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“Rule by Man” and “Rule by Law” in Early Republican China: Contributions to a Theoretical Debate

LEIGH K. JENCO

“Rule by man” and “rule by law” are frequently invoked categories in Chinese political discourse past and present, but their theoretical scope and possible interpretation remain highly controversial. Seeking to gain analytical traction on these categories, the author revisits an early Republican debate over whether virtuous men or well-designed institutions were more essential to securing political stability and social transformation in the aftermath of China’s 1911 Republican Revolution. Focusing on the work of Liang Qichao, Zhang Shizhao, and their interlocutors, the author shows how “man” and “law” not only play roles in legitimizing one or another form of rule, but also help formulate questions about the interaction between individual effort and institutional influence. Viewed from this theoretical rather than historical angle, the debates become important not only for understanding wider issues in early Republican political discourse, but also for critically interrogating their contemporary variants from Chinese—rather than Western liberal-democratic—perspectives.

WHICH IS MORE NECESSARY for a successful legal and political regime—good men or good laws? China’s evolving legal system continues to wrestle with this long-unresolved tension between virtuous, far-seeing individuals and well-designed, impartial institutions that was first broached by Warring States philosophers two millennia ago. The categories of “man” and “law” that eventually came to articulate these two tendentious poles recur throughout Chinese legal and political analysis, especially in times of crisis. Reacting to the Cultural Revolution and the autocratic “rule by man” (*renzhi* 人治) strategy explicitly associated with the Gang of Four, legal thinkers in the late 1970s and early 1980s set out to establish requirements for a socialist “rule by law” (*fazhi* 法治) regime (Xia 1981). Much of this discussion has been analyzed, by both Chinese and Western scholars, from the point of view of liberal-democratic rubrics of accountability (leading many to use “rule of law,” rather than “rule by law,” to translate *fazhi*). For example, to what extent does *fazhi* in contemporary China point to a system in which “law imposes meaningful restraints on state and individual members of the ruling elite” (Peerenboom 2002, 8)? How do

recent excoriations of *renzhi* logic by Chinese legal scholars portend the emergence of political accountability in China (Keith 1994; Shen 2000)?

The persistent invocation of rule by man and rule by law throughout Chinese political discourse suggests, however, that the terms may not be exhausted by the concepts many contemporary scholars have used to assess them. Even in the contemporary era, Chinese leaders, most prominently Jiang Zemin 江澤民 and Hu Jintao 胡錦濤, continue to insist on rule by man principles when they assign a role to personal virtue (*de* 德) in building a predictable rule of law foundation for their economic expansion (Jiang 2006, 91–92; Yang 2006). The relationship between the virtue of men and the institutions of laws is not self-evident here, because rule of law rubrics would read such appeals to “virtue” as only tenuously complementary to the kind of accountable, impartial regime that Jiang and Hu say they want to build. When legal scholars acknowledge that people make institutions work, they tend to mean simply that it is people who enforce and obey the law. In contrast, Jiang and Hu’s “Confucian emphasis on character building,” which views the virtue of the ruler as a necessary component of a successful regime, is held to be precisely one of those elements of the Chinese tradition that “do not provide a very friendly environment for rule of law to grow in” (Peerenboom 2002, 49). Far from presenting an obvious starting point for rule of law discussions, “rule by man” and “rule by law” seem to promote agendas of their own that intersect with but are certainly not reducible to particular legal frameworks.

This awkward fit between particular political forms and the Chinese terms used to analyze them has often been articulated as a conceptual muddle at best, and a cultural predisposition toward authoritarianism at worst. But it need not mean either: the awkwardness presents an unusual opportunity to reassess the terms on their own ground. Comparative frameworks that relate the terms to political sovereignty as much as to “rule of law” rubrics are one means of reassessment (Ocko and Gilmartin 2009). Another would be to 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? The most common touchstone for understanding men and law in Chinese thought is the much-touted conflict between the “Confucians” and the “Legalists” of the fourth century BCE (Peerenboom 2002, chap. 2; Shen 2000, 24). These schools surely elaborated key vocabulary for ensuing debates, but they do not explicitly relate rule by man or rule by law terms to modern legal and political concepts such as constitutionally limited rule, democracy, and political accountability. Later thinkers, however, did explicitly address such issues using such terms, and it makes sense to explore their work for its more ready application to contemporary modes of politics.

To that end, I analyze an early twentieth-century Chinese debate over “man” and “law” to gain some theoretical traction on these recurring but persistently

troubling categories. Shortly after the Chinese republic was established in 1911, the eminent thinker Liang Qichao 梁啟超, along with his sometime colleagues Du Yaquan 杜亞泉 and Wu Guanyin 吳貫因, invoked “rule by man” language to advocate a greater role for moral reform as the Chinese government transitioned from imperial rule to democracy. Increasingly skeptical that the Chinese people were capable of self-rule, they vigorously opposed the “rule by law” measures—advocated by Zhang Shizhao 章士釗 and those who wrote for his political journal, *The Tiger* (*Jiayin zazhi* 甲寅雜誌)—that in their view accorded too much faith to the ability of institutions to transform social and political reality. Significantly, the disagreements between these thinkers did not fall along the simple opposition between a rule of law that provides security and predictability, on the one hand, and a tyrannical rule by man that gives full reign to autocratic power, on the other.¹ Rather, its participants elaborate a series of complex relationships along different registers entirely—man and law, it turns out, track the tensions between moral and legal authority, but also between personal and institutional efficacy, and between actions taken in society and those taken in political spaces. As such, the binary helped reformers think creatively not only about state legitimacy and justice, but also, and more importantly, about the sources of social change available at a time when state power was deeply fragmented.

The debate has been largely ignored in historical literature, but it articulates dilemmas that persist today.² Most prominently, positions in this debate mark wider theoretical disagreements about how and in what way a population with no prior heritage of popular rule can successfully establish a regime that takes “the people” as central. This is not a question only for democracy: in contemporary Chinese politics, the role played by “the masses” in Communist ideology provokes a similar dilemma, centered on the fact that those who are the putative leaders of a political movement (in this case, “socialism with Chinese characteristics”) seem to lack the capacity for participating in it. It is no accident that Communist Party leadership assuages its awkward position by the use of “man” and “law” vocabulary, insisting that while party-imposed legal structures (“law”) must necessarily restrain the people’s conduct, the people are in fact contributing to and participating in the success of law, and the socialist movement more generally, by practicing “socialist ethics” or “virtue government” (Luo 2001).

¹By “law,” pre-Qin Legalists (*fajia*) meant rules for punishment and reward, the proper manipulation of which could achieve certain goals established for the ruler’s benefit. In this sense, as Xiao Gongquan notes (1977, 23–4), Legalists promoted values more similar to those assumed within Confucianism’s “rule by man” ethical and political system than to modern liberal-democratic, “impartial” rule of law regimes.

²The secondary literature that does mention the debate tends to read it as teleologically linked to May Fourth discourse (Chow 1967; Weston 1998) or to distinct “rule of law” issues such as state legitimacy in the international order, the autonomy of the law, and procedural justice (Ocko and Gilmartin 2009, 89–90). Although both perspectives shed light on the debate, they fail to capture both the real issues about social change at stake in a deeply fragmented and unstable political order, as well as the potential for theorizing contemporary politics that *renzhi* and *fazhi* offer.

Far from being incomplete realizations of rule of law ideas, these contemporary readings of man and law point to the terms' already successful integration into "modern" politics. This fact belies their dismissal—then and now—as merely residual traditional elements playing out in otherwise progressive or "Western"-centered discourse, even as it demands deeper analysis as to how such terms address both mass/elite and man/law tensions.

Such analysis is provided, in part, by Liang, Du, Zhang, and others as they map "traditional" categories onto modern problems of governance—belying claims that China, unlike India, produced no "satisfactory reinvention" of indigenous thought to negotiate its domestic and international predicaments (Shue 2009, 101, 104). Their exploration included new elaborations of "society" and "culture" as spaces for enacting positive political transformation, the affirmation of greater numbers of legitimate political actors, and the identification of alternatives to constitutional rule and democratic subjectivity. Zhang Shizhao's contribution is particularly helpful here. Long considered *the* spokesperson for rule of law in the early Republican period, Zhang is often read through post-May Fourth lenses as an intransigent (and foolish) supporter of political solutions to problems that only "cultural" reform could solve (Hu 1985, 224–26; Wang 2003, 250; Weston 1998). A closer look at the debate, however, reveals Zhang's more nuanced theoretical position. A rule by man commitment, Zhang argues, can endow officeholders with undue discretion and political authority, but when tempered with "law," it can also articulate a participatory role for nonelites in political community building capable of resisting unrestrained autocracy. This deep ambiguity suggests that contemporary variants of rule by man, such as Jiang's "rule by virtue," may contribute to top-down autocratic control, but still contain the potential to challenge the very political apparatus that invokes them.³

Given the complex positions staked out in this debate, I resist translating *fazhi* as "rule of law," and hope my still-fraught choice of "rule *by* law" will gain clarity as I elaborate its context. As should be clear by now, however, the paper does not mean to provide simply historical background. I follow Liang, Zhang, and these other thinkers to ask, rather, what kinds of theoretical insights into political life can be gained by using "men" and "laws" as categories of analysis? This approach affirms these thinkers not only as historical but also as *theoretical* agents, whose work contributes to a meaningful discourse about political life that continues into the present. By clarifying what the participants in the debate rejected or opposed in order to stake out ground for their favored policies, we can examine how "rule by man" and "rule by law" re-mark the territory within which both they and we can formulate ideas about politics. In the process, I hope to shift the emphasis away from Western liberal commitments demonstrated in

³Ironically, this conclusion about "rule by man" mimics what Ocko and Gilmartin claim for rule of law in Qing China and British India: "it served simultaneously as an ideology of legitimation for authoritarian power—even as it defined a principle that potentially constrained it" (2009, 65).

“rule of law” rubrics toward ongoing Chinese disagreements, past and present, over how and by whom a shared political environment can be structured.

RULE BY MAN

The debate I examine here was provoked by profound disappointment with the outcomes of the Revolution of 1911, which ended China’s two-thousand-year-old dynastic system. The provisional constitution, promulgated soon after in 1913, seemed ineffective at securing a free, self-ruling community, mainly because the Chinese masses were far from prepared to shed their old role as imperial subjects and step into their new one as democratic citizens. “Rule by man” arguments reflected a growing realization that institutions alone were unable to call into being both the practices and attitudes needed for a functional constitutional regime. The historian Xu Zongmian identifies these years between 1913 and 1915 as a “high point” for questions of democracy in China, no doubt because many of those thinkers who had formerly celebrated democracy came to view its practicability with increasing skepticism (Xu 1984, 23). Liang Qichao and his Progressive Party began supporting elected president Yuan Shikai’s bid for greater central power, as the efficacy of regional and national assemblies receded in the face of growing national debt, domestic unrest, and imperialist pressure. Those who supported Yuan feared democratic tyranny, political fragmentation, and factional struggle more than the possible dictatorship that Yuan might—and eventually, in 1915, did—install (Xu 1984, 25; Young 1977, 149). Yuan Shikai took further advantage of conservative hopes by evoking the potential for “virtue government” with his ironic motto, “Virtue is the substance; laws are merely instrumental” (cited in Yue 1989, 107–8). Fearing that Yuan simply served to undermine the new republic by invoking the idealism of the past while simultaneously promoting its feudal excesses, many thinkers invoked “rule by law” ideas to counter the justification of authoritarian rule on the basis of claims to superior “virtue.”

Although Yuan Shikai’s 袁世凱 bid for restoration of the monarchy in 1915 no doubt intensified the debate, the two camps cannot be distinguished from each other simply on the basis of their appraisal of Yuan. As I will show, rule by man theorists and their rule by law interlocutors were responding to a problem that marked all early Republican political theory, namely, the lack of a stable center from which all reform and change could emanate. The Republican revolution installed “the people” as political agents and rulers, but they exhibited no spontaneous capacity for exercising their new role. With the elimination of the emperor as the only political agent not beholden to higher command, change in society and politics became radically contingent on the decisions of others to act, and act as freely, as the emperor once did. It seemed only natural to expect this selfless yet self-confident resolve to appear in morally muscular

individuals, whose virtue could help them discern both the urgency of the situation as well as the steps they should take to remedy it.

The work of Wu Guanyin exemplifies the problems for and of popular rule engendered by “rule by man” commitments. With Liang Qichao, Wu edited the influential journal *The Justice* (*Yongyan* 庸言) (Wu and Liang 1912–14) in Tianjin, and then the *Great China Magazine* (*Da Zhonghua Zazhi* 大中華雜誌) (Liang 1915b) based in Shanghai. Wu centers his discussions on the importance of cultivating *renwu* (人物)—exceptional individuals, often those playing a public role, who possess special talent or merit—for decisively determining the goodness or success of that community. Government and its institutions can make the nation prosper, it is true, but those very institutions can only be made possible by granting exceptional *renwu* leverage to order them properly (Wu 1913e, 1). The claims that Wu makes for *renwu* are bold: those who are properly cultivated quite literally have “power enough to transform an age,” and for that reason are deserving of intense study (Wu 1913a).

Wu does not offer support for Yuan so much as he emphasizes the efficacious power of virtue in nonpolitical arenas. In a series of essays, Wu distinguishes the philosophical commitments (specifically, *daoxue* 道學) that enhance individual virtue and presumably render it efficacious from the techniques of unadulterated power (*quanshu* 權術) that characterize the political-institutional realm. This putative distinction between “virtue” and “power” here leads him to invoke an analogous opposition between “society” (as the proper domain for *renwu*) and “politics” that gradually supplants—and in some ways contradicts—the pristine discreteness between man and law that originally motivated his analysis. When Wu insists that politics should be avoided in favor of cultivating virtue, it is not because he believes politics is ineffective, but that it is too negatively influential. For Wu, politics and political institutions inevitably produce behavior inimical to virtue and the preservation of *dao*. Those who enter politics hoping to make a positive difference or “save the country” are necessarily implicated by the pressures of power, and distort their morality for the excuse of circumstance and practicality (Wu n.d.).

In these essays, Wu is less sanguine in pushing for good *renwu* than he is for making society as a whole better: the talent these figures display, Wu notes, is half naturally given and half determined by what is encouraged by their social environment, either through common opinion or through widely felt approbation (Wu 1913c, 1913d). While China’s long history provides many instances of its society “lacking *dao*,” there always existed “independently motivated gentlemen” whose disdain for social opinion left them ever ready to cultivate the “people’s virtue,” but now society labels these kind of people “stubborn and old fashioned.” To Wu, the only way out of this is to “awaken the world and awaken the people” by declaring war on society and to change prevailing practices by convincing other like-minded moral individuals to combine and “accrete their power” (Wu 1913b, 2, 6).

Wu’s solution renders salient the contradiction between his unequivocal faith in *renwu* to effect seemingly endless beneficence and his simultaneous conviction that widespread social endorsement is required to make *renwu* function appropriately. Similar problems plague Du Yaquan 杜亞泉 (1873–1933), whose essay “Individual Reform,” published in 1914 in the *Eastern Miscellany* (*Dongfang zazhi* 東方雜誌), is considered by many to be the representative example of rule by man thinking in the republic. “There has never been a case where one who is not rectified is able to rectify others; nor has there ever been a case where parts [of the whole] are corrupt but the group can remain good. Our great mistake actually lies in not reforming the individual (*geren* 個人), but instead continuing to talk about reforming society” (Du 2003, 303). Du attributes the ongoing failures of reform to an inability to self-reform, directly linking individual effort with wider social transformation. Yet he does not explore the reverse proposition, which would predicate individual motivation or efficacy on particular social or political conditions. Where do the individuals who engage in reform of other individuals come from? Suggestive of the old Confucian idealism that believed in the exclusive and nearly omnipotent power of virtuous men to guide the ship of state toward peace and virtue, Du and others such as Gao Yihan 高一涵 embraced “individual reform” rather than political agitation, even as President Yuan Shikai peddled authoritarian control in the name of sagely virtue.

Lydia Liu has argued that Du’s rule by man individualism, like other contemporaneous appearances of *geren* in Republican Chinese discourse, does not promote autonomous independence. Rather, it seeks to liberate persons from the bonds of family to refashion them into nationalist subjects, as called for by the revolutionaries (Liu 1995, 89, 91). Whatever Du’s relationship to a burgeoning nationalist consciousness, Liu’s reading nevertheless suggests that his “individual reform” speaks not only to the imperial system, but also the regulative, hierarchical control that characterized it. By promoting reform on an individual level rather than an institutional one, Du suggests that it is no longer the education and virtue of the emperor and his attendants, but of individual citizens, that required the most intense cultivation. For that reason, Du’s rule by man commitments lead him away from Yuan Shikai, toward advocacy of apolitical participation in civil society. He hoped a civil society could unite the intellectual and merchant classes into an entity capable of acting independently of and in opposition to the state, just as they had in Europe (Gao 1998, 32).

Du’s rejection of institutions, although based in European liberal theory, was in a sense more thoroughgoing than traditional Chinese arguments. In his view, the actions of exceptional individuals were no longer seen to be enhanced or enabled by the positions they occupied—political means of transforming society or leveraging power were given up completely in the face of what to Du was their obvious failure after 1911. Political and social transformation was traced directly back to the personal virtues that once complemented, but now

exhaustively constituted, the capacity for world-changing action. Yet if individuals are uniquely capable of transforming intersubjective reality absent institutional leverage, there seems to be no clear answer why they could not have done so already. Du's lapses are more productive than his explanation here, because they gesture toward unresolved tensions created when "man" (Du's *geren*) and "law" (external forces and institutions) are upheld as an absolute dichotomy. Whereas Wu answers the question by assuming that such efficacy inheres only in exceptional and thus rare individuals (*renwu*), Du simply fails to wrestle with the possibility that forces external to the individual may be impeding his successful reform. In fact, Wu's careful attention to the way in which the quality and hence efficacy of these *renwu* is linked to external conditions and the wider sociopolitical environment betrays an implicit conflation of "man" with the institutions and political environments ("laws") in which individuals find themselves. He struggles to craft a theory of political transformation that relies purely on "rule by man" logics, but consistently portrays the relationship between "man" and "laws" as reciprocal. And Du's argument, when seen in light of this tension, appears unable to promote the egalitarianism it implies: it must either assume that only exceptional (yet oddly unmotivated) elites can transform reality, or succumb to the charge of impracticability.

Why, then, do these thinkers place their hopes squarely on the world-changing capacities of exceptional elites, even in the face of a reality that convinces them that institutions are at least equally influential on political and social order? Wu is concerned not only that the power of precisely these kinds of individuals can be destabilized ("corrupted") by institutions, but also that this instability signals powers and forces that exist outside, and sometimes in opposition to, the intentions of the extremely virtuous. The revolution had already denied to virtue the efficacy once guaranteed it, at least in theory, by the imperial system, further breaking apart Confucian morality from its prerevolutionary administrative base. This rift between politics and morality encouraged contemporary scholarship to draw a theoretical distinction between action taken in the sphere of "culture" or "society," on the one hand, and in "politics" on the other (Wang 2003, 248)—conceptualizing, as two distinct realms, what late imperial Chinese administrative practice had maintained as a single unit fused together by a shared universal morality (Ocko and Gilmartin 2009, 68, 70, 90). Conceptualizing "culture" or "society" as entities isolated from "politics," as Wu and Du explicitly do, may undercut their faith in morally muscular individuals, but it shores up the line between virtuous and dissolute that they no longer felt comfortable establishing through institutional means that smacked of imperial bureaucracy. They can defer issues of political administration indefinitely, and avoid falling prey to objections that their arguments lack an account of intersubjective political regulation.

Yet this conceptual bifurcation between society and politics, while resolving some of the contradictions of the rule by man position, at the same time produces

its own tensions. Invoking “society” as a realm of action partly explains how non-political, self-directed activity can be effective absent the institutional leverage associated with the older imperial order (including the emperor’s role as exclusive motor of all change), but it also alludes to precisely those diffuse new powers whose cumulative zeitgeist poses such a challenge for rule by man arguments. Du and Wu fail to attend adequately to the apparent efficacy of those who act outside proscribed norms, with the result that they are unable to explain why the efficacy of virtue is constantly undermined.

Cognizant of these contradictions, Wu’s more well-known colleague at *Yongyan*, Liang Qichao, reexamines the opposition between society and politics to formulate a new path for reform. Distancing himself from rule by man arguments such as Wu’s on the basis of the tensions they leave unresolved, Liang responds to both the egalitarian potential as well as the structural oversights of Du’s and Wu’s arguments by avoiding their emphasis on exceptional individuals. He examines instead the systemic problems that for him produce suboptimal social conditions, foregrounding “society” as the target of and source for his reform.⁴ But by refusing to address directly the potential of political institutions to fashion new social and political realities, Liang is still bound to many of the same conceptual strategies employed by Wu and Du. His preference for action in “society” rather than in “politics” aligns him with the rule by man theory he explicitly rejects, and brings him into direct conflict with Zhang Shizhao.

LIANG QICHAO AND “THE CAUSE OF SOCIETY”

Although Liang Qichao first earned fame agitating for constitutional reform under the Qing regime, he grew increasingly doubtful after 1911 that the Chinese people had reached a level of knowledge and experience capable of supporting democratic or constitutional government. On the basis of this doubt, Liang began to point out the contrasts between the ideals that rule by man advocates espoused and the reality that they confronted. Specifically, he criticizes Chinese society for producing a mutually reinforcing system of suboptimal officeholders, who then attempt to govern a populace that lacks the capacity for intelligent evaluation of their political world. He is far more anxious than either Du or Wu, then, that the quality of the population from whom *renwu* would be drawn is inadequate for building a modern democratic state in China.

⁴Although Liang’s work “after the social turn” is of primary interest here, it should be noted that Liang’s early work evokes without much reflection rule by man arguments more similar to those of Wu and Du. In “The Great Origins of China’s Virtue” (*Yongyan* 1, no. 2, December 16, 1912), for example, Liang echoes Wu’s sentiments that China’s past successes lie in its leaders’ virtue, the fundamental essence—if not the content—of which China shares with other dominant societies.

In his provocative essay “The Foundations of Government, with a Directive for Public Opinion Leaders,” Liang critiques public opinion newspapers for being unable to transform the political realities they presumably act to change. He uses this case as a jumping-off point for remarking on the inefficacy of political institutions in general and the uselessness of talking about how to change them. While Zhang and the contributors to his *Tiger* magazine chasten Yuan Shikai for usurping power and dismissing the National Assembly, Liang sees their advocacy of “political talk” (*zhengtan* 政譚) useless without the elite-led, society-wide moral education he sees as the minimally necessary foundation for any and all political activity.

This question [about the foundations of politics] has actually become a stagnant one. Why do I bother to broach it again? It is because I want to stop years of useless political talk, and shift our focus rather toward the cause of society [*shehui shiye* 社會事業] ... I have written this essay to explain that the very foundation of government is in society. (Liang 1915a, 233)

Liang’s exhortation to take up “the cause of society” indicates his conviction that only by focusing on society can both government and society be properly renovated. Politics thus becomes the product, rather than the context or condition, of “society,” and society is seen as that set of mores, practices, and general “culture” with the capacity to function independently of politics.

Here Liang partially returns to the “individual reform” concept found in the work of Du Yaquan to argue that not only the leaders, but *everyone*, in society must be good to make the government good. However, his critique shifts the focus away from individuals and their behavior toward evaluating the moral status of collectivities—specifically the masses of Chinese, whose preferences had acted as a barometer for the health of the Chinese political community since before the time of Confucius. He contends that “good laws” can be formed in only two ways: either Heaven gifts China with a king of superlative, Manu-like physiological and intellectual capacities, or the Chinese people become able to understand their government well enough to supervise and criticize it, thereby forcing officeholders to do good. Liang admits that the first option is unlikely; but the second option brings attention back to the failures of “society” to meet certain standard capacities for republican governance (Liang 1915a, 234).

This commits him to considering more carefully than do other rule by man theorists the possibility not only that individuals are susceptible to manipulation or influence by incentives, but also that systematic, large-scale ambient factors may exist whose impact on sociopolitical outcomes equal or surpass those of individual moral behavior. The moral and intellectual condition of “society” supplants that of specific officeholders or local leaders as most crucially deserving of

redress. For Liang, the root of the problem is that the very institutions the revolution was expected to found are useless when peopled by the Chinese race, whose culture gives them no sense of what they are meant to accomplish. “Discussing political institutions” and making this the focus of reform efforts, as he claims Zhang Shizhao’s journal *The Tiger* does, is still left with the unfortunate problem of China’s backward “national nature.”

Think about it carefully: monarchy or republicanism, a unified or federated state structure, a dictatorship or a popular government—other countries have tried one or another of them before, and has been successful. But our country has tried every single one of them these past few years. Since success continues to elude us, it can be inferred that the answer must lie outside of political institutions. No matter [what kind of institution], they are all peopled by this generation of Chinese. Saying then that although using structure or institution A does not work, but that B will, is nonsense that I simply cannot understand. (Liang 1915a, 242)

Just as changing the wax coating on a pill will not change the medicine inside, Liang contends, promulgating a constitution or establishing a democracy ipso facto will not make any difference to the society it governs. But unlike Wu, Liang does not assume that the connection between people and institutions is unilinear or necessarily destructive; rather, his grasp of the wider forces to which individuals are potentially susceptible allows him to acknowledge a potential interplay between government and society. Articulating the problem as one of reinvigorating a potentially successful but languishing “national nature” opens new avenues for political reform, because it renders the masses of Chinese an internally undifferentiated entity actionable by those who remain above them and can guide their improvement. Liang does not deny so much as defer a role for political institutions in responding to what he sees as China’s more urgent and fundamental problems. Once action is taken to make society better, its political functions will assume proper shape.

Liang’s endorsement of society as the initial site, if not ultimate resting place, of China’s transformation amplified calls made by Huang Yuanyong 黄遠庸 and others to find solutions to China’s problems outside the realm of politics. In a 1915 letter to Zhang Shizhao in his capacity as editor of *The Tiger*, Huang identifies literary reform and language vernacularization as the key to bettering China’s plight and advancing Liang Qichao’s “cause of society.” “Political talk,” like Zhang’s pleas to accommodate different opinions and uphold particular institutional structures, is useless without first establishing a new literature adequate to “awaken” China. Huang writes,

In my humble opinion, politics is in such a confusion that I am at a loss to know what to talk about. Ideal schemes will have to be buried for future

generations to unearth ... As to fundamental salvation, I believe its beginning must be sought in the promotion of a new literature.⁵

Huang gestures here toward a diverse range of socially and culturally centered reforms that served the goals of both the contemporary New Culture movement and the May Fourth movement that followed closely behind it. These included rebuilding the cultural character of society through education, language vernacularization, the encouragement of popular literature, and—an obvious relic of earlier rule by man arguments—the elevation of ethical conduct (Yue 1989, 129–31). Huang sees contemporary social problems as rooted in the inability of current tools of discourse, the most salient being the obscure classical Chinese within which all political matters were discussed, to relate to the “common man.” “Old” culture, in other words, fundamentally incapacitates “new” social reforms. By carrying on “political talk” in classical Chinese, Zhang and his compatriots were betraying both the Chinese masses and modernization efforts.

In his reply to Huang’s letter, Zhang stated bluntly that only once the political structure was in place could “the matters of society, which include art, be discussed” (2000, 612–13).⁶ For many scholars, Zhang’s response here is taken as the definitive defense of rule by law arguments in Republican China, a position linked in turn to the “Western liberalism” that Zhang was attempting to introduce (Yue 1989, 111–12; Zou 2001, 3). Ironically, the very “rule by man” arguments that are excoriated today for being inimical to contemporary political modernization are seen by historians of the early republic as crucial to that very project—and Zhang’s “rule by law” position is seen as nearsightedly opposing what was necessary to transition China from feudalism to modernity. Timothy Weston believes that Zhang’s emphasis on politics blinded him to the need for cultural reform urged by May Fourth intellectuals such as Huang Yuanyong, resulting in the failure of his political program. “In the end,” Weston claims, “Zhang Shizhao proved unwilling to imagine that anything other than politics could save China” (1998, 271). The replacement on the intellectual scene of Zhang’s formerly dominant *Tiger* magazine with Chen Duxiu’s *New Youth* symbolizes for these scholars the shift in mainstream Chinese thought away from “political solutions” and toward literary and social reform, consciousness building, and socialism (Wang 2003, 253; Yue 1989, 132).

It is certainly true that Zhang aligns himself against monarchy and benevolent despotism in favor of a constitutionally limited parliamentary government. But his commitment to institutional reform in these respects should not be confounded with a conviction that institutions alone have the power to transform reality and thus shape China’s future. Zhang in fact presents institutional

⁵Huang’s letter is reprinted in *Zhang Shizhao Quanji* (3:614–15). Here, I use Chow Tse-tsung’s translation (1967, 272).

⁶All references from Zhang (2000) are from volume 3, hereafter referred to as ZQJ.

reform as necessary to register what is ignored by rule by man arguments, including the political energy that arises outside as much as within politics. He attends especially to the problems that result when aggregative concepts such as “culture” and “politics” are used to authorize wholesale transformation, arguing that Liang’s “cause of society” demands a level of elite involvement inimical to the egalitarian participation it seeks to promote. It is not the transformative potency of individuals, but the dangers of their political enshrinement, that for Zhang most greatly undermines the foundations of a republic and motivates his advocacy of “rule by law.”

ZHANG SHIZHAO’S “RULE BY LAW” ARGUMENTS

In Zhang’s essay “Politics and Society,” published in *The Tiger* in 1915, Zhang rebuts Liang’s claims by using the very evidence that Liang provides. Zhang criticizes Liang for bracketing an admittedly important factor in producing the conditions he expects to change. Claiming that government affects society at the same time that he champions society as the exclusive motor of reform means Liang is saying that “government is not good because society is not good; but society is not good because politics is not good. Both are simultaneously causes and effects of the other.” This failure to acknowledge the circularity of causation blinds Liang to another possibility. Zhang theorizes that “even these ‘causes’ [may not be] absolute causes ... are there other factors involved? If they are absolute, then they cannot both be simultaneously upheld (as causes) ... but if they are not absolute, then these supplementary factors must be investigated, and their importance evaluated with respect to the other factors. Only then can one know from whence must ameliorative efforts proceed” (ZQJ 428; cf. 437–38).

Zhang defends his reasoning for institutional reform precisely by demonstrating the effects that institutions have on the quality of the people who interact with them. Unlike Liang, whose medicinal metaphor suggests that the Chinese people remain permanently intractable to institutional influence, Zhang contends that people’s natures can and will change based on the incentives the sociopolitical environment presents to them:

People with talent have a talented nature [*cai xing* 才性]; but they also have a not-talented nature [*bu cai xing* 不才性]. When people inhabit a good society, their humane side is strong and their inhumane side is weak; if they inhabit a bad society, the reverse is true. When talented individuals enter a good government, then their talented nature is manifest and their not-talented nature is suppressed. If they enter a bad government the reverse is true. (ZQJ 438)

This decision to exhibit one’s talented nature or one’s not-talented nature crucially pivots on whether or not this talent will be able to “find a proper place”

within the society or political system to which the individual contributes. Whereas Liang and Huang assume that the natures of individuals are inelastic and imbued with fundamental essences or “spirits” that obstruct or enable their development, Zhang pictures individuals as choosers who make deliberate decisions about the incentives their environment proffers, who respond to institutions but are not decisively determined by them. Denying the role of institutions in producing relevant incentives would mean assuming, as Liang does, that nonelite individuals lack the capacity to change their behavior. Citing John Stuart Mill’s argument (1861) that people learn about government and self-rule by participating in it, Zhang’s discussion here makes clear that the people in a constitutional government are not condemned by their “Chineseness” to replicate the stagnation and exploitation of imperial times. In Mill’s view, the respect endowed to participants by political participation leads to a greater felt sense of duty, further raising the dignity of both the participant and his or her act (Mill 1991, 343). The interactive basis of virtue and institutions leads Zhang to suggest that if the right institutions are in place China’s new era presents a unique opportunity to consider new “rule by man” possibilities.

In fact, Zhang celebrates the quality of people in government as the decisive factor in political success and identifies institutions as serving in a supplementary role: “A good government is nothing other than creating an organization and encouraging all the courageous, intelligent, clever and strong people in the country to contribute to it, directly or indirectly, as the quality of their talent dictates” (ZQJ 431). Zhang’s primary critique of Liang, then, is that he fails to consider the possibility that the government or its institutions may decisively influence the very cause of society he hoped to undertake. The powers inhabiting the “social” or “cultural” spheres are neither independent of nor uniquely powerful over the political influences that interact with them. To argue that they are, Zhang contends, Liang “must first posit the condition that politics and society are completely separate, such that ‘You do your politics business; I do my society business.’ Only after society has developed can one dedicate real energy to politics, and reunite the two in order to renew the country. But I would like to ask—is this condition tenable?” (ZQJ 427). Rather than parcel out who affects what and how, Zhang foregrounds the possibility that no clear answer may exist.

Other of Zhang’s colleagues at *The Tiger*, including Li Dazhao 李大釗 and Zhang Dongsun 張東蓀, made similar claims about the interactive potency of institutions and virtues, belying a common characterization of these thinkers as unremitting “rule by law” advocates. In his 1916 essay “Popular Custom and Government,” Li begins by endorsing a solid legal foundation for democratic government in China, but returns repeatedly to the dependence of law on custom, practice, and virtue. In fact, he explicitly contends that only if man and law are kept in balance can the political order succeed: “If you seek to correct the deficiencies in rule by man by relying only on law, you risk inviting the problems

of [pure] rule by law [regimes]; but simply waiting on a hero will also produce imbalance” (Li 1959, 49; cf. Zhang and Zeng 1981, 214–15). Zhang Dongsun, similarly, urges caution in presuming that law alone can transform both politics and society. China’s current crisis can be traced precisely to the gap between republican institutions and traditional popular sentiment that emerged in the wake of the 1911 revolution. A republican spirit was not a necessary consequence of a republican revolution; changing laws and changing attitudes were two distinct tasks, and both must be attended to at once (Zhang 1914, 6).

This circularity between men and laws is one foundation of the *Tiger* group’s moderate politics, which reflects a British liberal emphasis on compromise as a supreme political value. Citing Jeremy Bentham’s history of British government, Zhang Shizhao claims that only the gradual balancing of distinct interests in society produced Britain’s enviable prosperity (ZQJ 257). This balancing demands both flexible institutions, as well as a critical but broadly tolerant populace—a relationship of mutual interdependence that Zhang traces to the contemporary liberal thinkers Leonard Hobhouse (1911) and John Morley (1886) (ZQJ 264–65). Yet the very interaction between men and laws that contemporary liberal thought posed left Zhang at a loss to explain how, short of imperialism, those institutions could be successfully installed. Here, Zhang turns again to man/law vocabulary, centering his response to the dilemma on “habits” (*xiguan* 習慣)—a term that had become a shorthand explanation for why China could not support free institutions. Zhang agrees with Frank Goodnow, foreign political advisor to Yuan Shikai, that “for a thousand years the [Chinese] people never discussed the shape of government, and had no right to participate in it.” The habits that this produces, however, do not translate into destiny, as Goodnow claims; in fact, Zhang argues that “if the habit is not a good one, then seek ways to change it. Discussing whether or not to change habits ... on the basis of current habits [as he claims Goodnow seeks to do] is begging the question” (ZQJ 137).

It really is true that representative mechanisms and the institutions of self-rule were not something people could talk about ten years ago, and that was a “habit.” But in the ten years since, [the number of] people who talk about them have been increasing daily, to the point where they have become a kind of common knowledge. This is also a “habit.” It is just that the former is an old [habit], the latter a new one. Once a new habit has been established, what sense does it make to focus obsessively on the old habit, unrestrainedly declaring this [old habit] as “what we are used to”?” (ZQJ 137)

Zhang points out that changes are incremental and sometimes invisible, suggesting that habit has the unique characteristic of being tractable not to external impositions but only to the people who daily act to change it. Ironically, institutions can play a role in fostering just this kind of decentralized process by

opening spaces for a wider range of people to participate in altering old habits. Claiming that particular kinds of habits or levels of “virtue” must be attained before efficacious action can be taken either begs the question of where new habits begin in the first place, or supports arguments like Goodnow’s for tutelage dictatorship. The key, for Zhang, is realizing that ethics is not a measure of political efficacy or success.

In our country our perspectives on ethics and politics have never been clearly distinct. Outdated ethics talk has confused the point of government Ethics takes virtue as its topic, and politics takes institutions. Politics uses institutions to regulate an entire state, from the leader to the ordinary people, from the extremely worthy to the extremely dissolute. In the eyes of the law, there is no distinction between them. All have a fixed space that circumscribes them. (ZQJ 230)

Zhang’s argument for the impartiality of institutions again reflects Anglo-American liberal thought, specifically notions of equality under the law protected by rights to political participation, self-expression, and personal security. In liberal thought, these claims animate a rich discourse on individual liberation and personal autonomy, in which the right to privacy both grounds and makes possible individual liberation and self-development.⁷ In light of rule by man arguments, however, Zhang is making another kind of claim. Granting everyone a “fixed space” by way of the impartiality of law denies more than simply distinction based on rank. It contributes to a theory of social change by denying that political efficacy can be ascribed to individuals solely on the basis of their level of virtue. Zhang uses the vocabulary of “politics” to articulate this inclusion, evacuating it of the ethical mandates that traditionally authorized rigid hierarchies (e.g., the “five relations” of Confucianism) and that continue to underlie claims made by exceptional *renwu* for exceptional status (ZQJ 417–19). This is different from separating people and the “culture” or “society” they inhabit from political institutions, however. Zhang’s counterargument to Liang already established that relationship as both necessary and reciprocal. In fact, he demonstrates that he shares with rule by man advocates a desire to uncover efficacious sources for sociopolitical transformation, as well as a belief that individual effort does matter to political outcomes. He simply resists solving the circularity problem by resorting to the coercion of one-man rule, denying that virtue can ever attain a level that would justify the unrestrained political authority of its possessor.

The absolute authority of virtue, no one but sages can attain ... [but] has there ever been this kind of sage? ... Among all of that which historians

⁷Both John Stuart Mill and Leonard Hobhouse work from these prototypically liberal claims to justify more radical social and economic rights (e.g., “On Liberty,” Mill 1991), but Zhang does not engage these arguments despite their obvious application here.

recorded and literary figures transmitted, and which can be used as irrefutable proof, has there ever been among emperors and kings one who is so strong, so clear of mind, so intelligent that he can be praised by all under Heaven in the way Xunzi has described? ... if there is not [such a person], then this would be saying that order must rely on someone that can never exist in order to come about. (ZQJ 267)

Zhang summarizes his position here by quoting the Tang dynasty literatus Liu Zongyuan 柳宗元: “The way of sages is of no use to this world.” By desacralizing the role of virtue in rendering actions efficacious, Zhang pictures social and political forces as both arising from and tractable to human decision making—though not only on the part of “sage-kings” and the elites who strive to fill their shoes. Denying the efficacy of sages reduces the power of any *one* individual to transform social reality, but leaves society and politics open to human intervention on a broader scale.

With this response, Zhang stridently if indirectly contradicts the rule by man logic of Du Yaquan, which assumes that only if the quality of individual virtue is raised can China’s postrevolutionary order gain some measure of stability. Yet his argument has more important implications for society/culture arguments like Liang’s. Institutions of the type Zhang promotes subject the activity of nonelites to both regulation and recognition, which has the effect of registering such activity both legitimate in, and efficacious for, a republican government. This undercuts the authority of those elites whom Liang assumes will be capable of rising above social influences to guide “society” toward transformation—not only because elites and political leaders will be as beholden to the law as any other citizen, but also because institutions are rendered independent of virtue entirely, in terms of both those who run them and of those who are subject to them. The monopoly on virtue and culture that elites formally held in the forms of literacy, access to books and art, and elevated status within their communities holds much less weight in a constitutional system when culture and society are no longer seen as necessary or exclusive sites of sociopolitical transformation.

Zhang’s emphasis on politics rather than culture or society, then, reveals that even the cultural movement to democratize literature, promoted by Huang Yuanyong and later by May Fourth intellectuals, contains elements that are both unavoidably political and inegalitarian. By seeking to reform literature, elites privilege their traditional domains as unique sites of transformative intervention, even in the face of “social forces” arising from below as much as from above. They remain blind to the contributions of nonelites because they take forms different from what has traditionally been recognized as meaningful political action. The cultural reform that Huang advocates attempts to facilitate the access of nonelites to these traditional elite domains—specifically, high culture and literature—but does not entertain the possibility that efficacious action undertaken to sustain free government can take other forms or occur in other

places. In other words, the levers once exclusively maneuvered by elites can remain in their control even as they attempt to “democratize” literature by eliminating classical language. Liang Qichao alludes to the assimilative tendencies of social and cultural reform when he articulates “majority rule” as developing the virtue of the majority in accord with correct moral principles—that is, the contributions of nonelites are discounted when unmediated by proper cultivation (Liang 1922, 3644).

It is precisely a radical openness to unforeseen alternatives, however, that Zhang’s separation of ethics from politics makes possible. He suggests other, less elite-centered outlets for creative local changes, specifically the use of talent unregulated by central command: “if a country has good institutions, and allows *everyone* to make use of them, the virtuous and able will come to increasingly display their abilities. Would the incompetent then be willing to continue being incompetent?” (ZQJ 439; emphasis added). By claiming that he has no use for sages, then, Zhang does not mean to disparage the efforts of exceptional, “sage-like” individuals in building social and political reality. He simply hopes to drive a final and decisive wedge between sageliness and political authority, by enacting impartial laws that make the efficacious action once ascribed only to sages become the responsibility of the citizens of the Chinese republic.

CONCLUSION: CONTEMPORARY IMPLICATIONS

At least one Chinese historian has characterized participants in this early Republican debate as “losers,” whose seemingly futile efforts at puzzling through the institutional, personal, and cultural requirements for democracy were valuable only for facilitating later, May Fourth–era discussions on modernization and individual emancipation (Xu 1984). But once the categories of “man” and “law” are mapped from a theoretical rather than a historical vantage point, they illuminate contemporary usages of “man” and “law” invoked for ostensibly very different purposes. One key contribution of this early Republican debate is how participants use “man” and “law” to articulate questions that are centered more on the spaces and agents of efficacious, politically relevant action than about the proper characteristics of any particular regime. This shift in focus offers an alternative path for interrogating the quality of the Chinese (or any) government that need not rely on contemporary Western ideals of liberal democracy as a yardstick.

For example, many commentators on China’s contemporary political situation focus on its (lack of) democratic elements. This perspective leads to questions focusing on *who* rules: who leads, makes political decisions, and holds both leaders and decision-makers accountable? The disagreement between Zhang Shizhao and the social/cultural reformers, however, shows that an equally important line of questioning asks *how* rulers rule: how and in what spaces are political

actors formed, how do they intervene meaningfully, and how are they restrained (if at all)? This latter set of questions overlaps with those raised in analyses of Chinese rule *of* law, in that they ask about the accountability and performance of political actors. Yet man/law concepts allude to far wider political arenas than those identified strictly with officeholders or the government per se.

This broader political space is evident in recent policies replacing the Maoist “mass line” with such notions as the “Three Represents,” in which the party acknowledges its representative responsibility to citizens beyond those of the proletarian vanguard. Man/law ideas are integral to theorizing the transition: Jiang and the Communist Party of China have invoked a “rule by virtue” policy to “fully mobilize all positive factors and constantly generate new strength for the great rejuvenation of the Chinese nation” and thereby enable their cultural, political, and social representation of the citizenry (CPC 2003). By taking personal ethical practices seriously as constitutive components of political life, Jiang reads such virtuous interventions as forms of politically relevant participation. In a sense, he and his successors are using “rule by man” rubrics to respond to the very dilemma faced by the post-1911 reformers: if ruling, in the sense of creating or contributing to social order, is now a much more diffuse responsibility than previously, how can its sites and consequences be identified and improved? Hu Jintao’s more recent policy of the “harmonious society” recognizes the tensions in this project: the need for economic development requires (among other things) “a society full of vigor” and creativity, and thus the cultivation of particular cultural orientations among the people. At the same time, however, the doctrine insists that the dissensus that produces such beneficial innovation be subject to regulation by “scientific” and ideological principles, and reduced ultimately to a harmonious unity (CPC 2006).

This paradox between mass liberation and top-down control alludes to the tensions of rule by man arguments, but fails to exploit those tensions productively. That is, if (as both the “Three Represents” and “harmonious society” policies recognize) the behavior and morality of each and every person contributes to the overall characteristics of society, there is also the converse possibility that each person may also challenge or disturb the order in which he or she finds himself or herself. The mutual interdependence of both man and law—which forms a key node of the early Republican debate—suggests a more dynamic, if more difficult, relationship between self and society. How can personal virtue *change* social order and institutions, rather than replicate them or reduce them to objects of conciliation? Does “rule by man” mean that institutionally installed rulers should be virtuous, that the virtuous should be rulers, or—most radically of all—that “the people,” as rulers, should be free to exercise their virtues, however disparate or unconventional?

Contemporary legal theorists in the People’s Republic of China, such as Wang Jiafu 王家福, imply that a socialist rule of law regime does in fact act on the promise of that last, radical point: the will of the people is manifest in

the law, Wang claims, and this law should rule the state and its leaders (Wang et al. 1996; see also Peerenboom 2002, 59). Jiang Zemin, in contrast, insists that virtue and law are complementary, a view underscored by Hu Jintao in his calls for cultivating the “eight prides and the eight shames” as a means of building a socialist rule of law regime (Li 2007). Yet the contestation of Republican reformers over “man” and “law” suggests that Wang Jiafu’s notion of law may offer a better habitus for “rule by virtue” than either Jiang or Hu offer. Zhang’s argument especially highlights the ways in which “virtue” can oppress rather than liberate, because it protects already-privileged forms of expression and therefore accords undue space for elites, rather than everybody, to act. For Zhang, the impartiality of laws that apply to everyone is an important first (if not last) step in recognizing the contributions of nontraditional and nonelite actors to political outcomes. By insisting that “new virtues can be pursued only by pursuing new institutions; they cannot be attained directly” (ZQJ 230), Zhang seems to be pointing out that judicious reliance on institutions offers a path for change that need not presuppose values that are already present on a wide scale—in fact, rule by law can facilitate the entry into politics of heretofore suppressed notions of virtue that may challenge the status quo.

These insights suggest that a “rule by law” emphasis may be needed to counteract excessive reliance on rule by virtue—not because the latter leads to autocracy and the former to impartial liberal democracy, but because without law, virtue has no capacity for effecting change. Focusing not on individuals but on the aggregative entities of “culture” and “society,” Liang and Huang attempt to remedy the faults in arguments like Du Yaquan’s and Wu Guanyin’s, which paid insufficient attention to social forces that may act to thwart the goals, and thus remain beyond the control, of any one person. Liang and Huang end up repeating Du’s mistake, however. They believe that certain individuals do have the power to initiate wholesale change independently of actions others may take, assuming that reform “in society” can proceed predictably along lines reformers dictate. In the contemporary context, appeals to virtue mask similarly disempowering rhetoric: in attempting to release the economically beneficial energies of the entire people, “rule by virtue” and the “harmonious society” embrace some measure of agency for this mass of persons, but enforce a virtue whose content remains beyond contestation. Virtue’s efficacious deployment—its capacity to “rule”—remains the exclusive purview of only a select number of party leaders.

This need for control perhaps fuels resistance to institution building; as Lin Yusheng has observed, “because there are many possible ways for the mind to respond, no change of external stimuli can assure a desired intellectual change” (1979, 55). On this view, the unpredictable responses by people to institutions make “rule by law” rather dangerous as a political policy, and “rule by man” more secure as a means of fostering particular kinds of consciousness. Ironically, one upshot of this insight is that affirming a direct role for “law” in

fact allows a much wider space for the virtue, wisdom, and character of people to take effect independently of the regime in power—whether those people are nonelite actors, as in Zhang Shizhao’s case, or simply those who dissent from Communist ideology. Such insights point the way toward an alternative set of questions: rather than asking, “Will China democratize?” we may wish to ask about when and how the current Chinese leadership will give play to the unrestrained exercise of virtue, on the part of both leaders and masses. How can this virtue transform or challenge current power holders, and how does it both register and inform the influence of legal and political institutions?

My analysis here does not pretend to answer these questions. I simply aim to demonstrate that “rule by man” and “rule by law” concepts of every era offer considerable theoretical resources for both posing and responding to questions that are obscured from other perspectives, such as liberal democracy or rule of law rubrics. As a response to substantive theoretical issues, the opposition in any specific historical context between “man” and “law” also tracks a more general relationship between individual effort and institutional influence on social change. The Republican debate that I have analyzed here thus throws light on the ideas of a major transitional generation of Chinese reformers, but more importantly can be used to critically interrogate contemporary variants of “man” and “law” that hide more radically transformative possibilities.

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