

# Revisiting the Rule of Law and the Rule of Man

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*This paper challenges the seemingly uncompromisable dichotomy between the rule of law and the rule of man in the discussion of liberal democracy. Whereas the rule of law has long been stressed as an indispensable element in the sustained survival of democracy, we point out that, like the rule-of-man-based institution, it is subject to potential deterioration. When deterioration does occur, the sustainability of democracy cannot solely depend on perpetuating the existing rule of law system. The alternative we propose is to utilize the constitutive relationship between the rule of law and the rule of man to initiate institutional change that will halt this deterioration. Leaders in this constitutive structure are required to exhibit two pivotal qualities: (1) the ability to initiate institutional change to halt deterioration in the existing system; and (2) willingness to submit to the rule of law institution once it has been established so as to ensure the*

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*sustainability of democracy. Two examples of such leaders are chosen: Charles de Gaulle in France and Chiang Ching-kuo in the Republic of China on Taiwan. They exemplify how a non-antagonistic and non-exclusive understanding of the rule of law and the rule of man can help, in the former, to further consolidate democracy in a time of crisis, and in the latter, to transform an authoritarian regime into a democracy in a time of transition.*

**KEYWORDS:** rule of law; rule of man; Charles de Gaulle; Chiang Ching-kuo; democracy.

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One of the conventional premises for a liberal democracy is the installation and practice of the rule of law. Rule of law is considered to exclude and be the opposite of the unpredictable rule of man. Listed first in the "Declaration of Democratic Values" issued by the heads of state of the seven major industrial democracies is the statement: "We believe in a rule of law which respects and protects without fear or favor the rights and liberties of every citizen and provides the setting in which the human spirit can develop in freedom and diversity."<sup>1</sup> Elsewhere, it is not difficult to spot the recurrent antithesis in the literature of modern law, political philosophy, and democracy, where one finds the following remarks: "the rule of law, not man," "law is reason, man is passion," or "law is objective, man is subjective."<sup>2</sup> However, is the dichotomy between the rule of law and the rule of man oversimplified? Is the rule of law system flawless? Does the rule of man really contribute little to the study of democracy and institution-building? Institutions based on the rule of law are, after all, created by men. How can a rule-of-man-based regime be transformed into a democracy without the intervention of certain men? Moreover, can the rule of law really protect human beings in all circum-

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<sup>1</sup>"Declaration of Democratic Values," reprinted in *The Washington Post*, June 9, 1984, A14.

<sup>2</sup>Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004); Raymond Wacks, *Philosophy of Law: A Very Short Introduction* (New York: Oxford University Press, 2006); and José María Maravall and Adam Przeworski, eds., *Democracy and the Rule of Law* (Cambridge: Cambridge University Press, 2003).

stances? What if the rule-of-law-based institution deteriorates? Who should then step outside the rule of law system and pinpoint its flaws? In other words, is it not the case that a rule of law system that has deteriorated needs human intervention in order for it to be corrected and better aligned to the spirit of humanity?

This paper revisits the seemingly uncompromisable dichotomy between the rule of law and the rule of man. We do not seek to deny the importance of the rule of law in a liberal democracy. Instead, we wish to synthesize the rule of law with the rule of man and stress the benefits that an alternative constitutive relationship between them can bring, especially in times of crisis, such as war, interregnum, or a period of regime transformation. We are interested in exploring the correlation between institutional change and the constitutive relationship of the rule of law and the rule of man. In doing this we work in parallel with certain other examples in the literature of leadership. For example, Strahan employs an "institutional time" approach to describe how political leaders who carry out purposive actions in legislatures may have an important influence on initiating institutional change;<sup>3</sup> Cothran and Phillips talk about how crucial it is for black leaders to lead in times of crisis and to initiate changes in race relations;<sup>4</sup> Edinger mentions different kinds of leadership in routine and crisis, or stable and unstable, national or international conditions.<sup>5</sup>

The logic of our argument is as follows. We begin by revisiting the seemingly uncompromisable rigid dichotomy between the rule of law and the rule of man, and point out a problem of oversimplification in the conventional understanding of this dichotomy. Then we argue that, in common with the rule-of-man-based institution, the rule-of-law-based institution

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<sup>3</sup>Randall W. Strahan, "Leadership and Institutional Change in the Nineteenth-Century House," in *Party, Process, and Political Change: New Perspectives on the History of Congress*, ed. David W. Brady and Mathew D. McCubbins (Stanford, Calif.: Stanford University Press, 2002), 355-406.

<sup>4</sup>Tilman Cothran and William Phillips, "Negro Leadership in a Crisis Situation," *Phylon* 22, no. 2 (1961):107-18.

<sup>5</sup>Lewis Edinger, "Approaches to the Comparative Analysis of Political Leadership," *Review of Politics* 52, no. 4 (Autumn 1990): 509-23.

also deteriorates. Next, in order to prevent this deterioration, we propose a new understanding of the relationship between the rule of law and the rule of man, a relationship that is constitutive in nature and neither antagonistic nor exclusive, unlike that described by our predecessors. When the rule of law system deteriorates, especially in extraordinary circumstances, leaders are needed who can step outside the system and guide us in a new direction. Leaders in a rule of man system can act in a similar way in order to transform that system into a democracy. Once the system is restored, those leaders should submit to the new rule of law system. In short, leaders in the constitutive rule of law and rule of man structure should exhibit two pivotal qualities: (1) the ability to initiate institutional change to halt the deterioration of the existing system; and (2) willingness to submit to the rule of law institution once it has been established so as to ensure the sustainability of democracy. Finally, to elucidate our propositions, two empirical cases—those of Charles de Gaulle in France and Chiang Ching-kuo (蔣經國) in the Republic of China on Taiwan—are examined. The former exemplifies how the constitutive relationship of rule of law and rule of man can help to initiate institutional change in order to further consolidate democracy in a time of crisis, while the latter demonstrates how a leader can effect the transformation of a regime from authoritarianism to democracy.

### **An Oversimplified Dichotomy**

The relationship between the rule of law and the rule of man is not adequately discussed in the modern literature. Whereas attention is concentrated on the rule of law in a liberal democracy, the rule of man has long been ignored. It is treated as a historical relic that is merely touched upon in discussion of Aristotelian ethics, Homeric heroics, or the Confucian ideal of the *junzi* (君子) or "virtuous man." To be more precise, in the debate over the rule of law and rule by law,<sup>6</sup> the meaning of rule of man is

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<sup>6</sup>Michel Rosenfeld, "The Rule of Law and the Legitimacy of Constitutional Democracy," *Southern California Law Review* 74, no. 1307 (March 2001): 1318-29; and Franz Neumann,

oversimplified, being reduced to rule by a self-interested ruthless dictator. The aim of such a self-interested leader is assumed to be the expansion of his/her power and survival, leaving benevolent and virtuous leadership to the realm of the epic and the expectations of moralists.

Moving beyond this oversimplified dichotomy and probing the origins of the rule of law and the rule of man, we find that they have much in common, especially the search for divine justice and the fairer distribution of public goods. This more thorough examination reveals that the tradition of the rule of man, which has been ignored for too long, may be redefined to provide a more complex picture.

When they talk about the rule of law, many people actually mean rule by law. This is the thinnest definition of the rule of law, meaning whatever government does, it should do through laws. At one extreme, the law under rule by law is a tool of the powerful and the government uses the law as the most convenient way to govern. In Holmes' words, what distinguishes the rule of law from rule by law is the power system to which they respond: "The powerful will cede power only to rival powerful forces."<sup>7</sup> Rule of law, on the other hand, can only emerge when rulers, though focused on self-interest, are forced to restrain themselves and achieve their manifest goals through certain institutional arrangements. This view owes much to the opinion of Machiavelli, that "men will always be bad unless, by necessity, they are compelled to be good."<sup>8</sup> Following the logic of Machiavelli, we can conclude that political leaders in particular behave morally only when they have no choice and are forced to do so. Under the uncompromisable premise that human nature is bad, the rule of man has been distrusted and there was considered to be no value in discussing it. No more effort was devoted to seeking out human goodness, and as a result, trust was invested in the ability of institutions, rather than individuals, to maintain the system and achieve divine justice.

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"The Change in the Function of Law in Modern Society," in *The Rule of Law under Siege*, ed. William E. Scheueyman (Berkeley: University of California Press, 1996), 114-15.

<sup>7</sup>Maravall and Przeworski, *Democracy and the Rule of Law*, 3.

<sup>8</sup>Machiavelli, *The Prince*, xxiii.

The modern distinctive dichotomy between the rule of law and the rule of man has its roots in ancient Greece, where the Stoic ethics<sup>9</sup> of duty and a legalistic way of thinking about morality became dominant. Since those times, the development of rationality and David Hume's claim<sup>10</sup> that virtue is equated with unpredictable human emotion, the rule of law has triumphed over the rule of man. In terms of practical rationality, the goal of ethics is no longer to describe the types of character which we might admire but to formulate a set of universal law-like principles that people must obey. Justice for many, especially those who believe only in positive law,<sup>11</sup> not in natural law, is acting according to law, namely rule by law.

Yet not everyone agrees with such a seemingly established dichotomy. The rule-of-man-based philosophy, if it is to be included in the discussion of good governance, merits further elaboration. It also attempts to exclude the self-interested dictator. For the past few decades, there has been a revival of interest in virtue, ethics, and morality in leadership.<sup>12</sup> This

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<sup>9</sup>Duty (*kathêkon*) was an important concept for the Stoics; it denotes "an action in itself adapted to nature's arrangements (*oikeion*)" (*Lives*, 7.107). As part of nature, one's duty is to conform to nature. The Stoics also established the concept of "natural law" and held that there is an eternal and immutable law governing all movement and change in the cosmos. This law is divine and natural, and the order it establishes is rational. The virtue of a human as a rational being is to obey the natural law and to be indifferent to one's desire and passion. See Steven K. Strange and Jack Zupko, eds., *Stoicism: Traditions and Transformations* (Cambridge: Cambridge University Press, 2004).

<sup>10</sup>Hume claimed that what drives a person to act is not rational judgment or the pursuit of the good, but the individual's emotions and passions. "Reason," for him, "is and ought to be the slave of the passions." See David Hume, *A Treatise of Human Nature*, ed. L. A. Selby-Biggie (Oxford: Clarendon, 1978), 415.

<sup>11</sup>Positive law is what we often associate with "law" today. It denotes laws made by the government authorities, mostly in written form. Natural law, in contrast, consists of general natural rules that have validity when applied to everyone, the discussion of which tends to take place within ethics or theology.

<sup>12</sup>Interestingly enough, there is far more literature on virtuous leadership in business management and executive leadership than in political leadership. This literature talks about how to cultivate personal moral excellence, entrepreneurship, and prudence. Most discussions on virtuous political rulers have been presented in the form of autobiographical and biographical profiles of historical leaders, such as Stephen Mansfield, *Never Give In: The Extraordinary Character of Winston Churchill* (Elkton, Md.: Highland Books, 1995). There are practically no formulations of systematic theory on virtuous political leadership at present. See also Douglas Allen, ed., *Culture and Self: Philosophical Perspectives, East and West* (Boulder, Colo.: Westview, 1997); and Pujan Roka, *Bhagavad Gita on Effective Leadership: Timeless Wisdom for Leaders* (Lincoln, Neb.: iUniverse, 2006).

literature does not directly employ the term "rule of man" but discusses the usefulness of virtue in maintaining social order and expresses admiration for virtuous leadership in the form of biographical study. In antiquity, the traditional wisdom of Aristotle in the West and Confucius in the East saw the virtue embedded in the rule of man rather than the rule of law as the end of political life. The objective of political leadership, according to the Aristotelians, is to achieve the ethics of virtue while ordinary men aim at pleasure, which can be secured by the rule of law and which is also an end for the slave and the beast.<sup>13</sup> Both schools believe that men are born with equal talent but possess different degrees of virtue due to cultivation. For Aristotle, the degree of non-rational virtue,<sup>14</sup> such as the sense of liberty and honor, can only be determined by the existing morality and cultural and historical contexts within which one happens to exist. Confucianism, a system of ethics, stresses personal cultivation of virtue or *de* (德).<sup>15</sup> Through the cultivation of virtue, only a few are able to develop the personality of excellence that qualifies them for leadership. A virtuous leader is one who is able to obtain the endorsement of Heaven and the ancestors, and to have capable ministers and people support him/her in formulating good policy. One needs to continuously cultivate virtue in order to have the capability to rally support; physical power and influence over people depend on acting according to virtue and universal justice. Yet, the end of behaving like a virtuous leader is not to attain the self-interested goal of survival which is the only end of beasts. A virtuous leader goes beyond individual profit and puts his/her emphasis on attaining the public good. A ruler who possesses virtue can obtain support from people without resorting to force or violence. This is how the rule of man should function.

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<sup>13</sup>See Yuli Liu, *The Unity of Rule and Virtue: A Critique of a Supposed Parallel between Confucian Ethics and Virtue Ethics* (Singapore: Eastern Universities Press, 2004), 12.

<sup>14</sup>Aristotelian ethics divides virtue into intellectual virtue and ethical virtue. The former refers to the function of a person as a thinking human being whose goal is to perform his function well and survive; the latter is associated with the function of a person as a social being whose goal is to be accepted and admired by the society and tradition to which he/she belongs. See Aristotle, *Nicomachean Ethics*, 1103-17.

<sup>15</sup>Arthur Wright, ed., *Confucianism and Chinese Civilization* (Stanford: Stanford University Press, 1990); Herbert Fingarette, *Confucius — The Secular as Sacred* (New York: Harper

Now we have unraveled the oversimplified dichotomy between the rule of law and the rule of man and elaborated further how the rule of man re-emphasizes the ingredient of virtuous leadership. For the sake of facilitating a comparison between the rule of law and the rule of man and restoring the ideal image of both, we have condensed the rich debate across thousands of years down to the following two triangular diagrams.

Institutions based on the rule of law depicted in figure 1 are established on a solid foundation of rule by law belief. Such belief values the strict implementation of codified rules as the responsibility of all actors, including citizens and leaders. The second layer is a notion in use since Machiavelli and Hobbes: man is universally self-interested and the nature of man is not inherently benign. The natural state of the world is war of all against all.<sup>16</sup> For Hobbes and many of his followers, men are born naturally equal, both mentally and especially physically. As a relatively frail organism, any one of us can be destroyed by another being. Furthermore, the supply of resources in the world is usually not enough for everyone to share. In order to survive, the individual must fight for a bigger share of commodities. Therefore, no man will put public welfare above his individual profit as this would put his individual survival at risk. According to this logic, no man will act as a benevolent leader for the public good without being forced to do so. It would therefore be unimaginable to put one's trust in a government run by self-interested men, and the only solution is to create institutions that constrain the actions of government and leaders and make them predictable. Institutions based on the rule of law are expected to bring order and stability to society, create accountability, constrain rulers, and punish wrongdoers who in any way deviate from the established rule. At the top of every triangular model resides divine justice, which is either God, the natural law, or the *dao* (道) of Heaven.<sup>17</sup> In clas-

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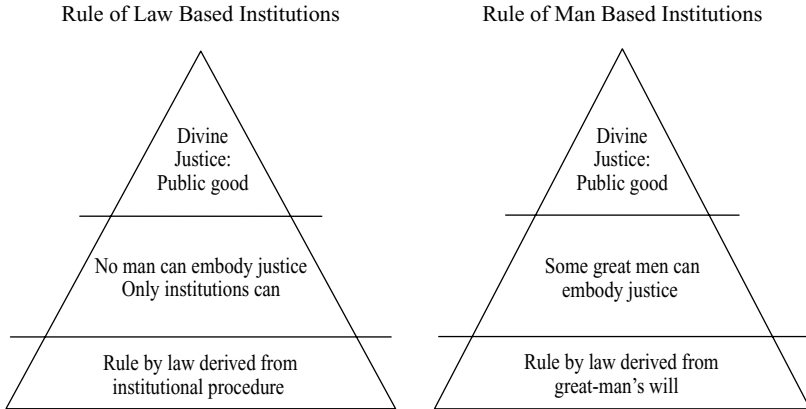
Torchbooks, 1972); and Alan Chan, "Confucian Ethics and the Critique of Ideology," *Asian Philosophy* 10, no. 3 (2000): 245-61.

<sup>16</sup>A good brief discussion of this theme may be found in Gregory S. Kavka, "Hobbes's War of All Against All," *Ethics* 93, no. 2 (January 1983): 291-310.

<sup>17</sup>The *dao* (道) in Mandarin is translated as the "way" or "path." In classical Chinese philosophy, heaven's *dao* (道) or *tian dao* (天道) means the sky or the natural way in which this



**Figure 1**  
**Rule of Law vs. Rule of Man Ideal Type**



sical Chinese philosophy, the aim of such justice is usually to distribute the public good fairly and secure human well-being.

The institutions based on the rule of man, surprisingly to many, resemble the former model. They are founded on rule by law, where law is promulgated by an authorized organ such as the court or, in ancient China, directly under the divine authority of the Chinese emperor as the Son of Heaven (*tianzi*, 天子), whose word was law. Ordinary citizens are undoubtedly subject to the law, whereas the upper ruling elite are usually not.<sup>18</sup> The major difference between institutions based on the rule of law and those based on the rule of man lies in the second layer of figure 1. The latter model holds that there are some men whose virtue can be cultivated

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world orbits. It therefore approximates to what in Western philosophy is expressed as the totality of natural law.

<sup>18</sup>There is a debate about whether Chinese officials in pre-modern society were subject to the law or not. Max Weber categorized Western law as rational and Chinese law as irrational because Chinese officials often exercised discretionary power in judicial decisions. However, there are later studies that demonstrate that Chinese officials' obligation to adjudicate according to the law was much stronger than Weber thought. See Robert M. Marsh, "Weber's Misunderstanding of Traditional Chinese Law," *The American Journal of Sociology* 106, no. 2 (September 2000): 281-302.

to a point closer to excellence and who therefore can be entrusted with the fate of a government and can embody justice. Virtue, for this school of thought, is beyond the deliberations of utility and individual survival. Confucianism labels a person of virtue a gentleman or *junzi*. Such a man treasures righteousness more than private profit. He/she is willing to give up personal pleasure for the public good. In the Roman tradition, Cicero also believes in the ability of selective men. The most educated and the wisest, according to Cicero, should be allocated greater power to rule, as they are the ones with the capacity to discern the requirements of the natural law that should govern society.<sup>19</sup> A virtuous leader aims to satisfy people's needs, not his or her individual needs. At the top of both models is justice derived from the natural law or divine power as the general rule governing the universe and such justice may represent the virtue of public good, which is supposed to be the aim of a government.

### **Inevitable Deterioration of Both Institutions**

After further elucidating the dichotomy between the rule of law and the rule of man, we will focus on an observation made by many legal scholars yet not emphasized by them. That is, the fact that, in common with the rule of man system, the rule of law is subject to deterioration.

One problem with critiques of the rule of man is that the wickedness of human nature is overemphasized to the point that the merits of benevolent leadership are pushed aside into the realm of legend. Without a doubt, history is full of examples of political leaders corrupted by the lust for power and universal justice eclipsed by individual desire. However, what is often ignored is that rule-of-law-based institutions can also suffer from similar shortcomings. These institutions deteriorate precisely because they are also created, operated, and maintained by human beings with the same

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<sup>19</sup>Janet Coleman, *A History of Political Thought: From Ancient Greece to Early Christianity* (Oxford: Blackwell, 2000), 284-87.

qualities of human nature as those operating in institutions based on the rule of man. Legal theorists, such as Albert Venn Dicey and Friedrich Hayek, as well as many radical leftists,<sup>20</sup> have noted the decline of the rule of law over several decades.

Before deterioration in the rule of law occurs, ambiguity in the language and expression of the law already creates problems for the rule of law system. The debate on the indeterminacy of the law was especially lively in the 1980s and early 1990s. Problems include concerns about the indeterminacy of language, standards, and particular areas of the law.<sup>21</sup> It is worth noting that the indeterminacy thesis basically asserts that the law does not produce a single right answer. Gaps in rules, exceptions to rules, and the openness of legal standards all leave opportunities for skilled lawyers, jurists, politicians, and citizens to manipulate the law and use the law as a tool for their own benefit.

Problems with the rule of law are exacerbated in a liberal democracy when a democratic institution attempts to incorporate opposing and divergent opinions from various institutional arrangements. In a democratic setting, the rule of law might suffer from either an excess of unity or an excess of forces in opposition to each other. Whereas a rule of law system that suffers from an excess of unity might potentially become a rule of one unified voice or a dictator, a system troubled by too many opposing forces,

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<sup>20</sup>Albert Dicey and Hayek were particularly concerned with the confrontational roles played by the rule of law and the expansion of administrative action resulting from the developing welfare state. When the courts are not only involved in legal matters in their daily functioning, but are involved in issues of policy, management, and expertise, the rule of law deteriorates and can no longer serve its purpose of being predictable and objective. In many welfare states, where administrative agencies were created by legislation and laws grant them resources and mandates, the rule of law faces difficult choices in the face of distributive justice, rather than universal justice. See Friedrich Hayek, *The Political Ideal of the Rule of Law* (Cairo: National Bank of Egypt, 1955) and Richard A. Cosgrove, *The Rule of Law: Albert Venn Dicey, Victorian Jurist* (Chapel Hill: University of North Carolina Press, 1980).

<sup>21</sup>John Hasnas, "Back to the Future: From Critical Legal Studies Forward to Legal Realism, or How Not to Miss the Point of the Indeterminacy Argument," *Duke Law Journal* 45, no. 1 (1995): 89; Mark Tushnet, "Defending the Indeterminacy Thesis," *Quinnipiac Law Review* 16 (1996): 339; and Christian Zapp and Eben Moglen, "Linguistic Indeterminacy and the Rule of Law: On the Perils of Misunderstanding Wittgenstein," *Georgetown Law Journal* 84 (February 1996): 485.

though incorporated into institutional arrangements, may give rise to the problem of stagnation.

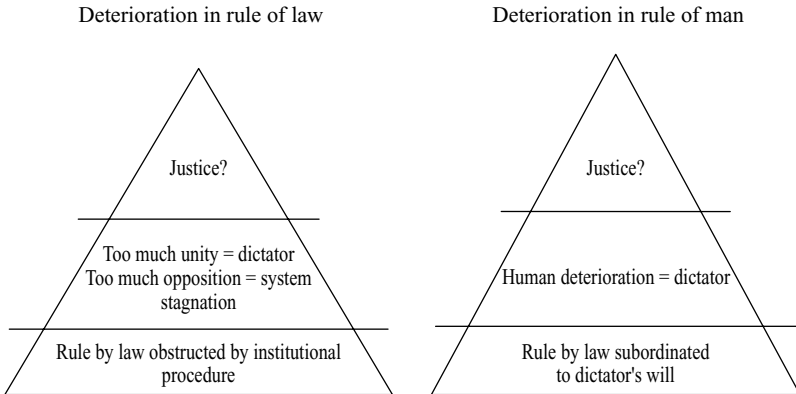
If there is an excess of unity or conformity in the rule of law institutions—that is, the power and legal right to interpret law are concentrated in a small group of judges, a particular organization, or even in one individual—the rule of law easily becomes rule by judges or rule by the few. In other words, whenever the rule of law has authority, it means judges have the authority and the right to determine the implications of laws. If judges consist of a group of elites not held accountable, who treat political issues as if they are matters of law, hiding political decisions under the guise of purely legal interpretations, the rule of law breaks down over time and it will suffer from symptoms similar to those otherwise observed in a rule of man system. Other problems similar to those of excessive unity in the rule of law are demonstrated by the concerns of many radical leftists. For them, the law is too often on the wrong side, showing its authoritarian face and protecting only the powerful and the privileged members of the capitalist class. It was among these critics that a liberalist movement against the rule of law arose in the 1960s and 1970s. Founding members of that movement were law students at elite institutions in the United States during the 1960s and new law professors during the 1970s. They complained that courts presided over by one judge or another pushed to rewrite the U.S. Constitution to advance their personal political views. They described the era they lived in as a moment between "the breakdown of the old order and the creation of a new one."<sup>22</sup>

Another problem associated with the deterioration of the rule of law stems from excessive opposition in the system. When an interpretation of the law is subject to numerous varying opinions, none of them is authoritative enough to dominate. Consequently, the rule of law system might lose its credibility and break down, eventually giving rise to other extra-legal solutions to the legal gridlock, such as violent revolutions and coups

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<sup>22</sup>Lester Mazor, "The Crisis of Legal Liberalism," *Yale Law Journal* 81, no. 5 (April 1972): 1032.

**Figure 2**  
**Deterioration Effect**

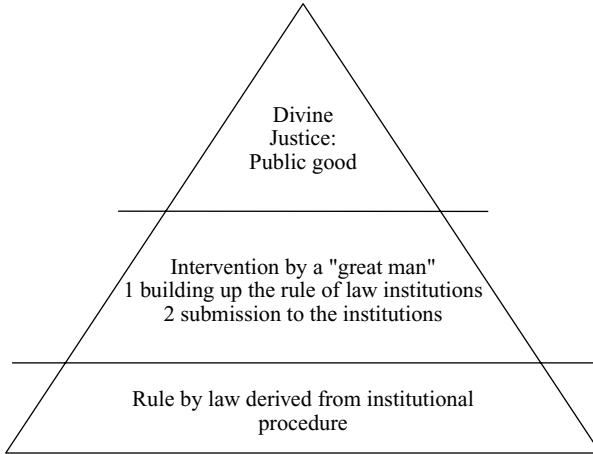


d'état that seek to overthrow the whole system. The most common form of legal gridlock is that which takes place in the legislative branch where opposing political parties cannot reach a consensus on issues such as appropriations for public services or fair tax codes. The system of the rule of law, burdened as it is by too many opposing internal forces, suffers from stagnation and it becomes almost impossible to find a way out of that kind of stalemate in a liberal democracy. Two particular problems related to the deterioration of the rule of law are delineated in the left-hand triangle in figure 2.

### **A Constitutive Relationship between Rule of Law and Rule of Man**

As we show in figure 2, in both rule-of-law- and rule-of-man-based institutions deterioration is inevitable. For a long time the search for a form of governing arrangement that will uphold universal justice has been the focus of heated scholarly activity. This paper proposes that when either the rule of man or the rule of law system deteriorates, the "great man" portrayed in the ideal rule of man model can intervene to correct the system and thereby increase the chance that democracy will be sustained. The

**Figure 3**  
**Constitutive Relationship of Rule of Law and Rule of Man**



relationship between the rule of law and the rule of man is not antagonistic, it is constitutive. On the one hand, democracy needs to be established and sustained by the rule of law, while on the other hand, when the existing system deteriorates, especially under extraordinary circumstances such as during transitional periods, the system requires the intervention of a "great man" who can assume the role of arbiter and either create or restore the order of rule of law. We hold that the ruler in this constitutive relationship of the rule of law and the rule of man should possess two pivotal qualities: (1) the ability to initiate institutional change to halt the deterioration in the existing system; and (2) willingness to submit to the rule of law institution once it has been established so as to ensure the sustainability of democracy. The constitutive model of the rule of law and the rule of man is illustrated in figure 3.

In order to show how our new approach works in reality, two leadership cases are offered: Charles de Gaulle in France and Chiang Ching-kuo in the Republic of China on Taiwan. These two leaders will be examined to see if they possess the two pivotal qualities mentioned above. These examples show how a non-antagonistic and non-exclusive understanding

of the rule of law and the rule of man can help, in the case of the former, to further consolidate democracy in a time of crisis and, in the case of the latter, to transform an authoritarian regime into a democratic one in a time of transition.

What is crucial from a historical perspective is that these two cases are chosen because they represent the "great man" prescribed in the ideal rule of man model. Both of these leaders possessed immense power and could easily have turned into unpredictable dictators—the worst nightmare of the rule of man. The label of dictator was not unfamiliar to the leaders' own ears or to those of people who questioned their rule as another example of dictatorship. No wonder that each of them was labeled a "strong man" at certain historical moments. However, they both ended up as highly regarded leaders both domestically and internationally, and their contributions to institution-building in their respective countries have been widely recognized.

On the May 19, 1958, during a press conference held in the Palais d'Orsay on the conditions of de Gaulle's return to power, a questioner asked what the general's attitude would be toward basic civil liberties. De Gaulle's voice rose in rasping scorn and anger: "Have I ever made any move on basic civil liberties? On the contrary, I restored them. Why should I, at 67, begin a career as a dictator?"<sup>23</sup>

Chiang Ching-kuo, the son of the authoritarian leader Chiang Kai-shek (蔣介石), was in his youth an enthusiastic student of communist ideology, particularly Trotskyism, and as the head of the secret police, better known as the Blue Shirts, he possessed overwhelming power in the early years of the Republic of China on Taiwan, when the country was under

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<sup>23</sup>For a complete transcript of the press conference, see [http://www.charles-de-gaulle.org/article.php3?id\\_article=519](http://www.charles-de-gaulle.org/article.php3?id_article=519) or read about the specific question of basic civil liberties in Don Cook, *Charles de Gaulle: A Biography* (New York: G. P. Putnam's Sons, 1984), 320. Another interesting episode was the conversation between the president of the Fourth Republic, Vincent Auriol, and Prime Minister Paul Ramadier. Ramadier conveyed de Gaulle's intention to enter the political arena and assume more power for President Auriol. The president replied, "Let him take note that I am not going to be a Hindenberg" (the German field marshal-president who called on Adolf Hitler to come to power in 1933). President Auriol suspected that de Gaulle intended to gather more power into his own hands and he was reluctant to be the one who allowed a dictator to rule France. See *ibid.*, 305-6.

authoritarian rule and martial law. The "white terror" launched by Chiang and his father in the 1950s was notorious and for this reason the younger Chiang was long considered to be a dictator. Despite this background, Chiang was able to transform the deteriorated rule of man system, breaking out of the vicious circle that had kept him in power from the 1970s.

In sum, both of these men were splendid examples of the "great man" ideal, especially in the way they behaved during transitional periods when the existing systems might not have been effective in solving the problems at hand. Cerny categorizes the rule of de Gaulle as the transformative type of leadership in contrast to the other three forms: routine, integrative, and catalytic leadership; whereas Hoffmann or Crozier would have labeled it "crisis leadership" or "heroic leadership."<sup>24</sup> Chiang Ching-kuo was seen as a leader who quietly allowed the development of civil society and opposition parties under an authoritarian regime and the figure who used his authoritarian power to end his own authoritarian rule.<sup>25</sup>

In the following section, we attempt to demonstrate how de Gaulle and Chiang manifested our constitutive model. The two chosen qualities of leaders: (1) the ability to initiate institutional change to halt deterioration in the existing system; and (2) willingness to submit to the rule of law institution once it is established so as to ensure the sustainability of democracy, demonstrate how the constitutive practice of the rule of law and the rule of man can save the system from deterioration.

### *Ability to Initiate Institutional Change*

The 1954 Algerian War of Independence threatened the legitimacy of the Fourth Republic and challenged the survival of France and its relations

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<sup>24</sup>Philip Cerny, "The Process of Personal Leadership: The Case of de Gaulle," *International Political Science Review* 9, no. 2 (1988): 131-42; Stanley Hoffmann, "Heroic Leadership: The Case of Modern France," in *Political Leadership in Industrialized Societies*, ed. Lewis J. Edinger (New York: Wiley, 1967), 108-54; and Michel Crozier, *The Bureaucratic Phenomenon* (London: Tavistock, 1964).

<sup>25</sup>Ramon H. Myers, "A New Chinese Civilization: The Evolution of the Republic of China on Taiwan," *The China Quarterly*, no. 148 (December 1996): 1072-90; Yang-Sun Chou and Andrew J. Nathan, "Democratizing Transition in Taiwan," *Asian Survey* 27, no. 3 (March 1987): 277-99; and Maria Hsia Chang, "Political Succession in the Republic of China on Taiwan," *ibid.* 24, no. 4 (April 1984): 423-46.



with its overseas territories. Affected by parliamentary instability,<sup>26</sup> the Fourth Republic, although exercising the rule of law and acting in accordance with the Constitution, suffered from one of the problems mentioned above—the problem of too much opposition. It had twenty-one prime ministers in the twelve years from 1946 to 1958; there were so many contradictory voices in the system and no single voice was strong enough to resolve the Algerian crisis. People and politicians in general during the Fourth Republic sensed the urgent need to bring in an arbiter to sort things out. On May 29, 1958, President Rene Coty announced that he was calling upon "the most illustrious of Frenchmen" to form a government, and he threatened to resign if this should fail.<sup>27</sup> On June 1, de Gaulle's government was voted into power by 329 votes to 224 (42 Socialists voted for, 49 against). On the same day, as a condition of returning to power that de Gaulle negotiated with President Coty, a majority in the National Assembly,<sup>28</sup> with the consent of other relevant government organs, voted to amend Article 90 of the Constitution, which laid down the procedures for amending the Constitution itself.<sup>29</sup> This amendment simplified the pro-

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<sup>26</sup>In 1944, after the collapse of the Vichy regime, de Gaulle became president of the provisional government, resigning in 1946. The primary reason for de Gaulle's resignation was his strong opposition to the newly drafted Constitution of the Fourth Republic under which, he considered, too much power was concentrated in the hands of parliament and the shifting political parties—resulting in an unstable regime of parties. See Chapter 5: "Democracy, Greatness, and Civilization: de Gaulle and a 'Certain Conception of Man'," in Daniel J. Mahoney, *De Gaulle: Statesmanship, Grandeur, and Modern Democracy* (New Brunswick, N.J.: Transaction, 2000).

<sup>27</sup>Julian Jackson, *De Gaulle* (London: Haus, 2003), 76.

<sup>28</sup>The motives for amending the Constitution were officially expressed by the National Assembly on June 1, 1958, as follows: "The crisis that the nation recently went through and which threatened a civil war stems from the fundamental problem of the confusion of state power. It is then under a situation of extreme urgency that the Constitution is to be reformed in order to restore the Republic's power to maintain order." This is cited in *Documents parlementaires, Assemblée nationale, annexe n. 7233, session ordinaire de 1957/1958, séance du 1er juin 1958*. This document can be found in *L'Histoire de L'Elaboration de la Constitution du 3 octobre 1958* volume 1 p. 137. On June 2, 163 members of the 350-member National Assembly voted against the adoption of the revised Article 90.

<sup>29</sup>Before it was amended, Article 90 of the 1946 Constitution of the Fourth Republic stipulated: "Revision can occur in the following ways. The revision must be decided upon through deliberation and adopted by an absolute majority of the members of the National Assembly. It is submitted, within a three-month minimum term, to a second reading, to which it has to proceed in the same form as the first one, unless the deliberation has not

cedures for constitutional revision, allowing de Gaulle, as the new premier, to assume unlimited power in drafting a new Constitution which would then be approved by a referendum. In other words, de Gaulle was given the power to go beyond the established rules and the opportunity to totally rely on his personal good judgment to lead France out of the crisis. With the Constitution of the Fifth Republic, de Gaulle created a new political regime that was fundamentally different from the unstable parliamentary regime of the Fourth Republic. The French political scientist Maurice Duverger later characterized the new setup as a "semi-presidential regime"<sup>30</sup> and it is widely discussed in the works of Robert Elgie<sup>31</sup> and Cindy Skach.<sup>32</sup> The new semi-presidential regime created by de Gaulle in France was aimed at extricating French politics from party political games. De Gaulle installed a more powerful executive by enlarging the authority of the president and strengthening the power of the administrative branch. With this strong executive, de Gaulle was able to make clear decisions and to lead France out of the Algerian crisis. This is something that it would have been impossible to achieve under the constant instability of the parliamentarian

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been adopted by an absolute majority from the Council of the Republic, to which it must be sent by the National Assembly. After such a second reading, the National Assembly elaborates on the proposed law for the revision of the Constitution. This proposal is submitted to the Parliament and voted for by a majority, in the way anticipated for ordinary laws. The proposal is then submitted to a referendum, except when it has been adopted in its second reading by the National Assembly by a two-thirds majority or a three-fifths majority vote by each assembly. The project is promulgated as constitutional law by the President of the Republic within eight days of its adoption. No constitutional revision related to the existence of the Council of the Republic can be effected without the consent of the Council itself or without recourse to a referendum." Translation from the original text of the 1946 *Constitution of the Fourth Republic*.

<sup>30</sup>Maurice Duverger, *Échec au roi* (Paris: Albin Michel, 1978).

<sup>31</sup>Robert Elgie, "The Classification of Democratic Regime Types: Conceptual Ambiguity and Contestable Assumptions," *European Journal of Political Research* 33, no. 2 (March 1998): 219-38; Robert Elgie, "The Politics of Semi-Presidentialism," in *Semi-Presidentialism in Europe*, ed. Robert Elgie (Oxford: Oxford University Press, 1999), 1-21; Robert Elgie and Sophia Moestrup, eds., *Semi-Presidentialism Outside Europe: A Comparative Study* (London: Routledge, 2007); and Robert Elgie, "Semi-Presidentialism: Concepts, Consequences and Contesting Explanations," *Political Studies Review*, 2, no. 3 (September 2004): 314-30.

<sup>32</sup>Cindy Skach, *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic* (Princeton, N.J.: Princeton University Press, 2005).

Fourth Republic. After going to Algeria several times to listen to the wishes of the local people, on June 14, 1960, de Gaulle spoke to the entire nation:

The genius of the century also has changed the condition of our overseas action and the our conduct of our colonization... it is totally natural that we still feel nostalgia for Empire, just as we miss the gentle light of an oil lamp, the feeling of sailing on the sea, or the spirited time of teamwork. But what now? There can be no politics outside of reality. And Algeria? Ah! I never believed that I could ever have solved that problem that has existed for the past 130 years... the self-determination of Algerians of their own fate is the only solution to this complex and painful tragedy... After all, all is done so that the people in Algeria can regain their role through appeasement... so Algeria can transform into a country of prosperity and fraternity.<sup>33</sup>

Despite strong opposition, the French people were ultimately convinced by de Gaulle. In the referendum on Algerian independence held on January 8, 1961, 21 million French voters voted in favor and 5 million voted against. Of the 2,800,000 votes cast in Algeria, 1,920,000 were in favor and 790,000 were against.<sup>34</sup> A year later, on July 3, 1962, de Gaulle officially proclaimed the independence of Algeria.<sup>35</sup>

President de Gaulle was the most powerful man of his era in France, the man who could have made decisions that caused more deaths and further tragedy, and that worsened the deterioration in the rule of law. He could have ignored the minor Algerian terrorist attacks on the mainland of France and launched a full-scale military attack on the Algerian nationalists. In order to maintain the authority of the French government and the integrity of the French empire, he could have unilaterally imposed martial law and resisted to the end, rather than allowing a referendum to be held in Algeria. Instead, not only was he able to peacefully resolve the Algerian independence issue through a referendum, he also rewrote the Constitution and generated a new and more stable institution of the rule of law—the

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<sup>33</sup>Partial translation of the June 14, 1960, speech; cited in Charles de Gaulle, *Mémoires d'Espoir* (Paris: Plon, 1970), 112-13.

<sup>34</sup>*Ibid.*, 123.

<sup>35</sup>For more details on the Algerian War, see Alistair Horne, *A Savage War of Peace: Algeria 1954-1962* (New York: NYRB Classics, 2006).

Fifth Republic. The new Republic was designed in such a way as to avoid the problems arising from the parliamentary instability of the Fourth Republic that was rooted in an excess of opposition. In this, France was rewarded with the return of order in the rule of law and a restored stable democracy under the rule of a great man—de Gaulle.

Chiang Ching-kuo played a similarly pivotal, yet different, role to de Gaulle in the transition from martial law in the Republic of China on Taiwan. Unlike France, which was an established democracy that under de Gaulle merely experienced an adjustment of its deteriorated democratic system, the ROC under Chiang was an authoritarian regime. It was therefore an even more difficult task for Chiang, as it would have been for any leader under such circumstances, to effect a transformation from a one-party regime to a democracy.

During the early decades of the Republic of China on Taiwan, between 1947 and the 1980s, the political challenges faced by Chiang were threefold—an identity crisis, a legitimacy crisis, and a participation crisis. The society had been struggling ever since the ruling Kuomintang (KMT, 國民黨), or Chinese Nationalists, evacuated from mainland China to the island of Taiwan in 1947. The natives of the island had until recently been Japanese citizens living under Japanese imperial rule and they found it difficult to embrace a Chinese identity. The KMT military personnel who evacuated to Taiwan were also suffering from an identity crisis as they were unable to identify with the local people on the island and treat them as their own. This identity crisis was further complicated by a legitimacy crisis. Immediately after the KMT arrived on the island, its legitimacy was called into question by the local inhabitants. The February 28th incident of 1947 was the first manifestation of this legitimacy crisis. Later on, a participation crisis added to the pressure on the regime. In the 1970s a third wave of democratization was gathering strength around the globe, bringing calls for inclusion and participation. Chiang's government was under great pressure to move from authoritarianism to democracy, though the KMT, as a party, sought to hang on to power by consistently resisting democratization.

How did Chiang, as leader of the KMT and president of the ROC, handle these three interwoven crises? What decisions did he make while

faced with the clash of interests between the mainlanders and the native Taiwanese? How did he react when the legitimacy of his authoritarian regime was challenged and some citizens refused to play by its rules?

From the mid-1960s to the 1980s, Chiang, who had been carefully groomed for leadership by his father, was in effective control of Taiwan. The younger Chiang's power base was impressive and practically no one could overrule any decision he made.<sup>36</sup> However, he was determined to exercise self-restraint in his rule and push for a more open and democratic society on the island of Taiwan. Three critical decisions best portray how Chiang's virtuous leadership and good judgment allowed Taiwan to transform its authoritarian regime and pave the way for the peaceful emergence of democratic institutions.

Firstly, immediately after the death of his father in April 1975,<sup>37</sup> Chiang made a series of decisions which brought about the regime's transformation from hard to soft authoritarianism, as Winckler first categorized it.<sup>38</sup> These decisions expanded political participation by bringing new KMT members and non-KMT members into the government. In 1979, after the break-off of diplomatic relations with the United States, the Central Standing Committee (中常會) of the KMT was reconstituted, with some associates of Chiang Kai-shek being forced to step down or being promoted to emeritus status. Meanwhile, a number of new and younger members were added, including two prominent figures from the media cycle and three Taiwanese government administrators, namely Lin Yang-kang (林洋港), Chiu Chuang-huan (邱創煥), and Lee Teng-hui (李登輝). In 1981, the whole Central Committee was reelected with fixed terms of four years. As for Chiang's efforts to incorporate non-KMT members into

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<sup>36</sup>For more on the problems of succession in political leadership in the Republic of China on Taiwan, see Chang, "Political Succession in the Republic of China on Taiwan," 423-46.

<sup>37</sup>Hung-mao Tien, "Taiwan in Transition: Prospects for Sociopolitical Change," *The China Quarterly*, no. 64 (December 1975): 615-44; and Edwin A. Winckler, "After the Chiangs: The Coming Political Succession on Taiwan," in *China Briefing*, ed. Richard C. Bush (Boulder, Colo.: Westview, 1982), 103-22.

<sup>38</sup>Edwin A. Winckler, "Institutionalization and Participation on Taiwan: From Hard to Soft Authoritarianism?" *The China Quarterly*, no. 99 (September 1984): 481-99.

the decision-making process, the election of 1977 for the first time allowed non-KMT politicians to enter the political arena and put forward opposing policies which were increasingly adopted by the KMT. In both the 1981 and 1983 elections for national representatives, non-KMT members won roughly 30 percent of the vote and 22 percent of the seats.<sup>39</sup> This new group of national representatives injected more life and energy into the system by questioning government policy, challenging unfair legislation, and proposing new alternatives. As Chiang eased restraints and made efforts to adjust his rule to the demands of institution-building, Taiwan's hard authoritarianism did indeed become softer.

Secondly, Chiang actively recruited native Taiwanese into the KMT<sup>40</sup> and promoted them to the higher ranks. One of the first of these, Hsu Ching-chung (徐慶鐘), became deputy secretary-general of the KMT Central Committee, and in 1978 Shieh Tung-min (謝東閔) became the first native Taiwanese vice president. Shieh became one of the principal bridges between the ruling party and the Taiwanese elite. Nevertheless, the most critical decision Chiang made during the period when he was building the rule of law institution was to appoint Lee Teng-hui, a former communist with a Ph.D. in agricultural economics, as mayor of Taipei in 1978. Public and politicians were anxious to find out who Chiang would appoint as his vice president, his successor in the event of his death. Despite many objections from within the KMT,<sup>41</sup> Chiang nominated the inexperienced Lee who was formally elected to the post by the National Assembly in

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<sup>39</sup>For more discussion on Taiwan's elections, see John F. Copper, "Taiwan's Recent Elections: Progress toward a Democratic System," *Asian Survey* 21, no. 10 (October 1981): 1029-39.

<sup>40</sup>Outside the KMT, Chiang continued to allow leeway for non-KMT Taiwanese to participate in political institutions. For instance, a native Taiwanese and non-KMT member Henry Kao (高玉樹) was elected as Taipei mayor in 1964. The main reason for Kao's narrow victory was Chiang's unprecedented and self-defeating decision to allow poll watchers in the local election, providing Kao with 500 poll watchers in 360 polling stations. See note 39 above.

<sup>41</sup>The mainland Sun Yun-hsuan (孫運璿) was thought to be an appropriate candidate for both premier and vice president. Or if a native Taiwanese was to be preferred, there was speculation that Lin Yang-kang, a long-term protege of Chiang, would be chosen. Yet Chiang surprised many when he nominated the technocrat Lee Teng-hui. See Parris Chang, "Taiwan in 1983: Setting the Stage for Power Transition," *Asian Survey* 23, no. 1 (January 1983): 122-26.

1984. Lee has noted in his memoirs that he had no clear idea why Chiang nominated him to be vice president. He speculated that Chiang may have wished to appoint someone with a similar socialist background and mentality, who understood the needs of the people at grassroots level as he did.<sup>42</sup>

From the mid-1980s, Chiang started grooming Lee. For example, the chief of staff of the armed forces was instructed to talk with Lee about military strategy and Lee was dispatched by Chiang to Central America to visit the few countries with which the ROC still had diplomatic ties in order to make him more familiar with foreign affairs.<sup>43</sup> When Chiang died suddenly in January 1988, he left no will behind to instruct the nation what to do about the succession. According to Taylor, Lee Huan (李煥) discussed the matter with high-level leaders of the KMT and concluded that it was Chiang's wish that Lee Teng-hui should assume the roles of both KMT party leader and president of the ROC.<sup>44</sup> Elite members of the KMT worked hard to dispel dissent within the party over this appointment, and Lee ultimately became leader of the party and the country as it was entering a new era. Chiang had indeed paved the way for the democratization that took place in Taiwan in the 1990s.

Lastly, the decision to lift martial law undermined the foundation upon which one-party authoritarian rule rested and officially opened up a peaceful and legitimate path for the authoritarian regime to move toward democratization. Chiang revealed his intention to lift martial law during an interview with Katherine Graham of the *Washington Post* in October 1986. He said that he was motivated by a longstanding desire to democratize the country as well as to improve its economic conditions.<sup>45</sup> On July 15, 1987, despite numerous dissenting voices, especially within the KMT party

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<sup>42</sup>Lee Teng-hui, *Jianzheng Taiwan Jiang Jingguo yu wo* (Memoirs and narration: President Chiang Ching-kuo and me) (Taipei: Yunchen wenhua, 2004), 9.

<sup>43</sup>James C. Hsiung, "Taiwan in 1985: Scandals and Setbacks," *Asian Survey* 26, no. 1 (January 1986): 97.

<sup>44</sup>Jay Taylor, *The Generalissimo's Son: Chiang Ching-kuo and the Revolutions in China and Taiwan* (Cambridge, Mass.: Harvard University Press, 2000), 423.

<sup>45</sup>Ching-fen Hu, "Taiwan's Geopolitics and Chiang Ching-kuo's Decision to Democratize Taiwan," *Stanford Journal of East Asian Affairs* 5, no. 1 (Winter 2005): 26-44.

organization, Chiang unilaterally proclaimed the lifting of martial law, thus officially terminating the authoritarian regime which his father had founded and upon which his own power greatly depended. On January 1, 1988, he ordered restrictions to be lifted on the number of newspapers that could be published and the number of pages allowed in each newspaper. In a matter of weeks, two hundred new publications had been registered. More than sixty political groups applied to be registered as parties. On January 12, a proposal for parliamentary reform, drafted by Ma Ying-jeou (馬英九), was formally passed, ending the era of mainlander control over Taiwan's political process and allowing for new elections for the entire legislative body. Chiang died the following day, but it was said that although he was physically very weak, he was still greatly concerned about whether the parliamentary reform was in place or not. Chiang's power certainly went beyond what was granted to him legally but his leadership and concern for the public good and general welfare of the nation earned him much respect.

Although Chiang may have been under outside pressure to loosen his control over society,<sup>46</sup> he was not obliged to lift martial law. He could have continued to rule the island through his unchallengeable military power and to exercise firm control over many aspects of daily life, including the freedoms of speech, the press, assembly, and party affiliation. However, as a virtuous leader who put the public good above private gain or the survival of his own party, Chiang decided to lift the iron curtain and open up Taiwan's society, allowing greater freedom and more justice to prevail. If martial law had not been terminated by Chiang exercising his "great man" leadership, Taiwan would not have become one of the leading democracies in the region that it is today.

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<sup>46</sup>Peng Ming-min (彭明敏), a prominent Taiwanese intellectual, attempted on several occasions to incite more confrontations with the KMT regime among university teachers and students. When Peng was arrested, Chiang made sure that he only received a relatively light sentence of eight years in jail, instead of the death penalty which could have been imposed had he been charged with treason. Months later, Chiang issued a presidential pardon for Peng and released him immediately, as recalled by Peng Ming-min in *A Taste of Freedom: Memoirs of a Formosan Independence Leader* (Irvine, Calif.: Taiwan Publisher, 1984).



*Willingness to Submit to the Rule of Law*

Whether or not a leader, having resolved a crisis and restored the rule of law, becoming in the process a national hero, is willing to relinquish power and submit him/herself to the rule of law is important in our proposed new understanding of the constitutive relationship between the rule of law and the rule of man. The temptation of power has historically corrupted even the most charismatic leaders. A leader's decision in peace time to resist grabbing power is therefore what distinguishes a virtuous leader from a ruthless dictator.

In 1962, immediately after the declaration of Algerian independence, when French society was once again free from the fear of terrorism and civil war, de Gaulle began to think about the question of legitimate succession and the necessity of electing a president by universal suffrage. Such a president would be an arbiter<sup>47</sup> who would be above the political fray in the National Assembly, one who could make critical decisions in a timely manner should another crisis strike France. The Constitution of the Fifth Republic was revised through referendum and direct elections for the president were announced in 1962.<sup>48</sup> Under de Gaulle's presidency, France put the Algeria crisis behind it and the country's economic growth peaked under the doctrine of dirigisme—a combination of capitalism and a state-directed economy. However, economic policy is not an easy aspect of politics. There are winners and losers in the distribution of capital. During the period of French economic growth, peasants and workers who produced raw materials became the victims. Several miners' strikes and violent peasant demonstrations took place during the early 1960s. Although de Gaulle tried his best, his popularity fell in 1963 with, for the

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<sup>47</sup>Article 5 of the 1958 Constitution describes the role of president as that of an arbiter. By functioning as an arbiter, the president shall assure the regular functioning of public power and the continuity of the state. A copy of the 1958 Constitution is available on the Constitutional Council website: <http://www.conseil-constitutionnel.fr/textes/constit.htm>.

<sup>48</sup>In 1958, the direct election of the president of the Republic was unthinkable as prior to decolonization, there was great fear that such an election would lead to the domination of metropolitan France by the Empire. Once decolonization was completed in 1962, this obstacle was removed. See David Scott Bell, *Presidential Power in Fifth Republic France* (Oxford: Oxford International, 2000).

first time, the number of those registering as "dissatisfied" in opinion polls exceeding that of those "satisfied" with his leadership (42 percent versus 40 percent).<sup>49</sup> Knowing that there was a great risk that he might not have sufficient popular support to win, de Gaulle still decided to submit himself to the rule of law and became a candidate in the first direct presidential election in 1965, competing fairly with five other candidates: the Socialist François Mitterrand, Jean Lecanuet of the Democratic Center, Jean-Louis Tixier-Vignancour of the far right, the center-rightist Pierre Marcilhacy, and the independent Marcel Barbu. De Gaulle, standing under the banner of the Union for the New Republic, won the election with a majority of 55.1 percent and was elected president for a term of seven years.

During his term, de Gaulle continuously devoted his efforts to constructing better democratic institutions that satisfied the needs of French citizens and provided the basis for fair play. In 1969, he proposed a project of constitutional revision that was aimed at effecting two major reforms: to give more autonomy and authority to regional governments and to further limit the powers of the Senate. Despite the Gaullists' ability to get more than enough votes in the National Assembly to push through any kind of reform the president wanted, de Gaulle wished to be perfectly aligned with the constitutional spirit that he had striven for: universal suffrage was the only legitimate source of power. Realizing that the chance of being rejected by the voters was greater than the chance of defeat in the National Assembly, where the Gaullists still in the majority, he still insisted on submitting his reform proposal to a referendum. De Gaulle's proposal was defeated at the referendum with 53 percent of voters voting against. Within twenty minutes of the poll's closing at 8 p.m. on April 27, 1969, the prime minister went on television and spoke calmly: "Tomorrow a new page in our history will be turned. General de Gaulle was at the center of our national and political life. We remain faithful to him. A difficult period, perhaps a period of trouble, now lies before us. For the moment the government will ensure continuity of public powers in accordance with the

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<sup>49</sup>Jackson, *De Gaulle*, 117-19.

constitution. It will naturally do its duty."<sup>50</sup> De Gaulle almost simultaneously decided to resign. He instructed his staff in the Elysée Palace to remove all personal files, papers, and every trace of his presence in the building. De Gaulle did not cling onto his presidential powers and position as the most powerful individual in the nation; instead, he submitted himself to the constitutional principles that he had instituted and, beyond constitutional law, he exercised a higher moral responsibility toward France and its people by resigning as president, an action not required by the constitution.

Chiang Ching-kuo did not have the chance to resign as de Gaulle did in order to demonstrate his sense of responsibility toward his nation and its people. Instead, his most lasting achievement and the primary source of his popular support was his determination to submit himself to the rule of law that he helped to create. This willingness was demonstrated in two pivotal decisions: his choice of successor and his attitude toward the emergence of an opposition party.

The question of Chiang's successor was of great concern to all, including KMT members and native Taiwanese. The choice of a successor was related to the new distribution of political resources and the future direction of Taiwan society. Naturally, many KMT members wanted to see another member of the Chiang family in power, one whose powerful name would continue to ensure the KMT's dominance over the island of Taiwan. However, when Chiang Ching-kuo learned that his sons, Chiang Hsiao-wu (蔣孝武, Alex Chiang) and Chiang Hsiao-yung (蔣孝勇, Eddie Chiang), intended to run for seats on the KMT Central Committee, he told Ma Shu-li (馬樹禮), the KMT secretary-general, to stop them. Later, Alex was sent into exile in Singapore as Taiwan's deputy representative.<sup>51</sup> Chiang not only stopped his two sons from running for office in the KMT Central Committee; when he was asked about whether there could be a family successor or military rule after his departure, he replied firmly, "It cannot be

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<sup>50</sup>Cook, *Charles de Gaulle: A Biography*, 415.

<sup>51</sup>Taylor, *The Generalissimo's Son*, 398-400.

and it won't be."<sup>52</sup> To fulfill his promise on the termination of succession by blood, Chiang devoted himself to preparing the native-Taiwanese vice president for the presidency as noted above.

Historically, many authoritarian leaders have preferred a succession from father to son, like the one Chiang Ching-kuo's father favored. It is indeed hard for an authoritarian leader to resist the temptation to retain power within his/her own family. Chiang, however, succeeded in going beyond narrow self-interest. Submitting himself to the rule of law, he helped to prepare for the leader he thought might best unite diverse interests and bring more justice and freedom to Taiwan.

Chiang's attitude toward the new opposition political party further proved his willingness to submit himself to the rule of law. On September 28, 1986, 135 members of the informal opposition met at the Grand Hotel (圓山大飯店) in Taipei, a symbol of KMT authority, and contrary to most people's expectations, they announced the establishment of a new party, the Democratic Progressive Party (DPP, 民主進步黨). The goal of this new party was "self-determination" for the people of Taiwan. The future of the DPP was uncertain and the lives of those who advocated the establishment of a formal party in opposition to the authoritarian one-party rule of the KMT were in great danger. Indeed, the leaders of the new party had written their wills, believing that death would be the inevitable price they would pay for freedom. It is reported that when the shocking news about the establishment of the DPP reached Chiang's ears, he merely nodded but did not react in any other way.<sup>53</sup> Hours later, he entered an urgent meeting convened by high-level KMT officials. Addressing the meeting from his wheelchair, he said, "Times are changing," "The environment is changing. The tide is also changing.... In the past, the KMT was too proud and conceited and now it cannot act as before."<sup>54</sup> The Garrison Command then presented Chiang with a list of people to be arrested. He refused to look at

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<sup>52</sup>*New York Times*, December 26, 1985.

<sup>53</sup>Taylor, *The Generalissimo's Son*, 406.

<sup>54</sup>Taylor's interview with Wang Chia-hua (王家驊), Taipei, August 25, 1995. Ibid.

it. "To arrest people cannot solve a problem.... The government should avoid conflict and remain calm."<sup>55</sup> Therefore, despite strong opposition from members of the KMT who shouted "treason, treason"<sup>56</sup> during the discussion of the DPP issue, there were no detentions, but neither was there yet any legal recognition of the opposition party. Chiang said, "It is easy to use power, but it is hard to know when not to use it."<sup>57</sup> He knew that once he had made the decision to lift martial law, he needed to learn how to submit his own power and that of the KMT to the rule of law that was prescribed in the Constitution of the Republic of China but which had been frozen and inactive for too long. In the following legislative election, the KMT still obtained 70 percent of the popular vote, but the DPP nevertheless won 23 of the 44 seats it contested only three months after its formation. Chiang was content with the result. "We must understand we are all in the same boat, and we must help each other to achieve harmony in good faith and in a forgiving spirit. Rationalism dissolves extremism."<sup>58</sup>

## Conclusion

Empirical studies of political life in a liberal democracy have produced the view that there is an antagonistic dichotomy between the rule of law and the rule of man. This conventional view favors the seemingly less corrupted rule of law system over the unpredictable rule of man system. This paper challenges that dichotomy and introduces an alternative understanding—that there is a constitutive relationship between the rule of law and the rule of man. After revisiting the ideas underlying the institution

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<sup>55</sup>Taylor's interview with James Soong (宋楚瑜), Taipei, September 13, 1995; and with Yu Chi-chung (余紀忠), Taipei, September 26, 1995. Ibid.

<sup>56</sup>Taylor's interview with Yu Chi-chung, May 24, 1996. Ibid. Other opposition voices included the radical mainlander groups like the Iron Blood Patriots who complained that Chiang was being too soft and wrote a petition in their own blood to demand that the government arrest the DPP leaders. See *Financial Times* (London), October 14, 1986.

<sup>57</sup>Taylor's interview with Wang Shao-yu (王紹育), Taipei, May 11, 1996. Ibid.

<sup>58</sup>Central News Agency, Taipei, December 31, 1986.

based on the rule of law and that based on the rule of man, we first find that the conventional dichotomy is oversimplified. Both systems deserve more attention and further examination of their complexities, since their common goals are the same in terms of searching for divine justice and the public good. We then point out that the rule of law in a liberal democracy, like the rule of man, is subject to deterioration, as it suffers from an excess of either opposition or unity. When both systems deteriorate, the intervention of a "great man," the ideal prescribed by the rule of man model, is needed to save the system. Two qualities of leadership are pivotal in the constitutive understanding of the rule of law and the rule of man systems: (1) the ability to initiate institutional change to halt deterioration in the existing system; and (2) willingness to submit to the rule of law institution once it has been established so as to ensure the sustainability of democracy.

To exemplify how the constitutive relationship between the rule of law and the rule of man is able to remedy the deterioration problem in reality, two empirical leadership cases are raised—Charles de Gaulle in France and Chiang Ching-kuo in the Republic of China. These cases demonstrate that a strict implementation of existing rules or norms cannot provide solutions for a deteriorated system, especially in extraordinary circumstances. Although the rule of law system may do a better job than the rule of man one in providing stability and accountability for a regime, they are both subject to deterioration. The latter can easily nurture a dictator, but the former is not immune from this problem either. Moreover, the rule of law system often becomes stagnated when it is overloaded with various oppositional forces. Yet when either the rule of man or the rule of law system deteriorates in a crisis or in a transitional period, the intervention of great man leadership is required to surpass existing rules or norms and pinpoint the flaws of the deteriorated system. Leadership is pivotal in providing a new direction that more closely conforms to justice and the spirit of humanity, distributes public goods more fairly, and ensures the stability and prosperity of the regime.

In this paper we attempt to restore trust in the quality of goodness in a leader and give credit to the few leaders who have made efforts to introduce the necessary institutional changes to overcome deterioration in an

existing system. Thus leaders in developing countries or transitional states may be encouraged to exercise virtuous leadership as exemplified by the two qualities we have delineated. Although there are plenty of examples of corrupt rule of man systems recorded in history, this does not mean that no merit can be derived from the ideas underlying this kind of system. On the other hand, the rule of law system is by no means flawless—for example, lack of clarity in the law can create opportunities for guileful individuals to distort the law to their own advantage. Only when political leaders avoid the temptation to pursue their own individual interests and instead make decisions that benefit the greater public good can the deterioration of the rule of law system be effectively halted and that of the rule of man system be transformed. By adopting a new understanding of these systems as constitutive rather than antagonistic, states may be enabled to consolidate their democracy or carry out democratization, as in the cases of France and the Republic of China on Taiwan.

#### **BIBLIOGRAPHY**

- Allan, Sarah. 1997. *The Way of Water and Sprouts of Virtue*. New York: State University of New York Press.
- Allen, Douglas, ed. 1997. *Culture and Self: Philosophical Perspectives, East and West*. Boulder, Colo.: Westview.
- Aristotle. *Nicomachean Ethics*, translated by Terence Irwin. 1985. Indianapolis: Hackett.
- Bell, David Scott. 2000. *Presidential Power in Fifth Republic France*. Oxford: Oxford International.
- Cerny, Philip G. 1988. "The Process of Personal Leadership: The Case of de Gaulle." *International Political Science Review* 9, no. 2:131-42.
- Chang, Maria Hsia (張俠). 1984. "Political Succession in the Republic of China on Taiwan." *Asian Survey* 24, no. 4 (April): 423-46.
- Chang, Parris (張旭成). 1983. "Taiwan in 1983: Setting the Stage for Power Transition." *Asian Survey* 23, no. 1 (January): 122-26.
- Chan, Alan. 2000. "Confucian Ethics and the Critique of Ideology." *Asian Philos-*

ophy 10, no. 3:245-61.

- Chou, Yang-Sun (周陽山), and Andrew J. Nathan. 1987. "Democratizing Transition in Taiwan." *Asian Survey* 27, no. 3 (March): 277-99.
- Coleman, Janet. 2000. *A History of Political Thought: From Ancient Greece to Early Christianity*. Oxford: Blackwell.
- Cook, Don. 1984. *Charles de Gaulle: A Biography*. New York: G. P. Putnam's Sons.
- Cosgrove, Richard. 1980. *The Rule of Law: Albert Venn Dicey, Victorian Jurist*. Chapel Hill: University of North Carolina Press.
- Copper, John F. 1981. "Taiwan's Recent Elections: Progress toward a Democratic System." *Asian Survey* 21, no. 10 (October): 1029-39.
- Cothran, Tilman, and William Phillips. 1961. "Negro Leadership in a Crisis Situation." *Phylon*. 22, no. 2:107-18.
- Crozier, Michel. 1964. *The Bureaucratic Phenomenon*. London: Tavistock.
- Brady, David W., and Mathew D. McCubbins, eds. 2002. *Party, Process, and Political Change: New Perspectives on the History of Congress*. Stanford, Calif.: Stanford University Press.
- De Gaulle, Charles. 1970. *Mémoires d'Espoir*. Paris: Plon.
- Duverger, Maurice. 1978. *Échec au roi*. Paris: Albin Michel.
- Edinger, Lewis J. 1990. "Approaches to the Comparative Analysis of Political Leadership." *Review of Politics* 52, no. 4 (Autumn): 509-23.
- Elgie, Robert. 1998. "The Classification of Democratic Regime Types: Conceptual Ambiguity and Contestable Assumptions." *European Journal of Political Research* 33, no. 2 (March): 219-238.
- \_\_\_\_\_. 1999. "The Politics of Semi-Presidentialism." In *Semi-Presidentialism in Europe*, edited by Robert Elgie, 1-21. Oxford: Oxford University Press.
- \_\_\_\_\_. 2004. "Semi-Presidentialism: Concepts, Consequences and Contesting Explanations." *Political Studies Review* 2, no. 3 (September): 314-30.
- \_\_\_\_\_, and Sophia Moestrup, eds. 2007. *Semi-Presidentialism Outside Europe: A Comparative Study*. London: Routledge.
- Fingarette, Herbert. 1972. *Confucius—The Secular as Sacred*. New York: Harper Torchbooks.
- Hasnas, John. 1995. "Back to the Future: From Critical Legal Studies Forward to



- Legal Realism, or How Not to Miss the Point of the Indeterminacy Argument." *Duke Law Journal* 45, no. 1 (April): 84-132.
- Hayek, Friedrich. 1955. *The Political Ideal of the Rule of Law*. Cairo: National Bank of Egypt.
- Hoffmann, Stanley. 1967. "Heroic Leadership: The Case of Modern France." In *Political Leadership in Industrialized Societies*, edited by Lewis J. Edinger, 108-54. New York: Wiley.
- Horne, Alistair. 2006. *A Savage War of Peace: Algeria 1954-1962*. New York: NYRB Classics.
- Hsiung, James C. 1986. "Taiwan in 1985: Scandals and Setbacks." *Asian Survey* 26, no. 1 (January): 93-101.
- Hu, Ching-fen. 2005. "Taiwan's Geopolitics and Chiang Ching-kuo's Decision to Democratize Taiwan." *Stanford Journal of East Asian Affairs* 5, no. 1 (Winter): 26-44.
- Hume, David. *A Treatise of Human Nature*, edited by L. A. Selby-Biggie. 1978. Oxford: Clarendon.
- Jackson, Julian. 2003. *De Gaulle*. London: Haus.
- Jerome Young. 2000. "Morals, Suicide, and Psychiatry: A View from Japan." *Bioethics* 16, no. 5 (February): 412-24.
- Kavka, Gregory. 1983. "Hobbes's War of All Against All." *Ethics* 93, no. 2 (January): 291-310.
- L'Histoire de l'Elaboration de la Constitution du 4 octobre 1958*, volume 1. 1987. Paris: La Documentation Francaise.
- Lai, Karyn. 2006. *Learning from Chinese Philosophies: Ethics of Interdependent and Contextualised Self*. Aldershot: Ashgate.
- Lee, Teng-hui (李登輝). 2004. *Jianzheng Taiwan: Chiang Ching-kuo yu wo* (見證台灣：蔣經國與我, Memoire and narration: President Chiang Ching-kuo and me). Taipei: Yunchen wenhua (允晨文化).
- Liu, Yuli (劉余莉). 2004. *The Unity of Rule and Virtue: A Critique of a Supposed Parallel between Confucian Ethics and Virtue Ethics*. Singapore: Eastern Universities Press.
- Mahoney, Daniel. 2000. *De Gaulle: Statesmanship, Grandeur, and Modern Democracy*. New Brunswick, N.J.: Transaction.
- Mansfield, Stephen. 1995. *Never Give In: The Extraordinary Character of*

Winston Churchill. Elkton, Md.: Highland Books.

- Maravall, José María, and Adam Przeworski, eds. 2003. *Democracy and the Rule of Law*. Cambridge: Cambridge University Press.
- Marsh, Robert M. 2000. "Weber's Misunderstanding of Traditional Chinese Law." *The American Journal of Sociology* 106, no. 2 (September): 281-302.
- Mazor, Lester. 1972. "Review: The Crisis of Legal Liberalism." *Yale Law Journal* 81, no. 5 (April): 1032-53.
- Myers, Ramon H. 1996. "A New Chinese Civilization: The Evolution of the Republic of China on Taiwan." *The China Quarterly*, no. 148 (December): 1072-90.
- Neumann, Franz. 1996. "The Change in the Function of Law in Modern Society." In *The Rule of Law under Siege*, edited by William E. Scheuerman, 101-41. Berkeley: University of California Press.
- Peng, Ming-min (彭明敏). 1972. *A Taste of Freedom: Memoirs of a Formosan Independence Leader*. New York: Holt, Rhinehart and Winston.
- Raz, Joseph. 1979. *The Authority of Law*. Oxford: Clarendon.
- Roka, Pujan. 2006. *Bhagavad Gita on Effective Leadership: Timeless Wisdom for Leaders*. Lincoln, Neb.: iUniverse.
- Rosenfeld, Michel. 2001. "The Rule of Law and the Legitimacy of Constitutional Democracy." *Southern California Law Review* 74, no. 1307 (March): 1318-29.
- Skach, Cindy. 2005. *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic*. Princeton, N.J.: Princeton University Press.
- Strahan, Randall W. 2002. "Leadership and Institutional Change in the Nineteenth-Century House." In *Party, Process, and Political Change: New Perspectives on the History of Congress*, edited by David W. Brady and Mathew D. McCubbins, 355-406. Stanford, Calif.: Stanford University Press.
- Strange, Steven K., and Jack Zupko, eds. 2004. *Stoicism: Traditions and Transformations*. Cambridge: Cambridge University Press.
- Tamanaha, Brian Z. 2004. *On the Rule of Law: History, Politics, Theory*. Cambridge: Cambridge University Press.
- Taylor, Jay. 2000. *The Generalissimo's Son: Chiang Ching-kuo and the Revolutions in China and Taiwan*. Cambridge, Mass.: Harvard University Press.

- Tien, Hung-mao (田弘茂). 1975. "Taiwan in Transition: Prospects for Sociopolitical Change." *The China Quarterly*, no. 64 (December): 615-44.
- Tushnet, Mark. 1996. "Defending the Indeterminacy Thesis." *Quinnipiac Law Review* 16 (Fall): 339-40.
- Wacks, Raymond. 2006. *Philosophy of Law: A Very Short Introduction*. New York: Oxford University Press.
- Winckler, Edwin A. 1982. "After the Chiangs: The Coming Political Succession on Taiwan." In *China Briefing*, edited by Richard C. Bush, 103-22. Boulder, Colo.: Westview.
- \_\_\_\_\_. 1984. "Institutionalization and Participation on Taiwan: From Hard to Soft Authoritarianism?" *The China Quarterly*, no. 99 (September): 481-99.
- Wright, Arthur, ed. 1990. *Confucianism and Chinese Civilization*. Stanford, Calif.: Stanford University Press.
- Zapp, Christian, and Eben Moglen. 1996. "Linguistic Indeterminacy and the Rule of Law: On the Perils of Misunderstanding Wittgenstein." *Georgetown Law Journal* 84 (February): 485-520.