

Law in the Original Analects

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I here test my notion of how law might have developed in Warring States China against the Brooksonian reconstruction of the Lún Yǔ (hereafter LYB). Bruce and Taeko's work situates the text in history, tempting the historian to look for "progress" over time. In its standard arrangement, the text makes little historical sense to me, because in each chapter a complex vision of ritual life is juxtaposed with a very simple level of political development. But reading the Analects in the chronological order proposed by Bruce and Taeko, I sense that the authors of successive chapters are responding to the demands of an ever more complex and impersonal bureaucratic society. I also find a remarkable reluctance to accept some features of this new world, especially formal written laws, as valuable.

I begin with the dominant paradigm, which has emerged from the Western experience. Though contingent on particular historical experiences in Greece, Rome, feudal Europe, and early modern Europe and America, the movement from status to contract (Maine **Ancient**) and from rule of man to rule of law (Weber **Social**) carries weight because it is viewed as the natural state of affairs. Critiques of law as a means to justice appeared in classical times and continue to this day (eg Unger **Law**), but skeptics have not developed an alternative to the standard narrative of change over time in legal matters. Moreover, both Western and Chinese scholars continue to hearken to the Western notion of the rule of law as a means to evaluate China's legal system, past and present.

Some aspects of the status-to-contract model do resonate with the Chinese case. Thus, I find many of the features Weber attaches to a modern legal system in 03rd century Chinese texts such as the Jīng-fǎ 經法, the Gwǎndǔ 管子, and the Chín laws from Shwèihǔdì 睡虎地 (see Turner **Theory**). Studies of the changes in ways of thinking that accompanied this transition in the West (eg Havelock **Justice**) also suggest that written laws stimulate the need for a new kind of knowledge based on seeing and vision, rather than hearing and listening. Again, I have found in 03rd century Chinese texts that the value of míng 明 (intelligence based on observation; seeing things clearly) is celebrated when codified laws are discussed as essential for ruling. Finally, some of my reading on the 12th century Renaissance in Europe (Southern **Making**), which witnessed the revival of a universal legal system based on Roman law after the "dark" ages of fragmented tribal and feudal law, alerted me to look for a different conception of time as the state develops, from a polity that is no longer based on direct, immediate mutual relations between people connected by kinship or local ties, but instead expanded to more distant, long-term reciprocal relations between strangers.

Not all these conditions would apply everywhere at any given time in any society, but I did expect to find some of these ways of thinking in the “new” men, who by the time of Confucius had the chance to define a self that was not predetermined by family status, and could cultivate characteristics that would equip them to gain influence in a more open political arena. At the same time, of course, these men were still obliged to satisfy family and local obligations, and so would also have to operate according to the informal, mutually acceptable habits that satisfied their kin and neighbors.

With these expectations in mind, I approached the first 12 layers of the Lún Yǔ, spanning the years 0479-0317, as Bruce and Taeko Brooks have reconstructed them. I have worked from notes and newsletters produced by WSWG, and key my citations to the Legge translation for readers’ convenience.

LYB places Chapter 4 at the head of the text and dates it at 0479 (479 BC), the year of Confucius’s death. This arrangement makes sense to me. LYB 4 is an initial statement of the Master’s principles, a definition of what it means to be fully human, *rǔn* 仁. The 05c (5th century BC) man could create a name and identity for himself because his position in local and family life no longer offered the only definition of human worth. In a time of social change, these men needed new guidelines for dealing with their own community and with the world outside it. Now freed from certain ascriptive forces, a man could be held responsible for his own actions, and had to find a way to judge others. A concept of interiority, of an inner person with a self-directed life, emerges. And this inner life counts more than superficial traits. The Master is said to have said, “He does not worry about not having a position; he worries about whether he is qualified to hold one” (4:14). The man who acts according to *rǔn* can make his mark with strangers and yet preserve the respect of his community: “If he chooses not to abide by *rǔn*, how will he get to be known?” (4:1). The theme that I see dominating this first chapter is that it is the content, the interior meaning, of behavior that counts, rather than formal, superficial activity.

There is a defensive tone here. What is Confucius reacting against? The manipulative, profit-minded merchant seems to be his target (there is no mention of the empty-hearted son who still performs the rituals correctly). The good man is judged by his sincerity: how well others trust his word. This emphasis on inner character seems to me to represent the response of the leader of a small community whose members are known to one another but judge one another by new signals and values. This community tries to resist being seduced by profit, to be independent-minded, but connected to one another by a set of core values. The “state” is not an issue; there is no mention of law or rulers in Chapter 4.

The Brooksonian version places Chapter 5 next, dates it at 0473, and links it with a small circle of original students. This chapter provides more concrete advice about how and why to be *rǔn*. The community can trust the word of a man who is *rǔn*, but it has also become a necessary qualification for holding office. The person who manipulates language is criticized. Words must be used carefully. Eloquent, polished speech must not make the man. I see here that sincerity is no longer sufficient. Now a man’s authenticity matters: his deeds must match his words.

The Master said, At first my way with others was to listen to their words and trust their actions. Now, my way with others is to listen to their words and watch their actions (5:9).

This statement implies that a person has both a private and a public life, plays many roles at once, and ideally remains the same person, true to the values of his community of peers, in all of these situations.

In this chapter, the state impinges in the form of punishments. 5:1 has the Master marrying his daughter to one who had been in shackles (léi-syè 縲紲¹), presumably by order of an authority outside the local clan networks. The next passage (5:2) deplors a world in which a man might be decent and yet barely escape the state's punishment. The only valid measure of a man's worth comes from inside a community of people devoted to rǎn. In this story of Confucius's chosen son-in-law, the text implies that the state's decisions neither necessarily agree with the truth of a situation, nor mark a person as good or bad. These passages display a coded resistance to the state's right to determine moral character. I am troubled by the appearance of state institutions and punishments so soon after Chapter 4. Perhaps the author deliberately ignored the state, or six years later it could no longer be ignored. Or this statement is out of place.

Chapter 6 (c0460) tackles problems that arise when members of the community supervise the distribution of resources. Here is the first mention of the common people, and the warning that one who is rǎn must understand their concerns but keep his distance (6:13). There is no mention of laws or rules as guidelines.

In Chapter 7 (c0450), the authors become defensive about "tradition," declaring that the authentic man will commit himself to preserving it. The Master is portrayed as a transmitter, not a creator – and yet, curiously, there is no mention at all of old laws or customs. In this chapter I also find the suggestion that the ear is what channels understanding. The Master is described as anxious about "hearing the right and not following it" (7:3), and impressed with the power of music to build character (7:14). This layer seems still to celebrate the virtues of an oral rather than a written culture.

Chapters 8 (0436) and 9 (c0405) deal with men leaving the community to fulfill official duties. Not surprisingly, this mobility threatens family relations, which need to be reaffirmed and renegotiated. In Chapter 10 (c0380), members of the community are described as taking part in local councils and ancestral worship, and in court affairs. Curiously, the text describes the local council as the site most fraught with danger – possibly because here the literate man is called upon to adjudicate disputes using written laws or because at this level a man's personal, local life and official, bureaucratic roles intersect.

¹This meaning of the character 縲 is troublesome. Hulsewé **Ch'in** 69 cites, though he rejects, an opinion that it means "black ropes" tied around the neck of a convict in LY 5. In any case, the person in question was in some way marked as a criminal.

In Chapter 11, Confucius declares that today's *jiwǎndǔ* knows rites and music, as opposed to yesterday's rustics, who did not. But he also asks whether a man's inner goodness can be determined by his ability to discuss things with ease and correct form (11:20). Two disciples are praised for literary accomplishments (11:2), but Dǔ-lù asks whether a man must read books in order to be learned. It seems to me that the chapter addresses men who are finding life complicated and contradictory, and asking how to retain fundamental values.

Chapter 3 (c0342) offers a solution, the rites, which can serve as guideposts for men trying to juggle multiple roles. Here for the first time, *rǎn* is linked with *lǐ*; one who is *rǎn* must know and practice *lǐ*. Ritual involves expense, and the authentic man is warned not to be seduced by the material side of ceremony. The state most likely directs the production and distribution of products for ritual consumption and should have need of regulations to guide this business. Personal decisions could not alone order this elaborate ritual scheme. Yet there is no mention of law.

In Chapters 12, 13, and 2 (c0326-c0317) we find a new concern and focus, and an explanation for some of the ambivalence expressed in Chapter 11. The authors take up all of the problems they face as players in an increasingly bureaucratic, legalistic world. In Chapter 12, the community is told that it must apply the standards it uses to judge itself to others, in all situations, to pay attention to "public" opinion, to know and care about all humans. The definition of *rǎn* in 12:2 is worth quoting: "It is, when you go abroad, to behave to everyone as if you were receiving a great guest; to employ the people as if you were assisting at a great sacrifice; not to do to others as you would not wish done to yourself; to have no murmuring against you in the local government and none in the family."

The state intrudes now and cannot be ignored. Universal rules, litigation, punishments, taxes, war are the concerns of the *jiwǎndǔ*. And now too, *míng* 明, an intelligence connected with vision, sight, literacy, is celebrated as valuable for surviving and carrying out official business. Yet, there is no mention here of laws or codes. I find this silence strange, since written laws had to be a part of the official side of life by this time, according to other evidence, and because other texts dated from this period, most obviously *Gwǎndǔ*, are preoccupied with trying to figure out whether old law or new law works best.

In Chapter 13, a connection is finally made between language, categories, and punishments: if categories are used correctly, punishments will be consistent and fair. How to regulate the coercive power of the state is a problem, and in this layer we find the Master warning that the people should understand why they are being sent to war before they can be expected to sacrifice themselves for a cause. This passage implies as well that the concept of interiority extends to the common people, who are not simply fodder to fulfill the ruler's ambitions, but engaged in a reciprocal relationship and a common cause with elites. When the author of this chapter warns the ruler that he must not abuse his people and then ask for their support, I suspect he is using the best ammunition he can muster against capricious rulership – if you don't treat them right they won't fight. I think too that he is linking the fears of the *jiwǎndǔ*, now engaged in a dangerous enterprise if he serves, with those of the common people.

In Chapter 2 occurs a yearning for passive kingship, couched in the metaphor of the pole star, probably because rulers' demands were interfering too much with local life. The author of this chapter is worried about the litigious nature of the people, who will manipulate the laws if they are public. Thus the state has penetrated the lives of ordinary people. In this very difficult world, which is different from that presented in Chapter 4, resistance to the idea that the literate man is the best arbiter of contributory rules surfaces. When he outlines the stages of Confucius's life, the author presents the sixty-year-old Master as having perfected his hearing, not his vision. Here too the value of the rites, the rules that determine long-term human relations between humans, is reaffirmed. And law, which can no longer be ignored, is said to be good only if it is old, connected with the past. In these three chapters, centered around 0320, the constellations of characteristics which I expected to find as the state takes shape, finally do appear in the text.

But what I find most interesting in this new reading of the Analects is its powerful testimony against the rightness of "progress." The authors of these early layers hold off as long as they can from mentioning written law and the need for the public man to read it. But they are not hide-bound conservatives engaged in a self-centered pursuit of archaic ritual, which appears to be the case if one follows the orthodox arrangement of the text that begins with the rites. The text as the Brookses present it can be read as an ethical handbook and a critique – made by men who extended their lives into a public realm – of the right of the state, of strangers, to use written categories of any kind to define the worth of the *jywndž*. The Confucian disdain for law must be seen as part of this reaction, and not simply as a preference for ritual. The message conveyed by the original Analects is that the measure of a good man must be rooted in the small community of men who share *rĕn*.

When I read the text in this light, I can begin to understand the tradition that offers contemporary Chinese dissidents the courage to defy the state again and again without losing a sense of self and a place in a community of like-minded individuals whose allegiances transcend political boundaries.

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