

CROSS-CURRENTS



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Introduction to “Law, Politics, and Society in Republican China”

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In 2011, the centennial of the 1911 Revolution, the Institute of Modern History of the Chinese Academy of Social Sciences released a set of publications that includes a narrative history of the Republic of China (*Zhonghua minguo shi*, 12 volumes), a chronology (*Dashiji*, 12 volumes), and a collection of Republican biographies (*Renwuzhuan*, 8 volumes). The result of decades of work since the founding of the Institute’s History of the Republic of China unit in 1956, this monumental set pays tribute to the foundational research of multiple cohorts of Chinese historians on the subject of the revolution. Now that many previously accepted “facts” have been more or less tamed, the moment has come, in China as well as elsewhere, for the field to take up the issue of how best to approach the history of the Republic of China from various perspectives.

To capture some sense of the changing dynamics in this historiography, in fall 2012 the Institute of Modern History of the Chinese Academy of Social Sciences and the Institute of East Asian Studies of the University of California, Berkeley, jointly organized a workshop on the subject of “Law, Politics, and Society in Republican China.” Nine research papers were presented, in which participants considered the use of law as well as the dynamics of codification, whether as discourse or practice, in a variety of settings in Republican Chinese society.

It was not the purpose of the workshop, to be sure, to produce a history of law in Republican China. The objective was instead to generate new insight on Republican history through an examination of law. With the latter goal in mind, workshop participants took the opportunity to raise questions that broadly concern issues in three areas: historical periodization, encounters between China and the West, and the tension between aspirations and practices. Is it

the most productive approach, the participants asked, to rely upon a political chronology of regime shifts (1911, 1927, 1949) to examine the changes in Republican law? Or, conversely, how does a legal approach to Republican Chinese history shed new light on the nature of modern Chinese regime shifts, including their chronology? Modernity in Chinese law, as is well noted, has much to do with the Xinzheng (New Policies) reform of the late Qing in the 1900s and the state-sponsored wholesale adoption of Western legal reasoning and institutions. How do historians a century later make sense of the Western factor in the continuity and discontinuity of Chinese legal politics and culture? Were the Chinese, while duplicating non-Chinese texts and models, able to retain their subjectivity and subject position in the making of a Chinese legal system in the modern period? If so, then might a history of Chinese legal culture beyond the discourse of modernization and revolutions be possible? The Republican years, above all, saw many disappointments with regard to aspirations for constitutional governance and the implementation of a system of rule of law. What are the consequences of this long-standing tension between aspirations and realities? What, indeed, is the significance of a legal approach to Republican history? The papers published in this issue of *Cross-Currents* represent a selection from the original workshop.

Joshua Hill, in “Voter Education: Provincial Autonomy and the Transformation of Chinese Election Law, 1920–1923,” offers a thoughtfully researched paper that zooms in on a paradigmatic shift in Republican ideas of representation: the move among the political elite away from the practices of indirect and selective representation toward a system that aspired to direct and universal voting. Hill shows that late Qing gentry traditions of public-mindedness in the civil sphere, so well documented in the works of Mary Rankin and others, proved vulnerable to violence and corruption in the Republican years. In response, a new discourse of universal voting emerged in the early 1920s that gained circulation among the provincial elite before it caught on with national leaders such as Sun Yat-sen. Hill’s paper highlights the role of the provincial elite and offers a new look at that group’s quest for provincial autonomy. It cautions against a simple acceptance of the conventional wisdom of historical periodization. Instead, it points toward the usefulness of rethinking the genealogy of the idea of popular sovereignty, often associated with the rise of the national politics of the Nationalists and the Communists, through an examination of the mechanisms of universal representation in Republican Chinese provincial history.

Wennan Liu, in “Redefining the Moral and Legal Roles of the State in Everyday Life: The New Life Movement in China in the Mid-1930s,” tackles the Foucauldian issue of bodily discipline and considers the role of the Nationalist police in the fashioning of a modern Chinese citizenship. The Nationalist police, Liu argues, operated in a sphere that was within neither the realm of law nor that of morality. Police activities constituted a third sphere into which the Nationalist state stepped to displace the old gentry order of communal morality (with its lineage patriarchs and village elders). Through a thoughtful analysis of the internal disagreements within the Nationalist government, Liu suggests that the New Life Movement, with its combination of propaganda and coercion, succeeded in producing a bureaucracy that redefined the role of the state and its modernizing mission vis-à-vis the population.

Xavier Paulès, in “Unacceptable but Indispensable: Opium Law and Regulations in Guangdong Canton, 1912–1936,” draws attention away from the national scene to the province of Guangdong, which had its own local politics and history for the first quarter of the twentieth century. Through an examination of opium, Paulès offers a chronological review of local legislative acts embedded in local contexts. Whether a political actor had been labeled a warlord or a revolutionary, Paulès shows, politicians tended to conduct themselves in a pragmatic fashion with regard to issues of revenue extraction. Indeed, none other than Sun Yat-sen legalized the opium trade in Guangdong in 1924. At the same time, there was a remarkably high degree of Chinese consensus on the stigma of opium smoking and the necessity for its elimination. It was precisely because of his perceived ineffectiveness in the war against opium, a national disgrace, that Chen Jitang, the warlord of Guangdong, was ousted from his power base in 1936.

Glenn Tiffert, in “An Irresistible Inheritance: Republican Judicial Modernization and Its Legacies to the People’s Republic of China,” takes up the issue of continuity and discontinuity across the 1949 divide. Tiffert offers a close look at the province of Hebei and its court system in the Republican years. Republican Hebei, Tiffert shows, was among the least-equipped provinces to provide modern-style legal services to its population. This condition nonetheless provided the baseline from which any post-1949 legal reconstruction would have to start. Meanwhile, by the late 1940s, the Hebei court system was so thoroughly dominated by Nationalist Party members that a complete makeover after 1949 was inevitable. Tiffert’s paper thus draws attention to the dilemma of inheritance between the accrued assets of institutional buildup and the revolutionary imperatives of an ideological remake.

Each of the articles described above speaks to a broader project with its own integrity. As a set, the four compellingly lay out a case for bringing fresh perspectives to the study of Republican law and society. To those who dismiss the relevance of law in strongman politics in Republican China, the papers answer by suggesting that in discourse, as well as in aspiration, the idea of “the rule of law” had been steadily gaining ground in Republican society. Law offered an arena of vigorous debate despite power politics. It was through these debates that Republican Chinese elites, drawing on resources that were inherited as well as imported, refashioned a modern Chinese sense of justice in the public place. And, the relevance of such debates cut across regime shifts.

A fresh approach to the question of law and the quest for justice, in short, promises to reward historians with a new understanding of Republican Chinese history.

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