers, an emphasis which perpetuated the vicious circle of bloody political turmoil.

The movement from the Grand Norm to the code of constitution required a paradigm shift on three fronts: (a) political legitimacy was to be based solely upon “popular will” in a people’s sovereignty, not upon any mandate from heaven; (b) the basic premise of political equality in lieu of inequality that fixes political-social classes; and (c) in addition to the emphasis on political morality, adoption of procedures of the rule of law, including separation of powers and independent judicial review, to solve the historical quandary of power unchecked by due process and thus increase the opportunities for peaceful power transitions.

Keywords: Mandate of Heaven, Grand Norm, constitutionalism, political equality, rule of law, separation of powers, partisan politics, deliberative democracy, paternalist government, periodic elections