

Name

Professor

Course

Date

East Asian Law from a Confucian Perspective

The fundamental role in the history of China's human rights was played by the teachings of the great Chinese philosopher Confucius (Kun-tzu) in an era of endless strife. In this regard, his doctrine, *Conversations and Expressions (Lun Yi)*, reflected the thirst for justice that had been instilled in the people and had a serious impact on both the outlook and the way of Chinese life. Confucianism's own right to respect the principles of charity in the state administration was distinguished by this doctrine from the practice of despotic rule and from theoretical concepts that justify violence against the subjects. Moreover, the means of moral recovery in pursuing the ancient traditions offered by Confucianism did not meet the requirements of the time. According to Confucianism, the human world differs sharply from the world of nature with its strict hierarchical sense of order. The natural laws of this doctrine are called the Tao (divine way), but they do not directly govern the human world. Thus, according to the Confucian doctrine, the revival of the order established by nature allows people to achieve the moral uplift and unity of the people, who then will not be afraid of any aggression from the outside.

Based on traditional views, Confucius developed a patriarchal-paternalistic concept of the state. He likened the state to a great family where the power of the emperor was

likened to the authority of a father, and the relations of the ruling and the subjects (a family relationship) where like the younger dependent on their elders. Political ethics of Confucius was aimed at achieving inner peace between the high and low levels of society and the stabilization of government. According to the Confucian doctrine in management, one should proceed from humane principles; that is, the ancient rulers were to keep people from injustice, link it with administration, carry it out correctly, and support humanity (Celarent 1047). The former rulers managed people gently, approached them with respect, and tried hard to be fair and just.

Furthermore, Confucianism reduces the requirements of morality to the level of the basic foundations of social and political life. Morality and law largely coincide, but the role of the former, because of its imperfection and abstraction, which does not take into account the diversity of life situations, was humiliated as “the fish swallowing ships could slip through the network of rules” (Lee 14). Confucianism also preaches the process of self-improvement by “taking in iron mitts” (Lee 14). The symbol of this method is the carp that floats against the current.

In addition, it is known that the law was not considered a factor of order or a symbol of justice in the understanding of the Chinese. It was a weapon of arbitrariness and a factor that violates the normal order of things. A respectable citizen was not obliged to respect the rights of someone else or to even to think about that person. His or her way of life was to exclude any legal claim and any appeal to justice. In his behavior, a person should be guided not so much by legal motives but by striving for harmony and peace. In view of this

conciliation procedures, more valuable justice was recognized. For instance, conflicts should be suppressed through mediation, rather than resolved in a legal way (Zhou 340). For example, if people are governed by law and disciplined by punishment, they will shamelessly look for ways to circumvent both. Thus, the practice in China ignored the laws as soon as they violated the tradition, and it is in this aspect that one should speak of the traditional Chinese legal model that has been in operation for thousands of years.

Besides, in China, people lived for centuries without knowing about organized legal professions. Moreover, people who were aware of the law were despised, and if they consulted with legal experts, it was done in secrecy. However, this traditional approach was still questioned over time. At the end of the reign of the Zhou dynasty, the school of Chinese legalism had been formalized. According to the position of legists, authority should be based not so much on the virtue of the rulers, but on the discipline of the law. For the first time, the concept of managing the people on the basis of a law, strictly performed by all - from the ruler and the official to the representative of the lower classes - was put forward and justified by Guan Zheng in the VII-V centuries BC, which was at a time when legists had not yet created a complete legal theory.

It should be noted that Confucianism and legalism expressed the opposite understanding of the nature of an individual, the relationship between people and ruler, and the goals and objectives of the state. According to Confucius, a person is a moral human, but legists, in contrast, believed that people were needed only to bring pleasure and avoid suffering. Breaking with customs and traditions, legislation was a rationalist doctrine, which

required a radical transformation of social relations in China (Celarent 1047). The submission of legalists concerning violent laws as the main means of governance is closely linked to their understanding of the relationship between people and state power (Lee 18). These relations had an antagonistic character on the principle. When people are stronger than their power, the state is weak; when the power is stronger than its people, the army is mighty.

At the same time, according to legalism, people are raw materials, and the ruler is a master who, while processing the material and cutting off everything, creates something beautiful. The ruler must be free from conscience, moral norms, and guided only by expediency. Decisive importance in public administration was given to both the law and the diligence of officials in assigning punishment. Strict punishment was considered to be the best means of control. If punishment prevails, the people are calm, but if there are abundant awards, then abomination is born where strict punishment for petty crimes disappears.

Shang Yang created the complete legist doctrine of managing people and state during the aspiration of Chinese society to overcome fragmentation and strengthen the central power of the ruler by suppressing the separatism of the aristocracy. This was in defense of a ruler's absolute power, through the strictly established law, which is not subject to discussion, to define the life of his subjects and recognize the impossibility of the existence of people outside of strict punishment. Shang Yang proceeded from the obligation of preventive measures and collective responsibility, which ensured good governance.

Han Feizy, another prominent theorist of legalism in China, argued that the law should not condone the nobility, and the slope should not falsify curvature. Where the law

applies: the intelligent cannot bypass it; the brave person cannot resist it; punishment for guilt does not disappear; and rewards for good deeds do not go away. That is why nothing compares with the law when it is necessary to correct the misconduct of the nobility and to show the crimes of ordinary people, to curb rebellion, to condemn deception, to get rid of excesses, to eliminate the absurdity, and to establish unified rules for all people. According to Han Feiji, in the state of the wise ruler, only the laws serve as a textbook of life, and there are no other books comparable to these goals (Zhou 345). However, the views of the Legist remained alien to the consciousness of the majority of the Chinese population since they too deviated from the rooted ideas and had only temporary success.

As noted, with the approval of the dynasty Han in 206 BC. - 221 BC., Confucianism once again reignited and logically made a compromise variant of coexistence with the ideas of legists. There was a merger of legalism and Confucianism in a new doctrine called Orthodox Han Confucianism. The dominant idea of this ideology was the Confucian idea of the inequality of people, their social class and rank differences as well as differences dependent on family status, gender, and age (Celarent 1048). The inviolability of these differences should have been the careful regulation of the behavior of people in society and family with the help of the strict moral standards “li.”

Thus, the officially recognized ritual based on customs and traditions remains the main regulator. Morality set the stereotype of behavior, and the law with the help of sanctions forbade avoiding it. The rules of dominant Confucian morality were supposed to be supported by force, a severe punishment of the “fa” of the law. At the same time, in the traditional law

of China, many legal provisions preserved the role, which was strengthened by the law enforcement mechanism created on the legist ideological basis of the state apparatus. Despite the fact that the legist demanded a mutual guarantee and collective responsibility, the promotion of denunciations came to the fore of the law when determining the extent of punishment. The courts were often guided by Confucian views (Zhou 364). After the collapse of legalism, the experience of statehood based on it in relation to the construction of the state machinery was partly preserved in the traditions of the country, although the values of the Confucian statehood were revived and were still being honored in the further history of the Chinese people.

Consequently, one can say with certainty that the ideological stereotype of the exceptional effectiveness of mutually complementary “li” and “fa” has become the most important feature of traditional mass consciousness and the most important element of the oldest century in a thousand years of Chinese civilization. This distinction most clearly reflected the variability of value orientations in the construction of state and law (Celarent 1048). In the value perception of the regulatory role of law, both of these directions, having received a clear expression in ancient times in China, remained a vivid phenomenon in world history.

China, Japan, and Korea have long been ignorant of legal doctrines, and there are no important lawyers who left a significant mark on it in the history of these countries. In a situation where the laws were not recognized as a means of resolving conflicts between people, only a negative attitude towards the courts could be formed. The useful role of the

courts was limited by the fact that they offered patterns of behavior and warned those who would behave in an anti-social way. Thus, the stability of the political regimes in East Asia against the background of changes in the world over the past twenty years proves that the role of Confucian traditions in assessing the legal situation in these countries and the prospects for its development was clearly undervalued. Strengthening the orientation of Asian countries to traditional values and cultural heritage is intended to provide more favorable conditions for their modernization in new historical conditions.

Works Cited

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