

From Edicts to Human Flesh Searches: Legal Communication and Practice in China's New Media Environment

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Abstract

During his stay in China from the outset of the May Fourth Movement in 1919 to 1921, American philosopher John Dewey wrote about the tension between customary, statute, and edict law which respectively derived their powers from long standing tradition, from state-sanctioned legal principle, and from the narrow exertion of force. Even though contemporary China is very different from the China Dewey observed, the development of legal communication and practice remains continuous with his account. Dewey predicted that China would develop its own path by integrating customary law into a more transparent and flexible system. New information and communication technologies have provided the outlet for many of the contemporary critical thrusts that are reshaping communicative institutions in contemporary Chinese society. This essay suggests that the increase in these technologies is making Dewey's prophecy something closer to a reality. The result is a novel exhibition of customary law through the power of social media in ways that can appear both emancipatory, as a voice of the people, and oppressive, as a reorientation to the intolerance of customary law.

Western media frequently portrays Chinese commoners as having a follower mentality shaped by state propaganda that makes them rule abiding or gullible to a manipulative authoritarian government. Take, for example, the *New York Times* article about the anti-Japan riots that were spurred on by recurrent ownership disputes over a set of small islands (Shanker and Johnson 2012). The article referenced the way the *China Daily*, the primary media organ of the Chinese Communist Party (CCP) touted the riots as demonstrations of the Chinese people's "patriotic fervor" (Shanker and Johnson 2012). It gave readers the sense that Party officials could be involved in the riots, and at the very least, they were doing little to calm the riots. Stories about the riots were released in Western outlets at the same time as news about the disgraced leader Bo Xilai whose wife, Gu Kailai, was accused of murdering

British businessman Neil Heywood. Those who keep up with the news in China could easily conjecture that the Party preferred the people to be in a state of patriotic excitement, rather than angry about what could have been a high-profile legal case regarding the sordid affairs of corrupt officials. This idea about Party motive is reinforced by Shanker and Johnson (2012), who write, “The political analyst Li Weidong said the official tolerance fit a longstanding pattern of behavior in which the Chinese government uses mass protests to further its foreign policy goals.” This is illustrated by the example of Sun Dongdong, a Beijing University professor who attracted negative attention after suggesting “that 99% of the people who repeatedly petition the government are mentally ill” (Reynolds 2009). Even though the professor apologized, petitioners gathered in front of the university and demanded that he explain his choice of words. To Western audiences who have kept even minimally abreast with happenings in China, the crowd’s response to the professor would seem to be missing the mark. He likely said that 99 percent are mentally ill because the “vast majority of petitions are unsuccessful, [as] one study suggested fewer than 1 percent received an official response” (Jacobs 2013a).

However, some Western news outlets are starting to reverse this trend, increasingly picking up stories about the variety of new ways the Chinese people are criticizing the structure of officialdom and the effects of this structure on other institutions, like the law. Reporting for *New York Times*, Jacobs (2012c) writes about a high-ranking Communist Party leader in Sichuan Province who fell from power amid a “flurry of vice-and-sex scandals... [which] have claimed a half dozen officials in recent weeks.” The majority of these scandals, he explains, “were first exposed on the Internet by journalists or anonymous citizens who forced the authorities to act” (Jacobs 2012c). Jacobs (2013a) also reports on the proposed overhaul of China’s re-education through labor system, an extralegal practice established in the 1950s by Mao Zedong “to swiftly neutralize political opponents.”¹ Pressure has been building

¹ Jacobs also notes “But any jubilation that the system might be on its way out was tempered by the manner in which the news emerged. Details of a conference held by top judicial and legal officials were reported online on Monday by a number of news media outlets —

against the practice of re-education through labor since the establishment of the 1982 Constitution and the corresponding push toward statute law. However, the labor camps have continued the CCP's work of maintaining stability where other forms of propaganda and censorship cannot. Recently, the most effective pressure against the re-education through labor system has been building online. One of the most well-known incidents that has incited netizen (online citizen) support is the case of Hunan Province woman Tang Hui, who was considered a public nuisance for sleeping in a court house and distributing flyers outside of official buildings to protest "that the seven men who had raped and forced her 11-year-old daughter into prostitution had been treated too leniently" (Jacobs 2013b). She was sentenced to 18 months of re-education through labor. This case was followed so closely in both social media and domestic media that Tang Hui was given the nickname "petitioning mama" (Jacobs 2013b). After her sentence to re-education through labor, "word spread through social media, [and] public outrage was so severe that the provincial authorities took the rare step of ordering her set free," (Jacobs 2013b). Tang Hui then successfully sued the committee that had sentenced her. She won an apology from the local police chief and \$429 in compensation, a sum that Jacobs (2013b) points out "was relatively paltry... [but] symbolically...carried a wallop." Stories like these, of Chinese people who stand up against injustice and prevail, are countered by representations of the Chinese people as gullible subjects.

We believe that understanding the complex dynamics at play in China's political development requires a more complex legal vocabulary that does more than go back and forth between narratives of collective obedience and individual resistance so familiar in the Western press. One such framework can be found in the writings of American philosopher John Dewey, who wrote about China during his stay there between 1919 and 1921. In China today, there exists a tension between following the law and respecting the law that runs parallel to the attitude Dewey witnessed when he arrived in China at the origin of the May Fourth movement in 1919. He was

including word that the party would "stop using the system" within a year. Those accounts, however, were later deleted, leaving only the brief Xinhua account."

interested in showing how China's modern reform movements had to be understood in the context of literally thousands of years of legal tradition and social habits. One passing observation of his 1920 essay, "Justice and Law in China," gives us a clue to the enduring value of his perspective in relation to modern tensions in legal communication and practice:

If you read the books written about China, you find the Chinese often spoken of as the 'most law-abiding people in the world.' Struck by this fact, the traveler often neglects to go behind it. He fails to note that this law-abidingness constantly shows itself in contempt for everything that we in the West associate with law, that it goes on largely without courts, without legal and judicial forms and officers; that, in fact, the Chinese regularly do what the West regards as the essence of lawlessness—enforce the law through private agencies and arrangements. In many things one who is regarded as breaking the real law, the controlling custom, is the one who appeals to the 'law'—that is, to governmental agencies and officers (Dewey 1929b, 244).

What Dewey saw was a culture in which law existed in multiple forms, often in direct conflict with one another. Specifically, Dewey identified the tension between statute law, enforced by the state through formal rules and agencies, customary law, enforced by the people through the exertion of mass cultural pressure organized through channels of informal communication, and edict law, which both surpasses and directs statute law as it flows from central sources of personality and power.

For those who keep abreast of events in China, the tension between following the law and respecting the law is further emphasized by cases of people who break the law and then appeal to the law. Take, for example, the case of convicted gangster Liu Yong. Originally sentenced to death, the sentence was overturned on appeal when Liu's lawyers argued that torture had been used to get his confession (Liebman 2010, 162). Author Gish Jen (2013), in her 2012 Massey lecture at Harvard University, describes how people have adapted to China's legal environment by treating life as a stage and pushing boundaries in a jovial manner. She writes:

In short, there is often a reality A and a reality B in China and, unlike in earnest America, an acceptance, even a relishing, of this. The ironies! The gamesmanship! Western observers are often flabbergasted to witness the downright mirthful floating of trial balloons in which people will engage, trying to figure out just what official censors will or will not, at any given moment,

tolerate—which is not to say that the limits-testing isn't pained and outraged at heart (Jen 2013, 130).

This essay tries to employ a new way of looking at contemporary currents of customary legal communication and practice by drawing on Dewey's decades-old observations. We gain valuable insight by trying to situate movements in Chinese communication and law from the historical perspective, provided by one of the most insightful Western philosophers of the twentieth century who observed China at a time of radical change. In many ways, of course, China of today does not resemble the chaotic Republic of the 1920s. Yet, the development of communication and law in China remains continuous with Dewey's account.

Mounting Tension between Customary and Statute Law

Perhaps Dewey's most important insight was that China, with its unique history, would never develop the same legal system as the West, but that it must evolve in order to meet the challenges of the modern age. Dewey predicted that China would develop its own path that was able to cast off reliance on edict law while integrating the rich history of customary law into a more transparent and flexible system.

It is not at all impossible that, in its future evolution, China will depart widely from Western constitutional representative models and strike out a system combining direct expression of popular will by local group organizations and guilds with a large measure of personal discretion in the hands of administrative officials as long as the latter give general satisfaction (Dewey 1929b, 252).

New information and communications technology (ICTs), a term used by Esarey and Qiang (2011), have provided outlets for many of these contemporary critical thrusts. This essay suggests that the increase in communication technologies is finally making Dewey's prophecy something closer to a reality as citizens appeal to the popular will and leverage power over both administrative officials and ordinary citizens. The immediate result is a novel exhibition of customary law through the power of new media in ways that can appear both emancipatory and oppressive, thus highlighting the often contradictory effects of expanding the reach of the popular will in opposition to institutions guided by edict or statute law.

While few resources can help us predict the future of law under the CCP, what John Dewey relates following his visit to China from 1919 to 1921 can help us digest the context of Chinese legal communication and practice. His visit was arranged and guided by a former doctoral student at Columbia, Hu Shi胡适, a liberal leader in the New Culture Movement. The political atmosphere in China during those years was similar to the atmosphere of today in that it was an ideologically contentious time. Progressives struggled against traditionalists, reformers struggled against radicals, and proponents of democracy struggled against supporters of communism. Dewey's social and political pragmatic philosophy was welcomed among those who sought change, and it was interpreted differently according to what types of change its advocates sought. Jessica Ching-sze Wang (2007, 62) refers to this time as "the Dewey experiment," when supporters of various ideological movements experimented with his ideas in the Chinese context as each perceived it. Dewey believed that by presenting the concept of pragmatism in terms of social and political philosophy, he would be able to help bridge the divide between competing ideological interests. Rather than unite on shared grounds, the competing groups interpreted the message of pragmatism in very different ways: the liberals in terms of intellectual progress, the traditionalists in terms of cultural preservation, and the Communists in terms of revolutionary imperatives. Following the Communist Party's successful revolution, the understanding of pragmatism as a tool for "getting things done" became most pervasive. Since then, this conception of pragmatism has been a mainstay in China's political culture, much to the chagrin of the other characteristics of pragmatic social philosophy, such as temperance, doubt, and experimentation. Suffice it to say that the legacy of pragmatism remains only a shred of the ideas Dewey introduced in the first part of the twentieth century, and that much can be learned from his analysis of China's legal communication and practice in those years.

For Dewey, "law" refers neither to an abstract legal code nor a form of coercive violence; law represents a form of transaction that implies "agreement, contract, consensus" (Dewey 2008, 118). Whereas abstract legal codes may have no bearing upon practice and enforcement through violence may be a one-way affair,

genuine rules of law take effect in “the institution of conditions under which persons make their arrangements with one another” (Dewey 2012, 54). Dewey thus makes law integrally tied to its application and communication through social habits and customs. Indeed, for him, “these customs are, upon the view here taken, the *source* of law” (Dewey 2008, 118). To explain this perspective, Dewey famously uses the analogy of a river valley, a stream, and its banks:

The valley in its relation to surrounding country, or as the ‘lie of the land,’ is the primary fact. The stream may be compared to the social process, and its various waves, wavelets, eddies, etc., to the special acts which make up the social process. The banks are stable, enduring conditions, which limit and also direct the course taken by the stream, comparable to customs (Dewey 2008, 118).

The valley thus represents the positive fact of the entire state of a culture at any one time, the river represents the communicating forces, tendencies, and cross-currents moving active at any point in social history to renegotiate social meaning and power, and the banks represent the sources of law—whether in custom, religion, science, economy, or the state—that canalize and channel these energies to create stability and predictability in any culture.

Dewey’s point is simply that law does not exist apart from its communication and practice; it is intricately tied up with managing and regulating the actual habits and customs of a society. As he explains, “a legal arrangement *is* what *it* does, and what it does lies in the field of modifying and/or maintaining human activities as on-going concerns. Without application there are scraps of paper or voices in the air but nothing that can be called law” (Dewey 2008, 118). On the one hand, abstract legal codes that control or regulate nothing represent either banks in a dry riverbed, or floating detritus, which always remains on the surface of cultural currents. On the other hand, attempts to coerce the current of the stream by force are akin to damming the water through sheer strength, the result of which might change the course of the stream, but often in unpredictable ways that might either overflow neighboring banks or break through and overtop the obstruction. If the violent restrictions on the course of the stream are impossible for it to resist, the current simply conforms to the artificial banks but kills all the life in the stream, thus turning it into a stagnant canal.

The essential tension in China of the early twentieth century, Dewey shows, is the tension between customary law and statute law. In Dewey's metaphor, this is represented by the difference between the natural course of a stream developed over time and the blueprints for a new channel drawn up by a civil engineer. What made China's situation unique was the depth and power of the river that had cut its channel for over two thousand years and had developed banks of law rich with tradition, ritual, and symbolism. Dewey (1929a, 208) remarks that "the Emperor did not govern" under the traditional Mandate of Heaven. Rather, "he ruled by *not* governing, by not interfering with the real government, the customs of the people, which were so immemorial and so interwoven in agriculture with the operations of nature that they themselves were like the workings of nature" (Dewey 1929a, 208). The essence of law in ancient China thus became synonymous with "the doctrine of non-doing," meaning here simply the doctrine of not interfering with the natural course of the river (Dewey 1929a, 204). Thus, the doctrine of non-doing was "something more than mere inactivity; it is a kind of rule of moral doing, a doctrine of active patience, endurance, persistence while nature has time to do her work. Conquering by yielding is its motto" (Dewey 1929a, 205). This also carried over into customs of communication that valued passivity and intended to not interfere. From this perspective, any reformer wielding papers full of new ideas did not have to be so much refuted as simply waited out: "Give enough rope to the haughty and ambitious, and in the end they will surely be hung in the artificial entanglements they have themselves evolved" (Dewey 1929a, 205). In other words, woe to those who would dare to challenge the river, for they will ultimately be drowned.

Human Flesh Searching: An Exercise in Customary Law

Customary law has a particularly sordid history in China because it was through habits of customary law that shaming and public executions of people who were labeled counter revolutionaries were affected during the Cultural Revolution. Jen (2013, 125) explains the relationship between public involvement in punishments, executions, and the interdependent foundation of Chinese society, she writes, "the horror and angst of leaving an interdependent household or group can be

considerable”. Agrarian units shifted during the initial Communist Revolution, then family structures were broken up during the Cultural Revolution when family members were often called on to carry out the punishment or execution of the accused. Jen (2013, 125-6) further explains the association with a quote from Peter Hessler’s book *River Town*, which tells how those victimized during the Cultural Revolution “were surprisingly full of shame...many of these victims... racked by shame, clearly believing that they were somehow flawed.” Customary law is closely entwined with interdependent structures, in which the breakdown of relationships creates a severe feeling of loss and the strong likelihood that a person will accept the shame that their group ascribes to them.

Customary forms of legal communication and practice are perhaps so at home on ICTs precisely because these technologies are so enmeshed in everyday life. The white-collar workers and students who account for the two largest categories of ICT users join together in “loosely affiliated, informal, anti-hierarchical ‘networks of networks’ of interpersonal relations” (Lievrouw 2011, 52). Since participants largely come from social groups that are literate in ICTs and have regular access to them, activity on ICTs tends to be integrated into their “everyday experience” in a way that is locally aware, “but is also undertaken with a global sensitivity...that is itself in a constant state of flux and reorganization” (Lievrouw 2011, 52). Spaces created by informal ICTs, play a special role in China’s communication environment because “they act as...‘countersites’ for expression, affiliation, and creativity apart from the dominant culture” (Lievrouw 2011, 63). Unlike social movements of the past, which commonly focused on goods, labor, and money, the major focus of social communication on ICTs occurs in the realm of symbolic production. It is about how the world is understood and how people identify their place in it.

The combination of customary law and ICTs has created a communication phenomenon known as *human flesh searching*, in which stories of bad behavior online or in real life attract widespread attention among web users who then use microblogs (China’s version of Twitter) to identify the accused, track them down online and/or offline, and make their displeasure known. Using human flesh searches to hold

officials accountable for bad or unlawful behavior could be seen as a step toward statute law because it accustoms people to something more akin to living in accord with *rule of law* in the sense that everyone is subject to legal scrutiny and the law is able to restrain the authority of even the most privileged individuals. For Western onlookers, the first impulse is to view human flesh searches in this way. In China or other areas of the world, Westerners tend to see the use of technology to expose corrupt officials as indicative of a progressive movement toward transparency and accountability. Yet, if given pause, there is much in this equation to prompt concern. What sets human flesh searches apart from other waves of intolerance for plurality of ideas, values, and ways of life is that they are employed to find and condemn people whose behavior is considered “wrong,” quite irrespective of the official legality or illegality of it.

Thus, the use of human flesh searches can also be seen as a magnification of customary law, whereby traditional judgments are used to regulate the behavior of individuals who fall outside the norm. The last phase of the human flesh search process, when the target is confronted online or in physical space can have very serious consequences. As, Zhu Huaxin (2011), fellow for China Media Project in Hong Kong explains, human flesh searches are unsettling because they are reminiscent of recurring waves of intolerance in modern China.

In light of the lessons of history, a number of abnormal trends have lately emerged on the internet that should prompt our concern. For example, dissatisfaction and scorn for those on the opposite side of an issue have in some cases escalated into ‘human flesh searches’ (人肉搜索) of other users, and even the publicizing of their personal telephone numbers or visits to their door to ‘teach them a lesson’; we have seen the disparaging of other’s characters, personal attacks, attempts to ‘restrain’ them offline, the issuing ‘death threats’, or posting to police microblogs calling for this or that person to be punished (Zhu 2011).

Kyle Vanhemert (2010) refers to human flesh searches as “mainstream vigilantism.” He notes, “The human-flesh searches are ‘not just a search by humans but also a search for humans’—humans that have in some way incurred the wrath of the anonymous bulletin board mob” (Vanhemert 2010). This has prompted Duan Yan

and Cao Yin (2012) who write for *China Daily* to call it “Cyber Cannibalism.” Of course, some targets do act badly by any conventional standard. Vanhemert (2010) gives the example of one very popular target, a woman who cruelly killed a cat. Yet, there is no shortage of questionable examples, like another target who was publicly shamed and forced out of her University after rebuking the government for their manipulative response to the Sichuan earthquakes. There are also many examples of people who become targets for lavish lifestyles or coarse behavior like flaunting their wealth or sexuality (Vanhemert 2010).

Human flesh searches know no boundaries. This has been true for past waves of intolerance as well. It was not uncommon during the Cultural Revolution, for example, for people in mainland China to suffer on account of the capitalist crimes committed by family members who had already fled. Different however, is the rapidity with which people can come under attack for events that no one will see. Kate Merkel-Hess (2008) offers the following striking example: “Grace Wang, a Chinese student at Duke University, received death threats (and her family in China was forced into hiding) after she was captured on film attempting to mediate between pro-Tibet and pro-China protestors on campus.” Cultural campaigns of the 1990s refocused the sense of Chinese identity in education materials and Party rhetoric, thus re-bolstering the state with cultural pride. This may be one explanation for experiences like Wang’s, which are becoming increasingly common. The technology entrepreneur Ping Fu, who lives in America and is the CEO of Geomagic, is another example of this experience. She wrote a memoir called *Bend Not Break* that recounts her experiences during the Cultural Revolution. Before the book was even released in China, netizens attacked it with an “Amazon blitz,” that consisted of a “barrage of negative comments” and a “flood of one star reviews” (Baker 2013). The attack was triggered when *Forbes China* published an interview that had been translated into Chinese. Having only the interview (translated with errors) to go off of, “a prominent Chinese academic and other internet users cried foul,” and the attacks began (Baker 2013). They called Ping Fu a fake and attacked her memories as lies. Even her memory of a rape was subject to incredulity. People like Ping Fu, who are willing to

“[air] China’s dirty laundry... to non-Chinese readers,” are increasingly becoming the targets of the “human flesh search phenomena” (Baker 2013). More and more often the searches are “trained on individuals to humiliate them publicly or to punish those who do not align with a strongly nationalist viewpoint” (Baker 2013). Ping Fu notes how similar the netizen attack felt to her experience of being publicly shamed when she was 8 years old and labeled a “black element” along with her parents (Baker 2013).

As the human flesh search movement continues to gain momentum, the group think dynamic strengthens. For example, Dennis Wong Shing-wing (2010) warned of the dangers of human flesh searching after one human flesh target, who had become known as “Kong girl,” considered suicide. “Netizens are often affected by group action” (Shing-wing 2010). The story of “Kong girl,” is provocative for the ways netizens responded with rationalizations for their behavior. The story began when Chiu Yin-ping recorded an argument she had with a store manager over the price of a wash basin. She posted it online, but rather than join with her and attack the manager for his unreasonableness as she intended, netizens attacked her for being “aggressive and overbearing” (Shing-wing 2010). She was labeled with the name “Kong girl” (港女), which is an abbreviated version of Hong Kong girl” (香港女), and connotes derogatory stereotypes about women from Hong Kong, i.e. “materialistic, greedy, [and] overbearing” (Shing-wing 2010). A few factors in this example culminated to such a bad effect: the “outing” became a competition between netizens, stereotypes made it easier for netizens to vilify Chiu Yin-ping, and her original intention, to disgrace the store manager, meshed with the stereotype of Hong Kong women to provide netizens with a strong sense of vindication for what they were doing.

The group mentality, the act of stereotyping, and the sense of mechanized inevitability that follows from the continued rationalization of bullying all work together to create a contemporary exercise in customary law. As it is consistently engaged in, the exercise becomes accepted as part of the way things are done. Human flesh searches appear to have arrived at that point. Even the language used in discussion of human flesh searches has grown official in tone. Take, for instance, the

incident of the “Shanghai Orient Shopping Centre Kappa Girl” (Fauna 2008). This human flesh search was conducted to reveal the star of a homemade pornography that was posted online. Once the woman was found, netizens report doing “field investigations,” by visiting her workplace with digital camera in hand (Fauna 2008). The target of the human flesh search became the subject of these field investigations so frequently that she chose to leave her job. Violating customary law brings significant penalties enforced by the collective power of indignant netizens to expose and shame the perpetrators.

Modern Changes Induce Duality of Law

Dewey observed that by the turn of the twentieth century, upheavals in the surrounding “valley” came to threaten the health and stability of the ancient river and its banks, meaning customary law. For over a century, China had maintained a “long and obstinate resistance to modern methods of industry, to machinery, railways and large-scale production,” assured in the strength of its traditions that it would endure these changes through the philosophy of non-doing (Dewey 1929a, 203). These mechanical changes combined with an increase in the means of physical communication began to destabilize traditional habits and customs, even as interaction between cultures created mutual “distrust, suspicion, [and] dread” based on a lack of understanding (Dewey 1929a, 202). Dewey writes that the “physical means of intercourse between nations by means of trade, mails, and cables have got far ahead of the agencies of psychological and moral intercourse” that regulate political and commercial contact between East and West (Dewey 1929a, 202). In short, the combination of industrial innovations, transportation technology, and increased means of communication began to undermine the integrity of traditional “banks” at the same time that they forced new obstructions into the river that eventually threatened its entire ecological health.

From a legalistic perspective, the answer was clear: simply draw up new statutes according to Western legal principles and use them to regulate and control these changes by top-down scientific methods and formal legal procedures. Indeed,

this is what was already occurring in 1920. Dewey (1929b, 251) takes note of the fact that

there is a competent law codification bureau, presided over by a Chinese scholar whose works on some aspects of European law are standard text for law schools. A modern system is building up. An effort is being made to secure well-trained judges and to reform and standardize judicial procedure.

As important and necessary as these changes were, Dewey did not see them as sufficient for adapting to the challenges China faced. He observed “it is one thing to introduce formal changes and another to change the habitudes of the people. Contempt for politics and disregard of governmental jurisdiction...will die hard” (Dewey 1929b, 251). In fact, he believed “it is to be doubted whether China will ever make the complete surrender to legalism and formalism that Western nations had done” (Dewey 1929b, 251). No matter the amount of disruptions, the river is simply too deep in the banks of cultural habit and too wide for any amount of statute law to reform its channel. The compromised system in place in China of the 1920s therefore amounted to a dual system of law. On the one hand, custom represented the way by which almost all disputes between groups were settled through personal relationships and negotiations. On the other hand, custom could not handle all confrontations; China still required the resources of a national government to regulate certain disturbances in its environment.

There have since been concerted efforts to develop the institutional structure and authority of formal legal practice. In the late 1970s and early 1980s the value of “rule of law” was considered in opposition to the “rule of men” (Peerenboom 2002), or in other words, whether laws should be exercised at the discretion of rulers or if rulers should be bound by the law. According to the 1982 Constitution, rule of law prevailed. Yet, the institutional structure and authority of the courts was still not developed enough to support this idea in practice. Then, the late 1990s saw the beginning of a new discussion. This discussion centered on the difference between “construction of a legal system” and “establishment of rule of law,” represented by the homophone *fazhi*, 法制 and 法治 respectively (Peerenboom, 63). One way of understanding the distinction is in terms of order. “Rule of law is the goal of a legal

system” (Peerenboom, 63). Another way to understand the distinction is in terms of “rule by law” and “rule of law,” where *by* indicates the instrumental function of law and *of* represents the practice of “meaningful restraints” (Peerenboom, 64). Either of these discussions ultimately boils down to decisions about communication, relationships, and authority.

In the early years of the People’s Republic of China (PRC) under CCP rule, Party legitimacy and strength was demonstrated to the people through acts like state infrastructure and sanitation improvements. In the same spirit, the CCP tried to demonstrate its legitimacy and strength to the world by having the qualities of a strong state. “Constitutions were something that strong states had; therefore, China had to have one” (Wong 2013). The rulers of modern China “experimented with the constitution to bolster the power of the governing body” (Wong 2013). Likewise, conceived in light of the Party’s Communist aspirations, the words of the constitution resemble those of Western constitutions, but ultimately mean something else. The 1982 Constitution provided “full powers for a representative legislature, the right to ownership of private property, and freedoms of speech, press and assembly. But the idealism of the founding fathers was short-lived” (Wong 2013). Even though the rationale of statute law began to develop, when faced with officialdom and/or customary law, the rationality still proved largely impotent.

When thrust into the mix, new ICTs are finding ways to work in close proximity to statute law, at times challenging or violating it, and at other times enabling it. Referring back to the story of the gangster who got the death sentence overturned by appeal to law, netizens used ICT networks to air their concerns about the role of corruption in the newfound leniency. The traditional media picked up the story. Then, it spread online. Headlines like, “Liu Yong Will Not Die,” said nothing of the argument about torture, but rather implied he was receiving special treatment. Mention of this sort of corruption sparked rage online.

The public outcry led the supreme People's Court to intervene in the case, apparently at the instruction of senior national CCP officials. The court invoked a rarely used procedure through which it may retry questionable cases *de novo*. The outcome of the carefully scripted retrial surprised no one: Liu

was resentenced to death. He was executed the same morning that the court announced its verdict. The media claimed victory, noting that the decision was in line with popular demands (Liebman 2010, 162).

In this instance of legal communication, public anger about corruption overshadowed anger about judicial process. In turn, ICTs were used to point out potential flaws in the just functioning of statute law but ended up operating in a customary way and achieving customary ends.

ICTs can also intensify focus on outdated statutes. The case of Sun Zhigang, a young migrant worker who was murdered while in custody, offers a good example of how ICTs can translate the attention garnered by a single incident into public opinion directed at larger systematic legal problems. The young college graduate ended up in jail because he went in search of work without adequate documentation. Three months later, in June 2003, “China’s State Council announced that the custody and repatriation system was being abolished and replaced by a system that would focus on assisting, rather than punishing, migrant workers” (Liebman 2010, 160). As mentioned earlier, many netizens are students and white-collar workers. They likely identified with this young man and easily made the connection between his death and the broken system. However, it should be pointed out that the actual murder (reportedly committed by another prisoner) was never addressed or resolved. Entirely overlooking a crime is no more a progression toward consistent statute law than reacting to the crime with unstoppable bloodlust. Rather, the attention netizens gave to the larger issue can likely be attributed to the relevance this case had in the lives of many netizens. This is not to say that personal relevance is a poor motive for addressing flawed policies, but rather to point out that ICTs are made to function in a broad enough range of ways that one must be wary of presumptions. In this instance, netizens addressed a policy, which could lead to a long term change. They also allowed the pull of personal relevance to overshadow the murder that had originally attracted their attention.

Edict Law May Still Trump All

Edict law, as Dewey witnessed, extended where customary law and statute law were unable to reach. Custom could not handle all confrontations. China required the resources of statute law. However, lacking the broad legitimacy of Western statute law, the government could enforce its will only through a largely linear chain of authoritative commands that concentrated on performing specific actions. Representing what might be called “edict” law, Dewey explains that “government in China is still largely personal—a matter of edicts, mandates, decrees, rather than of either common or statute law” (Dewey 1929b, 247). In edict law, the government does not set forth principles but rather commands that specific actions be done, which sets in motion a circuitous chain of command until some event occurs. Describing how the government repressed a new liberal weekly in Peking based on statements of its perceived “Bolshevism,” for instance, Dewey describes how “the Military Governor reported this statement to the Minister of War in Peking, who reported it to his colleague the Minister of Justice, who reported it to the local police, who took possession of the newspaper office and shut down the paper” (Dewey 1929b, 247). At no point during this procedure was there “any way that would secure the shadow of legal redress” (Dewey 1929b, 247). Instead there was simply “vagueness, overlapping authority, and consequent evasion and shifting of responsibility” that made it appear as an “official House That Jack Built” (Dewey 1929b, 247). Without the shared respect for the system of official law and justice in China, the government could enforce nothing else than a series of edicts.

This situation is paralleled in contemporary China. Edict law directs statute law, and where statute law does not prove amenable to Party needs, edict law will bypass the constraints. In this way, edict law has a great deal of power, but according to the rationality of statute law, it is unjust. The national petitioning system speaks to the idea of edict law, and dismantling it could speak to the attempt to bolster statute law. “In China, petitioning is an ancient form of getting justice. In imperial times, an ordinary subject who needed justice would come to the capital, throw him/herself at the feet of the emperor and beg for his/her case to be heard” (Reynolds 2009). The petitioning system still exists in an abridged form, but as the story at the beginning of

the article noted, it does not often provide petitioners with any gratification. Further, petitioners have for years faced the risk of black jails, an “extralegal form of detention” (Jacobs 2012a), that could be called symptomatic of China’s culture of edict law, where imperatives trickle down the ranks and across the land, eventually landing on the desks of local officials who must figure out a way of making the imperative happen. Jacobs (2012a) notes:

In recent years, top officials have repeatedly denied the existence of black jails, which are financed by local governments desperate to prevent aggrieved citizens from filing complaints against abusive police officers or corrupt local leaders in China’s hinterland.

When the imperative is to decrease the number of petitioners who arrive in Beijing, black jails have proven an effective means for local officials to prevent petitioners from making it there. The petitioners are either kept from leaving town by local officials, or are picked up by “retrievers” once they are in the capital (Jacobs 2012a).

When new ICTs are thrust into the mix, they call attention to the unjust functions of edict law and create a backlash against them. In an interesting variation on the use of petitions, netizens used ICTs to bypass the defunct Chinese petitioning system, posting instead on the U.S. government’s White House petition website. In an attempt to more effectively protest the construction of a petrochemical plant in Pengzhou, a Chengdu blogger created a White House petition (Li 2013). Days after the post, the blogger was visited by security agents and told to delete the post.

However, Li (2013) reports:

The US website does not allow petitions to be deleted. Frustrated and fearing retaliation, the blogger posted again on Weibo: ‘Help needed! Will someone please tell me how to delete a White House petition? The police have talked to me, and I am scared.’ China’s internet censors deleted her plea for help from the microblog.

Although ICTs have still not proven effective in preventing black jail related disappearances, they have offered a means for protesting citizens to place themselves in the public eye, thus increasing the likelihood that their disappearance would garner the kind of attention that the Party tries to avoid. For example, Ye Haiyan, a Guangxi

based gender rights activist, was assaulted and detained after returning from a protest in Hainan province. Lau (2013) reports:

Ye appealed for help three times on her microblog around noon yesterday, saying her apartment had been raided by about 10 women and one man while she was alone with her daughter. ‘There are now four to five women beating me up,’ Ye said in her first post. ‘Please help me to call the police. There is only me and my daughter [here].’

ICTs can provide witnesses for the exercise of edict law, they can provide public opinion pressure to support the practice of statute law, and they can provide the foundation for a resurgence of customary law.

The divisions between customary, statute, and edict law provide a heuristic framework for understanding developments in legal communication and practice. As Dewey realized in the early 1900s, Chinese society hinged between traditional approaches to legal communication, such as the direct command of edict law and the extra localized and emotional directives of customary law, and the modern perspective of statute law that would hold all people accountable to the same rule of law. These divisions provide the stable and navigable framework that is needed to study and interpret the range of capacities at which new technologies function in contemporary China and the various kinds of social movements developing from them. Further, such a structure frees Westerners who would write about Chinese communication from the trappings of superficial categorizations that would label the Chinese people as entirely subjugated by authoritarian propaganda or permanently imbued by the hierarchy of traditional society. Traditional forms of communication have found a new home in the electronic world. The resurgence of customary law via “cyber cannibalism,” or human flesh searching, is one example of this change. Lessons, like Dewey’s, learned from other periods of change, can help us confront this new electronic situation.

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